

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 7 December 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

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

THE HONOURABLE LEE CHEUK-YAN

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

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

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

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

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

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE STEPHEN LAM SUI-LUNG, G.B.S., J.P.

THE CHIEF SECRETARY FOR ADMINISTRATION

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

SECRETARY FOR SECURITY

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

SECRETARY FOR FOOD AND HEALTH

THE HONOURABLE DENISE YUE CHUNG-YEE, G.B.S., J.P.

SECRETARY FOR THE CIVIL SERVICE

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

SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MATTHEW CHEUNG KIN-CHUNG, G.B.S., J.P.

SECRETARY FOR LABOUR AND WELFARE

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

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

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

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Frontier Closed Area (Amendment) Order 2011	170/2011
Mandatory Provident Fund Schemes (Contributions for Casual Employees) (Amendment) (No. 2) Order 2011	171/2011
Antiquities and Monuments (Declaration of Historical Buildings) (No. 2) Notice 2011	172/2011

Other Papers

No. 37 — Emergency Relief Fund
Annual Report by the Trustee for the year ending 31 March 2011

No. 38 — Hong Kong Housing Authority Annual Report 2010/11

No. 39 — Hong Kong Housing Authority Financial Statements for the year ended 31 March 2011

Report No. 5/11-12 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2011

Report of the Bills Committee on Pyramid Schemes Prohibition Bill

QUESTIONS UNDER RULE 24(4) OF THE RULES OF PROCEDURE

PRESIDENT (in Cantonese): Questions. Apart from the six oral questions for this meeting, I have permitted Dr Priscilla LEUNG, Mr James TO, Mr WONG Yuk-man, Mr Alan LEONG and Ms Starry LEE to respectively ask an additional urgent question under Rule 24(4) of the Rules of Procedure.

As the five urgent questions are all related to the Number 4 alarm fire which broke out at Fa Yuen Street in Mong Kok and related issues, to facilitate Members' follow up, I will first call upon the five Members to ask their urgent questions and the public officers to reply to the five questions respectively. I will then invite Dr Priscilla LEUNG, Mr James TO, Mr WONG Yuk-man, Mr Alan LEONG, Mr Starry LEE and other Members to ask supplementary questions to the five questions. I will appropriately adjust the time for Members to ask supplementary questions.

Urgent question 1.

Follow-up Actions on Fa Yuen Street Fire and Relief Measures for Victims

1. **DR PRISCILLA LEUNG** (in Cantonese): *In less than a year after the fire at the Fa Yuen Street bazaar in December last year which destroyed around 50 hawker stalls, another fire broke out at a nearby location in the early hours of 30 November this year which resulted in heavy casualties. According to the owners of the hawker stalls in the vicinity of the fire scene, fire precautions have been enhanced following the authorities' recommendations, including reserving sufficient space between hawker stalls to facilitate the evacuation of residents of nearby buildings in case of fire, and providing appropriate space to separate hawker stalls which are not joined together to prevent the spread of fire. Nevertheless, it has been reported that the fire last week still spread very rapidly, and the fire precautions were barely effective. In this connection, will the Government inform this Council:*

- (a) *after the fire which broke out at the end of last year, whether the authorities have comprehensively assessed the fire risk in several large downtown open-air bazaars, including those at Fa Yuen Street, Tung Choi Street and Temple Street, and reviewed the corresponding fire safety measures in place; if they have, of the*

results of the assessment and the review; if not, the reasons for that; as the owners of the hawker stalls at the site of the recent fire said that they had already enhanced fire precautions following the authorities' recommendations, but the fire still spread rapidly and resulted in heavy casualties, whether this indicates that the authorities' analysis of and conclusion on the causes of the fire which broke out at a nearby location at the end of last year were not comprehensive and thus could not prevent the recurrence of another tragedy;

- (b) after the fire last week, whether the authorities have assessed the structural and overall safety of those residential buildings in the vicinity of the fire scene; if they have, of the results; as some victims are worried about their safety in the future, and they have indicated that they dare not move back to the aforesaid buildings even after the closure order on the fire scene is lifted, whether the authorities have any measure in place to help rehouse these residents; if they have, of the measures; and*
- (c) of the emergency financial relief measures provided by the authorities to the affected residents and family members of the deceased and injured this time; whether the Government will consider using the Community Care Fund (CCF) or similar emergency disaster relief funds to provide a series of emergency assistance if the victims cannot benefit from the relevant measures?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, first of all, on behalf of the HKSAR Government, I wish to extend our condolences to the fire victims and also wish that those who are still being hospitalized will soon recover.

Immediately after the outbreak of the fire at Fa Yuen Street in the early hours of 30 November, at the direction of the Chief Executive, relevant bureaux and departments of the HKSAR Government have set up an inter-departmental working group to handle relief work and introduced measures to enhance public safety.

In sum, we are taking follow-up actions along the following five directions.

First, rendering relief and assistance to the fire victims. After the outbreak of the fire, we immediately opened up community centres to provide temporary shelter to the fire victims and to conduct registration. Relevant departments including the Home Affairs Department, the Social Welfare Department (SWD) and the Housing Department (HD) have provided various forms of assistance to the fire victims in accordance with their existing policies.

Charitable organizations and other civic-minded members of the community have also shown their care for the victims. About \$5 million to \$6 million dollars of donations were collected within a matter of days. Families with members who passed away during the fire can each receive emergency assistance of about \$300,000; other residents directly affected by the fire can also receive emergency assistance of more than \$60,000 per household.

Besides, the HD has also made available the temporary accommodation in Shek Lei to temporarily house people who do not have a home to go back to. As at 6 December, 62 families comprising a total of 126 affected persons have moved there. They can temporarily live in the temporary accommodation for three months.

We hope that these measures can help the fire victims tide over this difficult period and resume normal life as soon as possible. At present, the first stage of Government's relief work has basically been completed.

Secondly, the fire has resulted in nine deaths and 34 injuries. Up to now, five persons are still being hospitalized and are in either critical or serious condition. The Hospital Authority will try their utmost to provide them with medical treatment.

Thirdly, the police and the Fire Services Department (FSD) have started extensive and in-depth investigation into the cause of the fire. If there is evidence indicating that any criminal element is involved, we will take vigilant enforcement action.

Fourthly, the Food and Environmental Hygiene Department (FEHD), the Buildings Department (BD) and the FSD have taken actions in several areas.

The FEHD has tightened up the inspection of over 40 hawker stalls areas, and will take strict enforcement actions against those breaching the regulations. To obviate the risk of fire, each hawker stall licensee can only operate within the permitted area. The canopy of a stall cannot be connected with other stalls or adjacent buildings. Furthermore, during non-operating hours, any goods stored in the stall must be kept within the stall area as prescribed by the licence.

In the coming six months, the BD will also strive to complete the inspection of about 300-old buildings built before 1980 that are six to 12 storeys in height with double staircases and hawker stalls in front of them. The BD will take enforcement action immediately, if irregularities are found and any alteration works have blocked the fire escape. The FSD will provide support to the work of the FEHD and the BD.

The objective of all these actions is to minimize the chance of recurrence of similar fire incidents based on existing laws and policies.

Fifthly, with a view to managing the hawker stalls more effectively and to enhancing public safety, the Food and Health Bureau and the FEHD will take the lead in examining various feasible options to enhance fire safety of the hawker stalls. In assessing these measures, we will have two considerations. First and foremost, measures to be adopted must be able to enhance public safety and to minimize the risk of fire. At the same time, such measures would also need to take into account the interests of the licensees of the hawker stalls.

Possible options suggested so far for enhancing public safety include: dismantling the stalls after trading hours, keeping only the metal frames for display within the approved pitch but removing the goods, introducing a demerit points system, relocation of the hawker stalls, and so on. We are prepared to listen to the views of the Legislative Council, District Council, members of the public and trade representatives on these measures.

Our intention is, after detailed study and consideration, to put forth proposals and consult the public on feasible measures to enable the community to have an in-depth and substantive discussion on the issue. If necessary, we can take forward the relevant measures in stages starting with those which are easier to implement.

In respect of the questions raised by Dr Priscilla LEUNG, my replies are as follows:

- (a) The FSD has been providing assistance to the FEHD in enhancing the fire safety standard of hawker stalls. Since the fire at the hawker stalls in Fa Yuen Street in December last year, the FEHD, in conjunction with the FSD, the Electrical and Mechanical Services Department and the hawker associations concerned, has implemented fire safety improvement measures, which include ensuring sufficient space in the carriageway for fire appliances and firemen; allowing sufficient space between hawker stalls to facilitate evacuation of residents of buildings in the vicinity; providing proper separation space between un-linked hawker stalls so as to prevent the spread of fire; ensuring that stalls are erected with fire-resisting materials; requiring hawker stalls to obtain independent electricity supply from legal sources, and so on.

According to the observations of the FSD at the scene, highly combustible canvas or plastic materials were found on top of some of the hawker stalls in Fa Yuen Street and the separation space between un-linked hawker stalls was inadequate, thus threatening fire safety. However, the actual causes of the fire and the circumstances leading to the spread of fire cannot be ascertained until the investigation is completed.

Since the Number 4 alarm fire broke out in Fa Yuen Street, the FSD has joined forces with the FEHD in conducting inspections in areas where residential buildings are found near closely packed hawker stalls and in reminding the hawker stalls to observe fire safety measures. In light of this recent fire incident in Fa Yuen Street, the FEHD, the FSD and other departments concerned are now reviewing the fire safety measures for hawker stalls and considering ways to further enhance their fire safety.

The FSD has formulated contingency plans for some 20 areas in the territory where old residential and composite buildings are found near closely packed hawker stalls, in order to enhance the efficiency in fire-fighting and rescue operations in case of a fire. To ensure

emergency vehicles can pass through smoothly, the FSD has also been conducting road tests from time to time in these areas.

- (b) After the FSD has completed its fire fighting and rescue operation, staff of the BD have inspected the buildings in the vicinity of the fire scene. The inspection revealed that the overall structural stability of these buildings was not affected by the fire and the buildings were still in a structurally sound condition.

As I said earlier, the HD has arranged temporary accommodation in Shek Lei for registered victims on 4 December to address their urgent housing needs. For individual occupants with special difficulties who may need to extend their stay in the temporary accommodation, the HD will work with the SWD to render them with the appropriate assistance as far as possible based on their specific circumstances. For those who are interested in applying for public rental housing (PRH), the HD will assist them in the submission of PRH applications. For those who are already registered on the PRH Waiting List, they would have to wait for the allocation of PRH according to the priority of their registration numbers.

- (c) To help the affected residents and family members of the victims cope with immediate needs, the Government has swiftly provided them with financial assistance and offered help in other areas after the fire. First, many charitable organizations and trust funds, including the Jockey Club Emergency Relief Fund, Yan Oi Tong Love and Care Project, Chinese General Chamber of Commerce Charitable Donation, Tung Wah Groups of Hospital, Pok Oi Hospital Emergency Fund, General Chinese Charities Fund, Lok Sin Tong Caring Fund, Sik Sik Yuen Emergency Fund, Yan Chai Emergency Fund, Po Leung Kuk and Hong Kong Young Industrialists Council, promptly offered a helping hand by providing emergency relief fund to address victims' urgent needs. The SWD has proactively assisted in distributing financial assistance to all victims expeditiously. Earlier in my reply I have already briefed Members on the details of financial assistance received by individual persons.

Apart from financial assistance, the Administration has also distributed household electrical appliances and other necessities to victims to address their daily needs. Moreover, the SWD has immediately arranged for clinical psychologists and social workers to provide emotional support and sharing sessions for victims. For households in need, the clinical psychologists and social workers will provide further counselling services. Colleagues of the SWD have contacted the family members of the deceased where possible to provide them with further emotional and financial assistance. With a view to providing family members of the victims and the affected residents with suitable assistance in a timely manner, the SWD will continue to follow up on their welfare needs to facilitate their return to normal life as soon as possible.

As regards the CCF, when drawing up assistance programmes, we will consider whether they can complement the assistance and services provided by the Government or other charitable funds so that duplication can be avoided as far as practicable. Having regard to the services and assistance already provided by the Government and other charitable funds to the victims, the CCF has no plan to launch relevant assistance programme.

None of us wish to see this fire happen. The Government has the responsibility to offer proper relief to the families of the deceased and to other fire victims, to conduct a detailed investigation into the cause of the fire, and to consider and discuss possible options with members of the public in order to prevent similar incidents from happening again. I believe that with the concerted efforts of all relevant bureaux and departments, and through soliciting the support of the community, we can duly perform these tasks.

PRESIDENT (in Cantonese): Urgent question 2.

Fire Hazards of Hawker Stalls and Buildings in Their Vicinity

2. **MR JAMES TO** (in Cantonese): *President, on the 30th of last month, a Number 4 alarm fire broke out at Fa Yuen Street in Mong Kok, in which the hawker stalls along the street caught fire first and it then spread to nearby old*

buildings, resulting in heavy casualties and substantial property losses. In this connection, will the Government inform this Council:

- (a) of the causes of the fire and the rapid spread of the fire, and the reasons why it has resulted in so many deaths and injuries, so as to immediately remind residents living in a similar condition to raise their awareness, and of how to prevent fire and avoid loss of lives and injuries in case of fire;*
- (b) of the number of similar situations in Hong Kong in which hawker stalls are set up in the vicinity of residential buildings; whether the authorities will immediately inspect similar hawker stalls and the buildings nearby, so as to assess whether these buildings can endure the risks in case of fire, including whether such type of living condition and such buildings are in compliance with the requirements of the Fire Services Ordinance, whether there is adequate fire service equipment, whether there are unauthorized building works or flat units divided into separate units (commonly known as "sub-divided units") inside those buildings, whether the fire escapes are free of obstruction, and whether the residents are sufficiently aware of fire prevention, and so on, as well as what immediate measures the authorities will take to prevent the recurrence of similar tragedies; and*
- (c) whether the authorities will immediately liaise with the Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA) to target at those old buildings which have similar living conditions in various districts and immediately and proactively provide technical and financial support to them, so as to raise the awareness of fire safety of the flat owners and help them improve the fire protection and fire service equipment in their buildings?*

SECRETARY FOR SECURITY (in Cantonese): President,

(a) and (b)

The Fire Services Department (FSD) and the police are still investigating into the causes of the Number 4 alarm fire in Fa Yuen

Street, and the findings of the investigation are still being awaited. Subject to the findings of departments' investigation and the final report, it is estimated that the piling up of stocks at the hawker stalls along the roadside and the many inflammable substances in the stocks might have led to the rapid escalation and spread of fire. However, I wish to emphasize that the actual causes of the fire and the circumstances leading to the spread of fire can only be confirmed when the investigation is completed.

Since the fire at the hawker stalls in Fa Yuen Street in December last year, the Food and Environmental Hygiene Department (FEHD), in conjunction with the FSD, the Electrical and Mechanical Services Department and the hawker associations concerned, has implemented fire safety improvement measures, which include ensuring sufficient space in the carriageway for fire appliances and firemen; allowing sufficient space between hawker stalls to facilitate evacuation of residents of buildings in the vicinity; providing proper separation space between un-linked hawker stalls so as to prevent the spread of fire; erecting stalls with fire-resisting materials; and requiring hawker stalls to obtain independent electricity supply from legal sources, and so on.

According to the information provided by the FEHD, there are about 40 locations in the territory where hawker stalls are found adjacent to composite/residential buildings. The FEHD and the FSD have inspected these locations on 1 and 2 December for potential fire hazard, and the FEHD has taken enforcement action against hawkers who contravened relevant regulations. In light of this recent fire incident, the FEHD, the FSD and the departments concerned are proactively reviewing the safety measures formulated at the end of last year, and studying how to further improve the fire safety of hawker stalls and nearby composite/residential buildings. The results will be announced as soon as practicable.

Most of the buildings in the vicinity of Fa Yuen Street are composite buildings or residential buildings completed in or before 1987. They are regulated by the Fire Safety (Buildings) Ordinance (Cap. 572). The FSD and the Buildings Department (BD) have

been inspecting the composite buildings with higher fire risks under a programmed approach to enhance their fire safety standard and fire safety construction measures. If obstructions to means of escape or potential fire hazards caused by structural problems are identified during inspections, or if problems are found in the fire service installations (FSIs) and equipment, the department(s) concerned would take enforcement action. If there were articles causing obstructions to means of escape which would lead to imminent and serious fire hazard, the FSD could make arrangement to remove those articles.

President, six old composite buildings near the hawker stalls were involved in the recent serious fire incident in Fa Yuen Street. Five of them have already been inspected by the FSD and the BD. Fire Safety Directions requiring the enhancement of fire safety measures were issued to them respectively between August 2008 and November 2011. Among these five buildings, the deadline for compliance of the Fire Safety Direction of one building is yet to expire. The other four have either applied for or have been granted approval for extension of deadlines. The main reason for extension is that the owners need more time to prepare for and carry out the works required.

Currently, the Fire Safety (Buildings) Ordinance does not regulate or require provision of fire service equipment within private domestic units. Therefore, there are no statutory requirements on provision of fire service equipment for the so-called "sub-divided units" inside private domestic units. Given the lower fire load and fire risks of strictly residential buildings and general domestic units, the code of practice issued by the FSD only requires the provision of essential FSIs and equipment in common areas of these buildings, such as fire hydrants and hose reel systems, and adequate unobstructed escape routes.

As regards building safety, the BD has since April 2011 launched a Large Scale Operation against sub-divided units, under which the BD will inspect the sub-divided units in 150 buildings each year and carry out enforcement action against those in contravention of the

law. The Secretary for Development announced on 2 December that the BD would adjust its enforcement strategy against sub-divided units by adopting a risk-based approach in selecting old non-single staircase buildings which were located in the proximity of hawker stalls for inspection. The Secretary for Development will explain in details the operation of the BD when providing her reply to another urgent question later.

The FSD has been conducting publicity activities to enhance public awareness of fire prevention. A television programme of the FSD on fire safety was broadcast in November this year, with an emphasis on educating the public on the correct way of escape in case of a fire. Leaflets on fire safety have also been distributed to resident's organizations to remind them to stay vigilant. For example, residents should ensure that all means of escape are free from obstruction, they should not store large amount of goods at home or near their residence, they should ensure that the FSIs in the building are operating normally and they should install FSIs in accordance with the Fire Safety Direction as early as possible, and so on. If potential fire hazards are identified, the occupiers should also notify the local fire station as soon as possible for their follow up.

In addition, the FSD has been arranging the Special Enforcement Unit to inspect old buildings with higher fire risks to ensure their fire safety. The FSD launched a special inspection operation in districts with a high density of old buildings in last November. More than 200 buildings were inspected during the exercise and 47 prosecutions were taken against irregularities such as obstruction to means of escape. Cases involving structural problems were referred to the BD.

- (c) The Government and its partner organizations, that is, the HKHS and the URA, have a number of technical and financial assistance schemes providing assistance to owners on matters related to building and fire safety. These include the Comprehensive Building Safety Improvement Loan Scheme and the Building Maintenance Grant Scheme for Elderly Owners funded by the Government, and the Integrated Building Maintenance Assistance

Scheme jointly administered by the HKHS and the URA. The scope of works covered by these assistance schemes include those related to fire safety constructions and fire safety installations and equipment. In addition, if owners encounter any technical difficulties when arranging for the works, they could seek assistance from the HKHS and the URA apart from approaching the relevant government departments or consulting the professionals.

Furthermore, to encourage owners to improve the fire safety of their buildings and to facilitate them to receive proper assistance under the various schemes, the FSD and the BD will provide information of the above assistance schemes when taking enforcement action against fire safety issues.

PRESIDENT (in Cantonese): Urgent question 3.

Fire Hazards of Sub-divided Flat Units and Sub-divided Hawkers Stalls

3. **MR WONG YUK-MAN** (in Cantonese): *President, in the early hours of last Wednesday, a fire broke out at the Fa Yuen Street hawker stalls and spread to the nearby buildings with flat units divided into separate units (commonly known as "sub-divided units"), resulting in a tragedy with at least nine people killed and 34 injured. A fire broke out at the same location on 6 December last year, and an explosion involving "sub-divided units" also occurred at Tung Choi Street last Tuesday. In recent years, similar incidents occurred quite frequently, threatening the lives and properties of residents in "sub-divided units" and hawker stall owners. In this connection, will the Government inform this Council:*

- (a) *given that the Development Bureau pointed out in June this year that it had thus far been unable to ascertain the number of "sub-divided units" across the territory, whether the authorities will immediately deploy manpower to inspect all old-style residential buildings and record the locations of all "sub-divided units" and particulars of their tenants, so as to offer assistance to tenants of "sub-divided units";*

- (b) *given that the Chief Executive has pointed out in this year's Policy Address that "sub-divided units" provide accommodation for low-income people not eligible for public housing, and he does not wish to ban "sub-divided units" across the board, whether the Housing Department (HD) will immediately revise the public housing allocation system to enable existing tenants of "sub-divided units" to be allocated public housing more expeditiously; and*
- (c) *given that quite a number of hawker stall owners there have divided their stalls into sub-divided stalls for lease, and this type of sub-divided stalls are so closely packed together that they not only block the fire escapes but also cause a fire to get out of control more easily, and yet so far no one has been prosecuted for this, whether such division of stalls breaches the law; and if so, whether the Food and Environmental Hygiene Department (FEHD) will step up its inspection and enforcement efforts, and institute prosecution in respect of the non-compliance cases?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, this fire which caused heavy casualties was peculiar in that it originated from the hawker stalls in front of the buildings. For general building designs, there should be a separation of at least 6 m between the window of a fire escape staircase and the building facing it so as to reduce the risk of fire spreading from the opposite building. In this incident, although the buildings on the two sides of Fa Yuen Street are more than 6 m apart, it is obvious that the affected buildings have much less than 6 m in distance from the stalls in front of them. This has brought about potential fire risk.

The Buildings Department (BD) entered the building that was affected by the fire most (that is, 192 to 194 Fa Yuen Street) to conduct an inspection after the fire and it was found that in the 14 residential units of the building, seven of them were sub-divided and it was estimated that there were more than 20 "sub-divided units" in total. We cannot ascertain at the moment whether these "sub-divided units" have aggravated the casualties in this incident as this should only be known after detailed investigation and taking of statements. Nevertheless, undeniably the existence of "sub-divided units" would generally increase the risk for the occupants during fire, such as when some "sub-divided

units" block the rear staircase of a double staircase building and hence leaving some of the occupants with only one of the staircases to escape instead of both during fire. The same situation also applies to the building at 192 to 194 Fa Yuen Street.

The emergence of and increase in "sub-divided units" is indeed a social phenomenon that has aroused public concern. As pointed out by the Members, the issue of "sub-divided units" is multi-faceted, involving issues such as fire and building safety, building management and housing demand.

From building safety angle, "sub-divided units" will generally contravene the Buildings Ordinance (BO) in only three manners — the obstruction of means of fire escape, overloading that affects the structural safety of a building and the resulting serious water seepage. The work of the Development Bureau is to ensure that these "sub-divided units" would not result in building safety problems. We are now tackling the building safety problems associated with "sub-divided units" through the four prongs of legislation, enforcement, assistance to owners as well as publicity and public education.

My reply to Mr WONG's three-part question after consolidating the information from relevant Policy Bureaux and departments is as follows:

- (a) The BD currently does not have specific statistical breakdown of applications for works of "sub-divided units" and hence could not provide information on legally or illegally altered "sub-divided units" in different districts in Hong Kong. Indeed, the existing BO does not specifically categorize or regulate different types of works involved in "sub-divided units". Nevertheless, with the full implementation of the Minor Works Control System (MWCS) on 31 December 2010, internal drainage works commonly found in "sub-divided units" have already been covered by the MWCS. Contractors who carry out such works have to submit relevant information of the works to the BD. However, not all the cases of internal drainage works involve "sub-divided units". Although the BD is currently conducting a stock-taking exercise for all the unauthorized building works at the exterior of private buildings in Hong Kong, it will be difficult to verify the situation of interior "sub-divided" units during the exercise. As a result, this operation

will not enable us to provide comprehensive information on "sub-divided units".

As I have, for some time in the past, pointed out during the Panel meetings of the Legislative Council or in response to the oral and written questions from the Members, the BD has since April 2011 commenced a Large Scale Operation against "sub-divided units", and has set a target of inspecting 150 buildings with "sub-divided units" in the current year. In response to the fire, I announced after my inspection of the scene last Saturday that the BD would adjust the strategy of its enforcement action by taking into account the fire risk that might be brought about by hawker stalls when choosing the target buildings. The buildings that the Department chooses will be those situated in the vicinity of hawker stalls, as well as those that are of the same type as the building at 192 to 194 Fa Yuen Street, that is, double staircase buildings of six to 12 storeys in height. It is estimated that there are around 334 such buildings over the territory, which are distributed in the Kowloon City District, Yau Tsim Mong District, Sham Shui Po District, Central and Western District, Wan Chan District and Eastern District. The BD will endeavour to complete the inspection of this category of buildings within the coming six months. The focus of the inspection will be on whether there is a blockage of means of escape as a result of "sub-divided units" or other alterations. During the course of inspection, the BD will immediately issue removal orders once they have collected sufficient evidence. If the owner refuses to co-operate and allow the BD to enter the premises for investigations, we will not rule out the possibility of exercising the power given to the Department by the current BO, and breaking into the premises in the presence of the police to carry out the investigations. We hope that through this enforcement action, we will be able to promptly attend to the building safety problems arising from the special properties of hawker stalls and the potential risks posed by "sub-divided units", so as to ensure the safety of the residents.

If, during the current round of inspection of buildings in areas with hawker stalls, it comes to the BD's knowledge that some owners or

residents of "sub-divided units" are in need of assistance, the Department will refer the case to the relevant departments or organizations for follow-up action as necessary. The BD will also provide all possible assistance under its purview. For example, the Department currently has a Comprehensive Building Safety Improvement Loan Scheme. If the owners who have received the removal orders from the BD encounter financial difficulties, they can apply for a loan from the BD to carry out the associated improvement works. Under the scheme, applicants will not be required to go through any means test and can receive a maximum loan of \$1 million.

- (b) According to the Transport and Housing Bureau, public rental housing (PRH) is a limited and valuable resource, and the Administration has to allocate it in a fair and rational manner to address the genuine housing needs of low-income families who cannot afford private rental accommodation. The Hong Kong Housing Authority maintains a PRH Waiting List (WL) to allocate PRH to eligible applicants in accordance with their date of registration, size of family and choice of district. The HD appreciates the housing needs of occupants residing in "sub-divided units" and will process their PRH applications in accordance with the existing allocation policy. For occupants who have special housing needs, they may consider applying for Compassionate Rehousing (CR) from the Social Welfare Department (SWD). The HD will arrange the rehousing of occupants to PRH after they have obtained the SWD's recommendation for CR. As for the suggestion of according priority to offer PRH flats to applicants who have been living in "sub-divided units", the Administration needs to avoid being unfair to the over 155 000 applicants currently on the WL and beware of such an arrangement would lead to other issues, such as in effect encouraging people to move into "sub-divided units" which would worsen the problem.
- (c) The Food and Health Bureau points out that, according to section 13 of the Hawker Regulation, except with the consent in writing of the Director of Food and Environmental Hygiene, no hawker shall sublet, transfer or lend any stall or transfer his licence or pitch card,

if any, to any other person. Besides, the FEHD has so far instituted a total of 70 prosecutions this year against stalls selling commodities which they are not permitted to sell or operating services which they are not permitted to operate. Some of these cases involve stall subletting. After the fire at Fa Yuen Street on 30 November 2011, the FEHD has strengthened enforcement involving irregularities found in the hawker bazaar in Fa Yuen Street and all other hawker bazaars in the territory. Subletting is among these irregularities. If stall subletting is substantiated, the FEHD will enforce the regulations strictly. The FEHD appeals to members of the public to report immediately to it any suspected stall subletting and the FEHD will carry out follow-up investigations accordingly.

PRESIDENT (in Cantonese): Urgent question 4.

Providing Immediate Assistance and Stepping up Fire Precautions After Fa Yuen Street Fire

4. **MR ALAN LEONG** (in Cantonese): *President, after a Number 3 alarm fire broke out at Fa Yuen Street in Mong Kok in 2010, the Government ordered the stall hawkers to switch to the use of fire resisting materials, and removed 10 stalls away from the exits of nearby buildings to reserve space for fire escapes. In less than a year, another more serious Number 4 alarm fire broke out at Fa Yuen Street in the early hours on 30 November 2011, resulting in nine people killed and 34 injured. This incident has aroused public concern about insufficient fire control over hawker stalls, which fails to deal with the potential hazards posed by them. Apart from Fa Yuen Street in Mong Kok, similar types of hawker stalls are still found in quite a number of old districts in Hong Kong (such as Fuk Wing Street and Ap Liu Street in Sham Shui Po, Temple Street and Po Ning Street in Jordan, and so on), and there are old buildings on both sides of the stalls, thus posing potential fire risks, all the more giving rise to concern whether the fire precautions for hawker stalls in Hong Kong are comprehensive. In this connection, will the Government inform this Council:*

- (a) *whether, in the regulatory control over streets with open-air hawker stalls of the Fire Services Department (FSD) and the Electrical and*

Mechanical Services Department (EMSD), there are specific requirements on the safety separation distance between hawker stalls, distance between hawker stalls and residential buildings, as well as fire protection equipment; if there are, of the details; if not, the reasons for that; of the number of inspections conducted by the FSD at Fa Yuen Street since the Number 3 alarm fire which occurred there last year and the details concerned;

- (b) *given that the Government has indicated that it will adopt a zero-tolerance stance towards non-compliant hawker stalls and actively study the feasibility of requiring such stalls be closed and cleared each night and be set up only during the day for business, the introduction of a demerit point system and the revocation of licences, and so on, of the measures to be taken by the authorities to strike a balance between reducing fire risks and facilitating the operation of hawker stalls; whether consideration will be given to providing subsidies to stall hawkers so as to reduce their operating costs; if so, of the details; if not, the reasons for that; and*
- (c) *given that the authorities have provided loans for repairs of the buildings affected by the fire last year and helped the buildings concerned to form owners' corporations (OCs), of the progress of the relevant arrangements; whether the authorities will consider providing subsidies to those OCs and flat owners affected by this fire for the purpose of repairing all the damaged public areas and private residential areas of their buildings, if they will, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, my reply to the various parts of Mr LEONG's question is as follows:

- (a) Since the fire at the hawker stalls in Fa Yuen Street in December last year, the Food and Environmental Hygiene Department (FEHD), in conjunction with the FSD, the EMSD and the hawker associations concerned, has implemented fire safety improvement measures, which include ensuring sufficient space in the carriageway for fire appliances and firemen; allowing sufficient space between hawker

stalls to facilitate evacuation of residents of buildings in the vicinity; providing proper separation space between un-linked hawker stalls so as to prevent the spread of fire; erecting stalls with fire-resisting materials; and requiring hawker stalls to obtain independent electricity supply from legal sources, and so on. The FSD has formulated contingency plans for some 20 areas in the territory where old residential and composite buildings are found near closely packed hawker stalls, in order to enhance the efficiency in fire-fighting and rescue operations in case of a fire. To ensure emergency vehicles can pass through smoothly, the FSD has also been conducting road tests from time to time in these areas.

According to the observations of the FSD at the scene, highly combustible canvas or plastic materials were found on top of some of the hawker stalls in Fa Yuen Street and the separation space between un-linked hawker stalls was inadequate, thus threatening fire safety. However, the actual causes of the fire and the circumstances leading to the spread of fire can only be confirmed when the investigation is completed.

Since the Number 4 alarm fire broke out in Fa Yuen Street, the FSD has joined forces with the FEHD in conducting inspections in areas where residential buildings are found near closely packed hawker stalls and assisted the FEHD in taking enforcement action. In light of this recent fire incident in Fa Yuen Street, the FEHD, the FSD and other departments concerned are now reviewing the fire safety measures for hawker stalls and considering ways to further enhance their fire safety.

- (b) In the wake of the fire at Fa Yuen Street on 30 November this year, the FEHD has immediately strengthened enforcement regarding non-compliances in the hawker bazaar at Fa Yuen Street and all hawker bazaars in Hong Kong. If the area used or the size of canopy is found to have exceeded the requirements imposed on the stall, or if street obstruction by commodities or overnight storage of commodities beyond the stall area is detected, the FEHD will take enforcement actions. By 4 December, the FEHD has issued 170 summons against non-compliances at Fa Yuen Street.

Drawing on the experience of this fire at Fa Yuen Street and the one last year, we consider that it is necessary to introduce new measures to improve the environment of hawker bazaars, so as to further reduce the fire risks. In this connection, the inter-departmental working group chaired by the Chief Secretary for Administration is actively considering different options. Public safety, particularly the safety of life and properties of people who live in the vicinity of hawker bazaars, is our paramount consideration when examining these options. We consider that it is the duty of stall operators to operate in accordance with the licensing conditions. However, according to past experience in stall management, reliance on the self-discipline of traders alone is not sufficient. We need to step up enforcement with immediate effect in order to prevent the recurrence of incidents similar to this fire. Nevertheless, the long-term operating environment of stall operators should also be taken into account.

In order to enhance public safety, we will actively consider various improvement options, including introducing the arrangement of "setting up stalls only during trading hours" or "removing the commodities without dismantling the stalls at night", a mechanism for cancellation of hawker licences and realigning or relocating the hawker stalls, and so on. Since each option has its own pros and cons, we must conduct careful studies to assess the risks involved and discuss with the relevant stakeholders, including the stall operators and the District Councils. We understand that the public expect an early implementation of the improvement measures. The FEHD and the departments concerned are now conducting the studies at full speed and will strive to strike a balance between reducing fire hazards and taking the stall operation into consideration.

Regarding the question of providing subsidies to stall operators raised by Mr LEONG, I would like to point out that all stall operators are obligated to comply with licensing conditions. They should not expect subsidies from public money.

- (c) Since the Number 3 alarm fire broke out at Fa Yuen Street last year, the Yau Tsim Mong District Office (YTMDO) has enhanced its

active follow-up action on the building management problems in the district. Through various channels including distributing leaflets and arranging roadshows, the YTMDO together with the Property Management Advisory Centre of the Hong Kong Housing Society (HKHS) has frequently visited the buildings affected by the fire, so as to introduce the Building Management and Maintenance Scheme and the Building Maintenance Grant Scheme for Elderly Owners of the HKHS to assist the affected residents in repairing their buildings and restoring to normal life as soon as possible. According to information from the HKHS and the Buildings Department (BD), among the six buildings eligible for financial support, four have been included under the Operation Building Bright (the Operation). Two of these buildings are arranging for the works, while the other two have commenced the works. As for the two buildings that have not participated in the Operation, the owners of one of the buildings have stated that they do not intend to join any of the financial support schemes as the costs will be covered by an insurance company. The other building is currently receiving the support from the HKHS under the Building Maintenance Incentive Scheme. Some of the buildings have also been subsidized to carry out a number of fire safety improvement works.

As for those buildings without OCs, the YTMDO, in collaboration with the HKHS, has conducted home visits and briefing sessions to encourage owners to form OCs to strengthen building management, as well as to introduce the various financial assistance schemes to assist owners in meeting various needs. Since December 2010, the YTMDO has assisted two private buildings at Fa Yuen Street in holding owners' meetings and forming OCs. Furthermore, the YTMDO has also strengthened their visits to the private buildings along the affected sections of Fa Yuen Street, in order to understand the building conditions and enhance the residents' awareness of building management.

Similar to last year's arrangement, the HKHS has plans to proactively contact the affected OCs and visit the affected owners and occupants upon the re-opening of the affected buildings, with a view to providing information of and offering appropriate assistance

under the various assistance schemes under the Government, the HKHS as well as the Urban Renewal Authority (URA). In particular, for those eligible owners or OCs of private buildings affected by the fire this time, if they encounter financial difficulties in building repair and maintenance, they may apply for the Integrated Building Maintenance Assistance Scheme (the Integrated Scheme) jointly administered by the HKHS and the URA. The Integrated Scheme provides one-stop comprehensive support to owners, including Common Area Repair Works Subsidy, Common Area Repair Works Interest-free Loan, Home Renovation Interest-free Loan and Owners' Corporation Formation Subsidy. These two organizations also provide technical assistance to applicants. Furthermore, owners or OCs may apply for two government-funded programmes via the Integrated Scheme, which include the Building Maintenance Grant Scheme for Elderly Owners administered by the HKHS and the Building Safety Loan Scheme administered by the BD.

PRESIDENT (in Cantonese): Urgent question 5.

Enhancing Fire Safety of Old Buildings and Hawker Stalls

5. **MS STARRY LEE** (in Cantonese): *President, a fire resulting in the heaviest casualties since the reunification of Hong Kong broke out at the hawker stalls at Fa Yuen Street in Mong Kok in the early hours of last Wednesday, in which the fire rapidly spread and smoke engulfed two adjacent tenement buildings, resulting in nine people killed and 34 injured. Apart from the concern about the safety management of hawker stalls, quite a number of residents also complained that when they escaped from the fire, the staircases were piled up with too many miscellaneous items, thus blocking the fire escapes, resulting in heavy casualties. In this connection, will the Government inform this Council:*

- (a) *whether it will consider conducting inspections of all old buildings with potential safety hazards throughout the territory immediately; and with fire safety as a priority consideration, requesting the Food*

and Environmental Hygiene Department (FEHD) to provide immediate assistance in clearing the fire escapes once they are found seriously blocked by miscellaneous items; and

- (b) *whether it will request hawker stalls at Fa Yuen Street to immediately adopt the temporary arrangement of "no overnight storage of goods at stalls" until a proposal acceptable to various parties is arrived at through discussion?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, my reply to Ms LEE's question is as follows:

- (a) Old composite and residential buildings are regulated under the Fire Safety (Buildings) Ordinance (Cap. 572) (the Ordinance). The Ordinance came into operation in July 2007. It aims at upgrading the fire safety standards of about 12 000 composite and residential buildings completed before 1987 to present day fire safety standards. Of the about 9 200 old composite buildings, the Fire Services Department (FSD) and the Buildings Department (BD) have so far conducted joint inspections for about 4 600 (that is, 50%) of them. Fire safety directions have been issued to owners or users of about 2 600 buildings, requiring them to upgrade the fire safety standards of their buildings. If obstructions to means of escape or potential fire hazards caused by structural problems are identified during inspections, or if problems are found in the fire service installations and equipment, the department(s) concerned would take enforcement action. If there are articles causing obstructions to means of escape which would lead to imminent and serious fire hazards, the FSD will also make arrangement to remove those articles.

In addition, the FSD has been arranging the Special Enforcement Unit to inspect old buildings with higher fire risks to ensure their fire safety. The FSD launched a special inspection operation in districts with a high density of old buildings last November. More than 200 buildings were inspected during the exercise and 47 prosecutions were taken against irregularities such as obstructions to means of escape. Cases involving structural problems were referred to the

BD. Leaflets on fire safety have also been distributed to the residents.

Owners and residents have to ensure that the fire escape passageways of their buildings are free of obstruction and they are responsible for clearing any such obstruction.

- (b) The inter-departmental working group chaired by the Chief Secretary for Administration is actively considering different options. Public safety, particularly the safety of life and properties of people who live in the vicinity of hawker bazaars, is our paramount consideration when examining these options. We consider that it is the duty of stall operators to operate in accordance with the licensing conditions. However, according to past experience in stall management, reliance on the self-discipline of traders alone is not sufficient. We need to step up enforcement in order to prevent the recurrence of incidents similar to this fire. Naturally, the long-term operating environment of stall operators should also be taken into account.

In order to enhance public safety, we are actively considering various improvement options, including the arrangements of "no overnight storage of commodities at stalls" or "setting up stalls only during trading hours" and "removing the commodities without dismantling the stalls at night". Since each option has its own pros and cons, we must conduct careful studies to assess the risks involved and discuss with the relevant stakeholders, including the stall operators and the District Councils. We understand that the public expect an early implementation of the improvement measures. The FEHD and the departments concerned are now conducting the studies at full speed and will strive to strike a balance between reducing fire hazards and taking the stall operation into consideration.

PRESIDENT (in Cantonese): I will now invite Members to ask supplementary questions on the five urgent questions.

DR PRISCILLA LEUNG (in Cantonese): *President, human life is at stake. I had raised an urgent oral question on the same subject at this time last year, but no thorough discussion was held in the Legislative Council on that day as the incident back then had not caused any casualties. We therefore did not have a chance to put further questions to the Government. Nonetheless, the fact that nearly 50 hawker stalls were burnt down last year had already sounded a serious alarm, it is hoped that we will no longer have to raise similar oral questions in the future.*

President, I think the reply given by the Government today is pretty perfunctory. The proposals were actually put forth by the victims when we visited the fire scene. I agree to adopt measures mentioned in parts (a), (b) and (c) of the main reply, but a more important question is, can those nine human lives arouse the Government's concern and subsequently, it will provide thorough assistance to the victims? Last year, after the authorities had resolved the most pressing problems, owners rebuilt the stalls themselves and not the slightest improvements had been made. Given that the Government may not necessarily ban these hawker stalls, will it consider assisting stall owners to set up metal frames and install additional FSIs, such as sprinklers, so that they can comply with the fire safety requirements? Many victims said that though the fire broke out some time after 4 am, the firemen only reached the rooftop to rescue them at 9 am. The fire-fighting system had serious defects on that day, and overall planning in this regard is beyond the affordability of any traders. Can the Government resolve this problem more thoroughly so that everyone feels safe and the automatic alarm system can function properly when a fire breaks out, thereby minimizing the casualties?

PRESIDENT (in Cantonese): Which public officer will reply to this supplementary question? Chief Secretary for Administration.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I will give a reply first, the Secretary for Security and Secretary Dr York CHOW will provide additional information later.

After the outbreak of the fire at Fa Yuen Street last year, a series of measures had been introduced by the relevant departments to allow sufficient

space between hawker stalls and adjacent buildings, as well as between hawker stalls. Measures mentioned earlier in the main reply, be it dismantling the stalls after trading hours or keeping only the metal frames for display within the approved pitch but removing the goods, have been actively considered.

Regarding more thorough solutions, Dr Priscilla LEUNG just now mentioned that some measures cannot be undertaken by individual stall owner and the Government must take a leading role. I can assure Members that any proposal that can help reduce the fire hazard and safeguard public safety will be actively examined and considered. I wonder if the other two Directors of Bureaux have anything to add.

PRESIDENT (in Cantonese): Which public officer would like to supplement additional information?

SECRETARY FOR SECURITY (in Cantonese): President, after the outbreak of the fire at the hawker stalls at Fa Yuen Street in December last year, as other colleagues and I have said, the Food and Environmental Hygiene Department (FEHD), the Fire Services Department (FSD), the Electrical and Mechanical Services Department (EMSD) and the hawker associations concerned have implemented various measures to enhance the fire safety of hawker stalls. We are deeply sad that nine people were unfortunately killed and numerous people were injured in the fire; we admit that there is certainly room for improvement under the current arrangement. The Chief Secretary for Administration is currently leading an inter-departmental working group to discuss the matter, and it is hoped that proposals on the necessary measures can be put forth in due course.

Regarding the comment of Dr LEUNG just now that the fire-fighting system had serious problems on that day, I do not agree. In fact, after the FSD received fire reports on that day, firemen arrived at the scene in four minutes, which is even faster than the time stated in the performance pledge. What is more, the number of fire appliances and firemen deployed on that day had far exceeded that required to combat a Number 3 or Number 4 alarm fire. We learnt from newspapers that some people had to wait for five to six hours before they were rescued. Certainly, the priority tasks of firemen upon arriving at the scene are to put out fire and rescue people, but we should prioritize our rescue

efforts. People who are in emergency or dangerous situations will certainly be rescued first, while those who are in the vicinity of or further away from the fire scene with no imminent danger will probably be rescued at a later time. Likewise, those at the rooftop who do not have imminent danger will also be rescued at a later time.

Among the numerous telephone calls received by the firemen for help, one was made five-odd hours after the fire has broken out. By the time he was rescued by the firemen, it was already six hours after the outbreak of the fire. Therefore, we cannot blame the firemen simply because some people were rescued six hours after the fire. We must understand that the foremost task of the firemen is to put out fire, and rescue those victims who are in dangerous situations. For those who do not have imminent danger, they will certainly be rescued if there is abundant manpower. However, given the limited manpower, we will surely rescue those victims who have imminent danger.

PRESIDENT (in Cantonese): Does any other public officer wish to supplement? Secretary for Food and Health.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I would like to respond to the issue concerning the management of hawker stalls. While we understand that the grassroots want to do some small businesses, we had reached a consensus with stall traders in December last year that they should comply with some new regulations, in particular regulations on fire safety, with a view to relocating the hawker stalls to specified locations and subjecting them to certain height restrictions.

According to our observation, if traders practicably follow the instructions and fully comply with the relevant regulations, the safety of hawker stalls would be greatly enhanced. However, over the past year, we found that many stall owners have contravened the requirements and have placed their stocks outside the permitted area, as well as increased the height of their stalls. They have even stored excessive stocks in their stalls, which have exceeded the capacity of the stall. Our gravest concern is that these stocks might become a potential cause of fire, especially when they are left unattended. Therefore, severe punishment must be imposed.

Apart from adopting a "zero-tolerance" stance in enforcement, we will also consider in conjunction with the FSD and the Buildings Department (BD) to see what can be done to further improve the FSIs and enhance fire safety. These are the work what we must handle.

PRESIDENT (in Cantonese): Dr LEUNG, has your supplementary question not been answered?

DR PRISCILLA LEUNG (in Cantonese): *There is still one point. Regarding what Secretary Ambrose LEE said just now, I do not*

PRESIDENT (in Cantonese): Dr LEUNG, you can only directly repeat the part of your supplementary question that you think the Chief Secretary or the Secretary has not answered.

DR PRISCILLA LEUNG (in Cantonese): *The part of my supplementary question on fire precaution which must be answered by the authorities is, they should examine if the design of the area has caused any obstructions to fire-fighting operations and undermined their efficiencies. I am not saying that the firemen had not put in sufficient efforts. This is the supplementary question that I have asked.*

SECRETARY FOR SECURITY (in Cantonese): I do not quite understand the question, can Dr LEUNG repeat again? What kind of obstruction does she refer to?

DR PRISCILLA LEUNG (in Cantonese): *President, my supplementary question is: Given that some victims were only rescued a few hours after the fire broke out on that day, in this connection, have the authorities examined if the physical environment and FSIs in the area have caused any obstruction to fire-fighters, such that they could not swiftly put out the fire and rescue the victims? This involves how the authorities would address the causes of fire in the long run.*

SECRETARY FOR SECURITY (in Cantonese): Let me briefly reply Dr LEUNG's supplementary question. After the fire at Fa Yuen Street last year, we have requested hawker stalls to allow sufficient space in the carriageway, which is 6 m on each side, for fire appliances and firemen to take emergency actions, including fire fighting and rescue operations.

As evident from this fire, the rescue operation has actually improved. The FSD was not only able to arrive at the scene four minutes after receiving the fire reports, even the fire appliances could directly access the street concerned. There was absolutely no obstruction to the fire fighting and rescue operations.

MR JAMES TO (in Cantonese): *President, just now several public officers have pointed out that after the fire last year, the Government has imposed certain stringent measures, which include prohibiting the keeping of goods in the hawker stalls overnight and allowing sufficient space between hawker stalls and adjacent buildings. In early October this year, two newspapers had a full-page coverage on the potential fire hazards and the serious consequences.*

I want to raise a very simple supplementary question. Before 30th of last month, that is, the date of the present tragedy, on which day and which month did the FEHD and the FSD inspect the hawker stalls at night and in the early hours? Please note that what I mean were inspections carried out at night and in the early hours. Did they notice any excessive storage of goods in the hawker stalls and the close proximity of the stalls to adjacent buildings at that time? What measures have the authorities taken in response? Were there any actions that could have been taken to avoid the tragedy but had not been taken? Can the Government inform us of the number of operations that had been carried out at night and in the early hours last year?

PRESIDENT (in Cantonese): Which public officer will give a reply? Secretary for Food and Health.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): First of all, inspections were not only carried out at night, but also during daytime

MR JAMES TO (in Cantonese): *President, I just want to know the inspections at night. On which day and which month was the last inspection carried out?*

PRESIDENT (in Cantonese): Member particularly wanted to ask about the inspections carried out at night.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I do not have the relevant information in hand right now, and I am not sure if the FSD has it or not. Nonetheless, in early November, we did find heavy storage of stocks in the district. The FEHD has sent letters to all owners of hawker stalls at Fa Yuen Street to remind them to comply with the rules laid down in December last year in respect of the storage of stocks, and urged for self-discipline. If they do not discipline themselves, we intend to take enforcement actions and institute prosecutions.

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

MR JAMES TO (in Cantonese): *President, my supplementary question does not refer to the aftermath of the current fire; I simply ask if the Director of the FEHD or the Secretary was aware whether inspections have been carried out at night and in the early hours since the outbreak of the fire last year, so as to find out whether there is heavy storage of goods in the hawker stalls? Have any such inspections been carried out?*

PRESIDENT (in Cantonese): Your supplementary question has been very clear.

MR JAMES TO (in Cantonese): *President, he also failed to answer last time. Have the authorities carried out such inspections?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, if no such inspections have been carried out, we would not have issued letters to owners of hawker stalls in early November. We have certainly grasped certain information before issuing the letters.

MR JAMES TO (in Cantonese): *President, can the Secretary state specifically whether any inspections have been carried out at night and in the early hours since last year?*

PRESIDENT (in Cantonese): Secretary, can you state specifically the inspections being carried out at night and the number of times?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I do not have the relevant information in hand. Nonetheless, I can inform Members that the FEHD is aware of the piling up of stocks in the hawker stalls overnight, and this is precisely why warning letters had been issued to them.

MR JAMES TO (in Cantonese): *President, as we are going to have a motion debate on this topic a few hours later, can the Secretary brief us on the relevant information later on?*

PRESIDENT (in Cantonese): Mr TO, as you have said, Members will have another chance to speak in the debate to be held later.

MR WONG YUK-MAN (in Cantonese): *President, after the occurrence of this tragedy, we may notice from the public officers' reply that none of them felt sorry about their inadequacies or have a self-reflection, which is the usual attitude of our SAR Government. All of them just give an account of what they have done within their terms of reference, and claimed that they have done their best. Everyone behaves the same. Today, being accountable officials, one Secretary of Department and several Directors of Bureaux have attended the meeting to respond to the five urgent questions and an adjournment debate relating to this tragedy. We can therefore see how serious the matter is. Yet, all of them*

appeared as if they were old ministers and none had the slightest feeling of remorse about their inadequacies. Nor did they apologize in public or step down. Contrarily, they continue to have a bright career prospect, like you, Stephen LAM. Members Just open your eyes and see what kind of legislature this is, and what kind of government

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

MR WONG YUK-MAN (in Cantonese): *They do not have the slightest feeling of remorse about their inadequacies. Among the responses made by the Directors of Bureaux, only the one given by Mrs Carrie LAM in response to my question barely satisfies me. She has at least given a very concrete reply. However, she insisted that she was right*

PRESIDENT (in Cantonese): Please do not give any more comment but raise your supplementary question.

MR WONG YUK-MAN (in Cantonese): *I wish to ask Secretary Carrie LAM about "sub-divided flats", which can now be broken into at any time. I nonetheless remember that some time ago, someone said that there was no way to break into these "sub-divided units", and he is Secretary for Home Affairs TSANG Tak-shing, who is sitting right beside Secretary Carrie LAM. Under what circumstances can the authorities break into the "sub-divided units"? She failed to give a concrete description.*

Secondly, what is meant by adjusting the enforcement strategies? I hope she can give a more concrete reply. In fact, her response is the most concrete among the other replies. It is the most concrete

PRESIDENT (in Cantonese): Mr WONG, you have raised your supplementary question. Please be seated.

MR WONG YUK-MAN (in Cantonese): *I have raised my supplementary question, President, so please ask her what is meant by adjusting the enforcement strategy.*

PRESIDENT (in Cantonese): Please be seated and let the Secretary reply.

SECRETARY FOR DEVELOPMENT (in Cantonese): What is meant by adjusting the strategy? Members may recall that we are very concerned about the prevalence of "sub-divided units" as it may affect public safety. Therefore, on 1 April 2011, the BD has formulated a strategy against "sub-divided units", hoping that enforcement actions will be taken against the 150 buildings with "sub-divided units" within this year.

So far, from April to October (within seven months), enforcement actions have been taken against 105 buildings according to the target. On the question of how those 150 buildings were selected, they are basically selected on the basis of the number of complaints received. The adjustment of strategy this time was made in the light of the latest disastrous incident. After our preliminary inspection at the relevant buildings, we found that buildings with double staircases and hawker stalls in front of them would pose potential threats, whereas the existence of "sub-divided units" would obstruct the rear staircase and therefore affect evacuation. Therefore, our adjusted strategy is to select buildings with "sub-divided units" and conduct inspections in the rest of the time. Risk-based prosecutions will be instituted.

For the risk-based approach, first of all, the BD and the FEHD will verify information and identify locations in the territory where hawker stalls are found adjacent to old buildings — we are less worried about new buildings as they have higher fire safety standards — old buildings built after 1980 mostly have double staircases and are about six to 12 storeys in height. We will focus our efforts on this kind of buildings and launch a Large Scale Operation against "sub-divided units". This is our new strategy.

We estimate that enforcement actions will be taken against 334 buildings in the following six months. As Mr WONG may be aware, we are supposed to inspect 150 buildings each year with the available resources, but 105 buildings

have already been inspected in the first seven months. We strive to complete the inspection of 334 buildings with the available resources in the latter half of this year, which would impose immense pressure on our enforcement officers.

Regarding the other question raised by Mr WONG, we will not rule out the possibility of exercising, in the absence of the power to apply to the Court for warrants, the more autocratic power vested under the existing legislation, and that is, the power to break into a premise in the presence of a police officer. Of course, we will exercise this power with great caution and we have done this before. This year, the media has released a high-profile report which reads "The Buildings Department broke into a premise to inspect high-risk 'sub-divided units'". We had successfully taken such action.

Last Saturday, I said that action would be taken without hesitation once enforcement officers of the BD identified any high-risk "sub-divided units", and relevant provisions would be invoked to facilitate our action before the amendment legislation is passed to empower us to apply for a court warrant. I can certainly assure Members that the power will be exercised with great caution.

MR ALAN LEONG (in Cantonese): *President, the Secretary for Development just now said in her reply that all "sub-divided units" would be banned. Nonetheless, I think that the President and many directly-elected Members should have seen residents of "sub-divided units" saying in tears that they would have nowhere to go if they are expelled from the units.*

Therefore, President, regarding the fire which broke out at Fa Yuen Street, the Civic Party is not merely concerned about whether hawker stalls should be dismantled after trading hours, as stall owners are also victims. We feared that the Government would use those hawker stalls to divert our attention.

I am very glad that in part (b) of the main reply to my question, there is a sentence stating that "the inter-departmental working group chaired by the Chief Secretary for Administration is actively considering different options". President, I would like to follow up on this issue. Will the inter-departmental working group chaired by the Chief Secretary also review Hong Kong's land and housing policies, and look into the culprit of this fire which has caused serious casualties The reason why some people failed to escape, as the President

may notice from press reports, is that the area surrounding the rear staircase had been divided into "sub-divided units". As a result, many people failed to find a means of escape, as the Secretary has said in her earlier reply. Yet, I wish to ask which Policy Bureaux will join the inter-departmental working group. Will the working group also review Hong Kong's land and housing policies, which include the building of more public housing units, with a view to thoroughly address the problem of "sub-divided units", which is the culprit of this fire that has caused serious casualties?

PRESIDENT (in Cantonese): Which public officer will give a reply? Chief Secretary for Administration.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, the inter-departmental working group consists of representatives from all relevant bureaux and departments. Regarding the issues of special concern to Mr LEONG, such as the social problem of "sub-divided units" and land supply, all relevant Policy Bureaux will be involved, which include the Development Bureau, the Transport and Housing Bureau, as well as the relevant departments. At present, it is certainly our top priority to deal with the fire risks.

Since both hawker stalls and old residential buildings have fire risks, we have seriously reviewed the existing legislation and policies to see if the fire risks can be minimized, so as to ensure the people can live safely and meet the operational needs of hawker stall owners. Certainly, I understand that housing is a longstanding problem in Hong Kong, and the existence of "sub-divided units" reflects that Hong Kong is a small place with a large population. There are still tremendous housing needs. In the Policy Address delivered in October, the Chief Executive pointed out that he would work hard to provide sufficient land for the provision of 15 000 public housing units and 5 000 Home Ownership Scheme units. This housing target can help address the shortfall and demand for housing units. Although this inter-departmental working group mainly deals with the issue of fire risks relating to hawker stalls and buildings with "sub-divided units", the relevant Policy Bureaux surely understand that, in the long run, continuous efforts should be made to resolve the housing problems.

MS STARRY LEE (in Cantonese): *President, when the Secretary for Development replied just now, she pointed out the authorities would adjust the strategy in the inspection of "sub-divided units". As I recall, after a fire broke out in a 54-year-old building at Ma Tau Wai Road on 15 June 2011, the Government advised, in its response to a Legislative Council question on 22 June, that the BD had launched a special operation against "sub-divided units" since 1 April. A Member pointed out at that meeting that some buildings with "sub-divided units" might have blocked the rear staircase. I also remember the Secretary had said that enforcement actions would be taken against non-compliant "sub-divided units" with particular reference to their implication on the means of escape. In the reply given on that day, the Secretary also mentioned that the FSD would adopt a "four-pronged" approach for buildings in densely populated areas (including Yau Tsim Mong) to lower fire risks.*

Why then would a fire broke out last Wednesday causing nine deaths? Apart from piling up of stocks at the hawker stalls — as clearly reported in the newspapers — the staircases are still blocked by objects and the rear staircases are completely blocked. After the fire, the Policy Bureau agreed to inspect buildings of similar nature. Once again, the authorities said that inspection would be carried out, yet people are very worried; they worry that the staircases would still be blocked despite the inspections. May I ask if the executive authorities have issued any new administrative directives in the course of inspection that can effectively address the problems of blocking the rear staircase and piling up of objects in the rear staircase?

PRESIDENT (in Cantonese): Which public officer will give a reply? Secretary for Development.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the issue raised by Ms LEE is precisely the greatest difficulty encountered in our previous enforcement actions for building safety. I remember that Mr James TO always reminds us that while penalty notices would be issued during our enforcement actions, the most important indicator is the time taken for compliance by the party concerned. It turns out that the indicator is less than satisfactory. Worse still, the compliance time required by the removal order is too long. Although we have taken joint actions with the FSD in accordance with the Fire Safety

(Buildings) Ordinance which came into effect on 1 July 2007 to improve the fire safety of composite and domestic buildings built before 1987, the record of compliance is not very good.

Therefore, I must stress again that we will deal with the problem from several perspectives: firstly, it is enforcement, which can at least achieve deterrent effects; secondly, assistance should be provided to owners of the relevant buildings as they might encounter certain difficulties. Therefore, Members may notice from the five main replies given earlier that comprehensive assistance has already been provided, which include interest-free loans, low-interest loans and subsidies for the elderly. Coupled with the Operation Building Bright, which has been implemented for three years at a cost of \$3.5 billion, the authorities have actually made continuous input.

And yet, the most important of all — I hope Members would also agree — is that owners should be held personally liable for the safety of the building. If owners disregard the safety of other people and their own self, and illegally divided their units, or disregard the notice, court order or removal orders served on them, the problem can hardly be addressed at root. However, I can assure Members that, being the law-enforcement department, the BD would do its best in the present inspections, in the hope of shortening the time required for compliance.

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

MS STARRY LEE (in Cantonese): *She did not answer my supplementary question. I raised two concrete issues: the blockage of the rear staircase and the piling up of objects in the fire escape. Regarding the piling up of objects in the fire escape, does the Secretary for Security have anything to supplement?*

SECRETARY FOR SECURITY (in Cantonese): President, as I have pointed out in my earlier main reply, we have actually inspected the buildings concerned and a number of orders have been issued to request flat owners for compliance. However, we found that in this fire, the staircases were not blocked and not many

miscellaneous items were piled up. So, this is not the major cause of the casualties.

MR FRED LI (in Cantonese): *President, as evident in this tragedy, the Government only acts when there are casualties because a fire broke out in exactly the same hawker stalls at Fa Yuen Street last year. I notice that the Government has said in the main reply that a lot of improvement measures have been introduced, but in response to Mr Alan LEONG's main question, it is pointed out that according to the FSD's observation at the scene, some hawker stalls have failed to comply with the relevant measures, such as insufficient space and the storage of inflammable objects. Earlier, Mr James TO's asked about the situation at night. My question, however, does not focus on the situation at night. My supplementary question is: How many penalty notices has the Government issued during the period? It seems that there is currently no demerit points system, but have any hawker stall owners being revoked of their licences due to non-compliance with the relevant measures? It has been a year between the outbreak of the last fire and the occurrence of the present tragedy, why would those problems still prevail? Is this attributed to a lack of enforcement or monitoring effort?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, FEHD staff inspect these hawker stalls at least twice a day, and inspection will be even more frequent for the black spots of non-compliance. Let me answer in passing Mr James TO's question about inspection at night. My colleague just now sent short messages to tell me that inspections were also carried out at night. Therefore, in early November, that is, before the outbreak of the fire, they had noticed some problems and issued warning letters to owners of the hawker stalls.*

Since Mr Fred LI just now mentioned some prosecution figures, I would like to provide some official figures. For Fa Yuen Street alone, 604 prosecutions have been instituted in 2010, and a total of 663 prosecutions have been instituted as at 1 December 2011. As Members may understand, our staff will institute prosecutions in the course of inspections if they found obstruction and illegal encroachment of the pavements. Nonetheless, generally speaking, it is our established practice to give warnings before instituting prosecutions if the goods are not placed well beyond the prescribed area, because hawkers would be

willingly move them inside. Nonetheless, many of them moved their goods out again immediately after the "inspectors" left. This is known to all. Given that it is impossible to rely on the self-discipline of hawkers, it is necessary to impose more severe punishments and ask them to move their goods back to the prescribed area.

I also want to mention the number of prosecutions instituted by the FEHD against hawker stalls in 43 streets territory-wide in each year. While there were 4 389 cases in 2010, there were 3 824 cases as at 1 December 2011.

PRESIDENT (in Cantonese): Mr LI, has your supplementary question not been answered?

MR FRED LI (in Cantonese): *I ask in my supplementary question if any licences have been revoked, but the Secretary has not answered.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I want to add one point. Apart from prosecution, no demerit points system has been put in place. We have not introduced such a system for stall management for the time being. As I have said, we will consider introducing this system.

PRESIDENT (in Cantonese): Have the authorities revoked any licences?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): No. We have not revoked any licences.

MR LAU KONG-WAH (in Cantonese): *President, not only one street but 40 similar streets over the territory have management problems. While the management of these 40 streets is slightly different, similar problems do arise time and again. It seems that self-discipline has failed to achieve any effect. Even if certain restrictions are imposed, they may not necessarily resolve the problems.*

Therefore, I wish to ask the Government if there are any new thinking that can change the entire management system, so as to avoid the recurrence of similar problems. If the problems cannot be avoided but keep recurring, what kind of new mindset should the Government adopt?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I can tell Members that comprehensive consideration is being made by the Government in respect of this issue. On the one hand, all hawker stall owners are obliged to follow the relevant regulations and do businesses in compliance with the licensing conditions, and on the other hand, residents or landlords of "sub-divided units" are required to comply with the requirements of the BD and the provisions of the Fire Services Ordinance. At present, FEHD staff is taking tough enforcement actions against non-compliant hawker stalls owners with its vested power under the existing policies. In the past few days, Members should notice the efforts being made in this regard.

After discussion, the Director of Buildings and colleagues of the Development Bureau are promoting the review and inspections of 300-odd buildings of this sort. The Administration understands that there are more than 40 places with similar hawker stalls, and the problems of Fa Yuen Street aptly reflect the lack of management over the past few decades. The Government will not rely solely on the self-discipline of stall owners because we understand that the effect is pretty limited. Stall owners can at best properly manage the few square metres designated to them. Therefore, I wish to tell Members that all possible options will be taken into consideration, including the suggestion made by Dr Priscilla LEUNG. She asked if the Government would take the lead to provide better protective facilities or facilities in certain areas. Actually, similar proposals have been put forth by government officials, but it is not as simple as it sounds. The situation is not that if the Government takes the initiative to provide some protection, fire can definitely be prevented. What is more, will local residents or owners of other shops find this acceptable? Will the hawker stall owners themselves find this acceptable? What will the local District Council and Members from different political party and affiliations think?

Government departments must make comprehensive consideration to address problems of managing hawker stalls properly, safeguarding public safety and minimizing fire risks. When implementing measures, we have to strive for the support of the Legislative Council and the relevant District Councils, as well

as the acceptance of local residents. Measures can only be successfully implemented if they are considered effective by local residents. So, let me respond to Mr LAU Kong-wah's question, this is the Government's current attitude. We are actively considering various measures, and that is why I told Members in my main reply that we are carefully considering various proposals, which include dismantling the stalls after trading hours, keeping only the metal frames for display within the approved pitch but removing the goods, introducing a demerit points system and relocation of the hawker stalls. Furthermore, as I have explained earlier, similar suggestions have been made by our colleagues.

MR LEE WING-TAT (in Cantonese): *President, this is the third fire tragedy that occurred within this one year or two, and has caused serious casualties. While some previous tragedies involved "sub-divided units" in old buildings, this time it is the goods at the hawker stalls that caught fire, which then spread to the adjacent old buildings with "sub-divided units". President, this is not the first time that questions and debates on the safety of "sub-divided units" and whether fire escapes are free of obstruction were raised in this Council for discussion. The Secretary just said that fire escapes were free of obstruction, but as reported by a television station after the fire, the fire escapes were obstructed. Secretary Carrie LAM said she would not doubt or query the power vested on her to break into problem premises to investigate "sub-divided units", but only one such investigation has been conducted over an extended period of time.*

President, these human tragedies cannot be resolved each time by government officials making brief responses, claiming that lessons have been learnt and a review would be conducted for this cause. People cannot tolerate the existence of so many bombs in the community. May I ask if the Chief Secretary for Administration will expeditiously lead a group, which may comprise of all Directors of Bureaux now sitting behind him, to conduct a comprehensive review of the safety of the "sub-divided units" and means of escape? Should it also expeditiously conduct a review, to be guided by the Chief Secretary for Administration, to see how the FSD instructs its staff to take the initiative to inspect the means of escape of old buildings and how the FEHD examines the fire hazard imposed by the hawker stalls adjacent to old buildings, with a view to submitting a report in three months? By so doing, Hong Kong people will be able to see for themselves the Government's determination in combating the problem and preventing its recurrence.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I thank Mr LEE Wing-tat for his question and opinions. I can tell Members that the inter-departmental working group that has been set up is precisely tasked to deal with these two matters. The fire at Fa Yuen Street does not only involve hawker stalls, but also buildings with "sub-divided units". The hawker stalls was on fire first, but then it spread to these buildings and affected the residents. Therefore, issues relating to the management of hawker stalls, fire precautions to be put in place in future, the means of escape of buildings and how building safety can be ensured will be dealt with by this inter-departmental working group. As I have said earlier, we are considering a series of measures, which will be ready for public discussion after comprehensive consideration. Discussion will certainly be held within the Legislative Council and the relevant District Councils.

For the "sub-divided units" in old buildings, as the Secretary for Development has explained, some measures have already been introduced, which include the inspection of some 300 old buildings. A new amendment bill will also be introduced later. We hope that Members will support it as it will allow the BD to enter into premises for inspection, for instance, the "sub-divided units". Therefore, the two problems will be dealt with in parallel. Once the drafting enters an advanced stage in the coming few months, the amendment bill will be tabled for Members' consideration.

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

MR LEE WING-TAT (in Cantonese): *Will the Secretary disclose the findings of the review conducted by the Government for discussion by members of the public and the Legislative Council?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, after considering the situations and before putting forward our proposals, we will certainly brief Members on the background and the relevant findings.

MR WONG KWOK-KIN (in Cantonese): *President, as the Chief Secretary for Administration has just said, the tragedy at Fa Yuen Street is obviously attributable to two factors, one being the hawker stalls and the other is the "sub-divided units". This is not the only tragedy caused by "sub-divided units", the collapse of a building at Ma Tau Wai Road which happened earlier was only caused by such units. Although the Government has just cited many policies to counteract "sub-divided units", I hold that the policies can only be a remedy rather than a cure to the problem. Honestly, who wishes to reside in a "sub-divided unit", given its unpleasant and dangerous environment? As the saying goes, "Who wishes to be bald if one has hair?" The crux of the problem is that people have encountered great difficulties in solving their housing problems. Thus, may I ask the Government whether, in the wake of these tragedies, it has reconsidered the supply of PRH flats under its public housing policy and assessed whether the supply should be increased as soon as possible, so as to avoid the present situation of still having 100 000-odd people queuing for PRH?*

PRESIDENT (in Cantonese): Which public officer will reply? Secretary for Transport and Housing.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we have been closely monitoring the WL for PRH. I believe Members also know very well that the Government has laid down a policy of limiting the average waiting time for PRH to three year and it is committed to the policy. In relation to the policy and commitment, we have repeatedly pointed out that the production of 15 000 PRH flats per year is not a rigid target. If some time later we foresee that the target of the three-year average waiting time is unlikely to be met, we will certainly look into the whole situation again.

As regards the present status of the PRH WL, in fact, I have said in a Panel meeting on Housing earlier that we are now able to reduce the average waiting time roughly to 2.2 years. In the 12 months between mid-2010 and mid-2011, 51% of the applicants on the WL were allocated PRH within two years and 70% were allocated PRH within three years. The statistics are in line with what we now are saying, that is, 2.2 years.

As regards the applicants who are not yet allocated PRH, actually half of their applications have already entered the investigation stage. I believe Members would understand that the actual waiting time is subject to the specific circumstances of individual applicants and the district where the PRH they apply for is located. According to available statistics, 78% of the applicants wish to be allocated a flat in extended urban districts. Besides, due to the series of relaxations launched earlier, one of which allows applicants to switch to queue for flats in other districts, about 48% of the applicants have switched to queue for flats in urban districts. Thus, we have increased the supply of PRH flats in urban districts. We will keep abreast of the situation to adjust PRH production, in a bid to meet the target of maintaining the average waiting time at three years as far as feasible. At present, the average waiting time is about 2.2 years.

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

MR WONG KWOK-KIN (in Cantonese): *I asked the Government just now whether, in view of the recent tragedies related to "sub-divided units", it would review the policy of housing supply and increase the supply of PRH. The Government has not specifically answered this supplementary question.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add in relation to this problem?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, as far as my understanding goes, the problem of "sub-divided units" is multi-faceted covering different portfolios. In fact, different people have different housing needs. No matter they are living in "sub-divided units" or other less desirable flats, they are accorded the same attention. Many people living in "sub-divided units" are in fact already on the WL for PRH.

Take the victims of the fire incident at Fa Yuen Street as an example. They will first be arranged temporary housing and, subject to their eligibility, will then be transferred to interim housing, during which they will wait for PRH

allocation. Moreover, a mechanism is now in place to help people with urgent needs to apply for Compassionate Rehousing through the SWD. Hence, efforts have been made in respect of PRH allocation, temporary housing and interim housing, in a bid to assist these residents wherever possible.

MR LEUNG YIU-CHUNG (in Cantonese): *President, on Sunday and yesterday night, I had meetings with the 60-odd residents who had moved from the Henry G. LEONG Yau Ma Tei Community Centre to Shek Lei interim housing. The residents expressed deep dissatisfaction at yesterday night's meeting, accusing roundly (I think I was one of them) that they were deceived into leaving the Henry G. LEONG Yau Ma Tei Community Centre and moving into the temporary shelters at Shek Lei. They said that officials told them it was alright for them to move there. However, Secretary Carrie LAM has just said that Shek Lei is only a temporary shelter and they can only live there for three months. In other words, they ultimately will have to leave three months later whether or not they are offered Compassionate Rehousing.*

Hence, the residents said they were cheated because the building (that is, the "sub-divided units") had been burnt down and restoration work could hardly be completed within three months for them to move back. If they cannot move back to their old residence, where can they go? This is the question raised by them. If they cannot move back to their old "sub-divided units", they have no choice but to move to other "sub-divided unit" nearby or elsewhere. Why? It is because not all of them are eligible for PRH application. What can they do then?

Secretary Eva CHENG just said that the present production of PRH is appropriate, and the target of three-year average waiting time for PRH allocation can be met, and that the production volume can be adjusted flexibly when necessary. Hence, President, may I ask what these residents can do if they do not meet the application criteria, including those for Compassionate Rehousing, or if they are not even eligible for PRH application? Where can they live? Moreover, they also said at last night's meeting that they were not the only ones facing such a predicament. Many other residents are facing the same problem because the present application criteria for PRH are too stringent, making it impossible for them to apply successfully.

Hence, will the Secretary review afresh the application criteria and increase the production volume, so as to give more people of the grass-roots echelon the chance of moving into PRH, rather than merely saying, as Secretary Carrie LAM has said, that they should not live in "sub-divided units"? No one wishes to live in "sub-divided units". No one enjoys living in "sub-divided units". The point is, with their limited means, they have no choice. Hence, the solution to "sub-divided units" may not be as readily available as Secretary Carrie LAM has thought. She thinks that by implementing across the board

PRESIDENT (in Cantonese): Mr LEUNG, you have made your supplementary question clear.

MR LEUNG YIU-CHUNG (in Cantonese): *But rather, there must be corresponding measures available. What corresponding measures are available to help these people move out of "sub-divided units"?*

PRESIDENT (in Cantonese): Which public officer will reply? Secretary for Transport and Housing.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the supplementary question Member has just asked involves the fire victims who now live in the temporary shelters we provide. Under the existing mechanism, they have three months' time during which, subject to their eligibility, they will be granted Compassionate Rehousing, as Member has just said. Moreover, if they can pass through the assessment to be conducted within these three months (we will conduct an assessment within these three months on whether they genuinely have no place to live in) as well as meeting the criteria for the PRH WL, they can then be arranged to live in interim housing while waiting for PRH allocation via the WL.

However, as Members has just asked, what if they do not meet the application criteria? I understand his concern, but PRH, after all, is a measure to assist people who cannot afford private housing. Thus, we have to draw the line

somewhere. At present, by setting a ceiling on income and asset, we seek to treat people now living in different housing fairly, including the 150 000-odd people now on the PRH WL. Take a three-person household as an example. After the adjustment made on 1 April this year, the maximum income limit to be eligible for application has been increased to \$15,000-odd per month and a total net asset of no more than some \$300,000. We must assess whether an applicant is eligible for PRH against these criteria. Certainly, if they have a special reason, assistance can be accorded to them through Compassionate Rehousing. The HD and SWD have been working jointly to process some special cases. Families with chronically-ill elderly members who have special medication needs may be accorded the assistance they need and be allocated a PRH flat through Compassionate Rehousing.

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

MR LEUNG YIU-CHUNG (in Cantonese): *My question has not been answered, President. My supplementary question is, does the Government ask residents to live in "sub-divided units" again, if they do not live in the "sub-divided unit" which have been burnt down, they will have to live in similar units nearby or elsewhere? I ask how the Government is going to help them; and what can be done if they are not eligible for interim housing application and have nowhere to live. The Secretary has not answered these questions. In addition, I ask whether the Secretary would review afresh the housing policy, relax the application criteria and alter the supply of PRH and change the target of producing 15 000 PRH flats per year*

PRESIDENT (in Cantonese): Mr LEUNG, please sit down. In respect of your first question, the Secretary has already made a reply. If you disagree with it, as you may know, there is another opportunity for debate later. In respect of whether the application criteria need to be reviewed, Secretary, can you say a little more about it?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): In respect of the application criteria, as I have just explained, the main criteria lie in the monthly income and total asset.

MR WONG KWOK-HING (in Cantonese): *President, I would like to pay my profound condolence to the deceased victims in the tragedy and extend my deepest sympathy to the 30-odd injured residents. In connection with this tragedy, may I inquire whether the direction of the investigation conducted by the Government includes two public concerns? The first concern is about how to safeguard the business of the hawker stall operators, given that a number of fire incidents have happened in the past which targeted at certain hawker stalls. Is it possible that these fire incidents targeted at hawker stalls are caused by triad society seeking to "extend its territory"? Another concern is, it has come to the attention of some residents that some barbeque restaurants now operate at the roof top of some nearby buildings. Is it possible that some burning soot or flying embers may have settled on the hawker stalls and initiated the fire? My supplementary is, has the Government directed its investigation towards these concerns?*

SECRETARY FOR SECURITY (in Cantonese): President, the investigations conducted by the FSD and the police are now in progress. We will direct the investigations in all possible directions, not letting go any possibility. However, to date, the investigations are still in progress and we have not drawn any conclusion at the moment.

DR RAYMOND HO (in Cantonese): *President, I can understand why Dr Priscilla LEUNG was so upset just now because at the same time last year, a fire broke out in the same location and the urgent question which she sought to propose on that incident was turned down. Members of the Professional Forum were also rather disappointed.*

The Government's housing policy has led to a great demand on "sub-divided units" from people of the lower echelon. "Sub-divided units" certainly have their value of existence, but as Secretary Carrie LAM has just said, these units have also brought about many problems, such as water seepage,

structural safety of the building, fire safety and maintenance. The Government intends to step up monitoring of "sub-divided units" by putting building works associated with these units under the regulation of the MWCS. However, after the bitter lesson learnt from this serious fire tragedy, does the Government still maintain its standard mindset and not intend to make any changes? Will the Government consider putting "sub-divided units" under direct regulation through legislation? "Sub-divided unit" is not a simple issue. I believe it is necessary to tackle the issue through formal legislation, rather than regulating it through the MWCS.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Dr HO for his supplementary question, as it gives me a chance for clarification. The two Mr LEUNG (Mr Alan LEONG and Mr LEUNG) have just pointed out that I have said in the main reply that "sub-divided units" had to be banned across the board. This is not our prevailing position. As Dr HO has said, the Chief Executive has pointed out in this year's Policy Address that we currently intend to put "sub-divided units" under regulation. To date, we still hold the position of putting general building works associated with "sub-divided units" under the regulation of the MWCS which came in effect last year. This is an appropriate practice.

Dr HO also proposed direct regulation of "sub-divided units" through legislation. Members should remember that I have also raised this issue for discussion at the panel meetings. In fact, "sub-divided unit" is a term commonly used by people, which refers to a format of dividing a flat into small partitions. In many cases, these partitions do not constitute any concern or problem to the safety or design of a building. Hence, in considering direct regulation through legislation, it is a rather big challenge in how to lay down the definition.

Nevertheless, as the Chief Secretary for Administration has just said, the inter-departmental working group is currently considering different proposals to enhance building safety in Hong Kong and tackle the present problem. Dr HO has shown great concern over building safety and has been Chairman to a number of Bills Committees in the past years. I certainly wish to hear Members or professional bodies express their views on this issue and furnish their views for the Administration's reference.

MS MIRIAM LAU (in Cantonese): *President, "sub-divided units", insufficient fire escapes in old buildings and lack of fire safety facilities are factors contributing to the tragedy which has caused serious casualties. The Secretary for Development has just said in the main reply that the Development Bureau will adjust its strategy to inspect buildings adjacent to hawker stalls first. I support this adjustment. However, these buildings also have different degrees of risk, some posing a higher risk while others a lower risk, subject to the types of hawker stalls in the vicinity. Moreover, past experience shows that conducting inspections alone cannot achieve a desirable result. Even if the authorities have issued guidance notes, notices or even removal orders, property owners may still not co-operate.*

President, my supplementary question is as follows: in respect of the buildings concerned, will the Development Bureau prioritize its inspections by inspecting higher-risk buildings first and lower-risk buildings later, so as to expeditiously dispose of the "bombs" in these buildings? If property owners refuse to co-operate with the authorities even if removal orders are issued after building inspections, will the Government deploy staff within a short period of time to expeditiously dispose of the "bombs" which block the passageways?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, according to the adjusted strategy of enforcement action, the 334 old buildings under our estimation are selected on the basis of their potential risk. First of all, these buildings fall under the type of our target buildings, that is, double staircase buildings of six to 12 storeys in height. Moreover, these buildings are situated in the vicinity of hawker stalls. These buildings normally do not constitute a fire hazard, but will be engulfed by fire once a fire breaks out at the hawker stalls. Certainly, when we take enforcement actions against the 334 buildings, we may focus our inspection on whether the staircases for fire escape are blocked.

Members should remember that I have said "sub-divided units" will contravene the BO in three ways. First, overloading, which generally does not constitute a serious problem; second, water seepage, which is a disturbing problem affecting the upper and lower-floor residents; and third, obstruction to rear staircases which are meant for fire escape and this is the focus of our risk-based enforcement action. Hence, we will take immediate enforcement actions once we find any obstruction to the staircases for fire escape.

However, I must reiterate here that despite repeated inspections have been made against these old buildings and buildings suspected of having "sub-divided units", it is really difficult to discover these "sub-divided units" if we cannot enter into the flats. It is because these flats on the outside have preserved their original wooden doors and iron gates and partitions are made inside these flats. Hence, the difficulty in entering into flats for inspection is the biggest weakness of our present enforcement actions. We have to tackle this point.

With respect to Ms LAU's question on what we are going to do if property owners do not comply with the removal orders issued after the inspection to enforce the law, we certainly can remove the obstructing objects on their behalf and levy the fees on them, and then proceed to prosecution. I surely do not rule out that we have such authority, but whether or not we exercise it is subject to the degree of risk posed by the obstruction. Given that this concerns the issue of privacy, particularly considering the fact that there are occupants living in the "sub-divided units", we need to exercise this authority with caution.

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

MS MIRIAM LAU (in Cantonese): *President, the Secretary has not answered my supplementary question about the 334 buildings.*

My supplementary question just now is as follows: given the 334 old buildings pose different degrees of risk, with some posing a high risk (subject to factors such as the distance between the building and the road, the nature of hawker stalls, and so on), will the Secretary prioritize the 334 old buildings in terms of their degrees of risk?

PRESIDENT (in Cantonese): You have made your question clear.

MS MIRIAM LAU (in Cantonese): *The Secretary has not answered this question. She only said that the buildings generally face the same risk.*

PRESIDENT (in Cantonese): Secretary, please reply.

SECRETARY FOR DEVELOPMENT (in Cantonese): We prioritize the buildings according to the risk which the buildings pose. If the BD has to take into account the nature and relative risks of the hawker stalls, this may further retard our enforcement actions.

However, if the FEHD has confirmed The 334 buildings are situated on some 40 streets with hawker stalls throughout the territory. If the FEHD can prioritize the buildings in terms of their risk involved, the BD will be delighted to consider conducting the enforcement actions according to the degree of risk.

MR ALBERT CHAN (in Cantonese): *President, in a debate on "sub-divided units" in this Chamber earlier, I already pointed out that "sub-divided units" will sooner or later cause a fire leading to heavy casualties. If the problem of "sub-divided units" could be solved sooner, this tragedy could have been avoided.*

President, we can pursue the discussion at two levels. First, at the level of hawker stalls; and second, at the level of "sub-divided units". In respect of hawker stalls, the Government can consider drawing reference from the practice adopted by Tsuen Wan District Council. Tsuen Wan District Council has deployed funding to carry out a complete revamp of the Hau Tei Square Hawker Bazaar. The situation at the Hau Tei Square is even worse and more dangerous than that at Fa Yuen Street. Hence, there is already an existing option available, which has already been adopted in some other districts. I hope Secretaries of Departments and Directors of Bureaux can stop acting as if they have fallen asleep and keep on

PRESIDENT (in Cantonese): Please come to your supplementary question expeditiously.

MR ALBERT CHAN (in Cantonese): *I hope the authorities can draw reference from practices adopted in other districts to expeditiously introduce*

reconstruction of all hawker stalls which are dangerous and incompatible with fire safety standards.

Second, it is the problem of "sub-divided units". President, regarding this problem, the Government has said that it will conduct a comprehensive review and that it will ensure the safety of the occupants. Apart from "sub-divided units", many industrial buildings have also been illegally converted. The partitions inside these industrial building flats are another "bomb"

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

MR ALBERT CHAN (in Cantonese): *President, my supplementary question is as follows: will the Government conduct a comprehensive study and assessment? It is because apart from the problem of "sub-divided units" and hawker stalls, which I have just mentioned, other potentially dangerous "bombs" may also cause injuries and death. Then, will the Government conduct a study on the problems which I have just mentioned, that is, the illegal partitions inside industrial building flats which may be dangerous and life threatening?*

PRESIDENT (in Cantonese): Which public officer will reply? Secretary for Development.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, my simple answer is yes. We have looked into the problem of illegal partitioning of industrial building flats. The risk of illegally-partitioned industrial building flats probably involves the means of fire escape. Given that such buildings are meant for industrial use, putting flats of industrial and residential uses together in the same building will pose a potential fire hazard.

Hence, it is the BD's strategy to replace these "sub-divided units" in industrial buildings. Mr CHAN may as well remember that in response to the proposal put forth by the BD and the Development Bureau, the Steering Committee on the Community Care Fund chaired by the Chief Secretary for Administration indicated earlier that these "sub-divided units" within industrial

buildings must be replaced because these units simply should not exist in industrial buildings.

Hence, under the support of the Community Care Fund and in tandem with the enforcement actions taken by the BD, we will provide a one-off subsidy for occupants living in "sub-divided units" of industrial buildings who have to move due to the enforcement actions. The work will be continued.

DR PAN PEY-CHYOU (in Cantonese): *President, I have just looked up some information and found that a fire broke out at the hawker stalls at Fa Yuen Street respectively in the early hours on 17 September 2010, at 5 am on 6 December 2010 and recently at about 4 am on 30 November.*

May I ask the Government or the Secretary for Security whether there is any record in Hong Kong concerning fire incidents happened at similar hours in the same location? Moreover, how likely is it that the fire incidents are caused by accidents?

SECRETARY FOR SECURITY (in Cantonese): President, as far as I remember, there is a place where a fire broke out twice within a year. However, President, if Member wants exact figures, please allow me to provide a written reply. I do not have the information with me now, that is, the formation on the number of fire incidents and at what time the fire broke out. (Appendix I)

PRESIDENT (in Cantonese): Last supplementary question.

PROF PATRICK LAU (in Cantonese): *President, having listened to a number of Members and the Secretaries spoken on the problem under discussion, I note that the focus of the discussion is not on the cause leading to the death of occupants. I went to the scene for inspection and found that the bodies of the deceased were found on the staircase for fire escape. This is the major problem.*

I echo Secretary Carrie LAM in saying that there are now 40-odd similar high-risk buildings. I wish to sort out a point. Given that so many people have

died at the fire-escape staircase, does the biggest problem not hinge on the fire-escape staircase?

President, the Legislative Council should always keep its door open, but doors leading to the fire-escape staircases should always be kept closed; otherwise, people will be choked to death by smoke when they escape through the staircases. Hence, may I ask this supplementary question to clarify whether we have failed to address the crux of the problem? Certainly, the origin of the fire was at the hawker stalls, which needs to be addressed, but may I clarify whether our top-priority task is to improve the fire-escape staircases of these old buildings? This is the point I wish to clarify.

Members need to understand that fire stop doors in new fire-escape staircases are always kept closed, thereby stopping smoke from getting into the staircases. It has been reported that the deceased victims of the tragedy was choked to death by smoke drifted into the fire-escape staircases where they could not find a way out. I wish to know more about this issue through the supplementary question.

PRESIDENT (in Cantonese): Please let the public officers answer.

PROF PATRICK LAU (in Cantonese): *OK.*

PRESIDENT (in Cantonese): Which public officer will reply? Secretary for Security.

SECRETARY FOR SECURITY (in Cantonese): President, according to the information we obtained, most of the bodies of the deceased were found at a staircase. The staircase which leads to the front door is not for fire escape. Thus, it is not the rear staircase.

On the day of the incident, our colleagues did not notice that the staircase was blocked. As to why a number of victims were found burnt or choked to death at the staircase, this is precisely the focus of our investigation right now. I

believe a death inquiry will be initiated at the Coroner's Court. We thus should not jump to the conclusion now and should wait for the result of the investigation.

With respect to Member's suggestion of constructing an additional staircase, given that such old buildings only have one staircase, it is impossible to construct an additional staircase except building a lift attaching to the building. We will later review the result of the investigation and see if any measures can be adopted, particularly whether a fire resistant wall can be constructed at the old buildings adjacent to the hawker stalls to prevent the fire from spreading to the buildings through the staircases.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Enforcement of Building Management Ordinance

1. **MR LEUNG YIU-CHUNG** (in Cantonese): *President, according to the Direct Investigation Report on "Enforcement of the Building Management Ordinance" published by the Office of the Ombudsman in June 2004 (the Report), the Home Affairs Bureau and the Home Affairs Department (HAD) had failed to enforce the Building Management Ordinance (BMO) since its enactment. The Report pointed out that the Secretary for Home Affairs had never instituted prosecution against anyone, never invoked his powers, and never applied to the Lands Tribunal for a court order. The Report also made a total of 11 recommendations to the authorities. In this connection, will the Government inform this Council:*

- (a) *of the number and types of cases recommended by the HAD for instituting prosecution for the offences under the provisions of the BMO since June 2004; whether the Secretary for Home Affairs has instituted prosecution against anyone; if so, of the details; if not, the reasons for that;*
- (b) *of the number, types and details of cases of requests for invoking the Secretary for Home Affairs' powers under the provisions of the BMO*

since June 2004; if the powers have not been invoked, of the reasons for that; and

- (c) *whether the Government has implemented the recommendations of the Report to enforce the BMO; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, private multi-storey buildings are the properties of individual owners. Our policy objective is to encourage owners to organize themselves to effectively manage their properties. The BMO (Cap. 344) was enacted to provide a legal framework to facilitate owners to form Owners' Corporations (OCs) and to carry out the building management work properly in accordance with the requirements of the legislation. Each owner is empowered and shall be responsible under the BMO to monitor the work of the OC and its management committee (MC). The BMO also empowers the Authority (that is, the Secretary for Home Affairs) to exercise certain powers in specified circumstances so as to achieve the policy objectives.

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

- (a) and (b)

Since June 2004, the Administration has received a total of 25 cases requesting the Authority to invoke his powers or institute prosecution.

Regarding cases of requests for instituting prosecution, three are related to section 12 of the BMO (that is, requests to the Land Registrar to maintain register of corporations); six concern section 27 (that is, requests to maintain accounts); one is related to section 32(2) (that is, giving notice to the Land Registry concerning the appointment or termination of an administrator); and eight are related to section 36 (that is, false statements or information).

Among cases of requests for invoking the Authority's powers, one is related to section 31(1)(d) (that is, requests to the Authority to apply

to the tribunal for appointment of administrator); 11 are related to section 40A (that is, the Authority may request the OCs or any person managing the building to provide information, inspect the books or other documents, and so on); two cases are related to section 40B (that is, requests to the Secretary for Home Affairs to order an appointment of building management agent in a specified period).

Among these 25 cases, seven requested the Authority to both institute prosecution and invoke his powers.

These cases involve the conflicts between owners and OCs, as well as among owners. It is understandable that some owners would request the Government to intervene to redress the scales. From the Administration's point of view, due consideration must be given and sufficient evidence must be presented in exercising the power to intervene the conflicts among owners or even to institute prosecution.

Regarding each of the cases above, staff of the HAD has conducted in-depth investigation. Upon examining by the seniors and seeking legal advice, a proposal on how the case should be handled would be made to the Secretary for Home Affairs. So far, none of the case reports submitted by the HAD has recommended taking legal action. Having thoroughly weighed all relevant considerations, I have agreed with the each of the proposals and decided not to prosecute or invoke the powers under the BMO. The major reasons include:

- (i) First, individual owners made the requests based on their personal perspective of the disputes they involved. We however strived to consider each case in an objective, fair and comprehensive manner, taking into account the actual circumstances. For example, an owner considered that there were problems in the management of his building and requested the Authority to order the MC to appoint a building management agent to manage the building. However, after knowing the actual operation of the building, we confirmed that the daily management of the building was undertaken by

the MC and the management company and that the building did not have serious problems. It was therefore inappropriate for the Authority to exercise the power under section 40B of the BMO.

- (ii) Second, in a considerable number of cases, the OCs did not deliberately contravene the BMO. In the course of investigating owners' complaints, the HAD would actively advise the OCs to strictly abide by the requirements of the BMO. Under most circumstances, the OCs would make rectification upon the HAD's advice. Sometimes, dissatisfaction among owners arose because the OCs lacked understanding about the BMO or were affected by other factors. For instance, an owner lodged a complaint against the OC for not retaining an accountant to audit the financial statements under section 27 and requested the Authority to institute prosecution against the MC members. Upon investigation, we learned that the OC did not deliberately refuse to engage an accountant for auditing. The fact was that there were multiple switches of property management companies for the building within the past few years and that the property management companies had failed to maintain the relevant accounts and records properly. As a result, the then MC was unable to prepare the financial statements or to engage an accountant for auditing within the designated time frame. Notwithstanding its failure to fulfil its obligation under the BMO, upon the admonition of the District Office (DO), the OC promptly convened a general meeting of the OC to inform owners of the actual situation and its plan for remedial actions, so that the owners could deliberate and pass a resolution on the matter. In light of the case, we did not consider prosecution necessary.
- (iii) Third, there are prerequisites and limits on the powers vested in the Authority under the BMO. The applicability of the powers is not the same as what some owners may envisage. For instance, an owner said that there was financial problem of a building and requested the Authority to invoke section 40A of the BMO to inspect the financial statements of the OC.

However, such power should be exercised to forestall situations posing safety risks and safeguard the interest of owners when the prerequisite of identification of major building management problems is met. There is a threshold in exercising the power in view of the legal advice. Having further understanding the situation, we confirmed that there was no circumstance warranting the invocation of the powers for the building. Another example is that an owner requested to invoke section 40A to inspect an instrument for the appointment of a proxy to determine its validity. However, the BMO expressly provides that only the MC chairman or the person presiding at the meeting (in the absence of the chairman) has the power to make these decisions. Even if the Secretary for Home Affairs inspects the relevant proxy instruments, he does not have the authority to determine the validity. Any owner who disagrees with the decision of the MC chairman may apply to the Lands Tribunal for adjudication under section 45 and Schedule 10 of the BMO.

The powers vested in the Authority under the BMO should be exercised for the benefits of the people. Our policy objective is to encourage owners to form OCs and to work together for building management, so as to foster a harmonious living environment and ensure that the owners' interest are best protected, instead of deepening the conflicts in the neighbourhood. Hence, we have endeavoured to resolve the disputes through communication and admonition. Nevertheless, if an OC deliberately violates the law and does not take DO's advice, which affects owners' legal rights, we will be determined to take enforcement actions.

- (c) Regarding the recommendations made in the Ombudsman's Report in 2004, particularly those relating to enforcement actions, the Home Affairs Bureau and the HAD have formulated implementation measures.

The HAD has formulated and issued detailed internal guidelines to

clearly set out the procedures for the HAD staff when handling requests to the Authority to institute prosecutions and invoke powers, which include acknowledgement of receipt of a request within a designated time frame; collection of case information; maintaining close communication with the parties concerned and submission of a detailed report to the HAD, and so on. In line with the recommendations of the Report, all cases will be submitted to the Secretary for Home Affairs for consideration

The internal guidelines also set out the factors in considering whether prosecutions should be instituted and powers be invoked by the Authority, such as the nature of the incident, whether the violation is deliberately caused by the OC and whether it has caused any damages to other owners, and so on. The guidelines also list out powers which can be invoked by the Authority under the relevant provisions of the BMO and the role of the Department of Justice in providing legal advice.

In addition, to further enhance the understanding of the owners and OCs of the BMO, we have put together a guide on the BMO to provide an outline of the major provisions of the BMO in simple language. We have also compiled publications and pamphlets, such as Frequently Asked Questions on the BMO; How to Form an OC; Code of Practice on Procurement of Supplies, Goods & Services and Code of Practice on Building Management & Maintenance; Property Owners and Private Building Maintenance; Building Management (Third Party Risks Insurance) Regulations; and Management of Private Buildings for owners' and OCs' ease of reference.

The HAD also advises owners on the procedures for the formation of an OC; assists in convening general meetings and provides subsidies for searches; attends OC meetings to advise owners on the operation of an OC; handles enquiries of and complaints about building management, so as to assist in resolving disputes among owners, OCs and management companies; organizes education and publicity activities (including training courses, workshops and seminars) to promote effective building management.

In the meantime, we have established the Review Committee on the

Building Management Ordinance which is currently studying common problems in respect of building management, including those relating to sections 40A and 40B of the BMO. It will examine whether these problems should be resolved through amending the BMO. The Committee will make recommendations to the Government to enhance the operation of OCs and to safeguard the interests of individual owners. It is expected that the Committee will submit an interim report to the Administration by the first half of 2012.

MR LEUNG YIU-CHUNG (in Cantonese): *President, the Office of the Ombudsman published this report in 2004. From an objective point of view, the 11 recommendations were made out of dissatisfaction with the Secretary for Home Affairs and the HAD. However, in reply to my question, the Secretary has said that out of 25 cases, 11 are related to section 40A, that is, the Authority may request the OCs or any person managing the building to provide information, inspect the books or other documents, and so on. But, according to the Secretary, section 40A has not been invoked after staff of the HAD has conducted in-depth investigation.*

As the Secretary has not inspected the documents, how can he say that he accepted that staff had conducted in-depth investigation? What are the findings of the investigations? The Office of the Ombudsman only requested him to inspect the documents because there were problems, right? If he has accepted those investigations, can he provide the Legislative Council with a report on the findings of the so-called in-depth investigations? What aspects have been investigated? Was the decision made by just listening to the staff's reports and discussing the matters with a few members; or have a lot of documents been inspected before making a decision that section 40A need not be invoked?

SECRETARY FOR HOME AFFAIRS (in Cantonese): *President, as mentioned in my main reply, staff of the HAD will conduct in-depth investigation and compile reports for submission to the HAD. Upon examining by the seniors and seeking legal advice, recommendations would be made as to whether I should invoke my powers as Secretary for Home Affairs.*

I would like to give an example. I know that Mr LEUNG was involved in

a case heard at the Legislative Council. The case is related to the problem of proxies who attended an OC meeting of a certain building, and some owners requested the Secretary for Home Affairs to inspect the proxy documents so as to determine their validity. As I have just said in my main reply, this is not within the scope of decisions to be made by the Authority (that is, the Secretary for Home Affairs). These issues have been carefully considered by staff of the HAD.

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

MR LEUNG YIU-CHUNG (in Cantonese): *He has not answered my supplementary question. I ask him what is meant by in-depth inspection, as he said that there are many complaints requesting the authorities to invoke section 40A to inspect books and other documents*

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

MR LEUNG YIU-CHUNG (in Cantonese): *..... he has not answered what is meant by in-depth inspection. I have also asked him to submit to the Legislative Council an in-depth investigation report to facilitate our understanding. Furthermore, the case cited is not the case I mentioned; the Secretary mistakenly thinks that I am talking about that case but I am actually talking about another case. I similarly wish that the authorities can inspect the relevant books and other documents.*

PRESIDENT (in Cantonese): Secretary, can the details of the investigation be provided?

SECRETARY FOR HOME AFFAIRS (in Cantonese): An investigation by the HAD involves having in-depth discussions with the owners who have lodged complaints, having meetings with them and directly visiting the buildings to deliberate matters with the OCs and the persons concerned on the basis of their

allegations, in order to collect the actual facts.

MR LEUNG YIU-CHUNG (in Cantonese): *Can the authorities submit a report to the Legislative Council?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): We need to find out whether the reports on our internal investigations should be made public.

MR ALBERT HO (in Cantonese): *President, it is often doubtful if the BMO has been effectively enforced. Though many provisions are provided, if the MC of an OC ignores or does not perform its duties, staff of the HAD will frequently adopt the attitude mentioned in the Secretary's main reply, that is, the Government should not intervene in disputes among owners. President, there are definitely disputes and dissatisfaction, as some people consider that the OCs have not performed their duties, and they thus seek government intervention. Yet, the Government often asks them to solve the problems by themselves and institute prosecution on their own.*

President, my supplementary question is very simple. In fact, some cases are straight forward, the OC refused to convene a meeting as requested by owners having more than 5% of the shares. Even if staff of the HAD have repeatedly advised the OC to perform its duties and hold a meeting, their efforts have been ineffective. Yet, the Government still believes that no actions can be taken.

I would like to ask the Secretary if he thinks that the HAD does not need to take any actions even though some people have obviously violated the law. If he thinks that the Government does not have the power, should the relevant ordinance be reviewed to empower the Government to intervene in some obvious cases?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, as stated in my main reply, if an OC deliberately violates the BMO and refuses to perform its duties under the BMO despite repeated advice of staff of the HAD, we will be

determined to take enforcement actions.

Are there serious problems with OCs? As a matter of fact, there are approximately 9 400 OCs in the territory, managing some 16 000 buildings. We have just given some figures; since 2004, there were only three to five cases of disputes referred by the HAD to the Secretary for Home Affairs for handling each year. On the whole, the OCs have played an active role. After all, our policy objective is to promote the organization of OCs for proper building management.

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

MR ALBERT HO (in Cantonese): *As you have just heard, one part of my supplementary question is whether the Secretary considers that he does not have the power of intervention. It seems that the Secretary has not answered the part of my question about whether it is necessary to review the ordinance. Does he mean to say that, in the examples that I have just given, such as refusing to convene meetings, the Government has the right to intervene provided that there is evidence, thus it needs not review the ordinance or empower the Government to intervene?*

PRESIDENT (in Cantonese): Secretary, does the Government have the power of intervention?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, at present we have the power of intervention. Can improvements be made to the actual enforcement of the provisions of section 40A or 40B of the BMO? Should improvements be made as there are various new building management problems? I have mentioned in my main reply that we have established the Review Committee on the BMO which is currently conducting a review, with a view to recommending further improvements.

MS AUDREY EU (in Cantonese): *President, when the Secretary answered Mr Albert HO's supplementary question just now, he said with great satisfaction that*

the BMO was working extremely well. There may not be problems with the operation of most OCs. Nevertheless, there are many cases where there are problems with the operation of OCs. All elected Members can tell the Secretary that this is definitely a vexed problem, especially when the Legislative Council has passed a number of legislation on building and window inspections, there are also problems of collusive bidding. Thus, more and more problems will arise.

Let us look at the Secretary's main reply, he has presented a very pleasant picture. President, he said the authorities wished to encourage fostering of a harmonious living environment and protect the owners' interest. The problem is that when there is a dispute and the Secretary will only intervene and conduct in-depth investigation if the case involves deliberate and criminal elements

PRESIDENT (in Cantonese): Please put your supplementary question quickly.

MS AUDREY EU (in Cantonese): *that is not enough. Therefore, my supplementary question to the Secretary is, will the Government adjust its mindset, given that he has power to intervene, will he play an proactive and positive role in resolving disputes involving buildings, or will he play the role as a mediator or a judge for upholding, instead of instituting prosecution and intervening after criminal offences have been committed.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): As I have just said in my main reply, the HAD has established a review committee on the BMO, and it is considering if any improvements can be made to the BMO in light of the current social situation. We are now handling this issue.

As to whether the Secretary for Home Affairs needs to directly intervene and play a mediator role, it is not specified in the BMO that the Secretary for Home Affairs should play such a role. The last report by the Ombudsman has touched upon mediation and we have established some mediation mechanisms. For example, the HAD will work in partnership with the mediation centre to forward or resolve through mediation disputes between owners and OCs.

PRESIDENT (in Cantonese): We have spent more than 23 minutes on this

question. Second question.

Statistics on Pensioners

2. **MR LAU WONG-FAT** (in Cantonese): *President, will the Government inform this Council:*

- (a) *of the current number of pensioners who are in receipt of a monthly pension from the Government of the Hong Kong Special Administrative Region (SAR); of the average amount of government expenditure incurred for pension payments in each month since the beginning of this financial year;*
- (b) *of the annual changes in the number of pensioners who are in receipt of a monthly pension and the related government expenditure in the past 10 years; and*
- (c) *whether it knows, among all the pensioners who are in receipt of a monthly pension at present, the number of those residing in Hong Kong; the number of those residing outside Hong Kong and where they are currently residing, as well as by what means they receive their monthly pensions?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): *President,*

- (a) According to the Treasury's records, as at 31 October this year, there were 102 565 retired civil servants and judicial officers in receipt of pensions under the Pensions Ordinance (Cap. 89), Pension Benefits Ordinance (Cap. 99) and Pension Benefits (Judicial Officers) Ordinance (Cap. 401). For the first seven months of the current financial year, the Government's average monthly recurrent expenditure on pensions (including lump sum pension gratuities and monthly pension) was \$1,636 million.
- (b) The number of retired civil servants and judicial officers in receipt of pensions under the three pieces of pension legislations mentioned above and the Government's actual recurrent pension expenditure in

the past 10 years are set out in Annex 1.

- (c) According to the Treasury's records, as at 31 October this year, there were 94 217 retired civil servants and judicial officers in receipt of pensions under the three pieces of pension legislations mentioned above who had a correspondence address in Hong Kong, Macao or Mainland China, while the number of those having an overseas correspondence address was 8 348. The relevant information is set out in Annex 2. The vast majority of pensioners receive their pension through autopay by the Treasury into their Hong Kong bank accounts. A small number of pensioners collect their pension in cash at designated post offices in Hong Kong. There are also a small number of pensioners who receive their pension through telegraphic transfer by the Treasury to their Mainland bank accounts or demand draft mailed to their correspondence addresses in the Mainland, or through a paying agent designated by the Government to their overseas bank accounts.

Annex 1

Number of Retired Civil Servants and Judicial Officers in Receipt of Pensions and Actual Expenditure Involved

<i>Financial year</i>	<i>Retired civil servants and judicial officers in receipt of pensions</i>		<i>Recurrent pension expenditure</i>	
	<i>Number of retirees^(Note)</i>	<i>Increase over previous year</i>	<i>Amount of expenditure (\$ million)</i>	<i>Increase Over previous Financial year</i>
2001-2002	65 901		11,976	
2002-2003	71 572	8.6%	11,220	-6.3%
2003-2004	75 612	5.6%	12,652	12.8%
2004-2005	80 364	6.3%	14,125	11.6%
2005-2006	83 130	3.4%	12,106	-14.3%
2006-2007	86 354	3.9%	12,903	6.6%
2007-2008	89 388	3.5%	14,016	8.6%
2008-2009	92 401	3.4%	14,987	6.9%

<i>Financial year</i>	<i>Retired civil servants and judicial officers in receipt of pensions</i>		<i>Recurrent pension expenditure</i>	
	<i>Number of retirees^(Note)</i>	<i>Increase over previous year</i>	<i>Amount of expenditure (\$ million)</i>	<i>Increase Over previous Financial year</i>
2009-2010	95 696	3.6%	16,156	7.8%
2010-2011	99 457	3.9%	17,213	6.5%

Note:

Figure as at 31 December of the specified year.

Annex 2

Location of Correspondence Addresses of
Retired Civil Servants and Judicial Officers in Receipt of Pensions

<i>Location</i>	<i>Number of retirees^(Note)</i>
Hong Kong	93 850
Mainland China	328
Macao	39
Canada	3 679
United States of America	1 678
United Kingdom	1 280
Australia	1 099
New Zealand	240
Others	372
Total:	102 565

Note:

Figures are as at 31 October 2011.

MR LAU WONG-FAT (in Cantonese): *President, is there any difference in the monitoring mechanism for the granting of pensions to retired civil servants before and after the reunification of Hong Kong? What is the difference?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): *President, there is*

no major change in our monitoring mechanism before and after the reunification. Our main monitoring mechanism is that every year, two months before the pensioner's month of birth, the Treasury will send a form called "Declaration of Entitlement to Pension Benefits" to the pensioner, who must complete and sign the form with his signature witnessed by a third party as the pensioner's true signature. Then he should send back the form to the Treasury. Upon receipt of the form, the Treasury will cross-check the signature in the form against the signature in its internal files. If the Treasury considers that there is no problem, it will continue to grant pension to the pensioner.

Besides, every week the Treasury will check the Hong Kong identity card numbers of the pensioners against the identity card numbers of those who have been issued death certificates as recorded by the Immigration Department. In this way, the Treasury can further monitor if any pensioner has suddenly passed away. With such information, if any pensioner's identity card number is found on the list of the deceased, the Treasury will stop granting pension to the person concerned.

As we know, some pensioners may be very old or may no longer be able to write. For this small group of people, the Treasury has other measures, such as requesting these people to send a medical certificate to the Treasury to prove that they are still alive, but they are not fit to sign, complete and return the form.

MRS REGINA IP (in Cantonese): *Let me first declare that I am one of the 90 000-odd pensioners in Hong Kong. Every year I will sign the relevant form to indicate that I am still alive.*

I would like to ask the Secretary, every month the Government has to pay \$1.7 billion as pensions, which is certainly a substantial amount. Starting from June 2000, the Government ceased to recruit civil servants on pensionable terms and introduced the enhanced Mandatory Provident Fund (MPF) Scheme instead. Was the Government intended to cut the expenditure on pensions? Was this arrangement due to financial considerations?

In the meanwhile, has the Government considered that there are two types of civil servants in the Civil Service, while some of them are entitled to pensions, some others have much inferior terms of employment, resulting in different

treatment for the same job, thereby giving rise to conflicts?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, regarding Mrs Regina IP's supplementary question, civil servants who joined the Civil Service after June 2000 are no longer entitled to pension benefits. According to the Hong Kong laws, they are entitled to the MPF. After they have completed their probation and become civil servants appointed on permanent terms, they will enjoy the benefits of the Civil Service Provident Fund.

Our main reason for introducing the Civil Service Provident Fund Scheme was not that the Government wanted to save expenses. Rather, it was because we did not want the financial commitment incurred from civil service retirement benefits today to be shouldered by the SAR community in the future, since the most important difference between pension and provident fund is that we have not set aside an amount in our current expenditure which is sufficient to pay the pensions for all eligible persons in the future. The government expenditure on pensions is paid annually through budget allocation.

The provident fund is different in that the Government will make contributions to the provident fund for eligible civil servants. The payment is made monthly. Thus there is no question of today's liability to be shouldered by the taxpayers or SAR Government in the future. This was the prime consideration when we introduced the provident fund in June 2006.

In the second part of her supplementary question, Mrs Regina IP mentioned that in the present civil service team, the majority of civil servants are still on pensionable terms while a small number of them are under the scheme of provident fund. Nevertheless, as time goes by, this situation will gradually change. The number of incumbent civil servants entitled to pensions upon retirement will become smaller and smaller, whereas the number of those entitled to the provident fund after retirement or leaving office will keep increasing.

President, regarding civil service management, we will, from time to time, conduct reviews with reference to changes in time and employment terms of the working population in Hong Kong society, so as to determine whether the Government has kept abreast of the times in handling civil service affairs and managing the Civil Service. If we did not do so, the current civil service

employment terms — for example, if those post-Second World War employment terms were applied to the Civil Service, I believe such a practice would not be approved by the community and members of the public.

MR TAM YIU-CHUNG (in Cantonese): *President, from time to time I would meet some senior and low-income civil servants who retired in the early years (having retired for a considerable period) and were receiving pensions. They told me that the amount of pensions they received every month was meager, which was even smaller than that of the Comprehensive Social Security Assistance (CSSA), but they could not apply for CSSA. They asked me what to do. I just did not know how to answer them.*

May I ask the Secretary if there are figures on such civil servants? How many people are under such circumstances? How small is the amount of their pensions? If it is really smaller than that of CSSA and is insufficient to support their living, are there any solutions?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): According to the records provided to me by the Treasury, as at 31 October this year, about 27% of the retired civil servants and retired judicial officers received a monthly pension of \$3,000 or below. About 42% of the retirees received a pension of \$5,000 or below.

I would like to explain this supplementary question raised by Mr TAM in two ways. In accordance with the three pieces of legislation mentioned in my main reply, we provide eligible persons with pensions. This is a statutory requirement. The three pieces of legislation have set out clearly the calculation method of pensions for persons eligible for pensions. Besides, we have another legal provision which explicitly states that the amount of the monthly pension received by pensioners may be adjusted upward according to the Consumer Price Index (A). Yet the amount of their monthly pension will not be adjusted downward in view of deflation. This is the first point. It is a legal consideration.

With the legal consideration, there is also the contractual consideration —

that is, in offering civil service appointment, the Government has already explained to the eligible civil servants about the calculation method of their pensions upon retirement.

On the other hand, I think Mr TAM's supplementary question involves future livelihood issues of the elderly in Hong Kong society. I believe this is not only a problem for retired civil servants and retired judicial officers receiving a small amount of pensions. This is also a problem which other lower-income elderly people at the grass-roots level have to face. As far as I understand, the Government has adopted the "three-pillar" approach in its policy in this regard. The first pillar is, of course, pension or provident fund. The second pillar is savings saved up by individuals in employment. With regard to those in urgent need of social support, the third pillar is arrangement of assistance which we will provide to elderly retirees.

DR PAN PEY-CHYOU (in Cantonese): *President, it is a long-standing system for civil servants to receive pensions. Some civil servants still receive pensions after they have left Hong Kong to reside abroad after retirement. I have heard people query how the Government will ascertain that those civil servants who leave Hong Kong upon retirement and receive pensions regularly through their bank accounts are still alive? Will the Government requests the persons concerned to produce proof on a regular basis? Or is there any other approach? Will this system give rise to abuse?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, I have mentioned in the main reply that as at 31 October this year, there are some 102 500 people in receipt of pensions. Over 100 000 of the pensioners receive their pensions through autopay in their Hong Kong bank accounts every month. Hence, less than 2 000 retirees receive their pensions through overseas or Mainland bank accounts or receive their pensions in the form of demand draft through a correspondence address outside Hong Kong. Therefore, the first message which I would like to bring out is that regarding Dr PAN's concern, at present, there are only a small number of pensioners who receive pensions in places outside Hong Kong.

Another point is, even if retirees receive pensions through channels outside

Hong Kong, the monitoring system mentioned by me just now still applies to them. In other words, they must complete and return the form every year, and the form must be signed in the witness of a third party so as to prove that they are still alive. On receipt of the form, the Treasury or the Treasury's agent will cross-check the signature in the form against the signature on file so as to confirm that the retiree who completed the form is still alive.

PRESIDENT (in Cantonese): Dr PAN, which part of your supplementary question has not been answered?

DR PAN PEY-CHYOU (in Cantonese): *I think*

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

DR PAN PEY-CHYOU (in Cantonese): *I understand the mechanism which requires annual completion of the form, but what I mean is, apart from cross-checking the signature, is there any other more effective approach to verify if someone is still alive?*

PRESIDENT (in Cantonese): Dr PAN, are you asking the Secretary how to verify that a pensioner is still alive?

DR PAN PEY-CHYOU (in Cantonese): *Yes.*

PRESIDENT (in Cantonese): The Secretary has already given an answer. If you are not satisfied with the mechanism mentioned by the Secretary in her reply and considers that there should be other mechanisms, please raise it through other channels.

DR PAN PEY-CHYOU (in Cantonese): *Okay.*

MRS REGINA IP (in Cantonese): *President, civil servants have proposed to the Government or to me from time to time as to whether the Government can consider extending the retirement age by two or three years, or extending it to 62 or 65 years old. As people are getting healthier nowadays, not only can such an extension reduce the Treasury's expenditure on pensions but also enable civil servants who are still full of vim and vigour to continue with their service. What is the Secretary's view? Will this impede other people's promotion? I would like to hear the Secretary's opinion.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, I thank Mrs IP for her supplementary question. Extending civil servants' retirement age may not necessarily save the government expenditure on pensions. In the present formula for calculating pensions for eligible civil servants, an important factor is their length of service. The longer their length of service, the greater the amount of pensions they will receive in the future.

Another important factor is that the formula calculates the pension to be received by a civil servant in the future with the highest monthly salary in his employment. In this regard, I have reason to believe that if the length of service of some civil servants in the Government is extended, their highest monthly salary will also go upward. Thus, on whether extending civil servants' retirement age can save the government expenditure on pensions, we have to make a lot of hypothetical calculations and need qualified and professional actuaries to help us with such calculations.

However, setting aside the question of whether extending civil servants' retirement age can really save the government expenditure on pensions, I have time and again heard two different views, as what Mrs IP has said. Some colleagues in the Civil Service and civil service unions have asked me informally whether civil servants' retirement age can be extended, while other unions or other civil servants have informally advised me never to extend civil servants' retirement age because they have already waited for promotion for ages. If their superiors' retirement age is extended, their chance of promotion may have to be postponed for several more years.

I have heard the views from both sides. To me, the most important thing

in considering this issue is what changes have taken place in the demand and supply of the labour market in Hong Kong's medium and long-term economic development, since the civil service accounts for a substantial proportion in Hong Kong's labour market. For this reason, I am particularly concerned about the ageing population in Hong Kong or the present situation of foreign immigrants deciding to settle in Hong Kong. We will also project the demand of Hong Kong's economy on the working population in the medium and long run. I will focus more on the demand and supply of Hong Kong's working population in considering whether it is necessary to revise civil servants' retirement age.

PRESIDENT (in Cantonese): This Council has spent more than 22 minutes on this question. Third question.

North Lantau Hospital

3. **MR TAM YIU-CHUNG** (in Cantonese): *President, recently, some media cited an internal paper of the Hospital Authority (HA), which pointed out that due to shortage of healthcare manpower, the North Lantau Hospital (NLH) to be completed towards the end of next year would be manned by only 87 healthcare personnel in 2012-2013, and thus NLH could only provide limited services during its initial operation stage, for example, the Accident and Emergency Department could only operate eight hours a day, and NLH would not have sufficient manpower to provide full-fledged services until 2016-2017. As Tung Chung is relatively remote and substantially farther away from other hospitals in the New Territories West Cluster, at the time when the first batch of residents started moving into Tung Chung New Town in 1997, they already requested the authorities to set up a hospital in Tung Chung District. However, the soon-to-be-completed NLH will not be able to provide adequate healthcare services to meet the needs of the residents in Tung Chung and its vicinity as well as the travellers in the airport area before 2016-2017. In this connection, will the Government inform this Council whether it knows:*

- (a) *the HA's healthcare manpower arrangements for NLH when it commences operation towards the end of next year, including the respective numbers of general practitioners, specialists and nurses, as well as the services to be provided; the details regarding the*

healthcare services to be provided in NLH in phases, including the types of healthcare services to be provided in various phases, their service hours, and the respective target numbers of clients; and

- (b) *if the HA has conducted any study to strive for an increase in NLH's healthcare manpower on the premise that the healthcare manpower in other hospitals will not be affected, so that when NLH commences operation towards the end of next year, its healthcare services will not fail to meet the needs of Tung Chung, the airport and its vicinity due to shortage of healthcare manpower; and if the HA has conducted such a study, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, in accordance with general planning standard, an acute hospital will be planned for a district when the population of the district reaches about 200 000. Apart from population growth, we also take into account the planning of other infrastructures and the demand for medical services arising from all economic activities in a district. According to the projections of population distribution published by the Planning Department, the population of the North Lantau New Town is estimated to reach about 100 000 in 2019. To cope with the long-term development and population growth of the North Lantau New Town and the Lantau area, and considering that the Hong Kong International Airport and some major tourist facilities are situated in North Lantau, and given the distance and travelling time from the North Lantau New Town to other acute hospitals, we have decided to develop a new hospital in North Lantau before the population in the district reaches the relevant level under the general planning standard.

Under the existing cluster arrangement of the HA, NLH will be managed by the Kowloon West Cluster of the HA. Hospitals under the Kowloon West Cluster, leading by the Princess Margaret Hospital, will provide support to the services of NLH. My reply to various parts of the question is as follows:

- (a) NLH project, approved by the Finance Committee of the Legislative Council in January 2010, is currently in good progress. It is anticipated that the construction work will be completed at the end of 2012. The Kowloon West Cluster of the HA has set up a dedicated office to actively prepare and formulate the timeline for the

commissioning of various services and facilities of NLH as well as the associated manpower arrangement and procurement of medical equipment.

According to the current plan, the HA will take over the new hospital building by the end of 2012 and immediately carry out preparatory work for commissioning of the hospital, including system testing for the building, detection of work defects as well as installation and test run of equipment, and so on. Based on past experience in commissioning new hospitals, such work will normally take six to nine months to complete. Meanwhile, the HA will also set up a team of staff for NLH and provide relevant training to the staff.

Like other newly commissioned public hospitals, services of NLH will be commissioned by phases to facilitate healthcare staff to settle in the new working environment. The hospital will increase its services gradually to ensure smooth operation of and provision of quality service by the hospital. The HA anticipates that NLH will commence operation by phases starting from the 3rd quarter of 2013 and provide 24-hour accident and emergency (A&E) service and in-patient service in early 2014. Upon full commissioning, NLH will have around 160 beds, an A&E department, as well as diagnostic and treatment facilities. Ambulatory care services including specialist out-patient clinics, primary care clinics, a day rehabilitation centre, an ambulatory surgery/day procedure centre and community care services will also be provided by the hospital. On manpower, the HA anticipates that more than 80 staff will be employed by the end of 2012 to implement the preparatory work for the commissioning of NLH. It is estimated that some 400 additional staff including over 100 doctors and nurses will be recruited in 2013-2014. It is anticipated that upon its full operation, NLH will need a total of about 650 staff, including some 60 doctors, 170 nurses and 80 allied health professionals.

When planning the services of NLH, the HA will continue to maintain close communication with the Islands District Council, local residents and community organizations of Lantau Island and Tung Chung. Thorough considerations will be given to the views

of the residents on the hospital's operation and healthcare needs of the community, with a view to providing appropriate hospital services to the North Lantau New Town.

- (b) In light of the shortage of healthcare manpower in the public healthcare system over the past few years, the HA has allocated additional resources to implement a series of measures to strengthen the recruitment of healthcare manpower and supporting staff, improve the working environment and promotion prospects, provide additional allowance and enhance professional training, and so on, with a view to improving staff retention and boosting staff morale. To increase doctor manpower, the HA has extended the pilot scheme for employment of part-time doctors in the Obstetric and Gynaecological specialty to all other specialties, and at the same time carry out the recruitment of non-local doctors with limited registration. When planning for the commissioning of NLH, the HA will deploy its internal resources flexibly to ensure that the hospital has adequate healthcare manpower to launch its services.

MR TAM YIU-CHUNG (in Cantonese): *President, in part (a) of his main reply, the Secretary said that the authorities will take over the new hospital building by the end of 2012, but 24-hour A&E service and in-patient service will only be provided in early 2014. I would like to ask the Secretary whether the commissioning date can be advanced; and whether the said 24-hour A&E service and in-patient service can really operate around-the-clock or are such services incomprehensive in nature, just for trial or window-dressing purpose? I hope the Secretary will give us further details in this regard, and tell us whether Chinese medicine services will be introduced in NLH?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, medical services can never be provided in a window-dressing manner; they must really serve the intended purpose. Generally speaking, newly commissioned hospitals have to go through a testing period and services having relatively lower risks will be provided first. Generally, we will start with out-patient service because it involves relatively lower risks and has less stringent requirement on manpower. Moreover, we must allow time for healthcare staff to test run the equipments, such as X-ray machines and various laboratory equipments. Hence, the*

commissioning of any new hospital will necessarily involve a testing period and services cannot be launched all in one go. Regarding A&E service, I will require the HA to see to it that 24-hour A&E service is provided at NLH. Otherwise, much controversy will be created such as a patient is denied treatment because he arrives 10 minutes after the closing time of the A&E Department.

We hope that upon the formal commissioning of the A&E Department, it will be provided with adequate support services such that the necessary A&E service, as well as surgeries and treatment will be provided. In addition to the provision of acute services, the A&E Department must be given adequate support in respect of X-ray and laboratory services. Furthermore, a certain number of beds must be provided at NLH so that patients can stay for treatment if necessary. Of course, it is neither necessary nor feasible to provide certain specialist services in a district hospital because the number of patients per year may be quite low. In that case, the district hospital would refer patients to other hospitals for treatment.

For the district of North Lantau, we hope that NLH will at least provide medical services commonly utilized by people, such as the essential specialities of internal medicine and surgery, and so on. I believe that by the time NLH's 24-hour A&E service is launched in 2014, the necessary support services will be up and running.

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

MR TAM YIU-CHUNG (in Cantonese): *President, the Secretary has not replied the part on Chinese medicine services in my supplementary question.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we have no plans to introduce Chinese medicine services in NLH for the time being. But we are now exploring another proposal to integrate an existing clinic in Tung Chung with the new NLH, so as to allow scope for the provision of Chinese medicine services.

DR JOSEPH LEE (in Cantonese): *President, the Secretary has provided some*

information related to the new NLH in his main reply, and I notice that the services he outlined are different from those currently provided in an acute general hospital. The Secretary mentioned that as North Lantau will have a population of 100 000, there is a need to provide a district hospital. I would like to ask the Secretary that upon the launching of medical services by phases from 2014 to 2016, is NLH primarily intended to provide acute or A&E service, just like the case of the then Tang Shiu Kin Hospital? If so, when will a full-scale general hospital be provided?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, according to our analysis, the current population of Lantau Island is around 90 000, and most of them belong to the younger generation; the proportion of elderly persons is much lower than other districts. Hence, we consider that the need of patients with long-term care needs in North District is lower than that in other districts for the time being. However, we have also reserved a number of beds out of the 160 available in NLH for patients with chronic illnesses or rehabilitation needs because according to previous records of the HA's in-patient services, around 10 000 attendances per year were from patients living in North Lantau. This provision is made to cater for the need of patients requiring hospitalization, such as those who suffer from chronic illnesses and still require rehabilitation services after receiving treatment in other hospitals. If these patients who are Lantau residents can receive rehabilitation services locally, it will facilitate visits by their family members. As such, we will definitely monitor the utilization rate of such service, as well as the demand of various parties such that this aspect of hospital services may be increased gradually. In our view, this hospital is positioned as a district hospital.

MR CHEUNG HOK-MING (in Cantonese): *President, a number of hospitals including NLH and Tin Shui Wai Hospital will be completed over the next few years. The Secretary has also admitted in the main reply that there is an acute shortage of healthcare manpower in the public healthcare system. For instance, when Pok Oi Hospital was redeveloped back then, the purpose was to achieve a diversion effect in order to relieve the medical pressures of Tuen Mun Hospital. In the case of Pok Oi Hospital's redevelopment, even though hardware was available after its commissioning, there was a serious shortage of healthcare manpower such that many services could not be provided. I would like to ask the Secretary whether the situation faced by Pok Oi Hospital now or upon its*

commissioning after redevelopment will be repeated in NLH, whereby the shortage of healthcare manpower will hamper the provision of some services even though the hardware is available?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as I understand, the Government has already allocated a large amount of additional resources over the past few years for the development of the New Territories West Cluster (including Pok Oi Hospital and Tuen Mun Hospital). Of course, the positioning of these two hospitals is different. For example, day surgeries or other procedures previously handled by Tuen Mun Hospital have basically been transferred to Pok Oi Hospital so as to increase efficiency. Hence, under the operation of the hospital clustering arrangement, hospital services will be refined constantly through various new facilities. Therefore, it is unnecessary to provide all kinds of services in any given hospital. On the contrary, comprehensive services will be provided by a number of hospitals in collaboration. As we can see over the past few years, with the successive commissioning of new facilities, various new services will be launched gradually.

There is something particular about new hospitals. Patients seldom flock to a new hospital soon after its commissioning. Usually, they will try to use the service and wait for word-of-mouth comments from neighbours before they commit on receiving medical treatment at a new hospital. Also, some patients who are used to seeking medical treatment from a particular doctor may not switch to another new hospital easily. Usually, it takes time for local residents to become familiar with and accept the new hospital, which will then drive up service demand.

Hence, as shown by experience generally, hospitals in new development areas may need five or six years before their service demand peaks. We think the same situation will also occur in Tung Chung. Nonetheless, we are also aware that the hospital in Tung Chung is somewhat different from other district hospitals because it is far away from other hospitals; it is a stand-alone hospital on Lantau Island. The hospital not only provides services to local residents, but also caters for the need of the nearby airport and other tourism facilities. During the daytime peak periods, the hospital might need to provide additional services. Therefore, we already took the view during the planning stage that the A&E Department should be operated expeditiously. As such, A&E service is a

primary and priority service of NLH.

MR CHAN KAM-LAM (in Cantonese): *President, the Secretary stated in the main reply that an acute hospital will be planned for a district when the population of the district reaches about 200 000. I would like to point out that the current population of Wong Tai Sin is about 450 000, and the acute hospital network of the district also falls within the Kowloon West Cluster. If a patient requires ambulance service, the acute hospital to which he will be taken is Kwong Wah Hospital. I think the Secretary is also aware of the long distance between Kwong Wah Hospital and Wong Tai Sin. A great problem will be created if the ambulance has to travel through areas with busy traffic. Hence, my question to the Secretary is: As a number of hospitals have already been provided in this district with a population of over 400 000 under the Government's planning, why can't the functions of some hospitals in the district (such as Our Lady of Maryknoll Hospital) be upgraded so as to address the problem? Why has the Government not taken such an approach?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, I recall that after the establishment of the HA, the hospital clustering arrangement was introduced around 2000. The hospital clustering arrangement does not work on the basis of 18 geographical districts; instead, the territory is divided into seven clusters and individual hospitals are grouped under these seven clusters.*

I agree that Wong Tai Sin is situated in the margin of hospital clusters such that its nearest acute hospital is Kwong Wah Hospital. But as Mr CHAN has just mentioned, Our Lady of Maryknoll Hospital in the district also provides specific services, such as out-patient service, and so on, to serve the local residents. While we will constantly review the service needs of people, it is worth noting that under our current plan, a site has been reserved in the former Kai Tak Airport to provide an acute hospital.

DR JOSEPH LEE (in Cantonese): *President, in part (b) of the main reply, the Secretary said that he will ensure adequate healthcare manpower for NLH upon its commissioning. But as a matter of fact, the wastage rate of both doctors and nurses in the public healthcare system has remained high over the past few months. I would like to ask the Secretary: Given that the HA's current*

manpower policy serves to discourage rather than encourage the continued service of existing staff, what measures can be adopted by the authorities to ensure that upon the commissioning of NLH, the hospital will be staffed by experienced healthcare personnel rather than newly appointed doctors and nurses?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, first of all, the HA has made efforts to implement a number of policies to retain experienced healthcare personnel, including nurses. Generally speaking, as a new hospital is commissioned, we hope that its management team will be formed by experienced healthcare personnel so as to lead the way. Hence, a co-ordination office has been set up under the Kowloon West Cluster to actively undertake preparatory work relating to the appointment of managerial staff of NLH. After these appointments are made, they will soon start recruiting other personnel with whom they have good working relations. Resources have already been allocated in this regard for training the relevant personnel by phases so as to prepare serving staff members of other hospitals to work in NLH. Based on past experience in the recruitment of healthcare personnel for hospitals in remote areas, arrangements will be made to transfer healthcare personnel from other hospitals to work in NLH. Hence, I think in future, many healthcare personnel working in NLH will also live in the vicinity, which facilitates commuting. Judging from the current situation, I am quite optimistic that we can attract 600-odd staff to work in NLH.

PRESIDENT (in Cantonese): This Council has spent nearly 21 minutes on this question. Fourth question.

Five-year Development Plans of Two Power Companies

4. **MR KAM NAI-WAI** (in Cantonese): *President, under the Scheme of Control Agreements (SCAs) signed between the Government and CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC), the permitted return of the two power companies shall be 9.99% of the total value of the average net fixed assets for the year. According to CLP, it has to invest in fixed assets in order to develop its electricity supply business in Hong Kong, and the investment costs will be recovered from electricity sales. Moreover, CLP*

indicated earlier that due to the rise in worldwide fuel prices, the fuel clause surcharges on tariffs will unavoidably have to be increased. In this connection, will the Government inform this Council:

- (a) of the projected electricity consumption in Hong Kong when the Government approved the respective five-year development plans of the two power companies in September and December 2008 and the actual electricity consumption;*
- (b) whether it knows the projects completed so far and their expenditures, as well as the projects which have not yet started and their estimated expenditures, under the respective five-year development plans of CLP and HEC involving capital project expenditures amounting to \$39.9 billion and \$12.3 billion, and whether the two power companies have revised those development plans; if so, of the details; in response to the increased use of natural gas as a fuel for power generation, whether the two power companies need to make extra capital investments on retrofitting generating units, thus causing tariff increases; and*
- (c) given that the rise in worldwide fuel prices will push up the costs of electricity supply, whether it has assessed the impact of the abolition by the two power companies of the "regressive tariff system" for non-residential high-usage customers on the electricity bills of residential users?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, thanks to Mr KAM Nai-wai for his question.

In the new SCAs signed by the Government with the power companies in January 2008, the permitted rate of return of the power companies was lowered significantly from 13.5% to 15% on the Average Net Fixed Assets to 9.99%. As a consequence of the reduction in permitted rate of return, the two power companies revised downwards their Basic Tariff rate in the following year (that is, 2009) by 10% and nearly 20% respectively, equivalent to an annual saving of over \$5 billion in electricity bills borne by the community.

Apart from lowering the permitted rate of return, the scrutiny of the

Development Plans submitted by the power companies is the Government's another gate-keeping measure to ensure that electricity tariffs are maintained at a reasonable level. The capital investment proposals put up by the power companies in the five-year Development Plans would have a direct impact on the "Basic Tariff" component of electricity tariff. With assistance from independent energy consultants, we have been meticulous in examining the related proposals with a view to avoiding investments that are excessive, premature, unnecessary or unreasonable in the Development Plans of the power companies. In 2008-2009, in examining the capital investments proposed by the power companies in the current Development Plans (which last till 2013), we reviewed critically the need, timing and cost-effectiveness of the capital projects. This resulted in the eventual agreement by CLP and HEC to reduce their originally proposed capital expenditure by 30%.

Quoting an example, members will recall that, through discussion with the Mainland, we have successfully secured the supply of natural gas to Hong Kong through the West-East Natural Gas Pipeline, obviating the need to construct a Liquefied Natural Gas Terminal in Hong Kong costing about \$10.4 billion. This in turn helps contain the capital investment by power companies, and revise downward the Basic Tariff rate.

Moreover, through negotiation with power companies over electricity tariff adjustments each year, the Government would critically examine factors such as electricity demand and sales, operating costs, fuel prices, capital investment, measures to control costs and enhance productivity, updated balances in the Fuel Clause Recovery Account and Tariff Stabilisation Fund, permitted return, and so on, with a view to further eliminating unnecessary capital expenditure by the power companies, thereby preventing extra profit from expanding capital expenditure.

The other component of electricity tariff is "Fuel Clause Charge", that is, the cost of fuels used for electricity generation. Pursuant to SCAs, fuel costs are passed through on the basis of actual spending. Following our request in recent years of using cleaner energy to improve air quality, power companies have increased the use of natural gas in electricity generation. As the generation cost of gas-fired electricity is higher than that of coal-fired electricity, it has been the main cause of net tariff increase in the past few years. Tariff levels for 2007 to 2011 are listed in the Annex.

Regarding questions raised by Mr KAM Nai-wai, I reply in the following

order:

- (a) CLP projected local sales to grow at an average annual rate of 1.9% in its five-year Development Plan submitted in 2008; while HEC projected local sales to grow at an average annual rate of 1.1%.

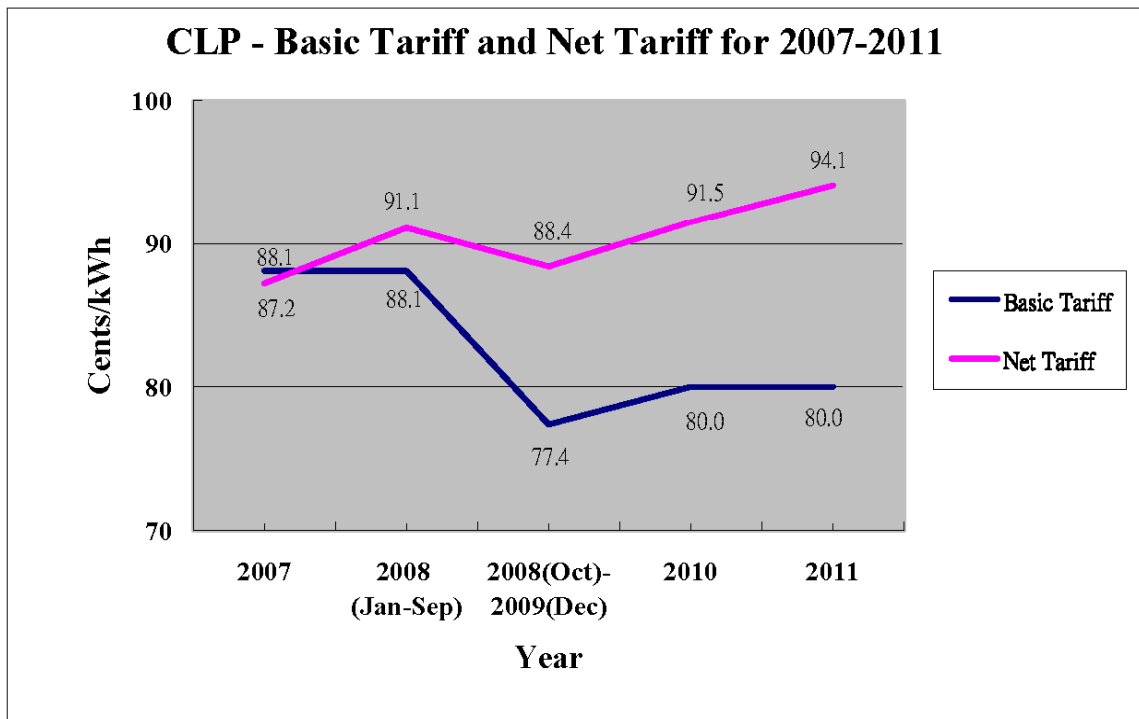
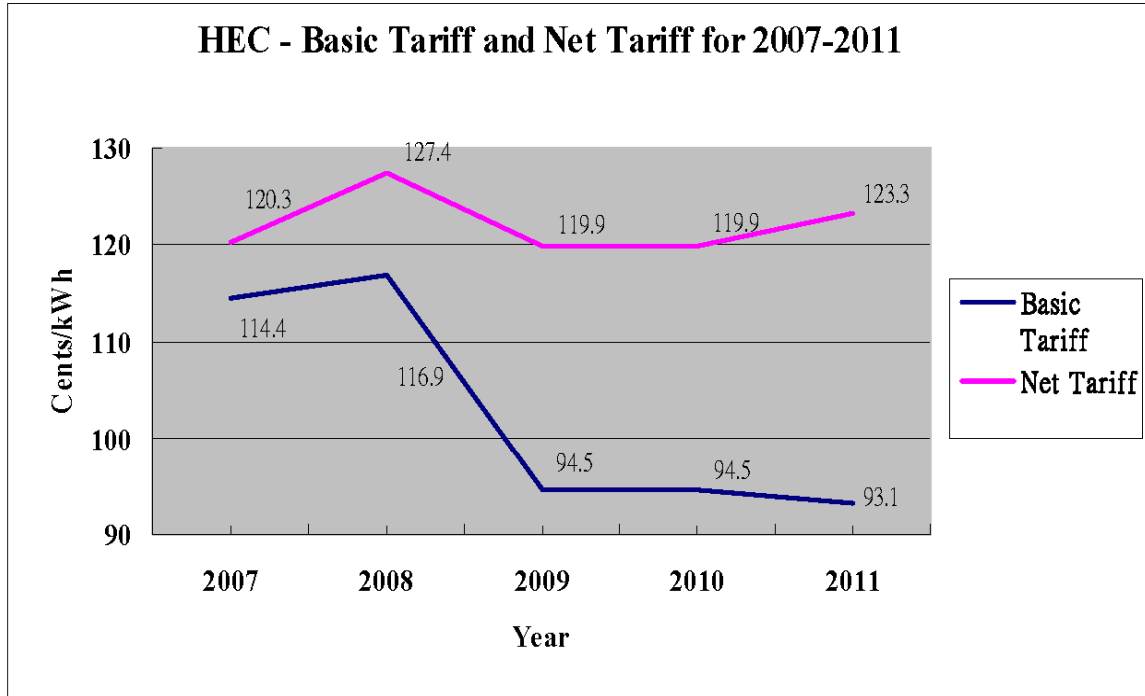
According to the information provided by the power companies, local electricity consumption for CLP in 2008, 2009 and 2010 was 30.1 billion kWh, 30.6 billion kWh and 30.9 billion kWh respectively; while that of HEC was maintained at about 10.9 billion kWh annually.

- (b) As I have just mentioned, the Government, in reviewing the Development Plans proposed by the power companies, would examine critically the need, timing and cost-effectiveness in order to ensure that the projects are absolutely necessary to meet the increase in electricity demand, maintain the reliability of the electricity supply systems or comply with the environmental and other technical requirements. At the same time, the Government has always assessed stringently the power companies' capital and operating expenditures in their five-year Development Plans and annual tariff review exercises, with a view to alleviating the pressure for tariff increase.

To-date, the power companies have basically completed the installation of emission control systems; while other projects to enhance generation systems, transmission and distribution systems, and customer and corporate services are also proceeding as planned. A point worth mentioning is that the Government has not approved additional gas-fired generators for the power companies within the current Development Plan period.

- (c) As regards the electricity tariff structure, we have requested the two power companies to review their tariff structure to identify opportunities for promoting energy conservation and reducing electricity consumption. We are awaiting the power companies' submissions. We will give due consideration to the impacts of any tariff structure adjustments on customers of different consumption levels.

Tariff levels of the power companies for 2007 to 2011



MR KAM NAI-WAI (in Cantonese): *Recently, the CLP hinted that there will be a tariff increase of close to 10%. It is reported in newspapers that if the proposed drastic tariff increase is eventually endorsed, the CLP will be bombarded with criticism by all people, for the increase will push up inflation, and in fact, the current inflationary pressure on the public is already very heavy.*

The Secretary stated earlier that power companies were not required to pay \$10.4 billion for the construction of a Liquefied Natural Gas Terminal in Hong Kong. However, according to the report, CLP indicates that its capital investment includes the laying of a 20 km gas pipeline to Hong Kong, at a cost of \$9 billion, which would be included as capital cost. Will the increase in capital cost and the introduction of the so-called "regressive rates" for high-use non-domestic users result in a substantial increase in tariff in future? During the negotiation between the Government and the power companies, have the power companies raised these two points for consideration?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): First, at present, the negotiation between the Government and the power companies on the tariff adjustment for next year is still going on. Upon the completion of the negotiation, I will give an account of the results to the Legislative Council.

Regarding the newly laid natural gas pipelines mentioned by Mr KAM Nai-wai earlier, if the relevant expenditures are reasonable and appropriate, they may be included as capital expenditure items. However, as I mentioned in the main reply, when we scrutinize the five-year Development Plan, we will take off expenditures which are unnecessary, premature and excessive if other more practical and economical options are available. For this reason, when we examine the five-year plan of one of the power companies, we have removed the \$10.4 billion cost for the construction of a Liquefied Natural Gas Terminal. Certainly, when pipeline-laying works are carried out in future, it will definitely involve some expenditure, but the Government will adhere to the established practice, as I mentioned in the main reply, in scrutinizing the amount required, the necessity and the timing for including in the accounts of every item of expenditure. To be more precise, the expenditure for the laying of pipelines should be far lower than the \$10.4 billion which we have removed initially.

Mr KAM Nai-wai also mentioned the adjustment of the tariff structure, since I have given my answer in the last part of the main reply, I will not repeat again.

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

MR KAM NAI-WAI (in Cantonese): *There is one question which has not been answered. In the last part of my question, I asked the Secretary whether the "regressive rate" offered to high-use non-domestic users would be one of the factors affecting the electricity tariff this year, the Secretary has not answered this question.*

PRESIDENT (in Cantonese): The Secretary said that he had answered this in part (c) of the main reply, and I will ask whether the Secretary has anything to add.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, as I have stated in the main reply, we will require power companies to put forth proposals on tariff structure indicating whether the structure will promote energy saving and reduce electricity demand. After receiving the proposals, we will scrutinize the proposals.

MR FRED LI (in Cantonese): *The Secretary has not answered part (b) of Mr KAM Nai-wai's main question at all. He is just beating around the bush to circumvent the problem. Really, I have to put this down on record: In the \$39.9 billion five-year Development Plan of CLP, are there any amended or additional expenditure items? Obviously, according to the information I received, the answer is in the affirmative. Yet, the Government circumvents and gives no answer to the question, apart from stating that the construction of the new generating unit had been disapproved. I am not concerned about this issue. My question is whether the expenditures have been increased. For instance, President, the laying of a 20 km pipeline to enable the supply of natural gas*

through the West-East Natural Gas Pipeline to Hong Kong is an investment item costing several billions. As far as I know, the extra investment should be excluded from the \$39.9 billion plan, and this is an amendment. Why does the Secretary not tell us frankly in this Chamber? Does it mean that all amendments will be covered up and will not be disclosed?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I do not know the source of information of Mr Fred LI. However, I can tell Mr Fred LI clearly, as I have made it clear in my reply to Mr KAM Nai-wai just now, when we first scrutinized the plan of CLP, we had definitely deleted an item on Liquefied Natural Gas Terminal involving \$10.4 billion. As such, in the five-year plan concerned, expenditure on this part has been deleted, which means the power company cannot earn the permitted rate of return of 9.99% in this respect.

However, an alternative approach of West-East Natural Gas Pipeline is adopted, which will naturally involve certain expenditure. Yet, to date, we have not completed the scrutiny of the expenditure on this item. The reason is that Government has to perform its gate-keeper's role, and it does not mean that a new item will definitely be approved upon the removal of another item. We will examine the appropriateness of the time frame for laying the pipelines and the expenditure incurred, which are factors to be considered in the course of scrutiny. However, the figures of this year and the coming year may not be reflected in full. I can give a clear answer to Mr Fred LI regarding this point.

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

MR FRED LI (in Cantonese): *Simply put, to this day, has no amendment been made to the five-year Development Plan?*

PRESIDENT (in Cantonese): Secretary, has the five-year Development Plan been amended?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I have explained this point clearly in the main reply. We had completed the discussion of the five-year Development Plan as a whole in one go and then submitted it to the Executive Council for decision. However, for other amendments arising during the year, including items requiring approval but pending decision or items that required another scrutiny, they will not be regarded as being approved. We will examine each and every item, including the West-East Natural Gas Pipeline arrangement mentioned by Mr Fred LI, and conduct another scrutiny before including the items in the plan.

MR RONNY TONG (in Cantonese): *President, in the past, Hong Kong people have been disturbed by the unequal treaty. Every one or two years, the power companies will notify the Legislative Council of an increase in tariff, causing great grievances among Hong Kong people on electricity tariff.*

President, may I ask the Secretary, has the Government ever considered adopting some relatively reasonable approaches to amend or deal with this unequal treaty? Let me quote a simple example to state my case. The so-called development plans involve hardware investment of these companies, which are long-term investments, and since they are long-term investments, they should not form the basis of short-term tariff increase. Can the Government discuss with the power companies that if such investments are used as the basis for tariff increase, they can only be used for calculating the average increase in the long run; and the power companies should not be allowed to request from time to time the calculation of profits on the basis of the total investment amount. I hope the Secretary will answer us, can the authorities request the power companies not to increase tariff in the next 10 years after an increase in tariff this time?

(THE PRESIDENT'S DEPUTY, MR FRED LI, took the Chair)

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Deputy President, as I have explained in the main reply, electricity tariff is affected by factors of two parts. The first part is the basic tariff, which is the part mentioned by Mr Ronny TONG earlier, where power companies can earn return within the permitted rate of return calculating according to their capital investment. In this

respect, the Government will perform its gate-keeper's role by scrutinizing every expenditure item, be it capital expenditure in the five-year Development Plan or the amendment proposed each year. We will examine the appropriateness of these expenditure items carefully and strictly to check whether excessive or premature items are involved, and then come up with the conclusion. Members may notice from the Annex to the main reply that over the past few years, after a substantial adjustment in basic tariff in 2008, the tariff had been maintained at a relatively stable level.

Another part of the tariff is the fuel cost, which will be affected by the prevailing fuel prices. No matter which part is involved, the Government will pay attention to the impact of the overall electricity tariff on the public. For this reason, as I have mentioned in the main reply, we will act as the gate-keeper by scrutinizing the five-year Development Plan, the annual tariff adjustment and the annual expenditures, including the balance of the fuel costs, and so on, hoping to reduce the impact on the public and consumers.

MR RONNY TONG (in Cantonese): *Deputy President, he has not answered my supplementary question. The crux of my earlier question is that these so-called five-year plans or 10-year plans are long-term investments, in which the span of the hardware concerned last for several decades. If so, when power companies use such investment as the basis for tariff increase, why does the Government not require that such investment can only be cited once as the reason for tariff increase? That is to say, if the investment span of the hardware investment is 20 years, the power companies can only impose tariff increase based on this investment once over those 20 years. Deputy President, I hope the Secretary will state if this arrangement is feasible.*

DEPUTY PRESIDENT (in Cantonese): Mr TONG, you have stated your follow-up question clearly. Secretary, do you have anything to add?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Deputy President, power companies cannot cite all capital expenditure, that is, the expenditure on investment as mentioned by Mr Ronny TONG, as a reason for tariff increase more than once. For any investment item which has been included in the five-year Development Plan or as necessary expenditure, the power companies

can only recover the expenditure according to the existing agreement. Hence, there is no question of the scenario mentioned by Mr TONG earlier.

In the past few years, the entire SCA had been handled in three parts. For the first part, Members should recall that during the formulation of the new SCA in 2008, the permitted rate of return of power companies had been reduced substantially. The second part was the scrutiny of the five-year Development Plan, where we noticed a great discrepancy. The third part was the handling of tariff adjustment every year.

Certainly, the handling work is tough every year, but we continue for we understand the worries of the public and we hope to narrow the bargaining gap with power companies as far as possible in this respect.

MS STARRY LEE (in Cantonese): *Deputy President, in the Secretary's replies to questions from Members earlier, he stated that the power companies have applied for tariff increase and the extent of increase was still under discussion. Though the issue is still under discussion, there are many comments regarding the increase in the press reports and there are speculations in various sectors. One of the saying is that power companies will take advantage of the 9.99% permitted rate of return in the SCA as a reason for tariff increase, and the increase may reach 10%, exceeding the inflation rate. May I ask the Secretary whether he agrees that if the power companies are approved to have a 10% tariff increase, electricity tariff will be beyond the affordability of the public?*

Moreover, it is reported that the Government can do nothing about the application for tariff increase, for the permitted rate of return has been laid down. May I ask the Secretary to clarify this comment, stating whether the Government is a toothless tiger which cannot but allow power companies to apply for whatever rate of increase they want?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Deputy President, in monitoring the tariff adjustment of power companies, Members can observe the efforts made by the Government in various aspects each year. As I mentioned in the main reply earlier, in the past few years, we had carried out a major task in respect of the rate of return of the power companies, which had reduced the permitted rate of return of power companies by about 50% the

maximum. Moreover, concerning each expenditure item, we would play a good role in gate-keeping.

Certainly, the tariff adjustment of each year may involve different factors, yet the focus of the Government is definitely to ensure that every expenditure item is truly reasonable and complies with the scope of the SCA, and to ascertain whether other items, such as the portioning of fuel cost, may reduce the burden of the public. We hope that power companies will adopt a responsible attitude and be understanding of the public's views.

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

MS STARRY LEE (in Cantonese): *The Secretary has not answered the crux of my supplementary question. My question is: if the power companies, upon the scrutiny of the Government, use the 9.99% permitted rate of return as the reason for tariff increase, will the Government and the Executive Council have other options to disapprove the application for tariff increase of up to 10%?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Deputy President, we do not set the situation according to the figures, for we have to examine every expenditure item. If the expenditures are necessary and comply with the requirements in the SCA in terms of power supply, safety and environmental protection, and so on, we will adopt a reasonable approach in handling this issue.

Moreover, we will examine whether the impact on the public has been minimized in the tariff adjustment concerned. For according to the four policy objectives we have laid down, apart from ensuring safety, reliability of power supply and environmental protection, the affordability of the public is also a factor for consideration.

MR KAM NAI-WAI (in Cantonese): *Deputy President, in the last point of the earlier reply, the Secretary said that the affordability of the public would be considered. However, we all know that the tariff of HEC has all along been higher than that of CLP by nearly one fourth, and many residents on the Hong*

Kong Island consider this situation very unfair. If the Secretary says that the affordability of the public will be taken into account, will he request HEC to lower its tariff to a level close to that paid by residents in Kowloon and the New Territories, so as to ensure that tariff is within the affordability of the public as the Secretary said earlier?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Deputy President, the tariff charged by the two power companies has to reflect the operating costs and expenditure of the two companies under the SCAs, and since the expenditure of the two power companies varied, it is natural that there is a discrepancy in the tariff charged.

However, as I mentioned in the main reply earlier and the subsequent replies, the Government will follow the several principles explained to Members earlier to scrutinize the items one by one, ensuring that only necessary expenditures are included and that the impact on the public is minimized.

DEPUTY PRESIDENT (in Cantonese): Fifth question.

A Survey Regarding Women's Status at Home, Work and in Social Environments

5. **MS EMILY LAU** (in Cantonese): *Deputy President, the Women's Commission (WoC) commissioned a consultant to conduct a questionnaire survey between February and May 2010 among 3 002 members of the public selected by random sampling, in which issues of women's status, role, division of work and development opportunity in the contexts of family, economic and social environments were covered. The survey findings showed that 33.4% of the respondents considered that staff members generally preferred not to be supervised by female managers or supervisors; more than 70% of the respondents considered that there were still occasions where men stood a better chance of promotion than women of similar age or with similar abilities; and 38.7% of the respondents agreed that male performed better in political leadership than female. In this connection, will the executive authorities inform this Council:*

- (a) *what follow-up actions the WoC has undertaken in respect of the survey findings;*
- (b) *whether the authorities have assessed if the policy on elimination of the mindset of gender stereotyping is effective; if it is effective, why the aforesaid survey findings emerged; if it is not effective, how the authorities will adjust the policy direction and formulate corresponding and specific measures (including whether they will conduct surveys on a regular basis and enhance civic education); and*
- (c) *whether it will appoint more women to advisory and statutory bodies (ASBs); of the current number of such ASBs in which the percentage of the number of female non-official members in the total number of such members is below 30% (list in table form the respective numbers and percentages of female non-official members in various ASBs); whether it has assessed if women's participation rates not being able to reach 30% in these ASBs is related to the mindset of gender stereotyping?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, our reply to Ms Emily LAU's question is as follows:

- (a) To study the public's perception of women's status at home, in the workplace and in social environments in Hong Kong, and to understand the factors affecting the full development and advancement of women in Hong Kong, the WoC commissioned a consultant to conduct a questionnaire survey entitled "What do Women and Men in Hong Kong Think about the Status of Women at Home, Work and in Social Environments?". Altogether 3 002 persons aged 18 or above selected by random sampling between February and May 2010 were interviewed.

The WoC organized press conferences to release the survey findings regarding the status of women at home, in social environments and in the workplace in November 2010, January 2011 and February 2011 respectively. In addition, in order to publicize the survey findings through a multi-pronged strategy, the WoC invited various

parties, including the Equal Opportunities Commission (EOC), women's groups, and members from the education and economic sectors, to participate in the radio interview entitled "What do you think about the status of women?" in February 2011. The recordings of the radio interview have been uploaded onto the WoC webpage for public access. The survey findings have been shared with relevant bureaux and departments (B/Ds) as future reference for their related work.

In September 2011, the WoC organized an exchange session on gender statistics. The exchange session was joined by representatives from the Census and Statistics Department, academia related to gender issues, women's groups, educational institutions and individuals interested in women's affairs. At the exchange session, the WoC shared the survey findings with the participants, and exchanged views with them on the compilation and dissemination of gender statistics, with a view to enhancing public awareness and furthering discussion of gender issues.

Moreover, the "Highlights of Survey Findings" has been distributed to women's groups and uploaded onto the WoC webpage for reading by the public.

- (b) The Administration has been working closely with the WoC to eliminate gender stereotyping and promote the well-being and status of women in Hong Kong. It strives to raise public awareness on gender issues and eliminate gender stereotyping through its support to the WoC's work in relevant researches and surveys, public education and publicity activities, and so on.

Over the years, the WoC has conducted a number of researches and surveys on gender issues aimed at examining the situation of Hong Kong women in various aspects, understanding society's views on different gender issues, and enhancing public awareness of and simulating discussion on these issues, with a view to eliminating gender stereotyping gradually. Apart from the survey mentioned above, the WoC has also conducted researches and surveys on the use of time, women's participation in social affairs, family-friendly employment policies and practices, development of women in Hong

Kong, and public perception of gender issues, and so on. The findings of these researches and surveys have been released to the public for information.

The WoC is committed to enhancing gender awareness in the community through public education and publicity activities. In addition to organizing large-scale conferences for the community to review the development of women and gender stereotyping in Hong Kong, the WoC also strives to promote public understanding of gender-related issues and discussion on gender stereotyping through different media such as television, radio, bus advertising and the press. In early 2011, we assisted the WoC in producing a 10-episode five-minute television series on gender issues. Starting from October 2011, we assisted the WoC in rolling out another series of 10-episode half-hour television drama portraying some common experiences of Hong Kong women in the 21st century, including issues related to gender stereotyping, to enhance public interest in gender issues.

Besides, the EOC has been committed to promoting gender equality and eliminating gender stereotyping through various public education programmes and efforts. These include promotion of the message of gender equality through various channels, such as publication of guidelines and references and organizing seminars, talks and exhibitions, supporting and encouraging community organizations to develop projects promoting equal opportunities through organizing the Community Participation Funding Scheme, launching advertising campaigns and television and radio programmes which include the messages of elimination of sex discrimination and gender stereotyping, and conducting public education programmes targeting the youth, including funding school performances and organizing the youth mentorship programme, and so on.

Elimination of gender stereotyping is an ongoing task. The WoC survey shows that while more could be done, some established gender stereotypes are gradually changing. For example, the shift in women's economic role is generally accepted in our society, and the traditional concept of men as the sole breadwinners of families

has changed; more than half in the community consider that male supremacy no longer exists; and over 80% of the people agree that women nowadays are independent and autonomous. The Administration will continue to work closely with the WoC and the EOC towards the goal of eliminating gender stereotyping.

- (c) According to the information collected by the Home Affairs Bureau from B/Ds, as at October 2011, 398 ASBs had Government appointed non-official members while 149 of them had not yet achieved the 30% gender benchmark. Please refer to Annex for the relevant statistics in respect of these 149 ASBs.

The setting of the 30% gender benchmark by the Government aims at encouraging B/Ds to increase the overall women's participation rate in ASBs to 30%. As at October 2011, the overall women's participation rate in all ASBs with Government appointed non-official members has already reached 31.01%.

In making appointments to ASBs, the Government aims to secure the services of the most suitable persons to meet the requirements of the board or committee concerned. In making appointments, the Government will consider a host of factors including a candidate's ability, expertise, experience, integrity and commitment to public service; the functions and nature of the board or committee concerned, and so on. For statutory bodies, the appointing authorities will also consider the relevant statutory requirements. In considering the above factors, the appointing authorities aim to achieve the objective that the composition of ASBs broadly reflects the interests and views of the community, and the principle of appointment by merit.

While there may be different reasons for ASBs failing to achieve the benchmark, they may be categorized in general as follows:

- (i) the majority of practitioners in the respective sectors or professions are male;
- (ii) the candidates are mainly nominated or recommended by the relevant professional bodies or institutions: while these bodies

and institutions have taken note of our 30% gender benchmark target, they have difficulties in identifying sufficient number of suitable female candidates largely owing to the small number of female members in the respective trade; and

- (iii) the scope for increasing the female ratio is constrained by the small number of Government appointed non-official members sitting on the ASBs.

While upholding the principle of appointment by merit, the Home Affairs Bureau will continue to appeal to appointing authorities for their continued efforts in enhancing women's participation in ASBs where practicable. The Home Affairs Bureau will encourage appointing authorities to continue taking proactive measures to identify, reach out and cultivate women who are willing and able to contribute to the work of ASBs. The Home Affairs Bureau will also continue to remind appointing authorities of the importance of further enhancing women's participation in ASBs.

Annex

Public Sector ASBs
with women's participation rate for Government appointed
non-official members of less than 30% (Position as at October 2011)

<i>Name of Body</i>	<i>Status</i>	<i>Female (Government Appointed)</i>	<i>Male (Government Appointed)</i>	<i>Total (Government Appointed)</i>	<i>% of Women Appointed</i>
Advisory Committee for the Fire Safety (Buildings) Ordinance and the Fire Safety (Commercial Premises) Ordinance	Statutory	1	11	12	8.3%
Advisory Committee on Barrier Free Access	Non-statutory	1	10	11	9.1%
Advisory Committee on Cruise Industry	Non-statutory	2	11	13	15.4%
Advisory Committee on Human Resources Development in the Financial Services Sector	Non-statutory	1	6	7	14.3%

<i>Name of Body</i>	<i>Status</i>	<i>Female (Government Appointed)</i>	<i>Male (Government Appointed)</i>	<i>Total (Government Appointed)</i>	<i>% of Women Appointed</i>
Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials	Non-statutory	1	4	5	20.0%
Advisory Committee on Post-service Employment of Civil Servants	Non-statutory	1	8	9	11.1%
Advisory Committee under Fire Safety (Buildings) Ordinance, Cap. 572	Statutory	0	4	4	0.0%
Advisory Council on the Environment	Non-statutory	6	16	22	27.3%
Airport Authority	Statutory	3	10	13	23.1%
Animal Welfare Advisory Group	Non-statutory	3	9	12	25.0%
Appeal Board on Public Meetings and Processions	Statutory	4	12	16	25.0%
Appeal Board Panel (Builders' Lifts and Tower Working Platforms (Safety))	Statutory	0	5	5	0.0%
Appeal Board Panel (Electricity)	Statutory	4	36	40	10.0%
Appeal Board Panel (Entertainment Special Effects)	Statutory	2	8	10	20.0%
Appeal Board Panel (Gas Safety)	Statutory	2	19	21	9.5%
Appeal Board Panel (under Construction Workers Registration Ordinance)	Statutory	1	55	56	1.8%
Appeal Boards Panel (Education)	Statutory	3	8	11	27.3%
Appeal Panel (Housing)	Statutory	29	71	100	29.0%
Appeal Tribunal Panel (Buildings)	Statutory	63	419	482	13.1%
Aviation Development Advisory Committee	Non-statutory	0	11	11	0.0%
Basic Law Promotion Steering Committee	Non-statutory	3	9	12	25.0%
Betting and Lotteries Commission	Statutory	2	9	11	18.2%
Board of Directors of the Hong Kong Science and Technology Parks Corporation	Statutory	3	13	16	18.8%

<i>Name of Body</i>	<i>Status</i>	<i>Female (Government Appointed)</i>	<i>Male (Government Appointed)</i>	<i>Total (Government Appointed)</i>	<i>% of Women Appointed</i>
Board of Directors of the Widows and Orphans Pension Scheme	Statutory	0	3	3	0.0%
Board of Governors of the Hong Kong Arts Centre	Statutory	1	3	4	25.0%
Board of Management of the Chinese Permanent Cemeteries	Statutory	3	13	16	18.8%
Board of Scientific Advisers	Non-statutory	1	6	7	14.3%
Board of the Urban Renewal Authority	Statutory	2	16	18	11.1%
Board of Trustees of the Lord Wilson Heritage Trust	Statutory	3	8	11	27.3%
Brewin Trust Fund Committee	Statutory	1	4	5	20.0%
Business Facilitation Advisory Committee	Non-statutory	4	18	22	18.2%
Capital Adequacy Review Tribunal	Statutory	1	4	5	20.0%
Certifying Body of Hong Kong-Canada Film and TV Co-production	Non-statutory	1	3	4	25.0%
Chinese Temples Committee	Statutory	1	5	6	16.7%
Clearing and Settlement System Appeals Tribunal	Statutory	2	5	7	28.6%
Clothing Industry Training Authority	Statutory	0	1	1	0.0%
Commission on Strategic Development	Non-statutory	10	59	69	14.5%
Committee on Slot Complaints	Non-statutory	0	2	2	0.0%
Construction Industry Council	Statutory	1	21	22	4.5%
Construction Workers Registration Authority	Statutory	1	14	15	6.7%
Consumer Council	Statutory	5	17	22	22.7%
Correctional Services Children's Education Trust Committee	Statutory	1	3	4	25.0%
Council for the AIDS Trust Fund	Non-statutory	1	3	4	25.0%

<i>Name of Body</i>	<i>Status</i>	<i>Female (Government Appointed)</i>	<i>Male (Government Appointed)</i>	<i>Total (Government Appointed)</i>	<i>% of Women Appointed</i>
Council of City University of Hong Kong	Statutory	0	7	7	0.0%
Council of The Chinese University of Hong Kong	Statutory	1	5	6	16.7%
Council of The Hong Kong Polytechnic University	Statutory	5	13	18	27.8%
Council of The Hong Kong University of Science and Technology	Statutory	1	9	10	10.0%
Council of the Lord Wilson Heritage Trust	Statutory	2	5	7	28.6%
Council of the University of Hong Kong	Statutory	2	5	7	28.6%
Council on Professional Conduct in Education	Non-statutory	0	2	2	0.0%
Customs and Excise Service Children's Education Trust Fund Committee	Statutory	1	3	4	25.0%
Customs and Excise Service Children's Education Trust Fund Investment Advisory Board	Statutory	1	4	5	20.0%
DesignSmart Initiative Assessment Panel	Non-statutory	11	45	56	19.6%
Disaster Relief Fund Advisory Committee	Non-statutory	1	3	4	25.0%
Disciplinary Board Panel (Land Survey)	Statutory	0	9	9	0.0%
Disciplinary Tribunal Panel (Builders' Lifts and Tower Working Platforms (Safety))	Statutory	1	4	5	20.0%
Disciplinary Tribunal Panel (Electricity)	Statutory	2	23	25	8.0%
District Council, Central and Western	Statutory	0	4	4	0.0%
District Council, Islands	Statutory	0	4	4	0.0%
District Council, Kowloon City	Statutory	1	4	5	20.0%
District Council, Kwun Tong	Statutory	0	8	8	0.0%

<i>Name of Body</i>	<i>Status</i>	<i>Female (Government Appointed)</i>	<i>Male (Government Appointed)</i>	<i>Total (Government Appointed)</i>	<i>% of Women Appointed</i>
District Council, Sha Tin	Statutory	2	7	9	22.2%
District Council, Sham Shui Po	Statutory	0	5	5	0.0%
District Council, Southern	Statutory	0	4	4	0.0%
District Council, Tai Po	Statutory	0	5	5	0.0%
District Council, Tsuen Wan	Statutory	1	4	5	20.0%
District Council, Tuen Mun	Statutory	1	6	7	14.3%
District Council, Wan Chai	Statutory	0	3	3	0.0%
District Council, Wong Tai Sin	Statutory	0	6	6	0.0%
District Council, Yau Tsim Mong	Statutory	1	3	4	25.0%
District Council, Yuen Long	Statutory	1	6	7	14.3%
Electoral Affairs Commission	Statutory	0	3	3	0.0%
Electrical Safety Advisory Committee	Non-statutory	1	15	16	6.3%
Endangered Species Advisory Committee	Statutory	3	8	11	27.3%
Energy Advisory Committee	Non-statutory	6	18	24	25.0%
Environmental Impact Assessment Appeal Board Panel	Statutory	3	8	11	27.3%
Exchange Fund Advisory Committee	Statutory	1	12	13	7.7%
Expanded Building Committee	Non-statutory	0	4	4	0.0%
Expert Committee on Food Safety	Non-statutory	5	15	20	25.0%
Federation of Hong Kong Industries General Committee	Statutory	0	2	2	0.0%
Fight Crime Committee	Non-statutory	2	6	8	25.0%
Fire Safety Committee	Non-statutory	1	8	9	11.1%
Fisheries Development Loan Fund Advisory Committee	Non-statutory	2	7	9	22.2%
Genetically Modified Organisms (Control of Release) Expert Group	Statutory	2	11	13	15.4%

<i>Name of Body</i>	<i>Status</i>	<i>Female (Government Appointed)</i>	<i>Male (Government Appointed)</i>	<i>Total (Government Appointed)</i>	<i>% of Women Appointed</i>
Greater Pearl River Delta Business Council	Non-statutory	3	31	34	8.8%
Home Purchase Allowance Appeals Committee Panel	Non-statutory	6	15	21	28.6%
Hong Kong Housing Authority	Statutory	6	20	26	23.1%
Hong Kong Logistics Development Council	Non-statutory	1	18	19	5.3%
Hong Kong Maritime Industry Council	Non-statutory	3	11	14	21.4%
Hong Kong Port Development Council	Non-statutory	2	10	12	16.7%
Hong Kong Productivity Council	Statutory	4	14	18	22.2%
Hong Kong Rotary Club Students' Loan Fund & Sing Tao Charitable Foundation Students' Loan Fund Joint Selection Committee	Non-statutory	0	1	1	0.0%
Hong Kong Trade Development Council	Statutory	2	5	7	28.6%
Honours Committee	Non-statutory	1	7	8	12.5%
Human Organ Transplant Board	Statutory	4	19	23	17.4%
Innovation and Technology Fund (SERAP Project Assessment Panel)	Non-statutory	10	24	34	29.4%
Innovation and Technology Support Programme Assessment Panel under the Innovation and Technology Fund	Non-statutory	14	43	57	24.6%
Intangible Cultural Heritage Advisory Committee	Non-statutory	4	10	14	28.6%
Investment Committee of the HKSAR Government Scholarship Fund	Non-statutory	0	3	3	0.0%
Judicial Officers Recommendation Commission	Statutory	1	6	7	14.3%

<i>Name of Body</i>	<i>Status</i>	<i>Female (Government Appointed)</i>	<i>Male (Government Appointed)</i>	<i>Total (Government Appointed)</i>	<i>% of Women Appointed</i>
Kadoorie Agricultural Aid Loan Fund Committee	Statutory	1	3	4	25.0%
Labour Advisory Board	Non-statutory	0	2	2	0.0%
Land and Development Advisory Committee	Non-statutory	2	18	20	10.0%
Leveraged Foreign Exchange Trading Arbitration Panel	Statutory	1	4	5	20.0%
Liquor Licensing Board	Statutory	1	10	11	9.1%
Local Vessel Advisory Committee	Statutory	1	11	12	8.3%
Mandatory Provident Fund Industry Schemes Committee	Statutory	0	11	11	0.0%
Market Misconduct Tribunal	Statutory	0	4	4	0.0%
Minimum Wage Commission	Statutory	2	8	10	20.0%
Municipal Services Appeals Board	Statutory	19	55	74	25.7%
Non-official Justices of the Peace Selection Committee	Non-statutory	1	4	5	20.0%
Occupational Safety and Health Council	Statutory	4	12	16	25.0%
Personal Data (Privacy) Advisory Committee	Statutory	2	5	7	28.6%
Pilotage Advisory Committee	Statutory	0	3	3	0.0%
Police Children's Education Trust Management Committee	Statutory	1	4	5	20.0%
Police Education and Welfare Trust Management Committee	Statutory	1	4	5	20.0%
Prevention of Legionnaires' Disease Committee	Non-statutory	1	4	5	20.0%
Protection of Wages on Insolvency Fund Board	Statutory	1	6	7	14.3%
Public Service Commission	Statutory	2	6	8	25.0%
Quality Assurance Council	Non-statutory	1	7	8	12.5%
Quality Education Fund Investment Committee	Non-statutory	0	2	2	0.0%
Regulatory Affairs Advisory Committee	Non-statutory	0	2	2	0.0%
Research Grants Council	Non-statutory	5	23	28	17.9%

<i>Name of Body</i>	<i>Status</i>	<i>Female (Government Appointed)</i>	<i>Male (Government Appointed)</i>	<i>Total (Government Appointed)</i>	<i>% of Women Appointed</i>
Review Panel (Land (Miscellaneous Provision) Ordinance)	Statutory	0	19	19	0.0%
Risk Management Committee of the Hong Kong Exchanges and Clearing Limited	Statutory	0	5	5	0.0%
Road Safety Council	Non-statutory	0	1	1	0.0%
Securities and Futures Commission	Statutory	1	7	8	12.5%
Small and Medium Enterprises Committee	Non-statutory	5	17	22	22.7%
SME Development Fund Vetting Committee	Non-statutory	3	11	14	21.4%
Social Workers Registration Board	Statutory	1	5	6	16.7%
Stamp Advisory Committee	Non-statutory	2	5	7	28.6%
Standing Committee on Judicial Salaries and Conditions of Service	Non-statutory	2	5	7	28.6%
Standing Committee on Legal Education and Training	Statutory	0	3	3	0.0%
Statistics Advisory Board	Non-statutory	3	8	11	27.3%
Steering Committee for Research Themes under the Research Endowment Fund	Non-statutory	1	6	7	14.3%
Steering Committee on Innovation and Technology	Non-statutory	0	9	9	0.0%
Steering Committee on Strategic Development of Information Technology in Education	Non-statutory	2	8	10	20.0%
Steering Committee on the Promotion of Electric Vehicles	Non-statutory	1	10	11	9.1%
Steering Group on the Promotion of Innovation and Design	Non-statutory	1	12	13	7.7%
Tang Shiu Kin & Ho Tim Charitable Fund Management Committee	Non-statutory	0	2	2	0.0%

<i>Name of Body</i>	<i>Status</i>	<i>Female (Government Appointed)</i>	<i>Male (Government Appointed)</i>	<i>Total (Government Appointed)</i>	<i>% of Women Appointed</i>
The Board of West Kowloon Cultural District Authority (WKCDA)	Statutory	2	13	15	13.3%
Tourism Strategy Group	Non-statutory	4	13	17	23.5%
Town Planning Board	Statutory	6	23	29	20.7%
Transport Advisory Committee	Non-statutory	4	12	16	25.0%
Travel Industry Compensation Fund Management Board	Statutory	2	5	7	28.6%
Tung Wah Group of Hospitals Advisory Board	Statutory	0	8	8	0.0%
University Grants Committee	Non-statutory	4	19	23	17.4%
Vetting Committee of the Professional Services Development Assistance Scheme	Non-statutory	3	8	11	27.3%
Vocational Training Council	Statutory	3	15	18	16.7%

MS EMILY LAU (in Cantonese): *Deputy President, the survey of the WoC uncovered something we have known for years, that is, the problem of gender stereotyping does exist in Hong Kong. No matter what majority of people think, in the practical world, it is still considered that men perform better in leadership than women, be it in the political or business sector.*

In his reply, the Secretary kept on saying that researches and surveys, as well as press conferences would be conducted. He pointed out that early this year, the WoC had shared the survey findings with relevant B/Ds as future reference for their related work. Deputy President, while this action is commendable, why no response is given here since the action was taken early this year? What have other B/Ds done to rectify the situation in the light of the survey findings? Deputy President, women's affairs have always been regarded as coming under the welfare portfolio and are thus the responsibility of the Secretary for Labour and Welfare.

The United Nations has pointed out that, in the process of legislation, funding and implementation of policies, a central mechanism should be in place

to examine the gender impact of such policies. Yet, the authorities have declined to do so. Anyway, they are required to report to the United Nations very soon. I want to ask the authorities — either the Secretary of Department or the Director of Bureau — how they are going to perform these tasks? After listening to the recommendations of the WoC, whether the departments have been sitting there and doing nothing in the past few months?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, the Government is highly concerned, particularly about the promotion of women's right and well-being. This is our top priority. As a matter of fact, we attach great importance to matters in this regard.

Ms LAU, there are some figures that I can share with you. Perhaps you are well aware that, in the survey of the WoC, the rating is expressed in a scale of one to five. In rating the level of satisfaction concerning men and women's status at home, in the workplace and in society, the overall score is 3.86 at home, 3.56 in the workplace and 3.55 in society, reflecting the situation is not really that bad. We will of course continue to put in efforts and strive to do better. It is true that we will exert every effort.

Nevertheless, it also reflects another aspect. As pointed out in my main reply, some established perception has changed, male supremacy, for instance, is not accepted by people in general

MS EMILY LAU (in Cantonese): *Deputy President, I do not want to waste time. The Secretary said that the survey findings have been shared with relevant B/Ds, but what have they done in the past 10 months? Can you tell me about that?*

DEPUTY PRESIDENT (in Cantonese): Ms LAU, please be seated. Secretary, can you further provide us with a more specific answer in this regard?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, we shared the findings with relevant departments in the hope that they

could integrate the findings in their future work and policies, but this could not be done overnight. As a simple example, in the area of education, among the students of institutions currently funded by the University Grants Committee, the number of female students has taken up 54%. This is a result of implementing matching policies. Furthermore, Ms LAU, 75% of trainees of the Employees Retraining Board are female, showing that we attach importance to women by providing them with training opportunities and a lot of other opportunities. We have provided support in policy-making. As such, it is a policy making reference

MS EMILY LAU (in Cantonese): *What is the relationship between women being admitted to university and the Government? Deputy President, why does he not tell me what the departments have done?*

DEPUTY PRESIDENT (in Cantonese): Ms LAU, it is not a forum for debate. After the Secretary has given his reply, if you find it necessary to follow up on the matter, please do so in other forum. Secretary, do you have anything to add?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I wish to add that, in formulating policies, we will definitely reflect these findings and most importantly, they will be fully integrated into our policy planning process.

MR CHEUNG MAN-KWONG (in Cantonese): *Deputy President, women's affairs are not welfare issues and they cannot be covered under the labour policy. As the policy involves various departments, the question should be answered by the Chief Secretary for Administration.*

According to the reply of the Government, at present, 149 ASBs — more than one third — have yet to achieve the 30% gender benchmark in appointing non-official members. Also, the number of ASBs with zero percent of female members stands at 35, representing a decrease of merely six ASBs when compared with last year. The progress is very slow.

While gender equality is upheld in Hong Kong, we still have 35 ASBs with zero female appointed and the situation remains unchanged year after year. Does this reflect that male supremacy still exists in the Government? What makes people most furious is, in the 18 District Councils, only 14 appointed members are female, representing a percentage of less than 30%; in eight districts, the number of women members appointed is zero. If the gender of voters is equally distributed, is such a ratio taken as a discrimination against women?

The new appointment exercise of District Councils is about to commence, will the Government undertake to ensure the 30% gender benchmark can be achieved this time? The appointment system is wrong in the first place, if such system discriminates against women, things go from bad to worse. Can the Chief Secretary for Administration make a reply?

DEPUTY PRESIDENT (in Cantonese): If the Chief Secretary for Administration has something to add, please do so later. I would ask the Secretary to reply first.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I cannot speak on behalf of the Chief Secretary for Administration, but as I have pointed out clearly in my main reply, we have three explanations, some of which are related to the so-called system. Simply put, for some organizations, recommendation and appointment can only be made by their own institutions or professional bodies. The Government does have constraints in this regard.

Secondly, if an institution claims that, according to its usual practice, only former chairmen are eligible for appointment and all of them are male, the Government can do nothing to change the history. As such, under these circumstances, we have limitations. Yet, I also agree that we should do our best to provide women with more opportunities and it is something we should strive for. For this reason, the Home Affairs Bureau will, from time to time, remind the appointment authorities on a regular basis. We also remind ourselves that we should consider enhancing the participation of women where practicable.

Of course, the principle of appointment by merit is all the same important. As such, six months before the expiration of the term of each committee, we will certainly scrutinize if it has a balanced composition, its gender ratio and the reasons for failing to achieve the benchmark, as well as the measures to be adopted to achieve the benchmark in the following term. In this regard, we will keep on working.

DEPUTY PRESIDENT (in Cantonese): The Chief Secretary for Administration, do you have anything to add?

(The Chief Secretary for Administration indicated that he had nothing to add, Mr CHEUNG Man-kwong stood up)

DEPUTY PRESIDENT (in Cantonese): Mr CHEUNG, which part of your question has not been answered?

MR CHEUNG MAN-KWONG (in Cantonese): *Deputy President, he has not answered my question at all. My supplementary question is: will the Government undertake to ensure that the 30% gender benchmark can be achieved in the appointment exercise of the new District Councils? If Secretary Matthew CHEUNG cannot answer, the Chief Secretary for Administration should at least give a reply. This is a major policy, why no one can give me an answer?*

DEPUTY PRESIDENT (in Cantonese): Mr CHEUNG, you have made yourself clear. Which Secretary will answer the question?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, as I have pointed out clearly just now, our primary consideration was the principle of appointment by merit. That said, we also need to fully explore if there are rooms to encourage the participation of both genders, in particular the female. If there is no female member in the ASBs, we will certainly do our best to ensure their participation. I will relay Members' views to the Home Affairs Bureau.

MR CHEUNG MAN-KWONG (in Cantonese): *We have equal participation of men and women in the District Councils, it is not possible that no women vote in the District Council election, is it? The number of male and female is broadly the same in Hong Kong*

DEPUTY PRESIDENT (in Cantonese): Mr CHEUNG, your question is clear, no need for further elaboration. Secretary, do you have anything to add?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I have nothing to add.

MS LI FUNG-YING (in Cantonese): *Deputy President, I believe that facts speak louder than words. Just now, the Secretary said that some trades had their own constraints, but our colleagues were talking about some statutory bodies where no profession constraint was in place. Why no woman was appointed in eight District Councils at all? Why the appointment ratio of female in the Mandatory Provident Fund Industry Schemes Committee, which is closely related to employees, is also zero? Why such ratio is only 25% in the Public Service Commission? I think the Government can hardly justify itself in this respect.*

I wish to ask the Secretary, even if you do not admit that you are discriminating against women, will you rectify this situation in the future?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, the Government's sincerity is very clear, we will definitely exert every effort in optimizing our capabilities under the major principle of appointment by merit, with a view to enhancing female participation. This is our policy objective. As I said just now, six months before the expiration of the term of each advisory or statutory committee, the appointing authorities are obliged to examine if the gender ratio has reached the benchmark.

MISS TANYA CHAN (in Cantonese): *Deputy President, you should have known I would certainly raise a question since I went to London to attend a*

meeting with you last week. Secretary Matthew CHEUNG told us in his reply just now that we had gender equality in university admission. I feel sorry to hear that. I have a feeling that I was back in London discussing if men and women had equal opportunity in university admission in developing countries. Hong Kong is a well-developed community. If we tell ourselves that we have no gender inequality by saying that the number of female students being admitted to university was higher than their male counterpart, I would really be surprised.

Just now, Ms LI Fung-ying mentioned some ASBs, actually there is one ASB which can represent female most; that is the Board of Directors of the Widows and Orphans Pension Scheme. Yet, there is no female representative in the Board. Why? According to the authorities, they are afraid that there may be conflict of interests. Deputy President, I do not think so.

Besides, the development in overseas countries is When we were in the United Kingdom, we noted that some countries had introduced legislation, requiring that at least 30% of representatives in Parliament should be female. Deputy President, the figure of 30% is already on the low side, but it is at least a starting point. I wonder if consideration will be given to introduce legislation — Deputy President, the ratio of female legislators in this Council is less than 20%. If the Legislative Council was one of the ASBs, it would also be listed in the Annex. I wish to ask the Secretary of Department or the Director of Bureau whether we will consider introducing legislation to set a minimum requirement on the number of female representatives in these statutory bodies.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I believe there are certain difficulties in introducing legislation. This may result in inflexible enforcement. However, during a certain period in the past, she can in fact see that the ratio had risen from 25% or 30% to 31.01%. Of course there may be individual organization — it is the fact — with no female representative appointed. We believe that we must work hard on this.

However, for some organizations, the problems involved are structural. For instance, due to various reasons, their appointment has to be recommended by outside bodies or institutions, the Government cannot intervene. In that case, there is nothing we can do. However, I agree that relevant B/Ds have to

seriously consider making full use of their capacity in providing women with more chances of participation. I will certainly reflect this to the Secretary for Home Affairs.

DEPUTY PRESIDENT (in Cantonese): Last Oral question.

Supplementary Labour Scheme

6. **MR WONG SING-CHI** (in Cantonese): *Deputy President, under the Supplementary Labour Scheme (SLS), local employers with genuine difficulties in recruiting suitable junior staff in Hong Kong may import workers at technician level or below after their applications have been approved by the Labour Advisory Board (LAB). In recent years, however, quite a number of companies have bypassed the LAB and directly applied to the Immigration Department (ImmD) for importing workers under the General Employment Policy (GEP) or other admission schemes for talents and professionals by changing the post titles concerned and other means, thus affecting the employment opportunities of local workers. As the employee members of the LAB consider that the ImmD approves applications for importing workers indiscriminately, they have suspended vetting and approving applications under the SLS, resulting in a shortage of imported workers. In this connection, will the executive authorities inform this Council:*

- (a) *of the 10 industries most affected by the suspension of vetting and approval of applications submitted under the SLS at present, as well as the percentage of imported workers in the total labour force in these industries;*
- (b) *whether the authorities have obtained exact data on the number of cases in the past 12 months in which the applicants have bypassed the LAB and submitted applications directly to the ImmD for importing workers by changing the post titles concerned and other means, and thus affected the employment opportunities of local workers; and*

- (c) *as it has been reported that the care industry is one of the industries affected by the LAB's suspension of vetting and approval of applications submitted under the SLS, and members of the industry have indicated that such suspension has given rise to manpower shortage in the industry, whether the authorities have assessed the impact of the suspension of vetting and approval on the care industry and explored measures to resolve the situation; and what short-term and long-term measures are in place to solve the problem of manpower shortage in the care industry at present?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, the SLS is a labour importation scheme administered by the Labour Department (LD). Its objective is to facilitate, on a limited scale, the importation of workers at technician level or below, thereby enabling Hong Kong to meet its demand for low-skilled workers.

It has always been the Government's policy to accord priority to local workers in terms of employment, and to safeguard their salaries and benefits. To this end, for each application under the SLS, the employer has to first launch a four-week open recruitment exercise, for which the employer must offer wages at not less than the median monthly wages of local workers in comparable positions. During the open recruitment exercise, the LD will conduct proactive job matching for the vacancies. The LD will also disseminate such vacancy information to training bodies and labour unions, inviting them to refer suitable local job-seekers for interview. Only if employers are genuinely unable to recruit the required workers locally will their SLS applications be considered. Each application under the SLS has to be considered by the LAB before the Government makes a final decision of either approval or refusal.

Our replies to the question by Mr WONG Sing-chi are as follows:

- (a) Employee members of the LAB announced on 31 October 2011 their decision to freeze the processing of SLS applications. Their action has directly affected a batch of 49 vacancies recommended for approval by the LD. These vacancies involve the following seven job titles:

<i>Job title</i>	<i>Quota of imported worker(s) recommended for approval (persons)</i>
1. Care Worker (Elderly Service)	26
2. Livestock/Poultry/Fish/Crops Farm Worker	10
3. Care Worker (Disabled Service)	4
4. General Sewing Machine Operator	4
5. Cook	2
6. Fitter/Mechanical Fitter	2
7. Machine Operator	1
Total	49

For the first job title above, namely Care Worker (Elderly Service), information from the Social Welfare Department (SWD) shows that as at 30 September 2011, private residential care homes for the elderly (RCHEs) in Hong Kong were hiring altogether 4 950 care workers, with 934 (or around 19%) of them being imported workers. For the remaining six job titles, we do not have statistics on the proportion of imported workers out of the overall labour force under the respective job titles.

- (b) At present, the ImmD implements two employment-related immigration arrangements, namely, the GEP for admitting mainly overseas professionals and the Admission Scheme for Mainland Talents and Professionals for professionals from the Mainland. The objective is to allow local employers to recruit professionals not readily available in Hong Kong to meet their manpower needs. Both arrangements are only applicable to professionals. The target group is materially different from the applicants of the SLS under the LD. In processing applications from professionals, 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. In general, professionals seeking to apply to work in Hong Kong shall meet three main criteria:

- (1) having a good education background, normally a first degree in the relevant field;
- (2) 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
- (3) 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.

Some applications for importing professionals had been refused by the ImmD for failure to meet the eligibility criteria or withdrawn by applicants after gaining thorough understanding of the relevant requirements. However, there should not be any cases where applications were submitted to both the LD and the ImmD or submitted to the ImmD directly to intentionally bypass the monitoring of the LAB. In any event, the ImmD has undertaken to enhance communication with the LD in processing relevant applications, and plans to require employers to declare whether any application was submitted under the SLS to the LD, regardless of the position applied for or its result, in the 18 months prior to applying for the importation of professionals. The ImmD will seek advice from the LD to prevent employers from submitting to the ImmD unsuccessful application for the same position under the SLS. Besides, the ImmD will also seek advice from the LD on any doubtful cases.

- (c) Since employee members of the LAB announced on 31 October 2011 their decision to suspend the processing of SLS applications, the SWD has not found any non-compliance with the staffing requirement in RCHEs owing to failure to renew the contracts of Care Workers (Elderly Service) under the SLS. The SWD will closely monitor the development. If an RCHE is affected and has to adopt emergency measures, the SWD will allow the RCHE to engage relief workers as an interim measure in order to maintain the service standard.

Regarding the manpower of other employees in the care industry, there are at present 30 training institutions which have obtained approval from the Director of Social Welfare to organize training courses for health workers (HW). According to the SWD, the total number of training places of HW training courses is about 2 000 each year. The training institutions will introduce training courses relevant to elderly care services and adjust the training capacity in response to the demand of the industry. To alleviate the shortage of healthcare staff, particularly nurses, in the welfare sector, the SWD, in collaboration with the Hospital Authority, has been running a two-year full-time programme to train enrolled nurses particularly for the welfare sector since 2006. Nine classes have been organized so far and three more will be organized from now to 2013. Together, the 12 classes will provide about 1 500 training places.

We will closely monitor the manpower supply and demand in the social welfare sector and implement facilitating measures as appropriate.

MR WONG SING-CHI (in Cantonese): *Deputy President, obviously, the current suspension of the SLS will mainly affect the supply of Care Workers (Elderly Service). Following the enactment of the Residential Care Homes (Persons with Disabilities) Ordinance, residential care homes (RCH) for people with disabilities will also have to increase their manpower substantially. Unfortunately, despite the measures mentioned by the Secretary just now, the Government still failed to convince the LAB to resume vetting and approving*

applications under the SLS. In each of the coming months, RCHs will be short of 30 to 40 supplementary workers. While the impact of the suspension is not seen right now, it will emerge some day. Otherwise, the Government would not have to introduce the SLS for RCHs in the first place.

I would like to ask Secretary Matthew CHEUNG and Secretary Ambrose LEE what should be done now. In the short run, relief workers can be engaged to work for RCHs. Yet, if this arrangement should work, we can simply abolish the SLS and allow all RCHs to engage relief workers. The problem can then be solved, right? However, such arrangement is obviously impracticable. What should the Government do to get a green light for the resumption of the SLS? As the contracts of some supplementary workers will soon expire or they may soon leave Hong Kong, RCHs will be short of staff when their supplementary workers stop working for them. The quality of elderly care services will thus be affected. Under such circumstances, what will the Government do for the resumption of the SLS?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I would like to thank Mr WONG for his supplementary question. We actually share his concern. That is why we had called on the employee members of the LAB to settle this issue expeditiously at the very start. The present transitional arrangement, under which RCHs may engage relief workers after the contracts of their supplementary workers have expired, is not a desirable way to cope with the shortage of manpower. It is only an interim measure for a short period of time. If we make it a long-term measure, service quality will definitely be affected. Therefore, in our view, that is only a stop-gap measure.

We have already contacted the employee members of the LAB to inform them of the proposal, which has been clearly explained in the main reply. Under such proposal, the ImmD, when processing relevant applications, will check if the employers concerned have submitted any application under the SLS to the LD in the past 18 months. The employers will be required to declare such information regardless of whether their previous applications are successful or not. The ImmD will keep the gate rigorously and inform us of any doubtful cases. A reporting mechanism will be established by strengthening our communication. We hope that the employee members of the LAB and Legislative Council

Members of the labour constituency can soon reach a consensus with the relevant parties to make way for the implementation of this mechanism. If this issue is to drag on, service recipients will be affected.

MS LI FUNG-YING (in Cantonese): *Deputy President, in part (b) of the main reply, the Secretary has stated that applicants shall meet three criteria, two of which are: their employers must prove that they cannot find the right talents in Hong Kong; and their remuneration packages must not be inferior to those of the local professionals in comparable positions. Nevertheless, the vetting mechanism now adopted by the ImmD is not transparent at all, neither the representatives of employees nor the representatives of the LAB can be involved in the mechanism.*

I would like to ask the Secretary of the specific criteria adopted for assessing whether or not the employers can find the right talents in Hong Kong? According to the figures provided to us by the Secretary for Security last week, more than 95% of applications had been approved for five consecutive years. This means that almost all applicants have been approved. Does it imply that the priority employment of the local workforce is not upheld?

SECRETARY FOR SECURITY (in Cantonese): The GEP was introduced earlier than other labour importation schemes. As the ImmD has implemented this policy for decades, it is well experienced in upholding priority employment of the local workforce.

As stated by Secretary Matthew CHEUNG in the main reply, under the current GEP, applicants must have a good education background. They must also be professionals who are not readily available in Hong Kong and their employers are required to prove that it is difficult to recruit such professionals locally. Furthermore, their remuneration packages must not be inferior to those of the local professionals in comparable positions.

Just now, Ms LI asked how we determine if a particular profession is in lack of local talents. In fact, the ImmD will, when processing relevant

applications, keep a close eye on our labour market structure. Sometimes, the ImmD will request employers to provide information to prove their difficulties in recruiting the required professionals locally. For example, employers are required to produce their recruitment advertisements and indicate the number of recruitment exercises conducted to prove that they cannot find the right talents in Hong Kong. Employers are required to provide information to prove that the reason for failing to recruit local talents is that the relevant professionals are in short supply in Hong Kong. Meanwhile, employers must offer a remuneration package which is not inferior to the prevailing market level for the relevant professionals in Hong Kong. Officers of the ImmD will not grant approval to applications which do not comply with any of these requirements.

In my view, the GEP has brought great benefits to our local economy over the last few decades. As stated last week when I answered Members' questions, the 21st century is a century thirsting for talents. All developed economies are now scrambling for professional talents. Therefore, we must strike a careful balance when we admit professionals who are not readily available in Hong Kong. On the one hand, we must ensure that priority is accorded to local workers in terms of employment; and on the other hand, we must avoid making the application procedure too complicated as it will discourage overseas professionals to work in Hong Kong. In my opinion, the procedures and policies implemented by the ImmD have already struck a good balance. In case we have any doubts about the technical issues when processing the applications of certain professional engineers, we will, from time to time, seek advice from the LD, other government departments or organizations so as to ascertain whether Hong Kong is in lack of such professionals.

MR IP WAI-MING (in Cantonese): *Deputy President, after listening to the reply given by the Secretary for Security, I am sorry to say that I do not quite understand what he is talking about. The Member actually wants to know how the Government will ensure transparency and if officers of the ImmD really understand the situation of the relevant trades. From his replies to my question last week and his answer to this question today, we are all aware of the fact that the ImmD will do the vetting. Yet, the problem is, very often the ImmD only examines the information provided by employers or their difficulties in*

recruitment. Do officers of the ImmD well understand how the relevant trades operate? For instance, do they know the salary structures of the trades? Many a time, we are doubtful about this. When we exchanged views with the ImmD staff in respect of certain cases, we found that they were not clear about the operation of the relevant trades. In this case, why do they not seek advice from other parties, including the LAB and trade unions? We are not against any talents admission schemes but we oppose to admitting "fake talents". Has he considered seeking advice?

SECRETARY FOR SECURITY (in Cantonese): Deputy President, I had provided Members with some figures when I answered Member's question last week. With regard to the professionals admitted, if I remember correctly, more than 30% are management talents in manager grade or above. Some 30% are accountants, engineers and so on. As these professionals are not the targets under the SLS, their admission therefore has nothing to do with the LAB. The GEP and SLS are two completely different arrangements. Under the GEP, 40% of talents admitted are managers, directors and heads of human resources whose salaries range from \$50,000 to \$100,000. As for other talents, such as architects, engineers and professors, their average salaries range from \$35,000 to \$60,000.

If we are to formulate a complicated consultation procedure for the admission of these talents, the time required for processing applications will be lengthened. I am not suggesting that we want to circumvent any consultation or avoid seeking advice from any relevant departments. As I have just said, whenever the applications received involved the admission of technical talents, the ImmD will consult the LD or relevant departments, such as the Electrical and Mechanical Services Department and the Civil Aviation Department. I do not agree to the comments of Mr IP Wai-ming that the vetting procedure will lack transparency if we do not specify that the LAB must be consulted.

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

MR IP WAI-MING (in Cantonese): *Deputy President, as a matter of fact, many trade unions have already set up affiliated associations for different professions. Will the Security Bureau consider seeking advice from them?*

SECRETARY FOR SECURITY (in Cantonese): Deputy President, the current GEP has been implemented for many years, and we hold that the GEP has made positive contribution to our overall economy and development. I think this policy has been effective. In general circumstances, as officers of the ImmD are experienced in processing applications, I do not think we should complicate the vetting procedure. However, as I have just mentioned, if the applications involved the admission of technical professionals, I believe the ImmD will surely consult the LD and other relevant government departments.

MR WONG SING-CHI (in Cantonese): *Deputy President, just now, I learn that the Secretary for Security and Legislative Council Members of the labour constituency cannot resolve their disagreement. The LAB will thus continue to suspend vetting and approving applications under the SLS. This will affect the manpower of RCHs and the care industry as a whole. According to Secretary for Labour and Welfare Matthew CHEUNG, the RCHs affected may engage relief workers as an interim measure.*

I would like to ask Secretary Matthew CHEUNG, for how long will you tolerate this situation? By engaging relief workers as an interim measure, the trade will not be able to provide quality services. For how long will you tolerate this situation? The Government has already done a lot to train HWs but these efforts do not pay off. Otherwise, the problem of labour shortage will not remain unsolved and we will not have to admit supplementary workers. Therefore, the current solution obviously does not work. Secretary Matthew CHEUNG, for how long will you tolerate this situation? How long do you expect the interim period will last? For how long will relief workers be engaged? When will you be able to resume the SLS so as to provide RCHs for the disabilities and RCHEs with sufficient manpower for better services?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I am as anxious as Mr WONG. I also want this issue to be settled as

soon as possible. We are making focused efforts to help representatives of the labour sector, especially the Legislative Council and the employee members of the LAB, to solve the problem as soon as possible.

MR WONG SING-CHI (in Cantonese): *Do you have a timetable? In saying "as soon as possible", it can be three months or three years. I just know that the issue may not be able to settle in the near future. Have you set a target time, say, three months, two months or six months? Have you set such target?*

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, we are taking a pragmatic approach in the hope that this issue can be settled as soon as possible.

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

WRITTEN ANSWERS TO QUESTIONS

Admission of Non-JUPAS Students by Local Universities

7. **DR RAYMOND HO** (in Chinese): *President, it has been reported that by the end of this year, the University of Hong Kong (HKU) and The Chinese University of Hong Kong (CUHK) will for the first time make early admission offers to students with International Baccalaureate (IB) and General Certificate of Education (Advanced Level) (GCE A-level) qualifications through the non-Joint University Programmes Admissions System (hereinafter referred as "non-JUPAS early admission schemes"). In this connection, will the Government inform this Council:*

- (a) *whether it knows the purposes of the two universities in introducing the aforesaid non-JUPAS early admission schemes; apart from applicants with IB and GCE A-level qualifications, if the aforesaid*

universities will also admit students on the strength of other academic qualifications under such schemes; if they will, of the details;

- (b) of the respective numbers and ratios of students who are taking the Hong Kong Advanced Level Examination (HKALE), IB programmes and GCE A-level examinations in the current academic year; and*
- (c) whether it knows the respective percentages of places for non-JUPAS intake of each of the eight local universities in their total number of places in the current academic year; the respective criteria adopted by various universities for determining the ratios of students admitted through JUPAS and non-JUPAS?*

SECRETARY FOR EDUCATION (in Chinese): President, the Joint University Programmes Admissions System (JUPAS) is the main platform for students sitting for the HKALE and the Hong Kong Diploma of Secondary Education Examination to apply for admission to undergraduate programmes funded by the University Grants Committee (UGC). Applicants outside the scope of JUPAS (including non-local students, sub-degree students and persons holding other qualifications) have to apply to institutions direct for admission (commonly known as "non-JUPAS"). Applicants cannot submit concurrent applications via both channels.

- (a) According to the information provided by the CUHK and the HKU, the two universities will give two rounds of offers in the admission exercise for non-JUPAS candidates for the 2012-2013 academic year. The first round of offer ("advance offer" for CUHK and "fast-track admission" for the HKU) will be similar to the advance offer arrangement adopted by many overseas universities, especially those in the United States.

The "advance offer"/"fast-track admission" arrangements in the non-JUPAS admission exercise of CUHK/HKU are completely different from the Early Admission Scheme for the Secondary Six Students implemented since 2002-2003. The Early Admission Scheme is a sub-system of JUPAS for admitting and enrolling outstanding students one year before their graduation from

matriculation studies, while the "advance offer"/"fast-track admission" arrangement facilitate the advancement of the application process within the normal application cycle, so as to allow students to get themselves prepared and plan for applying to different undergraduate programmes, and to provide institutions with ample time to consider and assess the applications. Like all other applicants, students selected under the "advance offer"/"fast-track admission" arrangements must satisfy all the admission requirements before joining the universities. They are not admitted a year earlier.

Eligible candidates should have completed six years of secondary education in any of the Hong Kong or overseas schools and meet the entry requirements of the respective universities. The arrangements are applicable to non-JUPAS applicants, including sub-degree students, non-school applicants holding previous HKALE results, students with other qualifications (for example, General Certificate of Education (GCE), IB, Scholastic Assessment Test, and so on).

- (b) As at November 2011, there are around 31 700 school candidates for the 2012 HKALE. At present, we do not have the statistics regarding local students taking IB and GCE A-level examination programmes.
- (c) Overall speaking, the UGC-funded institutions do not have a pre-determined ratio for the JUPAS and non-JUPAS intakes. In fact, admission of the students is mainly done by individual faculties/departments. Students are selected based on individual merits in a number of aspects, including their academic attainment (for example, results in public examinations and secondary schools), performance in interviews and auditions, non-academic achievements, interest and preferences in various academic programmes.

The number of students admitted through JUPAS and its ratio to the approved student number remain stable in recent years. The numbers of students admitted by the UGC-funded institutions through various channels, and their ratios to the approved student numbers are set out as follows:

	2005-2006		2010-2011	
Approved first-year-first-degree places	14 500		14 580	
Actual intake (include over-enrolment)	15 041	103.7%	16 054	110.1%
Local students	14 012	96.6%	14 195	97.4%
JUPAS	11 458	79.0%	11 660	80.0%
Non-JUPAS (Sub-degree or equivalent ⁽²⁾)	1 517	10.5%	1 502	10.3%
Non-JUPAS (other qualifications ^{(2), (3)})	1 037	7.2%	1 033	7.1%
Non-local students (Non-JUPAS)	1 029	7.1%	1 859	12.8%

Notes:

- (1) Percentages in the above table refer to the ratios of actual student intakes in respective categories to the approved number of first-year-first-degree places.
- (2) Admission qualification refers to the highest relevant academic qualification possessed by a new intake on the basis of which his/her admission is decided, regardless of whether that qualification has been completed or not.
- (3) Including HKALE, IB, GCE A-level Examination, and so on. Non-school applicants holding HKALE qualification can apply for admission to UGC-funded programmes either through JUPAS and non-JUPAS routes, but not both.

There has been an increase in the number of students admitted through JUPAS mainly because of the increase in number of non-local students admitted by the institutions. The additional non-local students in recent years are mainly admitted by over-enrolment on top of the approved student number, and hence they would not constitute direct competition with local students. The actual intake of the institutions has increased correspondingly to around 16 100 in the 2010-2011 academic year. Non-local students are required to pay a higher tuition fee.

The respective figures of the eight UGC-funded institutions are at Annex.

Student Intakes of UGC-funded FYFD Programmes (by institution)

	CityU	HKBU	LU	CUHK	HKIEd	PolyU	HKUST	HKU
Approved first-year-first-degree places	2 162	1 261	600	3 014	568	2 304	1 855	2 816
Actual intake (include over-enrolment)	2 359	1 403	616	3 190	752	2 599	2 034	3 101
	109.1%	111.3%	102.7%	105.8%	117.5% ²	112.8%	109.6%	110.1%
Local student	2 119	1 256	567	2 853	696	2 300	1 762	2 642
	98.0%	99.6%	94.5%	94.7%	108.8% ²	99.8%	95.0%	93.8%
JUPAS	1 679	1 122	518	2 485	489	1 859	1 488	2 020
	77.7%	89.0%	86.3%	82.4%	76.4%	80.7%	80.2%	71.7%
Non-JUPAS (Sub-degree or equivalent ³)	321	67	41	87	193	397	132	264
	14.8%	5.3%	6.8%	2.9%	30.2%	17.2%	7.1%	9.4%
Non-JUPAS (other qualifications ^{3,4})	119	67	8	281	14	44	142	358
	5.5%	5.3%	1.3%	9.3%	2.2%	1.9%	7.7%	12.7%
Non-local students (Non-JUPAS)⁵	240	147	49	337	56	299	272	459
	11.1%	11.7%	8.2%	11.2%	8.8% ²	13.0%	14.7%	16.3%

Abbreviations

CityU	City University of Hong Kong	HKIEd	The Hong Kong Institute of Education
HKBU	Hong Kong Baptist University	PolyU	The Hong Kong Polytechnic University
LU	Lingnan University	HKUST	Hong Kong University of Science and Technology
CUHK	The Chinese University of Hong Kong	HKU	University of Hong Kong

Notes:

- (1) Percentages in the above table refer to the ratios of the actual student intakes in respective categories to the approved first-year-first-degree places.
- (2) HKIEd was given 72 additional intake places outside the approved student numbers to admit students to its Bachelor of Education (Honours) (Early Childhood Education) programme. As the actual intake numbers cover this programme, their ratios to the approved student number targets have also been taken into account the additional places of this programme.
- (3) Admission qualification refers to the highest relevant academic qualification possessed by a new intake on the basis of which his/her admission is decided, regardless of whether the qualification has been completed or not.
- (4) Including the HKALE, IB, GCE A-level Examination, and so on. Non-school applicants holding HKALE qualification can apply for admission to the UGC-funded programmes either through JUPAS or non-JUPAS route, but not both.
- (5) Non-local students are mainly admitted by over-enrolment outside the approved student number subject to a maximum of 20% of the approved student number targets.

Self-financing Programmes Offered by Local Universities

8. **MR CHEUNG MAN-KWONG** (in Chinese): *President, the University Grants Committee (UGC) has gradually withdrawn its subvention for sub-degree (SD) and taught postgraduate (TPg) programmes of UGC-funded institutions since the 2004-2005 academic year, and the number of self-financing programmes (including SD, undergraduate and taught master degree programmes) offered by these institutions in recent years has increased substantially. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of subsidized places and the amounts of funding involved in the programmes which have been subject to the funding cut of the various UGC-funded institutions in each year since the 2004-2005 academic year;*
- (b) *whether it knows the respective numbers, student intakes as well as tuition fee incomes of various types of full-time and part-time self-financing programmes offered by the internal departments of the various UGC-funded institutions or their affiliates (for example, community colleges, and so on) in each year since the 2004-2005 academic year, broken down by the level of study;*
- (c) *whether it knows the respective numbers of full-time and part-time teaching and non-teaching staff employed by the internal departments of the institutions or their affiliates offering self-financing programmes in part (b) for such self-financing programmes as well as the related payroll expenses incurred in each year since the 2004-2005 academic year;*
- (d) *whether it knows the respective surplus/deficit of the internal departments of the institutions or their affiliates offering self-financing programmes in part (b) in each year since the 2004-2005 academic year; the financial arrangements with their parent institutions; whether they are required to pay any fee to their parent institutions in respect of operating the self-financing programmes; if so, of the details, together with a breakdown of the payments by the relevant item; whether they are required to submit the profits from the self-financing programmes to their parent*

institutions; if so, how the institutions use the relevant profits; whether the parent institutions need to subsidize the losses of the self-financing programmes;

- (e) what regulatory measures the authorities have in place to ensure that while the institutions enjoy autonomy they will not incessantly expand their self-financing departments in order to create new sources of income;*
- (f) whether the authorities have the power to regulate the revenues received by the UGC-funded institutions and their uses, including the profits made by their self-financing departments;*
- (g) how the authorities regulate the quality of various self-financing programmes (including the exit standards of students, the qualifications of lecturers and the teacher-and-students ratios, and so on) to ensure that the qualifications conferred by them meet the standards and are not for making up the numbers; and*
- (h) whether it knows the complaints mechanism in place if any student is dissatisfied with various self-financing programmes offered by the UGC-funded institutions; the respective numbers of complaints received by the various institutions in the past five years relating to their self-financing programmes, together with a breakdown by the reasons for the complaints?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) In response to the review report entitled "Higher Education in Hong Kong" published by the UGC in 2002, the Government accepted the recommendation that most TPg programmes should be run on a self-financing basis to reflect the benefits to the students' own career development. The Government also agreed that SD programmes in the UGC-funded sector, with the exception of programmes that meet specific criteria, should be put on a self-financing basis gradually.

The phasing-out of relevant UGC-funded TPg has been basically completed by the 2008-2009 academic year. The savings from TPg programmes have also been ploughed back to the UGC-sector to support worthwhile initiatives such as the creation of senior year places and research postgraduate places.

As regards SD programmes, the places in the UGC sector are phased out over a longer period. The savings from phasing SD places in the UGC sector are ploughed back to the SD sector as a whole, including enhancing the financial assistance for students of the self-financing post-secondary education sector. It is noteworthy that, there has been an increase in the number of publicly-funded SD places offered by the Vocational Training Council (VTC), to complement the expansion of the self-financing post-secondary sector. Overall speaking, the enrolment in publicly-funded SD programmes (offered by the VTC, UGC-funded institutions and the Hong Kong Academy for Performing Arts) has increased from around 22 200 in 2003-2004 to around 24 700 in 2010-2011.

The number of TPg and SD places in the UGC sector phased out and the amount of funding involved are set out at Annex A.

(b), (c), (d) and (f)

The eight higher education institutions funded through the UGC are autonomous statutory bodies, each with its own ordinance and governing Council. They enjoy academic freedom and a high degree of institutional autonomy in managing its internal affairs, including selection of staff, selection of students, curricula and academic standards, acceptance of research programmes and allocation of funds within the institution.

UGC-funded institutions are required to keep separate financial accounts for the publicly-funded and self-financing operations, and are not allowed to use public funds to subsidize the self-financing operations. In general, the institutions proper do not provide any subsidy to self-financed units if the latter incur deficit. However,

some of the institutions (that is, Lingnan University, The Chinese University of Hong Kong, The Hong Kong Institute of Education and The Hong Kong Polytechnic University) report that they would deploy private funds to provide subsidy/loan under exceptional cases or in case of proven financial difficulties. The deployment of surplus arising from its self-financing activities is subject to individual institutions' internal policies and guidelines.

The Administration and the UGC fully respect the autonomy of the institutions in this regard. That said, we expect that the institutions should ensure that self-financing activities do not detract from the core work of the institutions, have distinct separation of resources from publicly-funded programmes and are financially viable and sustainable.

The number and actual intakes of self-financing programmes offered by the eight UGC-funded institutions (including their affiliates) are set out at Annex B.

Given the time constraint, institutions are only able to provide information for the recent three academic years and the information is presented where available at the following annexes.

Annex C	Tuition fee incomes
Annex D	The number of academic and non-academic staff engaged in self-financed programmes offered by the institutions proper, community colleges and other self-financed education arms, and related staff costs
Annex E	Surplus/Deficit generated from self-financed programmes offered by the institutions proper, community colleges and other self-financed education arms
Annex F	The amount of fees paid by the institutions proper's academic departments offering self-financed programmes, community colleges and other self-financed education arms to their parent institutions

Please note that the information is compiled by individual institutions using their internal systems. Since the basis is not necessarily consistent among different systems, the figures reported by different institutions are not directly comparable.

(e) and (g)

The Government attaches great importance to the quality of the self-financing post-secondary education. UGC-funded institutions must ensure that all programmes (including publicly-funded and self-financing programmes) must successfully complete their internal quality assurance mechanism and meet all relevant criteria including entry requirements, exit standard and the quality and standards of teaching and learning.

As an additional measure to safeguard and promote the quality of UGC-funded institutions and their activities, the UGC established in 2007 the Quality Assurance Council (QAC) to assure the quality of their educational provision (however funded) at first degree level and above levels leading to a Hong Kong award. One of the QAC's core operational tasks is to conduct quality audits of individual UGC-funded institutions. The QAC audits examine all aspects of an institution's activities which contribute to the quality of student learning such as programme design, approval and review, as well as teaching, assessment and student support.

At the SD level, we have also devised the Common Descriptors for the Associate Degree and Higher Diploma programmes for compliance with an aim to enhance the common standard of the curriculum, entrance requirements, exit qualifications, and especially the admission criteria and exit level. The quality of self-financing SD programmes offered by the UGC-funded institutions is assured by the Joint Quality Review Committee. In our response to the Higher Education Review conducted by the UGC in 2010, we reaffirm our view that all post-secondary institutions should be subject to some form of regular external scrutiny in the context of quality assurance in order to enhance quality and accountability.

As demonstrated by the QAC model, self-accrediting status *per se* should not be a hurdle to external audits or reviews on an institutional or programme area basis. We therefore propose that periodic quality audits should be conducted by the Hong Kong Council for Accreditation of Academic and Vocational Qualifications on community colleges or self-financing operation at SD level and below under the aegis of UGC-funded institutions.

- (h) As student complaints can be dealt with at different levels (department, school/faculty, and central), the institutions do not have readily available figures on the numbers of and reasons for students' complaints in the past five years specifically related to the self-financed programmes. As far as institutions proper are concerned, all UGC-funded institutions have in place mechanisms to gauge student feedback and to handle students' complaints, including those relating to the programmes offered by the institutions regardless of whether the programmes are UGC-funded or self-financed.

Annex A

UGC-funded TPg and SD Programmes

TPg

	2003- 2004	2004- 2005	2005- 2006	2006- 2007	2007- 2008	2008- 2009
Student number (in full-time equivalent (fte) terms)	5 557	4 874	3 817	2 988	2 619	2 434
Cumulative change in student number compared with 2003-2004		-683	-1 740	-2 569	-2 938	-3 123
Cumulative change in funding (\$ million)		-98	-247	-365	-418	-482

SD

	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Student numbers (in fte)	11 453	10 612	9 330	7 270	5 596	5 484	5 592	5 683
Cumulative change in student number compared with 2003-2004		-841	-2 123	-4 183	-5 857	-5 969	-5 861	-5 770
Cumulative change in funding (\$ million)		-82	-204	-395	-549	-559	-546	-536

Annex B

The number and actual intakes of self-financing programmes
offered by the eight UGC-funded institutions (including their affiliates)

Full-time SD programmes

Institution	2003-2004		2004-2005		2005-2006		2006-2007		2007-2008		2008-2009		2009-2010		2010-2011	
	Pro-grammes	Intakes	Pro-grammes	Intakes	Pro-grammes	Intakes	Pro-grammes	Intakes	Pro-grammes	Intakes	Pro-grammes	Intakes	Pro-grammes	Intakes	Pro-grammes	Intakes
CityU	7	687	10	1 640	20	3 061	35	3 098	40	3 522	40	3 530	43	3 945	40	4 249
HKBU	7	667	14	983	18	1 004	16	899	19	1 192	19	1 153	22	1 608	24	2 513
LU	18	681	16	1 086	19	1 101	19	618	20	703	21	760	29	1 110	31	1 829
CUHK	10	395	21	827	17	800	19	1 216	21	1 130	22	1 107	23	1 216	26	1 597
HKIEd	3	160	4	203	4	164	4	199	5	259	8	214	9	289	7	445
PolyU	11	1 659	13	2 671	13	1 886	22	2 635	26	2 831	34	2 861	37	4 137	36	4 201
HKU	16	1 966	20	2 916	23	2 788	27	2 900	30	3 192	30	2 609	27	2 796	29	3 430
Total	72	6 215	98	10 326	114	10 804	142	11 565	161	12 829	174	12 234	190	15 101	193	18 264

Abbreviations

CityU City University of Hong Kong
HKBU Hong Kong Baptist University
LU Lingnan University

HKIEd The Hong Kong Institute of Education
PolyU The Hong Kong Polytechnic University
HKUST The Hong Kong University of Science and Technology
HKU University of Hong Kong

Note:

Figures for part-time programmes are not available. HKUST did not offer such programme.

Full-time undergraduate programmes

<i>Institution</i>	<i>2006-2007</i>		<i>2007-2008</i>		<i>2008-2009</i>		<i>2009-2010</i>		<i>2010-2011</i>	
	<i>Pro-grammes</i>	<i>Intakes</i>	<i>Pro-grammes</i>	<i>Intakes</i>	<i>Pro-grammes</i>	<i>Intakes</i>	<i>Pro-grammes</i>	<i>Intakes</i>	<i>Pro-grammes</i>	<i>Intakes</i>
<i>First year intake:</i>										
CityU	2	34	3	78	3	25				
HKIED					1	34	1	33	1	41
PolyU			1	24	1	18	1	11		
Sub-total	2	34	4	102	5	77	2	44	1	41
<i>Senior year intake/Top-up Degree:</i>										
CityU					4	202	4	255	5	346
HKBU					3	215	6	451	7	494
LU					9	29	9	59	9	40
HKIED									1	24
PolyU					15	763	16	1 239	17	1 391
Sub-total					31	1 209	35	2 004	39	2 295
Total	2	34	4	102	36	1 286	37	2 048	40	2 336

Note:

Figures of part-time programmes are not available. CUHK, the HKU and HKUST did not offer such programme.

TPg programmes

(2010-2011)*

<i>Institution</i>	<i>Number of programmes[#]</i>	<i>Intakes</i>
CityU	57	2 650
HKBU	34	1 493
LU	7	287
CUHK	113	4 713
HKIED	6	443
PolyU	79	3 457
HKUST	26	1 365
HKU	112	3 755
Total	434	18 163

Notes:

If a programme within an institution offers both full-time and part-time modes, number of programmes count once only.

* Data of 2009-2010 academic year or before are not available.

**Tuition fee income from self-financed programmes offered by UGC-funded institutions proper,
community colleges and other self-financed education arms**

Annex C

(\$million)	CityU		HKBU		LU		CUHK (Note 1)		HKIEd (Note 2)		PolyU (Note 3)		HKUST		HKU				
	08/09	09/10	10/11	08/09	09/10	10/11	08/09	09/10	10/11	08/09	09/10	10/11	08/09	09/10	10/11	08/09	09/10	10/11	
Institutions proper:																			
SD	-	-	-	96	128	172	-	-	189	200	214	6	4	-	-	-	-	-	
UG	194	163	128	83	110	129	6	7	8	17	20	20	2	5	11	227	239	248	
Tpg	191	222	263	129	146	160	17	19	22	335	427	497	24	35	44	292	315	334	206
Rpg	-	-	-	-	-	-	-	-	1	1	1	-	-	-	-	-	-	-	-
Total	385	391	308	308	384	461	23	26	30	542	648	732	32	44	55	519	554	582	206
Community colleges:																			
SD	256	270	281	-	-	-	35	60	94	-	-	69	78	70	209	241	305	-	-
UG	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tpg	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Rpg	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	258	270	281	-	-	-	35	60	94	-	-	69	78	70	209	241	305	-	-
Other self-financed education arms:																			
SD	2	1	2	-	-	-	43	56	82	-	-	-	-	-	1	-	-	-	-
UG	152	228	238	-	-	-	2	2	3	-	-	-	-	-	93	111	134	-	-
Tpg	19	24	28	-	-	-	-	1	-	-	-	-	-	-	14	15	13	-	-
Rpg	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	173	253	268	-	-	-	45	58	86	-	-	-	-	-	108	126	147	-	-

Abbreviations

SD	Sub-degree	CityU	City University of Hong Kong	HKIEd	The Hong Kong Institute of Education
UG	Undergraduate	HKBU	Hong Kong Baptist University	PolyU	The Hong Kong Polytechnic University
Tpg	Taught postgraduate	LU	Lingnan University	HKUST	The Hong Kong University of Science and Technology
Rpg	Research postgraduate	CUHK	The Chinese University of Hong Kong	HKU	University of Hong Kong

Notes:

- (1) According to CUHK's reply,

 - tuition fees from part-time research postgraduates are not included;
 - school of Continuing and Professional Studies is operative as part of the institution proper and its financial results have been included in the figures of CUHK; and
 - The Chinese University of Hong Kong-Tung Wah Group of Hospitals Community College Limited is an associate of the CUHK and is a separate legal entity truly independent of CUHK, therefore the financial information is not available.
- (2) According to HKIEd's reply, the tuition fee income of Institution Proper is from award-bearing self-financed programmes only and income from tendered courses and consultancy works is not included.
- (3) Tuition fee income from non-award bearing programmes are excluded.

Annex D

Number of staff engaged in self-financed programmes offered by UGC-funded institutions proper, community colleges and other self-financed education arms, and related staff costs

A. Institutions proper:

	CityU (Note 2)		HKBU (Note 3)		LU		CUHK (Note 4)		HKIEd (Note 5)		PolyU (Note 6)		HKUST		HKU (Note 7)	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Number of staff (Note 1)																
2008/09 academic year:																
Academic staff	279	66	222	247	4	2	114	531	0	24	158	841	2	0		
Non-academic staff	N/A		291	-	11	0	290	13	3	14	N/A		51	-		
Total			513	247	15	2	404	544	3	38			53	0		
2009/10 academic year:																
Academic staff	272	67	311	232	5	2	131	588	3	23	173	929	1	2		
Non-academic staff	N/A		296	-	11	0	317	12	8	7	N/A		61	-		
Total			607	232	16	2	448	600	11	30			62	2		
2010/11 academic year:																
Academic staff	259	67	335	209	4	3	137	620	2	31	188	974	1	1		
Non-academic staff	N/A		309	-	13	0	327	17	14	6	N/A		59	-		
Total			644	209	17	3	464	637	16	37			60	1		
Staff costs (\$ million)																
2008/09 academic year:																
Academic staff	151		89		5		138		20		215		37			
Non-academic staff	15		32		2		75		5		38		17			
Total	166		121		7		213		25		253		54			
2009/10 academic year:																
Academic staff	151		101		6		143		21		229		38			
Non-academic staff	15		34		2		81		4		39		23			
Total	166		135		8		224		25		268		61			
2010/11 academic year:																
Academic staff	151		117		6		156		27		233		40			
Non-academic staff	19		40		2		88		6		47		19			
Total	170		157		8		244		33		280		59			

B. Community colleges:

	CityU (Note 2)		HKBU		LU		CUHK (Note 4)		HKIED (Note 5)		PolyU (Note 6)		HKUST		HKU (Note 7)	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Number of staff (Note 1)																
2008/09 academic year:																
Academic staff	131	42	-	-	26	1	-	-	39	11	148	80	-	-	-	-
Non-academic staff	64	-	-	-	22	0	-	-	31	2	71	613	-	-	-	-
Total	195	42	-	-	48	1	-	-	70	13	219	693	-	-	-	-
2009/10 academic year:																
Academic staff	138	39	-	-	38	4	-	-	40	13	170	192	-	-	-	-
Non-academic staff	65	-	-	-	28	1	-	-	28	1	74	467	-	-	-	-
Total	203	39	-	-	66	5	-	-	68	14	244	659	-	-	-	-
2010/11 academic year:																
Academic staff	140	42	-	-	52	12	-	-	35	13	195	191	-	-	-	-
Non-academic staff	66	-	-	-	36	1	-	-	28	2	75	460	-	-	-	-
Total	206	42	-	-	88	13	-	-	63	15	270	651	-	-	-	-
Staff costs (\$ million)																
2008/09 academic year:																
Academic staff	83	-	-	-	10	-	-	-	24	-	78	-	-	-	-	-
Non-academic staff	17	-	-	-	6	-	-	-	6	-	23	-	-	-	-	-
Total	100	-	-	-	16	-	-	-	30	-	101	-	-	-	-	-
2009/10 academic year:																
Academic staff	83	-	-	-	16	-	-	-	26	-	99	-	-	-	-	-
Non-academic staff	18	-	-	-	7	-	-	-	7	-	24	-	-	-	-	-
Total	101	-	-	-	23	-	-	-	33	-	123	-	-	-	-	-
2010/11 academic year:																
Academic staff	84	-	-	-	26	-	-	-	24	-	110	-	-	-	-	-
Non-academic staff	19	-	-	-	9	-	-	-	6	-	25	-	-	-	-	-
Total	103	-	-	-	35	-	-	-	30	-	135	-	-	-	-	-

C. Other self-financed education arms:

	CityU (Note 8)		HKBU		LU		CUHK		HKIEd		PolyU (Note 9)		HKUST		HKU (Note 7)	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Number of staff (Note 1)																
2008/09 academic year:																
Academic staff	31	56	-	-	28	14	-	-	-	-	26	134	-	-	-	-
Non-academic staff	-	-	-	-	31	12	-	-	-	-	52	79	-	-	-	-
Total	31	56	-	-	59	26	-	-	-	-	78	213	-	-	-	-
2009/10 academic year:																
Academic staff	41	108	-	-	44	10	-	-	-	-	36	114	-	-	-	-
Non-academic staff	-	-	-	-	33	6	-	-	-	-	54	78	-	-	-	-
Total	41	108	-	-	77	16	-	-	-	-	90	192	-	-	-	-
2010/11 academic year:																
Academic staff	41	149	-	-	50	22	-	-	-	-	40	112	-	-	-	-
Non-academic staff	-	-	-	-	45	6	-	-	-	-	52	80	-	-	-	-
Total	41	149	-	-	95	28	-	-	-	-	92	192	-	-	-	-
Staff costs (\$ million)																
2008/09 academic year:																
Academic staff	33		-	-	14		-	-	-	-	23		-	-	-	316
Non-academic staff	N/A		-	-	7		-	-	-	-	18		-	-	-	107
Total	33		-	-	21		-	-	-	-	41		-	-	-	423
2009/10 academic year:																
Academic staff	50		-	-	17		-	-	-	-	30		-	-	-	295
Non-academic staff	N/A		-	-	7		-	-	-	-	18		-	-	-	112
Total	50		-	-	24		-	-	-	-	48		-	-	-	407
2010/11 academic year:																
Academic staff	56		-	-	25		-	-	-	-	35		-	-	-	296
Non-academic staff	N/A		-	-	8		-	-	-	-	19		-	-	-	114
Total	56		-	-	33		-	-	-	-	54		-	-	-	410

Notes

- Note 1: Staff number is reported in full-time equivalent (FTE) unless otherwise stated.
- Note 2: According to CityU's reply, non-academic staff are employed to support both UGC-funded and self-financed activities, therefore there is no readily available information about staff number. As regards non-academic staff costs, CityU includes staff costs for non-academic staff in academic departments only in the above table, whereas those related to central administration offices are included in the overhead charged by the University Central as reported at Annex E.
- Note 3: HKBU does not include number of UGC-funded staff engaged in teaching self-financed programmes in the above table as the information is not readily available.
- Note 4: CUHK's staff number represents estimated headcount as at 31 December each year. Estimation has been made to derive the whole population as it is unable to ascertain the number of some part-time instructors and teachers from the system. Staff costs for full-time and part-time staff are reported in aggregate as CUHK's accounting system does not differentiate between the two. Other teaching costs comprising teaching service costs, co-teaching charges and in-load teaching costs paid to the University proper are not reported in the above table. The Chinese University of Hong Kong – Tung Wah Group of Hospitals Community College Limited is a separate legal entity (an associate) truly independent of CUHK, and hence the financial information is not available.
- Note 5: HKIEd reports number of staff who are engaged in teaching award-bearing self-financed programmes only. HKIEd does not have a community college, but its School of Continuing and Professional Education (SCPE) offers programmes at sub-degree level. For the sake of completeness, staff number and staff costs are included in the above table.
- Note 6: PolyU reports number of full-time staff in FTE and part-time staff on a headcount basis. Information about number of non-academic staff is not available as relevant costs are charged on recovery basis. As for some outsourced central administrative services, the related number and costs of non-academic staff are not included in the above table.
- Note 7: According to HKU's reply, information about staff number, both academic and non-academic, is not readily available. HKU SPACE Community College is part of HKU SPACE (School of Professional and Continuing Education), and its staff costs are included in other self-financed education arms.
- Note 8: According to CityU's reply, non-academic staff costs are partly included in the Administration Office of the self-financed education arms and partly included in the overhead charged by the University Central as reported at Annex F.
- Note 9: PolyU reports number of full-time staff in FTE and part-time staff on a headcount basis. As for some outsourced central administrative services, the related number and costs of non-academic staff are not included in the above table.

Annex E

Surplus/(Deficit) from self-financed programmes offered by institutions proper,
community colleges and other self-financed education arms

A. Institutions proper:

	<i>CityU</i>	<i>HKBU</i>	<i>LU</i>	<i>CUHK</i>	<i>HKIEd⁽¹⁾</i>	<i>PolyU</i>	<i>HKUST</i>	<i>HKU</i>
Surplus/ (Deficit) in \$ million:								
2008-2009 academic year	86	(137)	10	23	(2)	92	52	95
2009-2010 academic year	88	(9)	10	127	3	107	93	116
2010-2011 academic year	81	72	12	160	4	107	53	154
Surplus is kept by	Academic units	Respective budget controllers of the programmes	Departments and University Central	Faculty	Institute Central, faculties and departments	Department/ Faculty/ Central	University/ School/ Department	Faculty/ Department

B. Community colleges:

	<i>CityU</i>	<i>HKBU</i>	<i>LU</i>	<i>CUHK</i>	<i>HKIEd⁽²⁾</i>	<i>PolyU</i>	<i>HKUST</i>	<i>HKU</i>
Surplus/ (Deficit) in \$ million:								
2008-2009 academic year	59	-	(6)	-	4	(41)	-	-
2009-2010 academic year	65	-	3	-	7	30	-	-

	<i>CityU</i>	<i>HKBU</i>	<i>LU</i>	<i>CUHK</i>	<i>HKIED</i> ⁽²⁾	<i>PolyU</i>	<i>HKUST</i>	<i>HKU</i>
2010-2011 academic year	85	-	18	-	9	52	-	-
Surplus is kept by	Community college	N/A	Community college	N/A	School of Continuing and Professional Education Limited	Community college/ University	N/A	N/A

C. Other self-financed education arms:

	<i>CityU</i>	<i>HKBU</i>	<i>LU</i> ⁽³⁾	<i>CUHK</i>	<i>HKIED</i>	<i>PolyU</i> ⁽⁴⁾	<i>HKUST</i>	<i>HKU</i>
Surplus/ (Deficit) in \$ million:								
2008-2009 academic year	31	-	2	-	-	(10)	-	26
2009-2010 academic year	63	-	3	-	-	20	-	45
2010-2011 academic year	59	-	11	-	-	34	-	44
Surplus is kept by	University	N/A	LIFE and University Central	N/A	N/A	SPEED/ HKCyberU/ University	N/A	HKU SPACE

Notes:

- (1) HKIED reports surplus from award-bearing self-financed programmes only. Institute Central has not shared the surplus since 2009-2010.
- (2) HKIED reports surplus from all programmes under SCPE, which are not limited to accredited programmes.
- (3) LU reports surplus from Lingnan Institute of Further Education (LIFE).
- (4) PolyU reports surplus from School of Professional Education and Executive Development (SPEED) and the Hong Kong CyberU Limited (HKCyberU).
- (5) The deployment of surplus arising from its self-financing activities is subject to individual institutions' internal policies and guidelines.

Fees paid to UGC-funded institutions proper by their academic departments,
community colleges and other self-financed education arms offering
self-financed programmes

Total amount of fees received from academic departments of the institutions proper:

(\$ million)	CityU	HKBU	LU	CUHK ⁽¹⁾	HKIEd	PolyU	HKUST ⁽²⁾	HKU
<i>2008-2009 academic year:</i>								
Academic and teaching staff costs	149	13	-	60	13	215	N/A	N/A
Use of campus facilities	116	4	-	8	5	139		
Central administrative services		15	4	78				
Academic support services		17	-	24	-			
Others		1	-	-	1			
Total	265	50	4	170	19	429	39	109
<i>2009-2010 academic year:</i>								
Academic and teaching staff costs	149	19	-	78	14	229	N/A	N/A
Use of campus facilities	116	5	-	12	10	151		
Central administrative services		17	5	114				
Academic support services		22	-	36	-			
Others		2	-	-	1			
Total	265	65	5	240	25	459	49	136

(\$ million)	CityU	HKBU	LU	CUHK ⁽¹⁾	HKIEd	PolyU	HKUST ⁽²⁾	HKU
<i>2010-2011 academic year:</i>								
Academic and teaching staff costs	149	26	-	75	23	233	N/A	N/A
Use of campus facilities	117	5	-	14	14	159		
Central administrative services		21	5	136				
Academic support services		26	-	31	-			
Others		2	-	-	2			
Total	266	80	5	256	39	484	75	145

Total amount of fees received from community colleges:

(\$ million)	CityU	HKBU	LU	CUHK	HKIEd	PolyU	HKUST	HKU
<i>2008-2009 academic year:</i>								
Academic and teaching staff costs	4	-	-	-	4	6	-	-
Use of campus facilities	80	-	1	-	5	68	-	-
Central administrative services		-	7	10	2	4	-	-
Academic support services		-	2	-	2	11	-	-
Others		-	-	-	2	-	-	-
Total	84	-	10	10	15	89	-	-

<i>(\$ million)</i>	<i>CityU</i>	<i>HKBU</i>	<i>LU</i>	<i>CUHK</i>	<i>HKIEd</i>	<i>PolyU</i>	<i>HKUST</i>	<i>HKU</i>
<i>2009-2010 academic year:</i>								
Academic and teaching staff costs	3	-	-	-	-	4	-	-
Use of campus facilities	83	-	1	-	5	73	-	-
Central administrative services		-	12	10	2	5	-	-
Academic support services		-	2	-	2	12	-	-
Others		-	-	-	1	-	-	-
Total	86	-	15	10	10	94	-	-
<i>2010-2011 academic year:</i>								
Academic and teaching staff costs	-	-	-	-	-	2	-	-
Use of campus facilities	83	-	1	-	6	73	-	-
Central administrative services		-	19	17	3	5	-	-
Academic support services		-	4	-	2	18	-	-
Others		-	-	-	-	-	-	-
Total	83	-	24	17	11	98	-	-

Total amount of fees received from other self-financed education arms:

<i>(\$ million)</i>	<i>CityU</i>	<i>HKBU</i>	<i>LU</i>	<i>CUHK</i>	<i>HKIEd</i>	<i>PolyU</i>	<i>HKUST</i>	<i>HKU</i>
<i>2008-2009 academic year:</i>								
Academic and teaching staff costs	-	-	-	-	-	15	-	15
Use of campus facilities	20	-	-	-	-	12	-	24
Central administrative services		-	9	-	-	2	-	18
Academic support services		-	2	-	-	8	-	-
Others		-	-	-	-	-	-	27
Total	20	-	11	-	-	37	-	84
<i>2009-2010 academic year:</i>								
Academic and teaching staff costs	-	-	-	-	-	15	-	14
Use of campus facilities	26	-	-	-	-	5	-	22
Central administrative services		-	12	-	-	3	-	19
Academic support services		-	3	-	-	8	-	-
Others		-	-	-	-	-	-	27
Total	26	-	15	-	-	31	-	82

(\$ million)	CityU	HKBU	LU	CUHK	HKIEd	PolyU	HKUST	HKU
2010-2011 academic year:								
Academic and teaching staff costs	-	-	-	-	-	19	-	11
Use of campus facilities		-	-	-	-	5	-	22
Central administrative services	27	-	17	-	-	3	-	23
Academic support services		-	2	-	-	10	-	-
Others		-	-	-	-	-	-	26
Total	27	-	19	-	-	37	-	82

Notes:

- (1) According to CUHK's reply, The Chinese University of Hong Kong-Tung Wah Group of Hospitals Community College Limited is an associate of the CUHK and is a separate legal entity truly independent of CUHK, therefore the financial information is not available.
- (2) According to HKUST's reply, it is an all-inclusive recovery without any breakdowns into respective cost components.

Glass Recovery and Recycling

9. **MR PAUL TSE** (in Chinese): *President, regarding the recovery of discarded glass products, will the Government inform this Council:*

- (a) *of the policies and measures in place to encourage and implement the recovery of discarded glass products at present;*
- (b) *whether it has collated statistics or made assessment on the daily amount of glass products discarded in Hong Kong at present and the space at landfills taken up by such wastes every year;*

- (c) *whether it has conducted studies on advocating and encouraging operators of tourist attractions and restaurants to recover on their own initiatives glass bottles for recycling (for example, producing environmental-friendly construction materials); if so, of the study results; if not, whether it can conduct such studies expeditiously; and*
- (d) *whether it has studied the reasons why glass-related environmental protection industries are not popular in Hong Kong; whether it has considered assisting the glass recovery and recycling industry by offering tax concession or other financial assistance?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

- (a) and (b)

In 2010, an average of 374 tonnes of waste glass was disposed of at landfills in Hong Kong every day, which accounted for about 4.1% of the total disposal of municipal solid waste. Eighty percent of such waste glass was waste glass containers. All along the Government has been encouraging different sectors to participate in separation of waste for recycling (including waste glass containers) so as to reduce waste and promote the recycling of resources. Our policy is to encourage and practise the use of products containing recycled glass through the promotion of green procurement. We also aim to engage different stakeholders to share their eco-responsibility for the proper handling of waste glass containers. To this end, we have been progressively developing voluntary glass container recycling programmes from which we could gather relevant experience. We also work with the trades and relevant organizations to promote the wider use of products containing recycled glass.

- (c) To encourage the community at large to participate in the separation of glass containers for recycling, the Government has been discussing with the relevant trades and other organizations interested in promoting recycling, with a view to assisting them in implementing glass container recycling programmes. Glass containers collected through such programmes are mainly recycled

for use as raw materials in the production of green building materials.

To date, a number of glass container recycling programmes have been successfully launched. Regarding the hotel and catering industries:

- (i) The Environmental Protection Department (EPD) collaborated with the Hong Kong Hotels Association to launch the Glass Container Recycling Programme for the Hotel Sector in 2008. Over 1 500 tonnes of glass have been recycled so far.
- (ii) Encouraged by the EPD, many hotels and large catering service providers, such as the Hong Kong Jockey Club and the Hong Kong Convention and Exhibition Centre, have started their own glass container recycling initiatives. Glass containers collected are sent to local recycling facilities for the production of eco-paving blocks.

Some local non-profit-making organizations (for example, the Hong Chi Association and the Hong Kong Dumper Truck Drivers Association) also organize glass container recycling activities at the district level and at locations where pubs and restaurants abound. Some of these recycling programmes receive funding support from the Environment and Conservation Fund and the Hong Kong Jockey Club Charities Trust. The EPD offers advice on and assists with the arrangements for glass recycling.

To further promote the recycling of glass containers in Hong Kong, the EPD joined hand with the Hong Kong Housing Authority to launch the Pilot Programme on Source Separation of Glass Bottles at six public rental housing estates in East Kowloon in late 2010. Glass container recycling bins were installed alongside the three-coloured waste separation bins in the participating housing estates to facilitate the residents in separation of glass containers from other daily waste for recycling. We will keep the collection and operational experience in view so as to examine the possibility of extending the separation programme to other housing estates.

- (d) The main obstacles to the promotion of recovery of waste glass in Hong Kong are the absence of local glass manufacturing plants and the lack of recycling facilities to absorb large quantities of waste glass. Export to other places on the other hand involves high transport costs. To facilitate the recycling of waste glass, the EPD funded a research by a local university in 2004 under which waste glass containers were crushed into small granules for the production of eco-paving blocks. This has successfully developed a new recycling outlet for local glass containers. The Government is now actively pursuing the wider use of eco-paving blocks containing recycled glass in Government works projects under the green procurement policy. For example, the Highways Department has already stipulated in their public road maintenance contracts that priority should be given to the use of eco-paving blocks containing recycled glass for paving concrete block pavements since October 2010. The Housing Department, the Civil Engineering and Development Department and the Architectural Services Department have also used these eco-paving blocks in suitable projects. In addition, the Government will actively explore and try out other potential works materials containing waste glass. This will not only relieve the pressure on landfills, but will also serve as an example to encourage more scientific research in the use of waste glass as works materials for projects. Experience so gathered can also serve as reference for private works projects. We hope that the market can ultimately create enough economic incentives to sustain the development of industries related to the local recycling and reuse of glass.

Education Support for Children of Native-speaking English Teachers

10. **MISS TANYA CHAN** (in Chinese): *President, recently, I have received a complaint from a native-speaking English teacher (NET) who teaches in Hong Kong that when she applied for her children for admission into the English Schools Foundation schools, they did not offer her children any chance of interview, thereby causing difficulties for her children to study in Hong Kong. Regarding the support currently provided for children of NETs to come to Hong Kong to pursue their study, will the Government inform this Council:*

- (a) *whether it knows the current numbers of NETs teaching in various primary and secondary schools in Hong Kong; among them, the number of teachers who came to Hong Kong with school-age children; the number of such children; the respective numbers of children of NETs currently studying in international schools and mainstream schools;*
- (b) *given that the Education Bureau is responsible for implementing the NET Scheme in various primary and secondary schools, whether the Education Bureau, in granting approval for the teachers concerned to come to Hong Kong to teach, takes into account if there are sufficient international school places in Hong Kong for the children of those teachers; if it does, can the authorities explain why children of some NETs have difficulties to attend school in Hong Kong; if not, of the reasons for that;*
- (c) *whether the authorities had received any request for assistance from NETs concerning difficulties for their children to attend school in Hong Kong in the past three years; if they had, of the number of such cases and details of the follow-up work; whether the authorities currently provide education support services for children of NETs; if they do, of the details; if not, whether the authorities will consider launching such services; if not, of the reasons for that; and*
- (d) *given the present tight supply of international school places, whether the authorities have assessed the impact of such circumstances on attracting NETs to come to Hong Kong to teach; if they have, of the assessment results; if not, the reasons for that; whether the authorities will take concrete measures to ensure that children of all NETs who come to Hong Kong to teach will be given international school places; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): President, our reply to the Member's question concerning the support for children of the NETs to study in Hong Kong is as follows:

- (a) In the 2011-2012 school year, 415 and 457 NETs are appointed under the NET Scheme by secondary and primary schools

respectively. However, the Education Bureau does not have the number of NETs who came to Hong Kong under the NET Scheme with school-age children or the number of such children. Nor do we have any information about the schools that such children attend in Hong Kong.

- (b) Currently, public sector secondary and primary schools may recruit NETs through the Education Bureau or by themselves. In other words, not all NETs appointed under the NET Scheme come to teach in Hong Kong through the Education Bureau's arrangements. Having regard to the principle of equal opportunities, the Education Bureau does not require applicants for NET posts to disclose their family status in the recruitment exercise, nor should the applicants' chance of appointment be affected by their need to bring along their school-age children to Hong Kong. Moreover, NETs who choose to accept appointment under the NET Scheme should be fully aware of the pay and benefits under the Scheme as well as the living situation of Hong Kong. To our knowledge, NETs who come to Hong Kong with their children do not necessarily opt for international or the English Schools Foundation schools for their children. In fact, some NETs do send their children to English-medium schools in the public sector (including DSS schools).
- (c) We have always provided NETs with information on local education for non-Chinese speaking children through various channels, including liaison meetings between the Education Bureau and the Native English Speaking Teachers' Association, and relayed their requests and concerns to the relevant education institutions. In the past three years, the Education Bureau did not receive any request from individual NETs for assistance in their children's education in Hong Kong.
- (d) It is the choice of individual NETs to send their children to international schools. The Education Bureau cannot guarantee that the NETs' children will be admitted to certain schools. As far as we know, at present some international schools still have vacant school places. Since its introduction in 1998, the NET Scheme, with its remuneration package, has successfully attracted quite a number of

NETs of different nationalities to teach in Hong Kong. Starting from the 2005-2006 school year, we have introduced a Retention Incentive for eligible NETs to encourage them to continue their service in Hong Kong. Statistics of recent years show that the wastage of NETs has been stable.

Debundling of Textbooks and Teaching/Learning Materials for Pricing

11. **MS STARRY LEE** (in Chinese): *President, in 2009, the Education Bureau requested textbook publishers to debundle textbooks and teaching/learning materials for pricing and sale, but this has still not been implemented after years of tug-of-war. The Secretary for Education issued an "ultimatum" to the trade at the end of May this year requesting the publishers to complete the task of debundling within one year, otherwise the Education Bureau would tender out the publication of textbooks and teaching materials to introduce competition. The Education Bureau has also set up a task force to review teaching and learning materials (the task force), which is responsible for examining issues arising from the policy of debundling textbooks and teaching/learning materials for pricing. In a joint statement issued in May this year, two major textbook publishers counter-proposed a time frame of three years for debundling textbooks and teaching materials for pricing. Moreover, it has been reported that the task force considers that the tendering approach is full of problems and it is inclined to recommend the Education Bureau to give up the tendering approach. In this connection, will the Government inform this Council:*

- (a) *of the counter-measures adopted by the Education Bureau in response to textbook publishers rejecting its request to complete the task of debundling the textbooks and teaching materials for pricing within one year;*
- (b) *of the views of the task force on the Education Bureau tendering out the publication of textbooks and teaching materials; of other methods, apart from tendering, to be considered by the task force for introducing competition to the textbook and teaching materials market with a view to reducing textbook prices;*

- (c) *when the task force will complete its final report and submit it to the Secretary for Education, and when the authorities will publish the report;*
- (d) *whether the authorities will simplify the procedure and shorten the time for vetting and approving textbooks in order to introduce more competitors; if they will, of the details; if not, the reasons for that; and*
- (e) *whether the authorities will take the initiative to co-ordinate the purchasing of teaching materials for the schools in need; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): President,

(a) and (c)

The Education Bureau finds it unreasonable and regrettable that publishers have not yet provided separate pricing for textbooks and other teaching materials in the 2011-2012 school year, and have maintained that they need three more years to fully implement the debundling policy. In the light of this, in June this year, the Education Bureau requested publishers to price separately the teaching materials that are urgently needed by teachers, including teacher's books, question banks and audio CDs, within one year.

As the distortion of the textbook market is becoming more serious, in June this year, the Education Bureau set up a task force comprising different stakeholders to examine and review various issues arising from the "Policy of Debundling Textbooks and Teaching/Learning Materials for Pricing", in particular the operation of the Recommended Textbook List, as well as other measures concerning the supply of learning and teaching materials with a view to providing schools with quality and value-for-money materials. The task force will submit its report to the Secretary for Education by December this year. The Education Bureau will then publish the report.

- (b) The task force has deliberated on how to introduce competition into the textbook and teaching materials market. Details of the recommendations will be included in the report.
- (d) The task force has discussed how to enhance the textbook reviewing procedure and made relevant recommendations. Details will be provided in the report.
- (e) It is the Education Bureau's practice to allocate block grants to all public sector schools so that they can, in accordance with their actual needs, flexibly use the funding to purchase teaching materials and meet daily operational needs. Starting from this school year, hyperlinks have been added to the Recommended Textbook List to facilitate teachers searching for the web-based learning and teaching resources developed by the Education Bureau and textbook-related learning and teaching materials. Over the years, the Education Bureau has produced a large quantity of web-based learning and teaching resources, and is currently setting up a one-stop portal for disseminating various learning and teaching resources developed by the Education Bureau to facilitate teachers' use of these resources in order to reduce their dependence on learning and teaching materials produced by publishers. It is expected that the one-stop portal will be fully developed by the end of 2011.

World Bank Report "Doing Business 2012"

12. **MR ABRAHAM SHEK:** *President, the World Bank Report "Doing Business 2012" assesses regulations affecting domestic firms in 183 economies from June 2010 to May 2011 and ranks the economies in 10 areas of business regulation including "Registering Property" and "Resolving Insolvency". In this report, Hong Kong once again ranks second in the overall "Ease of Doing Business" ranking. In this connection, will the Government inform this Council:*

- (a) *given that Hong Kong ranks 57th in the area of "Registering Property" and the ranking is relatively low as compared with that in other areas, what special measures the Government will introduce to shorten the number of days required for the execution of Sale and Purchase Agreements as well as filing the Agreements at the Land Registry (LR); and*

- (b) *given that Hong Kong ranks 16th in the area of "Resolving Insolvency", and the ranking has dropped as compared with that of 15th last year, what measures the Government will introduce to reduce the cost required to recover debts, increase the debt recovery rate and shorten the time involved in insolvency proceedings?*

SECRETARY FOR DEVELOPMENT: President, Hong Kong remains as the second easiest place to do business in the world according to the World Bank's Doing Business 2012 Report (the Report) released on 20 October 2011. The Report compares the ease of doing business in 183 economies by focusing on 10 constituent indicators. The Report is meant to encourage reform and measures to facilitate business and reduce excessive regulation.

Hong Kong has become a top economy on the ease of doing business in recent years. The Government has been studying the Doing Business Report carefully to identify scope for improvement and continues to improve our business environment and competitiveness through regulatory reforms, notably in "dealing with construction permits", "starting a business" and "getting electricity". We will continue to explore ways to improve the business environment by partnering with the business sector to ensure that regulation is appropriate.

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

- (a) According to the Report, 36 days are required for registering property in Hong Kong. Regarding the procedures directly under the control of government departments, namely, conducting a land search, registering the sale and purchase agreement with the LR, payment of stamp duty with the Stamp Office and registering the assignment document, the time taken is four days according to the methodology of the World Bank survey, and can in actual practice take a shorter time as some procedures can be done concurrently. We compare favourably with other advanced economies in terms of service accessibility, efficiency and costs of service. The remaining time for property registration is attributable to conveyancing procedures taken by solicitors, for example, to prepare and execute the sale and purchase agreement, to examine title deeds and perform title requisitions, and to prepare and execute the deed of assignment.

As part of its ongoing efforts to improve service quality and efficiency, the LR launched a new search system in August 2010 with online search service extended from 16 hours to 20 hours daily to further facilitate property transaction. The LR will also release an enhanced version of the e-memorial form in early 2012. The enhanced form will feature automated functions to promote efficiency and accuracy in completion, which helps shorten the time required for processing property transactions.

The Government will continue to explore ways to further improve the property registration mechanism. In particular, we have been working to replace the current deeds registration system with a title registration system commonly adopted in other common law jurisdictions. The deeds registration system now in use in Hong Kong requires examination of title deeds by solicitors. Under the title registration system, the title register will be conclusive evidence of the title to the property and hence conveyancing procedures will be simplified. We are working closely with the stakeholders on the details of the proposed system with a view to introducing the new regime as soon as possible. We will consult the Legislative Council on the necessary legislative amendments as and when appropriate.

- (b) The ranking of Hong Kong in "resolving insolvency" slips slightly from 15th to 16th in the Report largely due to the improvement in the performance of other economies in that area. To ensure that Hong Kong's corporate insolvency regime keeps up with international developments and to consolidate Hong Kong's status as an international financial centre, the Financial Services and the Treasury Bureau (FSTB) has recently rolled out a new exercise to modernize Hong Kong's corporate insolvency law. The exercise will aim at streamlining and rationalizing company winding-up procedures having regard to international experience, with a view to facilitating more efficient administration of winding-up and increasing protection of creditors. The FSTB aims at completing the modernization exercise within the 2012-2016 Legislative Council term. The Panel on Financial Affairs has been consulted on the proposed exercise at its meeting of 7 November 2011.

Fire Safety of Old Buildings

13. **MR CHAN HAK-KAN** (in Chinese): *President, I have recently received requests for assistance from a large number of households in the old buildings in Shek Wu Hui, Luen Wo Hui and Tai Po Market, claiming that the Fire Services Department (FSD) is gradually instituting prosecutions against them on the grounds of violations of the Fire Safety (Buildings) Ordinance (Cap. 572) (the Ordinance). They point out that the structural problems and building design constraints of these old buildings make it difficult to install fire service facilities such as water tanks and hose reels, and so on, as required by law. On the other hand, the absence of an owners' corporation (OC) in these old buildings and fragmented ownerships make it difficult for the households to comply with the statutory directions under the Ordinance. In this connection, will the Government inform this Council:*

- (a) of the number of prosecutions instituted by the authorities for violating the Ordinance since its implementation in 2007, as well as the penalties imposed on the convicted persons;*
- (b) given that the authorities indicated that they will adopt "a flexible and pragmatic approach" in enforcing the Ordinance, whether the FSD and the Buildings Department (BD) have formulated any internal guideline or code of practice to instruct their front-line staff how to adopt "a flexible and pragmatic approach" in handling the relevant cases;*
- (c) among those cases in respect of which Fire Safety Directions (FS Directions) have been issued since 2007, of the number of cases in which applications were submitted for extending the deadlines for compliance with directions and the main reasons for submitting applications; and the number of applications approved by the authorities; whether they have put in place any appeal mechanism;*
- (d) given that government departments or organizations such as the BD and the Hong Kong Housing Society (HKHS) are currently operating various schemes to provide subsidies and loans to property owners for building maintenance (including fire safety improvement works in buildings, as well as the provision and maintenance of fire services installation and equipment in buildings,*

and so on), whether it knows, among the applications received by the BD and the HKHS in respect of such schemes since 2007, the number of applications submitted for the purpose of carrying out the statutory works stipulated under the Ordinance; the respective average amounts of subsidies and loans approved; whether it will consider introducing a dedicated scheme to provide subsidies to property owners to carry out the statutory works stipulated under the Ordinance;

- (e) whether it has any plan to review the Ordinance, and give more exemptions to older buildings in response to the views of the aforesaid households; if it has, of the details; if not, the reasons for that; and*

- (f) whether it will in the near future install more public fire service facilities in the aforesaid areas or other areas with more old buildings, with a view to ensuring the safety of the residents?*

SECRETARY FOR SECURITY (in Chinese): President, the Ordinance came into operation on 1 July 2007. The purpose of the Ordinance is to provide occupiers, users and visitors of composite and domestic buildings constructed on or before 1 March 1987 with fire protection which would better meet the needs of today's society. There is a significant difference between the fire safety requirements of those buildings at the time of their construction and the present standards. For instance, installation of an automatic sprinkler system, and so on, in the commercial portions of composite buildings was not required by law at that time. Such buildings are, therefore, not up to the present fire safety standards.

Since the Ordinance came into operation, the FSD and the BD have been conducting joint inspections on target buildings, and issuing FS Directions to owners and occupiers with regard to fire service installations and equipment as well as relevant fire safety constructions in these buildings with a view to enhancing basic fire protection measures. The Director of Building is the enforcement authority in relation to fire safety measures in the planning, design and construction of buildings, while the Director of Fire Services is the enforcement authority in relation to the provision or improvement of fire service installations or equipment.

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

- (a) Since the implementation of the Ordinance and up to the end of October 2011, there were eight prosecution cases against building/residential flat owners or occupiers who failed to comply with the FS Directions. Convicted persons/OCs were fined \$2,000 to \$2,500. In addition, the Court has issued Fire Safety Compliance Orders to some of the convicted persons/OCs, directing their full compliance with the requirements of FS Directions by the deadlines set in the Orders.

(b) and (c)

The enforcement authorities are aware that individual buildings might not be able to fully comply with the requirements due to structural or spatial constraints. On these special circumstances, the BD and the FSD have formulated internal guidelines to assist the officers concerned to adopt a flexible and pragmatic approach in enforcing the Ordinance. The officers concerned may consider dealing with some of the requirements in a flexible manner or accepting alternatives put forward by the owners in light of the circumstances of individual cases and the information submitted by authorized persons. For example, if there is spatial constraint in the installation of a hose reel system or water tank, the enforcement authorities would consider allowing the installation of an improvised hose reel system⁽¹⁾, and converting the fresh or flushing water tank into the water tank for the hose reel system.

The enforcement authorities normally give an owner a year to comply with the FS Directions. If the owner/OC concerned needs more time to prepare for and carry out the improvement works, the enforcement authorities would consider extending the compliance time basing on the justifications provided in the application and/or the scale of works involved. In most cases, the main reasons quoted are that more time is needed for discussion and raising funds to carry out the improvement works, and there is a plan to combine the fire safety improvement works with the major renovation works of the building. As at the end of October 2011, the BD and the

(1) An improvised hose reel system includes a hose reel water tank with less than 2 000 litre capacity, a hose reel drum installed at a higher position and a hose reel of reduced length.

FSD have issued a total of some 82 000 FS Directions, of which over 16 000 have been complied with, whereas the deadlines of some others are yet to expire. Extension for once or more has been granted to a total of over 33 000 FS Directions. Any owner who is not satisfied with the result of the application for extension may provide further justifications and request for a reconsideration by the departments concerned.

- (d) To assist owners of private buildings in conducting repair and maintenance, the Government, the HKHS and Urban Renewal Authority (URA) have been operating various financial assistance schemes for property owners in need, including the Comprehensive Building Safety Improvement Loan Scheme, Integrated Building Maintenance Assistance Scheme and Building Maintenance Grant Scheme for Elderly Owners. Fire safety construction works pertaining to the Ordinance have been incorporated into the list of works eligible for subsidies or loans. The Development Bureau, the HKHS and the URA do not maintain breakdown of applications submitted for the purpose of carrying out the works stipulated under the Ordinance. According to their information, the number of successful applications and the average amount approved under various subsidy schemes since implementation until end-October are set out in the Annex.
- (e) As pointed out in parts (b) and (c), the enforcement authorities understand the difficulties that individual buildings may encounter in complying with some of the requirements set out in the FS Directions due to structural or spatial constraints. The authorities would, without compromising basic fire safety, adopt a flexible and pragmatic approach in handling individual cases and consider whether to deal with certain requirements in a flexible manner and/or to extend the deadlines for compliance of the FS Directions. According to the experience of the FSD, most of the structural and technical problems concerning the installation of fire services water tank can be resolved, such as by selecting a suitable location for installation (for example, on top of the existing water tank or the head of rooftop staircase) or reducing water tank capacity. The FSD and the BD are also prepared to meet with the owners concerned or building professionals they have engaged and explain the requirements of fire safety improvement works as stated in the

FS Directions so as to assist them in resolving problems they may encounter in the implementation.

- (f) The most effective and fundamental way to ensure fire safety in old buildings is to put in place fire service installations and equipment and carry out relevant fire safety construction works as stipulated in the FS Directions issued under the Ordinance. To this end, the owners/occupiers of buildings should comply with the FS Directions in accordance with the Ordinance and, where necessary, approach the BD and/or the FSD when problems are encountered. The FSD would also continue to enhance public fire safety knowledge and awareness through various channels such as fire prevention activities jointly organized with local organizations, announcements of public interest and booklets on fire prevention, and so on.

Annex

Statistics on Financial Assistance Schemes
which provide assistance to owners of private buildings in conducting
repair and maintenance
(from implementation to 31 October 2011)

	<i>Integrated Building Maintenance Assistance Scheme⁽¹⁾</i>				<i>Building Maintenance Grant Scheme for Elderly Owners</i>	<i>Comprehensive Building Safety Improvement Loan Scheme</i>
	<i>Subsidy for Common Area Repair Works</i>	<i>Interest-free Loan for Common Area Repair Works</i>	<i>Interest-free Loan for Home Renovation</i>	<i>Subsidy for OC Formation</i>		
Form of assistance	Allowance	Interest-free Loan	Interest-free Loan	Allowance	Allowance	Loan
Number of cases approved	1 425	231	1 105	1 918	8 563	21 954
Estimated average allowance/loan of the above cases	\$180,700	\$1,160,000	\$39,200	\$2,500	\$26,000	\$32,800

Note:

- (1) Launched on 1 April 2011, the Integrated Building Maintenance Assistance Scheme is consolidated from five previous financial assistance schemes under the HKHS and the URA respectively. Figures before the consolidation have been included in the statistics above with regard to the objective and scope of assistance of the previous schemes.

Horticultural Plants with Cancer-causing Potential

14. **MR CHEUNG HOK-MING** (in Chinese): *President, it has recently been reported that some plants planted by some of the outsourced service contractors of the Leisure and Cultural Services Department in public places fall into the list of 52 cancer-causing plant species announced by the Chinese Centre for Disease Control and Prevention, and if members of the public are in frequent contact with these plants, the carcinogens in the plants may cause cells to become cancerous. In this connection, will the Government inform this Council:*

- (a) *whether the government departments concerned keep a register or a list of plants which have negative health impacts on humans and animals; if they do, of the relevant details;*
- (b) *whether the government departments concerned have provided guidelines to their outsourced service contractors, so as to avoid planting in public places plants which pose health hazards to humans and animals; if they have, of the details, and how they monitor compliance with the guidelines by the outsourced service contractors; if they have not, whether they will conduct a review of the present policy, so as to formulate appropriate measures to safeguard the health of the public and animals;*
- (c) *whether plants which fall into the aforesaid list of 52 cancer-causing plant species have been planted in the public places managed by government departments and the Hospital Authority at present; if so, of the distribution of their locations, quantities and species; and*
- (d) *how it will step up publicity and education so that the public will avoid coming into contact with these carcinogenic plants?*

SECRETARY FOR DEVELOPMENT (in Chinese): *President, to enhance the living environment, the Government takes meticulous care in selecting the plants for planting as well as their maintenance. We also organize public education and community involvement activities to enlist public support for the greening works and foster a culture of caring for plants.*

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

- (a) In selecting plants, departments follow the principle of planting "the right species in the right place" and take into account a number of factors, including the design and works requirements (for example, design concept, costs of works, and so on), environmental factors (for example, soil quality, impact on sightline and traffic, and so on), and characteristics of the plant species (for example, drought tolerance, toxicity, and so on). In general, the departments will avoid planting plants with poisonous features in parks or other locations that are easily accessible to the public.

The Plant Selection Matrix in the *Landscape Standards and Guidelines*, compiled by the Leisure and Cultural Services Department, provides a checklist on the features of common landscape plants, including their poisonous parts, if any. *The Check List of Hong Kong Plants* and *The Flora of Hong Kong*, compiled by the Agriculture, Fisheries and Conservation Department (AFCD), also sets out features of plants commonly seen in Hong Kong, including their habitat, distribution, ecology and medicinal effects/toxicity. These publications provide useful references for departments in selecting suitable plants and identifying the toxicity of different plants.

Although certain plants have poisonous parts, they do not spread its toxicity through the air. Thus, the poison in these wild or landscape plants cannot easily enter into the human body and cause harm except through prolonged direct contact with, picking or ingesting them.

- (b) In drawing up planting plans, departments will consider the factors as mentioned above and avoid planting species with poisonous features in parks or other places that are easily accessible by the public. Landscape contractors are required to comply with these planting plans in undertaking the landscape works. The completed works are also subject to works inspection by relevant departments before acceptance. Given that the landscape contractors are

required to comply with the planting plans drawn up by departments when undertaking the landscape works, the Government has not issued separate guidelines on selection of plant species for landscape contractors.

To further assist the departments in selecting suitable plants, the Greening, Landscape and Tree Management Section under the Development Bureau has commissioned a consultancy study for developing a more comprehensive set of criteria on plant species selection.

- (c) We have combed through publications of studies on the relationship between plants and cancer conducted in recent years for the concerned "list of cancer-causing plant species". We could only locate a publication on a similar subject by Mr ZENG Yi et al of the Institute of Virology, China Institute of Preventive Medical Science in the *Chinese Journal of Virology* in June 1992, which reported on an in vitro experiment conducted in laboratory settings to study the impact of concentrated extract from different herbs and plants on a group of cells. This experiment was conducted in settings that were entirely different from the environment where people come into contact with plants in their daily lives. Therefore, the Government has not sought to keep records on the quantity and distribution of locations of the species covered in that study.
- (d) The AFCD has published a leaflet on *The Five Most Poisonous Plants in Hong Kong*, cautioning the public against contact with, picking or ingesting these highly poisonous plants commonly found in the countryside of Hong Kong. The then Urban Council also published a book on *Hong Kong Poisonous Plants*. We will extract relevant information from the book and upload this to our Greening Website for public information. In the meantime, we will also closely monitor the situation and keep the public informed if any commonly found plants or popular landscape plants are confirmed to be harmful to human bodies.

Right of Abode in Hong Kong

15. **DR MARGARET NG** (in Chinese): *President, regarding application for the right of abode in the Hong Kong SAR (ROA), will the Government inform this Council:*

- (a) *of the respective numbers of Chinese and non-Chinese persons applying for ROA, as well as the numbers of those who had been granted ROA in each of the years between 2009 and October 2011; and*
- (b) *for those non-Hong Kong residents who are eligible to apply to the Immigration Department for ROA after they have ordinarily resided for a continuous period of seven years under the existing system, of the channels through which they obtained approval to enter Hong Kong?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) According to the Immigration Ordinance, Hong Kong permanent residents enjoy the right of abode in Hong Kong. The number of applications for verification of eligibility for permanent identity cards received by the Immigration Department and those approved in each of the years between 2009 and October 2011 are tabulated below:

<i>Year</i>	<i>Persons of Chinese Nationality</i>	<i>Persons not of Chinese Nationality</i>
2009	46 901 (34 128)	10 975 (8 620)
2010	54 003 (46 459)	10 466 (8 434)
2011 (up to October)	41 241 (30 467)	11 626 (8 875)

(figures in bracket represent number of approval)

- (b) Pursuant to paragraph 2 of Schedule 1 to the Immigration Ordinance, a permanent resident of the Hong Kong Special Administrative Region is:
- (a) a Chinese citizen born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
 - (b) a Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
 - (c) a person of Chinese nationality born outside Hong Kong before or after the establishment of the Hong Kong Special Administrative Region to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b);
 - (d) a person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than seven years and has taken Hong Kong as his place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
 - (e) a person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the Hong Kong Special Administrative Region in category (d) before or after the establishment of the Hong Kong Special Administrative Region if at the time of his birth or at any later time before he attains 21 years of age, one of his parents has the right of abode in Hong Kong;
 - (f) a person other than those residents in categories (a) to (e), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

Any person claiming to be a Hong Kong permanent resident under paragraph 2(b) or (d) of the aforementioned provision may submit, in accordance with established procedures, application for verification of eligibility for permanent identity card to the Immigration Department, if he meets the requirement of "having ordinarily resided in Hong Kong for a continuous period of not less than seven years" under the law and other relevant provisions of the ordinance, irrespective of the channels through which they obtained approval to enter Hong Kong.

Assessment of Taxes Under Arrangement Between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

16. **DR LAM TAI-FAI** (in Chinese): *President, regarding the reply given by the Secretary for Financial Services and the Treasury (SFST) to my written question on 23 November this year, will the Government inform this Council:*

- (a) *given that the SFST stated that the "days of physical presence" method was commonly adopted by various tax jurisdictions in determining the tax liabilities of a person, whether it knows if there are tax jurisdictions which do not use the "days of physical presence" method; if there are, of the methods they adopt and the reasons why Hong Kong has not adopted such methods;*
- (b) *given that the SFST stated that some European countries (the countries concerned) had special tax provisions for frontier workers, of the names of the countries concerned, as well as their time frame and reasons for implementing such provisions (list in table form);*
- (c) *given that the SFST stated that as Hong Kong's taxation system was based on the territorial principle, Hong Kong residents' income derived from the Mainland was not subject to tax in Hong Kong, and that the proposal of introducing special tax provisions for frontier workers would lead to double non-taxation of the income, whether it knows if the taxation systems of the countries concerned are based on the territorial principle; if they are, how these countries*

overcome the aforesaid problem; if not, of the principles on which the taxation systems of these countries are based;

- (d) given that the SFST stated that it was difficult to determine the coverage of the exemption area and to define frontier workers on an objective basis, whether it knows how the countries concerned determine the coverage of their exemption areas and define frontier workers (list in table form), and whether Hong Kong can adopt the practices of the countries concerned; if they can be adopted, of the details; if not, the reasons for that;*
- (e) given that the SFST stated that the proposal of introducing special tax provisions for frontier workers required careful deliberations, when the outcome of the authorities' deliberations will be available, and whether consultation will be conducted on the proposal; if consultation will be conducted, who or what organizations will be consulted; if not, the reasons for that;*
- (f) given that the SFST stated that if a part of a person's income had been assessed to Individual Income Tax on the Mainland, that part of the income could be exempted from Hong Kong salaries tax under section 8(1A)(c) of the Inland Revenue Ordinance (Cap. 112), of the number of taxpayers applying for such exemptions in each of the past five years, and the amount of tax exemptions involved;*
- (g) given that there were cases in which all the incomes of some Hong Kong residents were subject to Mainland taxes on the ground that they were present on the Mainland for more than 183 days within a year, and their incomes were also subject to Hong Kong's salaries tax on a pro-rata basis as they had stayed in Hong Kong for more than 60 days within the same year of tax assessment, whether there is the situation of part of their incomes being subject to double taxation in these cases; if so, how the problem is to be solved; if not, of the reasons for that;*
- (h) given that some Hong Kong residents have reflected that although all their incomes are subject to salaries tax in Hong Kong, all their bonus incomes, according to the tax provisions on the Mainland, are subject to Individual Income Tax on the Mainland even though they*

do not stay there for more than 183 days within a year, whether the bonus incomes involved are subject to double taxation; if so, how the problem is to be solved; if not, of the reasons for that;

- (i) after the Mainland and Hong Kong signed the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (the Arrangement) in 2006, whether it has assessed if the situation of double taxation still exists; if it still exists, of the details; if not, how the authorities conducted the assessment;*
- (j) given that the SFST stated that the authorities had raised the suggestion of relaxing the current 183-day threshold (that is, remunerations derived by Mainland and Hong Kong residents from their employment in the Other Side shall be taxed in that Other Side if they are present in the Other Side for a period or periods exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned) with the State Administration of Taxation, whether the authorities, apart from the discussions held in October 2009, have further discussed or examined the issue with the Mainland authorities; if so, when such discussions or examinations were conducted and of the contents concerned; if not, the reasons for that; and*
- (k) whether the authorities have discussed or examined with the State Administration of Taxation the issues of improving the provisions for avoidance of double taxation and introducing special tax provisions for frontier workers; if so, of the details; if not, whether the Hong Kong authorities will take the initiative in liaising with the Mainland authorities?*

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

- (a)** According to the Commentary of the OECD Model Tax Convention, the "days of physical presence" method is the only method which is

consistent with the wording of the Article on Income from Employment. Other tax jurisdictions have not made any reservation on this method in the Model Tax Convention.

(b) to (e) and (k)

According to our understanding, European countries that have special tax provisions for frontier workers include France, Germany, Italy, Belgium and Switzerland. These countries levy tax on a worldwide basis.

In Hong Kong's circumstances, the issue of double taxation for people who work across the boundary in the Mainland (including frontier workers) can be dealt with in principle in accordance with the Arrangement. On the other hand, the introduction of special tax provisions will lead to double non-taxation of income derived from Hong Kong employments by frontier workers since most of the services are likely rendered outside Hong Kong.

The Inland Revenue Department (IRD) meets with the State Administration of Taxation on a regular basis to discuss the implementation of the Arrangement and areas for improvement. At the meeting held with the State Administration of Taxation last month, the IRD raised the industry's suggestion on special tax provisions for frontier workers. Both sides consider that as the proposal may give rise to double non-taxation, it is not appropriate to introduce special tax provisions for frontier workers at this stage.

(f) The total number of claims for exemption of Hong Kong Salaries Tax under section 8(1A)(c) of the Inland Revenue Ordinance for the years of assessment 2009-2010 and 2010-2011 is as follows (the IRD does not have statistical breakdown on cases relating to the Mainland):

<i>Year of Assessment</i>	<i>Number of Claims</i>
2009-2010	6 243
2010-2011	10 731

The IRD does not have the relevant statistics for years prior to 2009-2010 nor the amount of tax involved for the cases of the abovementioned two years.

(g) to (i)

We believe that the Arrangement can reduce the incidence of double taxation that may be encountered by residents of the two sides. Generally speaking, the Mainland will only tax Hong Kong residents in respect of their remuneration derived from their work in the Mainland.

We will closely monitor the situation regarding any double taxation issue to ensure the effectiveness of the Arrangement. Any Hong Kong resident who considers that the tax authorities of one side or both sides have adopted measures leading to taxation not in accordance with the Arrangement (including taxation on bonus) can refer the case to the IRD for review. If necessary, the IRD will discuss the case with the Mainland competent authority.

(j) At the meeting with the State Administration of Taxation held last month, the IRD raised again the matter of 183-day threshold. Both sides consider that the 183-day threshold should not be changed as it is an international standard which has been effectively applied.

Regulation of Breastmilk Substitutes and Promotion of Breastfeeding in Hong Kong

17. **MR FREDERICK FUNG** (in Chinese): *President, nowadays infant formula advertisements and promotion are of a great variety and according to a study conducted earlier by the Consumer Council (CC), there is insufficient evidence to prove the beneficial claims of certain ingredients in some infant formulas, and exaggerating and misleading claims in the advertisements are involved. It has also pointed out in my earlier question that the authorities should, by means of publicity and education, eliminate the public misconception that infant formulas are richer and more comprehensive in nutrient components than breastmilk and change the parents' behaviour of blind worship of famous*

brands of infant formulas. In this connection, will the Government inform this Council:

- (a) how the authorities regulate the publicity contents of infant formula advertisements at present; as the CC's study has found that the claims in some infant formulas might be exaggerating and misleading, whether the authorities had taken any corresponding action in respect of similar claims in the past three years; if they had, whether such actions included issuing warnings and instituting prosecutions; if not, of the reasons for that, and whether this is an indication that the authorities can do nothing about the false claims in the advertisements of infant formulas;*
- (b) given that the Government is now drawing up a Hong Kong Code of Marketing of Breastmilk Substitutes applicable to Hong Kong (the Code) for the purpose of regulating manufacturers and distributors of breastmilk substitutes to prohibit them from advertising or marketing their breastmilk substitutes and related products by way of malpractice, of the details of the drafting of the Code; whether it will incorporate the Code in law and mete out a heavy penalty, and also consider taking a step further to impose a blanket ban on infant formula advertisements; if not, of the reasons for that; and*
- (c) given that the World Health Organization has all along been advocating breastfeeding, pointing out that breastmilk is the best food for the healthy growth and development of babies and suggesting that babies under six months of age should preferably be exclusively breastfed, and then continue to be breastfed supplemented by other foods until the age of two or above, of the latest percentage and practice of breastfeeding in Hong Kong according to the surveys of the Government; the measures taken by the authorities to support the practice of continual breastfeeding; and whether the authorities will set a target percentage for breastfeeding?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the Government has all along endeavoured to promote, protect and support breastfeeding, and has been implementing this policy through the Department of

Health (DH) and the Hospital Authority. Healthcare professionals provide counselling service for breastfeeding mothers, and help post-natal women acquire breastfeeding skills and tackle the problems they may encounter during breastfeeding. Infant formulas are manufactured in imitation of the nutritional content of breastmilk, and different infant formulas are very similar in composition. Although some parents choose to feed their babies with infant formulas, breastmilk remains the best food for the healthy growth and development of babies.

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

- (a) The Government has all along attached importance to the safety of infant formulas. Every year, under the routine food surveillance programme of the Centre for Food Safety (CFS), milk powder samples are taken at import, wholesale and retail levels for chemical and microbiological testing. Between 2007 and 2010, CFS took a total of 960 milk powder samples (including 590 infant formula samples) for testing. All results were satisfactory.

Under section 61 of the Public Health and Municipal Services Ordinance (Cap. 132), a person shall be guilty of an offence if he uses or displays a label which falsely describes food or is calculated to mislead as to its nature, substance or quality. The Ordinance also makes it an offence for any person to publish, or to be partly to the publication of, an advertisement which falsely describes any food, or is likely to mislead as to the nature, substance or quality of any food. The maximum penalty is a fine of \$50,000 and imprisonment for six months.

From 2009 to 2010, CFS received a complaint related to promotional materials of infant formula. After seeking legal advice, the complaint was confirmed to be not substantiated. In 2011, CFS has taken follow-up actions on 27 suspected cases of infant formulas with questionable claims and issued letters to the retailers/distributors/manufacturers involved in three of these cases, demanding them to provide information in support of their claims. As for the remaining cases, follow-up actions are still in progress. No prosecution has been instituted so far.

The Broadcasting Authority (BA), as the statutory regulatory body for the broadcasting industry, has stipulated that licensed broadcasters must not broadcast misleading advertisements. Over the past three years, the BA handled a total of 10 complaints about misleading infant formula advertisements. Having taken into account the professional advice given by the relevant departments (including the DH and CFS), the BA considered that there was insufficient evidence to conclude that the advertisements were misleading and thus decided that the complaints were not substantiated.

The Government encourages manufactures and distributors of infant formulas to exercise self-discipline and monitor their marketing practice of their own accord by complying with the International Code of Marketing of Breastmilk Substitutes published by the World Health Organization (WHO Code) in 1981 and the resolutions made in subsequent sessions of the World Health Assembly (WHA).

- (b) The DH set up a Taskforce on Hong Kong Code of Marketing of Breastmilk Substitutes (the Taskforce) at the end of June 2010, which is tasked to develop the Code with the objective to govern manufacturers and distributors of breastmilk substitutes and related products to prevent them from advertising and marketing their breastmilk substitutes and related products by way of malpractice. When formulating the details and coverage of the Code, the Government will make reference to the details and scope of regulation recommended in the WHO Code and the subsequent WHA resolutions, and take account of the local advertising and marketing practices of the manufacturers and distributors of the relevant products.

The Code will be implemented in the form of voluntary guidelines in tandem with an appropriate monitoring mechanism. At present, many countries like Australia, New Zealand, Singapore and Malaysia, and so on, have formulated voluntary guidelines applicable in their own countries for compliance by the trade with reference to the WHO Code. In light of the experience of these countries, it would be more effective in the control of undesirable marketing practices if appropriate monitoring and sanction

mechanisms are put in place in tandem with implementation of the WHO Code. After the Code has been put into implementation, the Government will monitor the situation and canvass the views of various parties to consider if there is a need to step up enforcement and regulation through the Code.

- (c) With the Government's efforts to promote breastfeeding, the breastfeeding rate in Hong Kong has been continuously on the rise. The findings of the regular breastfeeding surveys carried out by the DH's maternal and child health centres (MCHCs) among their target clients indicated that of the babies born in 2010, the percentage of ever-breastfed babies was 77%, while the percentage of babies exclusively breastfed for four to six months was 14%. Over the past 10 years, the surveys conducted by obstetric departments in hospitals indicated that the percentage of newborn babies in Hong Kong who had been ever-breastfed increased from 55% in 2000 to close to 80% in 2010, demonstrating an impressive outcome.

The DH's MCHCs have been endeavouring to promote breastfeeding and have conducted a series of workshops to equip breastfeeding working mothers with the necessary skills to get them prepared for continuing breastfeeding after returning to work. The DH has also been collaborating with other professional bodies in enhancing the breastfeeding training for local healthcare personnel, enabling them to give effective support to mothers for continued breastfeeding. Besides, the formulation of a local code applicable to Hong Kong is crucial for encouraging and upholding breastfeeding as well as affording protection to infants and babies through proper use of breastmilk substitutes.

Engine Stalling Problem of LPG Vehicles

18. **MR WONG SING-CHI** (in Chinese): *President, regarding the large number of stalling incidents involving liquefied petroleum gas (LPG) vehicles which occurred in Hong Kong in 2010, the Secretary for the Environment (SEN), in reply to questions raised by Members of this Council on 17 November 2010 and 1 June this year respectively, indicated that "since early January 2010, a total of 206 LPG samples had been taken from 62 LPG filling stations and five*

LPG terminals (by the Electrical and Mechanical Services Department (EMSD)). Tests on samples have been conducted by accredited laboratory against the auto-LPG specification. Except for a sample taken in April 2011, the overall testing results of all other samples met our requirement". The SEN also pointed out that there was already an internationally recognized independent laboratory in Hong Kong which could provide such testing service in trial operation since the middle of this year. In addition, the SEN also indicated that "the Vocational Training Council (VTC) has agreed to incorporate the key maintenance issues into the syllabus of future training courses on the maintenance of LPG vehicles so as to enhance the know-how of vehicle mechanics in respect of LPG vehicle maintenance". In this connection, will the Government inform this Council:

- (a) of the respective numbers of cases of sudden stalling of LPG taxis in each year since 2008, together with a breakdown of the numbers by month;*
- (b) regarding the aforesaid LPG sample which did not meet the requirement as shown in the sample test results, of the details of the Government's follow-up actions with the LPG supply company concerned; and how it ensured that LPG supplied by that company already met the requirement before resumption of its supply;*
- (c) whether it knows the particulars of operation (including the locations and hours of operation, the schedules of its trial operation and formal commencement of its service, the number of testing personnel, the preset monthly capacity of testing service it can provide, as well as the average number of tests conducted in each month at present, and so on) of the aforesaid independent laboratory since its trial operation; of the number and particulars of operation of laboratories which can provide the aforesaid testing service in Hong Kong at present;*
- (d) whether it knows the progress of the VTC in offering the training courses related to the repair and maintenance of LPG vehicles since late 2010; whether there are sufficient instructors or professionals responsible for teaching such courses in the VTC or other institutions; if there are, of the details; if not, the reasons for that, and the Government's counter measures in place;*

- (e) *given that the SEN indicated that "in general, LPG supply companies have developed internal work procedures (including the water draining operation) that can best meet the characteristics of their LPG sources and the design of their terminals", how the Government ensures that LPG supply companies comply with all the relevant work procedures; whether there is any mechanism in place at present to monitor the work procedures of such companies, as well as any penalty put in place in respect of LPG supply companies which fail to complete all the relevant work procedures; if there is, of the details; if not, the reasons for that, and whether it will consider introducing the relevant mechanism and penalty; and*
- (f) *of the Government's criteria for determining that the current work procedures of LPG supply companies are adequate to assure the quality of LPG and ensure normal operation of gas piping; whether it has any plan to formulate a set of official criteria for the work procedures for reference of or compliance by LPG supply companies?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President, our replies to the questions raised by Mr WONG Sing-chi are set out below:

- (a) Following the engine stalling incidents of LPG vehicles happened in the beginning of 2010, the EMSD set up a 24-hour telephone hotline in early January of the same year to monitor and follow up the incidents. The number of engine stalling incidents received by the hotline is set out below:

<i>Month</i>	<i>Number of Engine Stalling Incidents Received by the Hotline</i>	
	<i>2010</i>	<i>2011</i>
January	141	2
February	9	2
March	2	0
April	3	0
May	0	0
June	1	0
July	0	0
August	0	0

<i>Month</i>	<i>Number of Engine Stalling Incidents Received by the Hotline</i>	
	<i>2010</i>	<i>2011</i>
September	0	0
October	0	0
November	34	0
December	1	-
Total	191	4

As the hotline was set up in early 2010, we do not have the statistics for 2008 and 2009.

- (b) From early January 2010 to mid-November 2011, the EMSD collected a total of 273 LPG samples from 62 LPG filling stations and five LPG terminals. The samples were sent to accredited laboratories for testing against the auto-LPG specification. Except for a sample taken in April 2011, the overall testing results of all other samples met the requirements.

For the sample in question, the ratio of propane/propylene and butane/butylene failed to meet the auto-LPG specification. Although such deviation did not have any impact on gas safety or vehicle performance, upon receipt of the test result, the EMSD immediately asked the LPG supply company concerned to stop selling auto-LPG. After the company had replaced the auto-LPG at all of their filling stations as required, the EMSD examined the LPG quality test reports submitted by the company and arranged separate LPG quality tests on all affected filling stations. The EMSD agreed to the re-opening of the LPG filling stations only after the LPG quality was confirmed to be compliant with the specification. The EMSD also instructed the company to strength its measures in monitoring the LPG quality and stepped up the sampling of LPG supplied by the company. All samples taken thus far are compliant with the specification.

- (c) An internationally recognized testing organization in Sha Tin expanded its laboratory facilities to provide LPG quality testing services and commenced the services in March 2011. This testing centre is currently the only recognized laboratory in Hong Kong

providing LPG quality testing services. All auto-LPG samples are now sent to this laboratory for testing. The centre is run on commercial principle. We are unable to provide its operation information.

- (d) The VTC has been providing "LPG Vehicle Servicing" training courses since January 1999 and "Servicing of LPG Fuel Injection System" training courses since September 2009. Since April 2011, the VTC has incorporated the key maintenance issues identified in the course of implementing the "LPG Vehicle Testing Scheme" into the syllabus of the relevant training courses, so as to strengthen course participants' knowledge in the maintenance of LPG vehicles.

Since September 2010, 60 people have enrolled for the "LPG Vehicle Servicing" training course and 36 for the "Servicing of LPG Fuel Injection System" training course. According to the VTC, there are 16 qualified instructing staff for teaching the relevant training courses; the number is adequate to meet the training demand.

- (e) and (f)

LPG supply companies develop internal work procedures, including receipt of LPG from tankers, storage at terminals (such as water draining operations), delivery by road tankers and storage at filling stations, with regard to the characteristics of LPG sources and the design of terminals. The EMSD has been conducting regular site inspections and audits on the work procedures and in-house records in connection with the LPG supply chain to ensure that the relevant procedures are in compliance with general trade practices. Should there be any inappropriate work procedures, the EMSD will advise the LPG supply companies to implement improvement measures or follow up with these companies in accordance with the provisions of relevant regulations.

The inspection and audit results show that the LPG supply companies have been implementing appropriate work procedures. We consider that the existing monitoring mechanism is effective in ensuring the quality of LPG and normal operation of its supply.

Regulation of Credit Rating Agencies in Hong Kong

19. **MR FREDERICK FUNG** (in Chinese): *President, some time ago, the European Commission (EC) proposed the introduction of legislation to tighten the supervision and restriction on credit rating agencies (CRAs) (including increasing the transparency of their credit rating process and bolstering competition in the credit rating industry; making it mandatory for enterprises to change the CRAs they hire on a regular basis; as well as restricting the timing for CRAs to publish sovereign ratings). The proposed legislation also provides that any member state of the European Union (EU) or investor may bring civil liability legal actions against losses arising from the ratings; and encourages local banks and financial institutions to make their own assessments, with a view to reducing reliance on CRAs. Furthermore, the European Parliament passed a bill to confer greater power on the European Securities and Markets Authority to vigorously curb sovereign debt speculation, including imposing a ban on naked short selling in shares and sovereign debts, as well as in relevant credit default swaps (CDS). In this connection, will the Government inform this Council:*

- (a) *whether the authorities have assessed if, compared with the existing regulatory regimes of other economies and the aforesaid legislative proposal of EC, the current regulation of CRAs in Hong Kong is too lenient, and if there is sufficient competition in the rating industry and adequate transparency in the rating process; if an assessment has been made, of the results; if not, the reasons for that;*
- (b) *given that the European Parliament has endorsed a ban on naked short selling in shares and sovereign debts, as well as in relevant CDS, whether it knows how the relevant trading practices are regulated in Hong Kong at present; whether the authorities have a full picture of the participation of local financial institutions in the trading of financial derivative products (including taking part in the issuance of these products) relating to European sovereign debt (European debt) crisis; whether the authorities have conducted any risk assessment in this aspect, and in the event of sovereign defaults in EU countries, of the potential loss suffered by local financial institutions and the systemic risks likely to emerge in the financial market; if such an assessment has been made, of the results; if not, the reasons for that; and*

- (c) *whether the authorities will make reference to the practices of EU to step up the regulation of CRAs and speculative practices, and require local financial institutions to enhance the transparency of trading and assets relating to European debts, and so on; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, my reply to the questions raised by Mr Frederick FUNG is as follows:

Regulation of CRAs

In line with the international development of the regulation of CRAs, the Securities and Futures Commission (SFC) formulated a regulatory regime governing CRAs last year. The regime became effective on 1 June 2011. Under the new regime, CRAs and their rating analysts who provide credit rating services in Hong Kong are required to be licensed for Type 10 regulated activity under the Securities and Futures Ordinance and are subject to supervision by the SFC. All licensed CRAs and rating analysts are required to comply with the applicable rules, codes and guidelines of the SFC, including the Code of Conduct for Persons Providing Credit Rating Services (the Code of Conduct). When considering whether the CRAs and the rating analysts are fit and proper to become licensees, the SFC would in general take the requirements set out in the Code of Conduct as one of the factors for consideration. If a licensed CRA or rating analyst is found to be guilty of misconduct, the SFC may take a range of disciplinary actions, including revocation or suspension of licence, fines, public reprimand, and so on.

The requirements set out in the Code of Conduct are primarily based on the "Code of Conduct Fundamentals for Credit Rating Agencies" issued by the International Organization of Securities Commissions (IOSCO) in 2008 (the IOSCO Fundamentals). The Code of Conduct has also incorporated additional requirements and some supplementary provisions that have been introduced in other jurisdictions, particularly in the EU, including the additional requirement of reviewing, at least annually, the rating target's creditworthiness, and restrictions on CRAs in entering into any contingent fee arrangement for providing credit rating services. The IOSCO Fundamentals, the local Code of Conduct, and measures regarding CRAs put in place in other comparable jurisdictions all

revolve around the principles of integrity, independence, transparency and confidentiality. The SFC would closely monitor the international development and trends in CRA regulation to ensure that the CRAs regulatory regime in Hong Kong is in line with international regulatory direction and local needs.

Short selling

In respect of the EC's new requirements on naked short selling, Hong Kong has banned naked short selling since the 1970's. In 2000, the maximum penalties for naked short selling had been increased from a fine of \$10,000 and imprisonment for six months to a fine of \$100,000 and imprisonment for two years. At the same time, new criminal offences were introduced for unreported short selling. Moreover, Hong Kong also imposes the uptick rule, that is, short selling below the best current ask price is prohibited in Hong Kong. Separately, the SFC understands that currently only EU countries have imposed ban on the purchase of CDS without owning the related bonds. There is no similar measure in other major overseas markets. The Government and regulators will continue to closely monitor the development in this regard.

The European Debt Crisis

Due to the European debt crisis, some investment products are facing counterparty risk exposure to the European markets and/or financial institutions. In view of this situation, the SFC has put in place a number of measures, including monitoring these products' risk exposure to major international financial institutions; requiring the collateral level for each of the domestic synthetic ETFs be topped-up to achieve at least 100% collateralization; closely communicating with major product issuers/arrangers, fund management companies and overseas and local financial institutions and requiring them to inform the SFC of any unusual situations. The SFC has also put in place detailed contingency plans for various kinds of emergency situations, such as high level of market volatility, major financial problems or bankruptcy of any brokers or financial institutions, exchanges or clearing houses unable to operate in a fair and orderly manner, and so on.

As of the end of June 2011, Hong Kong's banking system's total risk exposure to Greece, Ireland, Italy, Portugal and Spain constituted less than 1% of their total assets. In the event of default of these countries, the direct impact on the Hong Kong banking system is expected to be very limited. Although banks

in Hong Kong do not have significant exposure to debts issued by European countries facing sovereign debt problems, the banking sector may suffer from the negative spillover in the event that fiscal problems of some European countries would lead to heightened risk aversion and trigger capital outflows from emerging markets or liquidity squeeze in the interbank market.

The Hong Kong Monetary Authority will continue to monitor banks' risk exposure through its day-to-day supervision, and has requested banks to strengthen their risk management and maintain adequate capital and liquidity to address the potential systemic risk arising from the global financial turmoil.

For the insurance sector, according to the Office of the Commissioner of Insurance (OCI), exposure of authorized insurers in Hong Kong to the European market is about 5% of their total investment. The impact of the European debt crisis on the overall stability of the Hong Kong insurance industry is therefore insignificant. The OCI will continue to monitor the international market situation and review the investment portfolios of insurers and conduct stress tests from time to time to ensure that the insurers are solvent.

Travel Club Membership

20. **MR PAUL TSE** (in Chinese): *President, regarding complaints about travel club membership in recent years, will the Government inform this Council:*

- (a) whether it knows the respective numbers of complaints about travel club membership received by the Hong Kong Police Force, the Consumer Council (CC), the Travel Industry Council (TIC) of Hong Kong and other tourism-related government departments in the past two years; among them, of the number of complaints substantiated as cases of deception after investigation;*
- (b) whether it knows the percentage of complaints about travel club membership being formally investigated in all relevant complaints; and the main reasons for other complaints not being taken up for investigation; and*
- (c) of the policy in place to prevent fraudulent cases involving travel club membership from happening?*

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

(a) and (b)

The number of complaints received by the police relating to travel club membership in the past two years is as follows (only the number of companies involved was recorded):

	<i>2009</i>	<i>2010</i>	<i>January to October 2011</i>
Number of companies involved	6	5	0

The police has investigated all complaint cases to determine whether deception or other crimes are involved. After investigation, no criminal elements are found in these cases.

The number of complaints received by the CC relating to travel club membership in the past two years, the nature of complaint and the number of cases in which mediation was successful are set out below:

	<i>2009</i>	<i>2010</i>	<i>January to October 2011</i>
Sales practices	232	72	31
Price dispute	7	1	5
Quality of service	5	2	5
Others	7	1	5
Total	251	76	46
Percentage of cases in which mediation was successful	54%	71%	82%

When the TIC receives complaints relating to travel club membership sold by an entity which is not a licensed travel agent regulated by the TIC, it will suggest the complainant to seek assistance from or lodge a complaint to the CC. The TIC does not keep any record on such complaints received. In the past two

years, the Tourism Commission has not received any complaints relating to travel club membership.

- (c) As can be seen from the complaints received by the CC, the vast majority of them relate to sales practices. To tackle unfair trade practices and protect consumers' interests, we now plan to amend the Trade Descriptions Ordinance (Cap. 362) to expand its scope of application to cover services and to criminalize some commonly seen unfair trade practices in consumer transactions, including false trade descriptions of services, misleading omissions, and the practice of accepting payment without the intention or ability to supply the products contracted for. We are now pressing ahead with the preparation of the legislative amendments.

BILLS

First Reading of Bills

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

BUILDINGS LEGISLATION (AMENDMENT) BILL 2011

CLERK (in Cantonese): Buildings Legislation (Amendment) Bill 2011.

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

Second Reading of Bills

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

BUILDINGS LEGISLATION (AMENDMENT) BILL 2011

SECRETARY FOR DEVELOPMENT (in Cantonese): Deputy President, I move the Second Reading of the Buildings Legislation (Amendment) Bill (the

Bill). The objective of the Bill is to amend the Buildings Ordinance to further enhance the building safety control regime.

Deputy President, on 3 February last year, I moved the Second Reading of the Buildings (Amendment) Bill 2010 in the Legislative Council for the implementation of a mandatory building inspection scheme and a mandatory window inspection scheme to protect building safety. It was only five days after the Ma Tau Wai Road building collapse tragedy. Unfortunately, a fire broke out at Fa Yuen Street which destroyed hawker stalls last Wednesday, causing nine deaths and 34 injuries. The victims of this tragedy were residents of old buildings adjacent to the stalls. These tragedies remind us of a basic requirement, that is, buildings must be safe to enable people to live in peace, and there is no compromise at all. The community must be of one mind and make every effort to enhance building safety, so as to avoid direct or indirect casualties due to building dilapidation or illegal alteration, thereby making the public lose their homes.

In the past two years, we have taken actions to demonstrate the Government's commitment on building safety. The Chief Executive has, in this year's and last year's Policy Address, stated that building safety must be enhanced. In last year's Policy Address, the Government proposed to implement a package of multi-pronged measures, including legislation, enforcement, support for building owners, publicity and public education. In this year's Policy Address, it is also expressly stated that the Government will table legislative proposals for more stringent control over building safety, including "sub-divided units".

The Development Bureau is doing its utmost to implement the multi-pronged measures. As an enforcement agency, the Buildings Department (BD) is working under immense pressure; I am very grateful to staff of different professions in the BD for their dedication and hard work, as well as their spirit of service of taking the bull by the horns. Nevertheless, I must say that, if people's awareness of building safety is weak, and owners illegally make building alterations to reap greater benefits at the expense of tenants' safety, enforcement staff can never solve the problem at root, no matter how hard they work.

Legislating requires the co-operation between the Legislative Council and the Government. In the past few years, we have spared no efforts on enacting

legislation to protect building safety, and effective results have been attained. Between June 2008 and December 2009, the Legislative Council enacted the principal legislation on minor works control system and a number of related regulations. Since the implementation of the system late last year, good progress has been made and the industry's response has been positive. The Legislative Council has subsequently spent more than a year scrutinizing the Buildings (Amendment) Bill 2010, and an amendment ordinance was enacted in June this year for implementing a mandatory building inspection scheme and a mandatory window inspection scheme, and establishing that appropriate building maintenance is the fundamental responsibility of every owner. The Legislative Council is now scrutinizing the subsidiary legislation related to the schemes; we expect that the registration of inspectors can commence at the end of this year at the soonest, to facilitate the formal implementation of these two preventive building safety schemes next year.

On enforcement, the BD has implemented a new enforcement policy since April this year to enhance the clearance of all types of unauthorized building works and implement a number of large-scale operations, including the operations on illegal "sub-divided units" about which the public are highly concerned. In order to fully ascertain the status of local unauthorized building works, the Buildings Department has conducted a stock-taking exercise for all unauthorized building works at the exterior of buildings in Hong Kong; as at late October this year, it has completed the stock-taking work on around 10 600 buildings, which is estimated to account for about 26% of all buildings. The completion of the work within next year will help the authorities work out further enforcement policies and set priorities.

Regarding support for building owners and public education, Operation Building Bright, involving a total amount of \$3.5 billion, is in full swing and approximately 3 000 buildings will eventually be benefited. The Hong Kong Housing Society and the Urban Renewal Authority consolidated a number of support schemes in April this year and introduced the Integrated Building Maintenance Assistance Scheme, for the provision of one-stop technical and financial support to needy owners. We will continue to promote the culture of attaching importance to building safety, strengthen education on building safety matters of public concern and adopt tailor-made promotional strategies, so as to arouse all stakeholders to pay great attention to building safety.

We deeply believe that the above measures will facilitate the enhancement of building safety in Hong Kong. However, the Ma Tau Wai Road building collapse tragedy and the serious incidents that occurred afterwards, as well as the Fa Yuen Street hawker stall fire last Wednesday which caused great casualties to residents of the old buildings nearby have illustrated the complexity and severity of building safety issues. We need to introduce further measures to strengthen the authorities' capacity to respond. To sum up the discussions by Legislative Council Members and the views of professionals and the public, we understand that the community generally hope that the authorities would expeditiously enhance the capacity of enforcement and regulation in handling unauthorized building works, as well as strengthen the deterrent effect on owners who fail to comply with legal requirements.

In the context of the above, in the course of the Legislative Council's scrutiny of the Buildings (Amendment) Bill 2010, when the provisions on a mandatory building inspection scheme and a mandatory window inspection scheme were introduced, the Government had suggested proposing an amendment to the Bill to introduce early measures to further enhance building safety. Nonetheless, during the deliberation, some Members and the legal adviser of the Legislative Council questioned whether these amendments were consistent with the scope of the Bill. Although we had different interpretations on the point of view, to avoid affecting the implementation of a mandatory building inspection scheme and a mandatory window inspection scheme, we decided to remove the amendment, and we promised to introduce another bill on the relevant proposal soon.

The objective of the Bill introduced today is to re-introduce the five proposed amendments that were moved when the Buildings (Amendment) Bill 2010 was last scrutinized. I am going to briefly introduce these proposals.

Proposal (a) is about warrant for entry into interior of individual premises. When the Bill was last scrutinized by the Bills Committee, Members generally supported the principles of these five proposals, but they were more concerned or had divergent views about the proposal that the BD could make application to the Court for warrants to facilitate entry into individual premises. I hope Members would understand that the Buildings Department has encountered a lot of difficulties in enforcement against unauthorized works in the interior of buildings. Although under the Buildings Ordinance, the Building Authority is empowered to

enter and where necessary, break into premises in the presence of a police officer, the Building Authority is fully aware of the importance of private property rights and personal privacy, thus the power was very carefully exercised in the past. The power is usually exercised to break into a premise only when there is imminent danger or in extreme cases where there is a serious hazard to the environment and health. The figures I am going to give can fully reflect the enforcement difficulties of the BD. Beginning from April this year, the BD has conducted large-scale enforcement operations against "sub-divided units". As at the end of October, the BD has inspected 105 buildings and found that 677 buildings are suspected of having "sub-divided units". The number of "sub-divided units" involved amounts to more than 2 300 but staff of the BD only succeeded in entering into some 60% of the units (396 units) for inspection. The BD has issued more than 657 advisory letters and removal orders to more than 400 inspected units. Since the BD has failed to enter into the remaining units for inspection, it has not yet taken the necessary follow-up actions.

The BD took action on 1 August this year to break into a building along To Kwa Wan Road. The BD visited the "sub-divided units" for almost 10 times two months before the operation, and had urged the residents to co-operate to facilitate the inspection work, but to no avail. As a last resort, staff of the BD gave the owners an advance notice in late July that they would exercise the power to break into the units, in the presence of a police officer, for inspection. Finally, the owners of four units were willing to allow staff of the BD to enter into the units for inspection while two other units were broken into. The process of the operation was smooth; upon successful inspection, staff of the BD issued removal orders, requesting the owners to rectify the irregularities. We notice that the public and public opinion generally support this proactive action taken by the BD, but they consider that it is more appropriate for the staff concerned to enter into premises with warrants issued by the Court.

As a matter of fact, it is not a new practice for public officers to apply to the Court for a warrant to enter into a premise for law enforcement. The existing laws in Hong Kong have provided for such actions to be taken by certain departments. According to the experience of the Food and Environmental Hygiene Department, the Fire Services Department and the Environmental Protection Department, owners will generally be more co-operative if officers have first applied to the Court for a warrant. Therefore, we propose allowing the Building Authority to apply to the Magistrate's Court for warrants to facilitate its

entry into individual premises for inspection and enforcement actions. The new proposed requirement is strict as compared with the existing powers to break into premises. The Court will play a gatekeeper's role to ensure that warrants will only be issued when the law is complied with, and it is really necessary to improve building safety.

We understand some Members' concern about the impact of the proposal on private property rights and personal privacy. Thus, we will build in the Bill safeguards to clearly define the circumstances under which the officers can apply to the Court for a warrant. We think the proposal has struck a balance between the public's concern about building safety and private property rights. Concerning the issue of "sub-divided units" that people are extremely concerned about, it is very important for enforcement personnel to enter into premises early for inspection. I implore Members who have reservations about this proposal to support the Administration's proposal, taking into consideration the emphasis on people's livelihood and the protection of the safety of residents.

Proposals (b) and (c) are about stronger deterrent effects on non-compliant owners. On various occasions, Members and the public have remarked that it is necessary for the authorities to distinguish between "responsible" and "irresponsible" owners, and assist small owners in dealing with other owners who are unwilling to bear responsibilities for building repair works. Under the Bill for the implementation of a mandatory building inspection scheme and a mandatory window inspection scheme which has been passed, persons who refuse to share the costs of inspection and repair of common parts of the buildings without reasonable excuse is an offence. If non-compliance with the notice by owners makes it necessary for the BD to appoint contractors to carry out the works, the BD can collect not more than 20% surcharge. We propose extending the application of these two arrangements to all statutory orders and notices issued by the BD to urge owners to bear their responsibilities.

Proposal (d) is about the signboard control system. There are about 190 000 unauthorized signboards in Hong Kong, posing threat to the safety of passers-by and residents. For this reason, we propose to introduce a signboard control system as a pragmatic approach to deal with the safety issue of existing unauthorized signboards. The specification for unauthorized signboards joining the scheme should conform to the specification for corresponding minor works under the minor works control system, and be proven to comply with safety and

technical requirements. The proposed system would allow the continued use of certain existing unauthorized signboards unless there are changes in safety conditions provided that safety checks should be conducted once every five years. We will encourage owners to join the scheme for unauthorized signboards found in the course of mandatory building inspection and the BD will take enforcement actions against unauthorized signboards not joining the scheme. The Bill mainly establishes a legal framework for the control system so that the system can be comprehensively implemented upon passage of the Bill and the relevant subsidiary legislation. Also, the Bill introduces an amendment that allows the future extension of the application of the existing Household Minor Works Validation Scheme to other types of works.

The last proposal of the Bill is to require registered inspectors to comprehensively report exterior and external unauthorized building works under the Mandatory Building Inspection Scheme. Under the Scheme approved by the Legislative Council, the registered inspector appointed to carry out a mandatory inspection must notify the BD of any unauthorized building works in the common parts or the external walls of the building, identified during the course of the mandatory inspection. In line with the enforcement policy on unauthorized building works which entered into force on 1 April this year, we further proposed that registered inspectors must notify the BD of any unauthorized building works on building roofs or platforms, or courtyards, ramps or streets adjacent to buildings. This will help the BD to take prompt action to implement the new enforcement policy, so as to produce a stronger deterrent effect.

Deputy President, the principles and details of the five proposals have been discussed in great detail at a number of meetings of the Bills Committee held between February and June this year. We hope Members can expeditiously complete the scrutiny of the Bill on the basis of past discussions, so that the legislation related to building safety would be further improved as soon as possible.

Last but not least, I must emphasize that legislation is not the ultimate solution to the problems because the requirements of the law can only enable buildings to meet the most basic safety requirements. Even with sound laws and regulations, adequate support and vigorous enforcement, if some owners disregard safety and take shortcuts, I am afraid the building safety problems will continue to exist. Hence, I once again call upon all owners in Hong Kong to

bear in mind that, owners attempting to evade responsibilities for building safety have criminal and civil liabilities and they may endanger their precious lives and those of others. I implore Members to support the Bill to facilitate the early implementation of the proposals.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Buildings Legislation (Amendment) Bill 2011 be read the Second time.

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

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): Bills. We now resume the Second Reading debate on the Inland Revenue (Amendment) (No. 2) Bill 2011.

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 2011

Resumption of debate on Second Reading which was moved on 9 March 2011

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

MR PAUL CHAN (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2011 (the Bills Committee), I report on the deliberations of the Bills Committee.

At present, in the calculation of the profits chargeable to profits tax of enterprises, tax deduction is granted for capital expenditure incurred on the

purchase of patent rights and rights to any know-how. To promote the wider application of intellectual property rights (IPRs) by enterprises, the 2010-2011 Budget proposed to provide tax deduction on profits tax for capital expenditure incurred by enterprises on the purchase of three commonly-used types of IPRs, namely copyrights, registered designs and registered trade marks. The main objective of the Inland Revenue (Amendment) (No. 2) Bill 2011 (the Bill) is for the implementation of this proposal.

The Bills Committee has held seven meetings and the public, including the relevant trade associations and professional organizations, have been invited to give views on the Bill. I will report the following five points to Members on behalf of the Bills Committee.

First, it is about the coverage of the Bill. The Bill stipulates that taxpayers are required to have the ownership of the IPRs concerned for claiming the tax deduction. The Bills Committee has noted that some owners of high quality IPRs are often reluctant to sell their IPRs and are only willing to allow others to use the IPRs by means of a license. Under this arrangement, the users have to pay an annual licensing fee for a specified IPR, and they often have to pay a substantial amount of upfront fee in signing the agreement. Since the policy objective of the proposed tax reduction is to promote the wider application of IPRs by enterprises, the Bills Committee has asked the Administration to consider extending the proposed tax deduction to cover such upfront licensing fees.

The Administration has advised that under the licensing arrangement, the taxpayer has not acquired the ownership of the specified IPR, and thus the taxpayer is not eligible to the proposed tax deduction. Moreover, since the upfront fee of an IPR licence is capital expenditure in nature, under the existing Inland Revenue Ordinance (IRO), it is not deductible. Since Hong Kong does not tax the corresponding capital receipts of licensors (for both local and overseas), Hong Kong would suffer revenue loss if tax deduction is extended to cover upfront licence fees. Despite that, as the annual licensing fee paid by the taxpayer for the use of the specified IPR is a recurrent expenditure, it is deductible under section 16 of the existing IRO.

Deputy President, I will then report the second point to Members on the determination of market value of IPRs. It is proposed in the Bill that the Commissioner of Inland Revenue (the Commissioner) be empowered to

determine the true market price for any sale or purchase transactions of the IPRs for tax deduction purpose. The Bills Committee has noticed how the Administration would ensure that the Commissioner would make such determination in an objective manner and whether a mechanism is available for taxpayers to appeal against the Commissioner's determination.

The Administration has advised the arrangement for providing tax deduction for capital expenditure on the purchase of IPRs may be abused, and thus the Commissioner must be empowered to determine the true market price for any sale or purchase transactions of the IPRs. Actually, under the existing ordinance, the Commissioner has already been empowered to determine the true market value of an asset for tax purpose.

The Administration has explained to the Bills Committee the operation arrangement of the Inland Revenue Department (IRD) in determining the true value of IPRs. In view of the concerns raised by the Bills Committee, the authorities has undertaken that apart from specifying the arrangements for determining for tax purpose the true market value of an IPR in the Departmental Interpretation and Practice Notes (DIPNs) of the IRD, the relevant arrangements would be mentioned in the speech of the public officer in charge during the resumption of the Second Reading debate on the Bill.

Regarding appeal arrangements, the Administration has advised that a statutory objection and appeal mechanism is already provided under the existing IRO, and there is no need to make additional provisions about the appeal arrangement in the Bill.

Deputy President, the third point to be reported to Members is about the anti-avoidance provisions concerning transactions between associates. It is stated in the proposed section 16EC(2) that deductions will not be allowed for patent rights, rights to any know-how or the specified IPRs purchased wholly or partly from an associate. Members have queried the approach resulting in the blanket denial of tax deduction for IPR transactions between associates. Members consider that so long as the transaction price is fair and reasonable, the expenditure incurred on the purchase of an IPR, even from an associate, should be able to enjoy the proposed tax deduction.

The Administration has explained that associated companies can easily manipulate the transaction price of the IPRs for tax avoidance purpose. Moreover, as the market value of the IPRs may appreciate and it is now proposed under the Bill to cap the sales proceeds of the IPRs to be brought to tax at deductions previously allowed, which means that profits tax will not be levied on the discrepancy between the previous value and the appreciated value of the IPRs. Hence, without the anti-avoidance provisions on associates, corporations may transfer the IPRs from one member company of a group to another member company for tax avoidance purposes. Therefore, the Administration considers it necessary to adopt the anti-avoidance measure provided under the proposed section 16EC(2).

Some deputations have expressed their views to the Bills Committee. They consider that IPR transactions arising from mergers and acquisitions should not be caught by the anti-avoidance provisions on transactions between associates. The deputations have pointed out that the transfer of ownership of IPRs registered in various jurisdictions often involves complicated and lengthy legal procedures. In order to avoid any delay in the mergers and acquisitions process, the transfer of ownership of IPRs is often carried out after the merger or acquisition. By that time, as the companies concerned would become associates, purchasing the IPRs would be denied the proposed tax deduction for the capital expenditure on the purchase of the IPRs. They consider the practice unfair. In this connection, the Bills Committee has requested the Administration to consider formulating an escape clause to cater for the purchasing activities of IPRs under normal mergers and acquisitions transactions.

The Administration has indicated that it has made reference to the relevant pieces of legislation of comparable overseas jurisdictions, and found that those pieces of legislation do not contain any escape clause to cater for the mergers and acquisitions transactions in question. The Administration also does not see any valid justifications to make exemption arrangement accordingly. The Administration has pointed out that for mergers and acquisitions where huge sums of money are at stake, the parties concerned will normally seek professional advice in order to ensure that such transactions are tax-efficient. As such, the absence of the suggested escape clause will not pose significant impact on the parties concerned.

Deputy President, I will then go to the fourth point, which is about the tax-avoidance provisions on cross-border activities. It is stipulated in the

proposed section 16EC(4)(b) that if the relevant IPR is used wholly or principally outside Hong Kong by a person other than the taxpayer under a licensing arrangement, tax deduction for the expenditure incurred on the purchase of the IPR concerned will not be allowed. Though the authorities have pointed out that this is an anti-avoidance provision, many deputations considers that the provision will bring about the undesired side effects of hindering normal business operations, particularly on cross-border processing activities, such as contract processing and sub-contracting arrangements.

According to the views of the deputations, since proposed section 16EC(4)(b) is drafted according to section 39E(1)(b)(i) of the existing ordinance, they worry that unfair tax arrangement similar to the case under section 39E will reoccur. They worry that where tax deduction for the expenditure incurred on the purchase of IPRs is not allowed on the one hand, they have to pay profits tax for the sale proceeds from the products concerned.

Some opposing views have stated that the proposed section 16EC(4)(b) is not needed, as proposed section 16EA(2) already serves to reflect the policy intent of denying tax deduction in respect of IPRs not used for the production of profits chargeable to tax in Hong Kong. Besides, the IRD can tackle tax avoidance by way of the general anti-avoidance measures provided under the existing sections 61 and 61A.

In the course of scrutiny, the Bills Committee has had repeated discussions with the authorities and various deputations on this provision. Eventually, in response to the request of the Bills Committee, the authorities explain the application of the proposed section 16EC(4)(b) in various scenarios involving cross-border activities by means of tables and examples. During the course, the grasp of the nature of IPRs protection is crucial to the completion of the scrutiny of this provision. The nature of the IPR registration system is that the protection is of a territorial nature, that is, the territorial scope of protection of an IPR registered in a jurisdiction is solely restricted to that jurisdiction. Given this unique nature, the application of the proposed section 16EC(4)(b) in the cross-border activities of Hong Kong companies is summarized below.

Scenario (A): A Hong Kong company, after acquiring the proprietary interest of a Hong Kong registered trade mark only, contracts a manufacturer in the Mainland to produce goods bearing the Hong Kong registered trade mark for sale in Hong Kong or overseas to produce profits chargeable to tax in Hong

Kong. As the Hong Kong company has not acquired the proprietary interest of that mark for the Mainland, it has no right to grant a licence to the Mainland manufacturer. In the above scenario, since the Hong Kong company has not given the trade mark to the manufacturer for use in the Mainland, section 16EC(4)(b) in the Bill is not applicable. In other words, the Hong Kong company is eligible for tax deduction in respect of the capital expenditure incurred on the purchase of the Hong Kong registered trade mark provided that it can satisfy other provisions in the Bill.

Scenario (B): A Hong Kong company acquires the proprietary interest of a Hong Kong registered trade mark, and then registers the mark in the Mainland. The company then contracts a manufacturer in the Mainland to produce goods bearing the registered trade mark, and the goods are sold in the Mainland and overseas by the Hong Kong company and produce profits chargeable to tax in Hong Kong. The Hong Kong company has not purchased the Mainland registered trade mark, and it has become the registered owner of the trade mark in the Mainland because it has subsequently registered the trade mark in the Mainland, whereas the cost incurred in the latter case is the registration fee of the trade mark, and the trade mark used by the Mainland manufacturer has no relationship with the registered trade mark in Hong Kong, hence, section 16EC(4)(b) of the Bill is not applicable. In other words, the Hong Kong company is in the same situation as the Hong Kong company in scenario (A), the capital expenditure incurred on the purchase of the Hong Kong registered trade mark is also eligible for tax deduction.

Scenario (C): A Hong Kong company, after acquiring the proprietary interests of a trade mark registered both in Hong Kong and in the Mainland, contracts a manufacturer in the Mainland to produce goods bearing the trade mark. The goods produced by the Mainland manufacturer are then sold in Hong Kong and in the Mainland by the Hong Kong company and produce profits chargeable to tax in Hong Kong. In this example, the expenditure incurred by the Hong Kong company on the purchase of the Hong Kong registered trade mark is no different from that in scenario (A) and scenario (B) and is thus eligible for tax deduction.

For the expenditure incurred on the purchase of the Mainland registered trade mark, it is for the manufacturing of products by the Mainland manufacturer. As such, this part of expenditure is not eligible for tax deduction in Hong Kong.

With the above clarification from the authorities, the Bills Committee has accepted the retention of proposed section 16EC(4)(b) as it is drafted by the Government. In response to the request of the Bills Committee, the Administration has undertaken to cover the application of the proposed section 16EC(4)(b) in the form of examples in the DIPNs to be issued.

Deputy President, the last point I have to report to Members is about the DIPNs.

In the course of the Bills Committee's deliberations, Members have requested the authorities to draw up the DIPNs later in respect of the application of various part of the Bill, so that taxpayers may understand the situation clearly. The Administration has undertaken to provide the final draft version of the DIPNs compiled pursuant to the provisions in the Bill to the Panel on Financial Affairs for scrutiny.

In addition to the five salient points discussed above, the Bills Committee has also examined the following issues. First, the scope of IPRs covered by the proposed tax deduction; second, the registration requirement under the proposed tax deduction; third, the arrangement on the apportionment computation of tax deduction; and fourth, the anti-avoidance provision preventing the abuse of the proposed tax deduction by means of the "rent and buy" approach.

The Administration will propose a number of amendments of a technical nature and related to the drafting of the provisions. The Bills Committee agrees with the Committee stage amendments moved by the authorities and support the resumption of the Second Reading of the Bill.

Deputy President, I will then express my views.

Deputy President, I will not speak further about the Bill, yet I would like to take this opportunity to briefly discuss several points.

First, on 4 February 2009, at the motion debate on the motion "Promoting the development of local creative industries" moved by Dr Samson TAM, I proposed an amendment urging the Government to allow enterprises to enjoy tax deduction for expenditure incurred on intangible assets to promote the development of creative industries in Hong Kong. I had particularly mentioned

trade marks and designs, which are exactly the scope covered by the Bill. Hence, when the Financial Secretary later proposed the introduction of this measure in the 2010 Budget, I gave my full support and appreciated that the Government had heeded our views to act accordingly.

In retrospect, I recalled that in 2008, after I assumed office as a Member of the Legislative Council, I had met with the Financial Secretary and proposed to him that amendment to the ordinance must be made to enable Hong Kong to sign more bi-lateral taxation agreements with overseas places, so that Hong Kong could be developed into a trans-investment centre for overseas investment which Mainland and foreign enterprises would be willing to use. In the 2009 Budget, the Financial Secretary also proposed that arrangement, and a relevant bill was introduced subsequently and passed by this Council.

I cite these two examples to illustrate that there is room for improvement for the tax regime of Hong Kong. As I have mentioned repeatedly in the legislature that the Government should set up a specialist tax policy unit to review the legislation of Hong Kong so as to keep the legislation in Hong Kong abreast of the times and upgrade its competitiveness, and furthermore, the legislation will also serve the purposes for public finance. That motion had also been passed by this Council at the time. Regrettably, the Government has not taken any positive follow-up actions in this respect so far.

Deputy President, I hope that in the next Budget, the Financial Secretary will propose the establishment of a specialist tax policy unit to conduct a comprehensive and in-depth review on the tax regime of Hong Kong, particularly the offer of options for certain companies to choose to carry forward the loss of a year to the coming year or carry back the loss to previous years for tax rebate. This practice is adopted both in Australia and Singapore aiming to facilitate cash flow of companies, particularly small and medium enterprises (SMEs), in times of economic recession.

We all worry about the economic prospect next year, and I think this is something the Government must do. If it worries that the tax rebate may incur substantial expenditure, the approach of capping the tax rebate amount as adopted in Singapore may be followed to target SMEs as the major beneficiaries of the tax rebate.

Another point is to allow profits and losses of companies within the same group be offset before the charging of tax, so as to encourage companies to invest on long-term projects with longer time-horizons, and to exert positive impact on the promotion of the six industries with competitive edge, particularly the local creative industries which development is not yet mature.

Deputy President, I so submit. Thank you.

MR WONG TING-KWONG (in Cantonese): Deputy President, in fostering sustainable development in the economy of Hong Kong, the promotion of the development of a knowledge-based, high-value-added and creative economy is the right direction, whereas intellectual property rights (IPRs) is an essential element in promoting the development of creative industries. At present, the full utilization of IPRs to provide impetus for business development and competitiveness enhancement is a topic to be examined constructively by enterprises in restructuring and upgrading, as well as in the formulation of long-term plan and the pursuit of sustainable development.

Deputy President, the Inland Revenue (Amendment) (No. 2) Bill 2011 (the Bill) proposes expanding the scope of application of profits tax deduction, as a taxation incentive, to cover capital expenditure incurred on the purchase of three types of IPRs, namely copyrights, registered designs and registered trade marks, so as to further encourage enterprises to make wider application of IPRs and promote creativity. Moreover, amendments are proposed in the Bill on tax deduction relating to the partly use of patent rights and rights to any know-how to enhance the existing tax reduction arrangement. These are favourable measures to the trades, and thus the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and I will support them.

There are several controversial points worthy of attention during the course of scrutiny, which I would like to discuss here. First, it is about the registration requirement. Some deputations have expressed concern that if the assessment year in which capital expenditure for the purchase of the IPRs is incurred will soon end, but the applications for registering the assignments of registered trade marks or registered designs purchased by them and for registering themselves as the registered owners are still being processed, will tax deduction be granted for such expenditure? Moreover, if the registration of an IPR is eventually ruled to

be invalid, revoked or surrendered after tax deduction has been granted, how the authorities will handle this situation? The approaches for handling these situations have not been stated clearly under the existing provisions. As such, the authorities clarify that tax reduction will be granted if taxpayers can provide proof that the IPRs have been registered and that the relevant application for assignment has been submitted. As for the case where the registration of certain IPRs is eventually ruled to be invalid or revoked, or that the applicants have surrendered after tax deduction for the IPRs has been granted, the authorities will recover the tax deduction previously provided. It is evident that the authorities will adopt a lenient and reasonable approach. Though the authorities refuse to include the relevant provisions in the Bill, it agrees that the relevant arrangement will be set out in the Departmental Interpretation and Practice Notes (DIPNs) at the request of Members. However, I hope that the registration authorities will speed up the process in approving registration applications, where unnecessary procedures should be avoided to ensure speedy completion of the application, so that there will not be prolonged confusion.

Moreover, Deputy President, the Bill states unequivocally that where the IPR is used partly in the production of chargeable profits, deduction is only allowed for the part of capital expenditure that is proportionate to the extent of the use of the IPR in the production of such chargeable profits. In this connection, I think the apportionment computation is very complex, which will not be understood and comprehended by the trades easily. Hence, I hope that the authorities will specify a formula for apportionment computation. Though the authorities have responded that a formula can hardly be specified due to the varied computation adopted according to the different modes of operation of various trades, I think the authorities may set out the possible scenarios as far as possible, disseminate more information to the trade and set out relevant guidelines, so as to facilitate the trades to understand the apportionment computation better.

The authorities have also included anti-avoidance measures in the Bill to lower the possibilities of tax avoidance. I hope that the relevant measures should avoid going to the extreme. Regarding the anti-avoidance provisions on the transactions between associates, it is stated in section 16EC(2) that deductions will not be allowed for patent rights, rights to any know-how or the specified IPRs purchased wholly or partly from an associate. However, the definition of "associate" does not seem to be very clear. Some deputations cite the example

that the IPR transactions arising from mergers and acquisitions involve the registration transfer of various jurisdictions, and to avoid any delay in the mergers and acquisitions process, the transfer of ownership of IPRs is often carried out after the merger or acquisition. By that time, as the companies concerned would have become associates, purchasing the IPRs would be denied the proposed tax deduction for the capital expenditure on the purchase of the IPRs. However, the mergers and acquisitions are common activities in business operation. Hence, for normal mergers and acquisitions, where there is no evidence of suspected tax avoidance, the enterprises concerned should be exempted from the provision of section 16EC(2) and be granted tax deduction. The authorities have refused to formulate an escape clause, for it considers that out of the concern of tax-efficiency, enterprises will make arrangement for the purchase of IPRs before they become associates. I hope the authorities will pay close attention to the impact of section 16EC(2) on mergers and acquisitions and review the performance of the relevant measures, and it should avoid causing undesirable effects on normal business activities, impeding the application of IPRs by enterprises.

Regarding the provision on the use of IPRs in cross-border activities under the anti-avoidance provision section 16EC(4)(b), it has the same demerit as section 39E of the Inland Revenue Ordinance (IRO). It is stipulated in section 16EC(4)(b) that no deduction is allowable if the relevant IPR is used wholly or principally outside Hong Kong by a person other than the taxpayer under a licensing arrangement. In my view, section 16EC(4)(b) will affect the business operation of enterprises in some measures, for a majority of Hong Kong industries have moved northward to the Mainland, and many Hong Kong companies engaging in processing trades will sub-contract their production work to their Mainland partners, where these companies will authorize their partners outside Hong Kong to use the IPRs they have purchased at no cost. Though the production procedures are carried out outside Hong Kong and the IPRs are used outside Hong Kong, the entire production processes and arrangements are planned and controlled by Hong Kong companies. Hence, if Hong Kong companies are not granted tax deduction for the cost for purchasing the IPRs for this reason, it will discourage the application of IPRs by enterprises, which will not facilitate their restructuring and upgrading.

Later, having grasped the views of the trade, the authorities have set out examples of different scenarios in response to Members' concern. It clarifies

that tax deduction will be granted for the relevant IPRs irrespective of whether they are used in Hong Kong, so long as they are used by the taxpayers themselves for production of profits chargeable to tax in Hong Kong; and that when a Hong Kong enterprise contracts a Mainland manufacturer concerned to produce goods using the IPR purchased by the Hong Kong enterprise, and sells the manufactured goods and earns profits chargeable to tax in Hong Kong, the enterprise can enjoy the proposed tax deduction for the part of the capital expenditure incurred on the purchase of the IPR used in the production of goods for the enterprise's trading activities. Since different tax treatments are adopted according to the different uses of IPRs in cross-border activities, and the uses of IPRs involved complicated situations, the trades can hardly understand and cope with the various taxation arrangement, and this is likely to arouse disputes. For instance, I query if it is so easy to differentiate the production cost incurred in Hong Kong and that in the Mainland. If the enterprise can hardly divide the expenditure incurred on the purchase of IPRs for Hong Kong and the Mainland or even other places, how can taxation be calculated effectively? In this connection, it is proposed in the present Bill that the Commissioner of Inland Revenue (the Commissioner) is empowered to determine the true market value of IPRs, and taxpayers dissatisfied with the decision of the Commissioner may lodge an appeal. However, if the value is estimated by the Commissioner, enterprises will inevitably raise disputes about the estimate. Though they may lodge appeal against the decision, the trades may worry that it will cost them more time and troubles. Hence, the authorities have agreed to state in the DIPNs the arrangements on the use of IPRs in cross-border activities and quote examples for illustration. I hope the authorities will give clear and precise explanation to enable the trades to understand the arrangement, so that they can make better planning in operation. In the long run, I hope that the authorities will impose suitable measures at appropriate times. In regard to the economic situation and the mode of business operation of Hong Kong enterprises, the authorities should review the tax regime relating to cross-border activities and examine the feasibilities of relaxing the requirements. As in the case of section 39E of the IRO, where many Members have been striving continuously for the repeal of the section in the Legislative Council over the years, Members hope that the trades will be granted reasonable tax deduction. The authorities should not refuse to make any adjustment merely on the ground of anti-avoidance; on the contrary, it should examine other feasible anti-avoidance measures, say assigning staff to inspect the business operation in places outside Hong Kong, and so on.

Finally, Deputy President, to further encourage wider application of IPRs by the trades, the authorities should review and update the types of expenditure in the scope of tax deduction for IPRs expenditure according to the development of society and economy and with reference to overseas experience, so that more types of expenditure on the application of IPRs can be tax deductible. Members have agreed at the meetings that the expansion of the scope of tax deduction will be referred to the Panel on Commerce and Industry for follow-up in future, hoping that the Government will consider and examine the issue proactively.

With these remarks, Deputy President, I support the Bill and the relevant amendments.

MS AUDREY EU (in Cantonese): Deputy President, according to the existing Inland Revenue Ordinance (IRO), expenditure incurred on the purchase of patent rights and rights to know-how is tax deductible. In the Budget of 2010-2011, it is proposed that in addition to the two expenditure items mentioned above, the scope of the tax deduction concerned should be expanded to cover capital expenditure for purchase of three types of intellectual property rights (IPRs), namely, registered trade marks, copyrights and registered designs, so as to promote creative industries.

Regarding the work of the Bills Committee, the Chairman of the Bills Committee, Mr Paul CHAN, has given a clear account when he spoke earlier, so I will not repeat the details here. However, I would like to highlight an issue we had spent much time to discuss. Under "one country, two systems", more often than not, factories of Hong Kong enterprises are not set up in Hong Kong but on the Mainland, and thus many financial arrangements involve factories on the Mainland. In this connection, we have discussed whether the provision under section 16EC(4)(b) should be relaxed to allow tax deduction for expenditure on IPRs involving cross-border activities. It is stipulated in section 16EC(4)(b) that expenditure for IPRs used across the border is non-deductible. For instance, when a mother company in Hong Kong authorizes its subsidiary company outside Hong Kong to use certain IPR and produce profit, the expenditure on that IPR incurred by the subsidiary company outside Hong Kong is not eligible for tax deduction under section 16EC(4)(b).

However, the prevailing reality is that there are no industries in Hong Kong, for enterprises all set up their factories on the Mainland. If expenditure on IPRs involving cross-border activities is non-deductible, the new concession provided will be of no benefit to many Hong Kong enterprises. The Government explains that the authorities must lay down anti-avoidance provisions and upheld the taxation principles of "territorial source", which means that only chargeable profits produced in Hong Kong are entitled to this tax concession. Moreover, the Government has to comply with the principle of "tax symmetry". We understand these reasons. The Government states that section 16EC(4)(b) cannot be relaxed because of these reasons. However, we urge the Government to continue to consider and review the arrangement in this respect, for without the relaxed arrangement, many Hong Kong enterprises will not be able to benefit from the concession, and the amendment put forth will fail to truly promote the development of creative industries.

Though we welcome the expansion of the scope of tax concession, we consider this a belated attempt and the extent of the concession is also inadequate. In the Policy Address 2008-2009, Chief Executive Donald TSANG stated that vigorous efforts would be made to promote creative industries. As a result, the Government set up an office specified in promoting creative industries and the \$300 million CreateSmart Initiative (CSI) was introduced to provide financial support to activities of varied scales. In 2011, 30 activities had been organized. However, so far, the effort in promoting creative industries has been unfocused, not to mention the establishment of a sound mechanism or the formulation of long-term policies that can truly promote creative industries. We know that the Chief Executive's term of office will soon expire in June. Will the next Chief Executive be able to facilitate creative industries to scale greater height? We will wait and see whether the next Chief Executive can do so.

Let us look at the situation in other places, for instance. In Taiwan, the Act for the Development of Cultural and Creative Industries has been put in place. According to the legislation, if profit-making enterprises' donation or purchase of original creation is for disadvantaged groups, for sponsoring cultural or creative activities in remote areas, or for the establishment of incubation centres for cultural or creative industries, that amount may be listed as annual expenses or losses so long as the total amount is within NT\$10 million or 10% of the income of the enterprise. To promote the innovation of creative industries, investment in cultural and creative researches and development, as well as

personnel training are entitled to tax reduction or exemption under the provisions of the tax law or other laws and regulations. As for machinery and equipment imported by cultural and creative enterprises from overseas countries for their own use, the import tax will be waived so long as the authorities in charge prove that it is the case, and that the project office of the Ministry of Economic Affairs confirms that the machinery and equipment are not available in Taiwan.

Apart from Taiwan, Beijing has also put in place various tax concessions to encourage the development of cultural and creative industries. For instance, the income from the first entrance of activities organized by memorial museums, museums, museums of culture, museums of art, exhibition halls, calligraphy and painting exhibition halls, libraries and heritage conservation units, and the income from ticket sales of cultural and religious activities organized by religion venues are exempted from business tax. As for enterprise income tax, it may also be waived. When a unit engaging in cultural business restructures into an enterprise, it may be exempted from paying enterprises tax. To encourage the establishment of new cultural enterprises, those enterprises are exempted from enterprise income tax for three years since the date the business registration is made. Prizes in monetary terms awarded to individuals by provincial authorities or international organizations in the fields of science, education, technology, culture, health, sports and environmental protection, and so on, are exempted from individual income tax. As for the use of land, if a cultural business unit restructures into an enterprise, its premises for self use will be exempted from property tax.

It is evident that regions in the vicinity have provided support for cultural industries through diversified channels, which is a manifestation of their determination to support the development of cultural and creative industries. Yet in Hong Kong, despite the amendment to the legislation to expand the tax deduction coverage for capital expenditure incurred on the purchase of IPRs, it is of very little help, for the tax concession can hardly assist small entities. In fact, the purchase of eligible environmental protection facilities and environment-friendly vehicles, and the purchase of patent rights, rights of any know-how or the copyrights, registered designs and registered trade marks now under discussion, often involves enormous application fees and capital expenditure, which are unaffordable to small enterprises in general. Hence, despite the passage of the present amendment, they will not benefit.

We may look at the story of a local hat-maker Jay COW. She went to the United Kingdom and was taught the technique of hat-making by the royal hat-maker Rose COREY, who has been serving the royal family for many years. Jay COW is specialized in making spectacular hats for artists to attend glamorous banquets and concerts. For instance, she has made hats for Eason CHAN, Fiona SIT and Susanna KWAN for their stage performance. However, in Hong Kong, she can only sell her hats to very famous artists, and she can hardly promote her design here. At the interview with the press, she expressed that she wished to become famous in Paris, so that her hats could first be exported and then imported to the local market. Her experience rightly reflects the problem now prevails in Hong Kong. Though many people who have good ideas and artistic talents hope to develop their creative business in Hong Kong, they are unable to get adequate assistance from tax concessions if they run a small business with limited capital in individual capacity or as an individual entity.

I would like to talk about a major problem bothering Hong Kong enterprises, that is, the developer hegemony. In Taiwan, it is stipulated in Article 25 of the Act for the Development of Cultural and Creative Industries that the Government is obliged to assist the establishment of cultural villages. In Hong Kong, while several cultural villages are found scattered over the territory, such as the Cattle Depot Artist Village and the Creative Arts Centre at Shek Kip Mei, other policies, not just tax concession alone, such as the revitalization of factory buildings, often go against the concept of promoting creative industries. Consequently, people engaging in creative industries are often burdened with exorbitant rent.

Hence, the Civic Party hopes that the authorities will not only focus on minor amendments and insignificant remedies. The restricted tax concession provided under the Inland Revenue (Amendment) (No. 2) Bill 2011 under discussion today is a case in point. The authorities should focus on measures which can truly address the many problems now faced by creative industries in Hong Kong. No matter the assistance is provided in terms of rental assistance, or by means of policies or the promotion of assistance fund, or via the provision tax concession for investors of small enterprises, we hope that the Government will give due regard to different perspectives and introduce all-round and diversified polices. Thank you, Deputy President.

MR JEFFREY LAM (in Cantonese): Deputy President, the Inland Revenue (Amendment) (No. 2) Bill 2011 (the Bill) seeks to implement the proposed tax deduction put forth in the Budget last year to allow taxpayers to apply for tax deduction for capital expenditure incurred on the purchase of copyrights, registered designs and registered trade marks. Moreover, the Bill seeks to modify the existing provisions on tax deduction to encourage the wider application of intellectual property rights (IPRs) by enterprises and to promote the development of creative industries. In my view, this tax deduction measure will promote business operation and attract more investment.

(THE PRESIDENT resumed the Chair)

However, we have reservations about the restrictions imposed on tax deduction as we worry that these restrictions will be so stringent that most of Hong Kong enterprises fail to benefit, and hence the intended objective cannot be attained. We are most concerned about section 16EC(4)(b) which imposes restrictions on the use of IPRs on cross-border activities. The provision stipulates that no deduction is allowable if the relevant IPR is used outside Hong Kong by a person other than the taxpayer under a licensing arrangement. In gist, if owners of the IPRs use the IPRs through contractors outside Hong Kong, deduction will not be allowed for the cost so incurred.

We think that the restriction under section 16EC(4)(b) will affect the business operation of enterprises, particularly when it is common for Hong Kong enterprises to contract certain processes to Mainland manufacturers, where Mainland manufacturers or contractors will use the IPRs purchased by Hong Kong enterprises in the course of production to produce goods for Hong Kong enterprises. Since operation takes time, many Hong Kong enterprises will authorize contractors outside Hong Kong to use the IPRs under a licensing arrangement at no cost. It is a very common practice. Under the sub-contract arrangement to Mainland manufacturers, products will be sold to the Hong Kong enterprise concerned at relatively low prices but not to a third party for profits. As such, Hong Kong enterprises usually will not charge the Mainland manufacturers for licensing fees for the use of the IPRs concerned.

However, under section 16EC(4)(b), the above arrangement will be regarded as the use of IPRs by a third party in cross-border activities and even "offsetting transactions", where no deduction will be allowed. This restriction may render many manufacturers engaging in processing trade unable to benefit from this new tax concession. The situation is similar to the present dispute on section 39E of the Inland Revenue Ordinance (IRO) where capital expenditure incurred on renting machinery and plant is not eligible to claim depreciation allowance. As such, the restriction goes against the intent of the Bill, it fails to encourage the wider application of IPRs by enterprises and achieve the objective of promoting the development of the creative industries in Hong Kong.

In our view, in order to avoid the same mistake made in respect of section 39E of the IRD, the Government should abolish the restriction on the use of IPRs in cross-border activities, or stipulate explicitly that the provision is not applicable to the licensing arrangement for IPRs of processing trade, so that the capital expenditure incurred on the use of IPRs in the processing trade business, even outside Hong Kong, will be tax deductible.

I hope the Government will listen to our views and make improvement accordingly, so that more enterprises can benefit from the new tax concession, which will in turn promote the application of IPRs by Hong Kong enterprises and the development of creative industries in Hong Kong.

President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Financial Services and the Treasury to reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, first, I have to thank the Chairman of the Bills Committee, Mr Paul CHAN, members of the Bills Committee and staff of the Legislative

Council Secretariat again for their efforts which enable the scrutiny of the Bill to be completed smoothly.

The Inland Revenue (Amendment) (No. 2) Bill 2011 (the Bill) was submitted to the Legislative Council for scrutiny in March this year. The Bills Committee has held seven meetings and invited the trades and relevant stakeholders to express their views.

The main objective of the Bill is to amend the Inland Revenue Ordinance (IRO) to implement the proposal in the 2010-2011 Budget that profits tax deduction be provided to capital expenditure incurred on the purchase of copyrights, registered designs and registered trade marks, so as to promote the wider application of intellectual property rights (IPRs) by enterprises, to promote creativity and encourage improvements, and to promote the development of creative industries in Hong Kong.

Under the existing IRO, tax deduction is provided for revenue expenditure in general in calculating profits tax, hence, the revenue expenditure of enterprises on IPRs, such as royalties, licensee fees and other regular payments, like other revenue expenditure incurred, are tax deductible in the calculation of profits tax. Since no capital gains tax is levied in Hong Kong, tax deduction is not allowed for capital expenditure accordingly. However, to support the development of enterprises, we have provided tax concession in specific areas, such as expenditure incurred on research and development, the purchase of patent rights and rights of any know-how, the purchase of eligible environmental protection facilities and environment-friendly vehicles. Moreover, to promote the protection of IPRs, tax deduction will be provided specifically for capital expenditure incurred on the three types of IPRs registered in or outside Hong Kong, namely, patent rights, registered trade marks and registered designs.

With the proposed amendments in the Bill, the scope of tax-deductible capital expenditure will be further expanded to cover capital expenditure incurred on the purchase of copyrights, registered designs and registered trade marks. These are the three types of IPRs commonly used by enterprises and applicable to business of various trades in general. Hence, the proposed amendment will enable more enterprises to benefit. Moreover, as I mentioned earlier, capital expenditure incurred on the purchase of patent rights and rights of any know-how is already eligible for tax deduction. Since these rights are of a similar nature to patent rights, registered designs and registered trade marks, we take this

opportunity to amend some of the existing provisions on tax deduction relating to patent rights and rights of any know-how with a view to enhance the tax deduction arrangement.

First, the Bill proposes to amend part of the provisions under section 16E of the IRO to remove the "use in Hong Kong" condition currently applicable to the tax deduction for patent rights and rights to any know-how, and to reduce the sales proceeds to be brought to tax for patent rights and rights to any know-how by capping it at deductions previously allowed instead of the full sales proceeds. The two proposed amendments are consistent with the tax deduction arrangement for other deductible capital expenditure under the existing IRO. Moreover, we also propose expanding the scope of tax deduction for capital expenditure to cover legal expenses and valuation fees incurred in connection with the purchase of patent rights and rights to any know-how.

To implement the tax deduction arrangement for capital expenditure incurred on the purchase of copyrights, registered designs and registered trade marks, the inclusion of a new section 16EA to the IRO is proposed under the Bill. Since the protection life of the three newly added IPRs is relatively long, with the shortest lasts for 25 years and the longest for life, we propose that tax deduction for the specified IPRs be spread over five succeeding years on a straight-line basis starting from the year of purchase. The proposed tax deduction period is on par with or more generous than similar tax concessions in other tax jurisdictions. In specific circumstances where a specified IPR reaches the end of its maximum period of protection within the five-year deduction period, we propose that the deduction be spread in equal amounts over the number of years during which the protection of the specified IPR subsists. The proposals mentioned earlier on enhancing the tax deduction arrangement for patent rights and rights to any know-how are also applicable to the proposed tax deduction for copyrights, registered designs and registered trade marks, which have been reflected in the newly added sections 16EA and 16EB proposed in the Bill.

In line with the arrangement for other tax deduction items, we propose to include the commonly used anti-avoidance provisions to deter tax avoidance. Hence, the inclusion of the new section 16EC is proposed in the Bill to extent the anti-avoidance provision on transactions between "associates" applies to patent rights and rights to any know-how to tax deduction arrangement for copyrights, registered designs and registered trade marks. Other commonly used anti-avoidance provisions are proposed under section 16EC, namely, the so-called

"sale and licence back" and "leveraged licensing" arrangements, and the provisions to empower the Commissioner of Inland Revenue (Commissioner) to determine where the circumstances so warrant, the true market value for any purchase or sale of any of the five IPRs in respect of which a tax deduction is claimed and to allocate the purchase or selling price for individual specified IPRs having regard to all the circumstances of the transaction where the specified IPRs are purchased or sold together or with other asset(s) for a single price. These provisions are simultaneously applicable to the five rights, namely, patent rights, the rights to any know-how, copyrights, registered designs and registered trade marks.

We would like to thank the Bills Committee for its support of the aforementioned amendments and its valuable opinions expressed on the implementation details for certain clauses under the Bill in response to the concerns of the trades. Among which, we understand the aspiration of the trade for the Administration to define clearly how the Commissioner will implement sections 16E(8) and 16EA(9) in the Bill in determining the true market value for any purchase or sale of specified IPRs in respect of a tax deduction. As explained in a letter to the Bills Committee dated 10 June 2011, taxpayers are not required to file the valuation reports on the IPRs when they submit the application for tax deduction. However, when making tax assessment, the Inland Revenue Department (IRD) may, as it deems necessary, request taxpayers to provide documentary proofs such as valuation reports to substantiate the purchase prices of the IPRs concerned. For warranted cases, the IRD may also seek advice from independent professional organizations on the true market value of the IPRs concerned.

Moreover, we have had in-depth discussion with the Bills Committee on the tax deduction arrangement for IPRs involving cross-border activities under section 16EC(4)(b) in the Bill. As we have stated to the Bills Committee, section 16EC(4)(b) is consistent with the policy intent that tax deduction is only provided for IPRs used for the production of profits chargeable to tax in Hong Kong. Given the established principles on "territorial source" and "tax symmetry" and the need to avoid tax loss, we consider the inclusion of section 16EC(4)(b) essential. However, we have explained clearly to the Bills Committee that given the unique territorial nature of the registration system and protection of the IPRs, not all uses of IPRs involving cross-border activities are subject to the restriction under section 16EC(4)(b). In this connection, we have

provided examples to explain the application of section 16EC(4)(b) to the Bills Committee.

Earlier, Mr WONG Ting-kwong requested the Administration to stipulate the method for calculating apportionment to facilitate the trade to understand the apportionment arrangement. Regarding the concern of Mr WONG, we will consider disseminating more relevant information to the trade to explain the basic principles for the apportionment.

In response to the request of the Bills Committee, the IRD will draft the relevant "Departmental Interpretation and Practice Notes" (DIPNs) upon the passage of the Bill, so as to provide further explanation to the implementation particulars of certain provisions, including the requirements on the registration and use of IPRs, the determination of the true market value and the tax deduction arrangement for IPRs used in cross-border activities, which we have just mentioned. According to the request of the Bills Committee, we will submit the draft DIPNs to the Panel on Financial Affairs of the Legislative Council for reference of Members.

We will introduce technical and textual amendments to clauses 5, 6, 8 and 9, which are supported by the Bills Committee. I implore Honourable Members to support the Bill and the amendments to be moved later at the Committee stage to enable the early implementation of the proposed tax deduction.

Mr Paul CHAN has expressed some opinions about taxation when he spoke earlier, though the opinions are not directly related to the Bill, I would like to respond briefly to these views. Mr Paul CHAN proposed that the Government should set up a specialist tax policy unit. In this connection, I have to point out that the Government has adopted the approach of reviewing the tax regime on a continuous basis. Every year, during the formulation of the Budget, we will consult the views of various sectors and make prudent consideration. Regarding the proposal of Mr CHAN, we have made the stance of the Government clear in the previous responses to motions proposed at the Legislative Council and replies to questions of Members. Mr CHAN has also proposed the arrangement on carrying back the loss incurred. In my response to Dr David LI's question last Wednesday, I had also stated the position of the Administration clearly, so I will not repeat it here.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Inland Revenue (Amendment) (No. 2) Bill 2011 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): The Inland Revenue (Amendment) (No. 2) Bill 2011.

Council went into Committee.

Committee Stage

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

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 2011

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Inland Revenue (Amendment) (No. 2) Bill 2011.

CLERK (in Cantonese): Clauses 1 to 4 and 7.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1 to 4 and 7 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 5, 6, 8 and 9.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Chairman, I move the amendments to clauses 5, 6, 8 and 9. The content of the amendments is set out in the papers issued to Members.

The Inland Revenue (Amendment) (No. 2) Bill 2011 (the Bill) proposes the formulation of a provision to provide tax deduction to taxpayers for capital expenditure incurred on the purchase of the three newly proposed intellectual property rights (IPRs), namely, copyrights, registered trade marks and registered designs, in determining chargeable profits to tax, whereas the term "capital expenditure" is used in the provision.

On the other hand, in section 16E of the existing Inland Revenue Ordinance (IRO) provides for the relevant deduction of the expenditure on the two IPRS already covered, namely, patent rights and rights to any know-how, as

well as the amendment clauses to section 16E proposed in the Bill, the term "expenditure" is used.

We have confirmed that the term "expenditure" in section 16E and the relevant amendment clauses is referring to "capital expenditure". To bring consistency to the terms used in the expenditure deduction provisions for the five IPRs mentioned above, I propose an amendment to clauses 5 and 6 of the Bill to amend section 16E(1) of the existing IRO, and sections 16E(2), 16E(3A), 16E(8)(a) and 16EC(6) proposed in the Bill by replacing the term "expenditure" with the term "capital expenditure".

Moreover, newly added section 16EA(12) proposed in the Bill stipulates that a reference to the purchase or sale of the three newly included IPRs includes the purchase or sale of a share of the IPRs. The term "部分" is used in the Chinese text as the corresponding term for the term "share" in the English text.

As for the corresponding provision of the two IPRs covered under the existing IRO, that is section 16E(3), the Chinese term "股份" is used as the corresponding term for the term "share" in the English text. We have confirmed that "部分" is the appropriate corresponding term for the term "share" in the English text for the two aforesaid provisions.

Hence, I propose to amend clause 5 of the Bill to make a textual amendment to the Chinese text of section 16E(5) of the existing IRO by replacing "股份" with "部分".

Third, in response to the enquiry of the Legal Service Division of the Legislative Council, we have confirmed that it is our policy intent that the term "associate" in new section 16EC(8) proposed under clause 6 of the Bill includes the corporation controlled by a relative. To reflect this policy, I propose to amend clause 6 of the Bill to make a consequential amendment to the definition of "associate" in subsection (a)(v) of the proposed new section 16EC(8).

Furthermore, in the definition of the term "控制" (control) in the Chinese text of the proposed new section 16EC(8), "該法團" refers to "首述法團" (first-mentioned corporation), which we consider no ambiguity arises. However, we accept the views of the Legal Service Division of the Legislative Council to replace "該法團" by "首述法團" whenever it appears in the

definition of "控制" in the Chinese text under proposed new section 16EC(8), so that the terms of the Chinese and English texts tally strictly.

Finally, in this legislative session, two bills, including the present Bill and the Inland Revenue (Amendment) (No. 3) Bill 2011, have respectively proposed adding new provisions to section 89 of the existing IRO with a view to introducing new schedule for transitional provisions.

Since the Inland Revenue (Amendment) (No. 3) Bill 2011 has already been passed by the Legislative Council on 8 June 2011, it is necessary for the Administration to introduce technical amendments to clauses 8 and 9 to re-number the relevant transitional provisions of and the schedule to the Bill.

Chairman, the above amendments are purely technical and textual in nature. I hope Honourable Members will support the amendments.

Thank you, Chairman.

Proposed amendments

Clause 5 (see Annex I)

Clause 6 (see Annex I)

Clause 8 (see Annex I)

Clause 9 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 5, 6, 8 and 9 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 5, 6, 8 and 9 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 2011

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

Inland Revenue (Amendment) (No. 2) Bill 2011

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

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

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Inland Revenue (Amendment) (No. 2) Bill 2011.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Pyramid Schemes Prohibition Bill.

PYRAMID SCHEMES PROHIBITION BILL**Resumption of debate on Second Reading which was moved on 1 June 2011**

PRESIDENT (in Cantonese): Mr Fred LI, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MR FRED LI (in Cantonese): President, in my capacity as Chairman of the Bills Committee on Pyramid Schemes Prohibition Bill (the Bills Committee), I report on the deliberations of the Bills Committee.

The Bills Committee noted that given its loopholes, the existing Pyramid Selling Prohibition Ordinance (the Ordinance) is no longer effective in combating pyramid selling schemes in various guises. The object of the Pyramid Schemes Prohibition Bill (the Bill) is to repeal the Ordinance and introduce a new regime for the prohibition of pyramid schemes irrespective of whether they involve the sale of goods or services. The Bill also defines the elements which constitute a pyramid scheme, and sets out the matters to which the Court must have regard when making its ruling.

The Bills Committee has held four meetings, and invited views from the relevant trades and professional organizations on the Bill. The Bills Committee generally supported the legislative intent of the Bill to plug the loopholes in the existing Ordinance in combating pyramid schemes. The Bills Committee also noted the support of the Consumer Council and Direct Selling Association of Hong Kong (DSA) for the Bill.

In the course of deliberation, some members expressed concerns about whether the Bill would have the effect of over-regulating legitimate multi-level marketing schemes (MLMS) and deterring foreign entities from starting relevant business in Hong Kong. The Administration responded that the industry

generally expressed support for the Bill; and DSA also indicated that all its members supported the Bill which provides a precise definition of pyramid scheme such that the public will be able to differentiate legitimate MLMS from illicit pyramid schemes. A multi-national company which operates MLMS in a number of jurisdictions has indicated that the Bill would help combat pyramid schemes.

Some members suggested that the Bill should set out pointers or criteria, for instance, the provision for a cooling-off period or a right of return of goods, by reference to which the public could easily differentiate pyramid schemes from legitimate MLMS. The Administration explained that the relevant pointers or criteria have not been specified in the Bill because such features could easily be circumvented by promoters of objectionable pyramid schemes with ingenious modifications.

Regarding the enforcement of the Bill, some member has enquired whether unlimited companies, or shadow promoters in these companies, would be subject to the regulation of the Bill. The Administration explained that the Bill provides that if a body corporate or a member of an unincorporated body committed an offence under the Bill, a relevant person of the body would also be liable to the offence if it could be proved that the offence was committed with the consent or connivance of the relevant person, or was attributable to his neglect.

Some members expressed concern that those with little formal education and experience might inadvertently join a pyramid scheme and become liable for prosecution as "knowing participants" under the Bill. Some members also enquired whether participants in pyramid schemes can rely on good faith as an exculpatory circumstance. The Administration explained that under the Bill, participants in a pyramid scheme will commit an offence only if they (i) induce or attempt to induce other persons to take part in that scheme, and (ii) know or ought reasonably to know that their benefit is entirely or substantially derived from recruiting further participants. In other words, the Bill requires the establishment of a mental element, and the burden of proof rests with the prosecution to prove the *mens rea* of an offender. Hence, innocent people will not be punished without reason.

In respect of education and publicity, some members emphasized the need to target the publicity of the Bill to those engaged in direct marketing activities

who are homemakers with little formal education. Some members requested the Administration to give an assurance that in considering prosecution under the new ordinance, due consideration will be given to the social background of the participants, especially the elderly and those with little formal education. According to the Administration, the relevant legal requirements under the new ordinance will be publicized in layman terms to facilitate understanding by the general public. The Administration will also step up publicity to educate and help the public differentiate between legitimate MLMS and illicit pyramid schemes so that members of the public will not be caught inadvertently.

Suggestions have been made by the Bills Committee on the drafting of the Bill. The Administration has accepted those suggestions and will move amendments at the Committee stage. The Bills Committee supports the Committee stage amendments to be moved by the Administration.

President, on behalf of the Democratic Party, I will express our views on the Bill as follows.

We should pay attention to the relationship between pyramid schemes and other problems. For instance, among the cases for help received by the Democratic Party, many victims were under prolonged bombardment and lobbying to sign contracts for joining pyramid schemes; and if they refused to make any investment, they were prohibited from leaving the premises or their identity cards, credit cards, and so on, would be taken away. Subsequently, the victims would be lured into buying goods for resale. If the victims did not have enough money for payment, arrangement would be made for them to borrow large sums of money from finance companies. Most of the participants later find that as the goods were inferior and overpriced, they were unsaleable. It was only when the victims could not obtain a refund did they realize that they had been scammed. Although a period for return was specified in the contract, the victims often failed to do so for various reasons and they could not get any refund when the contract eventually expired.

Hence, notwithstanding the passage of this legislation prohibiting pyramid schemes today, it must be complemented by other laws in order to fully safeguard the people. I think the Secretary will know that I am referring to the proposed legislative amendments to the Trade Description Ordinance (TDO) including prohibitions against the use of aggressive practices in consumer transactions, bait

advertising and bait-and-switch, as well as the entitlement to a refund during the cooling-off period. After the creation of offences for the above unfair trade practices under the amended TDO, actions can be taken by law-enforcement agencies against suspected traders.

On behalf of the Democratic Party, I urge the Secretary again to introduce into the Legislative Council expeditiously a bill to amend the TDO, so as to allow its enactment before the expiry of the current Legislative Session in July, in order to complement the new Pyramid Schemes Prohibition Ordinance to offer better protection for local consumers. I so submit.

MR WONG KWOK-HING (in Cantonese): President, I am extremely grateful that the Secretary for Commerce and Economic Development has finally taken on board the repeated requests made by me and victims of pyramid schemes to amend the relevant legislation and introduce the Pyramid Schemes Prohibition Bill (the Bill) into the Legislative Council.

Secretary, I must also take this opportunity to thank your "right-hand man" who is literally sitting on your right hand side today. He is an expert in the matter. When we first met, he had listened to our views and then went back to study them thoroughly; he also lined up the Direct Selling Association of Hong Kong (DSA) and the industry to collect their in-depth views. I must commend your helpful assistant in your presence; and you are a good leader.

President, in June the year before last (that is, 2009), I received successively several dozens of cases seeking for help from victims of pyramid schemes. There were a total of 50 deception cases involving over \$3 million. In an astounding case, an 18-year old school leaver fell prey to a "gold-planting loan" scam. This young girl thought she had found a good job — she went to the showroom of Digital Crown Holdings (Hong Kong) Limited (Digital Crown) and was told that she could quickly ascend to upper ranks of sponsors such as "lieutenants" and even "generals" in the company; she saw in the showroom many models posing as successful distributors earning handsome income. Like many others, she fell prey to the scam. In this case, the 18-year-old girl borrowed over \$100,000. As she did not have the money to repay the loan, she was forced to file for bankruptcy — this victim has to file for bankruptcy when she was just 18.

Not only local residents fall victim to these scams, more and more people coming from the Mainland have also fallen into the trap of pyramid schemes. Moreover, the good reputation of Hong Kong as a commercial centre is seriously tarnished. I have accompanied these victims to stage protest to the Government, and helped them report their cases to the police. But the police told us that it was very difficult to combat such cases. In the meantime, we are particularly disappointed to learn that the Macao Special Administrative Region (SAR) Government has expeditiously introduced legislative amendments to crack down on the notorious operation of Digital Crown in Macao. After the amended legislation came into operation, the entire business of Digital Crown was closed down in Macao, and scams involving pyramid schemes were no longer found.

However, Digital Crown still expands its business in Hong Kong. In addition to an existing office in the busiest areas in Causeway Bay, several new offices have been established. It is clear that the current legislation in Hong Kong cannot adequately deal with the situation. In this connection, we have met with the Commerce and Economic Development Bureau to reflect the plight of the victims. The Bureau treated our views seriously and has subsequently conducted researches accordingly. Finally, the Government agreed to amend the Pyramid Selling Prohibition Ordinance (the Ordinance), which was enacted 31 years ago in 1980. As proven by facts, the Ordinance enacted 31 years ago cannot adequately deal with the current problem, failing to properly empower law-enforcement agencies, particularly the police, to take actions against the persons and organizations perpetuating these scams. Although many victims went to the office of Digital Crown to stage protest, some even took radical or even self-inflicted measures, no positive outcome is forthcoming.

Today, I implore Honourable colleagues to support this legislative amendment to ensure its early implementation, so that these pyramid selling scams will be eradicated in Hong Kong.

President, what is the most critical feature of the Bill? The most critical feature of the Bill is I prefer to describe it in layman terms rather than using the formal wordings in papers; otherwise, nobody will understand what I am saying. How to say in layman terms then? The Bill seeks to combat the acts of a person who "lures" others to join a pyramid scheme. The more people he "lures" into the scheme, the more profits he gets — as he introduces more new participants to join the scheme, he gets an increasing amount of profits. It is just

that simple. The Bill is intended to catch the act of those people who "lure" or "coerce" others to join pyramid schemes for obtaining more profits when no added value is actually brought by new participants to the goods and services involved. It is just that simple. I hope the media can help publicize the message that it is illegal to "lure" or "coerce" other people to join the pyramid schemes, so that such acts will no longer be found in Hong Kong. It is likewise illegal to run a company which operates pyramid schemes. I hope members of the public will remember that "benefits will not be offered for no reason", and stay away from these scams.

The Bill has four characteristics. The first characteristic is that under clause 3 of the Bill, both goods and services are within the scope of regulation under the legislation. Regarding the second characteristics, the offence of "knowingly promoting" a pyramid scheme is provided under clause 5(a) — in other words, any person who knowingly introduce others to join a pyramid scheme for the purpose of obtaining profits is liable to an offence. Also, clause 5(b) provides for the offence of inducing others to join a pyramid scheme with the knowledge that the benefit receivable is not derived from the actual sale of goods and services, and that more benefits will be obtainable through "luring" more new participants into the scam — I am explaining the law in layman terms because the actual provisions are quite boring and incomprehensible — these two points made up the second characteristics. The third characteristics is that under clause 6, if a body corporate or a member of an unincorporated body simply put, it just means that the backstage owners of companies involving in pyramid schemes are also liable under the new legislation. At present, the backstage owner of Digital Crown operates ingeniously by having the "lieutenants" and "generals" work for him while he maintains control over the entire syndicate. Under the former legislation, there is no way to bring prosecutions against backstage owners; but under the new legislation, backstage owners are also liable. It is as simple as that. The fourth characteristic is that under the new requirement in clause 7, a crime syndicate convicted by the Court must pay compensation to the victims. Unlike the past, victims can now be compensated. The four characteristics of the Bill outlined have improved the regulatory regime after amendment.

Nonetheless, there are inadequacies in the Bill. In the course of drafting and scrutiny of the Bill, I have suggested at the Bills Committee that a cooling-off period should be provided, specifically, I proposed that the cooling-off period

should be seven days. But after consulting the police and various parties, the Administration indicated that difficulties are involved because they do not know how illicit syndicates will outdo the new legislation, that is, they will repackage their scams to circumvent the new legislation. Hence, specific provisions are not desirable. That is the Government's view, but I have reservation about it.

I hope the Government will draw lessons from the implementation of the new legislation and make reference to the relevant law in the Macao SAR Government. Although Macao is a civil law jurisdiction and Hong Kong a common law jurisdiction, can we make reference to the spirit and experience of the relevant legislation so as to seek further amendments? Currently, under clause 4(2), the Court is empowered to make its judgment, and the police will look into the whole operation of the scheme during investigation. Given its wide scope, I am worried that this lax provision cannot adequately protect investors and consumers. Hence, I hope the Government can reconsider the matter. Notwithstanding, I very much hope that the Bill will be enacted today without further delay. I hope the Government will consolidate the experience learnt from the implementation of the new legislation so as to introduce further amendments in a timely manner.

President, lastly, although our legislation comes after Macao, it is always better to be late than never. Although spring comes late, I still hope that instant results will be achieved so that the legitimate operations of the direct selling industry and the multi-level marketing industry can be rationalized to provide *bona fide* employment opportunities for a greater number of people. The aim is to avoid affecting their operation while safeguarding the consumers at large and the investors. I hope that after the enactment of the legislation, these deceptive syndicates will close down immediately and disappear from Hong Kong. Can it really be done? I hope the Administration will closely monitor the situation.

Moreover, at the Bills Committee, I have also drawn the Government's attention to a particular phenomenon associated with previous cases. Some companies are not only involved in pyramid selling scams, but also collude with finance companies to entice the victims into setting up unlimited companies and provide them with large sums of cash loan without collateral. The Bill is silent on this situation. But the Administration has indicated earlier that the problem will be handled by other departments. I hope the Government will keep in view the situation I just mentioned and closely monitor fraudulent cases jointly

perpetuated by finance companies and companies operating pyramid schemes. The Government should stay vigilant about this situation. Otherwise, how can a young school-leaver 18 years of age borrow more than \$100,000 from several finance companies within the same day in one go? This is definitely an unhealthy phenomenon.

Hence, I hope the Government will take enforcement actions stringently, rather than feeling complacent after the enactment of the legislation. In particular, I think the Government must adequately and properly prepare for possible actions taken by companies suspected of involving in these scams because they are really cunning and can come up with many ingenious tricks. I hope the Government will not give them the opportunity to circumvent this new legislation and continue their illicit operations by some novel tricks. Otherwise, we will be very disappointed.

Therefore, I hope the Commerce and Economic Development Bureau will step up publicity and education further after the enactment of the legislation, and more importantly, take more effective enforcement actions jointly with the police in order to protect the people.

Thank you, President.

MS STARRY LEE (in Cantonese): President, pyramid selling scams occur frequently. In October this year, the press had revealed a scam perpetuated by agents of direct selling companies in the guise of "online promotion" jobs. Many young job seekers drawn to the seminars were recruited as direct selling "downline" distributors and have fallen prey to these repackaged pyramid selling scams. In March this year, eight men and women allegedly induced 5 000-odd persons to join a pyramid scheme in the guise of "private equity fund" investment, which reportedly involved over tens of millions of US dollar. At the end of last year, a direct selling company allegedly based in Europe opened its Asia-Pacific headquarters in Tsim Sha Tsui to hold seminars for local people and individual visitors from the Mainland, where "shareholders" of the company promoted supposedly profit-making schemes through pyramid selling tactics.

Hence, we see that pyramid selling may take many forms, but its essence remains the same. Regardless whether the goods are red wine, health food or cosmetics, the selling and buying are only used as a smoke-screen to hide the real

intention of "recruiting" further new participants because so long as new members are recruited, the scam will continue with "upline" members taking part of the investment from new members as commission. But these pyramid schemes will become unsustainable and go "bust" when reaching a breaking point.

As the essence of pyramid selling is "recruiting" further new participants, these scams usually involve a large number of victims and substantive sums of money. In some serious cases, the "busting" of pyramid schemes may create turmoil in society and hence, the Government should act tough against it.

According to the Government's statistics, a number of complaints on suspected pyramid selling schemes have been received by the police from 2007 to 2009. Even though arrests were only made in four cases, up to 157 victims and \$8,780,000 were involved.

As early as 1980s, the Pyramid Selling Prohibition Ordinance was enacted in Hong Kong to combat pyramid selling scams. But regrettably, the legislation has become obsolete as its definition on pyramid selling fails to catch up with the various new guises of pyramid selling. In particular, in 2003 and 2004, the Court of Appeal acquitted the defendants in two cases involving alleged pyramid schemes on the basis that the schemes in question did not involve the sale of goods or services. In one case, as the alleged scheme involved participants earning commissions through the introduction of new members, the Court ruled that it fell outside the definition of "pyramid selling schemes" in the said Ordinance. These cases reveal the major loophole in combating pyramid selling tactics, which is unsatisfactory.

Earlier, a 19-year-old girl has to file for bankruptcy at such a young age due to the massive debts incurred after she allegedly fell prey to a pyramid selling scam.

Unfortunately, given the limitation in law, the police are often prevented from taking actions against pyramid selling scams due to insufficient evidence and successful prosecution cases are few and far between. As a result, offenders can make use of the loophole in law and act fearlessly to circumvent regulation; and hence such scams have become commonplace. As such, there have all along been calls in society that the Government should amend the existing legislation as soon as possible so that more targeted actions can be taken.

On 6 January last year, I moved a motion in this Council on "Establishing a comprehensive consumer protection regime" which demanding *inter alia* that the Government should expeditiously introduce legislative amendments to combat and eradicate all kinds of pyramid selling tactics.

The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) welcomes the present legislative amendment proposal, as well as the Government's efforts to make reference to the relevant experience of other jurisdictions when drafting the Bill, so as to plug the loopholes in the current legislation. The DAB also welcomes the Government's proposal to substantially increase the maximum penalty from a fine of \$100,000 and imprisonment for three years at present, to a fine of \$1,000,000 and imprisonment for seven years, so as to enhance the deterrent effect.

In the course of scrutiny of the Bill, the DAB has two major principles: firstly, the legislation must be practical and effective; and secondly, it must avoid catching innocent persons inadvertently.

Let me first talk about the first principle. As the new Ordinance is enacted to plug the loophole in the current legislation, it must be practical and effective in targeting the ever-changing guises of pyramid selling tactics. Under the new definition of a "pyramid scheme", regardless of whether the selling of goods or services is involved, such schemes will be caught so long as participants are required to pay a participation fee (which can be monetary or otherwise) to join the schemes in return for the right to earn their income entirely or mainly from participation fee paid by further new participants they induced to join the schemes.

President, while pyramid selling tricks are ever-changing, they predominately operate along the theme of "upline" members earning profits from participation fee paid by "downline" members. Hence, the new definition, with its focus on benefits rather than goods or services previously, is targeting the crux of the problem, which is also in line with the practice adopted by other jurisdictions.

Moreover, as shown by views collected during the consultation period, most of the public generally support the Bill. Likewise, the Consumer Council and the Direct Selling Association of Hong Kong (DSA) also support the Bill and

consider that it can effectively plug the loophole of current legislation. Moreover, according to the Government, the new definition has responded to the two Court of Appeal cases just mentioned such that similar situations will fall within the scope of the new Ordinance.

Given that the new definition is supported by all relevant parties and has no impact on *bona fide* direct selling companies, the DAB considers that the Bill is moving towards the right direction.

The second principle we must emphasize is that the Bill should avoid catching innocent persons inadvertently. We are gravely concerned that participants who ought reasonably to know are also held criminally liable under the Bill. We worry that whether members of the public might be caught inadvertently, particularly because participants of pyramid selling schemes may be elderly persons with little formal education, or young and inexperienced job seekers. In this connection, we enquire with the Government the regulatory reach of anti-pyramid schemes legislation in other jurisdictions, in particular whether participants are criminally liable. We note from the information on relevant offences in Australia, Ireland, the United Kingdom, Singapore and Macao that most of these jurisdictions impose criminal liability on participants in pyramid schemes.

Moreover, unlike the situation in Australia where participation in a pyramid scheme is a strict liability offence, the Bill specifies the condition that participants of a pyramid scheme will commit an offence only if they "induce or attempt to induce other persons to take part in that scheme" when they "know or ought reasonably to know that their benefit is entirely or substantially derived from recruiting further participants"; and it is upon the prosecution to prove the same beyond reasonable doubt.

Considering that pyramid schemes can only sustain and grow like an avalanche primarily because the participants have introduced further new participants to the schemes, we accept the Bill's proposal that it is also an offence if the participants have knowingly "recruited" new participants for their own benefits. Nonetheless, we urge the Government to step up public education after the enactment of the legislation so that members of the public are aware of the characteristics and tricks of pyramid selling scams. The Government should also remind members of the public to be cautious and stay away from these

crimes. Meanwhile, the Government should review the implementation of the new Ordinance after it comes into operation for a certain period of time so as to avoid catching innocent people inadvertently.

President, having a legislative framework is only the first step in cracking down pyramid selling. It is most important that the legislation is enforced stringently to hold the offenders liable so that they cannot get away with punishment. President, I so submit.

MR VINCENT FANG (in Cantonese): President, people in general would consider any form of product sales an example of retailing business. However, pyramid selling (which is going to be prohibited by legislation today) and direct marketing (the operators of which are concerned that their industry will be negatively affected if the legislation is ambiguous) both do not belong to the wholesale and retail industry which I represent because they both do not operate in a way that people can freely and directly go there to shop. Nevertheless, as Hong Kong is an economically diversified society, we very much welcome people to start their businesses here as long as their businesses are operated in a legal and reasonable manner and are in line with interests of the operators and consumers. On the other hand, we hold that any forms of businesses which violate the key principles above have to be prohibited by legislation so as not to tarnish the reputation of Hong Kong as a shopping paradise.

Although direct marketing is another mode of wholesale and retail business, it is a legitimate way to market goods, and it very much relies on the quality and reputation of the goods sold as well as the confidence in and the services of the sellers. It can be regarded as a healthy mode of operation. Hence, my major concern is, whether the livelihood of the 170 000 direct-marketing practitioners will be affected in the course of legislation. We thus urge the Government to lay down a specific definition on pyramid scheme. The present definition is basically acceptable to us.

Sometimes, we may have come across media reports of pyramid schemes which did not involve the sale of goods. The so-called goods were only a guise, which were worthless and could not be resold. The source of income mainly came from the headcounts of new participants, that is, by turning the recruitment payments of lower-tier participants into the income of upper-tier participants.

Besides, many cases were simply commercial fraud. The Government said that they could not bring the operators of these modes of operation to justice because of the absence of an ordinance in Hong Kong to define these modes of operation as illegal. Hence, we, including practitioners of the wholesale, retail and direct marketing industries, have indicated our support to the legislation.

However, can such illegitimate modes of operation be prohibited upon the introduction of the legislation? Given that fraudulent practices exist in different guises, stringent legislation alone will only put pressure on law-abiding individuals but still leave room for opportunists. Hence, legislation must go hand in hand with education and law enforcement, rather than legislation without law enforcement.

In my opinion, after the ordinance is in force, the Government should look into fraudulent cases involving alleged pyramid selling and bring the people concerned to justice according to the law, so as to serve as a deterrent to others.

Besides, efforts should be made to educate the public of what pyramid selling is, such that job seekers will not inadvertently fall into these traps. Take myself as an example. Before joining the Bills Committee, I cannot tell the difference between pyramid selling and direct marketing and now I can basically grasp the idea. Yet, I believe people in Hong Kong know little of the two and cannot tell their differences. Hence, it is very important for the Government to conduct public education. I hope the Government who is given free advertisement slots in the electronic media can make better use of this benefit.

One of the reasons that the Government and a small number of Members support the prohibition of pyramid selling by legislation is that similar legislation has already been introduced on the Mainland and in our neighbouring city, Macao, thus Hong Kong should follow suit. However, I beg to differ with this view because the mode of operation in Hong Kong is different from those on the Mainland or in Macao. Hong Kong is a society operated under a free economy. Our retailing industry is enormous, thus attracting operators of different modes of operation to come and look for opportunities in Hong Kong. While we should maintain our efforts in rationalizing the business environment of Hong Kong, we should also preserve a certain degree of flexibility and leave some room for new modes of operation to develop in Hong Kong.

Hence, President, I so submit and hope that the Government, in proceeding with the legislation, can take a more comprehensive view on the subject and arrive at a piece of legislation that is effective, sustainable and enforceable. Thank you, President.

MR WONG TING-KWONG (in Cantonese): Pyramid selling is an illegitimate mode of operation which is unsustainable and contains elements of duress. To date, we have often come across people fallen victim to and suffered losses from this mode of marketing operation. Because of imperfections in the relevant ordinance in the past, the authorities have tabled a legislative proposal to revise the law, seeking to establish a new legal standard to sweepingly prohibit pyramid schemes which involve the sale of goods and services. I believe the legislation can strengthen protection to the public; thus, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and I support the passage of the Pyramid Schemes Prohibition Bill (the Bill).

We have often come across reports of fraudulent pyramid selling. The DAB alone has received over 50 such cases since the start of the year, 18 of which concerned a marketing agency in Mong Kok. As far as I know, the marketing agency remains in operation despite some of its staff have been arrested by the police. In other words, people still fall victim to it. The 18 victims in the fraudulent cases are all young people who were deceived into enrolling in some English courses. Apart from discovering later that the courses did not meet the description, the victims went bankrupt as a result of the loans they made to purchase products that they were asked to purchase. They have incurred a loss of \$390,000 in total. It has been learnt that the marketing agency are involved in many fraudulent cases. Its mode of operation is similar to pyramid selling but the selling is promoted by participants to their own friends. The victims induced by an alleged job opportunity are brainwashed into believing that the job can make easy money and thus are quickly committed into the marketing scheme.

Schemes involving pyramid selling commit offences in variable formats. Thus, it is paramount that timely legislative revisions be made to tie in with developments in society. We hope that this legislative amendment can be expeditiously endorsed to stamp out similar cases. Although the Bill has introduced a new definition on pyramid scheme, I am still concerned about how

the public and business entities can easily differentiate between pyramid schemes and legitimate multi-level marketing schemes (MLMS). During the deliberation of the Bills Committee, I have cited many different examples seeking the authorities' explanation and clarification. For instance, for fitness centres or beauty salons which adopt a membership scheme, under which discounts are provided for members who introduce new members into the centres or salons, will the business operators or members of the public violate the law? The sale of insurance policy can involve several tiers of insurance agents with the income of upper-tier insurance agents coming from the sales of the lower-tier insurance agents. Is this equivalent to a pyramid scheme? Besides, if a scheme offers commissions for promoters who have introduced new participants and the participants have purchased a certain quantity of products, but the scheme provides a cooling-off period and a right of return of goods, is this scheme regarded as a pyramid scheme?

All in all, the authorities have pointed out that if a scheme involves the sale of goods or services, the Court, by invoking clause 4 of the Bill, can consider whether the participation fee bears a reasonable relationship to the value of the goods or services that participants are entitled to be supplied with, and whether the emphasis given in the promotion of the scheme centres on the participants' entitlement to a recruitment payment or the supply of goods or services (in other words, whether he will receive payment upon successful recruitment or receive benefits upon successful promotion of goods or services), in determining whether the scheme is a pyramid scheme. As to whether there is a right of return of goods, it is not a determining factor because the offender can use the right of return of goods as a guise to deceive people. The Bill has offered some flexibility for the court which, by invoking clause 4(2), can take other related matters into consideration in arriving at its ruling.

President, we are also concerned that the public may not have sufficient knowledge and judgment in deciding whether the activity they have participated in is a pyramid scheme. Quite many participants are deceived into joining such schemes and some may have only joined the scheme but have not taken the initiative to recruit any lower-tier participants. If they are also convicted, they will have to bear the criminal liability as well as the financial losses. We are very concerned about the plight of these people. The authorities have indicated that the proposed clause 5(2)(b) of the Bill mainly seeks to target at participants who may not know about the operation of the scheme but have participated in it.

Hence, in addition to the relevant clauses of the Bill, I believe the consideration given by the Court in relation to the actual case, together with the evidence gathered by the police from their investigation, will accord protection to innocent participants.

We anticipate that the Bill will be able to eliminate objectionable pyramid selling and at the same time protect people who have inadvertently violated the law. We urge the authorities to step up publicity efforts after the Bill is enacted, particularly targeting at young people of lower education level and limited experience in the world who may have just come out to work or are eager to look for a job. The authorities have also undertaken to use words that are easy to understand in their educational and publicity programmes, so that the public will easily understand the relevant requirements and differentiate between legitimate and illegitimate MLMS.

President, I so submit and support the Bill and the amendments.

MR WONG YUK-MAN (in Cantonese): President, the Pyramid Schemes Prohibition Bill (the Bill) seeks to replace the original Pyramid Selling Prohibition Ordinance (Cap. 355) (the Ordinance), in a bid to plug the loophole of the existing Ordinance which fails to prohibit multi-level marketing schemes (MLMS) not involving any sale of goods or services. MLMS are not genuine economic activities with good faith; instead these schemes require participants to pay participation fee and, attracted by the incentive that they can share the participant fees of the lower-tier participants, they will continuously recruit new participants to join the schemes. This unsustainable mode of operation will ultimately "bust". This is common sense because we have come across many people fallen victim to the so-called "gold-planting" schemes in the past few years.

Today, although it is better late than never, the Government is finally willing to introduce legislation to amend the law to plug the loophole. The existing Ordinance is not effective in combating MLMS which do not involve the sale of goods and services. As a result, the Court of Appeal acquitted the defendants in two criminal cases in 2003 and 2004 involving pyramid selling schemes. We cannot allow such things to happen again. This is also common sense.

I cannot help but ask what the Government has done during the eight years between 2003 when the Court of Appeal made the ruling and 2011? It is a simple task. It simply needs to repeal the original Ordinance and introduce a piece of new legislation. There are numerous objective facts and law cases supporting the introduction of a legislative amendment or a new piece of legislation. Am I right? The target to be put under regulation is also clear. However, in the eight years from 2003 to 2011, the Government has hastily forced through a replacement mechanism for filling mid-term vacancies in this Council. It has done it in a swift, smart and swell manner. Even if it has been severely criticized by the public, it still insisted on re-tabling the proposal to the Legislative Council early next year. The Government had better try. I will fight against it at all cost. I can tell it now. Still want to force through the replacement mechanism? It certainly can, but to force through its end! President, I am not talking about you.

While the Government has forced through the replacement mechanism in a swift, smart and swell manner, the Court of Appeal made the ruling in 2003 that the existing Ordinance could not put an end to "gold-planting" schemes. Yet, the Government is unwilling to plug the loophole until eight years later. The public officer who was so swift, smart and swell in proposing an amendment to the "five geographical constituencies referendum" that he was later promoted to be the Chief Secretary for Administration and had a good fortune. President, is there any justice? In the past years, so many people have fallen victim to these schemes and have violated the law inadvertently, but the Government has turned a blind eye to the problem. Has it not? Hence, although the Government has proposed the Bill today I will definitely pledge my support to the Bill and I have no choice but to speak in support of it The Secretary was not involved at that time, but in the last three of the eight years, this matter is under his purview because he became the Under Secretary in 2008. Am I correct? Now that he has become Secretary for Commerce and Economic Development, this matter is certainly under his purview. He had better not think that he can say something like: "I, Gregory SO, will reap the harvest. How splendid it is! I have proposed the Bill to plug the loophole of pyramid selling and "gold-planting", thereby saving many people from being cheated. I, Gregory SO, am the best." He is no different from the Members who have spoken just now, all of them claimed the credit for the legislation. Buddies, they need not say so. We receive many similar complaints every day as this subject has been discussed for years.

President, I really find the political arena of Hong Kong very interesting. There are an "it-is-my-business" attitude and a "none-of-my-business" attitude. Our Honourable Members regard that all good deeds are related to them; while our public officers regard all misdeeds none of their business. Regarding the five urgent questions this morning I have to thank our brilliant President, in allowing the five Members to raise the questions, arranging all related Directors of Bureaux and Secretaries of Departments to answer the questions and then allowing other Members put forth supplementary questions, he has handled the incident as a very important subject for discussion. Today, there is also an adjournment debate. You will let us continue to discuss this incident, right? This shows that the incident is very important.

However, have any of our public officers shown any signs of shamefulness, self-reflection or apologies for the inadequacy? To date, nine people had died and 30-odd people injured, but our officials have shirked their responsibilities again. The Development Bureau claimed that they have made an effort to tackle the problem of "sub-divided units" and that they will now invoke the power of the Buildings Ordinance to forcibly enter into a flat for inspection. They pointed out that this was originally not allowed under the law and prior application for a court order was required, but they can now do so by invoking the Buildings Ordinance. They had better go ahead and do so. In the end, people will definitely complain about this practice because it is too drastic and they should not use force. Next, the Food and Environmental Hygiene Department announced that they have conducted inspections. The Fire Services Department announced that they have inspected the fire safety installations and fire escape facilities. In other words, they have all disclaimed responsibility of the incident. Nine people died and 30-odd people injured. The tragedy happened

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

MR WONG YUK-MAN (in Cantonese): I am giving examples. I am saying, the Government now adopts a "none-of-my-business" approach and Members adopt an "it-is-my-business" approach if something good have been done. President, these are the attitudes of "it-is-my-business" and "none-of-my-business".

Given that the Court of Appeal made a ruling in 2003 and 2004, and that the existing Ordinance cannot stop the act of "gold-planting", why the Government has not tabled a bill to this Council to revise the law in all these eight years until now? What has it done in these eight years? For the replacement mechanism, however, the Government could immediately table a proposal to this Council. My analogy is valid. Let us look at the original Ordinance (if the Secretary has done his homework, he should know this), it was enacted in 1980. The then Financial Secretary was Sir Philip HADDON-CAVE. At the Second Reading of the ordinance concerned, that is, the Pyramid Schemes Prohibition Ordinance, he made a rather interesting remark, which is in English, (I quote) "But it is a tricky area in which to introduce legislation, and if in practice we find we have not got it quite right, we may have to come back to this Council to amend the definition." When the legislation was enacted in 1980, the Government already foresaw that we will have to "come back to this Council to amend the definition" of the Ordinance. Secretary, how many years have passed since then? Thirty-one years. The Court of Appeal made a ruling in 2003 and 2004. How many years have passed since the two defendants had been acquitted for the alleged act of "gold-planting"? It has been eight years. What has the Government done? It has not tabled any legislative proposals until today. We will certainly pledge our support to it. Right? Yet, the point is that the Government must review on what it has done in the past.

As the saying goes, "as virtue rises one foot tall, vice rises ten". The Government at that time had actually foreseen that the definition of pyramid scheme would need to be amended. This is said by Sir Philip HADDON-CAVE in 1980. However, public officers of the post-1980s, including those in the Hong Kong-British era and after the reunification, only act on hindsight; but they should not be so, am I correct? Even though they are not persons of foresight like Sir Philip HADDON-CAVE, they should at least act on hindsight and should have done something. However, they have no sight of direction. Why? It is because in the 30 years since 1980, many "gold-planting" incidents have happened and many people have fallen victim to the incidents with some of them have lost all their savings because they were greedy for small advantages and money. The officials have turned a blind eye to these incidents in the past 30 years. Am I correct? Hence, I said that they have no sight of direction. Sir Philip HADDON-CAVE said at that time that the Ordinance would have to come back to this Council to redefine the definition. This was said by him in 1980, showing his foresight because he had foreseen this would happen. I do hope that the group of buddies would have the wisdom of hindsight, but they have no

sight of direction. Fortunately, they have awakened at last, and this Bill is tabled.

Very often, this Council does not place much trust on the bills tabled by the Government. We have to express our views. In the Legislative Council, I can be regarded as a "greenhorn". I thus did not join any bills committees in my first year as a Member. I remember that Mr Ronny TONG has ridiculed me for that. Of course, given my character that I will right my wrongs, if any; and will stay alert not to commit any mistakes, I have never stopped joining bills committees since then. I realize that examining a bill is tough and demanding. I thus have great admiration of the barristers. They are destined for the job. Hence, each of us should have their roles to play, and for me, I have the gift of the gab. Nevertheless, I have also participated in the work of bills committees. I am a member of the Bills Committee on Competition Bill. In the beginning, there were dozens of members participating in the meetings, as if they were eager to get a share of the pie. Now, the Chairman has to ensure the presence of a quorum at each meeting. All in all, Members are duty-bound not to let government bills easily pass our scrutiny.

Today, I rise to speak in support of the Bill. However, I must say, or rather, I must remind Members of this Council and strengthen their awareness that we must not lower our guard against the bills proposed by the Government. That is why I have looked up the remark made by Sir Philip HADDON-CAVE at the Second Reading of the original Ordinance, so as to tell Members that the Government has hardly done anything for a very long time in the past against fraudulent cases involving pyramid selling.

Apart from extending the definition of pyramid scheme to cover marketing schemes which substantially operate through the incentive that new participants are entitled to share the benefits of introducing a further new participant, irrespective of whether these schemes involve the sale of goods or services, I hold that the Bill has room for improvement in other respects. For instance, the scopes of clauses 3 and 4 are very extensive, thereby preventing easy circumvention by operators of objectionable schemes; clause 5 increases the penalty of the offence concerned to a fine of \$1 million and imprisonment for seven years; clause 6 provides the personal liability of the manager of schemes; and clause 7 empowers the Court to issue compensation orders. I must point out that all these are effective weapons in combating operators of fraudulent pyramid schemes.

However, there are concerns that the scope of the Bill is too extensive, thereby victimizing "innocent" participants. I must put the word innocent in quotation because no participant is innocent. They are all greedy and they have participated in the schemes. These participants will gradually turn into operators of the schemes. Hence, we should not say that the scope of the Bill is too extensive; otherwise, it will not be effective.

We know that the participants who have been deceived, so to speak, are the fraudsters who have been deceived, thus becoming the promoters of a fraud, and the promoters are also responsible for the fraud because they are forced to deceive others, given that they have been deceived in the first place. Hence, the only or main reason for the defrauded participants to participate in such schemes is that they have to do so, in order to gain money by deceiving other people to join as lower-tier participants. Having been deceived by the upper-tier participants, they certainly have to deceive the lower-tier participants, thus continuing the fraud from tier to tier. It is as simple as that. Hence, most of the participants would have violated the law. Right?

In the past, many defrauded victims were people with little formal education and experience especially young people. In particular, we have come across many cases where the victims are young people. Some of them paid with credit card and some asked their family members to pay for them, but in the end they were entangled in a trouble that could not be solved. Very often when we met the victims, we really could do nothing, except consoling them and asking them to be more cautious. We simply have no way to help them.

Hence, most of the Members will support the Bill which has been introduced into this Council. However, I hope the Government can do two things. First, it truly has to strengthen education and promotion, so as to increase public awareness of the Bill. This is very important. Publicity and promotion are very important, irrespective of the means, such as by going to the school or making use of the television media. Besides, flexibility should be allowed in handling prosecution. Young victims and those of little involvement or with no past record of the same offence should be treated with lenience. Consideration can even be given to mete out punishment in the form of a bind over because the present penalties are very heavy.

Second, the Bill has not laid down any differentiation between a general participant or promoter and an operator of a pyramid scheme. As I have just

said, the penalties for the two have to be meted out by the Court based on individual cases. Hence, it is legally difficult to effectively differentiate between the two. A scheme participant or promoter who actively induces people to become new participants is no less guilty than a scheme operator. It is evident from past examples of "gold-planting" schemes that a participant can become a promoter who may then become the "boss", that is, a scheme operator. However, people who were not heavily involved in a scheme or were only imposed a light penalty by the Court were convicted of the same offence. Hence, I hold that if opportunity arises, we should look into this point. Last but not least, after the Bill is passed and enacted, that is, on 1 January 2012, the Government should conduct a review on the actual implementation.

We support the Bill. Thank you, President.

MR ALBERT CHAN (in Cantonese): President, I speak in support of the resumption of the Second Reading and Third Reading of the present Bill.

President, in the past decade or so, I have constantly received complaints on pyramid schemes lodged by members of the public. In particular, at the onset of summer vacation every year, many Secondary Five and Six school leavers or even university students are induced or co-opted to participating in pyramid selling as summer jobs when they walk round Wan Chai, Causeway Bay or Tsim Sha Tsui. Many young people falling victim to these traps may lose tens or even hundreds of thousands of dollars.

As "Yuk-man" has said, some victims paid with their credit cards while some borrowed money from family members. Some companies even adopt highly elaborate and ingenious schemes to induce young people to borrow money from finance companies, which ultimately result in massive debts they owe the finance companies. As we all know, once the victims obtain a loan from finance companies, the debt will become a separate issue which has nothing to do with the pyramid selling companies. In case of default, the finance companies will send suspected loan sharks to the victims' homes to collect the debts. In the end, the victims may need to repay the principal and interests with all they have; some victims may even go bankrupt while some elderly persons may have to take out their lifelong savings to help pay off the debts of their family members.

Over the years, whenever cases and examples of pyramid selling scams were discussed by Members in the former Legislative Council Building, sounds of cries and wails would be heard constantly. After all these years, the Administration finally introduced the Bill into the Legislative Council to effect the relevant amendments. Regarding the impact of pyramid schemes on the general public, while I of course consider that cases involving casualties are most tragic and serious, such as the earlier fire at Fa Yuen Street which resulted in nine deaths and 30 injuries, the harm caused by pyramid schemes on society, as well as members of the public and their families is no less severe than this case of nine deaths and 30 injuries. Just imagine, many families are subject to endless nuisances, disturbances and suspected threats from debt-collecting companies because of the debts incurred; the victims' families and friends are put under constant pressures; and some people even lose their lifelong savings.

I do not know whether that is the case that under the existing bureaucratic structure of the Government, officials who flunk more stand a better chance of getting promotion. A case in point is "Eunuch LAM". During his tenure as the Secretary for Constitutional and Mainland Affairs, he failed to help the people of Hong Kong deal with Mainland issues; on constitutional affairs, he also failed to ensure the passage of the constitutional reform package, the eventual passage was only made possible with efforts made by the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region. His handling of the replacement mechanism was even more disastrous as the relevant proposal has been revised three times. Yet, he still got promoted. On the electoral front, his legacy is even more ridiculous. The problem of "vote-rigging" was created and has remained during Stephen LAM's tenure as the Secretary for Constitutional and Mainland Affairs, but he has taken no action to deal with it. Over the years, I have written to the Registration and Electoral Office and the Independent Commission Against Corruption on numerous occasions about the problem of "vote-rigging", but not a single prosecution case has been brought

PRESIDENT (in Cantonese): Mr CHAN, we are now dealing with the Pyramid Schemes Prohibition Bill.

MR ALBERT CHAN (in Cantonese): President, I am saying that persons who flunk more stand a better chance of getting promotion. For instance, it is because a number of successive Secretaries of Departments and Directors of Bureaux have completely neglected their duties in tackling problems arising from pyramid schemes that many young persons and innocent members of the public have been scammed, and new victims appear year after year. When we meet the young victims, we have also told them that pyramid scams have been so extensively reported in the press that they should have the common sense to stay away from these traps. Sometimes, we even suggest to schools that Secondary Five and Six teachers should brief their students about pyramid scams at the beginning of long holidays every year, especially the summer vacation, so as to prevent young people from falling prey to these scams again. However, similar incidents still happen every year.

Hence, in respect of this problem, I hope the Bill will be enacted so as to prevent young people or innocent members of the public from falling prey to these scams again, suffering economic and financial losses, and causing trouble to themselves and their families.

Nonetheless, we know for sure that after the implementation of the new Ordinance, the outlaws will definitely conjure up new tricks to bypass the regulation of the legislation. In fact, I have just written to the Director of Food and Environmental Hygiene today because back in the 1980s and 1990s when the Regional Council still existed, we had revised a number of regulations related to food business licensing, which were successful in cracking down illegal operation of food businesses. Now that almost 20 years have passed, we see signs that the situation is deteriorating because operators of food businesses have identified new ways to manipulate the legal loopholes so that unlicensed food businesses can remain in operation. Similarly, in respect of pyramid selling, I am quite convinced that law-breakers will use new contracts and means to operate their pyramid schemes. The simplest way is that the participants will just be asked to subscribe shares, rather than buying goods. I do not know whether this could happen because I was not a member of this Bills Committee. I wonder whether the "barristers" among us can study this scenario, that is, when participants are just asked to subscribe shares, rather than buy goods or join membership. I think there are indeed many ways to circumvent regulation.

I hope the authorities will carefully study and keep in view whether law-breakers will manipulate the legal loopholes to induce students and young people looking for summer jobs to participate in pyramid selling and cheat them of money by means of contracts and other new tricks. In particular, I wish to point out that if problems arise after the implementation of the new Ordinance, we should not have to wait 20 or 30 years for the authorities to introduce the necessary legislative amendments. If, after the implementation of the new Ordinance next year, irregularities are detected such that innocent members of the public may be scammed or induced to fall into pyramid scams inadvertently, I hope the relevant Secretary of Department and Director of Bureau will introduce the necessary legislative amendments expeditiously.

MR LEUNG YIU-CHUNG (in Cantonese): President, while the long-awaited Pyramid Schemes Prohibition Bill (the Bill) has finally been introduced, it still comes too late for many members of the public. As we all know, pyramid selling has been prevalent in Hong Kong over the past two or three decades, and many members of the public, particularly innocent persons, have fallen prey to such scams. The victims not only suffer financially and lose their savings, but also incur massive debts as a result of pyramid selling tactics. It is most tragic that some victims even committed suicide in order to avoid the debts.

Regrettably, the Government has ignored the problem and no actions have been taken accordingly. In 2003 and 2004, the Court of Appeal ruled that the defendants in two cases had not violated the existing Pyramid Selling Prohibition Ordinance (the Ordinance) on the basis that pyramid selling as specified in the Ordinance must involve the sale of goods or services. In other words, schemes not involving the sale of goods or services are outside the scope of the Ordinance. The Court of Appeal also ruled that pyramid selling schemes under the Ordinance must involve the sale of goods or services by or through participants. It was not until these two court cases that the Government finally realized that the Ordinance was ineffective in tackling pyramid selling tactics and the present Bill was proposed.

President, this Bill indeed comes too late. Moreover, as Mr WONG Yuk-man has said, the Government is belated in addressing the problem. In my view, the Government is not only slow in response, as the public and Members of the Legislative Council have been cautioning the Government continuously over

the years, it just does not take heed to our views. Hence, the Government is not slow in taking action; it really wants to turn a blind eye to the situation by maintaining the *status quo*, and avoid accepting its rightful responsibility. That is indeed even more pathetic. Given the dire consequences suffered by the victims, many complaints against pyramid selling have been brought to the attention of the Government; regrettably, it refuses to tackle the problem on the pretext of non-intervention of private market operation. As a result, many members of the public have suffered gravely.

As pointed out by many Members just now, the victims of pyramid selling scams are not only confined to elderly persons, but many young persons and homemakers as well. The consequences are often disastrous for the victims. Of course, the victims must also be blamed because they participate in pyramid schemes usually out of greed and they invite themselves to such dire consequences. However, apart from greed, we must also understand that many people who live in poverty merely want to make some quick money so as to improve their living. Therefore, it is also a problem created by the harsh reality. Coupled with inducement and coercion by the sweet-talking scammers, the victims are led astray and must bear dire consequences.

However, what has the Government done to tackle these problems? Over the years, the Government has all along adopted an indifferent or unconcerned attitude. It was not until 2003 and 2004 that the Government finally realized that some actions have to be taken. We consider that the definition in the present Bill is more reasonable and appropriate because under the Bill, it is provided that a person who knowingly promotes a pyramid scheme commits an offence; and a person who (i) participates in a pyramid scheme; (ii) knows or ought reasonably to know that any benefit that the person may get from participating in the scheme would be entirely or substantially derived from the introduction to the scheme of new participants; and (iii) induces or attempts to induce another person to participate in the scheme, commits an offence. A person who commits an offence is liable on conviction on indictment to a fine of \$1 million and to imprisonment for seven years. Such a definition is clear.

Nonetheless, there is a problem with this definition because some mid-level participants of pyramid schemes are in fact victims themselves, and they are forced to recruit new participants in order to repay or reduce their debts. According to the Government, such act should attract the same level of penalty on

conviction on indictment as persons who mastermind the pyramid schemes. However, this approach is different from many other countries, such as our neighbour Macao, which impose lighter penalty for the participants or inducers under such circumstances.

After the implementation of this new legislation for a certain period of time, I hope the Government will conduct a review expeditiously to see whether the penalty of some middle-level participants can be mitigated on a discretionary basis. Although the legislation specifically provides that a person commits an offence when he "knows" that any benefit that he may get from participating in the scheme would be entirely or substantially derived from the introduction to the scheme of new participants, what is the definition of "knows"? This can be controversial. Very often, this is also a matter of concern to the victims as they fear that they would be caught by law and become an offender. I hope the Government will review this matter expeditiously.

As pointed out by many Honourable colleagues, I think it is most important to eradicate the problem of pyramid selling through public education in the community. If the Government does not step up education, persons who are inexperienced, desperate financially or just greedy may easily fall prey to pyramid selling scams and breach the law. I think the Government should greatly enhance publicity and education, in parallel with the implementation of legislation, so as to stop members of the public from participating into such schemes inadvertently.

Last but not least, I would like to remind the Government that we should aim at targeting the real culprits of pyramid schemes who are rich and powerful. They can find scapegoats easily and remain at large. I hope the Government can take targeted actions to wipe them out because we can still see them operating impressive offices in busy districts (such as Causeway Bay) to recruit members blatantly. However, I am concerned that when the new legislation comes into operation, it may not be able to catch these real culprits, but instead only the middle-level participants are punished. If that is the case, I think the situation is far from satisfactory. Instead, the Government should tackle the problem at root so that the law can work effectively to curb the operation of pyramid schemes in our free market economy.

President, while I support this Bill, I hope the Government will pay attention to the questions I raise just now.

President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, pyramid selling has existed for a long time, and the problem is even worse in the Mainland. According to many reports I have read, hundreds of thousands of persons who resisted law enforcement fled to the hills, engaged in "guerrilla warfare" like Chairman MAO, hid their pyramid selling goods and refused to surrender no matter what. Pyramid selling is in fact very simple; it works like a pyramid from top to bottom. The distinguishing feature of pyramid schemes is that in the recruitment process, participants can benefit from exploiting others. It represents the most primitive form of capitalism.

If we really intend to crack down on pyramid selling, what should we do? The answer is simple. As the Chinese saying goes, "Capturing the ringleader first in order to capture all the followers" — persons who orchestrate or promote pyramid schemes should be heavily sanctioned. What should be done in order to catch the culprits or collect enough evidence to ensure their conviction on indictment? The authorities should learn from the Independent Commission Against Corruption (ICAC) to build their cases by using tainted witnesses. In other words, persons who maintain their innocence should provide a defence of reasonable excuse, for example, by claiming that "I know nothing, but I am involved, and there is nothing I can do."

The investigation should go all the way up, level by level. If the cases are not investigated this way, I fail to see how the culprits behind the scene who reap massive benefits from pyramid schemes can be punished, as suggested by Mr LEUNG Yiu-chung just now. Therefore, insofar as the spirit of this legislation is concerned, I think the benefit of the doubt should not go to the defendant. Instead, the defendant should prove his own innocence, just like the tactic used to target acts of corruption. Of course, our Government is partial to the business sector. Under its policies, business operation overrides everything. The Government will disallow any acts which will likely impede or restrict business operation, particularly monopolistic business practices.

In fact, the matter is quite simple. Do you consider real estate a kind of pyramid selling? I can see the similarities between the two. After a major real estate developer has completed a housing development project, he made use of the legal loopholes and found someone to buy a few flat in order to push up prices so that he could sell the other flats. This kind of activity does not fall within the definition of pyramid selling merely because he has not openly proclaimed that, "Come and buy the flats from me, my name is LI Ka-shing (or whatever). You buy my flats and re-sell them to others." The practices of real estate developers are most unscrupulous — even darker than ink or inkwell. However, does anyone have the courage to stand against them?

I recall that I once requested a membership list of The Real Estate Developers Association of Hong Kong (REDA); at that time we still hold the meeting at the former Legislative Council Building and our seats were close. The meeting was attended by a Mr LEUNG — possibly Mr Stewart LEUNG Chi-kin — and I told him, "I do not believe in what you say. Who are the several hundred members of your association?" He said, "It is alright, Mr LEUNG. You ask me for the membership list, I promise I will give it to you." This was heard by a reporter of Cable Television Limited (Cable TV) — a recording should have been made by Cable TV that day — then I thought, "Yes, we may as well get a membership list and check whether there might be suspected cases of vote-rigging where the names of deceased members still remain on the list". But, soon after, Mr LEUNG said he had wrongly heard my request that day, and he thought we were asking for the membership list of REDA's executive committee or

PRESIDENT (in Cantonese): Mr LEUNG, is there a relationship between what you said just now and the Pyramid Schemes Prohibition Bill under discussion?

MR LEUNG KWOK-HUNG (in Cantonese): Yes, I think the real estate industry is a form of pyramid selling. If the law cannot deal with similar pyramid selling activities, I should of course caution you — You cannot vote, pardon me — caution my Honourable colleagues to consider whether they should vote for this Bill. Do you agree? If the Bill cannot deal with the largest scale pyramid selling activities, should it be further amended or negatived? Hence,

the matters are related because I am talking about the effectiveness of the Bill. Don't you think there is a relationship? But I think there is.

Hence, if the intention is to crack down on pyramid selling activities, pyramid selling of real estate developers should clearly be prohibited. However, there is no such prohibition right now. In fact, why do I say there is no prohibition — President, I will go on as I always speak with a reason — that is because pyramid selling tactics are also found in our political system. What is pyramid selling in politics? For the impending election of the Chief Executive, one candidate is the wolf and the other pig, just like in a zoo. The candidates are also engaging in pyramid selling. The press refer them as "TANG's camp" and "LEUNG's camp", which incidentally remind me of a Chinese saying, "A person who lives in the CAO camp but with his heart in the HAN camp" — I thought I was reading an episode from the *Romance of the Three Kingdoms*. That is pyramid selling in politics. After a person has "docked" at a certain "pier", he then recruits another member, and the chain goes on. A total of 220 000 persons can take part in the election: when a person joins a camp, he then goes out to engage in pyramid selling

PRESIDENT (in Cantonese): Please speak on this Bill.

MR LEUNG KWOK-HUNG (in Cantonese): Sorry, I am explaining why the legislation is imperfect. If pyramid selling tactics are found in politics

This is what happens: when a company joins a particular camp, a group of persons join the camp. We learn from the press, who and who are related to someone, who and who is someone's fortress, and so on. To me, that is effectively pyramid selling.

When we analyse the form of pyramid selling, a number of perspectives are involved because one should never look at things from just a single perspective. A person comes out and starts recruiting others; and some goods are involved, that is, political gains — I envy you, President; you are now the President so you are spared from such pyramid selling — in this way, pyramid selling begins. That is the first member of the pyramid scheme.

From then on, this person will recruit people from various sectors to join this pyramid scheme because I recall that functional constituencies are also involved; out of the 800 persons now

PRESIDENT (in Cantonese): Mr LEUNG, it seems that what you said is irrelevant to the Bill we are dealing with now.

MR LEUNG KWOK-HUNG (in Cantonese): Irrelevant? I am explaining why this Bill cannot combat pyramid selling.

PRESIDENT (in Cantonese): Please focus your speech on this Bill.

MR LEUNG KWOK-HUNG (in Cantonese): It is very simple, as I just said, if you want to combat pyramid selling, you must round up the ringleader — that is the essence of my theory. The present Bill, If you do not believe what I say, you can ask Secretary Gregory SO. If you want to sabotage this closed and triad-like organization laced with transfer of benefits, there must be a whistle-blower; otherwise, you cannot, It is the same as vote-rigging, there must be a whistle-blower whose role is pivotal. But a mechanism of whistle-blowing is unavailable in this Bill. That is my point.

It is the same with politics. If there is no whistle-blower, it means that throughout the process of pyramid selling in politics, nobody is willing to tell the truth that this is pyramid selling. It is not going to work, right? Hence, there is nothing Hong Kong people can do. One person, two persons or three persons engage in pyramid selling in politics and 220 000 persons would be recruited; of those, 800 persons will try to make the most benefits out of it. It is not going to work, right? It is the same in society. A commercial organization has certain goods, and it keeps saying, "You can buy some of our goods; if you can buy some of our goods, I will give you a good price. Then you can sell the goods at a cheap price to others and earn a greater marginal profit. If you buy more goods, a greater number of persons will come and help you sell the goods, and you can make an even greater marginal profit." The same trick is used in all pyramid

selling schemes. As the snowball rolls bigger and bigger with economies of scale, it will look real.

Therefore, President, my theory is quite simple, if Secretary Gregory SO, just look at me. If the legislation is intended to combat a triad-like organization, that is, pyramid selling in politics in my earlier analysis, but no platform is provided to allow innocent insiders to blow the whistle either when they are arrested or when they repent, so that the evil syndicate is shaken and destroyed from top to bottom, it just will not do. I have come across one case where I was told by a civil servant that there were many deceptive claims of travel allowance in his department, and he was also involved. He later approached the ICAC and was told that, "No, you will also be charged because even though you blow the whistle, you may also be involved; you blow the whistle merely because you are afraid." This case has taught me this theory. Hence, without such provision in the Bill, that is, without any inducement for the whistle-blower, it will be quite difficult to combat such activities which are seemingly impossible to detect.

Let me cite another example. President, you must know who MADOFF is. You must have heard of him, right? As a broker of financial products, MADOFF had recruited persons to sell these products to others, and earned some US\$65 billion. What sort of power did he have? Officials of the Securities and Exchange Commission of the United States of America once asked him, "MADOFF, can you provide us with the full accounts of your companies?" and he yielded at the officials, "I have already done so!" As MADOFF was known in the entire United States Government, including George BUSH, nobody dared to follow up. That is the power of nepotism. Then how did MADOFF get caught? Thanks to the whistle-blower, MADOFF lost everything. He reaped some US\$65 billion. While the rich and powerful people appeared to be honest gentlemen, they all helped MADOFF sell his products. He had a private club — the MADOFF private equity funds which was a Ponzi scheme. Persons who did not know MADOFF or his trusted aides personally could not sell his products; and MADOFF's trusted aides would tell other people that they were MADOFF's friends and MADOFF was a friend of BUSH. Pyramid selling in politics is the same as pyramid selling in the business world. President, just look at me, OK?

PRESIDENT (in Cantonese): Mr LEUNG, your speech should be more directly related to the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, I know you want to evict me from the Chamber.

PRESIDENT (in Cantonese): You should not try to bring up issues other than pyramid schemes by talking about "pyramid selling" metaphorically.

MR LEUNG KWOK-HUNG (in Cantonese): The clothes I wear today is related to Mr LIU Xiaobo Mr LIU Xiaobo is a true master against these kinds of pyramid selling in politics. He considers it wrong that power is passed downwards from one level to another level, and power should not be passed downwards from the Communist Party of China (CPC) to the General Secretary and nine members of the Politburo Standing Committee through entities such as the Politburo, the CPC Central Committee, and so on, just like different levels of a pyramid scheme in which every person must participate. Like me, LIU Xiaobo is also against pyramid selling, particularly pyramid selling in politics. He penned Charter 08 to protest against pyramid selling in politics, or pyramid "scamming" in politics. President,

PRESIDENT (in Cantonese): Mr LEUNG, I think the so-called "pyramid selling in politics" you mentioned repeatedly is outside the scope of this Bill. Please speak on the Bill which we are dealing with now.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, I remember that on the day of LIU Xiaobo's sentence, the judge also said that, "I do not think what you said is related to the conditions of our country." Hence, let us remember that it takes courage to counter an act of corruption. Mr LIU Xiaobo was awarded the Nobel Peace Prize in Norway on 10 December 2010, and it is now 7 December 2011. Even though I might be evicted by the President, I think I am duty-bound to say what I have to. I think the people of Hong Kong and China should not forget

about Mr LIU Xiaobo. He is against pyramid selling in politics, monopoly in politics and one-party rule. He deserves our respect. Thank you, President.

MS CYD HO (in Cantonese): President, even though this Bill, which seeks to regulate pyramid selling tactics, comes too late, resulting in losses suffered by many members of the public, I still support the enactment of this Bill.

In fact, pyramid schemes create losses to members of the public mainly because members of such schemes are not attracted by goods or services with value that is commensurate with the selling price. Instead, when participants pay their initial participation fee which is much greater than the value of the relevant goods or services, this participation fee becomes the profit of pyramid syndicates. Participants must then recruit other "fools" or innocent persons to join as members so as to get a share of the benefits and service fees they paid. Hence, this Bill specifies that any person who joins such a syndicate and gets his profit out of it while knowing about such a mode of operation is guilty of an offence.

However, I would like to urge the authorities to handle prosecution cases carefully. For participants in the first, second, or even third or fourth levels, we have good reasons to believe that these persons are aware of the tactic of recruiting "fools" for profits. However, if a pyramid syndicate has some 10 or even 20 levels, the latter participants can only share a meagre profit, or just 5% like the "minibonds"; they might consider this a reasonable level of remuneration from a common sense point of view. These participants may well be honest common folks; and if the authorities enforce the law strictly to press charges against such participants, innocent persons may be treated as colluding offenders and prosecuted. That is a situation we cannot accept.

In the course of scrutiny of the Bill, I have put forth two requests to the Administration. First, is it possible to amend the Bill so that innocent or ignorant, so to speak, members of the public who join a pyramid scheme inadvertently and hence become victims themselves, will not be prosecuted by the authorities as colluding offenders? Second, when pressing charges, the authorities should exercise the power of prosecution carefully.

Why did I make those requests? That is because after the Lehman Brothers Minibond incident, we note the view held by many that persons who bought minibonds were greedy because they still bought these bonds even when they knew there were problems with the valueless bonds; as investors who willingly accepted the high risks involved, they had only themselves to blame for the losses. But as we later find out, this is far from the truth. Many cases involve ordinary members of the public who are old, with little formal education, or illiterate, and they were only given very simple explanation about the financial product by the relevant bank staff; in some cases, bank staff even lobbied mentally-handicapped customers to invest on the minibonds.

As a matter of fact, many honest common folks who were involved in pyramid schemes truly believed that they could earn a meagre remuneration by recruiting new participants. They genuinely believed that it was a lawful and normal job because they did not have the opportunity to share in the huge profits of the first, second and third levels. When the participants only got 5% of the participation fee of further new members in return, they had reasons to believe that it was an honest job.

However, according to the Administration, it is difficult to include such an exemption in the Bill because if it is provided, persons who knowingly and purposefully recruit and cheat their "victims" can get off the hook because of the exemption.

Mr Alan LEONG, a senior law practitioner, was also a member of the Bills Committee. Finally, we came to the conclusion that the Secretary should make it clear when speaking on the Bill that in considering prosecution under the new ordinance, due consideration would be given to the social background of the target of prosecution. In fact, the question of whether the participants are victims themselves would depend on whether they sign the agreement to join the pyramid syndicate as the deceived or the knowing deceiver. Hence, I call upon the Secretary to respond to this matter of utmost concern of the Bills Committee when he speaks in reply later.

Separately, President, there are some drafting matters with the Bill, and I am grateful to Mr Alan LEONG for bringing them up in the course of scrutiny of the Bill. I have no idea why the Department of Justice has adopted a rather cultivated approach in drafting and used the term "着墨" as the Chinese rendition

for "emphasis", for the term "着墨" is quite incomprehensible in context because it refers to the heavy and light strokes in Chinese painting or calligraphy and hence, it is a culture-related terminology involving subjective judgment. We hope in making laws, the Administration will adopt a pragmatic, clear and definitive approach in law drafting. Subsequently, the Administration has replaced the term "着墨" with "強調" and "重點", which are more modern legal terminology. I hope that when drafting new legislation in future, officials in the Department of Justice will always use objective wordings in law drafting.

Last but not least, I must reiterate my point that the Secretary should make it clear when speaking in reply later that the authorities will give due consideration as to whether the target of prosecution is the victim or the colluder when exercising the power of prosecution in future.

Thank you, President.

MR RONNY TONG (in Cantonese): President, I feel somewhat strange that so many Honourable colleagues are prompted to speak on this Bill.

I agree with Mr WONG Yuk-man's remark just now that this problem has in fact existed for several decades, and it has come under repeated criticisms from the Court. It has taken such a long time before the Government finally makes up its mind to present the Bill to the Legislative Council for scrutiny and enactment. While it is a case of "better late than never", such an attitude is undeserving of commendation.

President, while Mr WONG Yuk-man is not in the Chamber now, I must say that I have always considered his speeches powerful and convincing. He speaks effortlessly and can convince many others; that is why I consider that the issues he raised just now are quite valid. However, it seems that both Mr WONG and Ms Cyd HO, or even Honourable colleagues from the business sector who spoke earlier, adopt a line of thought — I dare not say it is a misunderstanding — about the matter, which is, as Ms Cyd HO put it, participants in the fourth, fifth, sixth and seventh levels may well be innocent victims themselves. Each in their own way, these Honourable colleagues have expressed the same view, that is, whether these so-called "victims" should be given lenient treatment. I recall that when Mr Vincent FANG spoke shortly

after lunch time, he also stated his wish that the scope of business operation should not be too wide, the Government should give due consideration in prosecution cases, and the matter might have to be reconsidered in future.

I do not quite agree with these views. First of all, I do not see these activities as business operation as pyramid schemes are only scams to cheat participants' money in the guise of business operation. The main focus of the Bill is that pyramid schemes are often unrelated to the resale of goods. More importantly, once involved, the participants of such pyramid schemes cannot possibly be regarded as innocent. No matter how innocent he is, a participant cannot presume, on the basis of such innocence, that he can avoid his responsibility as prescribed by law.

Why do I say so? In fact, pyramid selling is comparable to a vampire. President, I do not know whether you have ever watched movies about vampires. If you have, you will know that the vampire's trick is quite simple. By simple, I mean the method is quite mundane: the vampire takes a bite, leaves two holes and suck off the blood of his victim. Soon after, the victim turns into a vampire which bites other victims and sucks their blood. The vampire family can then live on forever after. Is the first person who got bitten a victim? He might be when he was first bitten, but when he went out to bite other persons, I am sorry, he is no longer a victim. Hence, the law makes participants of pyramid schemes also liable, and I think it is absolutely correct to do so. Regardless of the number of preceding victims, he must be sanctioned as long as he has bitten other persons.

Of course, I think the Court will make the right decision regarding the gravity of an offence on the basis of factual evidence. While the Court may mete out different sanctions against the mastermind of a pyramid scheme and other participants, for example, those in the fourth or fifth level, we cannot say that participants in the fourth or fifth level are not vampires. Moreover, Ms Cyd HO and a number of Honourable colleagues have likened the case of pyramid schemes with minibonds, but such a comparison is inappropriate because a person who buys minibonds must shoulder his own responsibility and he cannot possibly shift the responsibility to others; whereas in the case of pyramid schemes, it is possible. Through the act of pyramid selling, a participant shifts his own responsibility to the participants in the next level and beyond. Hence, it is an act of shirking one's own responsibility, as well as an act of dishonesty. I can

absolutely not agree that the authorities should differentiate between these acts in making prosecutions and treat the cases differently depending on the level of individual participants.

President, I have always disagreed that such decisions should be made by the prosecution to act on behalf of the Court to treat some persons leniently or others stringently. Basically, this line of thought runs counter to proper administration of the rule of law. As I see it, all persons who have participated in pyramid schemes should be sanctioned under the law; the degree of their participation should only be reflected by the severity of punishment. What is meant by "participation"? The Court will definitely provide a clearer definition later on the basis of precedent cases. But for me, the word literally means that a person has taken a bite of others after he was bitten himself; that is participation.

If the authorities can ensure proper publicity through the enactment of this legislation so that members of the public clearly understand the actual meaning of pyramid schemes, as well as the criminality of such acts, I think it may not be necessary to resort to the provision of whistle-blower protection, as suggested by Mr LEUNG Kwok-hung just now, before such crimes can be detected. Why do I think it is unnecessary to do so? It is because when a vampire is about to strike, the prospective victim can always say instantly that it is a criminal act; moreover, he can report the case instantly. Regardless of whether the victim was actually bitten or not, he can report such acts to the law-enforcement agencies so that actions can be taken against the criminals who suck blood off their victims; however, he should never think that he can avoid his responsibility as prescribed by law if he has taken a bite of others after he was bitten himself.

President, I hope the Secretary can see eye to eye with me on this point so the enacted legislation will apply equally to all participants to ensure that they are properly sanctioned by law, while the Court will decide on the severity of punishment according to individual circumstances. The main duty of the Administration is to explain clearly to members of the public, particularly young persons and those who are ignorant about such operation, the features of pyramid schemes, as well as major elements and the critical time for determining the offences. With such knowledge, members of the public can hopefully report such acts before they are bitten should they eventually become an unfortunate target of pyramid schemes. Even under the unfortunate circumstances that they are bitten, they should not perpetuate the act of biting others; instead, they should

report the case to the authorities instantly and put a stop to such crimes of unfairness. If this can be done, the objective of the legislation can be achieved to actually prevent these unacceptable non-business activities.

I hope the Secretary will agree with what I said just now, and make greater efforts to eradicate such criminal acts after the enactment of the legislation. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Commerce and Economic Development to reply.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I thank Members who speak in support of the Pyramid Schemes Prohibition Bill (the Bill) just now. I also thank the Bills Committee under the chairmanship of Mr Fred LI for giving us many valuable views.

The current Pyramid Selling Prohibition Ordinance (the Ordinance) cannot effectively combat objectionable schemes which adopt a pyramid structure in various guises. The principal objective of the Bill is to provide a new definition of pyramid schemes, taking into account of the logic behind the operation of pyramid schemes. Simply put, pyramid schemes as defined in the Bill mean those schemes where new participants must provide a payment or a consideration to other participants or promoters of the schemes; the provision of such payment or consideration is entirely or substantially induced by the prospect held out to the new participants that they will be entitled to certain benefits; and these benefits are entirely or substantially derived from the introduction of further new participants to the schemes.

An essential element in the perpetuation and extension of pyramid schemes is the recruitment of new participants by existing participants. In order to curb the extension of pyramid schemes to avoid further harmful effects to our economy and society, the Bill specifies that knowing participants of pyramid

schemes are held criminally liable. In the course of in-depth discussion on this issue, members of the Bills Committee considered that some participants of pyramid schemes who have little formal education or knowledge may have difficulty in understanding and identifying the irregularities of these schemes and hence, the prosecution should give due consideration to these matters when pressing charges. This point is also mentioned by a number of Members who spoke just now.

Under the Bill, participants in a pyramid scheme will commit an offence specified therein only if they induce or attempt to induce other persons to take part in that scheme when they know or ought reasonably to know that their benefit is entirely or substantially derived from recruiting further participants.

The Court will only make a guilty verdict when the prosecution can prove beyond reasonable doubt that a participant knew or ought reasonably to know the above circumstances, and that he has recruited or attempted to recruit others to join the scheme. When building a case, the prosecution must consider the evidence of the case pertaining to the role, level of participation and personal particulars (including *inter alia*, mental capability, knowledge, level of education, and so on) of a participant, as well as all other evidence, before a decision can be made as to whether sufficient evidence is available to prove that the participant knew or ought reasonably to know the nature of his income source and hence, whether charges should be pressed. I trust that a right balance has been maintained by the Bill so that the effectiveness of the Bill will not be undermined while no innocent persons will be caught. The Bills Committee is aware of the position and has no objection to the relevant provisions of the Bill.

At present, the maximum penalty prescribed under the Ordinance is a fine of \$100,000 and imprisonment for three years upon conviction on indictment. In order to increase the deterrent effect, the Bill proposes to increase the maximum penalty to a fine of \$1,000,000 and imprisonment for seven years. This proposal has the support of the Bills Committee.

President, in the course of public consultation on the Bill, the community expressed support for various proposals in the Bill. Moreover, at the public hearing held by the Bills Committee, attending individuals and deputations, including representatives of the direct selling industry, generally indicated support for the Bill.

Taking into account the suggestion of the Bills Committee, I will move two technical amendments at the Committee stage so as to improve the drafting of the Bill. These amendments have the support of the Bills Committee.

Responding to the views expressed by Members, we will continue to monitor the effectiveness of the legislation after its enactment by this Council. If considered necessary, we will gladly consider the need for legislative amendments seriously. We will also protect consumer rights from various aspects, such as amending the Trade Descriptions Ordinance so that more effective actions can be taken to tackle unfair trade practices. Moreover, in order to address the concerns expressed by a number of Members, and to support the implementation of the new Ordinance, we will step up publicity and education so that members of the public will have a clear understanding on pyramid schemes and stay away from such scams.

With these remarks, President, I hope Members will support the Bill and my proposed amendments. I am confident that the new Ordinance will be more effective in tackling pyramid selling scams than the existing Ordinance. We propose that the Bill, if enacted, shall become effective on 1 January next year as its early implementation will be beneficial to protecting the interests of *bona fide* businessmen and consumers.

Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Pyramid Schemes Prohibition Bill.

Council went into Committee.

Committee Stage

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

PYRAMID SCHEMES PROHIBITION BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Pyramid Schemes Prohibition Bill.

CLERK (in Cantonese): Clauses 2, 3 and 5 to 9.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 2, 3 and 5 to 9 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 1 and 4.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I move that clauses 1(2) and 4(1)(b) of the Pyramid Schemes Prohibition Bill (the Bill) be amended as set out in the paper circularized to Members.

Regarding clause 1(2), we propose to add the expression "by notice published in the Gazette" towards the end of the English text so that it is consistent with the Chinese text. This technical amendment is supported by the Bills Committee.

Separately, clause 4 of the Bill provides that the Court must have regard to two factors when determining whether a scheme involving the marketing of goods or services is a pyramid scheme, which include the emphasis of promotion as specified in clause 4(1)(b), that is, the emphasis given in the promotion of the scheme to the entitlement of the participant to the selling of goods or services by comparison with the emphasis given to the participant's entitlement to the "recruitment" of further new members. When drafting the provision, reference has been made to the relevant legislation in Australia and Ireland. Having reviewed clause 4(1)(b) on account of views of the Bills Committee, we propose that both the Chinese and English texts of the provision be amended so that it is easier to understand and read. This amendment is also supported by the Bills Committee.

Chairman, I implore Members to support the above amendments.

Proposed amendments

Clause 1 (see Annex II)

Clause 4 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 1 and 4 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1 and 4 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

PYRAMID SCHEMES PROHIBITION BILL

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

Pyramid Schemes Prohibition Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Pyramid Schemes Prohibition Bill be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Pyramid Schemes Prohibition Bill.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' Motions. Motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the Member who is to move the first motion today may speak, including reply, for up to 15 minutes, and have another five minutes to speak on the amendments; the movers of amendments to this motion 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): Reforming governance philosophy, resolving deep-rooted conflicts in society and alleviating the disparity between the rich and the poor.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr Frederick FUNG to speak and move the motion.

REFORMING GOVERNANCE PHILOSOPHY, RESOLVING DEEP-ROOTED CONFLICTS IN SOCIETY AND ALLEVIATING THE DISPARITY BETWEEN THE RICH AND THE POOR

MR FREDERICK FUNG (in Cantonese): President, I must declare that I am proactively preparing to run in the coming Chief Executive Election.

President, the mass media has recently put the spotlight on the electioneering activities of the two Chief Executive candidates from the pro-establishment camp. At first, there were guesses on who would be anointed by "Grandpa", followed by the candidates' "district shows" using the grassroots as the backdrop. What is more, the two candidates have arbitrarily written blank cheques to different sectors and badmouthed their rivals; they even distanced themselves from their previous administrative blunders by going back on what they said yesterday.

Their open rivalry and veiled strife is just like an imperial power struggle. Wrangling over power, they have fully exposed their ugliness. While the fine-sounding claim is that they are forging consensus, they sometimes carelessly revealed their overbearing and dictatorial manner. As for the election strategies, they compete against each other in terms of expedition, ruthlessness and ostentation, with the participation of celebrities. Recently, an animal farm syndrome has emerged, with the pig and wolf behaving recklessly. I wonder if there will be more absurdities in the future, exposing nakedly one's shortcomings.

Nonetheless, President, there is one thing I can be sure of. People are sick of the behaviour of these two candidates from the pro-establishment camp, but they cannot do anything. Not only are they deprived of the right to participate in the election, they are forced to watch the fake performance. Although everyone knows that only "Grandpa" and "big masters" have the final say, the coterie election was deliberately portrayed as universal suffrage. Members of the public are becoming more annoyed.

Worse still, the abovementioned election is actually lacking in real substance; there are promises but no commitment. The candidates have been evasive on the administrative blunders made while they were in office. There have been too many blames but too little retrospection. As a result, Hong Kong has lost the golden opportunity to squarely examine and resolve the core problems in society when a change of government is approaching. Therefore, the entire election is a lacklustre campaign, a bragging contest indeed. Thus, there is growing pessimism among members of the public. They have become more and more helpless and hopeless, especially in these few days when the candidates were seen badmouthing one another.

President, is it really that difficult for people to have a twist of fate? Will Hong Kong continue to be at a lost? Or, should we cut off all means of retreat and proactively look for a breakpoint or a possible way out so as to seek justice for Hong Kong?

President, I believe that the persevering Hong Kong people will not bow to fate. We seek justice rationally and respect the rule of law. We have done our best to duly perform our duty by exerting pressure both inside and outside the establishment, with a view to forcing the people in power and the future Chief Executive to listen to our voices and respond to our aspirations, and requesting them to meet the demands of the public.

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

Therefore, the purpose of proposing this motion today is to explore in depth and rationally the success, failure, gains and losses of the past government policy implementation. Instead of following the steps of our predecessors or the will of senior officials, we should, through rational discussion, abandon our biased views or partisan and forge a consensus, with a view to repositioning the roles and functions of the new government in the future and finding a way out for Hong Kong.

Deputy President, to the democratic camp, running in the coterie Chief Executive Election is a viable entry point. As I have said right at the beginning, I am proactively preparing to run in the Chief Executive Election. However, I would like to state clearly that whoever wins in the election is of no significance; what matters is that the politicians from the democratic camp who fight in this losing battle must spare no effort in achieving the goal of promoting public participation and introducing genuine competition; and at the same time, laying down a brand new election model to prepare for the future universal suffrage. The purposes of running in the election is to promote rational discussion of politics among various parties, summarize the gains and losses of previous governance, and find a way out for the future of Hong Kong, which is currently at a lost. The pro-democratic camp has always been serious in politics, and has never opposed for the sake of opposition. Rather, it aims to convey a clear message to the community that despite the longstanding political distortion and suppression, we have still developed a comprehensive governance philosophy.

What is more, we have the ability to rule. The pro-democratic camp is ready to participate in the future universal suffrage.

Deputy President, the motion proposed by me today is precisely a reminder to the probable Chief Executive candidates that they must have the guts to undertake responsibilities and duly perform their functions, and with broadness of mind in accommodating different views. A person is great when he can be tolerant and forgiving. I believe politicians who genuinely serve Hong Kong are different from those who pursue for fame and power. They will absolutely not tell lies in the election using unrealistic and empty slogans; they will not claim themselves to be auspicious; or they will not forcibly introduce new policies without public acceptance, simply to make glorious achievements and become world-famous.

Deputy President, a person who truthfully wants to engage in politics should discard his haughty airs and breathe with the public in order to gauge their sentiment. Furthermore, he should be able to forge a consensus in the community and arouse public interest to social issues by pointing out the crux of the issues and seeking solutions for public discussions. He should also put forth his vision and strive his very best to resolve deep-rooted conflicts in society.

Unfortunately, both the existing government and the two candidates from the pro-establishment camp have tried hard to conceal their administrative mistakes by all means, taken social injustice too lightly and were at their wit's end in tackling the deep-rooted social conflicts. Regarding the large-scale vote-rigging activity reported in the District Council elections which have just ended, the Chief Executive has taken it too lightly and flippantly as though this is a common phenomenon. He has even unintentionally demonstrated his disrespect of fairness and justice, which are the core values of Hong Kong. In the face of the widening disparity between the rich and the poor, the Chief Executive claimed that this is an inevitable outcome of capitalism, trying to shirk his responsibility.

Worse still, he is so shameless that he sang praises of his achievements in the Policy Address, and even attempted to lay down a framework of governance for the next government, insisting that Hong Kong should stick to the narrow principle of "big market, small government" and continue to adopt the goal of "capping government spending to no more than 20% of the GDP".

Deputy President, this is precisely the major reason why we lack an enterprising spirit and why our government has its hands tied, leading to wealth disparity and the situation of "rich Government but poor people". The fact that "99% of people's interests are taken away by the 1% of tycoons" is the major accusation of the "Occupy Wall Street" campaign. This is also the accusation that people levelled at the adverse effects brought by capitalism and financial hegemony. Given that Hong Kong is so indulged in free market, the situation would certainly be worse. We do not only top the list in respect of wealth disparity, the conflicts and difference among social classes have also led to growing antagonism against the rich and the business sector. The intensified class conflicts should be attributable to the increasing wealth disparity, biased governance philosophy and the unjust social system. Have the Chief Executive candidates ever seriously reflected on these problems?

Deputy President, I have stressed time and again that people from all walks of life must reflect on whether the mode of development adopted in Hong Kong so far has gone wrong and whether the Government's established governance philosophy no longer works. The biased governance philosophy together with a closed and lagging political system have formed a hybrid of political and economic system, which is neither fish nor fowl and fraught with problems. In the present age of information revolution, it is all the more obvious that Hong Kong is at a lost. It is palpable that the established system is incapable to renew and advance. This conflict is precisely the problem the Chief Executive candidates from the pro-establishment camp should understand squarely and identify a solution.

Deputy President, I propose this motion today to highlight the fundamental solution to the problem. The new government must reform the long-standing governance philosophy that tilts in favour of tycoons as well as people who are powerful and wealthy, and replace it with the principle of development for all people that gives consideration to all social strata as the basis of governance. While the Government should no longer make minor patch-up amendments, the two Chief Executive candidates from the pro-establishment camp should not just adopt the practices of their predecessors, they should not be autocratic or adopt appeasing measures.

Deputy President, the next Chief Executive must understand that the grievances and conflicts accumulated, as well as the serious lacking in channels for upward mobility in society today is closely related to the long-standing governance philosophy of holding fast to the principle of "big market, small government" and the *laissez-faire* policy in a free market. The economic and social policies derived from this philosophy have resulted in serious loopholes and imbalance. Many major livelihood issues which should be addressed and improved through government-initiated measures are now left to be tackled in the free market. From transport, housing and healthcare to employment of the grassroots, the hands of the free market are in full control. According to the rules of the game in the market, the weak will be eliminated and the strong will stay. The grassroots will be wiped out completely, for there is not a tiny hint of love and care.

Given the prevalence of the free market and mercantilism, coupled with the *laissez-faire* policy adopted by the Government, the business sectors have been given free rein and they are spoiled. Corporate social responsibility exists only in name; as enterprises still uphold the old business operation mindset of maximizing profit and reaping the greatest gains. Enterprises only care about extorting every penny of the public by all possible means. Financial institutions offer an array of products on various pretexts merely to lure the public to give their lifelong savings. Large consortia do all kinds of trickery and looting, enjoying monopoly across sectors and dictatorship in the market. Their short-sightedness and greediness are fully manifested with the Government's connivance. However, the adverse impact has to be borne by the grassroots alone.

Hence, the Chief Executive candidates must cast off the burden of the predecessors. He or she should tackle the root of the problem by reforming the established governance philosophy and mindset, establishing an open and democratic system, reviewing the principle of "adopting *laissez-faire* policy in a free market" and that of "big market, small government" upheld in the past, so that reasonable regulation and supervision can be imposed to rectify the greedy and reckless practices in the market. He or she should, through government-initiated actions, address the unfairness and inadequacies brought about by the free market, establish a principle of development for all people that gives consideration to all social strata, reinforce and expand the functions of the

Government, enhance the economic structure and develop new economic growth points, so that the Government can play a good role in resource redistribution.

With these remarks, Deputy President, I move the motion.

Mr Frederick FUNG moved the following motion: (Translation)

"That, given that the worsening of deep-rooted conflicts in society, the persistently low popularity of the Government and the numerous blunders in policy implementation all highlight that the existing political system and even social and economic policies, etc. lag far behind the prevailing circumstances, and there is a huge gap between the authorities' governance philosophy and people's expectations; and as a change of government is approaching and the Chief Executive Election is near, this Council urges all social sectors to abandon partisan or political biases, explore in depth and rationally the success, failure, gains and losses of past government policy implementation, reposition the roles and functions of the new government in the future, reform governance philosophy, establish a set of principles of development for all people that give consideration to all social strata, formulate comprehensive and fair social and economic policies, and set up a democratic and open political system, with a view to completely resolving deep-rooted conflicts in society, alleviating the disparity between the rich and the poor, and building a truly stable, harmonious and just society."

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

DEPUTY 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 Mr IP Kwok-him to speak, to be followed by Ms Audrey EU and Mr Albert CHAN respectively; but they may not move the amendments at this stage.

MR IP KWOK-HIM (in Cantonese): Deputy President, improving people's livelihood and promoting economic and democratic development have all along been the aspirations of the public, and they should also be the policy objectives of the SAR Government. As a change of government is approaching, in order to enable the next Chief Executive to understand the aspirations of the public and reform governance philosophy, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) had organized six workshops on the expectation of the new Chief Executive between late May and mid-August this year, and invited people from all walks of life to explore the Government's long-term policy objectives together. The DAB has collected and collated people's aspirations for the new Chief Executive, which will be published for consideration by different sectors.

The current administration of the SAR Government is actually very inadequate and there are numerous deep-rooted conflicts in society, which have hindered our overall development.

On people's livelihood, problems of an ageing population, housing and wealth disparity have not been properly dealt with. While the ageing population has imposed a heavier burden on the community, the working population is shrinking. In the absence of a comprehensive elderly policy, the livelihood of the elderly people has not been safeguarded. Although they have worked hard for decades and contributed to society, they are being neglected as they grow old and frail. This is unacceptable to the community. Housing issue, on the other hand, concerns with the problem of availability of a place for people to settle down. While accommodation is of paramount importance to Chinese people, there is insufficient housing supply in Hong Kong. The high property prices have made it difficult for people to buy their own flats, nor can they afford the exorbitant rent. Some people have to seek refuge in "sub-divided units". This has reflected the inadequacies of the previous housing policies implemented by the Government, which have failed to give the right cure for today's sickness. The wealth disparity reflects that people have failed to reasonably share the fruits of Hong Kong's socio-economic development. Wealth has fallen into the hands of a selected few and people's livelihood has failed to improve. These problems have intensified social conflicts and undermined social harmony, which have hindered social advancement.

Therefore, the Government must enhance its functions, make planning as soon as possible and be more proactive. In order to safeguard the elderly people's basic living needs, the DAB proposes to reform the "fruit grant" into a retirement protection pension. Under this three-tier system, pension will be given to applicants in accordance with their assets. We eagerly hope that the Government will seriously consider this proposal. Furthermore, in order to resolve the housing problem, the Government should formulate long-term land and housing policies. Apart from building Home Ownership Scheme flats, it should also provide additional public rental housing flats, re-launch the Tenants Purchase Scheme, provide rental allowance to applicants on the Waiting List for public rental housing flats and proactively develop land to ensure stable land supply in Hong Kong, so that people can live in peace and work with contentment. To alleviate the disparity between the rich and the poor, the Government must properly allocate social resources to safeguard the living of the grassroots. We propose to replace the "Work Incentive Transport Subsidy Scheme" by a maintenance grant scheme for low-income families, so as to enable families not eligible to apply for Comprehensive Social Security Assistance (CSSA) but whose incomes are still on the low side to receive a grant.

Regarding the economy, the community still has a mentality of imposing self restriction and thus fails to capitalize on the development opportunities offered by the Mainland, and cannot fully utilize the co-operation mechanism to give further impetus to the economy. Coupled with the fact that local industries are not diversified and lacking in talents, our economic development has therefore been greatly restricted.

To promote economic development, the SAR Government should adopt a long-term vision and proactive initiatives. Given that Hong Kong has failed to capitalize on the development opportunities offered by the Mainland, the SAR Government should adopt proactive initiatives to grasp co-operation opportunities that are favourable to Hong Kong in the light of the development strategy of our country, thereby exploring new markets for various industries and promptly importing talents, with a view to achieving some breakthroughs by releasing the significant potentials of our economy. For instance, the Government should make planning as soon as possible and take the initiative to take part in the preparatory work of the 13th Five-Year Plan of our country. This would enable Hong Kong to capitalize on our country's development trend and therefore formulate more appropriate development strategies. Meanwhile, the

Government should also proactively follow up on the various policies relating to Hong Kong under the 12th Five-Year Plan, especially the implementation of the 36 support measures to promote Hong Kong's overall development.

Regarding governance, the Government is currently relying too much on the market and often stresses the "big market, small government" principle. It has failed to understand its own roles and functions. The entire society, on the other hand, has merely stressed the reform of the election mode to the neglect of the establishment and co-operation of other political systems.

In order to reform its philosophy and improve governance, Hong Kong must examine in depth the relationship between democracy and good governance. Apart from promoting democracy in an orderly manner, it should also create conditions for good governance. To strengthen the governing team, for instance, the Government should review its functions and remuneration, improve political support, step up the work of accountability officials in the districts, enhance research on long-term policies within Policy Bureaux and make more concrete analysis on the social conditions and people's aspirations, with a view to implementing various policies in a more effective way. To improve the decision-making process, the Government should absorb more talents from various political parties into the governance structure. When formulating policies, the Government should also allow the participation of political parties as early as possible and allow more Legislative Council Members to join the Executive Council so as to encourage them to take part in the policy formulation process, thereby raising the degree of support of policies in the Legislative Council.

As a change of government is approaching and the Chief Executive Election is near, the DAB opines that the new-term government should uphold two principles: firstly, there should be long-term planning for Hong Kong's position and development, so as to fully capitalize on the unique position of Hong Kong connecting our country and the rest of the world; secondly, there should be clear requirements of the role and functions of the Government, so that it can proactively lead the Hong Kong society to develop continuously.

Deputy President, regarding the DAB's views on the original motion and other amendments, we do consider that it is the right direction for the motion to call on the Government to reform the governance philosophy and look squarely at

the social problems. Yet, the wordings are pretty vague. Regarding Ms Audrey EU's amendment to expeditiously withdraw the replacement mechanism, the DAB considers it inappropriate. Earlier, the findings of a number of major opinion polls showed that some 50% or even 60% of people considered it necessary to plug the loopholes of the arbitrary resignation of Members and amend the relevant election laws. Hence, the DAB considers that so long as the replacement mechanism complies with the Basic Law and can reasonably plug the loopholes, it should be supported. As for Mr Albert CHAN's amendment, it proposes to implement dual universal suffrage in 2012. However, the Standing Committee of the National People's Congress has already made a clear and specific decision on this and the Legislative Council had also endorsed the reform package by a two-thirds majority. Therefore, the DAB considers it meaningless to continue to linger over the issue of dual universal suffrage in 2012.

I so submit.

MS AUDREY EU (in Cantonese): Deputy President, last week, after I submitted this amendment on behalf of the Civic Party, I heard a bad news — a good friend of mine died in Australia. Therefore, Deputy President, I will have to fly there to attend the funeral tonight. I wonder if I can propose my amendment before I leave. If not, according to the Rules of Procedures, I will have to withdraw my amendment. Here, I would like to apologize to the President, Honourable colleagues and members of the public beforehand.

Deputy President, the original motion moved by Mr Frederick FUNG has actually put forward a number of aspirations for the next Chief Executive. The Civic Party has all along stressed that politics and people's livelihood are interrelated, thus discussions on people's livelihood, the polarization of the rich and the poor and social harmony must have something to do with the democratization of the political system. How can we prevent the worsening wealth disparity and polarization when the Chief Executive who governs some 7 million Hong Kong people is still selected by a coterie election involving 1 200 people; when half of the Legislative Council is still returned from a coterie election involving functional constituencies, and when the Government's governance has inevitably tilted towards people with vested interests? How can the middle class not suffer from downward mobility? How can the middle class, small capitalists, the grassroots or young people not talk about the collusion

between the Government and the business sector and the real estate hegemony all the time? It seems that a genuinely stable, harmonious and just society has become more distant from us. In a nutshell, without democracy, how can people's livelihood be improved?

A Mainland scholar, YU Keping, has published an article entitled "Democracy is a good thing", and another one entitled "The six relations of democracy where clarification is desperately needed", in which the close relationship between democracy and people's livelihood has been highlighted. Let me quote his remarks: "The improvement of people's livelihood and the development of democracy are complementary to each other and mutually reinforce each other. Democracy and people's livelihood are not repulsive. For a single citizen, economic interests and political rights are necessary for their normal life. For the entire country, improving people's livelihood and the development of democracy, after all, is to build China into a prosperous, democratic, civilized and harmonious modern power. Like a pair of wings, democracy and people's livelihood are essential in the revitalization and development of the People's Republic of China, and should not be biased. It is a wrong thinking to develop people's livelihood instead of democracy." (End of quote)

Deputy President, the Civic Party has all along stressed the importance of democracy and people's livelihood. In my amendment, I have highlighted a number of major factors affecting the political system. This is because, from our observation, the two hot-tipped or highly probable Chief Executive candidates have recently only talked issues such as people's livelihood, housing and economic development, and have completely evaded to talk about political issues. What do they think of the Government's deprivation of voters' by-election rights? What are their stances towards the replacement mechanism? Do they agree to the immediate abolition of the appointment system of the District Councils? Are they willing to abolish section 31 of the Chief Executive Election Ordinance which concerns with the "winning candidate to declare he is not a member of political party"? Are they willing to undertake to promote the abolition of the functional constituency seats and the separate voting mechanism of the Legislative Council in 2016? Are they willing to undertake not to promote the enactment of Article 23 of the Basic Law during his office or before the implementation of universal suffrage?

Deputy President, the Civic Party hopes and calls on people who have the right to vote in the Election Committee Subsector Elections to actively vote on Sunday, and calls on the elected members, the mass media or Hong Kong people to put important questions about people's livelihood, freedom and people's rights to Chief Executive candidates running in the coterie election.

Furthermore, Deputy President, a very important point in my proposed amendment today is public participation. This is where my amendment differs from the original motion and the other amendments. I propose this amendment because traditionally, it has all along been the objective of the democratic movement to pursue or achieve dual universal suffrage. And yet, as evident from the recent social development, more and more people have expressed their wish to participate in public or social activities. For instance, the action to protect the Queen's Pier in 2006 is tantamount to a tossed stone which has raised a thousand ripples. People now attach importance to participative democracy. Instead of relying on the elected representatives to speak for them in the legislature, they cherish direct participation and request the Government to comply with the requirements set out by the Web 2.0 Era, with a view to expeditiously responding to people and thereby advancing towards direct democracy.

After former Chief Executive TUNG Chee-hwa abolished the two municipal councils, district administration has regressed rather than progressed. Following the abolition of the Urban Council, district administration rests completely in the hands of government officials. The issuance of liquor licence or the naming of streets is now handled by government-appointed consultative bodies. Meanwhile, the Town Planning Board, the Antiquities Advisory Board and the Advisory Council on the Environment still find their basis on the policy of administrative absorption of politics, under which all members are appointed and secretariat staff is government official, who is responsible for relaying views to the appointed members. What is more, the incumbent Chief Executive Donald TSANG publicly practices favouritism. This has not only enabled the pro-establishment camp to have louder voices in these consultative bodies, but also ruled out the chance of public participation.

Let us look at a report of the *Hong Kong Economic Times* dated 1 December. It is reported that the Government has recorded a surplus of \$22.7 billion in the first seven months of this year, and coupled with a number of

sites to be put to tender in the coming few months and the collection of tax, many taxation institutes or accountants projected that this year's surplus will again strike record high. While our surplus is admired by countries plagued by European debts, has our Government made good use of the surplus? The point is people also notice the situation of "rich Government but poor people".

Deputy President, you may still remember the former Financial Secretary Antony LEUNG, who had once said that the amount of fiscal reserve should roughly be at a level equivalent to 12 months of public expenditure. Later, when Henry TANG took office as the Financial Secretary, he followed the same practice and again set the reserve at a level equivalent to 12 months of public expenditure. Donald TSANG was the Financial Secretary in 1998-1999. He highlighted that in order to meet the daily financial expenses, the Government only had to maintain an amount equivalent to three months of public expenditure. In case of emergency, there should be an amount equivalent to nine months of public expenditure. However, the current reserve is at a level as high as around 20 months of public expenditure. Although we have asked the Financial Secretary time and again how many months of expenditure the reserve should be equivalent to, John TSANG refused to answer. We opine that candidates who wish to become the next Chief Executive should respond and advise members of the public the appropriate level of reserve. Without setting the level of reserve, we can never formulate long-term plans and the Government will only arrange short-term "handouts" whenever there is surplus. Yet, this is not what Hong Kong people want the Chief Executive to do. Furthermore, (*The buzzer sounded*) I am running out of time, so other Members from the Civic Party will talk about other issues.

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR ALBERT CHAN (in Cantonese): Deputy President, speaking of the alleviation of poverty, Members should read the section on poverty alleviation set out in the report released by the State Council this year. The need to formulate a 10-year Plan has been clearly stated. The Outline for Development-oriented Poverty Reduction for China's Rural Areas (2011-2020) has put forth three major tasks, that is, a strategy which combines specific, industrial and social poverty

reduction efforts. State President HU Jintao also clearly pointed out in the press conference on poverty alleviation that by 2020, adequate food and clothing, education, basic medical care and housing will be available to the poor population. The Outline also states specifically that the per capita net income growth rate of poor peasants should be higher than national average, so that the widening development gap will be bridged overtime. These are the poverty alleviation measures implemented by the State Council.

Deputy President, let us look at the situation of Hong Kong. I will provide Members with some figures, which are really astonishing. Deputy President, in reviewing the figures of the past two decades, if we compare Hong Kong's per capita income growth with that of 20 years ago, the increase is less than double. The per capita income increased from \$139,000 in 1990 to \$245,000 in 2010. However, if we look at the net growth in the amount of assets held by the Cheung Kong (Holdings) Limited, it was \$18.9 billion in 1990 and \$269.5 billion in 2010, a surge by 14 folds.

If we compare the astonishing rate of increase in major tycoons' assets and the average increase rate of people's income, and if we also look at other data, we would be enraged and sad, and all the more, consider that our Government is shameful. The Gini Coefficient of Hong Kong rose from 0.476 in 1990 to 0.533 in 2005 — we do not have the latest data right now — For households earning less than \$2,000, the number is 59 000 in 1995, but it rose to 92 000 in 2005.

After looking at all these figures, it is obvious that the assets of those major tycoons and consortia, who are "too fat to put their socks on", have increased by more than 14 folds in the past 20 years. Nonetheless, people's average income has only increased by about 30% in the past 20 years — if we calculate on the basis of GDP per capita — the poor population, meaning those earning less than \$2,000, has expanded significantly by nearly one fold. Hong Kong's Gini Coefficient is the worst among the developing regions in the world.

Our Chief Executive was so ridiculous as to say that wealth disparity is an inevitable outcome of capitalism. Today, we are not discussing a simple phenomenon of disparity between the rich and the poor. Rather, we are discussing the worsening wealth disparity and the plight of the poor population, which has deteriorated to an inhumane situation.

I have worked in the Legislative Council for many years. When I joined this Council in the 1990s, I had already requested the Government to draw a poverty line and asked the Government how the poverty problem could be combated. The Chief Executive candidate Henry TANG was the Chairman of the Commission on Poverty back then. He had nonetheless ridiculously and shamelessly proposed to set Hong Kong's poverty line on the basis of 24 factors. Even our great Motherland under the leadership of the Communist Party is not so discreet and inhumane. As I have said, according to the poverty alleviation strategy adopted by our country, a specific figure is set in defining poverty in terms of people's income. In other words, if people's income falls below the line, they are considered poor and the Government should therefore proactively provide assistance to them. It is just that simple.

In fact, this is what many countries and regions are doing, using absolute poverty According to their definition, when people's standard of living falls below a certain level, they are considered poor. This is clear and upright. Or, the figure can be an average relative to GDP, which is expressed in terms of percentage. It can be 40%, 50% or 60%. This is also very clear. There is nowhere in this world that is as shameless, it can be said to be unscrupulous and shameless, as the Hong Kong Government. It has shirked its responsibility by refusing to draw the poverty line. It can be said that it is incapable and shameless.

Hong Kong government officials always meet with Mainland officials to communicate with each other. While our officials always praise how strong and brilliant our great Motherland is, how come they never learn from the Chinese Communist Party in combating poverty? Many officials are actually the "lackeys" of the "lackeys", am I right? Given that they are the "lackeys", they should copy all Chinese practices, even in the area of poverty alleviation. At present, our officials do not learn from the Chinese counterparts in respect of helping the poor; yet, they learn from the Chinese counterparts their corruptive and abusive behaviour, and they put on the same official air. So, do you think that Hong Kong's governance is even worse than that of the Communist Party? A 10-year plan has been formulated under the Communist rule. You may say that this is a scam or whatever; after all, it is a concrete 10-year plan set out in the report submitted by the State Council, in which clear and concrete targets of work plans to combat specific and other poverty have been laid down. Whether or not they can be achieved is another issue because "when a policy is devised at the top,

there are always ways of getting around it from below." Basically, it is seen as a strategy under national policy. The Communist Party knows very well that it owes its success to workers and peasants, and the sickle in the party emblem signifies its reliance on peasants. The Communist Party also knows very well that alleviation of poverty can help stabilize the community. It is aware that if the poverty problem continues to aggravate, society will become unstable. This would inevitably give rise to opposition and struggles, and even revolution.

Yet, our Government still does not care a dime and does nothing. Worse still, the Chief Executive was so presumptuous, unscrupulous and shameless as to say that poverty and wealth disparity are inevitable outcomes of capitalism. He is completely unaware of the possible conflict or chaos that might be brought about by the poverty problem. He is very confident that with the support of the Communist Party of our Motherland and the Liberation Army, no one in Hong Kong is capable of overthrowing or shaking the existing administration. He therefore continues to tilt towards the major consortia, and real estate and financial hegemonies.

In my amendment, I have highlighted in the clearest and most unequivocal terms the need to implement dual universal suffrage in 2012. To combat the poverty problem, we should not count on other people by wagging our tails, the coterie election is all the more untrustworthy. Some people are so ridiculous as to say that running in the Chief Executive Election is an attempt to confront the unjust system. However, it is exactly these people, who vowed to confront the unjust system, had voted in support of the coterie election with 1 200 members

MR WONG YUK-MAN (in Cantonese): Shameless!

MR ALBERT CHAN (in Cantonese): They are really — Mr WONG Yuk-man has said for me — shameless, pathetic and miserable. In the 2008 election, they sought people's mandate in a high profile by vowing to fight for an election in 2012. We would like to remind Members from the Civic Party that 2012 has yet to come. They had sought people's mandate during the 2008 election by vowing to fight for an election in 2012 but not in 2016.

Deputy President, whenever the issues of poverty and democracy were discussed, not a single Member from the Democratic Party was present at the meeting. All Hong Kong people can clearly see that. Now that the poverty problem is again being discussed in the Chamber, and not a single Member from the Democratic Party is present. How can they show care about Hong Kong's poverty problem and the well-being of Hong Kong people? Yet, wherever there is the mass media or individual interview, they will lodge petitions, submit petition letters and talk about the problem of "vote-rigging", simply to show their grave concern about these issues. But is the poverty problem not worthy of our attention? Poverty has brought pain and sufferings to people. How can they completely ignore this? They continue to dine out, watch football matches and drink red wine, setting aside the pain of the people.

Therefore, Deputy President, so long as Hong Kong does not have universal suffrage, members of the public will have to accept such an unfortunate phenomenon. There is one thing which many people do not understand. We have received lots of complaints about problems faced by members of the public, including those relating to employment contracts or government policies. And, when they face prosecutions lodged by major consortia, they would come and ask me why things have become so absurd. I would tell them this has existed for one or two decades. It is only that they were unaware if it is none of their business.

Thus, in the absence of democracy, people will have to continue to endure the sufferings. Besides, they will continue to be cheated by the "bogus democrats" or politicians. They will endlessly cheat and fool Hong Kong people, and continue to suppress Hong Kong people on behalf of the major consortia (*The buzzer sounded*) This is

DEPUTY PRESIDENT (in Cantonese): Mr Albert CHAN, your speaking time is up.

MR ALBERT CHAN (in Cantonese): How shameless and miserable the bogus democrats are.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I thank Mr Frederick FUNG for moving this motion today, and Mr IP Kwok-him, Ms Audrey EU and Mr Albert CHAN for moving amendments.

Later on, the Secretary for Constitutional and Mainland Affairs will also speak on today's motion and amendments about matters relating to political and economic development, as well as people's livelihood.

Regarding people's livelihood, first of all, I would like to say that the Government and Members of this Council are equally concerned about the problems of wealth disparity and poverty in Hong Kong. The Government has never — I stress — never evaded from these problems. Rather, we have adopted a multi-pronged approach to alleviate poverty in a pragmatic manner.

Take the social welfare perspective under my portfolio as an example. Funding of this financial year has reached \$42.2 billion, an increase of 11% when compared with last year. Recurrent funding has also increased by \$4.2 billion, which represented an increase of 22.2% (that is 111%) when compared with \$20 billion in 1997-1998. This has fully demonstrated the SAR Government's sustainable commitment and continuous injection of resources in the alleviation of poverty.

In fact, financial provision in social welfare is the second highest in the SAR Government's overall recurrent expenditure, which accounts for 17.4%, and is only second to education.

The Government is very concerned about the actual needs of the grassroots and the disadvantaged groups. As Members may aware, we have a sound social security safety net to help the needy people to meet their basic living needs.

Regarding housing, education and healthcare, the Government has also provided a lot of free and heavily-subsidized services to look after the daily needs of the disadvantaged groups and the low-income families.

Although cash and material assistance can definitely help the grassroots direct and cater for their immediate needs, they fail to thoroughly address the problem of poverty or disparity between the rich and the poor. Neither is this the best solution. Therefore, apart from strengthening the existing social

security safety net, we have proactively sought breakthroughs in recent years and provided opportunities for capable people by adopting new mindset from different perspectives, like providing re-training to help the recipients be self-reliant.

We have also strived to promote tripartite partnership among the community, the business sector and the Government by introducing new mindset, new impetus and new values, with a view to enriching the social capital and helping the grassroots and the disadvantaged groups together. As Members may aware, the Community Investment and Inclusion Fund, the Partnership Fund for the Disadvantaged, the Child Development Fund and the Community Care Fund were set up to achieve this goal.

Deputy President, after listening to Members' speeches, I will give a more detailed response. Thank you.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, the motion moved by Mr Frederick FUNG today has covered government governance, social services and livelihood issues. I will first make a few points in response to the issues relating to the political system as proposed in the motion.

Since the reunification, both the Central Government and the SAR Government have strived to promote the development of Hong Kong's democratic political system in an orderly manner in accordance with the Basic Law, with a view to achieving universal suffrage.

The incumbent SAR Government has achieved breakthroughs in two respects in promoting Hong Kong's political system.

First of all, we have succeeded in securing a timetable for universal suffrage. The Standing Committee of the National People's Congress endorsed the Decision in December 2007, specifying that Hong Kong may elect the Chief Executive by universal suffrage in 2017 and may subsequently elect all members of the Legislative Council by universal suffrage in 2020. This is the most solemn and legally-binding decision made by the State's highest authority.

Furthermore, we have successfully endorsed the 2012 reform package. Under the "one-person-two-votes" arrangement, the 3.56 million registered voters over the territory would be eligible to cast one vote separately in the geographical constituency direct election and the functional constituency election. This would significantly increase the democratic elements of the elections, and at the same time enhance Hong Kong people's confidence in the implementation of universal suffrage.

As the Chief Executive is returned by an election, which will become an election by universal suffrage in 2017, he should form his own governing team who will share his governance philosophy. The Chief Executive will also have to solicit support from different political parties and affiliations in order to have his political platform put into place. What is more, he should be willing to assume political responsibilities to manifest the Government's "people-based" spirit.

On the other hand, spates of incidents occurred after the reunification, such as the chaos at the commissioning of the new airport and the substandard piling works incident involving the Housing Authority, which have exposed the need to introduce changes to the established civilian system based on civil servants, so as to address public opinions and aspirations more directly and effectively. Besides, there was also a need to establish a firewall to safeguard the professionalism, permanence and neutrality of the Civil Service and protect it from political pressure.

Against this background and development, the political appointment system was first established in 2002 to dovetail with the development of Hong Kong's political system, and people's higher expectation of the SAR Government in respect of the transparency, openness, and accountability of its governance.

The system was further expanded in 2008. Apart from Secretaries of Departments and Directors of Bureaux, the layers of Under Secretaries and Political Assistants were also created to assist Secretaries of Departments and Directors of Bureaux and also the Chief Executive in administration.

Certainly, the political appointment system has been implemented in Hong Kong for less than a decade, and is still evolving. We admit that the system requires further improvement and refinement through experience gained and

lessons drawn from such experience during the development process, so as to better meet the needs of the times and be ready for the universal suffrage.

A new Chief Executive will be selected on 25 March next year. He will have every right to change the political appointment system or department structure which he considers appropriate and necessary, so as to ensure that the new governing team can exercise effective governance.

Besides, regarding review on the remuneration package of politically appointed officials, the Independent Commission on Remuneration for Members of the Executive Council and the Legislature, and Officials under the Political Appointment System of the Hong Kong Special Administrative Region will advise the Government on the matter. We will study and examine the views received and make recommendations for consultation with the Legislative Council in due course.

Mr FUNG's motion also urges all social sectors to abandon partisans or political biases, review the past and make plans for various aspects for the future, which include the role of the Government, social services and people's livelihood, as well as democratic development. We do see eye to eye on this.

Regarding constitutional development, the 2012 constitutional reform package was passed last year. We deeply understand that in order to promote the development of Hong Kong's constitutional system, we must abandon our diversities as well as the gains and losses of individual political party or individuals, with a view to forging a consensus through rational discussion by trying to identify common grounds while tolerating differences.

Deputy President, constitutional development has all along been a complicated and extremely controversial issue. We nonetheless believe that with our concerted effort in building mutual trust and rational communication, we can certainly achieve the ultimate goal of implementing universal suffrage for the Chief Executive and Legislative Council elections.

Deputy President, I so submit.

MR WONG KWOK-HING (in Cantonese): Deputy President, Mr Frederick FUNG will probably announce that he is going to run in the Chief Executive Election and become a Chief Executive candidate in dozens of hours. With respect to Mr FUNG's moving of this motion, I think this has been carefully arranged, and he has taken much pain to do so. In any case, I wish Mr FUNG all the best in running in the Election.

I would like to express some of my aspirations and views to Mr FUNG, the "probable Chief Executive candidate". Although Mr Frederick FUNG has mentioned a wide range of areas spanning politics, economy and people's livelihood in his original motion, regrettably, apart from the Secretary for Constitutional and Mainland Affairs, the only other Secretary present today is the Secretary for Labour and Welfare. Thus, I believe the Administration's response to this motion that covers a wide range of areas will be uninteresting and monotonous. Certainly, a comprehensive response to the motion will not be provided.

For instance, how will the Administration respond to the housing problem? Up till now, the Secretary for Transport and Housing still said that 15 000 units would be constructed. According to him, additional units would not be built and the issue would be handled with flexibility. With respect to the area of transport, since officials from the Transport and Housing Bureau have not attended the meeting, how can they receive views? In respect of healthcare, the Secretary for Food and Health is not present. Only the Secretary for Labour and Welfare is present today. That is why I do not wish to talk too much because there is not much positive significance to speak under this circumstance.

The left hand of the "probable Chief Executive candidate FUNG" is bandaged today. I wish to take this as my subject and talk about the issue to which Secretary Matthew CHEUNG will be able to respond. What is the issue? I will narrow the scope and focus on the Government's proposal of offering a concessionary fare of \$2 a trip to the elderly people and the so-called "eligible people with disabilities" next year, as announced in the recent Policy Address. I would like to focus my discussion on this proposal.

What do I wish to say? In his original motion, Mr FUNG asks the Government to resolve the deep-rooted conflicts in society. My criticism is that the Government not only fails to understand the deep-rooted conflicts, but also introduces new measures that will further aggravate and deepen these deep-rooted

conflicts. The words I used are selected after thorough consideration. I hope that Secretary CHEUNG will listen carefully to my words.

Deputy President, focusing on the abovementioned issue, I wish to explore whether the Government's governance can genuinely achieve its target of being people-oriented and pragmatic. Is it as pragmatic as described by the Secretary? I think the Government is not pragmatic at all; instead, it has deviated from public sentiments and public opinions, and is out of touch with the actual circumstances.

Take the measures of providing assistance to people with disabilities as an example. We can see that the left hand of Mr FUNG is bandaged right now. Of course, he is not disabled; he is just in the course of medical treatment and recovery. However, many disabled people in the community are actually not eligible for the concessionary fare of \$2 a trip offered by the Government to the so-called "eligible people with disabilities" due to the fact that they are not with 100% disabled.

On 9 November, we held a motion debate and urged the Government to conduct a comprehensive review on the Disability Allowance Scheme. On that day, I handed a letter to the Secretary on behalf of Mr LEE Shing-leung. In his reply to the letter, the Secretary said that according to this measure, a person with disabilities has to lose two limbs among his four limbs — a person has four limbs, he has to lose two limbs — in order to be eligible for this concessionary fare. LEE Shing-leung has lost a leg, so he is not eligible. To be eligible, he has to lose one more leg or one arm. I would like to ask whether such a requirement is unsympathetic and unreasonable.

The probable Chief Executive candidate, if you are going to announce your candidacy tomorrow, I would like to ask you to follow up with this issue. If you become the Chief Executive, would you agree to implement such an unreasonable measure? People losing one limb is already pitiable, they have to go to work and attend follow-up consultations; all in all they need to take public transport. However, they do not enjoy any concessionary fare. The Registration Card for People with Disabilities is totally useless, as holders can only enjoy concession for only one day in a year. Only one day in a year! I would like to ask the "probable Chief Executive candidate FUNG", isn't this very unsympathetic towards people with disabilities? As for the concessionary fare of \$2 a trip to be introduced next year, they are also not eligible. Is this reasonable?

Thus, I hope that the current-term Government will amend this unreasonable measure. Don't deviate from public sentiments to such an extent! I also hope that all candidates who plan to run in the Chief Executive Election will reflect on this and consider this issue when they formulate their election platforms. Mrs Regina IP who is present here has also planned to run in the Election. I wish all of you all the best. I also hope that Mr Henry TANG, Mr LEUNG Chun-ying, and "N" number of persons who plan to run in the election will ponder on this. If you become the next Chief Executive, will you disallow people with disabilities who are not 100% disabled enjoy the concessionary fare of \$2 a trip?(*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, in the original motion of Mr Frederick FUNG, it is stated that "given that the worsening of deep-rooted conflicts in society, the persistently low popularity of the Government and the numerous blunders in policy implementation all highlight that the existing political system and even social and economic policies, and so on, lag far behind the prevailing circumstances, and there is a huge gap between the authorities' governance philosophy and people's expectations". Deputy President, Mr FUNG has given an apt description of the social phenomena, and I share his observation.

We note that it is basically impossible to resolve the existing conflicts in society, which include the wealth gap, the growing population of the poor, the ageing population, as well as the issues of healthcare and retirement of the elderly. The community has put forward many positive proposals, but the Government has paid no heed. For instance, with regard to the issue of retirement of the elderly, we have put forward the proposal of universal retirement protection. However, the Government insists that the three pillars — namely private savings, Comprehensive Social Security Assistance and Mandatory Provident Funds — can resolve the problem. As a matter of fact, all of us know that the problem cannot be resolved. The Government is well aware of this fact, but it has chosen to stick its head into the sand. The Government is not lagging far behind the prevailing circumstances, it just refuses to admit the circumstances and address the problems. As I have often said, the retirement of

unremunerated labourers, such as housewives, will become a very serious problem. But the Government still pays no attention.

Apart from the issue of the ageing population, the problem of healthcare is also very serious. The Government has ignored the problem, and only introduced the voluntary medical insurance scheme as a solution. For those who are unable to join the voluntary medical insurance scheme, what are they going to do? Similarly, the Government ignores the problem, sticks its head into the sand, and turns a blind eye. However, the problem still exists. Furthermore, there is the problem of the wealth gap. We all know that the problem of the poor is aggravating. Despite the fact that the Government has enacted legislation to implement a minimum wage, the minimum wage is just a superficial phenomenon that can only resolve part of the problem. The number of low-income earners is still enormous. Furthermore, the problem of impoverishment of low-income earners is acute. In the face of all these problems, the Government does not only lag behind the prevailing circumstances, it has not admitted and acknowledged these circumstances with a view to addressing them. Thus, Mr Frederick FUNG has given an apt and accurate description of the problem.

Nevertheless, I have queries regarding a point raised by Mr Frederick FUNG in his motion. He said: "as a change of government is approaching and the Chief Executive Election is near, this Council urges all social sectors to abandon partisan or political biases, explore in depth and rationally the success, failure, gains and losses of past government policy implementation, reposition the roles and functions of the new government in the future, reform governance philosophy". Deputy President, with regard to this issue, I think the argument is based on a unilateral basis. Why do I say that?

The failures and successes of the governance of the Government do not hinge on the political biases of various political parties. Various parties are able to survive simply because they have their own political stances and views. This is inevitable; otherwise, there would not have been so many parties, and all parties could be "unified" into one. Thus, it is certain and inevitable that various political parties have their own stances and views. That does not contribute to the failure or success of the governance of the Government. The governance of the Government originates from the formation of the Government. The formation of the existing Government does not entail a system of accountability.

The Government does not have to be accountable to the public. This is where the major problem lies.

Take the series of issues concerning people's livelihood I have just mentioned as an example. It is not that the Government is not aware of the problems; just that it does not wish or want to know, and it does not want to address these problems. Thus, our Chief Executive has actually said that he regarded public opinion surveys and his popularity rating as floating cloud. Why is that so? It is because a system of accountability is not in place. So he can disregard all these and act unilaterally. He can do whatever he likes and refuses to do whatever he dislikes. You must not think that when he is informed of the problems, he will solve them. This is where the problem lies.

With the imminent change of government, there will be candidates running for the Chief Executive. They will strive to raise their popularity and communicate with more members of the public so as to understand people's aspirations. Nonetheless, in the end, who is to determine which person will be appointed as the Chief Executive? Eventually the Chief Executive will be ordained by the Central Authorities. When the Central Authorities suggest that a certain person can be elected, it is almost certain that he will be elected. Thus, popularity and public sentiments cannot resolve problems. We cannot discuss various issues with him in accordance with our philosophy of governance. Everything is determined by the views of the Central Authorities. Likewise, when he holds the office of the Chief Executive, he still has to listen to the views of the Central Authorities. He cannot act in an arbitrary manner. Therefore, the problems cannot be resolved on the basis of our wishful thinking. Unless reforms are carried out on our political system, this result can never be brought about.

What do we mean by political reforms? Our governing team must be returned by the public on a "one person, one vote" basis. It is only through the implementation of a highly transparent accountability system in which the governing team is accountable to the public that we can resolve the problems. Abandoning political biases, as the Member has suggested, will not resolve problems. This is particularly so when our existing system is executive-led. What the Executive Council advocates will almost certainly be implemented. Do we have any say? For instance, today we have been discussing a Member has mentioned just now, with respect to the housing policy, the major

problem at the moment is the flat production volume. I have continuously urged the Government to revise the flat production volume. Unfortunately the Government has turned a deaf ear and has ignored my request. It has not changed its attitude at all. What actions has it taken?

Thus, the core of the problem is I agree that eventually we must fully implement dual universal suffrage so that the Chief Executive and Members of the Legislative Council will be returned on a "one person, one vote" basis, thereby enhancing transparency and strengthening accountability, with a view to resolving issues concerning people's livelihood, drawing the philosophy of governance closer to public sentiments and aspirations. This is the core problem. I hope everyone will understand that unless there are reforms in our political system, we cannot resolve problems by wishful thinking and unilateral efforts.

Deputy President, I so submit.

MRS REGINA IP (in Cantonese): Deputy President, I welcome the motion put forward by Mr Frederick FUNG. As Mr Frederick FUNG has said, two persons have already announced that they will run in the next Chief Executive Election. Given the increased competition from the two candidates, the Chief Executive Election will enter a new phase. It is now the most appropriate time for the Legislative Council to debate on our expectations of the next-term Government, with the hope of receiving new ideas of governance.

With respect to the amendments moved by other Members, I very much appreciate the amendments put forward by Mr IP Kwok-him. First of all, the three amendments put forward by him are more specific. Apart from that, I also appreciate that his three amendments are related to three areas, namely people's livelihood, the economy and governance. If I have not misunderstood his argument, he is asking the next-term Government to adopt new ideas and play a more proactive role, such that reforms in society, either economic or political reforms, will keep abreast of the times and meet future challenges. As for the amendments put forward by the other two Members, I cannot give them my support because I think their amendments have bundled the debate of this Council's expectations of the next-term Government with their own political stances.

I would also like to take this opportunity to talk about my expectations of the next-term Government and my wish for their introduction of some concepts of governance. In recent months, I have attended a number of forums for candidates or probable candidates who wish to stand for the election. Prof Wilson WONG of The Chinese University of Hong Kong also attended the forum organized for civil servants last Saturday. The data he mentioned really merits our consideration. He pointed out, and I believe our colleagues also know that the golden rule of financial management of our Government is to contain public expenditure below 20% of the Gross Domestic Product (GDP). Prof WONG had listed a series of figures to indicate that the expenditure of the Hong Kong Government in 2004 was 22.2% of the GDP. In 2010, it was 18.5%. Mr Henry TANG who was present that day even said that the current expenditure of the Government was only 17% of the GDP. We heard Secretary CHEUNG point out that the amount of welfare expenditure was such and such, but in fact, the overall Government there is a continuous growth in our GDP, and the Chief Executive has also said that our economic growth is very healthy. However, the share of the government expenditure in our GDP has been continuously compressed. As a matter of fact, the Government is now playing a diminishing role.

Let us talk about other countries, such as countries in North America, and see how their situation is. The figures in Canada were really drastic — the government expenditure was 39.4% of its GDP in 2004 and 42.9% in 2010. In the United States, the expenditure share of GDP was 36% and 40.9% in 2004 and 2010 respectively. The most drastic figures were found in the Scandinavian countries. In Sweden, the expenditure share of GDP was 57.1% in 2004 and 55.2% in 2010. As we know very well, the governments in all these countries play significant roles. They are "countries of very high taxes", and are debt-ridden — as a matter of fact, Sweden is not, the situation in Sweden is quite good — as for our neighbouring country Japan, the government expenditure share of GDP was 37.3% in 2004 and 42.2% in 2010.

Let us also look at the role played by the Hong Kong Government. It is not my wish that Hong Kong should become a social democratic society, as we have witnessed how social democracies in Greece and Italy have collapsed. These countries have spent far too much to the extent that they are unable to pay their debts with their assets. However, in the face of so many challenges ahead, the amount of money spent by the Government is compressing continuously, it is

practically impossible to meet the challenges. Recently I attended four forums on education, forums in tertiary institutions, forums on social welfare, forums on information technology, and forums on civil servants, and so on. The participants put forward many requests, and asked the Government to face up to issues such as universal retirement protection, the elderly problems, housing problems, education problems, problems relating to the morale and remuneration of civil servants, and other problems concerning economic restructuring. Since the annual expenditure of the Hong Kong SAR Government is \$300-odd billion, these problems cannot be resolved. Secretary CHEUNG had revealed that among the expenditure, the largest portion of \$50-odd billion goes to education, followed by \$40-odd billion in welfare, \$30-odd billion in healthcare, and \$20-odd billion in security.

If we compress the public expenditure share of GDP to 17%, as revealed by Mr Henry TANG at the forum on Saturday both Prof Wilson WONG and I were shocked, because practically the SAR Government cannot do much with this amount. In other words, the Government is only sticking to the old rut, keeping the enormous amount of money and is not willing to spend money on the economy, people's livelihood constitutional affairs do not require much money. However, in the areas of economy and people's livelihood, the Government is, in fact, too conservative and fettered by old conventions. It refuses to take any actions.

Under the leadership of Chief Executive TSANG over the past seven years, irrespective of developing certain industries or addressing certain problems, the Government has adopted the same approach of making a one-off provision to establish a fund or grant a piece of land. We can see that among the six priority industries advocated, the education services and the medical services industries will easily or have already become "miserable industries". The medical services can absolutely be termed "miserable industries". A western saying that one should "be careful of what you wish for" has come true. The Government wishes that more businesses can be generated for the medical services industry. Consequently, demands for obstetrics and gynaecology services are so excessive that have overburdened the local healthcare system; local pregnant women and patients are subject to continuous price hikes of private hospitals, and medical blunders are frequent in public hospitals.

I am afraid that things will eventually go wrong in the education services industry. Recently, in a press report, the President of the Hang Seng Management College complained about the lack of fund; he said that in operating a self-financing university, he realized that the salaries offered to the teaching staff were so high. I said to myself, with Prof Raymond SO taking up the position of the Dean, the gains would surely be substantial. Moreover, he also asked the Government to provide an extra subsidy of \$40,000 per student. What is this about? After being granted a small piece of land for developing a self-financing university, they further ask the Government for subsidies, or allow students (*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR LEE CHEUK-YAN (in Cantonese): I share many of the views put forward by Mr Frederick FUNG when he spoke just now. However, his entire speech gave me the impression that he seems to have expectations for the Chief Executive Election. Although he knows clearly that he will not be elected, he still stands for the election. Whether he can secure adequate number of nominations is another question. There are also various problems with regard to other aspects. Thus, even if Mr Albert HO and Mr Frederick FUNG claim that they wish to represent the pan-democratic camp to run for the Chief Executive Election, we all know that eventually they will not be elected. For sure, they will not be the Chief Executive for the next five years.

Thus, it is really pathetic for Hong Kong people if they have expectations in the entire election. What expectations can we have? It can be observed from the entire system that reforming governance philosophy is just empty talk. The present "Ying-Ying" are "old batteries" of the pro-establishment camp. They are old faces known to us for so many years. Henry TANG had joined the Government for years, taking up the position of the Secretary for Commerce, Industry and Technology back then, and later the Chief Secretary for Administration until now. What were his achievements during all these years? LEUNG Chun-ying had been the convenor of the Executive Council for many years during which we had no idea of what he had done. And now, all of a sudden, he seems to be intelligent and competent, putting forward various policy platforms. But practically no one knows what he had done in the past.

We all know that "Ying-Ying" are "old batteries" of the pro-establishment camp. We have never seen them making an effort to inform the public of their ideas. Neither have they been appointed to certain positions on the merit of their own personal ideas. Whoever stands for direct elections has to give an account of his own ideas and platforms, as what any of the present pro-democratic Members or pro-establishment Members returned by direct elections had done. However, Henry TANG started off as a member of the functional constituency. Although he claimed that he had stood for the election of the nine New Functional Constituencies no, it seems he had never stood for the election of the nine New Functional Constituencies. Since he has always belonged to the small circle, what his ideas really were was not worth mentioning. He joined the Government later but we do not know what his ideas were that got him into the Government. Having never gone through the baptism of elections, he had only danced to the tunes of TUNG Chee-hwa and Donald TSANG. So how can we have any expectations?

We have to understand that this is an inherent flaw. The flaw lies in the fact that this system is a bogus election of a small circle in which only 1 200 persons participate. And of course, "Grandpa" is at the back of these 1 200 persons. Nevertheless, "Grandpa" does not take full control of everything, but has to convince members of the Election Committee who are those with vested interests, including the large consortia that hold numerous cross-sector seats. It is impossible for us to count how many cross-sector seats are actually held by these large consortia and plutocrats. In the face of the election totally controlled by a small circle, how can we have any expectations?

Speaking of reforming the governance philosophy, even if a sound reform is proposed, those members of the Election Committee will not vote for you; they will not vote for Albert HO, Frederick FUNG, or anyone from the pro-democratic camp. Even if they have put forward a reformed governance philosophy, will those 1 200 persons respond to it? Since we all know that eventually this is only a bogus election, why give people any expectations?

Speaking of the "Ying-Ying" again. Obviously they are the two candidates who got the nod from "Grandpa" to stand for the election. I saw Henry TANG smiling cheekily on television today. This fits in with his style. He said with a big smile that he did not mind being treated with ridicule. Such being the case, should we find a Chief Executive who can be "pushed around"? You can say that a person who can be "pushed around" is magnanimous because

he does not mind. But on the contrary, the bad thing for a person who can be "pushed around" is that he can be controlled by others. Henry TANG once said, "I am capable of cohering people of high calibre". This statement is worth pondering on. Is he really capable of cohering people of high calibre; or is it because he is incompetent so that people of high caliber will gather round him because he can be "pushed around" and be controlled.

The reason why there are star-studded rallies and gathering of heavyweights is because people prefer to stay behind the scene. Is it more desirable to push someone onto the stage and be the string puller behind the scene? Will Henry TANG be too submissive? He allows himself to be ridiculed, and it turns out that he is being "pushed around". He has no philosophy of his own, everything will be determined by the group of people behind him. Who are these people? They are those with vested interests who participate in the small-circle election. Victor LI once commented that Henry TANG was a trustworthy person. The LI family can certainly trust Henry TANG. This LI family is not my family although we share the same surname. I believe all of you know which LI family I am referring to. And that is the wealthiest LI family in Hong Kong. They say that Henry TANG is trustworthy. This is correct, because he can be "pushed around".

As for LEUNG Chun-ying, his face of a wolf has already surfaced. What is the most dreadful thing about people in power? That is to make use of his personal power, in particular the political and legal systems, to go against the mass media and even members of the public. This can be said to be the most dreadful thing.

Recently, LEUNG Chun-ying has repeatedly pointed out that *Sing Tao Daily* has targeted against him. His face of a wolf has already surfaced. He even alleged that he would file a case in court, and claimed that he was being defamed. As someone engaged in politics, are we not being subject to defamation all the time? LEUNG Chun-ying has exposed such an ugly feature. What is our view about this? Thus, how can we have expectations for this election? I think Hong Kong people are most pitiable, because we have to face these two candidates every day.

Thank you, Deputy President.

MR CHEUNG KWOK-CHE (in Cantonese): Deputy President, a state leader with foresight and vision will certainly set out a long-term objective of his work in the future, formulate plans, lay down a sound foundation for the state, and plan ahead in order to meet new challenges. President OBAMA of the United States has, in his State of the Union Address, stated the future directions to be taken by the United States with regard to major issues, such as how to resolve the problem of unemployment, how to implement healthcare protection, and so on. Moreover, he also mentioned some long-term objectives, such as the United States will become the first country to have a million electric vehicles on the road by 2015, and 85% of America's electricity will come from clean energy sources by 2035.

Let us look at our Chief Executive Donald TSANG. Since he took office, he has been unwilling to formulate long-term planning for Hong Kong. In his annual policy address, he only adopts a stopgap approach and introduces a series of short-term measures to "hand out candies"; no visions and ideas have been introduced. I think Donald TSANG has, at most, only fulfilled his duty of "getting his job done", but has completely failed to be an accountable and aspiring Chief Executive. I would like to take this opportunity to advise the future Chief Executive not to take up Donald TSANG's mentality of a wage earner. Instead, he should take up the role of leading Hong Kong people in their concerted efforts to resolve the deep-rooted conflicts of the territory.

Deputy President, even when Chief Executive Donald TSANG put forward the initiative of promoting the six industries with competitive edge back then, there were only slogans for promotion without any concrete policies. For instance, investment in talents of technological research is imperative to the development of innovative technology. However, up till now, the Government has not devoted any resources in this regard to tertiary institutions. The grandiose plan of developing the six priority industries has become empty talks.

Returning to today's subject, the issue of worsening wealth gap does not emerge overnight. All social classes, the grassroots, the middle class, the business sector or the capitalists, can sense that the wealth gap is widening. However, since our Chief Executive took office, he has not faced up to the problem squarely, but has allowed it to worsen. In formulating the policy objectives each year, he only takes one step at a time without any forward planning, resorting to seeking solutions hastily only when problems arise. We

all know that prevention is better than cure. With such an approach, it is not difficult to foresee that problem of wealth disparity in Hong Kong would further aggravate.

Take the issue of "sub-divided units" as an example. Donald TSANG had actually emphasized openly in the Policy Address that banning "sub-divided units" across the board was not a solution. This is really ridiculous. Last week's fire tragedy at Fa Yuen Street in Mong Kok reflected that many fire victims had to live in "sub-divided units" of old buildings as they are ineligible for public rental housing (PRH). Consequently, they were trapped in the fire scene. No wonder when the Chief Executive, in pretending to show his care for the people, paid a visit to the injured victims in hospital, a social worker who lives in a "sub-divided unit" said satirically, "Donald TSANG knows nothing about the miseries of people; he does not even know the eligibility criteria for public housing."

To address the problem of poverty, the Government should promptly draw a poverty line and implement targeted measures to resolve this deep-rooted conflict. The Government can also provide employment opportunities as well as assistance to those who are living below the poverty line. With respect to the issue of inter-generational poverty, the Government should increase investments in education, provide learning hardware for children in poverty, thereby enabling them to have equal learning opportunities as their classmates. Enhancing their competitiveness implies providing them with opportunities for upward mobility.

Moreover, it is also imperative for the Government to implement universal retirement protection expeditiously. Only in this way can we ensure that every generation in society will lead a stable and happy life when they grow old. However, the simplest as well as the most straight-forward approach of alleviating poverty is to provide low-cost housing for the public. When a person has a cozy home, he will have a sense of psychological security and can work hard with a peaceful mind. Thus, I hope that the Government will increase the supply of PRH flats, and in particular, expedite the production of PRH flats — we still think the supply is inadequate even if the number is doubled — so that low-income people can expeditiously move out of the undesirable living environment and have a home of their own.

Deputy President, when a similar motion was moved last year by me, I listed 16 items related to people's livelihood that had been previously passed by the Legislative Council. Despite that, the Government still paid no heed and so far, no progress has been made. In submitting progress reports to the Legislative Council, the Bureaux only repeat the existing measures taken by the Government. This passive attitude adopted by the Government does not give any impetus to resolving the problem. It is my wish that after receiving views from Members this time, the Government will seriously consider them, so that this social problem of deep-rooted conflicts can be resolved.

Deputy President, I so submit.

MS LI FUNG-YING (in Cantonese): Deputy President, resolving deep-rooted conflicts in society and alleviating the disparity between the rich and the poor have become frequent subjects of this Council. Not only have Members of the Council repeatedly voiced their opinions on such issues, even our national leaders have more than once reminded the Chief Executive to take heed of the deep-rooted conflicts in Hong Kong.

The deep-rooted conflicts of Hong Kong span various areas from the governance system to the economy and people's livelihood. All are interrelated. On the one hand, there are various parties with vested interests, and on the other hand, there are people with different aspirations. It is difficult to iron out various conflicts, which can be categorized as policy issues from a broader perspective, as well as problems of people's livelihood on a more specific basis.

Today, we have a lot of discussions on the Number 4 alarm fire broke out last week at Fa Yuen Street in Mong Kok, and the handling of the tragedy by the relevant government departments. As a matter of fact, this tragedy can be described as an epitome of the deep-rooted conflicts in society.

Many of the owners of existing hawker stalls of Fa Yuen Street have inherited the stalls from their parents or even grandparents. The several generations of stall owners have been relying on the small stalls for their living. Their experience is an epitome of the development in Hong Kong while the difficulties they face are apt descriptions of the deep-rooted conflicts in society.

No one would like to see a fire at Fa Yuen Street. After the occurrence of the tragedy, some traders of Fa Yuen Street told the media, "In the past, the area of a stall was 3 ft by 4 ft. Since the trading environment was relatively simple in the past, traders were able to survive even if their goods were of a few varieties. Now it is impossible to survive with only a few varieties of goods. The entire market has been monopolized. We are only asking for some room for survival. We are not hoping to get wealthy or affluent."

Small traders of Fa Yuen Street are not the only ones who have difficulties in operating their businesses. Many small traders had earned their living by operating in shopping malls of the Housing Authority in the past. Residents of the housing estates found the location of these shops convenient and their products multifarious. After The Link Management Limited (The Link) has taken over the management of these shopping malls, small traders can no longer be found in the malls. All malls look the same with stores occupied by chain consortia under the control of several plutocrats. If we say that The Link has stifled the pathway to survival of small traders, the Government that has nurtured The Link should also be responsible.

Since the tragedy of Fa Yuen Street, relevant government departments have stepped up their enforcement resolutely and vigorously, embarking on a large-scale prosecution of hawker stalls in breach of regulations. On the surface, the Government has attached great importance to the lessons learnt from this tragedy, but the story behind the prosecution is the difficulties faced by small traders in doing business, the miseries of displaying as many types of goods as possible in a small stall, as well as the deep-rooted conflicts in society generated by the prevailing dominance of consortia, the tilted government policies, and the difficulties faced by small traders in their business operation.

Deputy President, traders of hawker stalls at Fa Yuen Street have the following complains: "The entire incident is basically attributable to several factors. First, there are flaws in the Government's housing policy. Why are there so many 'sub-divided flats' and mezzanine floors that block all fire escapes for residents? Second, the Government is incapable of maintaining law and order. As the police station is just ahead on the same street, why have cases of arson happened repeatedly? Third, it is the fire-related issue. 'Sub-divided flats' are sub-divided to the extent that there are no fire escapes, and fire facilities are sub-standard. Why are these issues neglected?" These are the complaints

lodged by hawkers. In fact, such complaints are not only voiced by traders of Fa Yuen Street, but also by many members of the public.

With no regard for people's livelihood, property developers are ripping people off by hook or by crook. It is beyond the affordability of the public to buy or rent a property. "Sub-divided flats" have become the homes of the grassroots. The costs of transport are so expensive that members of the public have to pay dozens of dollars for their journeys to and from work. The so-called Work Incentive Transport Subsidy Scheme introduced by the Government is neither fish nor fowl. It can serve neither the purpose of encouraging employment nor assisting low-income families. In order to save the transport expenses, people have no other options but to live in "sub-divided flats" in urban areas. As a matter of fact, the phenomenon of "sub-divided flats" is another reflection of the deep-rooted conflicts in society.

Deputy President, according to media reports, on the following day of the tragedy, the Food and Environmental Hygiene Department (FEHD) initiated over 1 000 prosecutions against non-compliant hawker stalls. On Friday, almost every hawker stall at Fa Yuen Street received two to three penalty tickets. Some even received four penalty tickets with each ticket charging a fine of \$400.

I do not think anyone will raise objections against the improvement of environment and safety. Regarding the FEHD's large-scale prosecution of hawker stalls, the positive effect is that it is conducive to improving the environment and safety of stalls. In dry seasons, stepping up enforcement in areas with heavy flows of traffic and people can certainly warn the public of the danger of fire. However, when the focus of the tragedy is pinpointed on hawker stalls, those penalty tickets only serve to conceal the deep-rooted conflicts in Hong Kong.

The festive season is just around the corner. This is the golden period for hawker stalls to do businesses. In the face of the resolute and vigorous enforcement of the FEHD, traders have different views on whether they should continue their operations. This will only further aggravate the conflicts between the public and government departments.

Deputy President, actions taken by the Government in the aftermath of the Fa Yuen Street fire will reflect how it is going to address the deep-rooted conflicts in Hong Kong. While the Government is making an effort to regulate law and order as well as improve the safety of hawker stalls in Fa Yuen Street, I would like to call on the Government to review its existing policy regarding traders, as well as the governance philosophy of economic dominance. I believe it is only through this initiative that there is hope to solve the deep-rooted conflicts in society.

DR SAMSON TAM (in Cantonese): Deputy President, I support the original motion proposed by Mr Frederick FUNG. With regard to today's original motion, I am most concerned with a point he raised: "there is a huge gap between the authorities' governance philosophy and people's expectations". I think that is a remarkable comment to make.

Why is there such a huge gap between the authorities' governance philosophy and people's expectations? Is it because the Government has no idea of what people's expectations are? This is impossible, because many Secretaries of Bureaux and government officials conduct polls and surveys frequently. They must know the views of the public. I think the most important reason is that, at present, there is a general trend of polarizing the views of the people in Hong Kong. When there is a polarization of views, the Government does not know which party it should listen to. In other words, if most people adopt a middle-of-the-road approach, it will be easy for the Government to listen to these voices. However, if the voice of one party is of extreme leftist while the voice of the other party is of extreme rightist, it will be difficult for the Government to determine its policy objectives after it has received the views.

Why is there a polarization of public opinions? I think the Government is duty-bound to forge consensus among members of the public, identify the views of the majority and implement effective policies. I have identified three reasons to explain why there is such a serious polarization of public opinions.

(THE PRESIDENT resumed the Chair)

The first reason is that the public has all along blamed the Government for allowing the interests of consortia override the interests of the public. This comment is made in a rather overbearing manner. But in reality, many policies implemented by the Government in the past had very often been constrained by consortia, property developers or large consortia, such that many policies the Government intended to implement were aborted after various consultations. It was only after a lot of hard work that the current-term Government was able to put in place the legislation on minimum wage which safeguards the income of the lower strata in the community.

The fact that the interests of consortia have overridden that of the public is evident from the implementation of a high land price policy. The Government has been aware that high land price policy is detrimental to the long-term development of Hong Kong, and the business environment of the small and medium enterprises has thus been worsened. As land prices are high, no matter how much money wage earners can make, they are simply working for property developers when they pay rent. Thus, if this long-standing policy of high land price remains unchanged, the polarization of Hong Kong will continue in that the rich can have their own properties while the poor will never be able to catch up with the rise in property price. If the Government genuinely attaches great importance to people's livelihood and places the needs of the public before the interests of plutocrats, it should be able to eliminate one of the important factors that attributes to polarization.

The second reason for the Government's inability to forge consensus or to implement its policies smoothly is the practice of nepotism, as often pointed out by Mr LEE Wing-tat of the Democratic Party. We have always heard criticism from friends of the Democratic Party that the Government has been practising nepotism. Is this a valid criticism? From my observation of the Government's policy of appointing members to various consultative frameworks in the past, I think the Government should have a broader mind to initiate changes in this regard. It is obvious that for most of the consultative frameworks, the majority of members appointed are relatively submissive and obedient. That is why Mr LEE Wing-tat has often raised the issue of whether more people of different views should be appointed. In my opinion, this is quite a good proposal. If different views can be received in various frameworks as early as possible, the Government can have a better understanding of the views of the opposition party and other people, and the policies introduced can be more in line with public

opinions. I hope that the SAR Government will no longer be alleged of nepotism in the appointment of members to consultative frameworks or in causing social division.

The third reason can be found in the Legislative Council. Usually it requires the support of 51% of Members for motions debated in the Legislative Council to be passed. Of course, it is the wish of the Government that it can secure 51% of Members to support its motion. Concerning the support rate of 51%, sometimes the Government seems to stop canvassing when it is likely to have secured enough votes. I think this kind of practice may not necessarily be the most effective approach of governance. I hope that in the future, the SAR Government will not stop lobbying because it has secured enough votes. It should continue to strive for the support of more Members. If the view of the Government is that "a motion can be considered successful if it can secure the support of 80% or 75% of Members", it might as well devote more efforts to canvassing. Sometimes when the Government does not canvass votes from independent Members, we will think that the Government may have already secured enough votes. As a matter of fact, if the Government is able to secure votes from the pro-democratic camp or various camps, the motion will certainly be more in line with public opinions, and a wider consensus will be fostered when the motion is passed. I think this kind of approach in governance should be adopted as far as possible.

President, I have put forward three reasons to account for the serious polarization of public opinions. So what are my expectations of the next-term Government? It is my wish that the next-term Government will have a new mindset, particularly in appointing Secretaries of Departments, Directors of Bureaux, and members of the Executive Council. It should have a broadness of mind to absorb people of different political parties; thereby realizing the practice of division of powers during the process of policy formulation and decision-making of the Government.

I have all along hoped that government departments such as the Constitutional and Mainland Affairs Bureau can build up a better environment in nurturing political parties. In the event of an absence of political parties, or if only a small number of people have joined political parties, the vision of political parties will be very restrictive, focusing only on their own interests. These situations will not be conducive to improving the problem of polarization in Hong

Kong. I hope that the Government will provide additional resources to facilitate the development of political parties, so that they can be more mature and a greater diversity of political parties can be formed; as such, not just the voice of one single party can be heard. Meanwhile, assistance should be provided to political parties to put forward comprehensive policies, so that more co-operations among various parties can be made possible. In my view, if the problem of polarization of public opinions can be alleviated, the governance of the Government will be more in line with public opinions in the future.

President, I so submit.

PRESIDENT (in Cantonese): At this moment I am not certain of the time required to complete all the items on the Agenda. Therefore, I have decided that if this motion debate can be finished before 10 pm tonight, we will continue with the meeting until the last item on the Agenda is completed. However, if this motion debate cannot be finished by 10 pm, I will announce that the meeting will be adjourned at about 10 pm and we will resume the meeting at 9 am sharp tomorrow.

MISS TANYA CHAN (in Cantonese): President, I always believe that education plays a very important role in narrowing the disparity between the rich and the poor. However, insofar as the education system in Hong Kong is concerned, problems can be identified at all levels of education, from kindergartens, primary schools, secondary schools to universities, and special schools as well. Of course, the nature of the problems varied. If we have to discuss them one by one, I am afraid we will not be able to finish the discussion even in a few hours' time. Moreover, the Secretary of the related Bureau is not present today. Nevertheless, I still have to point out the problems. Take our university education as an example. After discussions for 22 years, eventually there was an increase of only 500 places for the publicly-funded undergraduate programmes. I really do not know for how many years we have to discuss before there is another increase in the number of university places. Meanwhile, the number of students eligible for admission into university but eventually being turned down is on the increase every year.

With the implementation of the new academic structure and the new examination system, students will no longer be screened out respectively at Secondary Five and Secondary Seven levels; instead, a large number of students are screened out in a single examination at Secondary Six. The Government has to handle this shocking situation properly because originally, this was perceived to be a social issue, but it has great potential to become a political issue. After all, education can help people break away from poverty. Unfortunately, in the area of education, it seems that the Government has not done much and has not done too well.

Moreover, I would also like to talk about development. Today, many colleagues have "felt the pulse" of the Government to diagnose its illness, and have consequently put forth various views in the original motion or the amendments. I have some other views with regard to this issue, and that is, the Government has always been expanding the importance of economic development, placing it in the foremost position; as a result, a price tag is attached to everything. Of course, we can calculate the value of many things. But very often, we only realize how precious some things are after we have lost them. And very often, those intangible things before our eyes are actually the most precious. Once they are lost, they will be irretrievable and the circumstances will be irreversible. These things can possibly be a certain piece of history, some special environment, or may even be the air that we just breathe in.

Mr Fred LI and I went to the United Kingdom for a meeting earlier. We found that in the struggle to get rid of poverty, many developing countries have all along been devoting efforts to build schools. They have the aspiration that economic development will help them create a new environment. But in the process of economic development, they still treasure their existing natural resources. In fact, sometimes it is very ironic. I remember an African representative sitting next to me said that coffee, bronze, gold, timber, diamonds, and all expensive resources and assets that could be named of could all be found in his country. However, they are living in poverty. People are starving every day. Children are starving. There is a possibility that women may die during their pregnancy. And even if babies are born, the fatality rate of children under five is very high. Children have no chance to receive education, and there is inequality among men and women. They think they are the ones being exploited.

Exploitation and disparity between the rich and the poor are not found in his country alone. Poverty is not exclusive to that country; it is also found in Hong Kong. Of course, the situation of Hong Kong is not as bad as those countries in famine. But likewise, some children in Hong Kong can only one meal a day because their parents cannot afford the expensive food. It is impossible for parents to cut costs any further, so they have resorted to cutting the food of their children. You can imagine how shocked we were at that time. In talking about development, the representative said that his country would not focus on economic development alone, but held onto the idea that their assets came from their natural environment, which they had all along treasured. They know that the only thing the next generation can inherit from them is the natural assets. Thus, they will not utilize them in a reckless manner. They are also concerned about development. Unlike Hong Kong which attaches importance to hardware development only, they stress the importance of sustainable developments in the realms of economy, environment as well as society.

I believe it is time that people in Hong Kong, the so-called international metropolis, genuinely need to change our concepts. When we talk about development, we must not always consider money our prime concern, and perceive that our mission is accomplished when the accounts are balanced. Eventually we need to include the damage done to our environment in our calculation. The worsening air quality will lead to the increase in healthcare expenditure. In the end, the entire society has to pay a price; the only difference is that it comes from a different pocket.

Having said that, has the Government actually got the message? As we all know, these motions are non-binding, so the Government often turns a deaf ear to them. I believe that is no exception today. This is comparable to the Government's handling of the consultation on the replacement mechanism. People who are against the mechanism are the opponents, people who support the mechanism are the supporters; and even though the Government is very eager to get as much support from the public as possible, it cannot go so far as to regard those who have no views as supporters of the mechanism. President, with respect to these subjects, you cannot say "heads I win, tails you lose", right? Were the consultation exercises conducted by the Government sham consultations? Some consultations were conducted with extreme speed. For instance, the result of the consultation on the Asian Games was ready in only one week. However, the Government had clandestinely kept the conclusion of the

report prepared by The Chinese University of Hong Kong in the dark. Consequently it was like "squeezing toothpaste out of a tube". After we had repeatedly asked for the report, as the Chinese saying goes, "an ugly bride will sooner or later have to meet her father-in-law", it finally let us have access to a conclusion which was completely different from the one announced earlier.

President, with respect to risk rate in the field of education, we do not know why rounds of consultation have to be conducted and students still have to pay interests every day. Thus, today, many colleagues are talking as if they are praying, leaving it to fate, setting out our philosophy and ideals, and advising what the next-term Government should do. However, since the current-term Government has rejected advice, will the next-term Government actually have this kind of magnanimity? I am really doubtful.

Anyway, as a Member, we are in a much better position than the public. At least we can talk to officials directly, and have the opportunity to exchange our ideas every week. I genuinely hope that the Government will not turn a deaf ear to what we have said.

I so submit.

MR RONNY TONG (in Cantonese): President, since I joined the Legislative Council, a lot of discussions and debates on the disparity between the rich and the poor have been held each year. And every time I speak on this subject, I feel more and more ashamed of myself.

When I joined the Council seven years ago, I had said that the problem of disparity between the rich and the poor was very serious. President, seven years have gone by, not only has the problem not be improved, there are indications that the situation is deteriorating. Seven years ago, social mobility was described as stagnant. Seven years later, surveys indicate that there is a downward trend in social mobility. What actually has happened to our society?

President, the Hong Kong Institute of Asia-Pacific Studies of The Chinese University of Hong Kong has just released the survey results of the "Research Programme of the Disparity between the Rich and the Poor in Hong Kong". It is sad to learn that 14% of the respondents indicated that they were unable to make

ends meet. Based on this percentage, it is estimated that about 1 million people in Hong Kong feel the pressure of living with tight living expenses.

The Hong Kong Council of Social Service (HKCSS) had calculated the poverty population with an income below the median income. It is found that 1.2 million people in Hong Kong were living under the poverty line. Almost all political parties (pro-establishment camp as well as pro-democratic camp) in the Council agree that this is a serious problem.

During a survey conducted in June, HKCSS interviewed 800-odd members of the public and asked them to compare their living conditions before and after the reunification. It was found that more than 50% of the respondents thought that their living conditions were far worse than before. The result of the survey indicated that 52.1% of the respondents opined that their present quality of life was worse than that before the reunification; 57.9% of the respondents opined that the economic situation was worse than before. As for the Government's governance, as high as 66.2% of the respondents opined that the present performance was even worse than that before the reunification.

President, why is that so? Before the reunification, Hong Kong was a colony with no democracy. After the reunification, the Central Authorities have all along reminded us continuously that democratic elements have been enhanced, and that our pace of democracy is heading forward to the extent that soon our goal will be achieved. It has also been pointed out that at present, it is "Hong Kong people ruling Hong Kong" but not "The British ruling Hong Kong". President, theoretically, should Hong Kong be better now than when it was during the colonial era? Should more Hong Kong people be benefited from the economic prosperity and progressive society brought about by the reunification? Why do the results of the relevant surveys give us an impression that the situation is just the opposite?

President, the pro-democratic camp is continuously asking "Without democracy, how can we guarantee people's livelihood?" Up till now, the progress of democracy in Hong Kong has only allowed a minority of people (that is, the business sector) to have more say; as evident in the reality we witness today.

Frankly speaking, under the existing political system, the political power of the business sector is undoubtedly much stronger than those living in public rental housing estates. The general public has no say in the election of the Chief Executive, only people of the business sector are involved. Meanwhile, the operation of the Council is controlled by the business sector. The powers are in their hands. The result of this reality is reflected in the figures mentioned above.

President, this is now the time for electing a new Chief Executive. We have three potential candidates — I mean those who have already announced their candidacy — I need not mention Mr Albert HO, as we all know clearly what his political philosophy is. Since we have been colleagues for many years, I need not spend time explaining his ideas. But, what are the political philosophies of the other two candidates?

One is the convenor of the Executive Council, and the other is a long-standing member of the governing team. What do they represent? Do they represent the Administration's governance philosophy of the past decade or so? President, this is really scary. The comments of the potential candidates vary depending on whom they are talking to, while the undertakings they make are also frightening. Why is that so? What they seek after is public opinion, but not long-term planning or implementation of political philosophy. They are not after votes, but public opinion. Under such a system, how can we have any expectations for long-term economic policies, social policies or planning, through which Hong Kong people can be led out of the blind alley of the disparity between the rich and the poor?

President, this is really pathetic. As long as genuine democracy cannot be realized, the real situation of society will remain unchanged. Instead, we will only witness the continuous aggravation of wealth disparity. Thus, it is my wish that the next-term Chief Executive will bring genuine democracy to the people of Hong Kong.

Thank you, President.

MR ANDREW LEUNG (in Cantonese): President, nowadays, social mobility is certainly lower than before. With the spirit of Hong Kong characterized by hard work and persistence, many people of our fathers' generation, or even our own

generation, had climbed up the ladder from grass-roots labourers in factories to the level of technicians and management staff, and even to the position of factory owners, operating cottage factories at first and then build their own factories. Back then, young people who were willing to endure hardship and were prepared to work hard could certainly find a job and lead a contented life.

With the northward relocation of the industries of Hong Kong to the Pearl River Delta (PRD) Region, some Hong Kong people were still able to cross the border and find a job in Hong Kong-owned factories. However, following the changes in industrial policies and the tightening of environmental policies in Guangdong, some Hong Kong-owned factories have already moved away from the PRD Region, resulting in a gradual diminishing of their ties with Hong Kong. When manufacturing bases are moving further north, it is difficult to consider them as the extension of Hong Kong industries, closing yet another pathway for young people.

Nowadays, many Hong Kong people, especially the young generation and even the Government, opine that a decline in industries is a very normal phenomenon in Hong Kong as it has become a developed economy. They believe that developing the financial industry and becoming an international financial centre is enough. Nonetheless, when we take a look at the economically developed countries in the world, we will find that despite their high operating cost, they still have the capacity to develop advantaged industries, for instance, the watch and clock industry and the pharmaceutical industry in Switzerland; the automobile industry in Germany, as well as the key component and high-end electronics industry in Japan.

The Federation of Hong Kong Industries has all along stressed that it is not advisable for Hong Kong not to develop industry. However, our industrial development must head towards a direction of high value-added and high technology activities, with a view to creating a large number of positions, and in particular, jobs suitable for young people. Moreover, there is a necessity for the Government to formulate policies and measures to attract related industries to anchor in Hong Kong. As a matter of fact, there is a robust intellectual property protection regime in Hong Kong, and we have established a good reputation for our product quality and safety in the international market. These are pre-requisite factors for developing industries of high value-added and high

technology, as well as industries that place emphasis on intellectual property protection.

If our policies can complement the development of industrial and commercial industries, we will be able to create a large number of employment opportunities, from the area of products, materials as well as technological research and development, to the areas of manufacturing industries, market development, as well as sales and promotion. If we can capitalize on the additional opportunities brought by the National 12th Five-Year Plan to boost domestic demand under the guidance and leadership of the Government or related organizations, enterprises will be able to start brand-building and tapping the Mainland domestic market, so as to strive for "paying tax after successful domestic sales" under the "early and pilot implementation" approach in Guangdong Province. By then, demand for jobs will not only concentrate in manufacturing industries, trading, financial industry, even related sectors such as exhibition, convention and tourism industries will also be benefited.

President, I have often said that 98% of enterprises in Hong Kong are small and medium enterprises (SMEs). If there are rooms for survival, profits and business opportunities for SMEs, there will be upward mobility, growth and development for them. Certainly, during this process, a large number of jobs will be created. Unfortunately, a number of newly implemented policies and legislations in recent years have constrained the operation of SMEs. I hope that before the enactment of any legislation, the Government will consider carefully how the legislation will impact on the operation of SMEs, so as to minimize the impact. It is also advisable for the Government to introduce as far as possible new measures that facilitate the daily operation of enterprises, with a view to clearing away unnecessary red tapes for SMEs.

There has been a global trend of promoting green economy, developing cloud computing and data centres in recent years. Environmental industries can create a large number of jobs at different levels. Cloud computing and data centres are conducive to developing "headquarter economy". More enterprises will be attracted to set up offices in Hong Kong, thereby giving impetus to the development of various industries, and subsequently, the creations of new jobs. The cluster effect produced is that talents worldwide will be attracted to come to Hong Kong, which in turn, will help to nurture a generation of local talents. I hope that the Government will adopt new thinking in this regard, and support the development of these industries at the policy level.

President, as Chairman of the Vocational Training Council (VTC), I am very concerned about career opportunities offered by society to young graduates. Thus, VTC attaches great importance to vocational training. Many of our courses are offered with the purpose of meeting the existing needs of various sectors in society as well as the interests of young people. For instance, in recent years, we often talk about creative industries, which include design, animation design, multi-media, Internet technology, and so on. VTC offers various courses at all levels with the objective of providing opportunities for young people to acquire knowledge and skills in these areas.

VTC operates the Hong Kong Design Institute which offers courses that allow young people to acquire skills they are interested in, such as advertising design, film and television, visual arts, fashion design, and landscape architecture.

We have seen young people showcase their creativity and ability in schools. However, upon graduation, due to their lack of experience, they often have to spend some time looking for opportunities. Despite the economic downturn of Europe in recent years, many European countries make a lot of efforts to provide practical experience to young people through the apprenticeship scheme, which is a vocational training scheme. Hong Kong can learn from their experience. We can review the existing apprenticeship scheme so as to better keep pace with time.

Starting a business has all along been one of the ways for Hong Kong people to climb up the social ladder. At present, since many sectors place their emphasis on professional expertise, skills and innovation, the requirement for capital investment is relatively low. For example, writing apps and engaging in online promotion offer good opportunities for young people to set up their own businesses. The Government should consider establishing a "Business Start-up Centre for Young People", and draw reference from the operating mode of Hong Kong InnoCentre which targets at helping young people set up their own companies by providing venues, one-stop professional support in trading and accounting, with a view to encouraging a reliance on individual ability and knowledge to gain an equal opportunity for upward mobility.

President, I so submit.

MS MIRIAM LAU (in Cantonese): President, today our society is beset with problems. As the State Council Premier WEN Jiabao had previously pointed out, there are indeed some deep-rooted conflicts in Hong Kong that need to be resolved; the problem of disparity between the rich and the poor, a subject familiar to us, is one of the conflicts. A recent survey conducted by The Chinese University of Hong Kong has indicated that as many as 76% of people consider the problem of wealth disparity "serious or very serious". This situation is really alarming.

I am sure everyone hopes that the candidates who wish to run in the Chief Executive Election will put forward some practical solutions to dispel the indignation in society. Of course, the Liberal Party will be glad to see that all social sectors can abandon biases and explore rationally, as suggested in the original motion. But I wish to point out that it takes two hands to clap. If some parties continue with the game of polarization or confrontation, or just like some of the colleagues who have spoken, persist with their own biases, how can we achieve this objective?

With respect to addressing deep-rooted problems, such as alleviating the disparity between the rich and the poor, the Liberal Party opines that we really need to devise more methods to help this group of people in need of our assistance.

Take the unemployment rate as an example. Although the current figure stands at 3.3%, which represents a slight increase of 0.1%; it still stays at a low level when compared to figures in recent years. On the surface, this is encouraging. However, surveys conducted by various organizations have indicated that the poverty population in Hong Kong is over 1 million. For instance, the research conducted by the HKCSS had pointed out that the poverty population in Hong Kong, that is, people whose income amounts only to half of the median household income or even lower, had risen from 1.143 million at the time Chief Executive Donald TSANG took office in 2005, to last year's 1.206 million. The poverty rate stood at 17.9%.

According to the joint survey conducted by the Hong Kong Institute of Asia-Pacific Studies of The Chinese University of Hong Kong and the Hong Kong Professionals and Senior Executives Association, among the 1 004 respondents, 14% of them indicated that they were unable to make ends meet.

Based on this percentage, it is calculated that about 1 million members of the public are in dire straits.

The above figures have reflected the serious problem of the working poor. As such, the Liberal Party has repeatedly proposed that the Government should rename "Low earnings Comprehensive Social Security Assistance" as "Work Incentive Scheme" which can encourage employment and remove the stigma effect. The Government should also extend the Scheme to working-poor families not eligible for Comprehensive Social Security Assistance but the family income is only half of the median household income or even lower, so that those who have worked hard but still cannot make ends meet can get the assistance and their living conditions can be improved.

The Liberal Party is also of the view that the Government should make every effort to give impetus to the development of emerging industries, so as to create employment opportunities, provide more jobs for the labour market, thereby rendering more social ladders for the grassroots to move upwards. Chief Executive TSANG had put forward the development of six industries with competitive edge. The direction of his proposal is right; but unfortunately, it is all smoke but no fire. Up till now, the six industries have failed to achieve the objective of playing major roles. For instance, the medical services have turned out to be maternity services only, and the rights of local pregnant women in securing a bed space to give birth are also threatened.

Earlier I quoted the views of some academics and pointed out that alarm had been sounded regarding the social mobility in Hong Kong over the past few years. The number of people belong to the sandwich class, with a monthly salary between \$10,000 and \$20,000 and not eligible for welfare benefits, is on the rise. While this group of people, many of them belong to the post-80s generation, has not yet fallen below the poverty line, they are called "the new generation of poverty" in consideration of their huge living expenses and slim chances for promotion. This is the group that requires more concern from us. Their predicament is closely related to the inability of the current-term Government to create new economic growth points, which makes them feel that there are inadequate opportunity for development and inequality in society.

In respect of fairness in the formulation of policy, many people from the middle class have often complained that they pay high taxes but enjoy little benefits. They consider that the Government has neglected them. In this

connection, in submitting our proposals on the Budget to the Financial Secretary last week, the Liberal Party had urged the Government to implement measures such as widening tax band, reducing marginal tax rates, putting in place new allowances or increasing the amounts of personal allowances, with a view to alleviating their tax burden.

In the face of the development of a knowledge-based economy, if Hong Kong needs to establish a strong foothold, nurturing more talents is the single key to success.

Unfortunately, the university admission rate in Hong Kong is much lower than that in other developed places. Even though the Chief Executive had announced last year that the Government would increase publicly-funded first-year-first-degree places each year from 14 600-odd to 15 000, and double the places of associate degree students articulating to university from 2 000 to 4 000; the increase is insignificant in considering that each year, over 6 000 students cannot be admitted to universities though they meet the minimum admission requirements because of insufficient places, and that each year, there are 36 300 associate degree graduates. Thus, the Government should increase the investment in education by further increasing the publicly-funded university places, and staunchly facilitating the development of private universities.

With regard to SMEs, in the face of external uncertainties and domestic troubles which include the European debt crisis, volatility in the American market, surge in prices of raw materials, drastic increases in operating costs due to high local rentals and the minimum wage, the Government has turned a blind eye to their miseries and has not provided any assistance. Such an attitude will only aggravate social conflicts and grievances. It will be up to the new Chief Executive to devise solutions to resolve the problems.

In their amendments, Ms Audrey EU and Mr Albert CHAN ask for the abolition of functional constituencies and separate voting mechanism in 2016 and 2012 respectively. We are of the view that this is equivalent to overturning the Decision of the Standing Committee of the National People's Congress, which will not work at all. Therefore, we will not support these amendments.

President, I so submit.

MR WONG SING-CHI (in Cantonese): President, the motion moved by Mr Frederick FUNG today is mainly about reforming governance philosophy. But the ultimate problem to be solved is the disparity between the rich and the poor.

In many large-scale surveys, the working poor is defined as those whose monthly income is less than half the median monthly income. Households with an income that is less than half the median income of those households with the same number of members are also regarded as working-poor households.

According to the Oxfam Poverty Report on working-poor Hong Kong households, 10.2% of households with working members were living in poverty in the second quarter of 2010, that is, the number of households increased from 172 600 in 2005 to 192 500, an increase of 12%. At the same time, the number of members in working-poor households increased from 595 600 in 2005 to 660 700 in the second quarter of 2010. This shows that the problem of working poor is very serious and the people affected need urgent help.

Working-poor households have generated many after effects. For instance, children have less chance of receiving education. They need to be "lucky" to get into good schools and may not be able to afford university education. As a result, their long-term prospects are limited. Moreover, children from many poor families suffer from inadequate nutrition.

In the first half of 2010, the poverty rate in Hong Kong was 18.1%, with more than 1.26 million people belonging to low-income households, and a record number of people living in poverty. This poverty rate was the highest in almost a decade. The number of poor people increased by 60 000 in six months, up from 1.2 million in 2009. The number of poor households also rose from 420 000 in 2001 to 470 000 in 2010, at a rate of 13.3% in a decade. In addition, the number of elderly people in poor households rose by 15% from 250 000 in 2001 to 290 000 in the first half of 2010.

Many scholars have studied the problem of poverty and expressed various views. They have also made various suggestions to the Government. However, the Government seems to turn a deaf ear. For instance, Dr WONG Hung has expressed some views on the problem of poverty in Hong Kong and offered some solutions to address the problem. He pointed out that the international understanding of poverty is changing. Even the conservative

World Bank that advocates neo-liberalism notes that poverty is not just a problem of inadequate income, but a multi-dimensional phenomenon. Hence, it has started to use other social indicators to measure poverty, such as vulnerability, risk and social exclusion.

In its World Development Report 2000, the World Bank summarizes the poverty situation around the world. It argues that poverty is not only evident in material or economic deprivation, but also in the lack of political power and being in a vulnerable position in society, such as vulnerability to economic changes, natural disasters and ill health. Hence, poverty is a problem caused by economic, social and political deprivations.

Thus, if the Government wants to further study the poverty problem, it cannot just look at the question of resources. For instance, by emphasizing the three pillars, the Government seems to focus only on resources. However, resources are certainly one factor that affects poverty. Thus, the present system related to resources needs to be changed. For example, we are now reviewing the Comprehensive Social Security Assistance Scheme so that recipients will not only be able to "scrape by", but can have a better life.

Actually, the Government has done some work in terms of resources, that is, by implementing the Transport Subsidy Scheme. Unfortunately, they have made a mess of it. As a result, not many people have applied. While the \$2 concessionary elderly fare is another way of tackling poverty in terms of resources, it will only be implemented by the end of next year.

As we can see, while the Government stresses that it is helping poor people by allocating resources, it is not doing enough. Thus, the new thinking is that the Government should expeditiously review on its policies regarding resources, so that everyone can receive adequate subsidies to cover their living expenses.

The second issue is that of opportunity, which involves the question of the education system. The problem with the education system is that even though many young people are eligible for tertiary education after graduating from high school, they are still unable to get into the better universities or receive higher education due to inadequate places. That is why the Government has to do more in terms of the education system, so that more young people can move up the social ladder by receiving education.

The third issue is that of circumstance. At present, poverty is caused by the difficult circumstances that many people face in society. In view of the discrimination against new immigrants and certain non-Chinese nationalities, more social education should be conducted to eliminate discrimination against people in different circumstances, so that they will have the opportunity of advancement in society.

President, the last point is about public participation. Without a fair, open and just electoral system in Hong Kong to ensure that everyone has a representative in the legislature and in the establishment to fight for his rights, those who are not represented because of poverty or other circumstances will continue to be poor. That is why we have to fight for universal suffrage, so that all Hong Kong people will have a representative in the legislature to speak for them. We need to give this system serious thought and implement it expeditiously.

President, new thinking is not just words, but needs to be put into practice as soon as possible. Thank you, President.

MR ALAN LEONG (in Cantonese): President, the content of the motion moved by Mr Frederick FUNG today has been discussed over and over again in this Council, either in Council meetings, in the Panel on Welfare Services, or in related panels and subcommittees, to the point of becoming platitudes. Unfortunately, it has been mere "talk", with no actions taken by the Government. Since it is time for the announcement of candidacy for the Chief Executive race, we should ask Mr Henry TANG and Mr LEUNG Chun-ying to talk about this issue. Strangely, while they have made different public appearances over the past two months, they have not explained their vision for Hong Kong. We have not heard them say what Hong Kong would be like if they were to govern us. This is very ironic and sad for Hong Kong.

Today, we are discussing how to "resolve deep-rooted conflicts in society". Of course, basically we know that these deep-rooted conflicts are the result of the uneven distribution of resources and of the fruit of economic activities in Hong Kong, so that the poor have become poorer, and the rich richer. Even if Hong Kong people did not understand this before, I am sure many of them now see what has led to this situation. As Ms Audrey EU has said in her speech — Ms

EU has moved an amendment on behalf of the Civic Party — without democracy, how can we guarantee people's livelihood? Thanks to small-circle elections and the existence of functional constituencies, political power is monopolized by those with vested interest, big businesses and big property developers. Only those policies that they consider to their advantage can be carried out. As a result, Hong Kong has become what it is now.

President, one crucial part of the amendment moved by Ms Audrey EU today is to establish a clean, fair and impartial electoral system. This is a core value of Hong Kong people and something that they treasure and hold on to. However, the cases of "vote-rigging" in different electoral districts uncovered by the media and candidates in the recent District Council elections have made Hong Kong people seriously question whether our elections are clean, fair, open and just. Even though we still cannot elect the Chief Executive or all the Legislative Council seats by one-man-one-vote, I am sure that at least, those who have the right to vote wish to see a fair and just election.

President, imagine that you are a resident in a certain district. During the District Council elections, a candidate told you he was your neighbour. He and his family have rented a tiny apartment in your district, instead of living in his luxury flat of a few thousand square feet. Actually, they do live there, but they use the unit of six or seven hundred sq ft in your electoral district as their registered address. You believed in him and voted for him. But after casting your vote, you found that he did not live there, but somewhere else. However, you took him at his word and thought that he was your neighbour who understood your problems. Understandably, these incidents provoked an outcry from residents and voters.

In the example I give just now, the candidate has broken various pertinent laws. In my view, the Independent Commission Against Corruption, the Hong Kong Police Force and the Electoral Affairs Office should all go after him. But President, most important of all is that without a clean, fair and just electoral system, we will not even have a modicum of justice.

I think Mr FUNG moves today's motion to call on all parties to set aside their differences. With these cases of electoral fraud and false declarations and claims coming to light, different parties have made a united stand. I strongly believe that they are purely responding to Hong Kong people's demand for a fair,

just and open electoral system, rather than having their own party's interest in mind.

President, I wish to spend the last minute talking about the idea that "without democracy, how can we guarantee people's livelihood?" in resolving these deep-rooted conflicts. The Civic Party cannot support Mr IP Kwok-him's amendment, since he clearly disagrees with the position expressed by Ms Audrey EU on behalf of the Civic Party in his amendment and speech. This position is that we need to have a fair, open, just, general and equal electoral system. That is why the Civic Party cannot support Mr IP Kwok-him's amendment.

President, I so submit.

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

MR ALBERT HO (in Cantonese): President, with the Chief Executive Election and a change of government approaching, Mr Frederick FUNG moves this motion today so that we can review the governance impasse Hong Kong has reached some 10 years after the reunification. In addition, this debate allows us to talk about our vision and expectations for the future.

However, I think we need to get to the core of the matter first. Undoubtedly, the core of the matter is that we have failed to straighten out our politics. The deep-rooted conflicts in society are the result of unequal political power. Under the present system, some rich people have much greater power than ordinary people. In small-circle elections, some people can control several votes, or even dozens of votes. The political powers of certain groups are several times or even several dozen times greater than that of ordinary people.

Take the agriculture and fisheries subsector in the Election Committee (EC) as an example. This subsector only has 160 bodies, with only 15 000 people engaged in the trade. Even so, they have as many as 60 votes in the EC. How did this system come about? The 320 000 voters in the EC elect 1 200 electors, who will then elect the Chief Executive. But as we all know, this election excludes the majority of Hong Kong residents. Several million residents have no right at all to choose the top executive of the Special

Administrative Region. In a small-circle election, the eligibility requirements ensure that there is little choice in the candidates. Their names are either LEUNG or TANG, or to put it more comically, the choice is between the wolf and the pig. When the people have no choice, how can they be satisfied?

President, an unfair electoral system results in the unfair distribution of power, which in turn leads to all sorts of conflicts. These conflicts are ultimately reflected in various public policies. Even strong public opinion is no match against a few individuals and groups with political privileges. The biased policies enable property developers and the financial sector to establish hegemony.

Today, no one can deny one simple truth, and that is "without democracy how can we guarantee people's livelihood?", as just mentioned by our two friends from the Civic Party, Ms Audrey EU and Mr Alan LEONG. If people are not allowed to participate in the formulation of our future policies, these deep-rooted conflicts cannot be resolved.

The amendments moved by Ms Audrey EU aim at solving Hong Kong's deep-rooted conflicts through the system. In order to let people take part in the decision-making process, the most fundamental solution is to give everyone a vote, so that their equal participation in the political system is guaranteed, instead of a situation where some people have the vote and others do not, and some people have several votes.

Unfortunately, so far, even though the two Chief Executive candidates from the pro-establishment camp — Mr Henry TANG and Mr LEUNG Chun-ying — have organized many large-scale election publicity events over the last few days and talked about future measures to improve people's livelihood, none of them were able to provide any details about their blueprint and vision for the governance of Hong Kong. They even dared not touch on the basic reforms of the political system, especially issues like the election of the Chief Executive and all Legislative Council Members by universal suffrage, the abolition of the privileges of functional constituencies, and the replacement mechanism for filling vacancies in the Legislative Council that may deprive us of our right to vote in by-elections in future. When those who intend to become Hong Kong's top official try to avoid these questions, how can Hong Kong people feel at ease?

I very much agree with what Mr LEE Cheuk-yan has said and that is, we should not have too high expectations of the Chief Executive candidates, including myself. Even if I become a candidate, people should not expect too much, since there are such great limitations to the election result. However, we still actively fight for a chance to participate, in order to exercise checks and balances against the odds. We can have some expectations in this respect. In this difficult situation, we need to fight for some space to speak for the people and challenge the candidates from the pro-establishment camp to talk about their governance philosophy and views. What are their views about universal suffrage and about the future? How do we defend our "high degree of autonomy", safeguard our rule of law and avoid interference by visible or invisible hands? How do we ensure that people can live in a fair and just environment, that their freedom and right of development are fundamentally guaranteed, and that they enjoy equal opportunities? How do we eliminate the gap between rich and poor, and prevent the impoverishment of the middle class? These are areas that we have to force them to give their views.

We feel that the people need to voice their views. We should seize every opportunity to voice our views. This is the only thing we expect from the election.

MR WONG YUK-MAN (in Cantonese): President, in his motion, Mr Frederick FUNG proposes establishing a set of principles of development for all people that give consideration to all social strata. This is just parrot-cry. In his 2007-2008 Policy Address, the incumbent Chief Executive Donald TSANG echoed HU Jintao's "scientific development concept" by advocating the governance philosophy of so-called "progressive development", promoting economic development through infrastructure projects; promoting community development through revitalization; and promoting social harmony under the concept of helping people to help themselves. But now, the Government seems to have forgotten this "development concept" and replaced it with a schizophrenic governance philosophy.

In terms of developing the economy, the SAR Government warmly embraces the neo-liberal doctrine of "big market, small government". Following the positive non-intervention policy, it winks at the hegemony of property and financial tycoons in exchange for economic prosperity, ignoring the ordinary

people who are exploited. This kind of attitude that "emphasizes economic development and disregarding people's livelihood" has produced a Gini Coefficient of 43.4, the highest in the world, and the astonishing figures of 1.26 million poor people and 470 000 poor households.

In terms of politics, the SAR Government stresses its executive-led approach and institutes authoritarian rule. In May this year, in order to prevent legislators from resigning and launching a *de facto* referendum again, the SAR Government adopted hard-line tactics and introduced a replacement mechanism that deprived Hong Kong people of their right to vote. It tried to push through the legislation quickly by holding Bills Committee meetings throughout the week. Former Secretary for Constitutional and Mainland Affairs Stephen LAM, the man behind the scene, behaved arrogantly and refused to carry out public consultations despite a strong outcry from Hong Kong people. This provoked the march on 1 July in which some 200 000 people took to the streets. Even though the Government made some concessions later, Stephen LAM was still promoted to Chief Secretary for Administration against the wishes of the people. Instead of stepping down to take responsibility, officials only get promoted. This is a blatant example of the high-handedness of the SAR Government.

In line with its policy of *laissez-faire* in terms of the economy and authoritarian ways when it comes to politics, the SAR Government's overriding governance principle is to help the strong and oppress the weak, exploit the general public while favouring the rich and powerful. Inevitably, this has led to resentment against the rich and the establishment, and growing social conflict.

The Chief Executive Election is a pretence that has turned real. The campaign for the 2012 Chief Executive Election is now in full swing, with the TANG and LEUNG camps facing off one another, attacking and smearing each other every day. Both the Democratic Party chairman Albert HO and the New People's Party chairman Regina IP seem eager to join the Chief Executive race as well. Even legislator Frederick FUNG who moved this motion will announce his candidacy tomorrow at the waterfront promenade opposite Central's Pier 9. Expressing his desire to highlight deep-rooted conflicts in Hong Kong such as the disparity between the rich and the poor, he moved this motion today and will start his campaign tomorrow to propose solutions in terms of policy areas he is familiar with. We all know very well whether this motion debate can help to "reform governance policy" at a time when "a change of government is

approaching and the Chief Executive Election is near". The Democratic Party (DP) and the Hong Kong Association for Democracy and People's Livelihood (ADPL) support small-circle elections. Did they not vote on 25 June last year in favour of returning the next Chief Executive through a small-circle election next year? By supporting small-circle elections and participating in small-circle elections, they are acting consistently. How are they different from the pro-government camp? How can they highlight injustice by participating in the election? It gets more and more confusing. What is Mr Frederick FUNG running for? He wants to run for Chief Executive? It's pure shamelessness.

The political system in Hong Kong is totally absurd and obstructs all forms of reform. The Chief Executive Election takes place within a small circle of 1 200 with a built-in elimination mechanism. Half of Legislative Council seats are returned by functional constituencies, while the interest of individual sectors is placed above public interest under the separate voting mechanism. The appointed District Council seats are used to reward political parties for their loyalty. Neither the executive nor the legislative body has a popular mandate and they are not accountable to the public. Under such a system, the SAR Government can naturally act arbitrarily and has no need to review its public policies and governance philosophy. It is a wishful thinking to expect the new Chief Executive to reform the governance philosophy after taking office.

It is a complete farce that the passive public and the aiding and abetting media have thrown themselves into the Chief Executive Election in which they have no say at all. Even more absurd are the opinion polls. They ask you who you would vote for, even though you do not have a vote. No wonder a student told me that if someone called and asked if he supported LEUNG Chun-ying or Henry TANG, he would answer with four-letter words.

It is an indisputable fact that human rights and freedom in Hong Kong have been steadily regressing since the reunification. In recent years, the SAR Police Force has continued to expand its powers and has spared no efforts in helping the totalitarians to suppress human rights and freedom. In safeguarding people's right to know, press freedom is the cornerstone of an open, modern society and a universal value. However, the motion on "Defending freedom of the press" was negated in the Legislative Council two weeks ago. The totalitarians' blatant acts are despicable indeed.

After the District Council elections, several "vote-rigging" incidents have been brought to light. The case in which one household has 13 voters with seven different surnames provoked an outcry. We can guess who the culprit behind is. Under the unfair and unjust electoral system in Hong Kong, even the only remaining political rights that people have are violated. Our status is no different from the slaves in a feudal society.

The pro-democracy camp is partly to blame for the authoritarian acts of those in power. On 23 June 2010, the Democratic Party proposed and voted for the pseudo political reform package concerning the "method for the selection of the Chief Executive and the formation of the Legislative Council in 2012". This package deprived the majority of Hong Kong people of their right of nomination and running in an election, reinforced the position of the nefarious functional constituencies in Legislative Council, and paved the way for the small-circle Chief Executive Election. Surrendering to the autocratic regime, the "pseudo pro-democracy camp" supported amending the Rules of Procedure to crack down on resistance in the Council, and worked with the pro-establishment camp to suppress us, who are named as the so-called opposition camp in the Legislative Council who still dare to say no to those in power. It is shameful that only three members of Legislative Council belong to the opposition camp.

Personal freedom, press freedom and political rights are being gradually tightened by the reigning power. With the "pseudo pro-democracy camp" selling itself out, the SAR Government is able to enforce its dictatorial governance principles that help the strong and oppress the weak. The motion today is totally absurd. Its mover should look at himself in the mirror to see how shameless he is!

MR LEUNG KWOK-HUNG (in Cantonese): President, the amendment moved by Ms Audrey EU is quite timely. Once you grasp the key issue, the rest will fall into place. When the distribution of power is extremely uneven, the distribution of wealth in society will also be unequal.

Today, I want to tell you that this issue has been discussed before. I will now quote the views of this man, who has expectations for our nation. He is Mr LIU Xiaobo. I want to read out his views for the reference of Honourable Members. This is what he said: "1. Amend the Constitution: abolishing the

provisions in the current Constitution that are not in conformity with the principle that sovereignty resides in the people so that the Constitution can truly become a document for guaranteeing human rights and [appropriate use of] public power. The Constitution should be the implementable supreme law that any individual, group or party shall not violate, and lay the legal foundation for the democratization of China." — This is equivalent to our idea of returning the Chief Executive and the Legislative Council Members by universal suffrage —

"2. Separation and balance of power: A modern government that separates, checks and keeps balance among powers guarantees the separation of legislative, judicial, and administrative power. The principle of governing by laws and being a responsible Government shall be established. Over-expansion of executive power shall be prevented; the Government shall be responsible to the taxpayers; the separation, checking and keeping balance of powers between the central and local governments shall be set up; the central power authority shall be clearly defined and mandated by the Constitution, and the local governments shall be fully autonomous. 3. Democratize the lawmaking process: All levels of the legislative bodies shall be directly elected. Maintain the principles of fairness and justice in making law, and democratize the lawmaking process."

He then went on to propose the "election of public officials: The democratic electoral system should be fully implemented, with the realization of the equal voting right of one person one vote. Direct election of all levels of administrative heads should be institutionalized step by step. Free competition in the elections on a regular basis and citizen participation in the election of public officials are inalienable basic human rights." "11. Freedom of expression: The freedom of speech, freedom of the press and academic freedom should be implemented. Citizens' right to know and to monitor and supervise should be protected. A press and publication law should be promulgated. The ban on freely publishing newspapers should be lifted. The current provision of 'inciting subversion of state power' in the Criminal Law should be repealed and criminal punishment for speech should be eliminated."

President, today, we are discussing how Hong Kong can have a good democratic system. After proposing the clause on freedom of expression in Charter 08, Mr LIU Xiaobo was sentenced to 11 years' imprisonment for committing the offence of "inciting subversion of state power" as stated in the Criminal Law. Today is 7 December. On 10 December last year, he was officially awarded the Nobel Peace Prize. I think it is rather sad that we are

talking about this issue today. It is not that no one in Hong Kong and China understands this. It is not that people do not understand that when power is monopolized by a minority, it will cause the suffering of the majority. It is not that people do not understand that when someone is punished for expressing his views, the whole society will eventually be forced to remain silent and become corrupt.

President, as long as there are still political prisoners like Mr LIU Xiaobo, our nation will have no freedom. If our nation does not have freedom, Hong Kong will not have freedom as well. As long as one-party rule persists in our Motherland, the situation brought about by the small-circle elections in Hong Kong, such as the collusion between the government and businesses and the disparity between the rich and the poor, will only worsen, just like in our nation. I hope colleagues who are present in this Chamber will not forget Mr LIU Xiaobo, or his wife LIU Xia, who has met with extremely inhumane treatment. While her husband was honoured, she disappeared from public view.

President, I hope our colleagues will do some reflections. I know that in order to participate in the pseudo Chief Executive Election, the pro-democracy camp has arranged for voters to vote in a mock primary election in January. I think this is ridiculous. In 2010, the resignation of some Members triggered a genuine referendum that not even the Administration could deny. Those who now call upon Hong Kong people to participate in the small-circle Chief Executive primary election by holding a mock ballot are precisely those who opposed the *de facto* referendum in 2010.

President, I hope we will not forget Mr LIU Xiaobo. I also hope we will not forget that you cannot be submissive or sup with the devil in fighting for democracy.

Thank you, President.

MS CYD HO (in Cantonese): President, with pseudo election fever running high in the media, the motion moved by Mr Frederick FUNG today provides us with an excellent chance to examine what is real election and what is manufactured popularity.

No matter who becomes the Chief Executive of the next government, he has to deal with the problem of the great wealth gap in Hong Kong. While Hong Kong ranks 21 among 42 highly developed regions in the world, our Gini Coefficient ranks first among these 42 regions. It is even higher than that in places where coups d'état have taken place recently, in Yemen, Tunisia, Thailand and Egypt. Why is that so? Why is our wealth concentrated in so few hands? It certainly has something to do with problems in our political system and in our governance.

Mr Frederick FUNG may be treating this motion as a declaration of his intention to run in the Chief Executive Election. However, I have to point out that we should not muddle up certain things. The motion urges all parties to abandon political biases and reposition the roles and functions of the new government. This cannot happen in a real election. The reason is that the Government's position reflects the values of the governing party. It represents how the party considers the direction of the overall development of society should be. This is quite clear and it is necessary to make the distinction.

If we have a real election, we need to stress the differences between the parties during the electioneering, and ask people to make a good choice. What kind of role should the Government play? Should it purport to adopt a "positive non-intervention" policy, while favouring the property developers? Should it claim to be a regulator, while in fact it is regulating the weak instead of the powerful? Or should it be an "efficient promoter", as Donald TSANG has recently switched to saying, while it is actually giving favours to the industries? Or should it redistribute wealth on behalf of the people, as social democrats advocate? Actually, these different approaches represent the huge differences between economic liberalism and social democracy. These differences in values must not be set aside. These values should be brought up in an election to promote a debate in society, so that people can make a good choice in a real democratic election.

Just now, I used Donald TSANG's language to discuss the social role of the government. If we talk about it in terms of concrete examples, it would be how to deal with the hegemony of property developers, how to increase public housing and resume the construction of Home Ownership Scheme flats in order to cool down the property market through active intervention by the Government. Should we lower our annual public spending to below 20% of the GDP as Donald

TSANG said, or should we increase it to 25%, as the Labour Party wishes. In reforming the taxation regime, should a sales tax be levied on everyone, as the Government suggests, or should a tax be levied on the super rich? Should we adhere to the principle of "big market, small government", or should the Government provide an adequate safety net? Should the Government be so irresponsible as to turn healthcare and education into businesses, thus increasing the burden of the ordinary people in these areas?

Actually, these policies are the cause of the disparity between the rich and the poor. But how can we expect a Chief Executive selected by 1 200 electors to account to 7 million people in these fundamental issues, and genuinely work for 7 million people to eliminate these problems? The reality we face is the existence of a privileged economic and political alliance, with wealth being concentrated in the hands of 1% of the population, who suck up the wealth and fruit of the labour of 99% of Hong Kong people every day. There is such a great wealth gap in our society because of these structural conflicts.

Actually, a democratic political system can only ease or try to avert these conflicts. But without a democratic political system, the consequences will be dire. The motion only urges all parties to set aside their differences, without mentioning any political reform. This is a difficult feat indeed. Nevertheless, I believe that he knows he has no hope of running, and is only planting a wish tree.

President, we must make it clear that this is a fake election. The two candidates are only competing for short-lived popularity, popularity that is built on quicksand. Look at them. They will not talk about safeguarding freedom of expression, freedom of assembly and freedom of the press. Yesterday, one of them even said the media had ulterior motives and was trying to frame him. This is really outrageous.

As we can see, both candidates go around lobbying only because Beijing wants the future Chief Executive to enjoy a certain degree of popularity, so that he will not look so bad. That is why they lobby for short-lived popular support to create the illusion of popularity. They have no intention of implementing a democratic system during their term, or let people exercise their freedom of expression to criticize them and continue to hold them accountable. Thus, both candidates are only writing post-dated cheques for individual policies. However, neither has told us clearly about the overall political and economic

roles of the Government. We still do not know what their real role and position are.

Finally, I want to talk about Mr IP Kwok-him's amendment. The most important part is part (c), in which he proposes promoting democracy in an orderly manner while creating conditions for good governance. He implies that democracy and good governance are contradictory. I want to make some additional remarks on this point. Actually, democracy is the basis for good governance. While it may not be the best system, there is so far no other system that is better and more in the people's interest. Therefore, it is totally impractical to expect good governance without democratic elections. Thank you, President.

MR TAM YIU-CHUNG (in Cantonese): President, just now, when Mr Frederick FUNG delivered his speech, I listened to him carefully. In his speech, he announced that he would run in the Chief Executive Election. After that, he spent several minutes attacking the other two Chief Executive hopefuls who had also announced their candidacies. I do not think his attack and smear are fair or reasonable.

Mr Frederick FUNG gives me an impression that he seems to prepare for the election only in recent days and in haste. While there are allegations that he just wants to join in the fun, seek publicity and take advantage of the election, I do not want to speculate about his motive as I do not think that matters. Certainly, whether he will finally be nominated as a candidate is a separate issue.

Just now, I heard Members of the Civic Party emphasize repeatedly that "without democracy, how can we guarantee people's livelihood?" Mr IP Kwok-him, my colleague from the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has also brought up the idea of "promoting democracy and improving people's livelihood" in his amendment. However, is democracy a panacea for problems in people's livelihood? The recent incidents in Europe have, in particular, shed new light on us. Many countries in Europe have a long history in democracy, and are called "western democratic countries". Yet, there has been a general strike in the United Kingdom recently. Today, the three largest trade unions in Italy have also announced that they will stage a general strike. Similarly, Greece is hit by wave after wave of strike.

So, what have happened in these countries? They are countries with democratic systems and people's livelihoods are safeguarded. In terms of livelihood, people in these countries enjoy short working hours, long holidays, high wages and good welfare benefits. Why then do they still go on strike? That is because their countries are plagued by economic problems. With an ailing economy and insufficient national revenue, these countries cannot afford the huge expenses on welfare. When people are asked to tighten their belts, or when pension payment is delayed, there are great grievances and an outcry of strong public discontent.

In my view, these incidents have exemplified that the three factors, namely economic development, improvement of people's livelihood and promotion of democracy are equally important. If we just concentrate on the latter two factors and dismiss economic development, how can we have money to improve people's livelihood? Therefore, the DAB has added in some key points on economic development in its amendment. We also expect the new Chief Executive to tell us how he will develop our economy in the future. In the face of economic globalization, if we do not enhance the new impetus for economic development, we will certainly be lagging behind. By then, the Government will have to tighten its budget, how will it be able to improve people's livelihood? I think we all understand this point of argument, though the focus of viewpoint may differ from person to person. As the DAB always takes a pragmatic approach, we examine this issue in its entirety instead of pinpointing on only one or two factors. We hope that we can achieve our goal of catering to the interest of the people.

Just now, some Members have talked about the recent "vote-rigging" allegation. The allegation has been widely reported by the press and some political parties have deliberately used it to insinuate and smear their competitors. In this connection, I must say that the DAB has all along been law-abiding in every election. We strongly believe that it is important for all candidates to comply with the rules. Securing a seat by illegal means is not only meaningless but may also end up in fiasco. We had suffered in this respect before. A few years ago, in a by-election in Tai Wai, one of the candidates bribed voters with treats and tours and arranged means of transportation to carry them to the polling stations. We were shocked by his acts, and this candidate was finally sanctioned by law. Hence, we strongly detest such illegal acts and consider that election must be fair and just. This has long been our stance.

Regarding the allegation of "vote-rigging", we have levelled much criticism at the Government. In the past, every time when we conducted home visits after obtaining the electoral roll, we would find discrepancies between the entries in the electoral roll and the actual particulars of voters, and we would have to tell the Government about that. Has the Government made any improvements in this respect? Yes, it has. However, there are still many discrepancies. Recently, the DAB has started to research into the situations of different districts. We want to know if such discrepancies exist in public housing estates, private buildings and villages. According to the information obtained, it seems that quite a number of entries in the electoral roll are problematic. We are doubtful about the accuracy of the electoral roll.

In view of this, we will, with Mr IP Kwok-him and Mr LAU Kong-wah as leaders, have a meeting with Secretary Raymond TAM tomorrow and will provide him with the information of doubtful cases. We will ask him and the Election Committee to look into these cases seriously to find out the reasons for such discrepancies. For example, why are there two residents in a public rental housing (PRH) unit allocated to singleton? Why are there eight residents in a four-people unit? Why are there registered tenants for long vacant units? Why are there registered voters in units which do not exist? As all these cases are found in the PRH, it should be easier for the Government to check the relevant particulars. As for voters living in private buildings, we have also found some discrepancies, but the Government may have many excuses for them. We will provide the Government with all the said information for study.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr Frederick FUNG, you may now speak on the three amendments. The speaking time limit is five minutes.

MR FREDERICK FUNG (in Cantonese): President, I will first speak on Mr IP Kwok-him's amendment. Regarding the three points that he has raised, I agree to his first two points, but not the third one, that is, "regarding governance, to

examine in-depth the relationship between democracy and good governance, and promote democracy in an orderly manner while creating conditions for good governance". This point is most controversial. My academic performance may not be very good but I had at least studied politics before. Regarding "good governance", is there a positive causal relationship between governance and democracy?

As a matter of fact, very often, the meaning of democracy is to confer citizens of a place with some basic political rights which allow them to choose their parliamentary representatives and government leaders, thereby reflecting that they are the persons who have the "final say" in that place or country. However, will the right to have the "final say" definitely bring in good governance, or definitely be devoid of good governance? Indeed, the two are hardly related.

With regard to the examples just given by our fellow Members, such as Europe as mentioned by Mr TAM, we should note that there are some successful examples in Europe. Among the European countries, Germany has the best governance. Like Hong Kong, Germany has fiscal surplus and foreign currency reserve. It has an elected government as well. Actually, the governance of a country or a place often hinges on the performance of its political parties and how its political figures handle various local issues. Therefore, I cannot agree to the third point. Given that I agree to the first two points but not the last one, I will abstain from voting on Mr IP Kwok-him's amendment.

Next, I will speak on Ms Audrey EU's amendment. In fact, we have from time to time debated on the four points made in her amendment. We had raised questions and voted on them before. As I basically agree to all those four points, I will vote for her amendment.

Regarding Mr Albert CHAN's amendment, as well as the speech of his fellow party member, Mr WONG Yuk-man, I can hardly give my support because I do not agree to some of their practices. There are many ways to fight for democracy, and we have our own means to do so. You may stand firm and refuse to yield a step, but is this the only way to achieve democracy?

The Hong Kong Association for Democracy and People's Livelihood (ADPL) has long been fighting for every step forward, as every step forward is a

step towards achieving the goal. Let me give one or two recent examples. In 2010, we supported the 2012 political reform package put forward by the Government. At that time, the issue put to vote was not whether we should have dual elections by universal suffrage in 2012. The real issue was whether we were for or against the package. In my view, if we voted for the package, we would make a slight step forward; if we voted against the package, the *status quo* would remain unchanged. The situation is not what Mr WONG Yuk-man has said, casting an opposing vote did not mean we could have dual elections by universal suffrage in 2012; or casting an opposing vote did not mean that we succeeded in our fight for dual elections by universal suffrage in 2012. In fact, either voting for or against the package would not bring us dual elections by universal suffrage in 2012. However, by giving our support to the package, we would be able to take a small step forward. Should we take this small step? Turning down the package would mean that no changes would be made. Was that the best option? We must make a choice between the two different outcomes. I do not think that voting for or against the package was in itself a matter of right or wrong.

Let me quote another example, that is, the voting on 21 December 2005 on the 2005 proposal regarding the 2008 election. If you still remember, according to the Government's proposal at that time, all District Council (DC) members would be members in the Election Committee so that they could have a vote in the election of the Chief Executive. It also proposed that five functional constituency seats and five directly-elected seats would be created. At that time, the ADPL told the Government that we would vote for the 2005 proposal only if it accepted our three requests. All these had been made public, and you may check the record. We are not covering anything. The three requests were: firstly, the provision of a timetable and a roadmap during his term of office, which meant that Chief Executive Donald TSANG could have 18 months to prepare for them; secondly, the abolition of appointed DC membership; and thirdly, going to Beijing with the then Members of the pan-democratic camp to discuss the political reform with the Beijing officials. Chief Executive Donald TSANG accepted all three requests but the proposal was not passed because of insufficient votes. As a result, all the promises were withdrawn.

If, in 2005, we succeeded in fighting for moving a step forward, today, it would not be difficult for the pan-democratic camp to obtain 150 votes as all DC members would be members of the Election Committee. I cite these two examples to indicate that while it is necessary to fight for every step forward,

some people may choose not to yield a step. In the fight for democracy, there is no difference of right or wrong; it is just a difference of strategy.

Thank you, President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): It is now seven minutes to 10 pm. We cannot possibly finish all the items on the Agenda before midnight. If I invite the Secretary to speak now, I do not think he can finish before 10 pm. I now suspend the meeting until 9 am tomorrow.

Suspended accordingly at six minutes to Ten o'clock.

Inland Revenue (Amendment) (No. 2) Bill 2011

Committee StageAmendments to be moved by the Secretary for Financial Services
and the Treasury

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 5 | By adding before subclause (1)—
“(1A) Section 16E(1), before “expenditure”—
Add
“capital”.”. |
| 5(3) | In the proposed section 16E(2), by adding “capital” before “expenditure”. |
| 5(6) | In the proposed section 16E(3A), by adding “capital” before “expenditure”. |
| 5 | By adding—
“(9A) Section 16E(5), Chinese text—
Repeal
“股份”
Substitute
“部分”.”. |
| 5(10) | In the proposed section 16E(8)(a), by adding “capital” before |

“expenditure”.

6 In the proposed section 16EC(6), by adding “capital” before “expenditure or”.

6 In the proposed section 16EC(8), in the definition of *associated person* in paragraph (a)(v), by adding—

“(AA) a relative of the first-mentioned person;”.

6 In the proposed section 16EC(8), in the Chinese text, in the definition of *控制*, by deleting “該法團” (wherever appearing) and substituting “首述法團”.

8 In the proposed section 89(7)—

(a) by deleting “(7)” and substituting “(8)”;

(b) by deleting “Schedule 22” and substituting “Schedule 24”.

9 In the heading, by deleting “Schedule 22” and substituting “Schedule 24”.

9 In the proposed Schedule 22—

(a) by deleting—

“Schedule 22 [s. 89(7)]”

and substituting—

“Schedule 24 [s. 89(8)]”;

(b) in section 1—

- (i) by deleting “(2B) and (4)” and substituting “(2B), (4) and (5)”;
- (ii) by deleting “5(1), (3), (4), (7) and (8)” and substituting “5(1A), (1), (3), (4), (7), (8) and (9A)”.

Annex II

Pyramid Schemes Prohibition Bill

Committee StageAmendments to be moved by the Secretary for
Commerce and Economic Development

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	In the English text, by adding “by notice published in the Gazette” after “Development”.
4(1)	By deleting paragraph (b) and substituting – “(b) the relative emphasis given in the promotion of the scheme to the new participant’s entitlement – (i) to the supply of goods or services; and (ii) to a recruitment payment.”.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Security to Dr PAN Pey-chyou's supplementary question during an urgent oral question session**

As regards fire incidents which took place at the same location and within a time frame reasonably close, according to the Fire Services Department (FSD)'s record from 2009 to 2011, there were 18, 15 and 17 locations in those three years respectively which involved two or more fire incidents taking place at the same location within a one-year time frame. The locations involved include schools, public toilets, refuse collection points and hawker pitches, and so on.

The causes of some fire cases at the same location were the same, for example, repeated fires at different times were caused by the failure of the installation inside the same switch room. On the other hand, the causes of some others were different, for example, the fire incidents which took place in the same public toilet at different times might be due to arson or mishandling of ignited items. No generalized conclusion could be drawn on the causes. When the FSD suspects the cause of a fire case, it will refer it to the police for follow up and investigation. For repeated fires with similar causes, the FSD will educate the persons, owners or occupiers concerned on how to avoid reoccurrence in future.