

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 21 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

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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

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

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 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

MEMBERS ABSENT:

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

THE HONOURABLE ABRAHAM SHEK LAI-HIM, S.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 YUK-MAN

PUBLIC OFFICERS ATTENDING:

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

THE SECRETARY FOR JUSTICE

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

SECRETARY FOR FOOD AND HEALTH

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 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

MISS ODELIA LEUNG HING-YEE, 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>
Country Parks and Special Areas (Amendment) Regulation 2011	176/2011

Other Papers

- No. 47 — Queen Elizabeth Foundation for the Mentally Handicapped Report and Accounts 2010-2011
- No. 48 — Director of Social Welfare Incorporated
Financial statements for the year ended 31 March 2011 together with the Report of the Director of Audit
- No. 49 — Social Work Training Fund
Fiftieth Annual Report by the Trustee for the year ending on 31 March 2011
- No. 50 — The Sir Murray MacLehose Trust Fund
Signed and audited financial statements together with the Report of the Director of Audit and Trustee's Report for the period of 1 April 2010 to 31 March 2011
- No. 51 — Police Welfare Fund Annual Report 2010/2011
- No. 52 — Annual Report on the Police Children's Education Trust and the Police Education and Welfare Trust 2010/2011
- No. 53 — 2010-11 Annual Report of the Office of the Privacy Commissioner for Personal Data, Hong Kong

- No. 54 — Grantham Scholarships Fund
Signed and audited financial statements of the Fund, together with the Auditor's Report and the Report of the Grantham Scholarships Fund Committee on the Administration of the Fund for the year ended 31 August 2011
- No. 55 — Brewin Trust Fund
Audited financial statements of the Fund, together with the Auditor's Report and the Report of the Brewin Trust Fund Committee on the Administration of the Fund for the year ended 30 June 2011
- No. 56 — Chinese Temples Fund
Signed and audited financial statements of the Fund, together with the Auditor's Report and the Report of the Chinese Temples Committee on the administration of the Fund for the year ended 31 March 2011
- No. 57 — General Chinese Charities Fund
Signed and audited financial statements of the Fund, together with the Auditor's Report and the Report of the Chinese Temples Committee on the administration of the Fund for the year ended 31 March 2011

Report No. 7/11-12 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Enduring Powers of Attorney (Amendment) Bill 2011

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

PRESIDENT (in Cantonese): Questions. Apart from six oral questions for this meeting, I have permitted Ms Starry LEE, Mr Fred LI, Mr Ronny TONG and Ms Miriam LAU to respectively ask an additional urgent question under Rule 24(4) of the Rules of Procedure.

As the four urgent questions are all related to the increase of tariffs by the two power companies, to facilitate Members' follow up, I will first call upon the four Members to ask their urgent questions and the public officers to reply to the four questions respectively. I will then invite Ms Starry LEE, Mr Fred LI, Mr Ronny TONG, Ms Miriam LAU and other Members to ask supplementary questions to the four questions. I will appropriately adjust the time for Members to ask supplementary questions.

Urgent question one.

Urgent Review of Proposed Rates of Tariff Increase Which Will Take Effect on 1 January 2012

1. **MS STARRY LEE** (in Cantonese): *President, CLP Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC) announced that their respective tariffs would increase drastically by 9.2% and 6.3% on 1 January 2012, and even though subsequently HEC has announced that it will improve the existing progressive block tariff rate mechanism to reduce the impact of the tariff adjustments on the grassroots as well as small and medium enterprises, the overall rates of the tariff increase of the two power companies are still much higher than the inflation rate. The Secretary for the Environment mentioned at the meeting of the Panel on Economic Development on 13th of this month that the two power companies had not yet provided sufficient information to justify their tariff increases. In this connection, will the Government inform this Council:*

- (a) *whether the two power companies have provided all the relevant information to the Government in the past week; if they have, of the Government's assessment at present; if not, whether the Government has the power under the existing mechanism to request the two power companies to provide such information;*
- (b) *given that the tariff increases will automatically come into effect on 1 January next year according to the existing Scheme of Control Agreements (SCAs) signed with the two power companies, whether the Government will request the two power companies to temporarily suspend the implementation of the new tariffs on 1 January next year until the two power companies reach consensus*

with the Government on the rates of the tariff increase for the coming year; and

- (c) *whether there is any provision under the existing SCAs which restricts the Government from providing to this Council all the information and data furnished by the two power companies to the Government on their tariff increases; if so, whether the Government will put the aforesaid request to the two power companies; if not, whether the Government will undertake to provide the aforesaid information to this Council as soon as possible?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, thank you Ms Starry LEE for her urgent question.

Electricity is an important infrastructure to support the development of a society and necessary services for the public's daily life. Our electricity policy is to strike a balance among the four objectives in electricity supply, which are reliability, environmentally-friendliness, safety and reasonable price. All along, we have been adopting the SCAs signed with the power companies as the regulatory framework while allowing the power companies to make long term investment for the electricity supply to Hong Kong and improvement in services.

The first SCA signed between the Government and CLP started in 1964; while that with HEC started in 1979. Upon the renewal in 2008, significant revisions on the basis of the past SCAs were made. Not only the permitted return was lowered significantly by 50%, the tariff was also reduced through tightening the balance of Tariff Stabilization Fund (TSF). The cap on TSF balance was also lowered from 12.5% to 8% of annual local sales in response to the public's concern on the over-accumulation of funds.

Due to the restriction in disclosing commercial sensitive information classified by the power companies, we cannot give a detailed account of our effort in negotiating the annual tariff increase in these few years, or the individual items that have been taken out. However, we may take this opportunity to explain to Members, in summary, the gate-keeping measures taken by the Government. The measures may be concluded mainly as being implemented at

two levels and with five focuses. I hope this will facilitate Members in asking questions and conducting discussion later.

The first level is the scrutiny of the five-year Development Plans of the power companies. With the assistance from energy consultants, the Government has been meticulous in examining the capital investment proposals submitted by the power companies with a view to avoiding investments that are excessive, premature, unnecessary or unreasonable. In 2008 and 2009, in examining the capital investments proposed by the power companies, we reviewed critically the need, timing and cost-effectiveness of the capital projects. This resulted in the eventual agreement by the two power companies to reduce their originally proposed capital expenditure by 30%.

The second level is to ensure that electricity tariffs are maintained at a reasonable level through the examination of the data on capital investment and operating costs submitted by the power companies annually. During the process, the Government accountants and the independent energy consultants would critically examine the major data in every aspect and the justifications submitted by the power companies, and strive to exclude the components which are considered inappropriate in the tariff increase proposal submitted by the power companies annually from the forecasts. There are five focuses that we have worked on:

- (i) First of all is the scrutiny of the capital expenditure of the power companies. To avoid the power companies from increasing their profits by making excessive, premature or unnecessary investments, our gate-keeping role is to scrutinize the capital investments submitted by the power companies annually. Quoting an example, a few years ago, we have taken out the Liquefied Natural Gas Terminal project costing \$10.4 billion from CLP's Development Plan. The difference in opinion between CLP and us in the preparatory and initial stage of work for increasing generation capacity during this year's examination is also one of the examples.
- (ii) Secondly, it is the scrutiny of the operating cost. Operating cost forms part of the Basic Tariff. It is different from capital investment in that it will be fully reflected in the tariff in the year when it is incurred. During the course of gate-keeping, we would

ensure that the power companies have worked hard in cost control, with a view to preventing the power companies from passing the unnecessarily high operating costs onto the consumers.

- (iii) The third focus is to review the Fuel Clause Recovery Account (FCA) of the power companies. Among the components of electricity tariff, fuel costs are passed through on the basis of actual spending. In the years when the tariff increase pressure is relatively significant, the power companies could lower the tariff increase by increasing the forecast balance or deficit balance in the FCA, with a view to moderating the tariff impact on the livelihood and businesses.
- (iv) The fourth is the TSF. The purpose of the TSF is to accumulate the excess of net revenue of the power companies over the permitted return, so as to provide funding, when necessary, to ameliorate the impact of tariff increases on the consumers. We scrutinize the power companies' year end TSF balances projection annually, the purpose of which is to prevent the power companies from accumulating excessive TSF balance and reserving it for compensating the shortfall when they are unable to earn the highest permitted return in future.
- (v) Lastly, it is the other revenue of the power companies. We would pay attention to whether the power companies will have additional revenue item in the following year, to ensure that the related sum will be recorded in the books without delay, and will benefit the consumers and public as soon as possible. The refund of rent and rates is one of the examples.

President, we have been carrying out all gate-keeping measure mentioned above in the same manner in every of the past few years. Through discussion and negotiation in accordance with the SCAs, the Government and the two power companies could basically come into consensus on the magnitude of tariff increase every year. However, there are differences between the Government and CLP in the tariff review this year.

My direct replies to the question raised by Ms Starry LEE are as follows:

(a) and (b)

Regarding the Government's reservation and queries on the tariff increase proposed by the two power companies, HEC had responded positively by reducing its tariff increase to 6.3% and subsequently adopting measures to contain the tariff increase for most domestic consumers to below 5%.

In fact, CLP has only responded our opinions this morning. President, please allow me to deviate from the original script of my main reply, for I had not received the reply from CLP when I submitted the script to the Legislative Council this morning. As such, I have to make some adjustment to the reply. By yesterday, CLP had not responded to the queries raised by the public on its premature capital investment and excessive increase in operating costs, and it had not reduced the tariff increase through further adjusting the balances in the TSF and FCA. The Government thus expressed regret about the actions taken by CLP and urged CLP to lower the tariff increase before 1 January 2012 in response to the request made by the Government and the Executive Council. As I mentioned earlier, it is not until this morning that the response from CLP is received, where the net tariff increase will be lowered from the original 9.2% to 7.4%. The Government is now examining the specific details.

(c) In accordance with Schedule 3 to the SCA signed between the Government and the two power companies, the power companies will make available to the Government for the purpose of the Tariff Review the relevant information and data, but they consider that such information will be restricted for the purpose of negotiation with the Government. The Government has strived to make available to the public as necessary the information within the scope allowed for under the SCA. President, to cope with the special meeting of the Panel on Economic Development of the Legislative Council to be held this Friday, we have made a written request to the power companies for providing the information to the Panel.

PRESIDENT (in Cantonese): Urgent question two.

Calculation of Rates of Increase in Basic Tariff

2. **MR FRED LI** (in Cantonese): *President, CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC) announced on 13 December this year the rates of tariff increase for the coming year, and the magnitude of tariff increases of the two power companies is very drastic. The respective rates of tariff increase of CLP and HEC are 9.2% and 6.3%, and even though subsequently HEC has announced that it will improve the existing progressive block tariff rate mechanism to reduce the impact of the tariff adjustments on the grassroots as well as small and medium enterprises, it is still believed that such increases will further stimulate inflation as well as aggravate the public's financial burden and increase the operating costs of businesses, causing the serious problem of inflation to worsen. According to the Government, there were divergent views between the Government and CLP during their discussion on CLP's tariff increase proposal (the proposal), including a higher-than-inflation rate of increase of CLP's forecast operating expenditure, and the premature inclusion of capital expenditure in the proposal. Yet, both the Government and CLP have not explained in detail. The recent announcements made by the two power companies to substantially increase the tariffs for the coming year have aroused widespread grievances among members of the public, and the Chief Executive has also made a rare move of publicly criticizing such drastic increases. According to the Government, one of the two power companies has at the last stage agreed to lower the rate of increase, while the other one has not given any positive response so far, which is unprecedented. As this is an issue of urgent importance because the new tariffs will come into effect on 1 January 2012 and time is running short, will the Government inform this Council:*

- (a) *whether it will immediately make public the respective five-year Development Plans of the two power companies, and whether there is still room for downward adjustment for the proposed rates of tariff increase;*
- (b) *of the justifications for CLP to propose a 6.25% increase in its basic tariff, and whether the authorities agree to such justifications; and*

- (c) *given that the Government has pointed out that CLP had, in calculating its basic tariff, adopted a higher-than-inflation rate of increase of its forecast operating expenditure, and its inclusion of capital expenditure in the calculation was premature, whether the Government can further elaborate this?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the Government's review of the tariff increase proposals submitted by the two power companies each year is always a stringent process. As just mentioned in my main reply to Ms Starry LEE, after receiving the tariff increase proposals from the two power companies, the Government's professional finance team together with the energy consultant hired will carry out the gate-keeping duties from two levels and five focuses under the framework of the Scheme of Control Agreements (SCAs). Under our scrutiny, the increase in Basic Tariff of the two power companies in each of the past few years since the implementation of the SCAs in 2009 did not reach the upper limit in Basic Tariff allowed for under the Development Plans.

President, we agree with Mr Fred LI that, as stated in his main question, the circumstance this year is "unprecedented". Indeed, in the past few years when the Government negotiated the tariff proposal with the two power companies, both sides, while fighting for the best deal, showed due respect to the SCAs being regulatory framework while allowing the companies to make long term investment for electricity supply and service improvement. The two power companies, while protecting the benefit of their companies, would also accept the reasonable queries raised by the Government relating to the capital investment and other expenditure, and tick out related items accordingly; regarding the balance of Tariff Stabilization Fund (TSF) and the Fuel Clause Recovery Account (FCA), both parties could also reach consensus after discussion.

However, the special case in current year is that, one of the two power companies, in facing the queries during the Government review, as well as subsequent queries from the Executive Council, the Legislative Council as well as the community, still insists on the increase which is considered as excessive after review.

Our reply to Mr Fred LI's question is as follows:

- (a) In respect of the capital investment of power companies, as indicated in the paper submitted to the Legislative Council early 2008, the cap for the capital investments of CLP and HEC previously approved under their current Development Plans were \$39.9 billion and \$12.3 billion respectively, which include the following major items:
- (i) expansion and enhancement of power transmission and distribution network to serve new development areas such as the West Kowloon and new rail lines development, as well as strengthening the quality and reliability of power supply;
 - (ii) provision of emissions control equipments such as flue gas desulphurization plants;
 - (iii) repair and refurbishment of power generating units; and
 - (iv) enhancement of customer service.

Upon scrutiny, we consider that there is still room for CLP to reduce its tariff increase, and has requested CLP to respond. President, as I mentioned earlier, CLP made an adjustment this morning.

(b) and (c)

The Government considers that amongst the increase in CLP's Basic Tariff next year, the increase in CLP's operating expenditure of 11.2%, as disclosed by the company, is far beyond the rate of inflation and should be reduced. CLP explained that the return of the rebates on insurance to its consumers in 2011 has caused an unusual reduction in 2011 operating expenditure and hence an expanded growth of its 2012 operating expenditure. However, the Government has noted that CLP's operating expenditure in 2011 was in fact not particularly small as claimed. To the contrary, it is higher than all in all previous years. The operating expenditure we referred to has already excluded those less flexible items such as depreciation and cost for purchase of nuclear electricity, and

primarily consists of staff remuneration, administration expenses, and so on. The Government therefore questioned whether CLP should further reduce its operating expenditure by improving its cost control measures, hence lowering the tariff increase in next year.

Regarding CLP's capital investment, those "premature investment items" which we have doubt are mainly the "preparatory" and "initial stage of works" to increase generation capacity. It is estimated that these items require capital expenditure in hundreds of millions in 2012, and are not purely feasibility study as claimed by CLP. These projects have yet to be fully vetted or included in the current Development Plan. Since the maximum demand for CLP's power generation in 2011 was lower than that in 2010, the Government finds no justification to support CLP in increasing its generation capacity. We have thus requested CLP to remove the relevant expenditure from its forecast capital expenditure in 2012.

CLP made another point that its increase in Basic Tariff was mainly attributable to the capital expenditure for emissions control projects. The Government has requested and agreed to the emission reductions of the two power companies, however, we should point out that CLP has already completed the emission control projects for its coal-fire plants by phases in 2010 and 2011. Hence, those emission control projects should have almost no bearing on the increase in Basic Tariff for 2012. Although this sum of premature investment being questioned by the Government has little impact on the increase in 2012 Basic Tariff, the relevant works involves additional generation capacity the continuous investment in which would entail huge sum of capital investments, eventually directing to a larger increase in Basic Tariff in future. To the contrary, if the initial stage of works is approved but the relevant additional generation capacity is not accepted eventually, the current preparatory and initial stage of works would be wasted, and the community has to foot the bill. We therefore request CLP to remove the relevant expenditure from its forecast capital expenditure in 2012, before a need for additional generation capacity is established.

Moreover, we consider that CLP may narrow the growth in tariff by increasing the negative balance of its FCA or reduce the balance of its TSF so as to strike a balance. Taking the FCA as example, CLP is prepared to accept a negative balance of \$800 million next year, which is far below that adopted by HEC which operates in a much smaller scale. However, I understand that in further reducing the tariff increase, CLP will raise its deficit balance to \$1.4 billion.

Regarding TSF, CLP projects, in the press conference, a balance of \$300 million by end 2012 and claims that this amount would be the lowest in the past 25 years. In response to this, President, we would need to provide the following figures:

- (i) First, CLP forecast an end 2009 TSF balance of \$150 million when the 2009 tariff was determined. Hence, the current estimate of \$300 million by end 2012 is not the lowest forecast figure in the last 25 years;
- (ii) CLP underestimated its TSF balances in eight out of the past 10 years; hence, the Government is more conscious on CLP's TSF projections;
- (iii) comparing the two power companies, CLP has always been maintaining the balance of the TSF at a high level. During 2001-2008 (that is, the previous SCA period), the average balance of CLP's TSF was close to \$3 billion. The new SCA introduced new control measures to reduce the cap of the Fund from 12.5% of the power companies' local sales revenue to 8%. CLP's TSF balance has been reduced gradually from \$1.65 billion since 2009, but is still higher than that of HEC. For comparison, the balance of HEC's TSF was zero in four years out of the past 10 years, while the highest was only around \$300 million to \$500 million in remaining years; and
- (iv) another factor which may affect the Fund balance is the sale of electricity to Guangdong. CLP assumes in its tariff proposal that unlike previous years, it would not sell electricity to the Guangdong Power Grid Corporation (the Corporation) in

2012. Since CLP should return to its consumers 80% of the net profits in the relevant electricity sale, it is very likely that the balance of CLP's TSF would increase if CLP is going to sell electricity to the Corporation next year.

President, the TSF is established primarily for mitigating the impact of tariff surge on the general public. Hong Kong is currently suffering from an uncertain global economic outlook and a local inflation pressure, and this is the time for the TSF to play its role. Having regard to the abovementioned, the Government considers that there is clear room for CLP to narrow its tariff increase.

PRESIDENT (in Cantonese): Urgent question three.

Proposed Rates of Tariff Increase for 2012

3. **MR RONNY TONG** (in Cantonese): *President, according to a statement issued by the Energy Advisory Committee, the Tariff Stabilization Fund of CLP Power Hong Kong Limited (CLP) has a huge surplus, and following an earlier judgment made by the Court of Final Appeal, the two power companies may receive a refund amounting to hundreds of millions of dollars from the Government for the excess rates and Government rent charged in the past few years. Nevertheless, at the meeting of the Panel on Economic Development held on 13 December this year, CLP and The Hongkong Electric Company Limited (HEC) still claimed that as substantial increases in fuel prices had pushed up their operating costs, they needed to increase their respective tariffs drastically, and the rates of the tariff increase of CLP and HEC are 9.2% and 6.3%. Even though HEC has subsequently announced that it will improve the existing progressive block tariff rate mechanism to reduce the impact of the tariff adjustments on the grassroots as well as small and medium enterprises, the overall rates of the tariff increase of the two power companies are still much higher than the inflation rate. In this connection, will the Government inform this Council:*

- (a) *how the two power companies work out their rates of tariff increase; given that HEC has indicated that it expects single-digit and*

double-digit increases in the prices of coal and natural gas respectively in the coming year, whether the Government knows the actual figures; if so, of the respective figures; if not, why it has not asked the two power companies to give a clear account of the figures; and whether it has looked into the actual extent of impact of the rising fuel prices on the overall rates of the tariff increase; if so, of the extent of such impact; if not, the reasons for that;

- (b) given that the two power companies have agreed to individually purchase fuels from the same market, whether the Government has looked into the reasons for the huge gap between the rates of the tariff increase calculated by the two power companies; if so, of the findings, and whether the gap is attributable to poor operation; if not, the reasons for that; and*
- (c) given that the two power companies may receive a refund of rates and Government rent from the Government and CLP's Tariff Stabilization Fund has a huge surplus, whether the Government has assessed if these factors have any implication on the rates of the tariff increase for the coming year calculated by the two power companies; if so, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, electricity tariff comprises two major components, namely "Basic Tariff" and "Fuel Clause Charge", that is, the cost of fuels. Pursuant to the Scheme of Control Agreements between the Government and the two power companies, fuel costs of the power companies are passed through on the basis of actual spending. Following our request in recent years for implementing various air improvement measures, including tightening the emission caps of the two power companies and requesting them to gradually replace coal by cleaner natural gas as fuel for electricity generation; coupled with the fact that some of the gas contracts signed by the power companies at rather low prices in the past are due for expiry and that the fuel prices under the new contracts will inevitably be higher than the old ones, there is double pressure on a higher fuel cost in the electricity tariff.

In the annual Tariff Review conducted by the Government with the power companies, our professional finance team, together with the independent energy

consultants appointed externally, will examine fuel cost information submitted by the two power companies from three aspects:

- (i) information regarding fuel contracts submitted by power companies, for example, whether the natural gas price in each contract is at a reasonable price in line with the international trend;
- (ii) the power companies' projected Fuel Clause Account (FCA) deficit balances by year end. The relevant forecast depends on a number of dynamic factors, such as fuel consumption caused by electricity consumption. Hence, the forecast FCA deficits in the tariff adjustment proposals will often differ from the actual year end figures. As the FCA allows accumulation of deficit balance, it will indeed provide room for power companies to relieve pressure on tariff increases in difficult years, without affecting their profits; and
- (iii) whether the company has explored all possible ways to keep the fuel prices and related expenses to a minimum level. A relevant example is that through our signing of the Memorandum of Understanding on Energy Co-operation with the Mainland in 2008, we are able to make use of the Mainland China's Second West-East Natural Gas and the related pipelines to replace CLP's original investment proposal of \$ 10.4 billion to build a Liquefied Natural Gas Terminal.

The use of clean energy will create pressure to increase electricity tariff. This is understandable by the government, the public and the community. However, this cannot be an excuse for us to relax our examination on the fuel expenses. Our principle is to allow for only those increases that are justifiable, and will not agree to any fuel expenses considered not reasonable in the three vetting focuses above. Our prime objective is to avoid the two companies from using clean energy as an excuse to increase their investment without good justifications, hence earning additional profits.

Regarding Mr Ronny TONG's question, my responses are as follows:

- (a) The Net Tariff comprises "Basic Tariff" and "Fuel Clause Charge". Through negotiation with power companies over electricity tariff

adjustment each year, the Government would critically examine factors such as operating costs, capital investment, fuel prices, measures to control costs and enhance productivity, updated balances of FCA and TSF, permitted return, and so on, with a view to eliminating unnecessary capital and operating expenditure on one hand; while striving to contain the tariff increase through adjusting the TSF and FCA balances on the other.

In reviewing the fuel prices of the two power companies, we will engage an independent energy consultant to assist in the review to ensure that the power companies' projections are in line with the trend movement of fuel prices in the international market and are set at a reasonable level. The consultant will also review the two power companies' natural gas price projections in recent years to ensure that the gas price calculations are consistent with the terms of the gas contracts. Besides, the Government will conduct regular review on the procurement policy of the two power companies, with a view to ensuring that they will apply vigorous and systematic measures to procure their fuels at reasonable prices. We together with the independent energy consultant would also scrutinize the terms of the contracts to see if they are reasonable before the power companies entered into long term gas contracts.

In recent years, to improve the air quality, the ratio of natural gas in the fuel mix of electricity generation in Hong Kong has been on the rise gradually. The increased use of natural gas in electricity generation will inevitably push up the generation cost. This is understood by the Government and the public. However, in the face of global economic uncertainty and mounting local inflation in the coming year, we have suggested that power companies should bear a larger FCA deficit balance so as to lower the tariff increase. HEC accepted our advice by further increasing the FCA deficit to well over \$1 billion, but CLP refused to adopt similar measure. Before the adjustment made by CLP today, its FCA deficit is around \$800 million. In view of CLP's scale of operation, we consider that there is room for CLP to further increase the deficit balance so as to reduce the tariff increase. As I have just said, CLP has lowered the tariff increase today, increasing the FCA deficit to \$1.4 billion.

- (b) There is difference in the fuel costs of the two power companies because the mode of operation and hence economies of scale between the two companies are not the same. There is also difference in their fuel mix. For example, CLP uses comparatively more natural gas in electricity generation, and around 30% of its electricity is nuclear electricity which does not involve any fuel cost; while HEC uses mostly coal. The gas contracts entered into by the two power companies in different years also give rise to different gas prices. In view of the above, the fuel costs and Fuel Clause Charge of the two power companies are not the same.
- (c) We are of the view that the Government rent and rates paid by the two power companies as operating costs under the SCA, are funded by the electricity consumers through payment of the Basic Tariff. The amount overpaid and subsequently refunded by the Rating and Valuation Department (RVD) should in substance be returned to consumers. We have requested power companies to return the related refund to consumers as soon as possible.

In respect of the appeal raised by HEC on the dispute with the RVD over the calculation of rent and rates payment in the assessment year of 2004-2005, the Court of Final Appeal made the ruling in principle in June 2011. With this ruling, HEC received refund of overpaid rent and rates for 2004-2005 from the RVD of around \$141 million, together with interest of \$30 million. Following the above ruling, the RVD has been discussing with HEC on the valuation and refund amount for assessment years thereafter, and a certain sum has already been returned to HEC. The litigation between CLP and the RVD over the rent and rates assessment of CLP's power supply system is still underway. With reference to the ruling in the case of HKE, it is expected that CLP will also receive the refund of rent and rates accordingly.

Regarding TSF, CLP forecasts a balance of \$300 million by end 2012. As I have pointed out in my reply to Mr Fred LI, we consider that there is still some room for CLP, through lowering its TSF balance and accepting a larger FCA deficit balance, to reduce

the tariff increase and lessen the burden of consumers. I have also noticed the adjustment made by CLP this morning.

PRESIDENT (in Cantonese): Fourth urgent question.

Impact of Substantial Increase in Tariffs on Business Operating Costs

4. **MS MIRIAM LAU** (in Cantonese): *President, the new rates of tariff increase announced earlier by CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC), which are as high as 9.2% and 6.3% respectively, are very drastic even though HEC has subsequently announced that it will improve the existing progressive block tariff rate mechanism to reduce the impact of the tariff adjustments on the grassroots as well as small and medium enterprises, and members of the public as well as the commercial sector alike have voiced strong opposition. In this connection, will the Government inform this Council:*

- (a) *given that CLP has introduced a new tariff scheme for business customers under which they will be charged at a flat rate, of the additional operating costs in tariff to be borne by large power tariff business customers; whether the authorities have estimated the extra tariff revenues so generated by CLP; as the scheme is tantamount to doubling the tariff increases to be imposed on these business customers, what measures the authorities will take to avoid imposing an additional burden on them; and*
- (b) *whether the Government has known well in advance that the two power companies will drastically increase the tariffs according to the provisions under the Scheme of Control Agreements (SCAs), and that the rates of tariff increase proposed at the end of next year will be even more drastic than this year's increase; if so, whether there is serious dereliction of duty on the part of the Government in respect of reaching such SCAs; if not, whether it will take remedial measures immediately?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the electricity tariff structures of the two power companies are all along based on the cost of electricity supply. The two power companies set different tariff levels and "discounts" for customers of different usage and different categories. Some of the "discounts" are offered for the purpose of promoting energy conservation, and some due to the lower cost of supplying electricity to consumers with higher level of consumption. As such, the tariff rates offered to these users are lower.

In view of the community's increasing demand for energy conservation, there are suggestions that the power companies should make changes to the electricity tariff structure to encourage energy conservation. In this regard, the Government has requested the power companies to explore how a revamp in their tariff structure can help promote energy conservation and reduce demand for electricity. We hope that the power companies will carefully consider the impacts on customers with different consumption levels when making the changes.

Our replies to the questions raised by Ms Miriam LAU are as follows:

- (a) In this year's Tariff Review, the two power companies have adjusted the electricity tariffs for customers with different electricity consumption levels. For example, the tariff increase for domestic customers with higher electricity consumption is relatively larger than those with lower consumption. The higher the consumption, the higher the unit charge rate would be. This arrangement will help promote energy conservation, and hence we consider it reasonable and should be acceptable to the public. For non-domestic customers, the power companies will apply different increase to different consumers. In general, the increase for customers with higher electricity consumption will be larger. Non-domestic customers involve different types of enterprises, operators and public organizations, such as offices in general, merchants, restaurants, hospitals, schools, sewage treatment plants, railways, and so on. The scale of operation and hence power companies' cost of supplying electricity to these customers are not the same. We need to carefully consider whether the approach of "higher charge for higher consumption" can achieve the target of promoting energy conservation. We are examining the data

provided by the power companies on their proposals to adjust the electricity tariff structures and are seeking further information from them.

- (b) The regulation of electricity market through the SCAs has been in operation all along since the 1960s. This mode of regulation has been extended for many times until the latest SCAs signed in 2008 which imposed the most significant changes ever. These changes mainly include:
- (i) lowering the permitted rate of return to reduce profits of the two power companies, hence saving the electricity bills borne by the community;
 - (ii) shortening the SCA duration to facilitate the introduction of competition when the requisite market conditions are present;
 - (iii) lowering the cap of the Tariff Stabilization Fund balance from 12.5% to 8% of annual local sales to keep down the profits that can be reserved by the power companies; and
 - (iv) linking the permitted rate of return of the power companies to their environmental performance.

Before signing the SCAs, we had several discussions with Members in the Legislative Council to explore whether our electricity market should be regulated by SCAs continually or by means of legislation if no agreement could be reached between the Government and the two power companies. At that time, many Members raised their reservation on regulation by legislation, worrying that this would violate the free market principle in Hong Kong. The Government subsequently reached consensus on the revised SCAs with the power companies, and also briefed the Legislative Council accordingly. The regulatory arrangement under SCA has been adopted since then.

The regulatory arrangement under SCAs does provide some flexibility for the power companies to proceed with the necessary development and services improvement within the scope of

Development Plans approved by the Government. Under this framework, the Government has diligently delivered its regulatory duties, including the two levels and five main points that I have just mentioned, and critically examined tariff adjustment proposals of the two power companies each year. This year's difference in opinions from that of CLP's was also initiated from this work. As regards the future regulatory regime of the electricity market, we will continue to listen to the views of Members and general public.

PRESIDENT (in Cantonese): I now call upon Members to ask supplementary questions. To give the largest number of Members the opportunity to ask questions, I remind Members again not to have lengthy discussions when asking supplementary questions.

MS STARRY LEE (in Cantonese): *President, "as the two power companies increase the tariff again and again, the public suffer again and again." This morning, CLP announced that the increase rate would be adjusted to 7.4%, which is still higher than the inflation rate. The Democratic Alliance for the Betterment and Progress of Hong Kong considers the 7.4% increase unacceptable. Moreover, CLP refuses to lower the Basic Tariff and change its style of maximizing profits by all means, and it also fails to fulfil the corporate responsibility.*

President, the calculation of Basic Tariff includes a 9.99% permitted return and the relevant operating expenditure. When the Secretary spoke earlier, he mentioned that CLP had not responded to the queries raised by the Bureau on its premature capital investment and excessive increase in operating expenditure. May I ask the Bureau of the percentage the Basic Tariff can be lowered in actuality if premature capital investment and excessively high operating expenditure are excluded, and whether the Secretary will ask the relevant power company again to lower its Basic Tariff?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, in my main reply, I have tried to adopt a relatively comprehensive approach to facilitate Members' understanding of the entire electricity tariff structure. Regarding the

Basic Tariff mentioned by Ms Starry LEE, the Government has expressed its views on two aspects. First, regarding the increase in operating expenditure of up to 11.2% in the coming year as claimed by CLP, we have pointed out that there is certain room for adjustment. Moreover, we consider that though the impact of certain expenditure is insignificant, it has a significant bearing on the future development of the generating units. Our views in these two aspects have been put forth to CLP. At the discussion with CLP held this morning, we had drawn its attention to the impact of this expenditure on the Basic Tariff.

In respect of the supplementary question of Ms Starry LEE, the two aspects mentioned earlier, in particular the latter one, will have relatively small impact on the tariff of next year. In my reply to the main question of Mr Fred LI earlier, I mentioned that we are concerned about the impact in the long run, say whether the continual payment of such expenditure will affect other expenditures in the next few years. Hence, it is not only a matter of the percentage involved, but also the monitoring of the company's expenditure in the next few years on our part.

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

MS STARRY LEE (in Cantonese): *The two power companies will increase the tariff on 1 January. My question to the Secretary is clear: what is the percentage for the further lowering of the Basic Tariff this year, as estimated by the consultant of the authorities, if premature investment and excessive operating expenditure are excluded, and will the Secretary strive to ask the power company concerned to lower the tariff?*

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

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, regarding the second part of the supplementary question, we have already taken action and I have already replied. As for the first part, the Government can

hardly provide specific figures, for we have raised a query and the power company must give an explanation or make an adjustment.

MR FRED LI (in Cantonese): *President, CLP indicates today that the tariff increase for next year will be lowered to 7.4%, but the increase in Basic Tariff will still be maintained at 6.25% with no downward adjustment. CLP only includes the outstanding receivable fuel charges into the negative balance so as to lower the increase rate, yet the relevant charges will have to be recovered sooner or later.*

President, the rate of return of the two power companies is still as high as 9.99%. Apparently, they are "maximizing profits". In the Government's reply to my main question, it is clearly mentioned that there are disagreements between the Government and the two power companies. However, yesterday, when Ms Emily LAU and I met with Mr Richard LANCASTER from CLP, he told us a completely different version. Moreover, he mentioned a very important point, that is, the entire mechanism of allowing CLP to increase its tariff next year had been approved by the Executive Council and the Chief Executive, and the authorities was now resorting to verbal manoeuvres to press for further compromise. In other words, if CLP refuses to give in and acts in accordance with the approved mechanism, the Government can do nothing to stop it, and the 9.2% tariff increase will be effective from 1 January.

My supplementary question is: What has happened? As the Secretary has said that it is not a guaranteed return, why does the Government not lower the 9.99% rate of return to stop the power companies from maximizing their profits to the rate of 9.99%, so that the Basic Tariff can be lowered slightly? Why did the authorities approve the entire mechanism first and then resort to verbal manoeuvres afterwards? I want a true answer, so that I know what the problem is.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): *President, I have already explained clearly in my replies to the main questions of the four Members. As I have said, basically, we carry out gate-keeping work at two levels, one of which is the scrutiny of the five-year Development Plans of the two power companies, and the other is the scrutiny of the tariff adjustment proposals*

submitted annually by power companies. I would say that efforts made in these two aspects are of similar importance.

For the Development Plan, it provides the outline of the company's plan, and we allow some flexibility within a certain scope. Since these investment items are of relatively longer term, the five-year requirement and the limit of 5% are imposed. Yet, concurrently, we will scrutinize the adjustment proposal submitted annually by power companies, and this is the reason for the discussion and negotiation to be held every year. I believe Mr Fred LI and other Members will agree that the Government must carry out the work in this respect. Though some people consider the annual scrutiny unnecessary after the outline of the five-year Development Plan has been agreed, this is not the established practice of the Government. The Government has been adopting this practice all along, and there is no exception this year.

However, it is natural that the situation varies from year to year, where some of our opinions may be rejected by the power companies. I have quoted some examples earlier stating that certain adjustments can be made both in the five-year Development Plans and the annual proposals, and some of which may involve issues that have caused queries from both sides and explanation are needed. In the case of this year, the main disagreement lies in the operating expenditure and capital investment of one of the power companies, and we have thus raised queries about those issues.

Mr Fred LI is concerned about how to ensure that the profit of power companies will not exceed the permitted rate of return. First, under the existing scheme as a whole, the return of power companies should not exceed the permitted rate of return, which has been already been lowered under the new SCAs. Second, as I pointed out in my reply to Mr LI's main question, in the annual scrutiny of the capital investment items submitted by power companies, we will list out those investment items we consider premature or excessive. If this is not done, the inclusion of the investment amount may give rise to higher tariff increase. We will also oversee the balance of the Tariff Stabilization Fund to prevent profit retention due to an excessive balance, so that in years when the return is lower than the permitted rate, the shortfall can be topped up. These are the necessary process of scrutiny we conduct every year and every time.

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

MR FRED LI (in Cantonese): *Not only has my question not been answered, it has even been distorted. My supplementary question is explicit. Since 9.99% is not the guaranteed rate of return but the maximum level of the permitted rate of return, if the increase this time aims at maximizing profits and the tariff level is unreasonable, why the Executive Council and the Chief Executive do not impose a reduction? This is the focus of my supplementary question. I am not saying that the rate of return has exceeded 9.99%, I just query why reduction cannot be imposed within the range of the 9.99% rate of return.*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the various measures I mentioned earlier aim at ensuring that the two power companies are spending prudently. Unlike what Mr LI has said, none of these measures mean to ensure that power companies can earn the 9.99% rate of return. In my replies to Members, I have pointed out that the same approach of regulation is adopted for the two power companies; and in the past, their profit had not reached the permitted rate of return in each of the past 10 years.

MR RONNY TONG (in Cantonese): *President, the Secretary has not answered part (a) of my main question at all. In part (a) of the main question, I asked the Secretary whether the Government knew the expected figures and the actual figures of rising fuel prices and whether the Government would explain to the Legislative Council if it knew the figures. However, the Secretary has not answered at all, and he has not provided a single figure. On the other hand, he told us that there was a great discrepancy between the calculation of the authorities and that of CLP, particularly in terms of the calculation on expected rising fuel prices and operating expenditure. President, now, I would like to ask the Secretary one question. If he considers the computation method adopted by the authorities correct, whereas the significant discrepancy between the authorities and CLP on the computation method cannot be solved in the next few days, will he take legal actions; if not, what are the reasons?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, as I have explained in my earlier reply to the main question of Mr Ronny TONG, the fuel charges of the two power companies basically consists of various components, so the fuel charges of the two power companies are indeed determined by the existing contracts and whether the contracts will be renewed. Regarding the situation next year, we notice that for one power company, a new contract will be commenced in the short term and the increase in fuel charges will be higher than before. The Government appreciates and understands this, where explanation has been given in different replies.

As for ways to solve the discrepancies, we have pointed out these discrepancies to the two power companies and provided opportunities for them to explain and reply. I believe this process has not yet completed. Among the discrepancies mentioned earlier, some involve discrepancies in figures and some involve significant principles which the authorities must obviously uphold in gate-keeping. We will continue to work on this.

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

MR RONNY TONG (in Cantonese): *President, the Secretary has not answered my supplementary question at all. My supplementary question is straightforward and concise. If the Secretary cannot narrow the discrepancies between the Government and CLP in terms of the computation method, will he take legal actions? If not, what are the reasons? Will the Secretary focus on my supplementary question in reply?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, in my view, it is not a legal issue but an issue of regulation under the SCAs. In respect of regulation, we have discussion with the two power companies every year. Queries of this kind will be raised, so that relevant work can be carried out within the Development Plan through negotiation and discussion between both sides, and reasonable requests be raised and addressed by both sides. I think these problems should not be addressed merely by legal means, but rather through the channel provided under the SCAs, where a consensus is arrived at with mutual respect.

MR RONNY TONG (in Cantonese): *Will the Secretary explain*

PRESIDENT (in Cantonese): Mr TONG, the Secretary has already answered your supplementary question. You asked the Secretary whether he would take legal action and the Secretary has answered.

MR RONNY TONG (in Cantonese): *But, President, he has not explained why legal action cannot be taken if regulation is applied via the SCAs?*

PRESIDENT (in Cantonese): I think the Secretary has already answered.

MS MIRIAM LAU (in Cantonese): *President, under the current tariff adjustment structure adopted by the two power companies, basically, the higher the consumption, the higher the unit charge rate would be. According to the Secretary's reply to part (a) of my main question, the Government considered this a reasonable arrangement for it helped promote energy conservation. However, the Secretary mentioned concurrently in the reply that non-domestic customers including Chinese restaurants, restaurants, merchants, hospitals, schools, railways, and so on, were merchants or organizations with high electricity consumption. Yet their high electricity consumption is inevitable. Should they be required to carry out business in the dark? Or should they be requested to provide service without any electricity consumption? It is absolutely impossible.*

In the main reply, the Secretary said that the Government had to carefully consider whether the target of energy conservation could be achieved merely by adopting the approach of "higher charge for higher consumption", and had required the power companies to provide further information. However, tariffs will formally increase on 1 January. May I ask the Secretary of the possible measures to prevent the two power companies from "exploiting" the aforementioned merchants or organizations on this pretext? I will describe this as "double levy", for a further increase in tariff is imposed on top of the flat rate. If there is no way to prevent the two power companies from "exploiting" these merchants or organizations, will the Government consider providing tariff allowance to them?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I thank Ms Miriam LAU for her supplementary question. As I have explained earlier, for the same category of customers, say domestic customers, customers with high consumption are required to pay higher tariff basically, and I believe Ms LAU would agree that this is a matter relating to energy conservation and consumption.

However, as I pointed out in the main reply, the situation of non-domestic customers is far more complicated, and I think Ms Miriam LAU would also agree. As far as we know, the two power companies, CLP in particular, are not charging non-domestic customers solely on their consumption level at present. For instance, some customers use electricity during non-peak hours, that is, the time when the demand for electricity is low, and this may promote energy conservation on the whole. Moreover, power companies will also consider the differences in cost for supplying electricity.

Hence, in this connection, we think the power companies should give regard to the situation of different customers rather than merely charging tariff on the consumption level on the grounds of promoting energy conservation. In this respect, when adjustments are put forth annually, power companies will submit the tariff level schemes to the authorities after the final adjusted tariff is confirmed. Since adjustment is still being made this morning, we have to conduct further studies to examine the various levels of tariff adjustment for different customers.

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

MS MIRIAM LAU (in Cantonese): *The Government is now obtaining information from the two power companies for further discussion. However, the Secretary has not answered whether the Government will provide tariff allowance if the authorities fail to prevent the two power companies from "exploiting" these merchants and organizations with that unreasonable approach?*

PRESIDENT (in Cantonese): Secretary, will the Government provide tariff allowance?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the provision of tariff allowance is beyond my purview.

MR WONG KWOK-KIN (in Cantonese): *President, we all know that electricity is an irreplaceable commodity. At present, there is indeed district-wide monopoly in Hong Kong in electricity supply. The Government lacks bargaining power to negotiate with power companies, as a result many disputes have arisen every time after the SCAs are reached. May I ask the Government whether it will consider the segregation of the generation sector from the network sector, so as to enable the purchase of electricity outside Hong Kong and to introduce competition when necessary, thereby enhancing the bargaining power of the Government over the power companies?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, Members would have known from my main reply earlier that the Government has to carry out extremely difficult regulation work every year. The difficulties involved do not necessarily refer to the possession of bargaining power or not, for the SCAs have provided room for the discussion of certain issues between both sides. It is natural that power companies will strive for their interest with their justifications, while the Government will raise issues of concerns, and if inappropriate issues are found, we are obliged to address them. We will do our level best within this scope.

The new SCAs came into effect in 2008 and 2009. In reality, we notice that the degree of tariff increase is at least lower than that in the previous regulatory year. In terms of Basic Tariff, the existing tariff level is indeed lower than that charged under the previous SCAs. If fuel charges are included, only the net tariff of one of the power companies is higher than the one adopted in the previous regulatory year. However, I agree with Mr WONG Kwok-kin that this discussion or negotiation has to be carried out every year after all. I will address the issue according to the approaches I told Members earlier.

Regarding the segregation of the generation sector from the network sector or the introduction of competition, we had mentioned these issues when we dealt with the renewal of the SCAs in 2008. This is a serious issue. Will the segregation of the generation sector from the network sector result in the direct

reduction in tariff? We often say that our electricity policy on a whole include four pillars, namely, safety, reliability, environmentally-friendliness and reasonable price. We must strike a balance among these four aspects. I think in the coming days, after learning the lesson from the experience this year, we will identify room for improving the mode of regulation in future.

MR TOMMY CHEUNG (in Cantonese): *President, I would like to ask the Secretary about electricity tariff which he has mentioned earlier in his reply to Ms Miriam LAU. Regarding the tariff this year, the catering sector is concerned about two issues: first, the increase is substantial, and second, it restricts high electricity consumption. These issues will deal a double blow to the industries. Moreover, HEC has unexpectedly lowered the tariff for domestic customers but increased that for business customers to strike a balance. I think these measures are unfair to small and medium enterprises (SMEs), particularly the catering industries. The Secretary said in the main reply that the authorities would examine the relevant data further, and I hope the Secretary will address the issue expeditiously and give SMEs a fair deal. What measures will the Secretary adopt to protect SMEs, particularly food establishments, from being robbed helplessly under such unequal circumstance?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): *President, as I have stated in my main reply to Ms Miriam LAU earlier, up to date, the basic tariff structure of the two power companies is based on the cost of electricity supply. We do not think there is cross-sector subsidy among the different categories of customers as pointed out by Mr Tommy CHEUNG, for the tariff structure is mainly cost-based. Moreover, the discrepancies in the costs of electricity supply for domestic and non-domestic customers by the two power companies are sometimes quite substantial.*

Hence, the Government notices that cost of supply is the primary consideration of power companies. As for customers in the same category, consumption level is another factor to be considered. Under this circumstance and on the grounds of energy conservation, customers with higher consumption level have to pay more. I think this is reasonable. However, in the case of non-domestic customers, given the completely different background, we hope that power companies will be more cautious in handling their cases. For this

reason, I have mentioned the various principles in my main reply. Many members of the trade have directly reflected their views in this respect to the power companies, and we will pay attention to this issue when we examine the details.

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

MR TOMMY CHEUNG (in Cantonese): *The Secretary has not answered my question. My question is about the different treatment for domestic customers and non-domestic customers in the tariff adjustment imposed by HEC, where the tariff of non-domestic customers is increased to offset the decrease in tariff for domestic customers. In fact, the catering industries and SMEs are under continuous suppression in such circumstance. How will the Secretary protect them from being robbed helplessly? He has not answered how to ensure that we will not be robbed with our hands tied.*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, according to the information I have at hand, I do not notice the so-called cross-sector differential treatment. I notice that in various categories, say the domestic customers, two more levels are added for customers with high consumption level, so that tariff discount is provided to customers with lower consumption level. Under the category of non-domestic customers, the same approach is adopted. However, I do not notice any cross-sector subsidy as mentioned by Mr Tommy CHEUNG.

DR PRISCILLA LEUNG (in Cantonese): *This is a case of fattening the top but slimming the bottom. I think the public is most indignant that CLP constantly claims that tariff increase is inevitable due to its financial difficulties; yet, it has been reported that its directors have received a 220% increase in bonus. How can the public accept this? The response of the Government in this respect has been really weak. I recall the similar case of sellers of Lehman Brothers products in the United States, where investors suffered tremendous loss but the directors concerned received a colossal amount of bonus. Prosecutions were*

brought against these directors subsequently. So, how will CLP explain its case? While it keeps stating that the company is facing financial difficulties on the one hand, its directors are receiving a colossal sum of bonus on the other. Moreover, how will the Government respond to this? At present, the people of Hong Kong hope that the Government will step up its regulation on the two power companies, which are public bodies, to prevent them from abusing the discretionary power empowered by the contract and from abusing the trust of the public? I believe this is the issue of our gravest concern, and the Government must respond.

PRESIDENT (in Cantonese): Dr LEUNG, please state your supplementary question clearly.

DR PRISCILLA LEUNG (in Cantonese): *My supplementary question is, I hope the Government will respond as to how it will reinforce the regulation to prevent the abuse of power in the light of the considerable discretionary power empowered by the contract to the two power companies?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, Members may notice from my main reply that the Government is now monitoring the two power companies through the SCAs. There are some historical factors concerning the present SCAs. When we reviewed the SCAs in 2008, there had been disputes about the best approach. In 2008 and 2009, when the SCAs were revised, we had made substantial amendments, the extent of which was the greatest among the various SCAs in the past. The objective of the amendment was clear, that is, to alleviate the burden of the public in paying electricity tariff and to lower the rate of return of power companies.

Apart from monitoring the amount of permitted return and the five-year Development Plans of power companies, I think Dr Priscilla LEUNG and other Members also agree that every year, the Government should properly carry out the gate-keeping work as mentioned above. This includes the monitoring of certain expenditure, which Dr LEUNG is concerned about, as operating expenditure. However, the Government cannot take over the operation of power companies. Hence, power companies will set the budget for various expenditure

items on their own, whereas the Government will perform the monitoring role. When we consider the operating expenditure or capital investment unreasonable, we must voice our views and we are now doing so.

In the past, the responses had been positive; some expenditure items had been removed or adjusted after discussion, resulting in the reduction of tariff. For certain necessary expenditure, the Government would render its support after it had grasped more information, such as the expenditure relating to cleaner energy or emission reduction measures. Hence, in this connection, I think the Government is now addressing the issues Dr Priscilla LEUNG wishes us to deal with. Certainly, the annual regulation work is an uphill task. This year, in view of our disagreement with one of the power companies, we have reflected the views clearly to the legislature and the public, hoping to let the public understand how the work is carried out and how monitoring can be reinforced.

MR LEUNG KWOK-HUNG (in Cantonese): *President, the Secretary is after all stating that the SCAs have been slightly amended in 2008 and 2009, where the so-called permitted rate of return, or whatever it is called, has been lowered from 10-odd percentage point to 9.99%, and the arrangement had been accepted by many Members back then, yet disputes are now brought up again.*

Secretary, I would like to seek your advice. You said earlier that the Government cannot take the place of power companies in supplying electricity. Why? May I ask you why you do not exercise the rights empowered under Article 105 of the Basic Law, which stipulates that the Government may acquire or make payment to buy back the right?

In my view, if the regulating work has been so difficult and the power companies impose tariff increase every year, why the Government has not ever considered invoking Article 105 of the Basic Law? In view of the opposition mounted in the legislature as a whole, and the strong opposition from the Chief Executive posted on Facebook, why you do not consider doing so?

PRESIDENT (in Cantonese): Mr LEUNG, after stating your supplementary question, you have to let the Secretary give his reply.

MR LEUNG KWOK-HUNG (in Cantonese): *Does he know what Article 105 of the Basic Law is about?*

PRESIDENT (in Cantonese): You have already stated your supplementary question.

MR LEUNG KWOK-HUNG (in Cantonese): *OK, alright.*

PRESIDENT (in Cantonese): Mr LEUNG, you ask why the Government does not consider acquiring the two power companies, please let the Secretary answer.

MR LEUNG KWOK-HUNG (in Cantonese): *No, I am not referring to acquisition but deprivation.*

PRESIDENT (in Cantonese): Secretary, please reply.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I recall that in 2008, when the renewal of the SCAs was discussed in this Council, the approach for regulation had also been discussed. First, in Hong Kong, electricity production and transmission have all along been operated under the commercial mode, which is bound by historical reasons. The Government believes that if commercial organizations can run properly under a fair, reasonable and regulated environment, there is no reason for the Government to make radical changes. Having said that does not mean the Government fails to fulfil the gate-keeping work I mentioned earlier under the purely commercial operation. Hence, as Mr LEUNG Kwok-hung has said, substantial adjustments had been made under the new SCAs, and the objective was to better protect the interest of the public.

In the past, the SCAs were reviewed once every 15 years, but the period has been shortened to once every 10 years since 2008. When the appropriate

time comes or when a review is conducted, the general public and the legislature will have the opportunity for discussion.

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

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

MR LEUNG KWOK-HUNG (in Cantonese): *He refers to the historical factors as answer, but we are now in the new era. Though the permitted rate of return has been lowered from 10-odd percent to 9.99%, we consider this unsatisfactory. When he offers history as the answer, he is Has he conducted any feasibility studies? We cannot*

PRESIDENT (in Cantonese): Mr LEUNG, please be seated. Honourable Members, we are now in the question session, I will not allow Members to have debate. As Members know, we will have an adjournment debate on the tariff increase of the two power companies, will Members wait till the debate to express their opinions.

MR LEUNG KWOK-HUNG (in Cantonese): *I am not expressing my opinions, President*

PRESIDENT (in Cantonese): The Secretary has already given his reply. Please let other Members ask their questions.

MR LEUNG KWOK-HUNG (in Cantonese): *I asked him about the current situation but he answered me with historical facts.*

PRESIDENT (in Cantonese): Please let other Members ask their questions.

MR LEUNG KWOK-HUNG (in Cantonese): *Whatever you say.*

PRESIDENT (in Cantonese): Now, 15 Members have requested to ask supplementary questions, will Members please be concise when they ask question and avoid expressing their opinions.

MR LEE WING-TAT (in Cantonese): *President, now, the Government seems to be playing "The Saga of the Power Tycoon", with Donald TSANG as the best leading actor and Edward YAU the supporting actor.*

Mr Fred LI asked earlier whether the Government and the Chief Executive in Council have already formally approved the increase. If the answer is in the affirmative, the Secretary should directly say so. They should not approve the increase internally on the one hand; and resort to verbal manoeuvres by the leading actor and the supporting actor to request power companies to curtail the increase.

President, in my view, the crux of the problem lies in the SCAs signed a few years ago with humiliating terms. Under the SCAs, the asset value of power companies is used as the basis for calculating the rate of return. We disagree with this. In fact, does the Secretary consider it necessary to advance the mid-term review, and adopt the principle of delinking tariff increase from asset value of power companies, so as to stamp out the practice of including unnecessary or premature expansion of assets?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, in my earlier replies to other Members, Mr Fred LI in particular, I have given clear answers to similar questions as the one raised by Mr LEE Wing-tat.

If Mr LEE Wing-tat considers that the approval of the five-year Development Plan by the Executive Council is equivalent to a one-off approval, where it is unnecessary for the authorities to make further queries, I have to point

out that this is not the case under the existing system, as I have explained earlier. Under the SCAs, apart from the two major requirements on permitted rate of return and the discussion of the development plans every five years, we will examine the annual proposals submitted by power companies, and we have all along been doing so.

Under the outline of the approved Development Plan, we will definitely respect the spirit of mutual agreement, and the Executive Council had accepted the proposals in the past. However, this year, in the scrutiny of the proposals of the two power companies, the Executive Council has raised queries similar to those expressed by the Government. As such, we continue to persuade and discuss the proposals with the two power companies. I believe Mr LEE Wing-tat will agree that the Government should continue with the work in this respect, particularly when it is noticed that some of the queries raised by the Government actually involve proposals beyond the scope of the original Development Plan. Hence, I hope Members will understand that in the past, at present and in future, the same approach in scrutiny and gate-keeping work was adopted and will be adopted.

MR LEE WING-TAT (in Cantonese): *President, the Secretary has not directly answered my supplementary question.*

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

MR LEE WING-TAT (in Cantonese): *Has the Chief Executive in Council already made a decision to approve the present tariff increase as proposed by CLP and HEC? The Secretary is circumventing this supplementary question.*

PRESIDENT (in Cantonese): Please let the Secretary give his answer. Secretary, will you answer this supplementary question?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I have already given a clear answer to Mr LEE, stating that the Executive Council has

approved the Development Plans of the two power companies submitted in 2008 and 2009, under which certain degree of flexibility was allowed. However, when the Government conducts the annual scrutiny and submits the relevant information to the Executive Council, the Executive Council shares the views of the Government and raises the queries I mentioned earlier.

MR TAM YIU-CHUNG (in Cantonese): *President, I would like to ask the Secretary to clarify one point. According to the SCAs signed between the Government and the two power companies in 2008 and 2009, the two power companies can increase tariff provided that the increase rate does not exceed 9.9%. The Secretary has been saying that the Government has performed its gate-keeping role but it has not taken any action to stop such increases. So long as the rate of increase by the two power companies does not exceed 9.9%, the authorities cannot stop the increases. We found the same problem this time. The Government can do nothing if the two power companies are reluctant to revise the rate of increase and forcibly increase tariff with effect from 1 January next year. I would like to ask the Government to confirm this point and I am not asking if the increase should be approved by the Executive Council.*

When the Secretary answered Mr WONG Kwok-kin's question about segregation of the generation sector from the network sector

PRESIDENT (in Cantonese): Mr TAM, you may only ask one supplementary question.

MR TAM YIU-CHUNG (in Cantonese): *Yes, I will wait until the adjournment debate to express my views.*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the supplementary question that Mr LEE Wing-tat just asked is clear enough, that is, whether the Executive Council has approved the increase. I have explained that the Executive Council only approved the development plans. Concerning Mr TAM Yiu-chung's supplementary question, I have made it very clear in this Council in the past that the permitted return or development plans within the scope of SCAs would be reviewed. In the annual review, even if the increase

rates proposed by the two power companies have not gone beyond the scope of the original five-year Development Plan, the Government must raise queries if it is in doubt. I do not think that we need to go to court as Mr Ronny TONG has just said. These issues can often be raised in a reasonable manner through the due diligence process. I also hope that a responsible company can give reasonable explanation and make appropriate adjustments. We have straightened things out with the two power companies based on this spirit.

MR LEE CHEUK-YAN (in Cantonese): *President, I think CLP is twisting the Government around its little finger and it has asked for an exorbitant increase of 9.2%. This morning, it announced that the rate would be reduced to 7.4%, as though it is a benevolent act. I trust that this consortium has already had the maximum gains but it is still playing tricks. The most miserable thing is that, it appears that the Government is powerless to monitor and all it can do is to raise queries, issues such as premature capital expenditure and excessive operating costs as mentioned by the Secretary are in fact just queries*

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

MR LEE CHEUK-YAN (in Cantonese): *My supplementary question is simple. The Government has queries but the other parties could not care less. The two power companies claim that they are right while the Government also claims that it is right. Thus, the parties are unable to reach an agreement in the end.*

The Secretary has been evading the problem and he always believes that there will naturally be a consensus after discussions. I would like to ask the Secretary, if the Government is powerless to monitor, what role it is playing now. The Government can actually do nothing if a consensus cannot be reached and the two power companies will still increase tariff from 1 January. The Government has later called upon people to rebuke the two power companies and "like" the Government on Facebook, which is an extremely irresponsible act.

So, my supplementary question is simple, what can the Government do if a consensus cannot be reached and what bargaining chips does it have in hand? If it does not have any, it is really under the thumb of the power companies.

PRESIDENT (in Cantonese): Please let the Secretary answer the question.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I understand the Member's views but I have already explained very clearly in my main reply that the SCAs provide a framework and gives room and flexibility to both sides. The two power companies need to develop with a view to improving services, especially when we have some new requirements for the two power companies in recent years. Therefore, we will give the two power companies appropriate room for development.

Nevertheless, under the SCAs, the two power companies must respond to the Government's queries. The Government will not only raise queries, it may also set up some barriers in the course of deliberation. For example, as mentioned in my main reply, if we are worried that some premature or excessive capital expenditure items will put pressure on the future tariff or exceed the originally estimated electricity consumption level, we will remove such items from the development plan.

I believe all agreements may have deficiencies but as the supply of electricity is a public service, the Government and the two power companies should respect the spirit of contracts and bear certain responsibilities towards the community.

MR LEE CHEUK-YAN (in Cantonese): *The Secretary has not answered my supplementary question about whether the Government can refrain from granting an approval if a consensus cannot be reached. It seems that the Government will grant an approval all the same; it can only remove the relevant expenditure from the future development plan at the most. My supplementary question is, can the Government refrain from granting an approval.*

PRESIDENT (in Cantonese): Mr LEE, please let the Secretary answer the question. Secretary, do you have anything to add as to whether the Government can refrain from granting an approval?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the Government can certainly remove the relevant expenditure from the future development plan if only the rate of increase is concerned; for example, when it goes beyond the scope of the development plan. However, the two power companies do have the flexibility if it is within the scope. But, the two power companies also have certain room for adjustment; for instance, in connection with the Tariff Stabilization Fund (TSF) and Fuel Clause Account (FCA) balances, and so on.

MR LAU KONG-WAH (in Cantonese): *President, CLP is obviously making an exorbitant tariff increase and the current rate of increase is still excessively high. The Secretary has just cited a lot of figures and some of them have been exaggerated by CLP*

(Mr Paul CHAN gave some indication)

PRESIDENT (in Cantonese): Mr Paul CHAN, do you have any question?

MR PAUL CHAN (in Cantonese): *No, I am just listening. Sorry, President.*

MR LAU KONG-WAH (in Cantonese): *..... Some of these figures have been exaggerated, some are unclear and some others are untrue. So, I would like to ask the Secretary if he thinks that CLP's rate of increase can possibly be revised downward? Is that possible or not? If that is possible, will he continue to negotiate with CLP? If CLP stands firm, will the Secretary asks it to defer the increase?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, CLP told me this morning that the rate of increase would be revised downward and I have already said that Basic Tariff has not been adjusted in the current proposal. This involves some queries raised by the Government and CLP needs to provide explanations. Nonetheless, I also need to find about more about the specific adjustment proposed by CLP because, like all of you, I also have limited

information before attending this Legislative Council meeting. So, I will continue to explore the matter and then consider the Government's position.

MR PAUL CHAN (in Cantonese): *President, CLP has announced this morning that the increase rate will be lowered; it is actually fooling the public, which is outrageous. As Members have just said, only the Fuel Clause Charge (FCC) has been adjusted, which involves collections and payment transfers. The accumulated loss of \$1.4 billion will be borne by us in the future. The Basic Tariff has not been reduced at all.*

President, please allow me to cite some figures in my question to the Secretary

PRESIDENT (in Cantonese): Please be as concise as possible.

MR PAUL CHAN (in Cantonese): *I will, President. CLP will receive \$600 million more when it reduces its FCC by 1.5 cents. Why do I say so? It is because there was originally a deficit Fuel Clause Account (FCA) of \$800 million, which will increase to \$1.4 billion after a reduction of 1.5 cents. In other words, it will receive \$600 million after a reduction of 1.5 cents. President, if it will receive \$600 million after reducing 1.5 cents, the Basic Tariff of an additional 5 cents will bring in an additional \$2 billion. This is the first set of figures.*

The second set of figures is that, in reviewing the Mid-Year Report of CLP, we found that the operating costs in the first half of 2011 increased by \$120 million as compared to the first half of 2010, while the depreciation expenses increased by \$250 million, amounting to a total increase of \$370 million. According to the projections of the year, the total expenses amounted to around \$800 million. When the expenditure amount of \$800 million is compared to the \$2 billion to be received after the 5 cents increase, we find that there will be a surplus.

The third set of figures is that, based on the annual income statement of CLP, for many years in the past, the income from electricity sales in the second half of the year was better than the first half of the year. The relevant income in

the second half of the year accounted for approximately 55% of the annual income while the income in the first half of the year accounted for 45% of the annual income. Making projections this way, there are reasons to believe that CLP will have \$3 billion additional income from electricity sales in the second half of 2011 (this year)

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

MR PAUL CHAN (in Cantonese): *In that case, there will be an additional surplus of \$1.1 billion*

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

MR PAUL CHAN (in Cantonese): *All right, President. What is the implication of this \$1.1 billion? It implies that CLP no longer needs to make fund transfer from the TSF and it may even be able to make fund transfer to the TSF.*

Secretary, on the basis of these figures, it can be said that this 5-cent increase apparently is an affront to Hong Kong people, and needless to say, an affront to the SAR Government

PRESIDENT (in Cantonese): Mr CHAN, please state your question. Twelve Members are still waiting for their turn to ask questions.

MR PAUL CHAN (in Cantonese): *I am sorry, President, I will state my supplementary question now. How can the Secretary ensure that we will not be affronted again in the future?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the data cited by Mr Paul CHAN may not be totally the same as those provided by the Government but the general direction is similar to that as stated in my main reply.

I believe Mr Paul CHAN has also taken three factors into account: first, how big the FCA balance can be? I have compared the situation of the two power companies in this connection. I found that CLP has increased the deficit balance in the FCA as requested. It should be noted that deficit balance is in fact an outstanding receivable account.

The second factor involves the operating expenses. In this connection, we share the same query as that of Mr Paul CHAN; that is, are the operating expenses too large or too small in relation to the scale of operation of the company? We have taken this factor into consideration. However, as I have just mentioned, we do not only query the amount, we also query whether some expenses should be considered as operating expenses or premature expenses. Yet, we can only ensure that similar problems will not arise in the future, for example through the next development plan.

The total revenue from electricity sales will actually have an impact on the TSF; that is why we have revised downward the TSF from the original 12.5% of the total revenue of the company to 8% in the new SCAs. We have been monitoring this ratio each year. As far as I remember, this ratio has been decreasing year-on-year in the past few years. This is also the direction of our gate-keeping work.

MR IP WAI-MING (in Cantonese): *President, many Honourable colleagues have already asked questions. We have just heard that CLP would revise the rate of increase downward from 9.2% to 7.4%. However, I still consider this rate of increase rather high. In particular, we should note that CLP will only lower the FCC but not the Basic Tariff. Now that CLP is carrying a deficit balance in the FCA; in other words, the public will have to settle the accounts even if there is a reduction in FCC.*

I would like to ask the Secretary if the Government accepts that CLP only reduce its FCC but not the Basic Tariff? Will the Secretary ask CLP to directly reduce the Basic Tariff?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): *President, as I have just remarked, we have informed CLP of people's request for a reduction in*

the Basic Tariff. I also hope Members would give us some time to study CLP's new proposal before giving a comprehensive response.

In respect of fuel costs, we have noticed that CLP is carrying a bigger deficit balance. I have heard Members' views on the Basic Tariff.

DR RAYMOND HO (in Cantonese): *President, CLP's tariff increase this time is surprising. I had an opportunity to tell CLP's senior management my opinions yesterday. Although the rate of increase has not exceeded the cap of 9.99% under the SCAs, CLP should also consider its corporate social responsibility and be well aware that inflation problem is serious and social demands have changed.*

CLP has not reduced the proposed rate of increase in the Basic Tariff, I would like to ask the Secretary if there is any room to reduce the rate of increase when the estimated operating expenses are taken into account? Will the estimated operating expenses be set at a more generous level as the Government has introduced a new fuel mix, hence CLP insists on a 5-cent increase per unit of electricity without any revision? Does the Government need to clarify this with the power company?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I thank Dr Raymond HO for his question. Among the components of electricity tariff, pure fuel costs are passed through on the basis of actual spending, as reflected in the FCA. When we review the electricity tariff, we make proposals to the two power companies on the basis of the actual fuel consumption. In the years when fuel costs have increased, I find it reasonable to increase the deficit balance in the FCA to adjust tariff.

In fact, fuel costs do not have direct impact on the Basic Tariff. On the contrary, as some Members have mentioned, we really should consider if the increased use of natural gas and so on for the sake of emission reduction to protect our environment may cause an increase in daily operating expenses. We have made the relevant study and analysis. This is definitely one of the reasons, but as I just said in my main reply, the expenses due to factors such as emission reduction have incurred in the past few years. Therefore, I wonder if emission

reduction can fully account for such a high rate of increase as proposed in the coming year. No doubt, this will put pressure on the two power companies but I wonder if the expenses are as considerable as the two power companies have mentioned. We have already asked the two power companies to consider our queries.

MS LI FUNG-YING (in Cantonese): *No matter how the Secretary defended himself, the SCAs is still an agreement signed between the Government and the two power companies. They have now voraciously asked for a high tariff increase. Yet it seems that the Government is utterly powerless with regard to the overall review.*

Does the Secretary have any immediate remedial measures to ensure that the basic rights of people will still be protected when there is tariff increase by the two power companies?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, in answering the questions for the past hour, I have already explained to Members that the Government has been committed to performing its gate-keeping role in respect of overall tariff control, which is a concern of the public. We have properly performed our gate-keeping role with the methods I have just mentioned.

Each year, the public is concerned if we have taken sufficient gate-keeping measures. However, as I have explained previously, some Members also questioned if it is necessary for us to make painstaking efforts to perform our gate-keeping role each year if the general principles have been worked out well in advance. That is right and I believe that the Government is performing its gate-keeping role in conducting an annual review of the implementation of the SCAs. We must continue to do so and we will directly reflect the views or queries of the public. Members may have different views in this regard, please allow us to listen before considering what improvements can be made.

MR ALAN LEONG (in Cantonese): *President, having listened for so long, I have a fairly clear picture of the present situation. Provided that the rate of increase of the two power companies does not exceed 9.99%, the Government*

cannot do anything and it dares not institute lawsuits. And, if it does not approve a rate of increase that is lower than 9.99%, it will definitely lose the lawsuit.

President, the SCAs will expire by 2018 and the Government will then have to conduct an interim review. Also, the Secretary has just said that a review would be conducted. I would like to ask the Secretary, after learning from this "meat on the chopping board" experience, in which aspects will a review be conducted? Will he also consider opening up the power grid?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, when the new SCAs were introduced in 2008, we had also discussed this idea and some long-term changes had been made. For example, as I have just said, the term of the old SCAs was 15 years but the current term is 10 years, so as to make room for us to decide whether competition should be introduced in the light of the future market situation. I believe that we must have discussions before the expiry of the SCAs, and I have mentioned in public that, to look forward, we must Regarding this incident, the public is certainly most concerned about how the permitted return of the two power companies will affect the rate of tariff increase, and what control measures have been put in place to make tariff become more transparent or better monitored. However, we have to tell Members, regarding the overall tariff policy, apart from tariff, we also need to take other policy objectives into consideration. These objectives were also supported and promoted by the Legislative Council in the past; for instance, the need to ensure the stable and safe development of electricity and to comply with urban development and environmental protection requirements, and so on. I trust that we must discuss these issues when we work out the regulatory approach in the future.

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

MR ALAN LEONG (in Cantonese): *President, is opening up the power grid a factor to be considered?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I have just mentioned in my main reply that the introduction of competition when the requisite market conditions are present is one of the factors for consideration.

MISS TANYA CHAN (in Cantonese): *President, I would like to ask a question about opening up the power grid. I have in hand a statement made by the Secretary when he met with reporters on the day after the SCAs were signed. It was stated that the community must get prepared that in the next regulatory period (that is, the current regulatory period), there would be studies on the opening up of the market and regulatory framework as well as increasing interconnection between the two power companies. In answering Mr Alan LEONG's question just now, the Secretary said that these issues would be studied when the market has become matured. Now that we have been "slaughtered" this way, does he think that the time is ripe? If he does not think so, what conditions does he think would indicate that the time is ripe for considering the opening up of the power grid?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I think we have already noted such requests when the SCAs were last extended. As we have said, besides reducing the permitted return, we also need to get prepared for opening up the market when necessary in the future. We will consider the development of the electricity markets in various parts of the world and different modes of operation, and we will find out if these modes of operation can ensure the sustainable development of the four important aspects of the current electricity policy in the future. As I have pointed out a while ago, in discussing about tariff each year, while we must consider ways to minimize tariff to relieve people's burden, we must also consider other factors. Furthermore, we need to consider if opening up the market will directly lead to a substantial tariff reduction.

MR ALBERT CHAN (in Cantonese): *President, in dealing with the current tariff increase of the two power companies, it is very rare that the Chief Executive has spoken up, forcing the two companies to give in under political and public pressures. However, the so-called tariff reduction measures of the two power companies contain a lot of misleading information, which are basically extending*

the pain. The rate of increase may be lowered this year but, on the whole, some domestic or business customers may have to pay more because of the adjustment. Detailed study has yet to be carried out. President, we can be sure about one point though. The current tariff increase of the two power companies is connected with emission reduction. I am saying that the additional costs of emission reduction should not only be borne by customers. Since the expenses on emission reduction can be regarded as part of the operating costs of the two power companies and the profits of the two power companies can be as high as 9.99%, the emission reduction measures will eventually become sources of increased profits. In relation to emission reduction measures, will the Secretary consider these two proposals: first, ensuring that the two power companies can only recover the costs from the expenses on emission reduction measures and they cannot reap 9.99% profits under the SCAs or the "profit guarantee scheme"; second, the Government should bear all expenses of emission reduction so that Hong Kong people need not bear the costs of emission reduction and the additional 9.99% profits of the two power companies?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I thank Mr Albert CHAN for his question and proposals. In the past few years, the Legislative Council and the community have agreed to further reduce emissions from electricity generation, as we have often cited that 90% of sulfur dioxide in the air comes from electricity generation. For this reason, we think that our electricity generation facilities must keep abreast of the times and we have invested in the relevant resources in the past few years. I believe that both the Government and the public would consider the relevant expenses reasonable. According to the user pays principle, people as users should bear part of the expenses.

Nonetheless, is emission reduction or clean fuel the major cause of tariff increase in the past few years or even the coming year? I have just mentioned in my main reply that the two power companies have gradually installed desulphurization units in the past few years and the costs have been reasonably reflected in the tariff. Hence, I hope Members or the public would not have a misconception that emission reduction is the only cause for tariff increase. This also illustrates that the Government's monitoring is justifiable. The community would accept projects to improve the environment under reasonable

circumstances. Yet, if the projects are not related to environmental protection, we have to ascertain if they are really necessary.

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

MR ALBERT CHAN (in Cantonese): *President, the Secretary has not answered the question at all. Obviously, the amount of over \$9 billion spent on emission reduction measures has certain pressure and impact on the rate of increase. My question is: my two proposals can help reduce the shock of the tariff increase and the impact on the public. Will the Government consider bearing the emission reduction costs and prohibiting the two power companies from reaping additional 9.99% profits from the emission reduction measures?*

PRESIDENT (in Cantonese): Will the Secretary respond to the two proposals made by Mr Albert CHAN, specifying if the Government would accept them?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): First, it would be unreasonable for the Government to take up the emission reduction work and forbid the two power companies from getting the permitted return that they are entitled to. As Mr Albert CHAN has asked, we may have different views as to whether the relevant expenses should be borne by taxpayers.

PRESIDENT (in Cantonese): Six more Members have requested to ask supplementary questions. As we have spent more than one and a half hours on these four urgent questions, Members have to stop asking questions. Members may raise their questions and express their views through other channels such as during the adjournment debate later on.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): First question.

Statutory Holidays in Hong Kong

1. **DR PAN PEY-CHYOU** (in Cantonese): *President, the festive holidays for the employees in Hong Kong fall into two categories, namely 17 days of "general holidays" every year provided under the General Holidays Ordinance and 12 days of "statutory holidays" every year provided under the Employment Ordinance (EO). In this connection, will the Government inform this Council:*

- (a) *whether it knows the respective numbers of employees who are entitled to 17 days of general holidays and 12 days of statutory holidays every year in the territory at present; the respective percentages of these employees in the total working population; and the industries to which they belong;*
- (b) *whether it knows the provisions governing the statutory holidays or general holidays enjoyed by the employees in other countries and regions and the respective numbers of days of such holidays; whether there are countries or regions where festive holidays for employees are differentiated by two or more ordinances; if it knows, of the details; if not, whether it has any plan to conduct a survey; and*
- (c) *given that some employees have pointed out that the aforesaid two ordinances have given rise to unfairness in that they stipulate different numbers of holidays for different employees, and that the Government indicated at a meeting of the Panel on Manpower in March this year that it needed to study the matter carefully, of the progress of the study so far; whether the authorities have any plan to raise compensation to employees who work on holidays, for example, by granting them one and a half times to two times the paid leave or wage in substitution, so as to provide employees with reasonable compensation; if they have, of the details; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): *President, my reply to Dr PAN Pey-chyou's question is as follows:*

- (a) General holidays, as provided for by the General Holidays Ordinance, are days on which banks, educational establishments, public offices and government departments need not open. In other words, they are primarily holidays for the relevant establishments. Meanwhile, statutory holidays are benefits accorded to employees which employers must provide under the EO. Employers are required to arrange for the granting of statutory holidays to eligible employees in accordance with the law. These two types of holidays are different in nature and were established under different backgrounds.

Currently, we do not have statistics on the respective percentage of employees who are granted statutory holidays or general holidays among the total working population, nor the industries to which they belong. To have a better picture of the number and distribution of employees taking these two types of holidays, as well as the sectors and occupations in which they are engaged respectively, the Labour Department has commissioned the Census and Statistics Department (C&SD) to collect relevant data for further analysis.

- (b) According to information gathered by the Labour Department, out of 10 of our neighbouring countries or areas, six have different practices in respect of general holidays and holidays designated for employees. They are the Philippines, South Korea, Malaysia, Japan, Macao and Taiwan. For example, there are 14 days of general holidays in the Philippines in 2011, but employees are only entitled to 10 days of paid holidays, with the remaining four days being unpaid. In South Korea, there are 14 days of general holidays a year, but according to its labour legislation, employers are only required to grant employees a holiday with pay on Labour Day. The Japanese government stipulates 15 days of general holidays per year. However, there is no provision in the labour law on employees' entitlements to these holidays, as the holiday entitlements of employees are subject to the terms of their employment contracts. In Malaysia, there are 14 days of general holidays per year, among which employees are entitled to 10 (excluding those days designated in a certain year by the Government according to the law as additional holidays). On the other hand, in four of our

neighbouring countries or areas, there is only one single system on holidays and no separate legislation on general holidays and holidays for employees. They are Australia, Singapore, Mainland China and New Zealand. The numbers of holidays range from eight to 11 days per year.

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

- (c) As mentioned above, statutory holidays are benefits to be granted by employers to their employees under the EO. The present stipulation that employees are entitled to 12 days of statutory holidays is a consensus reached progressively by all sectors of society after extensive consultation. As the EO is a piece of legislation applicable to all employers irrespective of the trades, sizes and circumstances of individual establishments, the rights and benefits accorded to employees by the EO constitute only the most basic requirements.

At present, apart from statutory holidays, some employers (in both the public and private sectors), having regard to their respective circumstances, do offer their employees benefits over and above the requirements of the EO by allowing their employees to take leave on general holidays. However, if all employers are obliged to provide employees with the aforesaid benefits which are beyond the statutory requirements stipulated in the EO, there will, to a certain degree, be an impact on the business cost and labour market. We have to carefully assess this proposal with a view to balancing the interests of employers and employees. The acceptance and consensus of society in this regard are also essential.

All along, the Government reviews the labour legislation from time to time in the light of Hong Kong's changing social circumstances and the pace of economic development to ensure that the relevant legislative provisions strike a balance between the reasonable demands of employers and employees, and that the statutory protection accorded to employees keep abreast of times. As the

proposal to increase the number of statutory holidays would, to a certain extent, have an impact on business cost, we need to collect the relevant data for further analysis. We have commissioned the C&SD to collect statistics on the number of employees taking statutory holidays or general holidays and the distribution thereof, as well as other information such as the sectors and occupations in which they are engaged. It is envisaged that the relevant data, upon compilation, would be passed to the Labour Department for further analysis in the first half of next year.

Regarding the arrangement of holidays in substitution, if an employee is required to work on a statutory holiday, the EO provides certain flexibility by allowing employers who are unable to allow their employees to take leave on the day of statutory holiday to provide a holiday in substitution on other days. According to the EO, if an employer requires his employees to work on a statutory holiday, he may, with prior notice given to the employees, arrange for an alternative holiday within a specified period to be taken by the employees. The employer may also agree with the employees to have the statutory holiday substituted by a holiday on another day within a certain period as prescribed by the law. The existing provisions in the EO do not require an employer to provide other compensation on top of the normal wages to an employee who is required to work on a statutory holiday. In view of the different circumstances and needs of different sectors, enterprises and posts, many employers have a practical need to arrange for their employees to work on the day of statutory holiday. Should all employers be obliged by law to provide additional compensation to their employees such as granting them one and a half times to two times of holidays or holiday pay if they could not allow their employees to take leave on the day of statutory holiday, this will, to a certain degree, have an impact on the business cost of local enterprises and the labour market. The present requirement concerning statutory holiday pay is a consensus reached after extensive consultation with employers and employees. We have at present no plan to change the existing requirement.

As regards making monetary compensation to require an employee to work on a statutory holiday, the current EO stipulates that employers must let their employees take statutory holidays and must not make payment in lieu of granting holidays to them. Otherwise, they are liable to prosecution and, upon conviction, to a maximum fine of \$50,000. To introduce a law permitting an employer to "buy out" an employee's statutory holidays by paying a greater sum of monetary compensation is tantamount to indirectly encouraging employees to give up their opportunity to enjoy the benefits of taking statutory holidays. This runs counter to the spirit of the law which prescribes that employees must be granted statutory holidays. As such, we have no intention to institute such a practice under the EO at this stage.

DR PAN PEY-CHYOU (in Cantonese): *Deputy President, the Secretary has declined to compare Hong Kong with other more developed countries in his reply and he has only chosen to compare Hong Kong with some neighbouring regions with poorer performance. This is just like a student who particularly likes to compare himself with students who are at the bottom in order to prove that he does not have the worst performance.*

The Government stated in March that it would conduct a survey to find out if employees in various industries are granted statutory holidays or general holidays and the data would be submitted to the Labour Department for analysis in the first half of next year. When will the official findings be announced? Will the Labour Advisory Board (LAB) and the Panel on Manpower of the Legislative Council be provided with the official findings for further discussion?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I thank Dr PAN for his supplementary question and opinions. First, I would like to clarify that we have chosen those countries not because their situation is worse than ours. The neighbouring regions that we have chosen, which include Australia, New Zealand and Japan, are mostly advanced countries or regions. This is the first point.

Second, I believe that we must be very careful when making comparison with other countries as people's conditions and the socio-economic conditions of each country is different. Members can notice from my reply that there are 14 days of general holidays in some countries but employees are only entitled to 10 days of paid holidays. In South Korea, there are 14 days of general holidays a year but employers are only required to grant employees a holiday with pay on Labour Day. The circumstances of each country are different.

Now that we have agreed to conduct a survey, when will we finish collecting the information? I have said in my main reply that we have commissioned the C&SD to collect relevant data as soon as possible. The supplementary question is straight to the point. We actually have no idea how many people are granted statutory holidays or general holidays and which work types and industries are involved. As such information is very important, we have asked the C&SD to try its best to provide relevant data in the first half of next year. Upon getting the data, we will immediately conduct an internal analysis and we will then provide the LAB with the results. We will also listen to the views of employers and employees and exchange views. At a later meeting of the Panel on Manpower, we will give a briefing on the way forward and whether amendments or improvements are required. We will brief Members at that time. Thank you, Deputy President.

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

DR PAN PEY-CHYOU (in Cantonese): *When will the LAB and the Panel on Manpower be provided with the relevant information and the result of the analysis?*

DEPUTY PRESIDENT (in Cantonese): This is a supplementary question. Secretary, do you have anything to add?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, as I have just mentioned, the C&SD will provide us with the data in the

first half of next year. Upon receiving the data, we will conduct analysis and then provide the LAB with the result of the analysis. Therefore, the commencement time of our analysis depends on when the C&SD will provide us with the data.

MR IP KWOK-HIM (in Cantonese): *Deputy President, as I have noted, the Secretary has just mentioned in his reply that the Government needs to assess this proposal with a view to balancing the interests of employers and employee and he will see if there is a consensus of society in this regard. I think he has not mentioned the Government's policy intent in his reply.*

However, I would especially like to ask one question: some employees not employed under a continuous contract are not granted rest days, statutory holidays, paid annual leave or paid maternity leave. Will the Government consider providing labour welfare for employees not employed under a continuous contract on pro rata basis?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I thank Mr IP for raising this issue. This issue has digressed from the main reply but I do not mind responding to it. In fact, this issue has been discussed at a meeting of the Panel on Manpower. We discussed the "4-18" threshold at a recent meeting, which involves an employee who has been employed for four weeks or more and has worked for 18 hours or more in each week. We have agreed to conduct a study and we will consult the LAB next year. During the review process, we will take into consideration the relevant survey results recently released by the C&SD. I would like to point out, non "4-18" employees are still fully protected, for example, they are granted statutory holidays.

MR WONG KWOK-HING (in Cantonese): *Deputy President, the Secretary has repeatedly mentioned business cost in his main reply just now and the issues of statutory holidays and general holidays will only be considered on the basis of business cost. Has the Government been overly biased towards the interests of the business sector in its consideration? Some reporters have told me that they are only entitled to labour holidays, that is, statutory holidays. The Legislative*

Council will soon adjourn and people are entitled to general holidays, but they still have to work. Therefore, these reporters requested me to ask the Secretary, apart from considering the business cost, will he consult the Family Commission and the trade unions to find out if aligning the two kinds of holidays would have any advantages to wage earners in terms of their mental and physical health, family warmth, parent-child relationship and family reunion? Will the Government also consider these costs?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I thank Mr WONG for his views and question. First, I would like to stress that we do not just consider business cost. In the main reply, we have used very specific wordings, that is, "we have to carefully assess this proposal with a view to balancing the interests of employers and employees. The acceptance and consensus of society in this regard are also essential." Concerning "the interests of employers and employees", we certainly need to consider the benefits and advantages to employees and we will weigh the interests of both parties. The assessment will be comprehensive. After we have analysed the data from the C&SD, the first thing we must do is to consult the LAB. In the course of consultation, we will also consider how people's views can be obtained through the Family Council and other relevant channels. We can also have further discussions with the Panel on Manpower. This issue has far-reaching social impacts and is the concern of all Members; we will definitely listen to Members' views.

MR WONG KWOK-HING (in Cantonese): *Deputy President, the Secretary has not answered whether the Family Commission and the relevant organizations such as trade unions will be consulted.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, the LAB is basically made up of trade unions and there are trade union representatives in it. Of course, it is our duty to consult the parties concerned and, where necessary, we will surely accept different views and consult the stakeholders as far as possible. Yet, we must first make specific proposals or analyse data before taking the next step. In taking the next step, we will definitely listen extensively to Members' views.

MR LEUNG YIU-CHUNG (in Cantonese): *Deputy President, regarding general holidays and statutory holidays under the EO, the difference between the two was very obvious in the past when there was a clear distinction between blue-collar and white-collar workers. White-collar workers were usually entitled to general holidays while blue-collar workers were only entitled to statutory holidays. Thus, there was an unfair phenomenon that office workers had more holidays while factory workers had fewer holidays. This problem remains very serious today even though there are more service sectors. Hence, I hope the Government would expeditiously align these two kinds of holidays, so as to avoid the unfair phenomenon from recurring. In aligning the holidays, I hope the Secretary would not repeat the past mistake made in handling overtime work. In the past, it was specified under the Protection of Women and Juveniles Ordinance that female employees who were required to work overtime had to get the permission of the Labour Department. The authorities subsequently standardized the arrangement, stipulating that male and female employees did not need to get the permission of the Labour Department to work overtime. As the former practice was considered unfair, we hope the Secretary can specify that all employees would be entitled to 17 days' holidays.*

In his main reply, the Secretary pointed out that "balancing the interests of employers and employees. The acceptance and consensus of society in this regard are also essential." Nevertheless, just now the Secretary has mainly talked about a consensus in the LAB. In this connection, I would like to ask the Secretary how the acceptance and consensus of society can be achieved. Will the Secretary issue a public consultation document to extensively consult all Hong Kong people?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): *Regarding Mr LEUNG's views and question, I think the most important point at this stage is that the Government adopts a completely open attitude in handling this issue and I have not said that we will not deal with the issue. The issue of 12 days' and 17 days' holidays was raised last year and we sincere want to deal with it. We have already commissioned the C&SD to collect relevant data, which will serve as the basis of our analysis. The first step is that we will first analyse the data to find out more about the situation. The second step is that we will figure out the way forward. First of all, we will consult the LAB but this does not mean that we will not continue to conduct a consultation. Mr WONG Kwok-hing has just*

asked if other commissions or trade unions will be consulted, and I have already stated that we will extensively listen to the views of the community, including the Panel on Manpower of the Legislative Council. This issue will then be known to all people and they can express their views.

MR LEUNG YIU-CHUNG (in Cantonese): *Deputy President, by "extensive" consultation, I do not only mean consulting the existing organizations*

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

MR LEUNG YIU-CHUNG (in Cantonese): *My question is whether the authorities will extensively consult all Hong Kong people but the Secretary only said that the Legislative Council, the LAB and other organizations will be consulted and he has not answered whether a consultation document will be issued to consult all Hong Kong people.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I do not rule out any possibility at this stage. My remark just now indicated that we sincerely want to deal with the issue. The most important task for us at present is to formulate proposals, and the first step is to consult the LAB. We may consult all Hong Kong people afterwards and this is not a problem. Nevertheless, we must do some basic work first such as collecting data and setting the way forward.

MR TAM YIU-CHUNG (in Cantonese): *In the proposals concerning our expectations of the new Chief Executive, the DAB has stated very clearly that 17 days of general holidays and 12 days of statutory holidays should be aligned as 17 days' holidays. One of the Chief Executive candidates has expressly agreed to this proposal and has suggested a method to align the two in five years' time. He thinks that it should be acceptable to the business sector for the two kinds of holidays to be gradually aligned so that 12 days of statutory holidays would be*

increased to 17 days within five years. Does the Secretary consider this a desirable method that will work?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I noted the DAB's proposal. We sincerely wish to deal with this issue and we hope that the problem can be meaningfully examined, and then set the way forward. As regards the proposal to be made, we do not rule out any possibility, but the most important step is to collect the data first. Our willingness to examine the problem is an important first step. Thank you, Deputy President.

MR LEE CHEUK-YAN (in Cantonese): *Deputy President, I have always wanted to reverse this unfair situation and I am drafting a private Member's bill for this purpose.*

The Secretary has just indicated his sincerity but I do not understand, after collecting the data in the first half of next year, the Secretary may not be in office in the second half of next year, unless he is appointed to be a policy secretary by the future Chief Executive; how can he display his sincerity in the second half of next year? Having procrastinated for so long, the Government is now saying that data has to be collected in the coming half year. Can the Secretary specify whether the direction of the authorities is to align 12 days of statutory holidays with 17 days of general holidays? If so, I can at least see his sincerity. If the Government has even failed to determine the direction, even if we wait until the end of the first half of the year does the Secretary think that he will be in office and can thus make a commitment? If the Secretary is not sure whether he will still be in office, we cannot see his sincerity in reversing this unfair situation.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I thank Mr LEE for his remarks. Our study has nothing to do with the change of government. If a demarcation line is drawn on the basis of the change of government, the current Government needs not take up a lot of work. All along, we have been making efforts to promote and improve labour rights in light of economic development. We have a very explicit plan this time. First, we collect data in a targeted manner and we have requested the C&SD to provide the relevant data as soon as possible rather than wait until the middle of the year. If

we have the data at an earlier date, we can start the analyzing work and we can at least make a proposal first. Even if the current-term government is willing to deal with the issue, legislative amendment takes time as we all know. We all understand that the amendment must be initiated by the next government. Hence, this study has nothing to do with the change of government and the most important point is that we sincerely wish to conduct a study. "A journey of a thousand miles begins with a single step" and the most important step to be taken first is to collect data and activate the mechanism. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Second question.

Football Development in Hong Kong

2. **MR CHIM PUI-CHUNG** (in Cantonese): *Deputy President, according to the information of the Federation International de Football Association (FIFA), the position of Hong Kong men's football team in the world ranking dropped to a record low of 168th in November this year. In this connection, will the Government inform this Council:*

- (a) *given that Hong Kong was once praised as the "football kingdom of the Far East", and the team of the Republic of China comprising representatives of Hong Kong's football players won the championship at the 1958 Asian Games, whether the Secretary knows the reasons why the world ranking of Hong Kong men's football team hit a record low;*
- (b) *given that the Hong Kong Football Association (HKFA) is the recognized sports association responsible for the development of football in Hong Kong, whether the authorities have assessed if, apart from overseeing how the HKFA utilizes government subsidies, there is a need to monitor or supervise its operations; and*
- (c) *of the policies or specific plans currently put in place by the Government to step up promotion of football to again become a*

popular and proper sport which has the support of the public in Hong Kong?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, football has long been a very popular sport among Hong Kong people. According to a Census and Statistics Department survey commissioned by the Home Affairs Bureau in 2010, football is one of the sports that attracts the highest numbers of viewers and participants in Hong Kong. Although local football has had its ebb and flow, we still remember how in the 2009 East Asian Games the Hong Kong Team showed perseverance and tenacity to win a gold medal, making history for Hong Kong football and delighting the public.

The FIFA determines the ranking of football teams around the world using a points system which is mainly based on the results of teams in international matches. The FIFA announces the rankings every month. The drop in the ranking of the Hong Kong men's team to 168th last month is indeed food for thought. Various parties have commented as to why the performance of the Hong Kong men's team has been less than satisfactory and Members of the Legislative Council have also expressed their views in motion debates.

In reply to part (a) of the question raised by Mr CHIM Pui-chung, the Home Affairs Bureau commissioned a consultancy study in 2009 to review the position of football in Hong Kong and to recommend viable options for the development of the sport locally. The consultant considered that the main factors affecting the standard of football in Hong Kong included a lack of talent identification and development mechanisms for young players; inadequate co-ordination across professional-, district- and school- based football competitions; limited provision of facilities for training and competition; and a low level of aspiration to play professional football in Hong Kong. All these factors combined have created a vicious circle — poor playing and management standards have led to a decreasing number of spectators, which has led to reduced revenue from gate receipts and media interest in the matches. As a result, less sponsorship income has been received, players' incomes have remained low and therefore fewer players are willing to pursue a career in football. The consultant believed that all aspects of the sport have to be improved if we are to turn this situation around.

To address these problems, the consultant put forward a series of recommendations regarding the long-term development of football in Hong Kong, which focus on improving the governance of the sport; raising the standard of professional and "national" teams; improving training for young players; upgrading football facilities and establishing a football training centre.

The HKFA, which is affiliated to the FIFA, is the recognized sports association governing the promotion and development of football in Hong Kong. To take forward the above recommendations, the consultant considered that the HKFA should take a leading role in local football development, with the Government providing appropriate support in a well-co-ordinated manner, including the allocation of resources and the development of football venues.

Since the publication of the Consultancy Report on Football Development (Consultancy Report) in March 2010, the HKFA and the Government have made a concerted effort to implement the consultant's key recommendations.

In response to part (b), the Government has always respected the HKFA's autonomy and independence and does not interfere in its affairs. To help take forward the recommendations in the Consultancy Report and initiate a renaissance of football in Hong Kong, the Home Affairs Bureau has set up the Football Task Force comprising members from the sports sector, to monitor the implementation of the related measures, as well as to provide advice and assistance in the process. Public funding provided to the HKFA in this regard is subject to the monitoring and control of the Government. The HKFA has signed an agreement with the Leisure and Cultural Service Department (LCSD) and made a commitment to exercising proper internal controls, and to ensuring that public funding will be used in a cost-effective and responsible manner. It will also provide evaluation reports and submit progress and financial reports to the LCSD on a regular basis. Separately, the Independent Commission Against Corruption (ICAC) has compiled a Best Practice Reference for Governance of National Sports Associations (which include the HKFA) to assist these associations in further strengthening their governance and internal controls. The LCSD and the ICAC will help sports associations implement the best practices related to governance that are recommended in this reference document.

In reply to part (c), the Government is working closely with the HKFA to implement Project Phoenix to help to bring about a renaissance of Hong Kong football. Specific plans include:

- (i) **Improvements in governance:** In response to the consultant's recommendations, the HKFA last year appointed a "change agent" to review its corporate structure and mode of governance. In April this year, in the light of the recommendations of the "change agent", the HKFA revised its constitution; introduced independent directors and set limits on the length of service of directors; and enhanced the transparency of voting procedures. To improve its executive management in order to strengthen its co-ordination of football development, the HKFA has conducted a worldwide recruitment exercise and appointed a Chief Executive Officer (CEO) with experience in sports management.
- (ii) **Improvement of facilities:** The LCSD has earmarked resources to provide 21 new or converted "third generation" artificial turf football pitches in the coming five years, bringing the total number of such pitches to 37 to meet the increasingly keen demand for football pitches for training and competition. Moreover, the LCSD designated "home" pitches for First Division teams starting from the 2010-2011 football season to help the teams attract more supporters and sponsors. In the meantime, the Home Affairs Bureau has been following up on the proposed establishment of a football training centre in Tseung Kwan O, with the aim of providing high quality training facilities of a suitable scale to meet the long-term development needs of football in Hong Kong.
- (iii) **Provision of additional support:** To ensure that there will be sufficient resources to take forward the recommendations in the Consultancy Report, the Government has, on the advice of the Sports Commission, earmarked \$20 million annually for the next three years to help the HKFA in undertake reforms and implement a long-term development plan.

As regards football at the district level, in November this year the Government granted over \$5 million in total to district-based football

teams. District teams can make use of these additional resources to hire coaches, purchase equipment and improve team administration. With regard to youth football, the LCSD continues to provide subvention to youth development programmes in the districts.

The Government will maintain a dialogue with the HKFA and help the Association to take forward Project Phoenix, with a view to delivering a long-term strategy for promoting football in Hong Kong.

MR CHIM PUI-CHUNG (in Cantonese): *Deputy President, the Secretary's reply is very comprehensive. Noting that the Government has provided subsidies for the development of football and earmarked \$20 million annually for the promotion and development of football matches, my supplementary question is as follows: Given that the HKFA is the highest authority overseeing Hong Kong's football development, and in part (i) of the main reply to part (c) of the main question, the Secretary pointed out that limits would be set on the length of service of its directors, will he set any limit on the length of service of its President? I am not biased against Mr Timothy FOK, but the fact is that the FOK's family has held the title of "President of the HKFA" for decades. May I ask if this is one of the reasons causing the HKFA's inability to develop? I assume that people who love football will make concerted efforts, and an extended occupation and possession of the HKFA will only suffocate the development of sports. My supplementary question is: Has the Secretary considered reforming the HKFA in the same way as the Hong Kong Jockey Club, by imposing a limit on the length of service of its top leaders, such that they will have to step down or be replaced after certain years?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): *Deputy President, the HKFA has agreed to revise its constitution to set limits on the length of service of its directors. Certainly, we are aware that the HKFA has a President and a Chairman as well. There will be limits on the length of their service, including that of the President.*

MR WONG YUNG-KAN (in Cantonese): *Deputy President, in June 2009, the authorities commissioned a consultant to study the position of football in Hong*

Kong. I wish to ask the Government: While our world ranking was still 143rd in 2009, I learnt from the Secretary's reply that it has dropped to 168th as at last month, representing a drop of 25 places. In that case, does this imply any problems with the development programme or a failure in the promotion of local football which has rendered us unable to nurture talents in this regard?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, we are certainly aware that the results of Project Phoenix, a programme to promote football, will not be seen overnight. After all, the revival of local football owes much to the down-to-earth promotion of this sport. While Hong Kong's drop in the world ranking to 168th is a record low and does warrant our attention, it has nonetheless boosted our determination to promote the development of local football.

MISS TANYA CHAN (in Cantonese): *Deputy President, I raise this supplementary question on behalf of the large number of football fans, hoping that the Secretary can give a helping hand. As Members may be aware, the FIFA's world ranking is determined by the results of football teams of different countries and regions in international football matches. Apart from competing in formal international matches such as World Cup or Asian Cup qualification matches, the Hong Kong football team rarely competes in international friendly matches with other regions or Chinese cities. I wish to ask the Secretary, will the Government arrange more international matches for our football team so as to facilitate the HKFA to boost our world ranking, with a view to maintaining and even enhancing the football standard of Hong Kong?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, the ranking announced by the FIFA is determined by ranking the results of various football teams in international matches. Points will be given to teams competing in world-class matches, such as the Olympic Games or World Cup, as well as in regional matches. The drop in the ranking of our Hong Kong team within a mere 11 months is undoubtedly attributable to a lack of participation in international matches recently. We will put in place one of the key targets set out in the Consultancy Report, and that is, apart from the ranking, participation in international matches should also increase. This is the direction that we will be

heading. The Home Affairs Bureau and the HKFA will both make efforts to enhance our team's participation in international matches.

MR ALBERT CHAN (in Cantonese): *Deputy President, while the Secretary was answering this question concerning football, a video footage has been widely circulating on the Internet. The video footage is on a centennial "own goal" scored in a match of the Hong Kong First Division Football League, and it has been viewed over 1 million times. As we are now discussing about Hong Kong's football skill, this "own goal" is really stunning to the world. Yet, it was an "own goal" where the ball was sent wrongly into our own net.*

Deputy President, regarding the future of Hong Kong's football and its ranking, I remembered that when our ranking dropped to some 130th some time ago, I had told my friends that this was yet the lowest of lows, the ranking would drop further. People who have a good understanding of the structure and overall development of Hong Kong's football should know that the biggest problem — I have repeated this saying time and again over the past 10 years or so — is "football has no future in Hong Kong if the HKFA is not revamped!" Not only is the structure corrupted with laymen leading experts, there is also the transfer of benefits, and the entire association is managed like a club. Hong Kong's football standard can never be enhanced under such circumstances.

Deputy President, in the main reply, the Secretary mentioned that the HKFA's structure will be reformed or improved. Will the Secretary thoroughly reform the corrupted system of the HKFA while he is still in office — as this issue has been discussed for more than a decade — so that the First, Second, Third and Fourth Divisions can all be represented in the HKFA, while at the time completely rectify the problem of laymen leading experts? How can we revive local football with laymen leading experts?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, the Consultancy Report does highlight the importance of transforming the internal structure of the HKFA. I also recall that in a motion debate previously conducted in the Legislative Council, some Members considered that it would be extremely difficult for the HKFA to endorse a revision of its constitution. A Member even likened this to the endorsement of the reform package.

Nonetheless, the fact is that the HKFA has now endorsed the revision of its constitution. Certainly, the reform package had also been endorsed.

Under the revised constitution, independent directors have joined the HKFA's Board of Directors, for instance, Mr TANG King-shing and Mr Simon PEH Yun-lu. As Members may be aware, they are football fans with rich experience in management. What is more, they are upright persons. Actually, a transformation of the entire structure of the HKFA has started. I have to admit that the sports sector used to think that the National Sports Associations (NSAs) were managed like clubs, such as gentlemen's club. With continuous advancement and the injection of substantial resources by the SAR Government into various NSAs, we are now particularly concerned about corporate governance, hoping that further improvements will be made.

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

MR ALBERT CHAN (in Cantonese): *Will the relevant reform be completed within his term of office?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, as I have said, we have completed the thorny task of endorsing the revision of the HKFA's constitution, we have also commissioned a consultant to oversee the implementation of the recommendations and conducted an open recruitment worldwide to look for a CEO. The transformation has already started. Instead of specifying when it will be completed, I would rather regard it as a continuous transformation process to keep abreast of the times.

MR LAU KONG-WAH (in Cantonese): *The promotion of football does not only concern the nurture of football players — for instance, is the injection of \$5 million annually a regular provision? — the nurture of spectators is also very important. The Democratic Alliance for the Betterment and Progress of Hong Kong had once pointed out that many people were unable to watch the World Cup matches, and thus suggested the Government to purchase the broadcasting*

right so that the general public can watch these world-class matches free of charge, thereby nurturing football spectators and promoting the future of football. What is the progress in this regard?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, we have provided a regular funding to the HKFA, which is about \$10 million each year. As I have said in the main reply, the Government has earmarked \$20 million for the HKFA to employ a professional who is familiar with football to implement various reform measures in the course of transformation. We have earmarked a sum of \$20 million but not just \$2 million. Regarding the proposal of purchasing the broadcasting right of World Cup matches, it would mean our intervention into the existing privately- or commercially- run television broadcasting market. I will discuss this issue with the Commerce and Economic Development Bureau.

MR PAUL TSE (in Cantonese): *Deputy President, we used to describe some people as having "more brawn than brain". Nowadays, young people are completely opposite as they have "more brain than brawn". I agree with what Mr LAU Kong-wah said earlier, we should enable more people to watch the World Cup matches. And yet, the advancement of technology has indirectly led to the regression of Hong Kong's football. This is because after watching too many high standard football matches, Hong Kong people hardly have any incentive to spend time watching local matches.*

The major problem is that Hong Kong's football flourished when our economy had yet to set off and the society was less well-off. At that time, the economic cost of playing football was pretty low and people were very willing to spend time playing football. The advancement of technology and the economy have nonetheless dampened young people's wish to spend time on playing football. Therefore, while I agree that there are problems with the HKFA's management structure as mentioned earlier, I think a more important point is that as our economy evolves from a less well-off state to a well-developed era, more incentives and opportunities will have to be provided for football. Support like scholarships, training and post-retirement arrangements should be provided to football players. Although this is not the major purview of the Secretary, is it possible for his bureau to work with other departments to safeguard the future of students engaging in football, provide them with financial support, offer subject

substitution and promote the future development of football. Only by so doing can there be an ultimate change in the decline of local football.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, if we look at the ranking of football teams from different parts of the world, we may certainly notice that there are teams from less developed countries like Brazil, but also national and regional teams from developed countries. Those among the top of list are teams from well-developed European countries. As such, the well-off level and economic prosperity of a community are not the determining factors of a place's football standard. The major factor determining the standard of football, as set out in our Consultancy Report, is the creation of a virtuous cycle. As we were previously stuck in a vicious cycle, the number of people playing football has dropped. A series of measures have now been put in place, such as the youth development programme launched by the LCSD to promote football at schools, under which hierarchical and systematic training will be provided. It is hoped that this will boost the number of football players.

DEPUTY PRESIDENT (in Cantonese): Third question.

Japanese Infant Formulas Containing Radioactive Cesium

3. **MR WONG YUNG-KAN** (in Cantonese): *Deputy President, it has been reported that earlier on, a Japanese food company carried out sample tests on its infant formulas and found that some of them contained radioactive substances, namely cesium-134 and cesium-137, and the company decided to recall 400 000 tins of the affected infant formulas, while some supermarkets in Hong Kong removed all batches of this brand of infant formulas from the shelves and stopped selling them right away. Since the Centre for Food Safety (CFS) has not immediately clarified whether the affected batches had been imported to Hong Kong, parents do not know whether they should stop feeding their babies with the formulas concerned at once. In this connection, will the Government inform this Council:*

- (a) *given that the problem of some food products in Japan being contaminated by radioactivity has arisen after the nuclear power plant incident in Fukushima, of the number of random tests which*

have been carried out by the authorities on all infant formulas imported from Japan (including parallel imports and authorized products) since the outbreak of the incident; the test results; the safety standards adopted by the Government at present in the tests and in the safety assessments made on Japanese infant formulas;

- (b) given that some Japanese infant formulas were tested and found to contain radioactive substances, whether the authorities will consider stepping up testing and sample checking on all imported Japanese food products and regularly publishing the radioactivity levels of such food products; and*
- (c) whether the CFS of Hong Kong will be notified immediately and obtain relevant test results when imported Japanese food products are found by the Japanese authorities to contain radioactive substances; whether the authorities have any plan to set up a reporting mechanism in respect of food safety incidents with the Japanese authorities, so as to enhance the exchange of information between both sides?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, a milk powder manufacturer in Japan announced on 6 December 2011 that radioactive substances were found in some of its milk powder products. Accordingly, it voluntarily recalled the relevant batches of products. The CFS took immediate action on the same day and made enquiries with the Japanese authorities and the local trade for more information. At a meeting on 7 December 2011, the CFS confirmed with a number of local importers/distributors of Japanese milk powder that the relevant batches of products had not been put on sale in the local market. While an importer had imported a consignment of the affected batch, the whole consignment did not enter the local market as it was still pending testing. The importer is arranging to return the consignment back to the manufacturer. The CFS issued a press release on 6 and 7 December 2011 respectively to announce the progress of the investigation and follow-up actions. Furthermore, the CFS has deployed staff to inspect local retail outlets and so far, has not found the relevant batches of products being put on sale. The CFS will continue to closely monitor the situation and follow up.

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

- (a) We have always been paying attention to the safety of food imported from Japan. Since 12 March 2011, that is, the day of the nuclear plant incident, the CFS has stepped up regulatory control of food products imported from Japan, which includes testing of radiation levels of every consignment of food products (including milk powder) imported by sea or air from Japan. As of 12 December 2011, 146 samples of Japanese milk powder had been tested by the CFS and none was found to contain radioactive substances.

As regards the testing standards, the CFS adopts the Guideline Levels for Radionuclides in Foods Contaminated Following a Nuclear or Radiological Emergency (Guideline Levels) laid down by the Codex Alimentarius Commission (Codex) (that is, iodine-131:100 Bq/kg, cesium-134 and cesium-137:1 000 Bq/kg), to step up testing of radiation levels of food products (including milk powder) imported from Japan. According to Codex, when radionuclide levels in food do not exceed the corresponding Guideline Levels, the food could be considered as safe for human consumption.

On 7 December 2011, the CFS briefed the Expert Committee on Food Safety (Expert Committee) on its follow-up actions on the issue. The Expert Committee, which comprises food experts from the Mainland and overseas as well as local experts, agreed that Hong Kong should continue to adopt the Codex Guideline Levels as standards for testing of radiation levels of Japan-manufactured milk powder. The Guideline Levels of cesium-134 and cesium-137 for infant foods and other foods are both 1 000 Bq/kg.

The radiation levels detected in the milk powder concerned were very low. The CFS conducted a risk assessment on the milk powder sample with the highest levels of radiation and found that the radiation dose from the normal consumption of the contaminated product by a nine-month-old infant for a prolonged period (one year) was approximately 0.04 millisievert (mSv), which was equal to the radiation dose received from less than one chest X-ray or 1/200

computed tomography scan. The dosage is unlikely to cause any adverse health effects.

- (b) Since 12 March 2011, that is, the day of the nuclear plant incident, the CFS has been taking samples from every consignment of food products (including milk powder) from Japan for testing of radiation levels. If the food concerned is found to contain radionuclides exceeding the Guideline Levels, the CFS will immediately mark and seal that consignment and arrange for disposal.

To date, over 58 000 samples of Japanese food products collected at import, wholesale and retail levels had been tested. Among them, only three samples of vegetables imported from Chiba prefecture on 22 March 2011 were detected to contain radioactive substances at levels exceeding the Guideline Levels. The test results of all the remaining samples were satisfactory (including 146 samples of milk powder imported from Japan).

As the radiation levels of the above three samples of vegetables were found to have exceeded the Guideline Levels, to safeguard food safety and public health, the Director of Food and Environmental Hygiene made an order on 23 March 2011 to prohibit the import of fresh food (including milk, dried milk and dairy products) from five prefectures in Japan, namely Fukushima, Ibaraki, Tochigi, Chiba and Gunma.

The Fukushima nuclear incident is yet to be fully under control and the radiation fallout following the release of some radioactive substances with long half-lives like cesium could remain in the environment for years, which will continue to pose threats to food safety. The order prohibiting the import of fresh food from the five affected prefectures in Japan will remain in force. For other food products imported from the said five prefectures and food products from other prefectures, the CFS will continue taking samples from every consignment of food products for testing. Based on the local surveillance results and those in Japan and other places, the CFS will decide the sample size of each consignment according to the risk assessment. Milk powder and other milk products will continue to

be under 100% surveillance. The CFS will also continue to liaise with relevant Japanese authorities to keep abreast of the latest development of the Japan nuclear incident and take appropriate follow-up actions. The surveillance result of food imported from Japan will continue to be posted on the CFS website daily. In addition to unsatisfactory food samples, satisfactory samples found to contain low radioactivity will also be announced.

- (c) The CFS has been in close contact with the Consulate-General of Japan in Hong Kong to exchange information on the nuclear incident in Japan. Following the detection of radioactive substances in milk powder in Japan, the CFS approached the Japanese authorities on 6 December 2011 for more information. To safeguard food safety in Hong Kong, the CFS will closely monitor information from Japan as well as the radiation testing results of Japanese food products in Hong Kong and elsewhere. Making reference to the recommendations of international authorities including the World Health Organization and the International Atomic Energy Agency, the CFS will review and adjust if necessary, the surveillance strategy on food products imported from Japan, in a timely manner.

MR WONG YUNG-KAN (in Cantonese): *Deputy President, as infant formulas are children food, I think their safety is a matter of grave concern for each and every parent.*

I would like to ask the Secretary a further question, he said that 146 samples have been tested, but all these samples are imported through normal channels, has the Government conducted random tests on samples of parallel-imported infant formulas? How does the Government test parallel-imported infant formulas so that they are also subject to Government supervision?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I would like to stress that if by "parallel imports", Mr WONG refers to goods which are brought into Hong Kong by members of the public after visiting Japan, there is no way we can conduct random checks on such products because people can freely bring

products back to Hong Kong. However, if the goods are imported through normal channels, monitoring is currently in place for products imported by sea or air.

Parallel imports sold in Hong Kong will be monitored at the retail level; and if necessary, tests will be conducted.

MR CHAN HAK-KAN (in Cantonese): *Deputy President, I read from the newspaper this morning that the Ministry of Health, Labour and Welfare of Japan has just announced that more stringent standards of radioactive cesium in food products will apply from April next year as follows: the standard for general food products will be tightened to 100 Bq/kg, the standard for milk products and the new category of infant foods will be reduced by half to 50 Bq/kg, and that for potable water is 10 Bq/kg.*

I would like to ask whether the Government will act correspondingly and tighten the standards applicable to Hong Kong? If not, food products considered unsatisfactory in Japan can be imported into Hong Kong easily, affecting the health of the people. Moreover, whether the testing equipment currently in use in Hong Kong can detect such a low dose of radioactive substances?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, we also note the adjustment made by Japan in this regard recently. But most importantly, we must ensure that imported food products (including infant formulas) comply with the current standards of Hong Kong. Our standards are formulated solely on the basis of risk assessment and they are also in line with the international standards laid down by the Codex. Hence, while the Expert Committee has considered the need for any adjustments on several previous occasions, we consider that Hong Kong as an international city should adhere to the principle of allowing consumers' choice as far as practicable and maintain the current standards on the basis of risk assessment.

Regarding the adjustments made by Japan in this regard, we will first find out the reasons for such a decision. Sometimes, individual countries will formulate relevant standards on their own food products, which can be totally

different from the standards adopted by the importer of such products. As an importer of food products, the Government will of course formulate food safety standards taking into account the potential risks for the public. This is an approach we have all along adopted. Hence, we will closely monitor the situation in Japan, as well as the developments in this regard of other countries and the Codex.

MS AUDREY EU (in Cantonese): *Deputy President, in his reply to Mr CHAN Hak-kan just now, the Secretary highlighted the emphasis given by the Government for consumers' choice. In fact, problems in relation to imported Japanese infant formulas are nothing new, and concerns have been raised by many people previously. For example, the nutrition information of imported Japanese infant formulas is displayed in Japanese only, and there is no Chinese or English equivalent. This has caused much confusion to consumers who also have many doubts about the relevant advertisements.*

I would like to ask the Secretary: Given that the Government has previously indicated that a code on marketing of infant formulas will be available by the end of this year, nothing has been heard to date, when will the Government finally make up its mind to formulate such a code, or even regulate by legislation the import of infant products?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, we have already explained the matter several times in the Legislative Council. At present, we will first regulate the nutrition labelling of infant formulas through a professional code; thereafter, legislation may be considered. This is also in line with international practices. Currently, a task force under the Department of Health is studying various issues relating to the code. We hope that a draft code will be available in the beginning of 2012 for consulting the public and the trade. We will then assess the trade's compliance, which will also serve as the basis of our study for legislation.

MR FRED LI (in Cantonese): *Deputy President, as the half-life and full decay periods of radionuclides range from several years to 10 or 20 years, does the Government have any plan to conduct long-term and regular monitoring and*

study on the impact of radioactive substance intake from imported Japanese food products, in particular infant and children food, so as to protect the children and infants?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, actions have been taken on various fronts, one of which is the monitoring of food safety. As the half-life of cesium-134 is two years and that of cesium-137 is as long as 30 years, radiation fallout following the release of these two radionuclides will remain in the environment for years, posing threats to safety. Hence, we will continue to monitor food safety in this regard.

Regarding the growth of children in Hong Kong, we have other ways to check their health and monitor their well-being, such as whether they have been impacted by any contamination in the environment. In Japan, certainly in places relatively close to Fukushima, the local authorities must closely monitor any increased incidences of cancer in infants and young people, as well as other health problems. However, insofar as Hong Kong is concerned, we consider that given our distance from Japan, it is unlikely that public health will be undermined as a result of contaminated food.

Nonetheless, in terms of ensuring that children have proper intake of nutritious food and live a normal life Through health checks in maternal and child health centres as well as in schools, we can monitor the state of health of Hong Kong children. I hope that with the introduction of a better electronic health record system in future, trends of illnesses or health conditions of the public can become more readily identifiable.

MS CYD HO (in Cantonese): *Deputy President, just now, the Secretary said that public consultation on the labelling of infant formulas will be conducted. I would like to ask the Secretary what are the matters for consultation really? In fact, the public's view is crystal clear: it is too late even if the legislation is ready right now. Does the Secretary need to consult the trade so that they still have the say as regards the timing of legislation, or worse still, will legislation be postponed and statutory control relaxed to the detriment of public interests?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, according to the guidelines of the World Health Organization, we must first formulate a set of professional codes, and then consider legislation in the next step. Hence, the Government is now working towards this direction. Regarding the stringency and laxity of legislation, it is most important to make the decision on the basis of the need of consumers and the general public. As the Legislative Council's approval is required for the relevant legislation, I think when the time comes, there will be many opportunities for discussion so that the right decision can be made.

DEPUTY PRESIDENT (in Cantonese): Fourth question.

Licence for Keeping or Using Any Place of Public Entertainment for Lectures or Story-telling

4. **MS CYD HO** (in Cantonese): *Deputy President, under section 4 of and Schedule 1 to the Places of Public Entertainment Ordinance (PPEO), any person who keeps or uses any place of public entertainment for presenting or carrying on activities of entertainment including a lecture or story-telling, and so on, is required to apply to the Food and Environmental Hygiene Department (FEHD) for a licence and be granted such a licence by the FEHD, and those who fail to do so shall be liable on conviction to imprisonment for six months and a fine at level 4 (that is, HK\$10,001 to HK\$25,000). In this connection, will the Government inform this Council:*

- (a) *when a lecture or story-telling was brought within the ambit of PPEO by the authorities, and the background to and justifications for doing so;*
- (b) *whether the authorities have invoked the aforesaid provisions to institute prosecutions; if they have, of the date on which the aforesaid provisions were last invoked to institute prosecution and the details of the case concerned; whether the person being prosecuted was subsequently convicted; if so, of the penalty; and*

- (c) *whether the authorities have assessed if the aforesaid provisions will infringe on the freedom of speech and right to expression; if the assessment findings are affirmative, whether they will amend Schedule 1 to PPEO accordingly as early as possible with a view to abolishing the aforesaid provisions under PPEO in respect of the requirement of applying to the FEHD for a licence for keeping or using places of public entertainment for presenting or carrying on lectures or story-telling?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, the PPEO was enacted in 1919. It has been amended a number of times in its history of more than 90 years and has been included in the laws of the Hong Kong Special Administrative Region (SAR) since 1997. Its primary aim is to protect public safety at places of entertainment at which members of the public would gather. On the three parts of the question, my reply is as follows:

- (a) The decision to add "lecture" and "story-telling" into the definition of "entertainment" under the PPEO was made in 1951 when the PPEO was amended. The terms have remained in the definition since then. The Legislative Council of the SAR did not amend the terms when it passed a proposal to amend the PPEO again in 2002.
- (b) The PPEO provides that the licensing authority for the Places of Public Entertainment Licences (PPELs) is the Secretary for Home Affairs. Starting from 2000, the Secretary for Home Affairs has delegated the authority to issue or cancel PPELs or to exercise any other function relating to licensing matters to the Director of Food and Environmental Hygiene under section 3B of the PPEO. The FEHD has not prosecuted against the conduct of lecture or story-telling activities without a PPEL under the PPEO since 2000.
- (c) When the licensing authority considers applications for PPELs, its considerations stem from the angle of protecting public safety. It will not put restrictions on the content of the "lecture" or "story-telling", and as a matter of fact, it does not impose such restrictions.

Freedom of speech, of the press and of publication are protected by the Basic Law of the SAR. The SAR Government executes the PPEO in order to ensure public safety, and it does not infringe on the freedom of speech or the right to express opinions.

MS CYD HO (in Cantonese): *Deputy President, the demerit of not having an archives law is fully reflected in this circumstance. Whenever we ask about information on events that happened long ago, even Directors of Bureaux have no idea. According to my speculation, after the founding of the People's Republic of China in 1949, the British Hong Kong Government prohibited the free entrance of Mainlanders to Hong Kong from 1950 onwards to avoid clashes between members of the Communist Party of China and that of Kuomintang in Hong Kong. Yet, such a clash could not be avoided. In 1956, a riot eventually broke out in Shek Kip Mei.*

Deputy President, I would say that the provision is even older than mummies. I have checked the online database of the Judiciary and there is no record indicating that the authorities have ever invoked the provision to institute prosecutions. Moreover, I have checked this with a retired Judge. As far as he can remember, the authorities have never invoked the provision to institute prosecutions.

Public safety in indoor places is protected under the Buildings Ordinance and public safety in outdoor places is protected under the Public Safety Ordinance. Why do the authorities not invoke other laws to protect public safety but insist on retaining a provision that allows conviction for expression of opinions, leaving room for the Government to initiate political prosecution selectively?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, the relevant ordinance, including the licensing arrangement, is in fact still in force. For instance, many places of public entertainment, including cinemas, theatres and so on, are required to obtain and regularly renew their licences in order to carry out entertainment activities.

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

MS CYD HO (in Cantonese): *My supplementary question is: Since public safety in indoor places is protected under the Buildings Ordinance, why do the authorities not protect public safety via similar legislation but insist on retaining the provision that allows conviction for expression of opinions?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, the intent of the provision is not to initiate prosecution for expression of opinions. The ordinance in question is a piece of legislation for protecting public safety.

MR LEE CHEUK-YAN (in Cantonese): *Deputy President, I wonder if the Secretary has a good understanding of the content of the PPEO, for the PPEO does not only require the application of licences for activities of public entertainment to be carried out in indoor places, like cinemas; activities of public entertainment carried out in all public places, including outdoor places, should also apply for licenses.*

In the year before last, I placed the Goddess of Democracy in a public place on behalf of the Hong Kong Alliance in Support of Patriotic Democratic Movement of China. The authorities said that I had contravened the PPEO and initiated prosecution against me. Today, Ms Cyd HO asked in her question for the justifications for bringing lecture and story-telling into the ambit of the PPEO. Secretary, in other words, is a licence required for giving a lecture in public places? Will all those who give a lecture without a licence be prosecuted?

Deputy President, following this logic The story of the "pig" and the "wolf" has become the talk of the town these days. These two Chief Executive candidates have been giving lectures on the streets. The two Chief Executive candidates from the pan-democratic camp have also been giving lectures on the streets. Have they applied for licences from the Home Affairs Bureau or the FEHD? Besides, the Secretary himself had also taken part in activities during which the slogan "Act Now! Act Now! Act Now!" was chanted. Members still remember Donald TSANG standing on a vehicle and giving lectures in public

places. Had he applied for a licence at that time? Secretary, you have also participated in the events.

My supplementary question is: Should all people giving lectures in public places applied for a licence? If so, why the authorities had not initiated prosecution against Donald TSANG, Henry TANG, LEUNG Chun-ying when they went around to give lectures without a licence? The Secretary may tell me that they had applied for licences. The Secretary may give this answer. Will the Secretary tell me whether they have applied for a licence?

SECRETARY FOR HOME AFFAIRS (in Cantonese): As I mentioned in the main reply earlier, the freedom of speech, of the press and of publication of the people of Hong Kong are protected by the Basic Law of the SAR. The PPEO is put in place to ensure public safety. If anyone carries out activities in certain places that prompt the gathering of public causing public safety concerns, we will take actions under the PPEO.

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

MR LEE CHEUK-YAN (in Cantonese): *My supplementary question is about Donald TSANG, Henry TANG and LEUNG Chun-ying*

DEPUTY PRESIDENT (in Cantonese): You ask whether they have applied for a licence, right?

MR LEE CHEUK-YAN (in Cantonese): *..... have they applied for a licence? More often than not, a lot of people will gather around them when they give lectures, thus they should be required to apply for a licence according to the definition put forth by the Secretary. May I ask the Secretary whether they have applied for a licence and whether they should apply for such a licence in his view?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, in certain places, such as venues of Leisure and Cultural Services Department (LCSD), the Hong Kong Convention and Exhibition Centre and certain shopping malls, activities of entertainment are staged from time to time during which the a large number of people would gather. These activities are in compliance with the requirements of the PPEO, for the premises have obtained a licence, and the licence is valid for one year.

MR LEE CHEUK-YAN (in Cantonese): *Deputy President, he has not answered my supplementary question. Since the three have been going around in Shum Shui Po giving lectures, have they applied for a licence?*

DEPUTY PRESIDENT (in Cantonese): Mr LEE, please be seated.

MR LEE CHEUK-YAN (in Cantonese): *He only mentioned the LCSD in his reply but not the three persons in question.*

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, I have nothing to add.

MS EMILY LAU (in Cantonese): *Deputy President, the Secretary pointed out in the main reply that in issuing licences under the PPEO for activities held in places of public entertainment, the licensing authorities' considerations stem from the angle of protecting public safety. The Secretary said that "It will not put restrictions on the content of the lecture or story-telling, and as a matter of fact, it does not impose such restrictions." He said earlier that if the lecture or story-telling prompted the gathering of a large number of people, the authorities might take actions.*

Deputy President, I think you and I both hope that when we give a lecture somewhere, some 20 000 people would suddenly gather together to listen. According to the reply of the Secretary, if the activities do not prompt the gathering of people, regulation will not be imposed. On the contrary, if people gather because of the activities, actions will be taken. What does the Secretary mean to say? Is he suggesting that whether actions are taken or not depends on the impact of the lecture given? Is such practice in violation of the Basic Law and the Hong Kong Bill of Rights?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, if my earlier reply is unclear, I am willing to explain it now.

The freedom of speech, of the press and of publication are protected by the Basic Law of the SAR. The objective of the PPEO is to ensure that adequate safety measures are put in places of public entertainment where public gather. According to the existing law, the definition of "entertainment" includes "lecture" and "story-telling". This is so stipulated in the relevant provisions.

MS EMILY LAU (in Cantonese): *Does it mean the Secretary cannot deny that the authorities will take enforcement action under the PPEO if the speaker is good at making eloquent lecture which prompt the gathering of a large number of people in places of public entertainment? Is this the case? May I ask the Secretary whether such practice contravenes the Basic Law and the Hong Kong Bill of Rights?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, public safety is the primary consideration for taking enforcement action.

MS CYD HO (in Cantonese): *All kinds of "places of public entertainment" are included under the PPEO, including streets on which people walk every day. Whenever people carry out the various activities, including lecture or story-telling as listed in Schedule 1, on the street, they will be subject to the regulation of the PPEO.*

In our daily life, there are people giving lectures or telling stories every day in places like the pedestrians precincts in Mong Kok. At times before election, hundreds of candidates will give lectures on the street. Recently, the two Chief Executive candidates often go out to give lectures on the street. May I ask the Secretary whether any of them have applied to the authorities for a licence?

Regarding activities organized by the Government, say the "Act Now" campaign mentioned by Mr LEE Cheuk-yan earlier, will the Secretary provide a copy of the PPEL for that particular event obtained by the Government? If no application had been made, why did the Government not take the lead to comply with the law?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, I think the legislative intent and the purpose of enforcement are crystal clear. The actual situation is that freedom of expression and of assembly have remained intact. Hence, a dispute from this perspective is uncalled for.

MR CHEUNG KWOK-CHE (in Cantonese): *The PPEO was enacted in 1919. In the main reply, the Secretary stated that authorities had not invoked the PPEO to initiate prosecution since 2000. I do not understand what he means. Perhaps no one has ever applied for a licence.*

Though the PPEO has been in force for over 90 years, it is doubtful if we really need to have this ordinance since no one has ever applied for a licence and the authorities have rarely invoked the PPEO to initiate prosecutions. Since the activities concerned are indeed carried out every day, does it mean that the PPEO fails to function and exists merely in form? The authorities should either review the PPEO or repeal it.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, the understanding of Mr CHEUNG Kwok-che is wrong. The reality is that applications for PPEL are received each year. At present, over a hundred places of public entertainment have obtained the PPEL and they renew their licences at regular intervals. Both applications for PPEL and temporary PPEL are received.

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

MR CHEUNG KWOK-CHE (in Cantonese): *Deputy President, the Secretary has mistaken my meaning. We are always concerned about giving lectures in public places, and we do not see*

DEPUTY PRESIDENT (in Cantonese): Mr CHEUNG, which part of your earlier supplementary question has not been answered? I think the Secretary has already answered.

MR CHEUNG KWOK-CHE (in Cantonese): *Alright. Secretary, since a lot of people are carrying out similar activities on the streets without applying for the licence, yet*

DEPUTY PRESIDENT (in Cantonese): Mr CHEUNG, you cannot raise another supplementary question now.

MR CHEUNG KWOK-CHE (in Cantonese): *I am not. He has not answered my supplementary question. Will he conduct a review on the PPEO or even repeal it?*

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, I have nothing to add.

MS CYD HO (in Cantonese): *Deputy President, let me make it clearer and ask the Secretary to provide more specific information. Will the Secretary please answer my supplementary question?*

Our supplementary questions are not about the operation of film companies or large commercial organizations, but about individuals giving lectures on the streets, or tourist guides telling stories or history of Hong Kong on the streets to their tour members. Regarding these activities, how many applications for licences have the authorities received each year? If no such application is received, whereas such activities are going on every day on the streets, will the Secretary repeal the provision, so as to properly protect the freedom of expression in Hong Kong?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, the freedom of expression in Hong Kong is well protected, it is adequately protected under the Basic Law in particular. Regarding the examples cited by Ms HO, say telling stories about Hong Kong and introducing scenic spots by tour guides, we surely welcome that.

MS CYD HO (in Cantonese): *Has the Secretary received the relevant applications?*

DEPUTY PRESIDENT (in Cantonese): Secretary, has the authorities received any application in respect of such activities?

SECRETARY FOR HOME AFFAIRS (in Cantonese): We have not received any applications in this respect.

DEPUTY PRESIDENT (in Cantonese): Mrs Regina IP.

MRS REGINA IP (in Cantonese): *Sorry, Deputy President, I have wrongly pressed the button.*

DEPUTY PRESIDENT (in Cantonese): Fifth question.

Application of New Practice Notes on Gross Floor Area Concessions to Development Project Above Tin Shui Wai Light Rail Terminus

5. **MR LEE CHEUK-YAN** (in Cantonese): *Deputy President, as the building plan of the property development project above the Tin Shui Wai Light Rail Terminus owned by the MTR Corporation Limited (MTRCL) was already approved by the Building Authority in 2009, it does not need to comply with the requirements under the new measures to control "inflated buildings" which came into effect on 1 April this year. There have been comments that according to the approved building plan, the development project will create a "wall effect" in the area where the project is located and four schools in the vicinity are most affected. In this connection, will the Government inform this Council:*

- (a) *whether the additional directors of the MTRCL appointed by the Chief Executive have any plan to put forward a proposal at the company's board meeting or other meetings to amend the building plan of the aforesaid development project in accordance with the new measures which control "inflated buildings", so as to reduce the impact on the residents, teachers and students in the vicinity; if so, of the details; and if not, the reasons for that; and*

(THE PRESIDENT resumed the Chair)

- (b) *whether the Government has any measure to make the MTRCL fulfil its corporate social responsibilities (including protecting the environment and maintaining a cordial relationship with the community) in planning the aforesaid development project?*

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

In accordance with the property package of the 2007 rail merger proposal, the then MTRCL purchased investment properties, property management business and property development rights in respect of six property sites (including the development project above the Tin Wing Light Rail Transit Station

(Tin Wing Station) in Tin Shui Wai) from the Kowloon-Canton Railway Corporation. In other words, the merged MTRCL owns the development rights to the development project above the Tin Wing Station.

The new requirements of quality and sustainable built environment, including the measures to control "inflated buildings", have been incorporated into the practice notes promulgated by the Buildings Department (BD) which have come into effect from 1 April 2011. The practice notes set out objective criteria for the design of new buildings and provide appropriate incentives for inclusion of green features in new buildings.

Under the BD's relevant arrangements, the Department considers building plan applications submitted before 1 April 2011 in accordance with the old practice notes, and considers building plan applications submitted on or after 1 April 2011 in accordance with the new practice notes.

According to the Development Bureau, the planning application of the property development project above Tin Wing Station was approved by the Town Planning Board (TPB) as early as 2001. The project's building plan was also approved by the BD in 2009. As such, the project has completed the statutory planning and building procedures and proceeded to the implementation stage.

As shown in the Master Layout Plan approved by the TPB, the property development above the Tin Wing Station in Tin Shui Wai comprises four blocks of 43 storeys, including a three-storey podium for Light Rail Terminus, carparks, clubhouse and podium garden respectively. The project will provide 1 600 residential flats with an average flat size of about 57 sq m, as well as 287 and 25 parking spaces for private cars and motorcycles respectively.

In response to concerns about the project's impact on air ventilation in the surrounding area raised by local residents, the MTRCL conducted an air ventilation assessment earlier on and proposed installation of urban windows on the clubhouse floor to improve ventilation. These measures have already been incorporated into the revised building plan.

In fact, the assessment of the Planning Department (PD) reveals that the project site above Tin Wing Station is not located at the sole breezeway in Tin Shui Wai. There are many other breezeways in the area, such as Tin Shing

Road, Tin Wah Road and Tin Kwai Road. Moreover, Tin Lung Road, Tin Shui Wai Park and Tin Shui Road Park are joined together to form another breezeway. The MTRCL has considered various environmental factors in designing the project site above Tin Wing Station, including air ventilation. The proposed provision of urban windows on the clubhouse floor can help improve the air ventilation of the surrounding area (including the four schools nearby) of the development project.

Notwithstanding the promulgation of the Sustainable Building Design Guidelines in 2011, as noted in the reply of the Secretary for Development at the Legislative Council meeting in May this year, the Administration cannot require the MTRCL to amend its project plan because it has already been approved after completing the statutory planning and building procedures.

As a listed company, the MTRCL has the discretion to determine how to implement its own property development projects. Regarding the property development above the Tin Wing Station in Tin Shui Wai, the MTRCL has indicated that the project has already entered the implementation stage after completing the statutory planning and building procedures.

Being a listed company, the operation of the MTRCL must comply with the provisions of the Listing Rules. The MTRCL operates on commercial principles in respect of its business development (including its property development projects), day-to-day operation, management audit and deployment of human resources, and so on. In respect of corporate governance, it must comply with the Code on Corporate Governance Practices of the Listing Rules.

The overall management of the MTRCL's business is vested in the Board of Directors (the Board). Pursuant to the MTRCL's Articles of Association, the Board has delegated the day-to-day operation of the MTRCL's business to the senior management, and focuses its attention on matters affecting the MTRCL's overall strategic policies, finances and shareholders. These include financial statements, dividend policy, significant changes in accounting policy, annual operating budget, major financing arrangements and major investments, risk management strategies, and so on.

The public officers appointed to serve on the MTRCL's Board help safeguard the investment interests of the Government and, in respect of their

policy portfolios, work with other Board members in performing the directors' duties, including formulating development strategies, examining the company's budget and overseeing the company's operations.

As with other listed companies, all Board members of the MTRCL are collectively responsible for discharging the functions of the Board. All Board members, be they independent non-executive directors or directors appointed by the Government in their capacity as public officers, shall undertake general legal responsibilities and fiduciary duties in accordance with the following standards as set out in the Listing Rules:

- (i) act honestly and in good faith in the interests of the company as a whole;
- (ii) act for proper purpose;
- (iii) be answerable to the company for the application or misapplication of its assets;
- (iv) avoid actual and potential conflicts of interest and duty;
- (v) disclose fully and fairly interests in contracts with the company; and
- (vi) apply due skill, care and diligence.

In summary, the directors must act in good faith on behalf of the MTRCL and in the best interests of all shareholders. As a matter of fact, as an incorporated and listed company, the MTRCL is obliged to comply with all relevant laws and regulations in Hong Kong with respect to its local business operations. As regards railway services, the Government regulates the operation of the MTRCL primarily through the Railway Ordinance, and the Operating Agreement between it and the Government. As with other companies, the Government regulates the MTRCL's property development business through the Town Planning Ordinance, Buildings Ordinance, and other regulations relevant to land matters.

In the course of project planning, the MTRCL has taken into consideration factors such as environmental protection and maintaining good community

relations. Sustainability is the development goal of the MTRCL. Hong Kong's transport policy stipulates reliance on public transport, with railways serving as a backbone, and promotes green transport. The railway network can help achieve environmental protection and sustainable development by mitigating the public's demand on road transport, and reducing adverse environmental impacts. In the process of planning, design, construction and operation, the MTRCL has all along been minimizing environmental impact by strengthening environmental management. In addition, the MTRCL also understands that, during planning and implementation, there is a need to actively communicate and maintain good community relations. The MTRCL would make full reference to the views of relevant stakeholders, with a view to striking a balance between operational need and the views and expectations of relevant parties, in order to achieve the goal of sustainable development.

The MTRCL considers that the property development above the Tin Wing Station in Tin Shui Wai has been planned with careful consideration in terms of the overall layout, building heights, green space and compatibility with the surroundings. There are also spaces between buildings. The MTRCL notes that local residents and bodies have different expectations. As such, it has met and discussed with the stakeholders, including the local residents, management of the schools nearby, and district leaders through different channels since 2010. With the development project entering the implementation stage, the MTRCL will set up a works liaison group to continue its engagement with the local community with a view to further improving the implementation during the construction period.

MR LEE CHEUK-YAN (in Cantonese): *President, the Secretary just stated that the design has preserved space between buildings. This is the space. Can Members see it? The 40-odd-storey-high buildings are only 4 m or at most 7 m apart. She said that there is space between buildings, but the space is only 4 m wide. These are the wall-effect buildings built by the MTRCL.*

The Secretary for Development sitting beside her has, in response to voices of objection in the community against wall-effect buildings, launched a set of guidelines on 1 April 2011, undertaking that wall-effect buildings would no longer be constructed. Yet, the Secretary for Transport and Housing or the MTRCL has disregarded the guidelines, claiming that the building plan was

subject to the old guidelines. However, the buildings concerned are not yet built; as such, why are the new guidelines not applicable?

President, given that the Government has just condemned CLP Power Hong Kong Limited for not letting go any chance to make money, even resort to making such comments on Facebook, should it not also condemn the MTRCL for not letting go any chance to make money? The Government owns shares of the MTRCL. It is determined not to let go any chance to construct buildings. It insists on constructing wall-effect buildings. It also does not let go any chance to make money. Then, should the Government not condemn itself on Facebook?

Secretary, but my question President, I know you are about to ask me what my supplementary question is.

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

MR LEE CHEUK-YAN (in Cantonese): *I know. President, my supplementary question is as follows: as stated by the Secretary for Transport and Housing in the main reply, the Board members of the MTRCL have to act in the interests of the company and of the shareholders. Given that the Government is the largest shareholder of the MTRCL, is its interest not the interests of the people? If she said that the interests of the people are not in the interest of the Government, I will have nothing to say. However, if the interest of the Government also includes those of the people, should it change the building plan and stop constructing wall-effect buildings, and follow the new guidelines instead? This is will also in line with the interests of the company because it can fulfil corporate social responsibility and maintain cordial relationship with the community in the vicinity. As a Board member of the MTRCL, will the Secretary instruct the MTRCL to change the building plan and stop constructing wall-effect buildings?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I hold that a major premise is that we have to act by the law. The property development is now owned by the MTRCL, not the Government. Approval has been granted for the development project, both in terms of planning

and construction, and the project has now proceeded to the implementation stage. This is the major premise.

Secondly, we understand the concern Mr LEE has expressed just now, but according to the PD's assessment, there is more than one breezeway in the district. As I have just mentioned in the main reply, there are a number of breezeways in different areas. Hence, at this stage, under the premise that we have to act by the law, the most appropriate and balanced approach is to actively communicate with various stakeholders and optimize the approved proposal, including the proposal of installing urban windows mentioned just now.

I hope Member would understand that as a Board member, the Government certainly has to consider the interests of the company and operate prudently on commercial principles. While we will take into consideration the interests of society as a whole, complying with the law is also a very important principle to be considered.

DR PHILIP WONG (in Cantonese): *President, I think the Government is sometimes doing a disservice out of a good intention. Many people in society, including Members of this Council, do not understand why the Government has granted the development right of the property to the MTRCL. If the Government has not done so, Mr LEE Cheuk-yan would not have put forth this question. Can the Secretary clearly tell us the rationale for granting this right to the MTRCL?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, in fact, railway development has all along adopted a rail-plus-property model. Many places around the world now draw reference from our model. The crux of the concept is that when railway development is financially infeasible, it can be taken forward in tandem with property development to compensate the capital shortfall. The advantage of the model is that public money can be deployed to infrastructural projects or other ends instead of railway development. Moreover, in the long run, this approach can make it possible for the railway company to adjust its fares to a more reasonable level without having

to get subsidies from the Government. This is the concept that we have all along upheld.

Of course, in the wake of the rail merger in 2007, apart from the rail-plus-property model, we have also adopted other modals as appropriate, including the ownership model in which the railway company is responsible for financing, designing, constructing and maintaining a railway. Another model which we have increasingly adopted is the concession model, meaning that the Government is responsible for the cost and the construction, while the MTRCL will take over the operation, but the latter also has to pay the service concession payments. This model operates in a way similar to the example that the Government constructs a venue to be rented to the MTRCL which has to pay a rent. We will take actions appropriate to the situation. We will choose a financing proposal that is most effective and appropriate according to the financing needs and costs of different projects.

MRS REGINA IP (in Cantonese): *President, as stated by the Secretary just now, the MTRCL is a listed company and is accountable to its shareholders. It thus has to operate on commercial principles. I notice that many Board members of the MTRCL are members of the business sector experienced in making money. In view of the fact that the MTRCL often suffers from schizophrenic syndrome (because the Government owns 76% of the company's shares), will the Government consider deprivatizing the MTRCL? Given that the Government is already the major shareholder, by doing so, will it be able to put public interests on top priority, rather than only focusing on maximizing profits?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I believe when the MTRCL went public, the rationale was to enhance its service effectiveness and competitiveness. We also notice that the MTRCL is ranked among the best in railway systems worldwide no matter in terms of service standard, operating standard, and so on. As far as operation of the railway is concerned, if the MTRCL, as a listed company, is able to face the market and operate on commercial principles to enhance effectiveness, the company will be conducive to the entire society.

As regards whether the Government, which possesses 76% of the shares, should sell more of its shares on the market, the Secretary for Financial Services and the Treasury will, I believe, consider from the perspective of public money and take into account factors such as whether there is a financing need. However, as far as operation of the railway is concerned, the purpose of the MTRCL going public in 2000 is clear.

MRS REGINA IP (in Cantonese): *President, the Secretary has misunderstood my question. I was not asking the Government to sell its 76% shares on the market By deprivatization, I mean buying back of the remaining some 20% shares*

PRESIDENT (in Cantonese): I heard that the Secretary had already answered the question on deprivatization. Secretary, can you go a little further on the subject?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, having considered the stock price, we do not have an intention at present to buy back the remaining 24% from the market. At present, the MTRCL has 250 000 shareholders.

DR RAYMOND HO (in Cantonese): *President, railway is a mode of public transport development which is very environment friendly, but it is also a very costly development project. If property development is not allowed to be conducted above rail terminuses, railway development will not have made such a rapid and fruitful progress. For instance, a company has taken forward a development project according to a building plan approved by the BD before 1 April 2011, but the Government then forbids the company to proceed with the approved building plan, will this not result in a lawsuit? In this connection, will the Secretary tell us whether the practice notes, for which constant updates are carried out, promulgated before 1 April 2011 contained any requirements on assessing the impact of air ventilation and transport? If so, will a lawsuit be triggered between the Government and the private company if the Government requires the company granted with a building plan approved before 1 April 2011 to comply with requirement promulgated after that date?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, as I have said in the main reply, as far as my understanding goes, the Development Bureau has stated in its reply to a written question raised earlier in the Legislative Council that the project, including its building plan and planning, has already been approved. I believe this is also applicable to the requirement that building plans approved before 1 April need not be re-submitted for additional procedures. As for the assessment on air ventilation, it was, in fact, an extra effort the MTRCL has made to respond to concerns raised by local residents. Some revisions were then made to address these concerns. Hence, my reply to Dr HO's question is that the project concerned has already been approved and has proceeded to the implementation stage. The optimized building plan is an effort made to respond to aspirations in the community. I believe the present approach has complied with the law as well as maintained communication with the residents. This optimized option is balanced and appropriate.

MS MIRIAM LAU (in Cantonese): *President, will the Secretary tell us, in respect of the property development project above the light rail terminus, what efforts have been made by the MTRCL to collect views in the districts or communicate with residents in the vicinity before and after drawing up the building plan? How will the MTRCL step up communication with the local residents and neighbouring schools during the implementation stage of the project?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we concur that consultation and communication are very important. As far as I understand, before the building plan was submitted for the TPB's approval, the MTRCL had conducted a district consultation in 2000 through the district office and had discussed the project in the Town Planning and Development Committee.

Moreover, in respect of the land grant application, the Lands Department requested a district consultation which was done through the district office in 2010. According to my understanding, the application was also discussed at the Town Planning and Development Committee. In the past few years, the

MTRCL has also maintained communication on the subject with the District Council members concerned, the school headmasters, owners' corporations and district leaders. Since local residents had expressed concerns, such as the impact of development density and air ventilation, the MTRCL later took the initiative to revise the development plan concerned and propose the installation of urban windows on the clubhouse floor. In respect of communication during the construction period, which Member has asked, the MTRCL has undertaken to establish a work liaison group to maintain communication with district leaders, so as to optimize the construction plan and minimize the impact generated during the construction period.

PRESIDENT (in Cantonese): This Council has used more than 20 minutes on this question. Last question seeking an oral reply.

Suspected Vote-rigging and Irregularities in 2011 Election Committee Subsector Elections

6. **MR RONNY TONG** (in Cantonese): *President, it has been reported that there were a number of cases of suspected vote-rigging and irregularities in the 2011 Election Committee Subsector (ECSS) Elections. For example, people who used to be members of a subsector continue to receive poll cards of that subsector even though they are no longer eligible to be registered as voters for that subsector after changing jobs. Moreover, among those who were elected uncontested, some members of the Agriculture and Fisheries subsector are engaged in occupations which are unrelated to the agriculture and fisheries industry. In this connection, will the Government inform this Council:*

- (a) *whether the Electoral Affairs Commission (EAC) had verified and updated the registers of ECSS voters in accordance with the requirements in the law before sending out the poll cards for this year's ECSS Elections; if it had not, of the reasons for that; if it had, the methods employed to verify the eligibility of the voters, together with a table listing the number of voters who were disqualified in each subsectors, the reasons for their disqualification, the number of voters in each subsectors in the ECSS Elections in 2006 and this*

year, as well as the difference in the number of voters between 2006 and this year;

- (b) whether it has assessed if people engaged in occupations which are unrelated to the agriculture and fisheries industry being elected as members of that subsector has contravened electoral law; if the assessment findings are negative, of the reasons for that; and*
- (c) whether the authorities have made reference to overseas examples in studying and reviewing ways to improve the electoral and verification systems so as to ensure that the Legislative Council Election to be held next year will really achieve the objectives of fairness, openness and being free from corruption; if they have, of the overseas examples to which they have made reference, and the details of those electoral and verification systems?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, regarding the three parts of the main question, my response is as follows:

- (a) 2011 is an ECSS Elections year. Following past practices, the Electoral Registration Officer (ERO) sent letters to all the umbrella organizations of the subsectors a few months before the voter registration deadline in the year. The letters requested each of the umbrella organizations to provide, within one to two months, a list of their members who are eligible for registration as voters of the respective subsectors according to the requirements in the electoral legislation.

The ERO compared and checked the lists provided by the umbrella organizations against the current register of voters. The ERO sent written inquiries to those who were no longer members of the organizations and hence might no longer be eligible for registration as voters of the relevant subsectors. The written inquiries were sent by registered post and before the statutory deadline of 30 June 2011, in accordance with the relevant legislation. If the voters concerned

did not provide, before the statutory deadline of 16 July, proof that they were still eligible for registration as voters in the relevant subsectors, the ERO would delete them from the registers of voters to be published in the year, in accordance with the relevant legislation. The ERO would also put the voters concerned on the omissions list. If, after the publication of the omissions list, the voters concerned did not lodge claims before the statutory deadline of 29 August, or the claims they lodged were not accepted by the Revising Officer, their names would not be included in the final register of voters.

After the publication of the final register of voters and before the election, if an organization mentioned above provides updates of its membership list to the ERO, showing that a member has lost his membership and is therefore no longer eligible for registration as a voter of the relevant subsector, the ERO will send a letter by registered post to the voter, informing him that he has been disqualified from voting in the relevant subsector, and the consequences of engaging in corrupt conduct. On the poll register to be used in the polling station during the election, the ERO will put a marker next to the name of the person. If the person proceeds to the polling station and asks for issue of a ballot paper, the staff at the polling station will give warning to the person that he has been disqualified from voting in the relevant subsector, and the consequences of engaging in corrupt conduct. The ERO will also include the person in the inquiry process I just mentioned before, when compiling the provisional register of voters next year.

There are 249 499 voters in the 2011 final register of voters. There has been a net increase of some 29 000 voters when compared with the 220 307 voters in the 2006 final register. The number of voters by subsectors is set out at the written annex submitted today. The 2006 and 2011 final registers are five voter registration cycles apart. There were newly registered voters and voters who were deleted every year. Reasons for voters to be deleted include voters who are no longer eligible for registration in a subsector, voters who are no longer eligible for registration as electors for geographical

constituencies, voters who have deceased, and so on. Those voters who have been deleted may re-apply for registration as voters in the following year if they become eligible again (for example, renewal of membership). Therefore, there may be overlapping in the figures across the five years. The figures in the Annex are the net change in the number of voters between 2006 and 2011.

- (b) All the public elections in Hong Kong are governed by legislation. Voter registration, eligibility of candidature, and electoral procedures are all handled in accordance with relevant legislation.

The Legislative Council Ordinance and the Schedule to the Chief Executive Election Ordinance stipulate who or which bodies are eligible for registration in each of the functional constituencies and subsectors. According to section 20B of the Legislative Council Ordinance and section 12(1) of the Schedule to the Chief Executive Election Ordinance, the bodies which are eligible for registration as voters in the Agriculture and Fisheries subsector may submit applications. Registered and eligible voters may participate in the election in accordance with the relevant legislation.

- (c) In the light of the recent public concerns that some voters may have made false declarations about residential addresses, the Administration has conducted a review of the existing arrangements and identified areas for improvement.

Firstly, we propose to introduce a requirement that address proof should be provided as standard supporting evidence at the same time when a person applies for registration as an elector of geographical constituency or when a registered elector applies for change in his residential address.

Secondly, we will enhance the existing checking on the voter register.

Thirdly, we will consider introducing legislative amendments to require electors to report change of registered address and to

introduce sanction for registered electors who fail to report change of addresses before the statutory deadline and who vote at an election afterwards.

Fourthly, we will enhance publicity measures.

Fifthly, we will conduct additional checks on lists of demolished buildings and buildings to be demolished.

The proposed measures were discussed at the Panel on Constitutional Affairs meeting on 19 December 2011. We will continue to listen to the views of Members and the public.

When deliberating these proposals, we have made reference to the legislation in other jurisdictions, including certain countries where common law is practised, such as Australia, the United Kingdom and Canada. For example, for address proof, driving licence is required under the voter registration system in Australia, and voters in Canada are required to produce address proof when casting votes. We will continue to make reference to the arrangements in other places to improve our voter registration system in the light of the actual situation of Hong Kong.

Since the Legislative Council Ordinance was enacted in 1997, the Administration conducts review on the Ordinance before every Legislative Council ordinary election. The sectors and trades covered by the functional constituencies and their electorates are updated as appropriate in the light of the latest developments and other relevant factors. In the process, if we have received reports or information indicating that certain corporate electors may have ceased operation, or should not continue to be electors of the relevant constituencies, the Administration will inquire into or examine the situation, and consider whether to propose certain corporate electors be deleted.

Annex

Number of ECSS Voters in 2006 and 2011

<i>ECSSs</i>	<i>Number of Voters in 2006 Final Register</i>	<i>Number of Voters in 2011 Final Register</i>	<i>Net increase (/decrease) in number of voters in 2011 Final Register when compared to 2006 Final Register</i>
First Sector			
1. Catering	8 191	7 934	(257)
2. Commercial (First)	990	860	(130)
3. Commercial (Second)	1 792	1 783	(9)
4. Employers' Federation of Hong Kong	112	122	10
5. Finance	136	125	(11)
6. Financial Services	580	568	(12)
7. Hong Kong Chinese Enterprises Association	319	321	2
8. Hotel	95	101	6
9. Import and Export	1 392	1 434	42
10. Industrial (First)	743	610	(133)
11. Industrial (Second)	517	695	178
12. Insurance	140	135	(5)
13. Real Estate and Construction	719	754	35
14. Textiles and Garment	3 779	3 188	(591)
15. Tourism	887	1 118	231
16. Transport	179	201	22
17. Wholesale and Retail	4 244	6 879	2 635
Second Sector			
18. Accountancy	20 765	24 630	3 865
19. Architectural, Surveying and Planning	5 584	6 778	1 194
20. Chinese Medicine	4 250	5 864	1 614
21. Education	78 840	86 618	7 778
22. Engineering	7 742	9 052	1 310
23. Health Services	35 873	39 128	3 255
24. Higher Education	6 865	9 106	2 241
25. Information Technology	5 004	5 522	518
26. Legal	5 560	6 583	1 023
27. Medical	10 087	11 118	1 031

<i>ECSSs</i>	<i>Number of Voters in 2006 Final Register</i>	<i>Number of Voters in 2011 Final Register</i>	<i>Net increase (/decrease) in number of voters in 2011 Final Register when compared to 2006 Final Register</i>
Third Sector			
28. Agriculture and Fisheries	160	159	(1)
29. Labour	554	626	72
31. Social Welfare	11 656	14 429	2 773
32. Sports, Performing Arts, Culture and Publication	1 836	2 358	522
Fourth Sector			
35. Chinese People's Political Consultative Conference	118	141	23
36. Heung Yee Kuk	147	147	0
37. Hong Kong and Kowloon District Councils	221	200	(21)
38. New Territories District Councils	230	212	(18)
Total	220 307	249 499	29 192

MR RONNY TONG (in Cantonese): *President, sometimes, you really cannot blame our colleagues for getting mad when asking questions.*

President, in part (b) of my main question, I asked the Secretary whether he had considered the consequences of having people engaged in occupations unrelated to the agriculture and fisheries industry being elected as members of that subsector. However, the Secretary has not, in his reply, mentioned about those elected members, he only talked about the election in general. President, I wonder if the Secretary has watched a recent TVB programme which revealed that one of the elected members was a clerk. This elected member had frankly admitted in the programme that he had no relation with the Agriculture and Fisheries subsector. Meanwhile, people like technician of the Water Supplies Department, property manager and social worker, who bore no relation to the agriculture and fisheries industry, were elected uncontested.

President, my question is: why would something like that happen? If the Secretary had watched that programme, did he look into those cases to see

whether the people involved should be prosecuted? If they should not be prosecuted, what are the reasons? While the television station could dig out those cases, why the EAC could not do so?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I would like to supplement my answer given in part (b) of the main reply.

I have watched the news programme mentioned by Mr Ronny TONG, and I am aware of those cases. Here, I would like to cite section 37 of the Legislative Council Ordinance (Cap. 542). In this section, it is stated that a person is eligible to be nominated as a candidate only if he/she has reached 21 years of age and has been registered as an elector for a geographical constituency. Apart from these two criteria, this section particularly states that, for a person to be validly nominated as a candidate, the person must be "both registered and eligible to be registered as an elector for the constituency; or satisfies the Returning Officer (RO) for the constituency that the person has a substantial connection with the constituency".

In other words, the RO for the relevant subsector will have to vet the person nominated in accordance with the requirements in the Ordinance after receiving his/her nomination. The RO is required to verify if the person nominated is a registered voter for the subsector or has a substantial connection with the subsector, and consider if he/she meets some other criteria. If the RO satisfies that this person meets all these criteria, his/her nomination will be accepted as a valid one.

In the previous ECSS Elections, ROs vetted the eligibility for nomination in accordance with the law.

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

MR RONNY TONG (in Cantonese): *How can this be regarded as an answer?*

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

MR RONNY TONG (in Cantonese): *President, I am not asking him to read out the legal provision. I have read it already. In the supplementary question that I just raised, I asked him why people with occupations like clerk, technician, social worker and manager could be elected as members of the Agriculture and Fisheries subsector. They had admitted to the media that they bore no relation to the industry. Why are they not prosecuted? Why were those cases disclosed by the television station instead of the EAC? President, can the Secretary answer these questions? I am not asking him to repeat the legal provision. We can read it ourselves.*

PRESIDENT (in Cantonese): Secretary, have those elected members violated any statutory requirements?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I have just cited the Ordinance because I want to illustrate that ROs for the relevant subsectors, such as the Agriculture and Fisheries, are required to vet the nominations according to the law so as to ascertain if they are in compliance with statutory requirements. As I have just stated in my reply, the RO had vetted the nominations for the Agriculture and Fisheries subsector in accordance with the requirements in legislation, and he considered them valid. The RO had already performed his duties as required by the law.

MR RONNY TONG (in Cantonese): *President, do you think he has answered my question?*

PRESIDENT (in Cantonese): Mr TONG, the Secretary has answered your question.

MR WONG YUNG-KAN (in Cantonese): *President, the clerk mentioned by Mr Ronny TONG in his supplementary question is the child of a fisherman. His father still goes fishing frequently. Those fishermen are very honest, and they told others their current occupations. He is the Deputy Officer of the Hong Kong Fishermen's Association (Aberdeen Office) and has served fishermen for a long time. Therefore, I think there is nothing to do with any government requirements and we do not have to dig into this issue.*

I would like to ask the Government

(Mr Ronny TONG stood up)

MR RONNY TONG (in Cantonese): *President, I would like to ask who is answering my question right now? Mr WONG or the Secretary?*

PRESIDENT (in Cantonese): Mr TONG, just now, before you asked your question, you had also talked about the background and made some comments. I have already asked Members not to give lengthy speech in raising questions. I do not think Mr WONG Yung-kan has violated the Rules of Procedures when he spoke.

Mr WONG, please continue with your supplementary question.

MR WONG YUNG-KAN (in Cantonese): *President, some organizations have fishermen participating in their district level meetings for a long time. I would like to ask the Government if such organizations can be regarded as serving fishermen. If the answer is in the affirmative, is it lawful for organizations such as the Tsuen Wan Residents Association, formerly named as Residents Fisherman Association, with a dedicated sub-group under it to serve fishermen, to register as voters for the Agriculture and Fisheries subsector?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I would like to thank Mr WONG Yung-kan for his supplementary question. As I have just stated in part (a) of my main reply, each

year, when the Registration and Electoral Office (REO) compiles subsector registers, it will send letters to all umbrella organizations in different subsectors to ask them for their latest membership lists before publishing the provisional registers. That is because there may be changes in the membership of umbrella organizations over the year. After receiving the latest membership lists, the REO will compare them with the corresponding membership lists of the preceding year, which can be found in the registers compiled last year. If any discrepancies are found, the REO will conduct written enquiries and update the lists as necessary. It will then go through a statutory procedure to confirm if the particulars set out in the new subsector registers are correct. I have just explained that in my main reply.

To put it simply, voter registration has to be done according to existing legislation. The Legislative Council Ordinance and the Chief Executive Election Ordinance have both stipulated clearly which bodies are eligible to be candidates for a particular constituency or subsector, as well as the circumstances under which members of certain specified bodies are eligible to vote. All the relevant duties have to be performed according to the law and, each year, we follow the aforesaid procedure in handling voter registration.

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

MR WONG YUNG-KAN (in Cantonese): *No, my question is about those organizations which have been serving fishermen since 1970s but have later changed their names. As the large number of reclamation works has changed the life style of fishermen over the years, I would like to ask the Government*

PRESIDENT (in Cantonese): You want to ask whether an organization will lose its eligibility after changing its name. Is that right?

MR WONG YUNG-KAN (in Cantonese): *Yes.*

PRESIDENT (in Cantonese): Secretary, please answer his question about the change of name.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, if an organization has made some technical adjustments, such as changing one or two words of its name, we will make technical amendments to the relevant parts in legislation before the election. Of course, such amendments will have to be passed by the Legislative Council. This is the normal practice before every election.

DR MARGARET NG (in Cantonese): *President, in listening to the Secretary's reply to Mr Ronny TONG's supplementary question, I have the impression that, no matter what legal criteria have been set regarding the persons to be considered as having substantial connection with a subsector, ROs will have the final say. The whole thing boils down to the approval or disapproval of the RO concerned. Is this the case? Are the decisions of ROs final, regardless of the statutory criteria? If their decisions are final, are we incapable of reverting such decisions in case they are arbitrary? In the case cited by Mr Ronny TONG, someone have been elected but all of us consider that the elected members do not have any connection with the subsector; yet, the RO concerned think otherwise and still accept their nominations, what else can we do? If the legislation stipulates that ROs' decisions are final and cannot be challenged, what is the purpose of the legislation?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the decisions of ROs must be in line with the relevant statutory requirements. I have already explained the relevant legislation. For a person to be eligible for nomination as a candidate, apart from meeting certain specified criteria, he/she must have a substantial connection with voters for the subsector or the subsector itself. Of course, there are statutory procedures for ROs to follow when they need to seek advice. They are required to consult a nominating committee for advice, and the members of this committee include lawyers.

The law has conferred ROs with the power to make such decisions. If anyone is dissatisfied with their decisions or considers such decisions unfair, he/she may lodge an appeal or take any other actions as allowed under the law.

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

DR MARGARET NG (in Cantonese): *President, the Secretary has not answered my supplementary question. The Secretary said that ROs have to make their decisions in accordance with the law. However, my supplementary question is: if a RO obviously has not followed the law in making the decision, will such decision still be taken as final and conclusive?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, according to the existing legislation, RO's decisions on which persons are validly nominated as candidates are final.

DR MARGARET NG (in Cantonese): *If ROs' decisions are final, what is the purpose of legislation? I have already asked this question at the start. If the decisions of ROs are final no matter what statutory criteria have been stipulated, what is the purpose of legislation?*

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, when requirements are provided in the current legislative framework and procedures, all persons, including ROs, must act according to the law. As in the case of reviewing other policies, if there are views in the community that procedures should be updated, the authorities concerned, including various bureaux, will certainly be willing to consider such views and examine if there are areas that required further review. However, when we talk about the existing election arrangements, things must be done in accordance with the prevailing law.

MR IP KWOK-HIM (in Cantonese): *President, just now, Mr Ronny TONG and Mr WONG Yung-kan sought clarification as regards how a candidate would be regarded as having a substantial connection with the subsector. In fact, this piece of legislation has been enacted for a long time. Even in this Council, some of our fellow Members are not representing the sectors that they work in. Ms Miriam LAU, my acquaintance, is one of the examples. Therefore, I do not understand why Mr Ronny TONG has such a view.*

I learn from the news report that some bodies belonging to the Information Technology subsector had requested the Government to clarify the eligibility of voters. My supplementary question is: the authorities asked all subsectors to verify their voters' particulars when compiling the subsector registers for the latest ECSS Elections? If it had done so, which subsectors had verified the particulars as requested? Can it provide information on the number of verifications done?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): *President, in the latest ECSS Elections, the REO had acted according to the procedure stated in part (a) of my main reply. If there is any change in the membership of relevant bodies after the publication of final registers but before the election, these bodies are required to report the changes to the REO. With regard to the elections just held, the REO had asked the Information Technology subsector and other subsectors to update their membership lists. Subsequently, one umbrella organization belonging to the Information Technology subsector reported that 24 persons had been wrongly listed as members. The register was later revised.*

After that, as stated in my main reply, the REO put markers on the relevant register and informed those people that they should not go to vote as they had been disqualified from voting. Presiding Officers were told to give warning to them in case they were seen in polling stations. However, in the elections just held, the 20-odd voters did not go to polling stations.

PRESIDENT (in Cantonese): *This Council has spent almost 24 minutes on this question. Oral questions end here.*

WRITTEN ANSWERS TO QUESTIONS**Medical Assistance Programmes Launched by Community Care Fund**

7. **MR ALAN LEONG** (in Chinese): *President, the Community Care Fund (CCF) has launched 12 programmes one after another, including two Medical Assistance Programmes, namely the First Phase Programme and the Second Phase Programme. The First Phase Programme has been accepting applications since 1 August this year, while the Second Phase Programme is expected to commence in the first quarter of next year. In this connection, will the Government inform this Council:*

- (a) *when the authorities will conduct a review of the First Phase Programme; whether the six cancer drugs subsidized under the Programme will be brought into the Samaritan Fund (SF) in the future; if they will, of the details; if not, how the authorities ensure the continuity of the subsidies; whether the CCF will regularly review and update the list of subsidized drugs so that some new drugs may have the chance of being included as subsidized drugs under the First Phase Programme;*
- (b) *as the Second Phase Programme will subsidize Hospital Authority (HA) patients facing economic difficulties but falling outside the SF safety net to use SF subsidized drugs, of the specific dates and timetable to implement the Second Phase Programme, the drugs and medical items expected to be subsidized, and the respective percentages of the amounts of subsidies of such drugs and medical items in the total amount of subsidies; and*
- (c) *how the Steering Committee on the CCF will enhance the transparency and accountability of the CCF, including whether more relevant information and data will be made public to enable patients, patient groups and the public to know the procedures and criteria for selecting subsidized drugs, the amounts involved in subsidizing various drugs and the number of beneficiaries, and so on?*

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

- (a) As far as the First Phase Programme of the CCF Medical Assistance Programmes is concerned, apart from submission of progress reports to the Medical Sub-committee and the relevant committees of the CCF on a regular basis, the HA will also conduct a detailed review on the effectiveness of the Programme after it has been implemented for a period of time.

The CCF provides assistance to people facing economic difficulties, and implements measures on a pilot basis to help the Government identify those that can be considered for incorporation into the Government's regular assistance and service programmes. The First and Second Phase Programmes of the CCF Medical Assistance Programmes will be implemented and open for applications on an ongoing basis until cessation of funding from the CCF, or until a decision has been made after due consideration on whether the Programmes will be incorporated into the regular assistance and service programmes.

Besides, when the six specified self-financed cancer drugs (at Annex) subsidized under the First Phase Programme have developed to a stage where the requirements under the existing mechanism are met, that is, when the latest scientific evidence on the safety, efficacy and cost-effectiveness of these drugs has shown that they have met the established requirements, due consideration will be given for them to be incorporated into the SF safety net or the Drug Formulary for provision to the public at HA's standard fees and charges. Moreover, the HA will continue to identify self-financed drugs which meet the requirements for subsidy under the First Phase Programme in accordance with the established drug review mechanism and make recommendations to the Medical Sub-committee and the relevant committees of the CCF for inclusion into the Programme.

- (b) The Second Phase Programme of the CCF Medical Assistance Programmes aims to provide assistance to those HA patients who marginally fail to meet the eligibility for subsidy under the SF. The

HA is working on the programme implementation plan and the details are expected to be announced early next year.

- (c) The statement of accounts of the CCF is audited by the Director of Audit and incorporated into the financial report of the Secretary for Home Affairs Incorporated for tabling at the Legislative Council annually. Apart from uploading the registers of interests of members of the committees under the CCF, the summary of discussion of meetings and information about its assistance programmes, and so on, onto the CCF website, the CCF also issues press releases and conducts publicity when launching assistance programmes with a view to enhancing its transparency.

With the launch of more assistance programmes in phases, the CCF will release more information and data. As to the First Phase and Second Phase Medical Assistance Programmes, apart from updating the relevant committees on the progress of the Programmes on a regular basis, the HA has set up in its website a dedicated webpage on the CCF Medical Assistance Programmes with the programme details. Meanwhile, the HA will also arrange for uploading the relevant drug review and selection mechanism as well as the cumulative number of approved applications and amount of subsidies onto the above dedicated webpage for public information. This dedicated webpage also contains hyperlinks to the websites of the Food and Health Bureau and the CCF, enabling the public to access information on the Medical Assistance Programmes from various channels.

Annex

List of self-financed cancer drugs subsidized under
the First Phase Programme of the CCF Medical Assistance Programmes

<i>Item</i>	<i>Drug</i>	<i>Designated type of cancer</i>
1	Rituximab	Leukaemia
2	Cetuximab	Colorectal cancer
3a	Sunitinib	Renal cell carcinoma
3b	Sunitinib	Gastrointestinal tumour

<i>Item</i>	<i>Drug</i>	<i>Designated type of cancer</i>
4	Pegylated liposomal Doxorubicin	Ovarian cancer
5	Lapatinib	Breast cancer
6	Pemetrexed	Lung cancer

The Hong Kong Academy for Gifted Education

8. **MR CHEUNG MAN-KWONG** (in Chinese): *President, the Hong Kong Academy for Gifted Education (the Academy), which was established at a funding of \$200 million, commenced its services in the 2008-2009 school year. The Academy aims to focus on the provision of challenging training programmes for gifted students aged between 10 and 18 to help them develop talents and potentials in a wide range of specialist areas, as well as rendering teachers and parents with professional training and support, so as to tie in with the development of gifted education in Hong Kong. I have recently received views from teachers pointing out that the Academy has focused on the provision of programmes and support mainly for secondary students without ever accepting any nomination made by primary schools, thus neglecting the needs of gifted senior primary students aged 10 or above. In this connection, will the Government inform this Council:*

- (a) whether it knows the number of gifted students in primary and secondary schools in Hong Kong in the past three years, with a breakdown by the grade and area of giftedness of students;*
- (b) whether it knows the number of students enrolled by the Academy in each of the past three years, with a breakdown by channel of selection (for example, school nomination and open competition, and so on) and area of giftedness of students;*
- (c) whether it knows the respective numbers, types, contents, service targets and numbers of participants, and so on, of the various types of programmes, seminars, talks, workshops and other support services rendered by the Academy to students, teachers and parents in the past three years, together with a breakdown;*

- (d) *whether the authorities have established any mechanism to monitor the quality of the programmes and support services of the Academy (including the formulation, contents and qualifications of teachers of the programmes, and so on), so as to ensure that the students' potentials are suitably nurtured and developed; if they have, of the details;*
- (e) *whether it knows the details of the expenditures, revenues, reserves and budgets of the Academy for the past three years and the current year; and*
- (f) *whether the authorities have planned to review the overall effectiveness of the Academy; whether it will enhance the training for gifted primary students on the basis of the current support which focuses on secondary students, including inviting primary schools to nominate students to the Academy, providing more gifted programmes targeting at primary students, and even extending support services to gifted students aged under 10; if they have, of the details?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) Based on the broad definition of giftedness stipulated in Report No. 4 of the Education Commission, each student may possess some special talents or potential, hence there cannot be a definite number of gifted students. Schools are given support and are encouraged to adopt a school-based approach to cater for the needs of gifted or high ability students of their own.

The Hong Kong Academy for Gifted Education (the Academy), which is charged to provide off-site support for exceptionally gifted students, currently provides services to secondary school students aged 10 to 18 years. The number of students admitted from 2008 to 2011, the first three years of operation, is shown in the table below.

<i>School Year</i>	<i>Number of Students Admitted</i>
2008-2009	1 212
2009-2010	1 409

<i>School Year</i>	<i>Number of Students Admitted</i>
2010-2011	1 340
Total	3 961

From 2008 to 2011, the domain and grade level distribution of all admitted students are as follows:

<i>School Year</i>	<i>Domain</i>	<i>Number of Students Admitted*</i>
2008-2011	Humanities	857
	Leadership	864
	Mathematics	1 249
	Sciences	1 159

<i>School Year</i>	<i>Grade</i>	<i>Number of Students Admitted*</i>
2008-2011	S1	141
	S2	305
	S3	709
	S4	1 413
	S5	540
	S6	987
	S7	43

Note:

- * Some students were admitted into more than one domain, therefore the total numbers of admitted students under all domains are slightly larger than the total number of students admitted in each year.

In the initial years of operation, the Academy focused on provision at secondary level, since it was considered more prudent for the Academy to avoid being overly ambitious. Also, the partners of the Academy have relatively more experience with programmes at secondary level. Nevertheless, the Academy has also been piloting programmes for primary schools (please see reply to part (f)), as well as accepting individual, exceptionally gifted primary students into the programmes meant for secondary students. With a few years' experience gained, the Academy will pilot more programmes for primary schools in the coming years.

- (b) For the past three years, the numbers of students awarded membership by the Academy were 1 212, 1 409 and 1 340 from 2008 to 2011 respectively. Detailed breakdown according to the nomination channels, level of study and domains of giftedness are given in Appendix 1.
- (c) In 2008 to 2011, the Academy has offered 201 programmes for 11 021 students and 25 activities for 3 207 students. In total, the Academy has offered 226 events for 14 228 students.

From March 2007 to 2011, the Academy has offered 121 programmes for a total of 7 820 teachers. Within the same period, the Academy has offered 88 deliverables for a total of 16 788 parents.

The detailed breakdown of the different programmes and services provided for students, teachers and parents are given in Appendix 2.

- (d) Since its inception, the work of the Academy has been closely monitored by the Education Bureau at a number of levels. Since 2007, the Education Bureau has appointed a Board of 10 Directors with two governance Committees, namely, Strategy and Planning Committee and Finance and Investment Committee, to monitor the strategic development, service quality and finance issues of the Academy. Since 2009, Working Groups have also been set up for each Division in which a number of independent professionals have been invited to advise on the design and development of programmes/services. Each Group meets on average around four times each year. A member of the Education Bureau staff sits in on each Working Group to understand and monitor the services provided and the direction of development of each Division of the Academy.
- (e) The financial figures of the Academy for the past three years are given in Appendix 3.
- (f) The Education Bureau has continuously evaluated the effectiveness, quality and quantity of the services provided by the Academy. Through active participation in the Strategy and Planning Committee

and the Finance and Investment Committee, the Education Bureau staff, together with appointed professionals and academics, provide the Academy with advice and oversight in respect of output quality.

Most recently, at their Board meeting in November 2011, the Directors agreed to establish a Research Division of the Academy. In its initial stages this Research Division will concentrate its efforts on the further development of an evidence-based Evaluation Framework that will operate across all Divisions.

Seeing the ever increasing demand for services from primary school students and their parents, the Academy will provide at least six primary programmes in mathematics and humanities within 2011-2012 school year (including courses on art appreciation, journalism, and a course on leadership and creativity especially for Little Astronauts prior to their departure to the United States). It is planned to provide more primary programmes in the near future based on the experiences gained on nomination procedures, curriculum and pedagogy, as well as the evaluation of the programmes. Currently the Education Bureau has been running 10 web-based courses for students of Primary Four to Secondary Three on astronomy, earth sciences, mathematics, humanities, and palaeontology. The Education Bureau will continue to run enrichment programmes for students, including programmes for those aged 10 or under.

Appendix 1

Table 1: Number of Students Awarded Membership by the Academy According to Nomination Channels and Domains of Giftedness

<i>School Year</i>	<i>Domain</i>	<i>Number of Students Admitted</i>			<i>Total</i>
		<i>School Nomination</i>	<i>School Social Worker Nomination</i>	<i>Nurturing Gifted Scheme</i>	
2008-2009	Humanities	239	16	3	258
	Leadership	274	35	0	309
	Mathematics	340	44	6	390
	Sciences	268	38	7	313

<i>School Year</i>	<i>Domain</i>	<i>Number of Students Admitted</i>			<i>Total</i>
		<i>School Nomination</i>	<i>School Social Worker Nomination</i>	<i>Nurturing Gifted Scheme</i>	
2009-2010	Humanities	308	16	0	324
	Leadership	295	20	0	315
	Mathematics	425	16	11	452
	Sciences	322	24	29	375
2010-2011	Humanities	275	N/A	0	275
	Leadership	240	N/A	0	240
	Mathematics	397	N/A	10	407
	Sciences	295	N/A	176	471
Total		3 678	209	242	4 129*

Note:

- * The Academy has offered various ways of nomination to all secondary schools in Hong Kong in an attempt to widen the net and reach out to those students with different forms of giftedness (including the underachievers). These include direct School Nomination, School Social Worker Nomination and the "Nurturing the Gifted" scheme whereby students are admitted through outstanding achievement in one or more recognized competitions. Most of our student members are admitted through the channel of direct School Nomination. The School Social Worker Nomination route was merged with School Nomination in 2010-2011.

Table 2: Number of Students Admitted to the Academy by Form and Domain preference 2008 to 2011

<i>School Year</i>	<i>Domains</i>	<i>Number of Students Admitted (Grades)</i>							<i>Total</i>
		<i>S1</i>	<i>S2</i>	<i>S3</i>	<i>S4</i>	<i>S5</i>	<i>S6</i>	<i>S7</i>	
2008-2009	Humanities	8	5	57	84	19	84	1	258
	Leadership	3	5	32	94	25	143	7	309
	Mathematics	13	21	75	161	43	77	0	390
	Sciences	10	9	45	119	36	92	2	313
2009-2010	Humanities	10	19	52	125	26	82	10	324
	Leadership	0	13	43	122	21	111	5	315
	Mathematics	17	40	91	171	77	53	3	452
	Sciences	8	24	50	130	60	101	2	375

<i>School Year</i>	<i>Domains</i>	<i>Number of Students Admitted (Grades)</i>							<i>Total</i>
		<i>S1</i>	<i>S2</i>	<i>S3</i>	<i>S4</i>	<i>S5</i>	<i>S6</i>	<i>S7</i>	
2010-2011	Humanities	13	15	43	95	57	49	3	275
	Leadership	9	15	23	65	63	60	5	240
	Mathematics	35	65	101	122	45	36	3	407
	Sciences	15	74	97	125	68	90	2	471
Total		141	305	709	1 413	540	978	43	4 129*

Note:

* Some students were admitted into more than one domain. Therefore the total numbers of admitted students are slightly larger than the total number of students admitted in each year.

Appendix 2

Table 3: Total Number of Students Served in 2008 to 2011

<i>School Year</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>Total</i>
<i>Deliverables/ Other Activities</i>				
Grand Total	3 344(45)	4 690(71)	6 194(110)	14 228(226)

<i>School Year</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>TOTAL</i>
<i>Deliverables</i>				
Talks	301(3)	902(7)	1 053(14)	2 256(24)
Workshops	146(5)	418(11)	306(13)	870(29)
Courses	1 283(29)	1 021(35)	1 479(59)*	3 783(123)
Camps	4(1)	0	0	4(1)
Mentorship	0	0	10(4)	10(4)
2 Year Courses	0	43(4)	0	43(4)
Competitions	692(2)	1 156(5)	2 145(7)*	3 993(14)
Student Sharing Group	0	0	62(2)	62(2)
Total Students Served	2 426(40)	3 540(62)	5 055(99)	1 1021(201)
Total Number of Students Enrolled	1 751(40)	2 784(62)	3 519(99)	7 102 [#] (201)

<i>School Year</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>Total</i>
<i>Other Activities</i>				
External Competitions	0	19(3)	65(2)	84(5)
Ceremonies	54(1)	136(2)	270(6)	460(9)

<i>School Year</i> <i>Other Activities</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>Total</i>
Briefing Sessions	14(3)	50(1)	0	64(4)
Orientation	850(1)	945(3)	804(3)	2 599(7)
Total Students Served	918(5)	1 150(9)	1 139(11)	3 207(25)
Total Number of Students Enrolled	916(5)	1 205(9)	1 244(11)	3 338 [#] (25)

Notes:

* Figures in brackets refer to the number of events.

The figures indicate the total individual students served between September 2008 to August 2011 in which no duplicated student is counted.

Table 4: Total Number of Teachers Served in 2007 to 2011

<i>School Year</i> <i>Deliverables</i>	<i>2007-2008</i> <i>March 2008</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>Total</i>
Total	400	2 743	2 689	1 988	7 820

<i>School Year</i> <i>Deliverables</i>	<i>2007-2008</i> <i>March 2008</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>Total</i>
Thematic Seminar		716(6)	843(7)	541(7)	2 100(20)
Thematic Workshop		267(5)	285(8)	550(13)	1 102(26)
Structured Course		1 166(23)	350(10)	267(8)	1 783(41)
Conference	200(1)	292(1)	250(1)	-	742(3)
Learning Circle			24(1)	-	24(1)
Outreach Talk	200(1)	302(5)	937(9)	630(15)	2 069(30)
Total	400	2 743	2 689	1 988	7 820

Note:

* Attendance (number of events)

Table 5: Total Number of Parents Served in 2007 to 2011

<i>School Year</i> <i>Deliverables</i>	<i>2007-2008</i> <i>March 2008</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>Total</i>
Total	150	5 420	6 231	4 987	16 788

<i>School Year</i> <i>Deliverables</i>	<i>2007-2008</i> <i>March 2008</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>Total</i>
Seminar	-	935(4)	1 009(7)	537(4)	2 481(15)
Workshop	-	313(3)	651(10)	687(10)	1 651(23)
Outreach Talk	-	3 512(15)	3 727(16)	2 906(15)	10 145(46)
Conference	150(1)	50(1)	241(1)	-	441(3)
Parent Orientation	-	-	-	362(1)	362(1)
Total	150(1)	4 810(23)	5 628(34)	4 492(30)	15 080(88)

Note:

* Attendance (number of events)

Total Number of Cases Dealt with by the Consultation and Assessment Centre in 2008 to 2011

<i>School Year</i> <i>Services</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>Total</i>
General enquiries	-	36	189	225
Helpline	529	483	233	1 245
Email	59	72	45	176
Face-to-face Consultations	22	9	12	43
Assessment	-	3	16	19
Total	610	603	495	1 708

Appendix 3

Table 6: Summary of Financial Information

<i>Financial Year</i> <i>(audited accounts)</i>	<i>Revenue*</i> <i>(\$)</i>	<i>Expenditure</i> <i>for the Year</i> <i>(\$)</i>	<i>Net Surplus/</i> <i>(Deficit) for</i> <i>the Year (\$)</i>	<i>Unrealized Gain</i> <i>on Investment —</i> <i>Schroders (\$)</i>	<i>Net Assets***</i> <i>(\$)</i>
2007-2008**	209,124,874	1,998,315	207,126,559	-	207,126,559
2008-2009	3,231,037	9,278,609	(6,047,572)	-	201,078,987
2009-2010	286,062	15,571,774	(15,285,712)	7,405,732	193,199,007
2010-2011	363,390	19,809,731	(19,446,341)	14,284,657	188,037,323

Notes:

* Revenue includes income earned from programmes, interest income and subvention from Education Bureau.

** The first audited accounts covered the period 12 March 2007 to 31 March 2008.

*** Net assets are the balance of assets less any liabilities and include the unrealized gain on the investment in Schroders.

Unauthorized Building Works in Village Houses

9. **MR LEE WING-TAT** (in Chinese): *President, regarding the handling of the problem of unauthorized building works (UBW) in village houses in the New Territories, will the Government inform this Council:*

- (a) *of the respective numbers of advisory letters and removal orders issued against cases of UBW in village houses by the Buildings Department (BD) under the Buildings Ordinance (BO) (Cap. 123) in each of the past five years; as well as the respective numbers of cases in which owners had complied with such removal orders and those who still failed to do so by the end of each year;*
- (b) *of the respective numbers of prosecutions instituted by the BD in respect of the non-compliant cases in part (a) each year; among these cases, of the number of cases in which the persons involved were convicted, and the maximum fine and longest imprisonment term imposed on such convicted persons; as well as the average fine and imprisonment term imposed in most cases;*
- (c) *among the non-compliant cases in part (a), of the number of cases in which the specified dates in the removal orders had been overdue as at the end of each year, broken down by the overdue period in each case (that is, less than one year, one to less than two years, two to less than four years, four to less than five years and five years or above);*
- (d) *given that the Lands Department (LandsD) may serve a notice in writing on the lessee or licensee of the land on which structures are erected in breach of a Government lease or licence, and require him to demolish such structures under the Lands (Miscellaneous Provisions) Ordinance (Cap. 28), of the number of cases in which notices in writing were issued by the LandsD against UBW in village houses in the New Territories in the past five years, as well as the respective numbers of cases of compliance and non-compliance with the orders stated in such notices to date;*
- (e) *given that the LandsD may exercise its right to re-enter the land or terminate the lease against structures which are erected in breach of*

a Government lease or licence under the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126), whether it had exercised its right of re-entry against UBW in village houses in the New Territories in the past five years accordingly; if so, of the details; if not, the reasons for that; and

- (f) whether the authorities will step up prosecutions against cases in which removal orders are long overdue but have not been complied with, or re-enter the land or terminate the lease according to the law, so as to heighten public awareness of compliance with removal orders and refraining from erecting UBW?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, the BD, as the enforcing department on building safety issues, has been taking enforcement actions against UBW in New Territories exempted houses (commonly known as "NT village houses") in accordance with the enforcement policy. For UBW on leased land (commonly known as "private land") which constitute a contravention of the lease conditions, the LandsD would take appropriate lease enforcement action.

In enforcing the provisions of the BO, the BD adopts an enforcement policy which takes into account relevant factors such as building safety and availability of resources. Upon receipt of complaints and reports about UBW in NT village houses, the BD will carry out investigation and, in accordance with the prevailing enforcement policy, take enforcement action against UBW which constitutes obvious hazard or imminent danger to life or property, UBW in progress and newly built UBW. Since April 2011, the BD has broadened the definition of "new UBW in progress" to cover fitting-out or site clearance in progress even after the completion of the main frame of the UBW. This has helped enhance the effectiveness of enforcement and contain the proliferation of new UBW. As we reported to the Panel on Development on two successive occasions this year, the BD is making preparations for the implementation of the enhanced enforcement against UBW in NT village houses.

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

- (a) In accordance with section 24(1) of the BO, the BD issues removal orders against UBW in high priority targets category, requiring the

owners to demolish or to rectify the UBW. The numbers of advisory letters issued in respect of "UBW in progress" in NT village houses by the BD in each of the years from 2007 to 2011 (up to 30 November 2011) are listed below:

<i>Year</i>	<i>Number of advisory letters</i>
2007	158
2008	424
2009	291
2010	305
2011 (up to 30 November)	325

The BD also issues advisory letters in respect of existing UBW in NT village houses but it does not keep statistics on these.

The numbers of removal orders issued by the BD in relation to UBW in NT village houses, including those which constitute obvious hazard or imminent danger to life or property, UBW in progress or newly built UBW, in each of the years from 2007 to 2011 (up to 30 November 2011) are listed below:

<i>Year</i>	<i>Number of removal orders</i>
2007	152
2008	423
2009	291
2010	304
2011 (up to 30 November)	328

The numbers of removal orders complied with and the numbers of non-compliant removal orders at the end of each year from 2007 to 2011 (up to 30 November 2011) are listed below:

<i>Year</i>	<i>Number of removal orders complied with</i>	<i>Number of non-compliant removal orders</i>
2007	115	37
2008	266	157
2009	136	155
2010	145	159
2011 (up to 30 November)	8	320

- (b) Where an owner fails to comply with the requirements of a removal order by the specified date, the BD would normally institute prosecution under section 40(1BA) of the BO against the owner concerned. In regard to the non-compliant cases, the numbers of prosecutions instituted by the BD and the associated numbers of convictions in each of the years from 2007 to 2011 (up to 30 November 2011) are listed below:

<i>Year</i>	<i>Number of prosecutions</i>	<i>Number of convictions</i>
2007	17	12
2008	66	38
2009	132	76
2010	129	77
2011 (up to 30 November)	186	152

In relation to the convictions mentioned above, the maximum fine imposed was \$50,000 and the average fine was about \$5,500. Over the past five years, there was only one case in which the owner concerned was sentenced imprisonment for three months, with the sentence suspended for three years.

- (c) The BD does not maintain yearly statistics on the overdue periods of non-compliant cases. As at 30 November 2011, the number of non-compliant cases, broken down by the number of years which they had been overdue, is tabulated below:

<i>Overdue period</i>	<i>Number of removal orders</i>
Less than one year	282
One to less than two years	159
Two to less than four years	312
Four to less than five years	37
Five years or above	0
Total	790

- (d) Generally speaking, the LandsD will consider taking appropriate lease enforcement action when, on receipt of enquiries or complaints, a structure on private land or part thereof is found to be in breach of the lease conditions. Such action may include the issue of a warning letter to the lot owner concerned, requesting

rectification of the lease breaches. If the lot owner does not rectify the lease breaches by the deadline, the LandsD may register the warning letter at the Land Registry, commonly known as "imposing an encumbrance". As appropriate, the LandsD may also refer the cases which involve UBW, including UBW in NT village houses and UBW which exceed the height and area restriction stipulated in the Buildings Ordinance (Application to the New Territories) Ordinance, to the BD for follow-up action. In the past five years, the LandsD has not required, under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any lot owner to demolish structures in NT village houses which are in breach of the lease conditions.

- (e) In the past five years, the LandsD has not exercised the right of re-entry under the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) against any structures in NT village houses which are in breach of the lease conditions. Where the cases involve UBW, the LandsD would refer them to the BD for follow up, as appropriate.
- (f) In considering prosecution against non-compliance of removal orders, the BD takes into account various factors, including whether the owner concerned has lodged an appeal or is arranging for the necessary works stipulated in the removal order. That said, as the Administration pointed out at the meeting of the Subcommittee on Building Safety and Related Issues under the Legislative Council Panel on Development held on 8 December 2011, the BD would increase the resources and set up a dedicated section to implement the new enforcement strategy against UBW in NT village houses. The BD would also enhance publicity and public education, and through internal monitoring, step up prosecution against the long overdue non-compliance cases with a view to enhancing the general public's awareness of compliance with removal orders and combating UBW.

Pickpocketing Cases Within Railway Premises

10. **MR WONG KWOK-KIN** (in Chinese): *President, it has been recently reported that there is an upward trend in the number of pickpocketing crimes*

within the railway premises, and among these cases, pickpocketing cases involving mobile phones happen frequently in which the offenders mainly aim at new smart phones and they steal these smart phones in a swift manner in crowded railway stations or train compartments, or when the victims are inattentive. In this connection, will the Government inform this Council:

- (a) of the numbers of the various types of crimes committed within the Railway Police District in the past five years, and among them, the numbers of persons who were arrested and convicted respectively, together with a breakdown by type of offence (pickpocketing, indecent assault, shop theft, clandestine photo-taking, criminal damage and wounding, and so on);*
- (b) among the pickpocketing cases in part (a), of the number of cases which involved mobile phones;*
- (c) of the five railway stations in which pickpocketing cases happened most frequently according to the figures in the past five years; whether the authorities have stepped up anti-crime actions in these five railway stations so as to reduce crimes; if they have, of the specific measures; if not, the reasons for that; and*
- (d) given the recent increase in pickpocketing cases which involved smart phones, whether the authorities have special measures and actions to reduce such crimes; if they have, of the specific measures and the effectiveness of their actions; whether the authorities will consider strengthening the manpower of the Railway District Task Force Sub-unit and the Railway Police District so as to combat crimes within the railway premises?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) The figures of various types of crimes committed within the Railway Police District from 2007 to 2011, and among them, the number of persons arrested, are at Annex A. The police do not maintain figures of convicted cases.

- (b) Among pickpocketing cases committed within the Railway Police District from 2009 to 2011, the number of cases which involved mobile phones are at Annex B. The police did not maintain figures of such cases before 2009.
- (c) Pickpocketing cases occur most frequently at major interchange stations or stations connected with at grade public transport interchanges in the railway system, particularly during morning and afternoon peak hours when train compartments and stations are crowded, making an ideal place for pickpockets to engage in such illegal activities.

To this end, the Railway Police District deploys front-line officers to carry out uniform static post duty and patrol while Task Force Sub-unit officers conducting plainclothes anti-pickpocket operations in these stations. To combat pickpocketing, joint operations are also conducted with relevant surface districts to enhance intelligence exchange on pickpocketing and to share information about the latest *modus operandi*.

As for co-operation with the Mass Transit Railway Corporation Limited (MTRCL), the Railway Police District and the MTRCL regularly hold anti-crime meetings, maintain close liaison and jointly review and formulate measures to combat offences in the railways premises. Railway Police District officers also deliver talks on crime prevention to MTRCL station staff and MTR shop staff to enhance their co-operation with the police and to strengthen intelligence collection in their concerted action of combating crime.

For the purpose of public education in crime prevention, the police work with the MTRCL from time to time to promote anti-crime messages, including the production of anti-crime posters for display within station areas to enhance public awareness of security. Various forms of anti-crime publicity activities are also conducted to remind the public to stay alert and avoid becoming crime victims.

In addition, through the television programme "Police Magazine", the police always remind the public of the *modus operandi* of common crimes in the railway premises. They are also reminded to

keep their belongings well attended at all times. For greater safety, the public are advised to keep their bags, backpacks or handbags to the front and keep their valuables in the inner compartments of their backpacks, particularly in crowded places. To augment their vigilance of the above crimes, the public may also go to the website of the police to get more anti-crime information.

- (d) To tackle recent pickpocketing cases involving smart phones, the Railway Police District has joined hands with relevant surface districts to hold anti-pickpocketing publicity campaigns targeting at smart phones at various crowded stations. To enhance public security awareness, "smart phone" notebooks produced by the Railway Police District and leaflets are distributed to remind commuters to be watchful of their mobile phones when travelling on railways.

In addition, by disseminating messages of common *modus operandi* of pickpockets to the media, the police aim to remind members of the public, to be vigilant of pickpockets. A number of recommendations on the prevention of mobile phone theft are also provided to curb pickpocketing crimes.

The Railway Police District also conducts internal redeployments in a flexible manner and works with surface districts concerned to launch focal combat against pickpocketing. This strategy is adopted to target against related crimes and it also makes room for a more effective use of district resources in fighting crimes within the railway premises.

Annex A

Crime Figures in Railway Police District from 2007 to 2011 (January to November)

	2007	2008	2009	2010	2011 (January to November)
Pickpocketing	100 (25)	94 (15)	157 (38)	260 (49)	266 (39)
Shop theft	103 (48)	134 (53)	219 (105)	252 (113)	160 (69)
Indecent assault	121 (87)	110 (67)	110 (74)	151 (110)	157 (104)

	2007	2008	2009	2010	2011 (January to November)
Under skirt photo-taking	88 (79)	117 (104)	80 (75)	91 (84)	75 (72)
Criminal damage	31 (7)	37 (7)	75 (12)	15 (7)	31 (11)
Wounding	4 (1)	5(2)	9 (7)	18 (13)	8 (6)

Note:

() denotes number of persons arrested

Annex B

Number of Pickpocketing Cases Committed in the Railway Police District Involving Mobile Phones in the Past Three Years

	2009	2010	2011 (January to November)
Number of Cases	157 (34)	260 (51)	266 (91)

Note:

() denotes number of cases involving mobile phones

Improving Air Quality and Updating Air Quality Reports

11. **MISS TANYA CHAN** (in Chinese): *President, regarding efforts to improve air quality and update air quality reports, will the Government inform this Council:*

- (a) *given that most environmental protection authorities in major countries worldwide make public their air pollution control measures and the effectiveness of these measures annually (for example, Mainland's Ministry of Environmental Protection published five brief periodic reports on emission reduction in respect of major pollutants in 2011), yet the Environmental Protection Department (EPD) in Hong Kong does not publish similar periodic reports at present, and that apart from the annual updating of the report entitled "Air Quality in Hong Kong", the latest study report on the EPD website was compiled two years ago, of the reasons why the EPD has not updated study reports on air quality in Hong Kong or on air quality improvement for a long time;*

- (b) *given that the SAR Government and the Guangdong Provincial Government have jointly implemented the air quality improvement measures under the Pearl River Delta (PRD) Regional Air Quality Management Plan with a view to meeting the targets of reducing the emission of four major air pollutants, namely sulphur dioxide, nitrogen oxides (NOx), respirable suspended particulates and volatile organic compounds by 2010, whether the two governments have set new emission reduction targets; if they have, of the new targets; if not, the reasons for that; and*
- (c) *given that the Chief Executive stated in the 2010-2011 Policy Address that the Government and franchised bus companies were conducting a trial to retrofit Euro II and Euro III buses with selective catalytic reduction (SCR) devices to reduce emission of NOx from these buses, and that the Chief Executive also announced in the 2011-2012 Policy Address the provision of subsidies to owners of liquefied petroleum gas taxis and light buses to help them replace catalytic converters in their vehicles, yet a study report indicated that SCR devices might increase the level of NOx, whether such a situation has arisen in the trial scheme of retrofitting buses with catalytic reduction devices (trial scheme); as the authorities advised at the meeting of the Panel on Environmental Affairs of this Council held in July 2010 that they would endeavour to have the initial results of the trial scheme ready by end 2011, of the progress at present; whether the authorities have any plan to submit the report on the trial scheme to this Council?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

- (a) The EPD publicizes the details and effectiveness of our air pollution control measures through the annual air quality report and the bi-annual reports submitted to the Panel on Environmental Affairs of Legislative Council on the progress of the various air quality improvement measures implemented in Hong Kong and PRD Region under the PRD Regional Air Quality Management Plan. We have uploaded the reports published in 2011 to the following webpages of the EPD for public access:

- (i) Air Quality in Hong Kong 2010:

<http://www.epd-asg.gov.hk/english/report/files/AQR2010e_final.pdf>

- (ii) Progress of Measures under PRD Regional Air Quality Management Plan:

<http://www.epd.gov.hk/epd/english/news_events/legco/files/EA_Panel_110128a_eng.pdf>

<http://www.epd.gov.hk/epd/english/news_events/legco/files/EA_Panel_110128a_annex_eng.pdf>

Moreover, we shall consult the Legislative Council and other stakeholders and upload the relevant information to the EPD's website for public access whenever we have plan to launch new air quality improvement measures. The progress of these measures will also be elaborated in the reports prepared under the PRD Regional Air Quality Management Plan.

- (b) To continue improving the air quality in the PRD region, the two governments are working in earnest to implement the emission reduction measures under the PRD Regional Air Quality Management Plan, which focus on power plants, motor vehicles and the more polluting industrial processes. The two governments are now conducting the final assessment on achieving the 2010 emission reduction targets. On the basis of the final assessment, the two governments will seek to complete a joint study on the emission reduction arrangements for the next phase and set emission reduction targets to further improve regional air quality.
- (c) Catalytic converters are devices making use of catalyst media used for reducing motor vehicle emissions. They come in different forms in terms of applications to different types of vehicle. "Three-way catalytic converters" are applied to petrol and LPG vehicles. This type of converter oxidizes harmful carbon monoxide and hydrocarbons to carbon dioxide and water, and reduces nitric oxide (NO) and nitrogen dioxide (NO₂) to nitrogen and oxygen. In

general their emission reduction efficiency can be over 90%. If vehicle owners do not replace the worn out three-way catalytic converters in time, the vehicle emissions would be increased drastically. As for the "diesel oxidation catalysts" referred to in a research report published by academics of The Chinese University of Hong Kong earlier, they reduce suspended particulates (including PM2.5), carbon monoxide and hydrocarbons emissions through an oxidization process. During the process, it may oxidize some of the NO in the exhaust gas into NO₂.

In recent years, vehicle manufacturers began to use SCR devices to reduce NO_x (including NO and NO₂) from the emissions of diesel vehicles. According to overseas experience, it can effectively reduce the NO_x emissions by about 60%. Since NO will further oxidize to NO₂ in the atmosphere after being emitted from vehicles, reducing NO_x emissions from vehicles (in particular franchised buses, which make up an important part of the vehicles running in urban areas) is the key to tackling the problem of local roadside NO₂ pollution.

Regarding retrofitting Euro II and III franchised buses with SCR devices, we have retrofitted three buses (comprising two Euro II and one Euro III buses) with SCR devices for trial in September 2011. We are now retrofitting another three buses (also comprising two Euro II and one Euro III buses) for trial. We expect that the retrofit can be completed in February 2012. We will review the initial results after the first six months of the trial to understand as soon as possible the feasibility of retrofitting these Euro II and III buses with SCR devices on a large-scale and their effectiveness in reducing air pollutants, and report the initial trial results to the Subcommittee on Improving Air Quality under the Legislative Council Panel on Environmental Affairs.

Booking and Use of Leisure Facilities Managed by LCSD

12. **MR CHAN HAK-KAN** (in Chinese): *President, from time to time there are members of the public who relay to me that as recreation venues managed by the Leisure and Cultural Services Department (LCSD) are always fully booked, it*

is difficult to hire a venue successfully, and that even though at present advance bookings can be made within 30 days from the current date, the venues are often fully booked on the first day when advance bookings are accepted. They have further pointed out that there are quite a number of online touting activities of reserved sessions of such venues. They also think that the authorities should build more recreation venues to promote a culture of sports for all. In this connection, will the Government inform this Council:

- (a) among the aforesaid online touting cases in the past five years, of the number of convicted cases and the relevant penalties; whether it had initiated investigation to ascertain if such touting activities involved syndicated operations;*
- (b) whether it will strictly implement the procedures for verifying the identity of hirers by requesting hirers to produce the hiring permits and their identification documents at the same time when they use the venues, so as to eradicate such touting activities; whether it will consider reviewing and introducing other procedures to verify the identity of hirers; if it will, of the details; if not, the reasons for that;*
- (c) whether the LCSD has examined the causes of and solutions for the problem that recreation venues available for booking by members of the public and organizations are always fully booked; if it has, of the causes; if not, whether it will consider conducting the relevant study, and of the details;*
- (d) apart from making reference to the Hong Kong Planning Standards and Guidelines (HKPSG), of the factors that the authorities will take into account in considering the construction of recreation venues, and the respective weighting of various factors of consideration;*
- (e) whether the authorities will consider reviewing the standards of provision of various recreation venues (including sports centres, soccer pitches, sports grounds, swimming pools and parks) as set out in the Guidelines, and lowering the ratio of population set for the provision of relevant venues; if they will, of the details; if not, the reasons for that; and*

- (f) *whether advance planning will be made in certain new development areas so that recreation venues will be constructed before residents of major housing estates in the areas move in and the population there increases significantly, so as to enable the residents to use these facilities as early as possible?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, my reply to the six parts of the question is as follows:

- (a) and (b)

According to the "Conditions of Use of Recreation and Sports Facilities" issued by the LCS D, the hirer of the LCS D facilities must be one of the users of the reserved facilities and must be present during the booked sessions. The hirer must produce a valid permit or approval letter for verification and registration before using the facilities. It is also stipulated that the hirer is required to produce his or her identification document at the check-in counter for verification.

At present, venue staff at the LCS D facilities strictly implement the above measures to ensure that the hirers take up the booking in person. If the person who produces the permit is found not to be the hirer of the facilities, he or she will not be permitted to use the facilities.

As regards online touting, the LCS D has conducted investigations and sought advice from the police and the Department of Justice, but there was insufficient evidence to bring charges. As a result, there have been no prosecutions for online touting related to sports venues in the past five years.

- (c) To promote "Sport for All", the LCS D sports facilities are available for hire by the public and by organizations for competition or training with a view to promoting sports development and encouraging the public to exercise more. However, as the demand for recreation facilities from both organizations and individual users

is increasing and particularly, as most users choose to hire the LCSD facilities on weekday evenings, Saturdays, Sundays and public holidays, many popular LCSD venues are fully booked during these peak periods.

We are committed to providing more sports facilities. Since 2007, we have completed projects or upgraded facilities at a total cost of over \$6.1 billion. We have increased the supply of popular sports facilities such as football pitches and sports centres. Specifically, there has always been strong demand for football pitches, but a natural turf pitch can only provide up to 60 sessions per month whilst an artificial turf pitch can offer as many as 270 sessions. The LCSD therefore plans to build more new artificial turf pitches and convert some existing natural turf pitches into artificial turf pitches in order to provide a total of 37 third generation artificial turf pitches in the next five years. As regards sport centres, five new ones have been opened since 2006, including Siu Sai Wan Sports Centre which opened to public in the middle of this year; Hang Hau Sports Centre will open by the end of December. One sports centre in North District and two sports centres in Yuen Long are under construction and will open next year. The LCSD would from time to time review public demand for different types of sports facility and build new sports facilities or upgrade existing ones.

(d) and (e)

In general, we make reference to the guidelines in the Hong Kong Planning Standards and Guidelines (HKPSG) when planning the development of recreation and sports facilities at district level. Whilst the HKPSG set standards for the provision of facilities according to population level, we will also take account of other factors when planning new facilities, such as policy objectives for sports development, utilization rates of existing facilities, public preference for different types of sports as indicated by studies and surveys, advice of District Councils and site availability. In other words, the HKPSG is not the only factor that we consider when planning the provision of new recreation and sports facilities; other factors are also of great importance. Since each case is different,

the relative significance of various factors may also change with different circumstances, but generally districts with a clear shortage of facilities will be given priority for the provision of new facilities. Besides, the Government from time to time reviews the standards for the provision of sports facilities in the HKPSG and revises these when necessary. When planning for new facilities, the LCSD makes reference to the prevailing HKPSG.

- (f) The LCSD is committed to planning and building various sports facilities to meet the needs of local residents. When carrying out projects, we will fully consider the projections of population distribution and growth in various districts over the years. Taking advice from District Councils, we conduct the planning process for sports facilities with the aim of ensuring that the provision of facilities is compatible with population growth.

Redevelopment Scheme for West Wing of Central Government Offices

13. **MR KAM NAI-WAI** (in Chinese): *President, regarding the proposed redevelopment scheme for the West Wing (the redevelopment scheme) of Central Government Offices (CGO), the Government intends to adopt a "two-envelope" tendering approach to develop the project which will provide an office tower with a financial theme, public open space (POS) and facilities for government institution and community (GIC) and ancillary office uses. In this connection, will the Government inform this Council:*

- (a) *of the situation under which the authorities will consider adopting the "two-envelope" tendering approach for development projects involving land sales; the criteria, guidelines and conditions to be complied with; the respective weightings accorded to the price and the technical and design aspects in assessing the tender proposals; the assessment mechanism concerned; as well as the number of such cases in the past 10 years, together with the specific situations and the results concerned;*
- (b) *why the "two-envelope" tendering approach is to be adopted for the redevelopment scheme; of the weightings to be accorded to the price*

and the technical and design aspects in assessing the tender proposals; the assessment criteria concerned; the formation and composition of the assessment panel; the expected number of bidders; and whether developers which previously designed and developed commercial buildings and POS at locations near the site for the redevelopment project will have an advantage over other bidders in terms of geographical knowledge, information access and experience;

- (c) of the advice given by the Independent Commission Against Corruption on the authorities' plan to adopt the "two-envelope" tendering approach for the redevelopment scheme; how the authorities ensure that the tendering process will be conducted in a highly transparent manner and that all bidders will have equal access to information and opportunities;*
- (d) among the 40 300 sq m of gross floor area (GFA) to be provided under the revised redevelopment scheme, of the floor area which has been reserved for use by public and statutory bodies, government and community facilities, as well as the percentage of such area in the GFA; whether the public and statutory bodies using the floor area of government and community facilities have to pay rental at the level of Grade A offices; and how the authorities ensure that the rents for the offices concerned and facilities for ancillary office uses are set at affordable levels for these public and statutory bodies;*
- (e) of the sizes of the loading/unloading area and the carpark to be provided under the revised redevelopment scheme; whether the carpark to be provided within the site of the POS will be owned and managed by the Government as in the case of the POS; and whether the land title or ownership of the carpark will belong to the Government or the developer concerned; among the proposed 40 300 sq m of GFA to be provided, of the floor areas (sq m) and percentages to be owned and managed by the developer and the Government respectively; and*
- (f) whether the authorities have considered further revising the entire redevelopment scheme and not selling the land concerned in order to*

preserve the entire piece of land as Government land forming an integral part of the "Government Hill", so that apart from the provision of POS, the future office tower will only be used for the provision of GIC facilities, and the Government will allocate and lease out the offices to public or statutory bodies related to monetary and financial matters, human rights and the rule of law (for example, the Hong Kong Monetary Authority, the Securities and Futures Commission (SFC), the Financial Reporting Council, the Investor Education Council, the Financial Dispute Resolution Centre, the Equal Opportunities Commission, the Office of the Privacy Commissioner for Personal Data, Office of The Ombudsman, the Hong Kong International Arbitration Centre, the Legal Aid Services Council and the Law Reform Commission of Hong Kong, and so on) to dovetail with the objectives set out in the proposals of the revised redevelopment scheme, and help raise Hong Kong's image and status as an international financial and legal services hub?

SECRETARY FOR DEVELOPMENT (in Chinese): President, the CGO is one of the eight major "Conserving Central" projects. On its own initiative, the HKSAR Government has proposed to comprehensively preserve CGO's Main and East Wings and fully consult the public on the redevelopment scheme. Taking into account the major concerns raised by the public during the consultation period last year, namely, that the new POS should be owned and managed by the Government to ensure public enjoyment of the site; that the proposed shopping centre under the original plan is not supported as there are already a lot of shopping malls in Central; and that traffic problems in the area should not be aggravated by the redevelopment, we have made positive responses and appropriate adjustments.

In the revised redevelopment scheme, the size of the lobby of the office tower at the Lower Albert Road level will be reduced, resulting in an increase of about 11% in the size of the POS within the development from the original 6 800 sq m to 7 600 sq m. The new POS will be under the Government's ownership and management. The GFA of the originally proposed commercial shopping centre in the portion below Lower Albert Road level will be significantly reduced to about 2 000 sq m in order to release more space for GIC facilities and ancillary office uses.

Without the shopping centre, the traffic arising from the redevelopment will be less than that in the original proposal. Based on the latest preliminary traffic assessment, the redevelopment scheme will not have any significant traffic impacts on the major roads in the area.

The revised redevelopment scheme will maintain the theme of "Restoring Green Central" of the original proposal. As Battery Path and the slopes on its two sides are not in the redevelopment area, the POS will play an important role of allowing the greenery from Government House to extend to Queen's Road Central and Ice House Street through Battery Path. We believe that the revised redevelopment scheme has struck a proper balance between development and conservation needs, and adequately responded to the concerns raised by different sectors of the community during the public consultation period. The proposal is in the best interests of Hong Kong.

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

- (a) According to the Stores and Procurement Regulations, for contracts where the quality of service or product is of paramount importance and needs to be taken into account in the tender evaluation, departments may consider adopting a "marking scheme", commonly known as the "two-envelope" approach, when inviting tender. Under the "two-envelope" approach, the assessments of non-price and price aspects must be conducted separately, and tenderers are required to submit the non-price and price information in separate envelopes. The "two-envelope" approach is more commonly adopted in tenders for works projects and service procurement.

For revenue contracts (including contracts involving land sales), it is not a common practice to adopt the "two-envelope" tendering approach. Therefore, the Government has not set any guidelines for weightings accorded to non-price and price aspects, criteria, conditions and assessment mechanism for this kind of contracts. Among the contracts involving land sales awarded in the past 10 years, the only case that adopted the "two-envelope" tendering approach was the land sale contract for the monument site of the former Marine Police Headquarters in Tsim Sha Tsui (Kowloon

Inland Lot No. 11161). The weightings accorded to the non-price and price aspects for that contract was 75:25.

(b) and (c)

We propose to adopt the "two-envelope" tendering approach for the redevelopment scheme solely for the purpose of ensuring that the quality of the design and technical proposals are commensurate with the site's significance and comply with the relevant requirements in the Planning Brief of this "Comprehensive Development Area" site, and that consideration will not be exclusively on tender price.

Since the redevelopment scheme will involve town planning procedures such as amendments to outline zoning plans, we estimate that tenders will not be invited until 2013. At present, the Government has not yet commenced the process of tender preparation or formulated the criteria and mechanism for tender assessment. We do not consider it appropriate to speculate about the likely market response to the tender invitation. But in due course, we will consider and formulate the relevant criteria and mechanism in accordance with our long-held principles.

The Independent Commission Against Corruption has approached the Development Bureau on its readiness to provide anti-corruption advice for the "two-envelope" tendering approach for the sale of redevelopment sites. We welcome the assistance offered by the Commission and will work closely with the Commission when we start work on drawing up the tender documents so as to ensure that the tendering arrangements will be fair and just.

(d) Among the floor space below the Lower Albert Road level which will be for GIC facilities and ancillary office uses, about 3 800 sq m, or 9.4% of the total GFA of 40 300 sq m under the revised redevelopment scheme, will be earmarked for local, regional and/or international organizations. The Government will consider at a later juncture the specific allocation criteria and rental levels for these government-owned floor space, but our premise is that the presence of these organizations in Hong Kong, and in Central in particular, would complement the presence of the Department of

Justice in the Main and East Wings and the SFC and Hong Kong Exchanges and Clearing Limited (HKEx) in the office tower, and help raise Hong Kong's image and status as an international financial and legal services hub.

- (e) Under the revised redevelopment scheme, the proposed loading/unloading and carpark level will be located beneath the POS. Subject to detailed design, the GFA of that level will be about 4 500 sq m, and a certain portion may have to be reserved for allowing natural light to penetrate to the lower floors through the skylight in the POS. According to the existing design, that loading/unloading and carpark level will be owned and managed by the developer, but it will be required to provide a vehicular access on that level to connect Lower Albert Road with St. John's Cathedral and the Former French Mission Building.

Under the existing design, all floor areas of the office tower above Lower Albert Road level (about 28 500 sq m or approximately 70.7% of the total GFA in the revised redevelopment scheme), including the portion to be leased out to the SFC and the HKEx for office uses, will be owned and managed by the developer. The Government will retain the ownership and management right of the entire POS (about 7 600 sq m) at Lower Albert Road level. For the portion below Lower Albert Road level for GIC facilities and ancillary office uses, apart from some 3 800 sq m earmarked for GIC facilities which will be owned by the Government, the remaining floor space (including lobby, circulation area, ancillary offices and commercial floor space) of about 8 000 sq m (about 20% of the total GFA in the revised redevelopment scheme) will be owned and managed by the developer.

- (f) According to information from the Rating and Valuation Department, the vacancy rate of office space is 5.2% in Central and 8% territory-wide in 2010. It can thus be seen that there is a strong demand for office space in the Central District. The study findings of the Hong Kong 2030: Planning Vision and Strategy also show that demand for Grade A offices in the Central Business District will outpace supply. The redevelopment scheme can increase the supply of quality Grade A offices in Central. The existing offices

of some public organizations or statutory bodies, such as the Equal Opportunities Commission and Consumer Council, are not located in Central. Their relocation to the West Wing will not help ease the shortage of Grade A office space in Central and does not dovetail with the redevelopment's theme of financial and legal services.

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

14. **DR LAM TAI-FAI** (in Chinese): *President, regarding the reply given by the Secretary for Financial Services and the Treasury to my written question on 7 December this year, will the Government inform this Council:*
- (a) *given that the Secretary for Financial Services and the Treasury stated that according to the Commentary of the Organization for Economic Co-operation and Development Model Tax Convention (OECD Model Tax Convention), the "days of physical presence" method was the only method which was consistent with the wording of the Article on Income from Employment, whether it is mandatory for Hong Kong to fully comply with the OECD Model Tax Convention; if so, of the reasons; if not, whether any problem will arise if the OECD Model Tax Convention is not fully complied with; if so, of the details;*
 - (b) *whether it knows if there are tax jurisdictions which do not fully comply with the "days of physical presence" method in the OECD Model Tax Convention in calculating income from employment; if it does, of the names of such tax jurisdictions, their reasons for not fully complying with such method and the calculating methods they adopt; if it does not, whether it will take the initiative to understand the facts;*
 - (c) *given that the Secretary for Financial Services and the Treasury stated that European countries which had special tax provisions for frontier workers included France, Germany, Italy, Belgium and Switzerland, and that these countries levied tax on a worldwide*

basis, whether the Secretary for Financial Services and the Treasury implied that levying tax on a worldwide basis was one of the premises or conditions for introducing special tax provisions for frontier workers; if so, of the justifications; if not, why the Secretary for Financial Services and the Treasury mentioned it;

- (d) given that the Secretary for Financial Services and the Treasury stated that both the Inland Revenue Department (IRD) and the State Administration of Taxation (SAT) considered that as double non-taxation might arise, it was not appropriate to introduce special tax provisions for frontier workers at this stage, at which stage or under what circumstances the introduction of special tax provisions for frontier workers will be considered appropriate;*
- (e) given that the Secretary for Financial Services and the Treasury stated that the total number of claims for exemption of Hong Kong Salaries Tax for the years of assessment 2009-2010 and 2010-2011 was 6 243 and 10 731, whether it has assessed why the number of such claims has increased by 72% in a year; if it has assessed, of the details; if not, whether it will make the assessment;*
- (f) of the reasons why the IRD did not have the relevant statistics for the years prior to 2009-2010 or the amount of tax involved for the cases of the two years in part (e);*
- (g) given that the Secretary for Financial Services and the Treasury stated that generally speaking, the Mainland would only tax Hong Kong residents in respect of their remuneration derived from their work on the Mainland, whether it knows under what non-general circumstances the Mainland will tax Hong Kong residents not only in respect of their remuneration derived from their work on the Mainland;*
- (h) given that the Secretary for Financial Services and the Treasury stated that both the IRD and the SAT considered that the 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) should not be changed as it was an international standard which had been effectively applied, whether it knows if there are other tax jurisdictions which do not adopt the 183-day threshold; if it does, of the names of such tax jurisdictions, their reasons for not adopting the 183-day threshold and the standard they adopt; if it does not, whether it will take the initiative to understand the facts;

- (i) regarding the annual meeting held between the IRD and the SAT last month, whether it can provide an extract of the relevant parts of the minutes of the meeting relating to the 183-day threshold or special tax provisions for frontier workers or other relevant information; if not, of the reasons for that and how such information can be obtained;*
- (j) during the meeting between the authorities and the SAT, whether both sides or any one side had confirmed that there were discrepancies in the time standard adopted by the two places in determining the places in which wages and salaries were derived; if so, of the details; if not, the reasons for that; and*
- (k) whether the authorities had, during their meeting with the SAT, attempted to fight for or examine the adoption by both sides of a more reasonable time standard (actual working time) to determine the places in which wages and salaries were derived; if so, whether both sides or any one side had agreed to adopt such new standard?*

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

- (a) and (b)

The OECD Model Tax Convention is commonly adopted internationally by tax jurisdictions as blueprint for negotiation of avoidance of double taxation agreements. Some other tax jurisdictions adopt the United Nations Model Double Taxation Convention. The Article on Dependent Personal Services of the

United Nations Model Double Taxation Convention also adopts the OECD Model Tax Convention's standard of 183 days of physical presence as the threshold for determining the taxing right. Whether to deviate from the OECD Model Tax Convention requires the consensus of both contracting parties and cannot be decided unilaterally by Hong Kong. The "days of physical presence" method is generally accepted by various tax jurisdictions and is consistent with the standard used by the Hong Kong Board of Review in determining the tax liabilities of a person.

(c) and (d)

Residents of those countries which levy tax on a worldwide basis, especially frontier workers who cross the borders frequently, may have higher incidence of double taxation. Hence, these countries may have a more imminent need to introduce special tax provisions for frontier workers. As for Hong Kong, our taxation system is based on the territorial principle. Hong Kong residents' income derived from the Mainland is not subject to tax in Hong Kong. The introduction of special tax provisions for frontier workers would rather lead to double non-taxation of income derived from Hong Kong employments by these workers. As a result, we and the SAT both consider that it is currently inappropriate to introduce special tax provisions for frontier workers. There is also no plan at the moment to further explore this matter.

(e) and (f)

The number of claims for exemption of Salaries Tax under section 8(1A)(c) of the Inland Revenue Ordinance (IRO) increases from 6 243 in 2009-2010 to 10 731 in 2010-2011, as a result of more taxpayers paying tax in jurisdictions outside Hong Kong with respect to their income from employment in 2010-2011.

The IRD only started to gather statistics on the number of exemption claims under section 8(1A)(c) of the IRO in 2009. Hence, it does not have the relevant statistics for years prior to 2009-2010 nor the amount of tax involved.

- (g) We believe that the "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) 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 between the Mainland and Hong Kong 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 (that is, non-general circumstances) can refer the case to the IRD for review. If necessary, the IRD will discuss the case with the Mainland competent authority.
- (h) According to our understanding, the 183-day rule is a common international standard. In the case of Hong Kong and the Mainland, the competent authorities of both sides consider that the 183-day rule is an international standard which has been effectively applied and will not give rise to double taxation problem. We have no intention to further explore this matter.
- (i) to (k)

The annual meeting between the IRD and the SAT is a working meeting between two competent authorities. We do not consider it appropriate to disclose details of the discussion at the meeting.

Risk of Hong Kong Travellers Being Affected by Nuclear Radiation in Japan

15. **MR PAUL TSE** (in Chinese): *President, my office has recently received phone calls from a number of persons who are about to visit Japan shortly, saying that their friends and relatives received medical checks after they had visited Japan and returned to Hong Kong, and the results indicated that they had obviously been exposed to high-level radiation contamination. These persons*

requested me to assist them in negotiating with travel agents to transfer them to other tours. In this connection, will the Government inform this Council:

- (a) of the data obtained by the Government regarding the impact of nuclear radiation on various prefectures in Japan since the nuclear radiation leakage incident at Fukushima (Fukushima incident), together with the sources of such data; and whether it has assessed the reliability of the sources of such data;*
- (b) whether it has conducted any study to find out the reasons why the health of the aforesaid travellers may have been affected by nuclear radiation contamination; if so, of the results; if not, whether it will conduct any in-depth study in this regard;*
- (c) of the respective numbers of members of the public making enquiries to the Government in each month since the Fukushima incident about nuclear radiation in Japan or its impact;*
- (d) given that the Security Bureau has pointed out that the Bureau will assess the safety level of Hong Kong people's favourite travelling destinations before each travelling peak season, whether the Bureau has any plan to assess, prior to the Christmas, New Year and Lunar New Year holidays, the suitability for conducting sightseeing tours or business trips to the various prefectures in Japan; if so, of the results; if not, whether it will conduct the assessments immediately; and*
- (e) whether it knows the numbers of assistance-seeking cases that the Tourism Commission (TC) and the Travel Industry Council of Hong Kong (TIC) have received so far which involve requests for refund, tour transfer or tour cancellation arising from the recent nuclear radiation incident in Japan; of the assistance that these two organizations may offer to the aforesaid travellers requesting tour transfer; whether the Security Bureau has continued to monitor the numbers of assistance-seeking cases received by the TC and the TIC and used such numbers as the factors it refers to when considering adjustment to the Outbound Travel Alert (OTA) issued for Japan?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) After the Fukushima Daiichi Nuclear Power Plant incident, the Ministry of Education, Culture, Sports, Science and Technology (MEXT) of the Japanese Government releases daily the latest radiation monitoring readings obtained in major cities of various prefectures, including the environmental radiation levels and the radioactivity levels of drinking water.

According to the latest readings, the environmental radiation levels in various areas are all within or very close to the range of baseline levels, except for Fukushima Prefecture in which the level is apparently higher. The range of baseline level refers to the upper and lower limits of the monitoring values before the earthquake. Anomaly is not detected in the radioactivity levels of drinking water in all major cities.

The official radiation monitoring readings can be found at the website of MEXT <radioactivity.mext.go.jp/zh/>.

- (b) According to MEXT's readings of radiation monitoring, the prevailing environmental radiation levels throughout Japan (except Fukushima Prefecture) have come down to the range before the nuclear incident and they are far below a level that will trigger tissue reactions. As far as Fukushima Prefecture is concerned, the Japanese Government has declared an evacuation zone within a 20-kilometre radius around the Fukushima Daiichi Nuclear Power Plant and other areas with higher level of radiation. Corresponding safeguard measures are put in place and public access is also restricted. Against this background, travellers in Japan will not be exposed to radioactivity or contamination at harmful levels which are to the detriment of their health.
- (c) Consolidated statistics from relevant departments are shown in the following table:

<i>Month</i>	<i>Number of enquiries about nuclear radiation in Japan or its impact</i>
March 2011	308
April 2011	154

<i>Month</i>	<i>Number of enquiries about nuclear radiation in Japan or its impact</i>
May 2011	43
June 2011	14
July 2011	6
August 2011	5
September 2011	1
October 2011	27
November 2011	24

- (d) The OTA System set up by the SAR Government aims to help Hong Kong residents better understand the potential risks to their personal safety when travelling overseas so that they may make their travel plans and arrangements accordingly. The Security Bureau closely monitors any incidents that may pose threat to the personal safety of Hong Kong residents travelling outside Hong Kong through various means, including the international media, Office of the Commissioner of the Ministry of Foreign Affairs in the HKSAR, the local Chinese Diplomatic or Consular Missions, announcements issued by local authorities, the travel industry, consulates general in Hong Kong and the overseas Economic and Trade Offices of the HKSAR Government. An assessment of the situation will be conducted accordingly before deciding whether or not to issue or adjust an OTA.

To ensure timely revision of the OTA coverage, the Security Bureau conducts bi-annual reviews (that is, around June and December of each year) and considers putting places which have recently become popular destinations for Hong Kong residents under the OTA coverage, thereby providing residents with relevant and an expanded scope of information. In addition, the Security Bureau maintains communication with the travel industry before peak season of outbound travel to affirm that the OTA coverage is in line with the latest travel preference of Hong Kong residents. Relevant information will be disseminated through the OTA webpage.

- (e) From 11 March when a 9.0 magnitude earthquake and tsunami hit Japan up to 14 December, the TC has received 37 enquiries and requests for assistance relating to the incident, and the TIC has received 1 534 cases.

The TIC has stipulated in its directives for travel agents on tour withdrawal or rescheduling arrangements in case of cancellation of package tours for reasons beyond control. Travellers' requests for refund, tour transfer or tour cancellation on personal grounds will normally be handled in accordance with the provisions of the signed agreement between the travellers and their travel agents. When handling assistance-seeking cases, the TIC will make every effort to assist the travellers, including mediating between the travellers and travel agents for a consensus. The TC will liaise closely with the TIC upon receipt of such cases to render appropriate assistance to travellers as far as possible.

As regards the issue of OTA for Japan, the Security Bureau has been closely monitoring the situation in Japan and obtaining relevant information through the various channels mentioned in part (d). We will also make reference to the travel information and alerts issued by other jurisdictions to conduct timely risk assessment and adjust the OTA accordingly. We will continue to closely monitor the situation and issue any updates through the media and the OTA webpage.

Arrangements Regarding Substitution of General Holidays for Employees Working Five Days a Week

16. **MR FREDERICK FUNG** (in Chinese): *President, in reply to my earlier question, the authorities pointed out that the Labour Department had respectively conducted a survey in 2006 and 2010, and the survey findings revealed that the percentage of the surveyed organizations which adopted five-day work week had increased from 36.5% in 2006 to 61.5% in 2010, indicating that organizations which provide five-day work week for their employees are on the rise and five-day work week is becoming increasingly popular. Moreover, the authorities have already introduced to this Council the General Holidays and Employment Legislation (Substitution of Holidays) (Amendment) Bill 2011, which was passed by this Council on 14 December this year. The legislation seeks to alter the prevailing arrangement that in case the day following the Chinese Mid-Autumn Festival and any day in the Lunar New Year Holiday fall on Sunday, the day immediately before the said holiday (that is, Saturday) shall be designated as the holiday in substitution, so as to address the present situation that the prevailing*

arrangement has failed to provide holidays in substitution which are de facto holidays to employees who work five days a week from Monday to Friday. In this connection, will the Government inform this Council:

- (a) whether it knows and understands the situation of employees currently working five days a week not being provided with a de facto holiday if a general holiday falls on Saturday; and how the situation compares with that before the adoption of five-day work week; and*
- (b) given that the authorities indicated at the meeting of the Panel on Manpower in March this year that they had to conduct a careful assessment of the full implications before considering the proposal of designating the day immediately preceding a general holiday which fell on Saturday or designating the Monday immediately following that general holiday as the holiday in substitution, and that the number of employees enjoying five-day work week continues to increase, of the timetable for extending progressively the scope of application of the aforesaid arrangement for holidays in substitution and whether the authorities have conducted any analysis on the feasibility as well as the financial and economic implications of the aforesaid arrangement?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Mr Frederick FUNG's question is as follows:

- (a) General holidays, as provided for by the General Holidays Ordinance, are days on which banks, educational establishments, public offices and government departments need not open, whereas statutory holidays are benefits accorded to employees under the Employment Ordinance (EO). Employers are required to arrange for the granting of statutory holidays to eligible employees in accordance with the law. At present, apart from statutory holidays, some employers (in both public and private sectors), having regard to their respective circumstances, do offer their employees benefits over and above the requirements of EO by allowing them day-off on general holidays. As these additional holidays are not employees' benefits stipulated in EO but originate from the employment contract

or agreement between the employers and employees, EO therefore has not provided for the arrangements in the event that such additional holidays fall on a certain day of a week. Should such additional holidays not prescribed by EO fall on Saturday, the actual arrangements have to be determined in accordance with the employment contract or agreement between the employers and employees.

In contemplating whether employees working from Monday to Friday should be granted a holiday in substitution if a general holiday falls on Saturday, we should, rather than focusing solely on the arrangement when a holiday falls on a Saturday, also give thorough consideration to whether the mode of work and leave pattern under a five-day work week mode of employment brings about an overall improvement to the well-being of employees.

As regards the circumstances where employees are not granted a holiday in substitution when a general holiday falls on Saturday, we do not have the relevant statistics.

- (b) The suggestion of designating across the board the preceding or following day as a holiday in substitution when a general holiday falls on Saturday is in effect a transfer of the original holiday (which falls on Saturday) to another day (the preceding Friday or the following Monday) so that the holiday in question would not overlap with a Saturday. Although this reshuffling would provide employees working from Monday to Friday with one additional day off, yet institutions which usually operate on Saturdays would then need to remain open on the day of the holiday (that is, Saturday). And a significant number of employees, who neither work on a five-day work week basis nor have Saturday-off, would have to work instead of enjoying a day-off on the day of the holiday (that is, Saturday).

For example, this year's National Day (1 October 2011) fell on a Saturday. Had the Government amended the relevant legislation to defer the holiday of National Day to the following Monday (that is, 3 October), the Saturday on which National Day (1 October) fell would not have been a general holiday. Although employees

working from Monday to Friday would as a result enjoy days off on three consecutive days, institutions which usually operate on Saturdays (such as some public offices, banks, and so on) would have to remain open on 1 October, and their employees would be required to work on that day, thus not being able to participate in festive activities.

As employees in different sectors are engaged under a wide variety of work patterns to cater for the operational needs of individual enterprises, we should give thorough consideration to the issue of holiday arrangements and avoid introducing any hasty change solely for employees engaged under a particular type of work pattern, for this could lead to unjust consequences for other employees. We will closely monitor the change in the labour market to keep our labour legislation in line with the pace of Hong Kong's socio-economic development.

Management of Public Records Kept by Office of the Chief Executive

17. **MS CYD HO** (in Chinese): *President, the programme records and administrative records in the Chief Executive's Office of the Hong Kong Special Administrative Region (including those in Chief Executive(Designate)'s temporary office before the reunification) cover records of specific preparatory work leading to the handover of sovereignty of Hong Kong, as well as records of the operation of the highest decision-making body of the Government. In respect of the preservation of such important archival records, will the Government inform this Council:*

- (a) *of the respective positions of the staff responsible for managing the records of the aforesaid Chief Executive's offices before 1 July 1997, during the first and second terms of Chief Executive (that is, from 1 July 1997 to 11 March 2005), and since 12 March 2005; in addition, whether there has been any change in the designation of staff responsible for managing such records since the issuance of the General Circular on mandatory records management requirements by the Government in April 2009; if so, of the details;*

- (b) *of the respective numbers and linear metres of the programme records and administrative records of Chief Executive(Designate)'s temporary office as at 30 June 1997; and the respective numbers and linear metres of the programme records and administrative records created by Chief Executive's Office in each of the years since 1 July 1997;*
- (c) *whether Chief Executive(Designate)'s temporary office had, during its operation in 1997, and Chief Executive's Office has so far, transferred any record to the Government Records Service (GRS); if so, of the number and details of the records transferred each year (list by year the relevant details in the table below);*

	<i>Programme records</i>	<i>Administrative records</i>
<i>Title of record</i>		
<i>Date of creation of record</i>		
<i>Date of record closed</i>		
<i>Date of transfer to the GRS</i>		
<i>Date of the GRS's appraisal of records for retention or destruction</i>		
<i>Date of destruction (if applicable)</i>		

- (d) *among the aforesaid records, of the current storage location of the records which had been closed but were not transferred to the GRS; of the room temperature and humidity of such location; whether the requirements for storage of archival records are met; if not, of the reasons for not transferring these records to the GRS; and*
- (e) *whether the authorities can undertake not to destroy any record in the aforesaid Chief Executive's Office (including those in Chief Executive(Designate)'s temporary office before the reunification) before enactment of an archival law?*

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): President, regarding the question raised by Ms Cyd HO, our reply is as follows:

- (a) Records of the Office of the Chief Executive have been managed by the Departmental Secretary since its establishment in December 1996. There has been no change in the post responsible for managing such records since the issuance of the General Circular on records management in April 2009.
- (b) As at 30 June 1997, there were a total of 73 programme records and 74 administrative records in the Office of the Chief Executive, and their respective linear metres were three and 3.1. From 1 July 1997 to 14 December 2011, the Office of the Chief Executive⁽¹⁾ has created 41 523 programme records (out of which about 36 000 were public complaint or enquiry cases) and 3 495 administrative records, and their respective linear metres were 403.9 and 255.3. We do not have readily available information on the number of records created each year.
- (c) Records transferred from the Office of the Chief Executive to the GRS for retention and those approved for destruction are listed in Annex 1 and Annex 2 respectively.
- (d) Closed records which have not been transferred to the GRS are stored in the filing rooms of the Office of the Chief Executive. These rooms are air-conditioned with room temperature set at not higher than 25.5°C and humidity at general office level, which meet the requirements for storage of records.
- (e) According to Government records management requirements, any closed records can only be destroyed after the GRS Director has assessed that the records have no retention value and has given approval for their destruction. Closed records with archival value and which are no longer operationally required to be stored in the filing rooms will be transferred to the GRS for permanent retention.

(1) Since 2002, the Executive Council Secretariat under the Office of the Chief Secretary for Administration has been put under the Office of the Chief Executive. The figures provided in this reply also include the records created by the Executive Council Secretariat from 1997 to 2002.

Annex 1

Records transferred to the GRS for retention

(a) Programme records

<i>Category</i>	<i>Years covered by the records</i>	<i>Number of records</i>	<i>Years in which the records were transferred to the GRS</i>	<i>Years in which the records were appraised for retention by the GRS</i>
Executive Council discussion or information papers	1978-2008	655	2002-2011	As appraised before 1997, this type of records should be preserved permanently
Records related to the Urban Council (including records of meetings, relevant ordinances and elections, and so on)	1948-1982	40	2002	2003
Cases of condemned prisoners and long-term prisoners	1973-1993	235	2002	2003

(b) Administrative records

Nil

Annex 2

Records approved for destruction by the GRS

(a) Programme records

<i>Category</i>	<i>Years covered by the records</i>	<i>Number of records</i>	<i>Years in which the records were appraised for destruction by the GRS</i>	<i>Years in which the records were destroyed</i>
Press cuttings and general miscellaneous matters of an Executive Council Member	1991-1996	12	2003	2003

<i>Category</i>	<i>Years covered by the records</i>	<i>Number of records</i>	<i>Years in which the records were appraised for destruction by the GRS</i>	<i>Years in which the records were destroyed</i>
Records related to the Urban Council (records of recreational activities, general administration, and so on)	1967-1984	8	2003	2003

(b) Administrative records

<i>Category</i>	<i>Years covered by the records</i>	<i>Number of records</i>	<i>Years in which the records were appraised for destruction by the GRS</i>	<i>Years in which the records were destroyed</i>
Administrative and personnel records	1971-1995	16	2004	2004
Administrative and personnel records	1983-2001	36	2008	2008
Information on applicants for departmental posts	1997-2009	3	2010	2010
Personal case records of ex-serving/retired staff	1958-2008	63	2010	2010
Documents on office accounts and expenditure	1999-2009	152	2011	2011

Review of and Planning for a Sustainable Population Policy for Hong Kong

18. **MR RONNY TONG** (in Chinese): *President, being an open international city, Hong Kong can attract inflows of capital and talents from different places, thereby facilitating Hong Kong's development. There have been comments that in view of the limited land and resources in Hong Kong, it is necessary to ensure that there are appropriate supporting facilities for members of the public to*

maintain their good quality of living while attracting the inflow of foreign immigrants, and it is most important for the Government to review the population policy and make projections. In this connection, will the Government inform this Council:

- (a) *of the growth in Hong Kong's overall population, resident population and individual community groups according to the last five population census and by-census (list in the table below);*

Year	Overall population	Mobile residents	Usual Residents							Growth in the overall population (compared with that of five years ago)
			Hong Kong permanent residents	Chinese nationals who came to Hong Kong under the "One Way Permit" scheme	Persons of foreign nationalities who came to reside in Hong Kong as dependants	Chinese nationals who came to reside in Hong Kong under investment immigration schemes	Persons of foreign nationalities who came to reside in Hong Kong under investment immigration schemes	Expatriates residing in Hong Kong with work visas	Foreign domestic helpers residing in Hong Kong with work visas	
1991										(not applicable)
1996										
2001										
2006										
2011										

- (b) *of the rate of increase in government expenditures on healthcare, housing, education and welfare facilities in the years in which the last five population census and by-census were conducted (list in the table below);*

Government expenditure items	1991	1996	2001	2006	2011
<i>Expenditure on healthcare and its percentage in the total government expenditure</i>					
<i>Public hospitals</i>					
<i>Primary healthcare (for example, services provided by the Department of Health)</i>					
<i>Public health and related community education</i>					
<i>Others</i>					

<i>Government expenditure items</i>	<i>1991</i>	<i>1996</i>	<i>2001</i>	<i>2006</i>	<i>2011</i>
<i>Expenditure on education and its percentage in the total government expenditure</i>					
<i>Pre-primary education</i>					
<i>Primary and secondary education</i>					
<i>University and tertiary education</i>					
<i>Vocational training</i>					
<i>Others</i>					
<i>Expenditure on social welfare and its percentage in the total government expenditure</i>					
<i>Comprehensive Social Security Assistance</i>					
<i>Old Age Allowance</i>					
<i>Child care and family services</i>					
<i>Services for the elderly</i>					
<i>Services for the youth</i>					
<i>Services for persons with disabilities</i>					
<i>Others</i>					
<i>Expenditure on housing and its percentage in the total government expenditure</i>					
<i>Construction of public rental housing units</i>					
<i>Construction of Home Ownership Scheme units</i>					
<i>Construction of Sandwich Class Housing Scheme units</i>					
<i>Others</i>					
<i>Expenditure on infrastructures and its percentage in the total government expenditure</i>					
<i>Transport infrastructures</i>					
<i>Major infrastructures</i>					
<i>Others</i>					

- (c) *in considering the annual expenditures, whether it has concurrently conducted planning for the next five years; if it has, of the basis to*

which the Government has made reference; if not, the reasons for that; and

- (d) *whether the Government has formulated a population policy for the whole society for the next 10 and 20 years; if it has, of the details; if not, the reasons for that?*

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): President,

- (a) Based on the results of the 1991, 1996, 2001 and 2006 Population Census/By-census conducted by the Census and Statistics Department, the figures of the overall population, mobile residents and usual residents in Hong Kong are as follows:

<i>Year</i>	<i>Overall population</i>	<i>Average annual growth rate over the previous five years (%)</i>	<i>Mobile Residents⁽³⁾</i>	<i>Usual Residents⁽⁴⁾</i>
1991	5 674 114 ⁽¹⁾	-	N. A.	N. A.
1996	6 412 937 ⁽²⁾	1.8 ⁽⁵⁾	N. A.	N. A.
2001	6 708 389 ⁽²⁾	0.9 ⁽²⁾	184 538	6 523 851
2006	6 864 346 ⁽²⁾	0.4 ⁽²⁾	219 126	6 645 220

Notes:

- (1) The figure includes 151 833 residents temporarily away from Hong Kong at the time of the 1991 Census conducted in March 1991.
- (2) The figures are compiled based on the "Resident Population" approach.
- (3) "Mobile Residents" are Hong Kong Permanent Residents who have stayed in Hong Kong for at least one month but less than three months during the six months before or for at least one month but less than three months during the six months after the reference moment, regardless of whether they were in Hong Kong or not at the reference moment.
- (4) "Usual Residents" refer to two categories of people: (a) Hong Kong Permanent Residents who have stayed in Hong Kong for at least three months during the six months before or for at least three months during the six months after the reference moment, regardless of whether they were in Hong Kong or not at the reference moment; and (b) Hong Kong Non-permanent Residents who were in Hong Kong at the reference moment.
- (5) The figure refers to residents in Hong Kong at the census/by-census moment, including those who were temporarily away from Hong Kong. The population figure compiled on this basis at the 1996 Population By-census was 6 217 556.

Breakdowns on the number of "Usual Residents" as requested in the question are not available in the above population censuses/by-censuses.

- (b) Recurrent government expenditure on health, education, social welfare, housing and infrastructure and their percentage shares of recurrent government expenditure are tabulated below:

	1991-1992*	1996-1997*	2001-2002	2006-2007	2011-2012 <i>Original Estimate</i>
Health					
- amount (\$billion)	9.7	22.7	32.0	29.8	39.9
- as percentage of recurrent government expenditure (%)	13.0%	15.8%	16.3%	15.7%	16.5%
Education					
- amount (\$billion)	16.6	34.1	47.0	44.6	54.5
- as percentage of recurrent government expenditure (%)	22.2%	23.8%	24.0%	23.5%	22.5%
Social Welfare					
- amount (\$billion)	6.1	16.5	28.6	32.4	42.2
- as percentage of recurrent government expenditure (%)	8.2%	11.5%	14.6%	17.1%	17.4%
Housing [#]					
- amount (\$billion)	0.4	0.1	0.2	0.1	0.2
- as percentage of recurrent government expenditure (%)	0.5%	0.1%	0.1%	0.1%	0.1%

	1991-1992*	1996-1997*	2001-2002	2006-2007	2011-2012 Original Estimate
Infrastructure					
- amount (\$billion)	4.8	8.8	13.4	13.0	15.9
- as percentage of recurrent government expenditure (%)	6.4%	6.1%	6.9%	6.9%	6.6%

Notes:

* Due to reorganization, the definitions and classifications of expenditure may differ from those adopted in the 2011-2012 Estimates.

Recurrent government expenditure on housing does not include expenditure of the Hong Kong Housing Authority.

We do not readily have the requested figure for every individual item.

- (c) The Administration will consult various sectors of the community (including Members of the Legislative Council) in drawing up the annual budget. Views and suggestions received will be passed to relevant bureaux for consideration and follow-up. With the budget we will also release a medium range forecast (MRF) on the financial position of the Government for the budget year and the subsequent four financial years (that is, a total of five years). The MRF uses a wide range of assumptions on factors affecting Government's revenue and expenditure. Some assumptions are economic in nature, such as real growth in gross domestic product and price change. Others are related to changes in expenditure and revenue of the Government, including the estimated cash flow of capital projects, forecast completion dates of these capital projects and their related recurrent consequences in terms of staffing and running costs, estimated cash flow for commitments, the trend in yield from individual revenue sources and the impact of new initiatives in the budget on expenditure and revenue, and so on.
- (d) The key objectives of the population policy of the Hong Kong Special Administrative Region are to attract and nurture talents, to

enhance the population quality so as to develop Hong Kong into knowledge-based economy, and to achieve a balanced demographic structure to sustain Hong Kong's development. The Census and Statistics Department compiles projections of the population of Hong Kong around every two years, which include the breakdown of population by different age groups for the next 30 years. In 2010, the Department released a set of projections covering the period of 2010 to 2039 which included, *inter alia*, the number of elderly and the number of babies born locally to Mainland women who are expected to return to Hong Kong. The above projections have provided a common basis for the Government's long-term planning in the areas of education, housing, transport, social services and health services, and so on. Looking ahead, we will continue to enhance the quality and quantity of our youth population by nurturing and attracting talents, and to prepare for the challenges brought by an ageing population.

Relaxing Anti-property Speculation Measures amid Economic Slowdown

19. **MR FREDERICK FUNG** (in Chinese): *President, it has been reported that the Financial Secretary indicated earlier during an overseas visit that the authorities might relax some of the anti-property speculation measures and take counter-cyclical measures to stabilize the property market if home prices extended their decline amid Europe's worsening credit crisis and a global economic slowdown. Subsequently, the Secretary for Transport and Housing added that the authorities would, if necessary, consider reviewing earlier than scheduled the special stamp duties and the limits on loan-to-value ratios for mortgages. The aforesaid remarks have aroused speculation in the market and among the public about whether the authorities will change the policy direction on regulating the property market. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have reviewed if the aforesaid arrangement for disseminating information, including making possibly less-than-prudent remarks, will cause confusion in the market and enable speculators to profit from the information and speculations by further exacerbating market volatility; and*

- (b) *given that apart from a shrinking turnover in the property market, home prices still remain at a high level at present, with the Private Domestic-Price Index (All Classes) compiled by the Rating and Valuation Department for October this year standing at 181.4, which is slightly lower than the peak of 188.1 in June this year, but still higher than the index of 172.9 in October 1997, whether the authorities can state clearly the circumstances under which the authorities will relax the anti-property speculation measures, and whether the price level and the home purchase affordability of members of the public are among the factors for consideration; of the anti-property speculation measures which the authorities consider relaxing; whether the earlier decision to resume the Home Ownership Scheme (HOS) will be overturned for the purpose of stabilizing the property market; and whether long-term strategies such as the development of land and the increase of land supply, and so on, will be affected?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the Government has been monitoring developments in the private residential property market closely and remains vigilant on the risks of a property bubble. Since 2010, the Government has been responding to the situation through the introduction of long, medium and short-term measures in four areas, including increasing land supply, combating speculative activities, enhancing the transparency of property transactions, and preventing excessive expansion in mortgage lending, with a view to ensuring the healthy and stable development of the property market.

Also, the Government has repeatedly reminded the public that an environment with abundant liquidity and ultra-low interest rates will not last forever, and flat prices will not keep going up endlessly. The public should be mindful of the potential impact of increases in interest rate on the property market and should carefully assess the risks and their own financial ability when making a home purchase decision.

The Financial Secretary reiterated the Government's position in respect of the property market when he was interviewed in South Africa, which was that the Government would, having regard to economic and market situation, introduce counter-cyclical measures to ensure the healthy and stable development of the

property market. The Financial Secretary did not mention the withdrawal of the Special Stamp Duty during the interview.

Also, the Chief Executive made it clear on 9 December 2011 that the Government was committed to combating short-term speculative activities to ensure the property market would remain healthy and stable. The Government will review the measures as and when necessary, but the review mechanism will not be activated in the meantime. The Government officials concerned only reiterated the Government's position all along. Members of the public are advised not to over-react to "hearsay".

The Government will continue to closely monitor the development of the property market. In this regard, the Government will take into account all relevant factors, both internal and external, including the risk of a property bubble, the property market situation (in particular the situation of small and medium sized residential properties), speculative activities, market demand and supply, affordability of home purchase, local and external economic conditions, global liquidity and interest rates, and policies and measures taken by other economies which may have an adverse impact on the healthy and stable development of the local property market.

In response to the aspirations of low and middle-income families for home purchase, the Chief Executive put forward two buffering measures in the 2011-2012 Policy Address, including a new policy for the resumption of the HOS and enhancement of the My Home Purchase Plan (MHPP). In respect of the New HOS, with the sites identified at this stage, we plan to provide more than 17 000 flats over four years from 2016-2017 onwards, with an annual production of between 2 500 and 6 500 flats. For the first year, 2 500 flats can be made available, which is expected to be ready for pre-sale in 2014 or 2015. As more sites become available, we will set our planning target at 5 000 flats a year on average. To be flexible, the actual number of flats to be built or put up for sale each year will depend on demand at the time. The Hong Kong Housing Authority will work out the implementation details of the New HOS. For MHPP, the Government will provide about 5 000 MHPP flats. The first project at Tsing Yi will provide around 1 000 "no frills" small and medium flats. These are expected to be completed in 2014 and applications for pre-letting will begin next year.

We must emphasize that the New HOS and MHPP are both buffering measures. In the long run, the Government will increase land supply to tackle

the housing issue. Our aim is to ensure an annual supply of land for an average of about 40 000 residential units of various types, including about 15 000 public rental housing units, 20 000 private residential units, and 5 000 New HOS flats. When demand for land declines, land development will continue. The newly developed land will be kept in the Government's land reserve and made available when appropriate.

Definition of Old Age Under Various Assistance Schemes for Elderly

20. **MR LAU KONG-WAH** (in Chinese): *President, over the years, the Government has provided various subsidies and concessions for the elderly, but the age of eligibility to apply for and the targets of such elderly welfare benefits are inconsistent, and some elderly people indicated that they are perplexed as to when they are eligible to apply for such benefits. In this connection, will the Government inform this Council:*

- (a) *of the number of elderly welfare benefit schemes (including allowances and concessions for the elderly to use facilities, and so on) provided by the Government at present; of the respective age of eligibility to apply for such schemes; and*
- (b) *whether the authorities will standardize the age of eligibility to apply for various elderly welfare benefit schemes (for example, at the age of 60 across the board); if not, of the reasons for that; if they will, whether they have assessed if standardizing the age of eligibility as 60 or above will lead to an increase in the Government's welfare expenditure and will benefit more elderly people; if so, of the estimated amount of increase in welfare expenditure each year, as well as the additional number of elderly people expected to be benefited each year?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Mr LAU Kong-wah's question is as follows:

- (a) and (b)

The Government's overall objective is to provide appropriate assistance and concessions to meet the needs of our citizens, and

ensure the proper use of public resources. As these assistance and concessions are different in nature, aim and target recipients, they have different age requirements and eligibility criteria. We have no plan to standardize the age requirements.

The age requirements of financial assistance and concessions for facilities currently provided by the Government for old persons are as follows:

<i>Financial assistance/concessions for facilities</i>	<i>Age criterion</i>
Building Maintenance Grant Scheme for Elderly Owners	60 or above
Allowances for old persons under the Comprehensive Social Security Assistance (CSSA) Scheme	60 or above
Concessionary admission and programme fees for the Leisure and Cultural Services Department (LCSD) museums, and museum concessionary pass	60 or above
Concessionary admission fees for the Hong Kong Wetland Park	65 or above
Concessionary rates for use of sports and recreation facilities maintained by the LCSD	60 or above
Concessionary tickets for cultural programmes presented by the LCSD	60 or above
Elderly Healthcare Voucher	70 or above
Fee exempted for the use of cloakroom at the LCSD libraries	60 or above
Grant of mediator fee for elderly minority owners under the Pilot Mediation Scheme under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)	60 or above
Higher Old Age Allowance	70 or above
Normal Old Age Allowance	65 to 69
Allowances under the Portable CSSA Scheme	60 or above
Public Rental Housing (PRH) Emergency Alarm System Grant for the Elderly	60 or above
PRH rent assistance	60 or above

BILLS**First Reading of Bills**

PRESIDENT (in Cantonese): Bill: First Reading.

BANKING (AMENDMENT) BILL 2011

CLERK (in Cantonese): Banking (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

PRESIDENT (in Cantonese): Bills: Second Reading.

BANKING (AMENDMENT) BILL 2011

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I move the second reading of the Banking (Amendment) Bill 2011 (the Bill).

The major objective of the Bill is to amend the Banking Ordinance (the Ordinance) so as to implement the regulatory framework announced by the Basel Committee on Banking Supervision (BCBS) in December 2010 (commonly known as "Basel III"). Through the requirements on global capital and liquidity under Basel III, the BCBS aims to improve the banking sector's ability to absorb shocks arising from financial and economic stress, thus reducing the risk of spill-over from the financial sector to the real economy.

The BCBS has specified a set of transitional arrangements with a view to ensuring that the banking sector globally can meet the higher capital and liquidity standards through reasonable earnings retention, capital or fund raising, and other balance sheet adjustments, while continuing to support economic activities

through lending and other banking business. Implementation of the new standards will begin on 1 January 2013, with the requirements being phased in over the following six years to achieve full implementation by 1 January 2019.

Under the current requirements under the Ordinance, locally incorporated authorized institutions (AIs) are required to maintain a minimum capital adequacy ratio (CAR) of 8% and all AIs are required to maintain a minimum liquidity ratio of 25%. The strengthened capital requirements under Basel III not only supersede, but are broader and more technically complex than, the existing capital requirements set out in Part XVII of the Ordinance. Instead of a single minimum total CAR ratio, Basel III introduces three risk-weighted minimum capital ratios, two capital buffers and a leverage ratio. Moreover, the liquidity requirements under Basel III are totally new international standards involving concepts that are technically more complex than the relatively simple liquidity ratio currently set out in Part XVIII of the Ordinance.

With experience gained from the recent global financial crisis, it is necessary for bank regulators to be empowered to amend regulatory standards relatively swiftly and proactively to address changing business practices and environments. In this connection, we propose to introduce amendments on the basis of the Ordinance so as to provide the Monetary Authority (MA) with the power to make rules prescribing minimum capital and liquidity requirements for locally-incorporated AIs or AIs operating in Hong Kong. This approach allows for a more flexible arrangement to introduce the Basel III requirements into Hong Kong. The new rules will be subsidiary legislation subject to negative vetting by the Legislative Council and must conform to the same statutory consultation requirements as the Banking (Capital) Rules (B(C)R) and the Banking (Disclosure) Rules made under the Ordinance. The new rules can also be supplemented by supervisory guidance issued by the MA.

In view of the above legislative approach, we propose under the Bill that the Ordinance be amended to provide the MA with the power to make rules prescribing the capital and liquidity requirements for AIs, and to issue or approve codes of practice for the purpose of providing guidance in respect of the rules.

At the same time, to tie in with the implementation of Basel III, we propose to broaden the scope of the existing Capital Adequacy Review Tribunal and rename it the "Banking Review Tribunal" to take the place of the Chief Executive

in Council as the forum to hear appeals against decisions by the MA to vary capital or liquidity requirements for AIs, or to require remedial actions by AIs when they have failed to comply with the capital or liquidity requirements applicable to them. We also propose that specified decisions of the MA made under the new rules for liquidity standards and the enhanced disclosure requirements in relation to Basel III shall be reviewable by the proposed Banking Review Tribunal. This proposal is similar to the existing mechanism under which an AI aggrieved by a specified decision of the MA relating to CAR calculation approaches under the B(C)R may appeal against the decision to the Capital Adequacy Review Tribunal.

Last but not least, we have taken the opportunity to propose amendments to section 106 of the Ordinance to require an AI to notify the MA of any criminal proceedings, in addition to civil proceedings, instituted against it if the criminal proceedings materially affect, or could materially affect, its financial position.

The MA has already consulted the banking industry on major proposals of the Bill, and will continue to work closely with the industry on the implementation of Basel III.

President, as a major international financial centre and a member of the BCBS, it is important that Hong Kong commits to adopting Basel III. Its implementation will ensure that the capital and liquidity frameworks for AIs in Hong Kong are consistent with international standards and that AIs will not be disadvantaged *vis-à-vis* their peers overseas, in order to maintain the stability and competitiveness of the banking system in Hong Kong. I hope Members will support the Bill so that we can implement the enhanced regulatory framework under Basel III in accordance with the international timetable so as to improve the banking sector's ability to absorb shocks arising from financial and economic stress.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Banking (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

PRESIDENT (in Cantonese): We now resume the Second reading debate on the Enduring Powers of Attorney (Amendment) Bill 2011.

ENDURING POWERS OF ATTORNEY (AMENDMENT) BILL 2011

Resumption of debate on Second Reading which was moved on 25 May 2011

PRESIDENT (in Cantonese): Dr Margaret NG, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

DR MARGARET NG: President, in my capacity as Chairman of the Bills Committee on Enduring Powers of Attorney (Amendment) Bill 2011 (Bills Committee), I wish to report briefly on the major deliberations of the Bills Committee.

An enduring power of attorney (EPA) is a special type of power of attorney which survives beyond the onset of the donor's mental incapacity. Under the existing legislation, an EPA must be signed by the donor before a solicitor and a registered medical practitioner who must both be present at the same time. The objects of the Bill are to relax the existing requirement by allowing a donor and a solicitor to sign an EPA within 28 days after it has been signed before a registered medical practitioner, and to improve the drafting of the new statutory forms in plainer language.

The Bills Committee supports in principle the legislative intent of the Bill to relax the existing strict requirement for the execution of an EPA with a view to promoting wider use of EPAs. Given that an EPA is a document of considerable importance and the circumstances in which an EPA is likely to be executed are those in which it is anticipated that mental incapacity is likely to occur in the future, members generally agree on the need to retain the medical certification

requirement for the execution of EPAs as a registered medical practitioner would be in the best position to assess the donor's mental capacity.

Members have also considered whether the proposed 28 days' time limit between medical certification by a registered medical practitioner and the signing of an EPA by the solicitor and the donor is appropriate. Members note that the proposed time limit of 28 days is based on the recommendation in the Law Reform Commission Report. Representatives of the social welfare sector and medical sector consider that 28 days would allow reasonable time for making the logistic arrangements for the signing of an EPA before a registered medical practitioner and a solicitor. In the view of the Administration, the proposed 28-day period provides a reasonable level of flexibility while not being so long as to render the medical assessment no longer current.

In the course of deliberations, members have emphasized the need to safeguard the interests of donors and have put forward various suggestions in this regard. Given the proposed 28-day period allowed between medical certification by a registered medical practitioner and the solicitor's witnessing, members have queried whether the document which is intended to take effect as an EPA will operate as an ordinary power of attorney after medical certification by a registered medical practitioner but before it is signed by a solicitor. Members have expressed concern about possible abuse that may arise from an uncompleted EPA operating as an ordinary power of attorney. For instance, the attorney may dispose of the donor's properties under the authority given by the donor under an unintended ordinary power of attorney.

Having considered members' views, the Administration has agreed to move Committee stage amendments to expressly provide that an EPA does not take effect as an ordinary power of attorney before it is executed and to alert donors in the relevant forms on the timing of commencement of EPAs and their legal effect upon execution.

Members have also expressed concern that the proposed new EPA forms have not spelt out clearly the legal consequences of the failure on the part of the donor to comply with the requirements specified in the forms, and have requested the Administration to conduct an overall review of the use of modal verbs (such as "must" and "should") in the forms with a view to clarifying any legal consequences that may arise from non-compliance with the requirements.

The Administration has advised members that whether deviations from the prescribed EPA forms will invalidate an EPA should be assessed in each particular case as a matter of fact and degree in its proper legal context. Having conducted a review on the proposed new EPA forms, the Administration has agreed to propose amendments to the EPA forms to draw the donor's attention to the serious legal consequences of failing to comply with certain requirements specified in the forms, such as the requirements to specify the appointment of joint or joint and several attorneys, and the authority of the attorney(s).

Members have sought clarification on the legal test for the revocation of an EPA, and in particular, whether a later EPA will necessarily revoke an earlier one. The Administration has explained that at common law, a power of attorney may be revoked by the donor in any circumstances and without obtaining any consent. In *Re E (a donor)*, the English court held that the execution of a later EPA did not automatically revoke an earlier one. The existing legislation does not contain any provision which prohibits the execution of simultaneous or successive EPAs. According to the Administration, whether the earlier EPA will be revoked in such circumstances is a question of fact to be considered in the light of the legal principles enunciated in *Re E (a donor)*.

Another concern raised by members is the mandatory requirement under section 15(1) of the existing EPA Ordinance for appointing attorneys to act jointly or to act jointly and severally, non-compliance of which may render an EPA invalid. Members have expressed concern that by the time the donor has become mentally incapacitated and it is then found out that the EPA is invalid by virtue of section 15(1), nothing can be done to remedy the situation. Members have requested the Administration to review and amend this mandatory requirement. Some members have suggested amending section 15(1) to provide that if the donor fails to specify in the instrument whether joint attorneys or joint and several attorneys are appointed, the attorneys should be joint attorneys by operation of the law.

According to the Administration, there is an essential difference between acting as joint attorneys and acting as joint and several attorneys. The Enduring Powers of Attorney Act 1985 in the United Kingdom also contains a provision similar to section 15(1) of the EPA Ordinance. Nevertheless, the Administration acknowledges the concern raised by members over the serious consequences that may arise as a result of the rigid requirement under section 15(1) and has undertaken to keep track of the developments after the coming into force of the

Bill and review in future the need to amend section 15(1). The Bills Committee has referred this issue to the Panel on Administration of Justice and Legal Services for follow-up as appropriate.

DR MARGARET NG (in Cantonese): President, I am going to express my personal views on the Bill. While my speech just now seems long and technical, the Bill is relatively simple because EPAs have always existed. However, given the requirement under the existing legislation that the prescribed EPA forms must be signed by the donor in the presence of a solicitor and a registered medical practitioner at the same time, many people who fail to meet such a requirement are prevented from making use of this effective tool. Hence, the Law Reform Commission (LRC) had proposed to relax this requirement, but there are divergent views on how this can be achieved. For instance, The Law Society of Hong Kong (the Law Society) opines that the medical certification requirement should be abolished because when assisting a donor in the execution of an EPA, a solicitor should be well aware of his own legal responsibilities in ascertaining the mental competence of his client; if there is any doubt, he will, on his own initiative, ask for medical certification from the client. As such, the legal profession (that is, the Law Society) considers that EPAs need not be signed by medical practitioners. But other organizations, social welfare organizations in particular, have doubts about this suggestion for they consider it safer to have medical certification.

As these divergent views cannot be reconciled, the decision is left to the hands of the Legislative Council, and we are invariably left with three choices: firstly, maintaining the *status quo*; secondly, abolishing the medical certification requirement; or thirdly, allowing separate signing so long as an EPA is duly executed within a certain time limit. If we adopt a middle-of-the-road approach, that is, an EPA would have to be signed by a solicitor and a registered medical practitioner albeit at different times, the only question which remains is the duration of this time limit, say 28 days, 14 days, or even longer, or even shorter. The matter is basically quite simple.

However, in the course of deliberation of the Bill, Members hope that the opportunity is taken to review whether there are any loopholes in the existing legislation and whether improvements can be made. For example, questions have been raised as to whether the prescribed forms are clear, whether a donor can clearly understand such an important power of attorney, what will be the

consequences if the EPA forms are not properly drafted, and so on. Considerable efforts have been made by the Bills Committee in this regard, and we hope that our efforts will be beneficial to the public. Hence, I personally think that it is correct to adopt these relatively simple yet essential improvements.

President, allow me to detour slightly. As we see, various recommendations made by the LRC, that is, suggestions put forth by the LRC after extensive study by professionals and persons in the community, as well as public consultation, have been postponed or even shelved by the Government, particularly after 1997, without any obvious reasons. Even for those which were implemented eventually, a long time had been taken. A case in point is the simple legislative amendments under discussion, which the Government has taken a long time to consider and eventually decided that they should be put into implementation. As such, much concern has been raised by different sectors.

Recently, this issue was discussed by the Panel on Administration of Justice and Legal Services. We are grateful that the Secretary for Justice had attended our meeting personally to discuss with members ways to improve this aspect of work. Our hope is that a relevant system can be established so that the Secretary for Justice, as the responsible Secretary of Department and the Chairman of the LRC tasked to refine the laws for the purpose of upholding the rule of law, will provide progress reports to the relevant Panels of the Legislative Council for comprehensive review on the LRC's recommendations. Thereafter, a programme or timetable should be formulated for the Chief Secretary for Administration and the Director of Administration to give directions to the relevant Policy Bureaux as they are responsible for whether and how the LRC's recommendations should be implemented. However, the Policy Bureaux must work according to the timetable or programme and provide a detailed response within 12 months at most on how the LRC's recommendations would be taken forward.

We hope that a consolidated report will be submitted to the Panel on Administration of Justice and Legal Services annually so that both Panel and Non-Panel members will be aware of the outstanding issues arising from the LRC's recommendations. Of course, we understand that not all LRC recommendations will be accepted or implemented as some recommendations are indeed controversial. But we hope that even for such controversial recommendations, the Administration can reconcile the controversies or indicate

clearly that these recommendations should be put on hold given their controversies. Therefore, if the Administration can provide us with a list, we will submit the same to the House Committee so that the relevant Panels will take note of the LRC's recommendations under their respective purview and include a relevant item in the list of outstanding items for follow-up. The Panel on the Administration of Justice and Legal Services will also examine the role of Policy Bureaux in this regard.

President, ultimately, we cannot force certain actions upon the Administration. It is the prerogative of individual Policy Bureaux as to how the LRC's recommendations should be taken forward. Likewise, we cannot dictate the topics studied by the LRC. But we hope that the LRC's recommendations, put forth after detailed review undertaken with time and efforts by the learned and devoted persons of the LRC, should not be wasted. A case in point is the amendment Bill under discussion today, which is a simple initiative with social benefits. It is our hope that the enacted legislation will become effective as soon as possible, and its implementation will not be hindered by any further delays.

President, I so submit.

DR PAN PEY-CHYOU (in Cantonese): President, I think Honourable Members in the Chamber are all well and fit. But perhaps let us imagine, if someday we loss all our memories and have no idea where we are, what time it is or even who we are, and we easily forget things which have just happened, say we forget that we have just taken a meal a few minutes ago, what shall we do?

Let us imagine, if someday we suddenly forget how many assets we have, how to dispose of our properties or investments, how to draw money from the bank, or even how much we should get back after we have paid to buy something, or how to sign our names to withdraw money from the bank, what shall we do?

If our analytical power is lost someday such that we cannot distinguish between fantasy and reality; and we become easy preys and willingly hand over all our possessions to swindlers, what shall we do?

Let us imagine, if someday your children and relatives argue about who should have the right to dispose of your properties, and decide whether you

should live in a residential care home or stay at home, yet nobody is empowered to handle such matters on your behalf, and the argument has become increasingly intense, how would we feel?

The answer to those questions lies in the execution of an enduring power of attorney (EPA). An executed EPA remains a valid legal document even when the donor has become mentally incapacitated. Hence, an EPA is a special type of power of attorney.

Under the existing legislation — we are seeking to amend the Enduring Powers of Attorney Ordinance (the Ordinance) today, and I hope the Bill will be passed — an EPA will take effect immediately upon execution unless otherwise stated. But, as reported by Dr Margaret NG just now, even if a donor has signed an EPA, he still has the power to revoke it subsequently.

Under what normal circumstance will an EPA be executed? In general, a donor will execute an EPA when he becomes aware of the imminent loss of his cognitive abilities, such that he can no longer make decisions himself. Hence, at the time when the donor decides to execute an EPA, his cognitive abilities may have already been affected. He only wishes that the formalities for the execution of an EPA can be completed before his situation deteriorates so that another person is empowered to act on his behalf when his mental incapacity sets in.

Therefore, there is a difference between the execution of an EPA and an ordinary power of attorney or agreement. The difference is whether a donor is capable when making the decision to execute an EPA. That is the crucial factor.

As mentioned by Dr Margaret NG just now, the existing legislation requires that an EPA must be signed by the donor before a solicitor and a registered medical practitioner who must both be present at the same time. Given the busy work schedule of legal and medical professionals, we can easily imagine how difficult it must be to arrange for the donor to execute an EPA in the presence of both a solicitor and a registered medical practitioner. It is perhaps the reason why the take-up rate of EPAs under the Ordinance is extremely low in Hong Kong. Hence, it is reasonable that the Ordinance should be relaxed or improved, and we support this course of action.

I would like to talk about the reasons for the loss of mental capacity. The loss of mental capacity is usually a gradual and slow process with dementia (the current Chinese term for "dementia" is "認知障礙" (cognitive disorder); whereas the former terms used are "失智症" (loss of mental ability) or "癡呆症" (idiotic syndrome)) being the leading cause, and it is commonly found in patients with Alzheimer's disease. A prominent symptom of dementia is the gradual loss of memory — memory loss is usually evident from the onset; and as the disease advances, other cognitive abilities of the patient (such as the ability of calculation and analysis, abstract thinking, sense of direction, and so on) will also deteriorate. The process can be tracked over time.

Mental capacity can also deteriorate rapidly over a number of days or weeks. What is the reason for the rapid loss of mental cognitive abilities generally? A common cause is brain tumours. While brain tumours can grow in different speeds, they will cause pressure to the normal parts of the brain as they grow bigger, causing rapid deterioration of mental cognitive abilities within a short period of time.

Mental capacity may also be lost suddenly. How "sudden" will it be? A patient may lose his cognitive abilities when he wakes up from sleep. What is the cause of such cases generally? The leading cause is serious strokes caused by thrombosis or haemorrhage. In such cases, mental capacity can be lost within a short period of time, even within one day.

My explanation above serves to remind Members that while we are all fit and well now, we should not forget that our sanity and cognitive thinking can be lost over a short period of time. What will happen afterwards? A long process may follow, such as in the case of Alzheimer's disease I cite just now. When a patient becomes mentally incapacitated, other cognitive abilities will disappear gradually. This is but a long and irreversible process.

However, under certain circumstances, the loss of mental capacity can be temporary, and certain functions may be restored over time. For instance, some patients who suffer from a stroke may restore part of their brain functions over time with convalescence. In such cases, while the patients have become mentally incapacitated as a result of strokes, they can eventually recover over time.

There is another situation involving patients who are sometimes sane and sometimes insane, sometimes sober and sometimes dazed. This is called "delirium" in medical terms. While this term may sound unfamiliar to Members, many illnesses can cause delirium in elderly patients, which might easily be mistaken as dementia. Delirium is different from dementia for it is a reversible condition.

By the above examples, I want to illustrate how difficult it is to make a judgment on whether a person has lost his mental capacity, which essentially involves an assessment based on the relevant circumstances. The symptoms I just mention can be found in elderly persons who may suffer from both dementia and delirium. This combination of diseases is quite common.

From a medical point of view, an assessment on whether a person is mentally capable of making decisions about his own affairs involves considerations of his basic abilities, which form the basis of a medical practitioner's assessment. First, there is the question as to whether this person can get or comprehend the basic messages in relation to his decisions.

Second, it is about whether this person's memory is good enough to remember the matters he needs to consider when making the decisions even though he may forget about the same afterwards. Of course, it is better if the donor can remember those things, but some persons do have short memories. To say the least, the person should have the important things in his mind or his heart when he makes the decisions.

An assessment will then be made to determine whether this person is capable of weighing the importance of information so that he can judge and select what items of information can help him make the decisions.

Lastly, there is the question as to whether this person can put across the decisions he made.

When a medical practitioner is required to make an assessment and judgment on the circumstances pertaining to the execution of an EPA to prove the donor's mental capacity, what are the factors to be considered? This in fact relates to the actions to be taken by the donor. There are many different kinds of actions, some are difficult while some simple. In this incidence, the medical

practitioner is required to make a judgment as to whether the donor is capable of signing the EPA at the time of signing.

As I see it, the medical practitioner must ascertain whether the donor understands the meaning of the EPA as well as the identity of the attorney. In addition, the donor must understand the powers vested to the attorney by virtue of the EPA as well as the decisions to be made by the attorney. At the same time, the donor must understand the consequences of not making the EPA. Lastly, he must also understand the right he has to revoke the EPA subsequently, as well as the procedures involved. These are the salient points which a donor must understand about the execution of an EPA.

Another point I would like to mention is that Hong Kong's legislation Even though the requirement of joint assessment by a medical practitioner and a solicitor is not commonly found in legislation of other jurisdictions, we have a fine system in Hong Kong because the respective roles of the solicitor and the medical practitioner in the execution of EPAs have been clearly specified. The solicitor's role is clearly that of ensuring the legality of the execution process of an EPA as a formal contract, attesting the donor's voluntary execution of the EPA without duress or deception, and ensuring the compliance of the EPA execution procedures with statutory requirements. The medical practitioner's role is that of ascertaining the proper functioning of the donor's cognitive abilities, as well as his mental capacity for EPA execution. The roles of the medical practitioner and the solicitor are thus very clear.

As I have just said, changes to a person's mental capacity can happen within a short period of time. While it is ideal for simultaneous assessment by the medical practitioner and the solicitor, it is not always feasible in reality. We consider that the period of 28 days is reasonable and practical in reality. But as many Members have pointed out just now, many changes can happen within 28 days. Hence, I think if the medical practitioner considers that the donor's mental capacity will likely deteriorate within 28 days, he should add a remark in his assessment. When performing his gate-keeping role, the solicitor should give due regard to the relevant circumstances. If there is any ground for doubts, another assessment should be made.

I so submit.

MS AUDREY EU (in Cantonese): President, many people who are now watching live broadcast of this debate on television may find the subject very technical and remote.

What is an enduring power of attorney (EPA) after all? As mentioned by Dr PAN Pey-chyou in his speech, there is a need to promote the wider use of EPAs locally because a much discussed topic in the community recently is the increasing incidences of dementia in Hong Kong. The English rendition of this disease, Alzheimer's disease, is more readily accepted because it carries no derogatory implication, while its Chinese rendition still creates a lot of controversies to date. Initially, dementia was called "老人癡呆症" (senile idiotic) in Chinese, which many people find objectionable. Sometimes, I am asked to persuade a certain friend, who might have "that disease" to seek medical help; yet, no one is willing to say specifically what "that disease" is. Nowadays, the Chinese terms of "腦退化" (mental degeneration), "失智" (loss of mental ability) or "認知障礙" (cognitive disorder) are adopted; yet, the disease remains a taboo.

In fact, we are told by medical professionals that more and more people are getting the disease — perhaps "disease" is not exactly right — more and more people are having this condition, particularly as the life expectancy of Hong Kong people is becoming longer. I have friends in their fifties who are found to have symptoms of dementia by others, yet nobody knows how to explain the disease to them so that they can seek medical help. If you found that your family members may have such problem, you should really learn more about EPAs.

While an ordinary power of attorney shall be effective when the donor is alive, it becomes invalid when the donor suffers from mental illness or becomes "mentally incapacitated". An EPA is a special type of power of attorney which survives beyond the onset of the donor's mental incapacity. Just think, if a person starts to have this condition when he is in his fifties, and he may live to his eighties or nineties, he really needs another person to take care of his finances or other general matters. There is an actual need for such an arrangement. Hence, the take-up rate of EPAs in Hong Kong may increase eventually.

The existing legislation on EPAs was enacted in 1997. In the nine years from its enactment to 2006, 16 EPAs were registered. It is evident from this extremely low take-up rate that many people have no knowledge about the use of

EPAs because the existing statutory requirement is excessively strict as an EPA is only valid when it is signed by a medical practitioner and a solicitor at the same time. Hence, there are views proposing a review of the relevant requirement. The Law Reform Commission (LRC) commenced to study the subject matter in 2006, and a public consultation was held in 2007. The LRC subsequently published its report in 2008. Two major recommendations were made by the LRC: the first recommendation was that the requirement of signing an EPA before a medical practitioner should be abolished, and the second recommendation was that the requirement of signing an EPA before a medical practitioner should be relaxed. Thereafter, the two recommendations were presented to the Panel on Administration of Justice and Legal Services for discussion in December 2010.

Eventually, it was decided that the middle-of-the-road approach, as mentioned by Dr Margaret NG in her speech, should be adopted with both requirements of certification by a medical practitioner and verification by a solicitor being necessary. But an intervening period of 28 days is allowed so that a medical practitioner can first certify that the donor remains mentally capable of understanding his own actions. By the time of verification and signing by a solicitor within 28 days, the EPA shall become effective. As a matter of fact, this discussion is significant because medical certification is not required in many other jurisdictions and verification by a solicitor is suffice. When I review the submissions received at that time, four supported the abolition of the medical certification requirement while 10 were against the proposal. It is clear from the scarce number of submissions that many people are indifferent to the subject matter. As I have just said, while this involves a much needed reform in the community, it is regrettable that only a handful of people have submitted their views on the subject matter.

Even though the issue may look simple, the Bills Committee of the Legislative Council formed to study the Enduring Powers of Attorney (Amendment) Bill 2011 (the Bill) have scrutinized the legislative amendments in great detail because while Members may agree on the major principles, we find that the devil is always in the details. A case in point is the question highlighted by Dr Margaret NG in her speech about the appointment of "joint and several" attorneys. Sometimes when a person appoints others to act on his behalf or to be his attorney, he may, as a precaution, appoint not only one attorney but two or more attorneys. This will give rise to the question as to whether all attorneys in

such a case must act together on behalf of the donor, or each attorney may act by himself. Obviously, this is a question subject to interpretation.

The Bills Committee thus sought clarification as to whether the legislation could clearly specify that the attorneys should act jointly or jointly and severally in case the donor has not made clear specification. In other words, is it possible to specify the choice of one way or another in the legislation? However, the Administration refused to consider our view because such a change fell outside the scope of consultation. Therefore, an EPA is only valid if the donor has clearly specified which attorney he would appoint, and the absence of which may render the EPA invalid. This obviously creates a problem should the EPA become invalid because the donor has not specified his choice at the time of execution. As such, we can only work on the EPA forms. As the forms were there when the LRC conducted the consultation and many views had been received, the Bills Committee had spent a lot of time examining how to improve the drafting of forms in plainer language and in a more user-friendly format, so that the donor would understand that he must indicate his wish to appoint joint attorneys, or joint and several attorneys because without a clear indication, the EPA may not comply with the necessary requirement or may become invalid. This point must be clearly specified so that the message can get across to the donor easily.

Moreover, we have also raised the question of commencement of EPAs for discussion at the Bills Committee, for example, whether an EPA will take effect immediately upon execution, or whether it will take effect only after signing by a solicitor just like an ordinary power of attorney? Should this point be clearly specified in the Bill so as to avoid any dispute in the future? As some of these questions have not been clearly provided in the Enduring Powers of Attorney (Amendment) Bill 2011, a number of relevant Committee stage amendments are required now.

The Bills Committee has also spent time to study the modal verbs used in the Bill because the Department of Justice (the Law Draftsman in particular) has taken the initiative to reform their usage in law drafting. While we understand the meaning of "shall" and "may", other modal verbs such as "must" have been adopted under the new drafting approach. What then is the difference between these modal verbs; and what will be the consequence of non-compliance with the specified requirements? Will the entire EPA become invalid, or can it remain

effective as an ordinary power of attorney? Hence, the Bills Committee has spent a lot of time on these questions in order to ensure consistency in diction so as to allow for easy comprehension and clear understanding of the legal consequences.

Furthermore, we have also discussed the proposed time limit of 28 days. As Dr PAN Pey-chyou has just mentioned, while the process of brain degeneration is usually slow, there might also be circumstances when a patient's condition may deteriorate suddenly, for instance, due to medication prescribed by doctors before surgery. Hence, should the time limit be reduced? Is the time limit of 28 days too long? Of course, as the time limit of 28 days was proposed by the Government for consultation previously, the Bills Committee cannot make other suggestions.

Given the myriad of issues raised by the Bills Committee and the considerable time expended on their discussion, this reflects to a certain extent that the Government's previous consultation was relatively simple as only two options were presented: the medication certification would be abolished under option A, or retained under option B. There was little in-depth discussion on problems which might arise in actual circumstances. As a result, there is not much scope of major change when the matter is discussed by the Bills Committee or the Panel, and there is no way to fully reflect or predict the need of EPAs in society.

President, we have already made our best efforts to duly perform the functions of the Legislative Council by improving the Bill. We hope that the enacted Ordinance can meet and satisfy the future need of the community.

Thank you, President.

MR LAU KONG-WAH (in Cantonese): President, an enduring power of attorney (EPA) offers peace of mind and protection to persons who have such a need, so that their finances will be taken care of by somebody they trust should they become mentally incapacitated in future.

Given the problem of ageing population of Hong Kong in the next few decades, the retirees, particularly those with special needs, would need other

persons to provide them with personal care and assistance in handling the various problems in daily living as well as their properties. There should be greater emphasis on the use and promotion of EPAs. Moreover, as elderly persons of the new generation are different from their predecessors as a result of better health, higher education level and greater financial independence, they have more matters to attend to. Moreover, with the increasing number of nuclear families, the number of childless elderly persons requiring care by others or assistance from their trusted ones in handling their affairs will likely increase in future.

As EPAs are executed when the donors are still mentally capable, it is an important tool for giving elderly persons a trouble-free retirement for they can appoint an attorney to handle their properties or finances on their behalf should they become mentally incapacitated. More specifically, EPAs allow elderly persons with special needs, such as dementia patients, to plan ahead and make early arrangements for disposing of their assets or even medical arrangements, so that they can enjoy a stable retirement life. Hence, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) considers that this legislative amendment exercise is by no means insignificant; conversely, the relevant provisions relating to EPAs should be improved and refined so as to promote the wider use of EPAs to tackle the problems arising from an ageing society likely to emerge in future.

According to statistics provided by the Government, the take-up rate of EPAs remains low after the enactment of EPA legislation in 1997. As at the end of last year, only 40 EPAs have been registered in Hong Kong, which is far less than the comparable figures in other jurisdictions. There are views that the low take-up rate may be attributed to the existing cumbersome EPA execution requirements for the prescribed form must be signed by the donor before a solicitor and a registered medical practitioner who must both be present at the same time.

The amendment Bill mainly intends to relax the time requirement under the existing legislation by allowing a donor and a solicitor to sign an EPA within 28 days after the EPA has been signed before a registered medical practitioner. By virtue of EPA execution, the donor can appoint an attorney to act on his behalf. At the same time, under the proposed amendments to the existing legislation, the statutory EPA forms and the explanatory notes will be drafted in plainer language and in a more user-friendly format. As EPAs are different from ordinary powers

of attorney, they must be executed in the prescribed forms and manner provided under the existing legislation, it is very important that the forms are drafted in a user-friendly format. DAB strongly supports the above two amendments.

In the course of deliberation by the Bills Committee, questions have been raised as to whether the time limit between medical certification by a registered medical practitioner and verification signing by a solicitor in the course of EPA execution can be shortened, and whether flexibility can be provided in their sequences. DAB considers the time limit of 28 days reasonable, and the period between medical certification by a registered medical practitioner and verification by a solicitor is not unduly long as to render the medical assessment no longer current.

On the question of whether a registered medical practitioner can verify the mental state of the donor after signing by a solicitor, we consider that medical certification should precede the signing of an EPA by the donor and the solicitor because the solicitor is duty-bound to ensure that the donor is mentally capable of signing the EPA. If there is any ground for doubts, the solicitor should, by virtue of his professional conduct, first seek certification from a medical practitioner on the donor's mental capacity so as to duly protect the right of donors, including elderly persons.

We also hope that the Government will introduce further measures to step up publicity through co-operation with professional bodies for increasing the public's awareness and acceptability of EPAs, as well as their take-up rate; this can in turn help bring down the fees. At the same time, the Administration should make greater efforts to encourage the use of EPAs among elderly persons, including the provision of concessionary legal fees for EPA execution and the publication of tailor-made leaflets on the use of EPAs by co-operating with professional bodies. The Administration should also step up publicity in the community, particularly to guard against frauds perpetuated by law-breakers who take advantage of the situation.

With these remarks, the DAB supports the Bill and the Committee stage amendments proposed by the Administration.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Justice to reply.

SECRETARY FOR JUSTICE (in Cantonese): President, after the Enduring Powers of Attorney (Amendment) Bill 2011 (the Bill) was presented to the Legislative Council in May 2011, a Bills Committee has been formed to study the Bill under the chairmanship of Dr Margaret NG. The Bills Committee has held four meetings to scrutinize in detail various provisions of the Bill, as well as their underlying policy objectives. First of all, I wish to express my heartfelt thanks to Dr NG and members of the Bills Committee for their efforts and valuable views.

As I mentioned when presenting the Bill to the Legislative Council, the Bill is intended to give effect to the recommendations made by the Law Reform Commission (LRC) in its report published in March 2008 to relax the existing requirements on the execution of an enduring power of attorney (EPA). At present, the Enduring Powers of Attorney Ordinance (the Ordinance) provides that an EPA must be signed by the donor before a solicitor and a registered medical practitioner who must both be present at the same time. As a number of Members have pointed out just now, this is perhaps the reason for the extremely low take-up rate of EPAs since the enactment of the Ordinance in 1997. Given the concern raised by various sectors and the community, a study was undertaken by the LRC. In fact, the LRC made two recommendations as follows. Under Recommendation 1, the medical certification requirement should be abolished in line with other jurisdictions. Under Recommendation 2, the existing requirement should be relaxed by allowing the separate signing of an EPA within 28 days.

Both Dr PAN Pey-chyou and Mr LAU Kong-wah spoke about the importance of medical certification just now. From a medical point of view, Dr PAN has elaborated the importance of medical certification in the execution of EPAs. While I also share the earnest hope expressed by Members for EPAs to

become a useful tool more widely used in society, I would like to clarify a point just made by Dr PAN that the medical practitioner's role was that of ascertaining the mental capacity of the donor and the solicitor's role was that of ensuring the legality of the EPA execution process. I would like to supplement that even when the existing legislation is relaxed, the solicitor must, in case of grounds for doubting the mental capacity of the donor, decide on the basis of practice directions and ethical standards of his profession as to whether further medical certification is required before he eventually signs the EPA. Hence, this is not a case where it is absolutely unnecessary for the solicitor to make a judgment in this regard. As we note, and as Members have mentioned, the Bill proposes to relax the existing requirement by adopting Recommendation 2 of the LRC to allow a donor and a solicitor to sign an EPA within 28 days after the EPA has been signed before a registered medical practitioner.

As mentioned by Ms Audrey EU just now, questions have been raised in the course of deliberation as to whether the proposed time limit of 28 days was appropriate. During consultation, many different views have been received on the proposed time limit of 28 days, including those from the medical profession. Dr PAN also pointed out just now that generally, a donor's mental capacity may not deteriorate rapidly. Dr Margaret NG has also relayed the views of the social welfare sector that time was required to make the necessary logistical arrangements. Having studied the matter, we consider that the proposed 28-day period represents a relatively proper balance for the time being. This proposed time limit, being part and parcel of Recommendation 2 of the LRC, has been duly reflected in the consultation; and the accepted proposal has been incorporated into the Bill. Another proposal under the Bill is that the new statutory EPA forms and their explanatory notes should be drafted in plainer language and in a more user-friendly format. We hope that after the enactment of the Bill, measures will be adopted to increase the public's awareness and understanding of EPAs so that more people will be encouraged to execute EPAs in the management of their properties and finances.

President, in view of the suggestions of the Bills Committee, we agree to propose a number of amendments to the Bill. I will propose the relevant Committee stage amendments (CSAs) later as follows.

Firstly, the Administration will move a CSA to add a new clause to amend section 10 of the existing Ordinance in relation to the commencement of EPAs.

Under section 10 of the existing Ordinance, an EPA will commence upon its execution by the donor unless a date or an event is specified in the instrument creating it for its commencement. Given the proposal in the Bill to allow for a 28-day period between certification by a registered medical practitioner and the signing by a solicitor, an instrument intended to be an EPA may operate as an ordinary power of attorney after medical certification by a registered medical practitioner but before it is signed by a solicitor. Members have also expressed concern about possible abuse that may arise as a result. For instance, the attorney may dispose of the donor's properties under the authority given by the donor under an unintended ordinary power of attorney.

In view of the Bill's Committee's concern about the need to protect the donor's interests, that is, "授權人" in Chinese — perhaps let me make myself clear because the two terms "授權人" (meaning the donor) and "受權人" (meaning the attorney) sound the same in Cantonese and may cause some confusion — in order to protect the donor's interests and rule out any question of possible abuse that may arise from the above scenario, the Administration will move CSAs to add provisions to section 10 of the existing Ordinance to expressly provide that an EPA does not take effect as an ordinary power of attorney before it is executed and that an EPA is executed when it is duly signed before the solicitor under the new section 5.

Secondly, the Administration will move CSAs to clauses (12)(b)(i) and 13(b)(ii) to draw the donor's attention to the legal consequences for failing to comply with the statutory requirements.

In response to the Bills Committee's request, the Administration has conducted an overall review on the use of modal verbs (that is, the modal verbs of "should", "may", and so on, just mentioned by Ms EU) in the proposed new EPA forms in Schedules 1 and 2, for the purpose of spelling out clearly for the donor the legal consequences for failing to comply with certain requirements specified in the forms.

The Administration agreed to amend the EPA forms so as to spell out clearly the legal consequences for failing to comply with certain requirements specified in the forms. The Administration will move the amendments at the Committee stage so that the relevant wording in the EPA forms in the proposed

Schedules 1 and 2 will be shown in bold type to further highlight the legal consequences for the donor's failure to specify the authority of the attorney.

Separately, the Administration will propose a CSA to clause 13(b)(i) in relation to the appointment of more than one attorney.

Under section 15(1) of the existing Ordinance, "An instrument which appoints more than one attorney cannot create an enduring power unless the attorneys are appointed to act jointly or jointly and severally." For the sake of clarity, I would like to remind Members that this provision is about whether the attorneys (that is, 受權人 in Chinese) are appointed to act "jointly" or "jointly and severally", as explained by Dr Margaret NG just now. Although the Chinese text reads a bit awkward, we should understand that it is necessary for the sake of clarity, given the complicated concepts involved in the expressions "jointly" and "jointly and severally". Under this provision, the failure on the part of the donor to specify the appointment of more than one attorney to act jointly or to act jointly and severally would render the EPA invalid. As just mentioned by Dr Margaret NG, there is a similar provision in the United Kingdom to achieve the effect. Members have expressed concern that by the time the donor has become mentally incapacitated and it is then found out that the EPA is invalid by virtue of section 15(1), nothing can be done to remedy the situation. This concern is acknowledged by the Administration.

In response to the suggestions of members and the legal adviser to the Bills Committee, the Administration has agreed to move amendments to the wording and presentation of paragraph 2 of Part A of Form 2 in the proposed Schedule 2 to the Bill to make it clear to the donor that he is required to make a choice expressly between the attorneys acting jointly and acting jointly and severally, and to draw the donor's attention to the serious legal consequences of failing to do so.

The Administration has also undertaken to keep track of the developments after the coming into force of the Bill after enactment, and review in future whether there is a need to amend the mandatory requirement under section 15(1) of the existing Ordinance. The Bills Committee has agreed to refer the issue to the Panel on Administration of Justice and Legal Services for follow-up as appropriate.

In addition to the above amendments, the Administration will move other amendments to deal with some minor and technical issues. Having considered the relevant amendments, the Bills Committee has raised no objection.

President, before I conclude, I would like to respond to the issue just raised by Dr Margaret NG in relation to the LRC. I have the opportunity to discuss with the Panel on Administration of Justice and Legal Services yesterday the implementation of LRC reports. My response is that we have in fact received many views in the consultation process. For instance, the Administration has also received many views during the legislative process of the present Bill. When the LRC embarked on the relevant study, consultation had been held initially. Although the feedback received at that stage might not be too comprehensive, the stakeholders had submitted their views to us in detail when the legislative amendments were proposed. While this is beneficial to our work, I must point out that in the process, we must proceed with further study on the issue on the basis of feedback collected during consultation as these views must be fully respected. In this connection, I am grateful to the Bills Committee for its efforts and long time spent on the scrutiny of the Bill. As Dr NG has mentioned just now, we attach great importance to the implementation and follow-up of LRC reports. As I explained in yesterday's meeting, the Administration has already issued a set of guidelines to Policy Bureaux requiring them to comply with the relevant time limits for responding to LRC reports. Bureaux having policy responsibility in respect of any LRC report should provide at least an interim response within six months of publication of the LRC report. Thereafter, a detailed response on the implementation of the LRC report should be provided within 12 months of its publication at the latest. I believe that with these guidelines, LRC reports will be followed up in a more effective manner. In this regard, we would welcome actions taken by the Legislative Council to follow up on the implementation of LRC reports. Upon request, we will gladly submit reports to the Panel on Administration of Justice and Legal Services of the Legislative Council for consideration. But I would like to point out that the relevant information has already been set out in detail on the website of the LRC.

President, I so submit and implore Members to support the resumption of Second reading of the Bill, as well as the amendments to be proposed by the Administration at the Committee stage later.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Enduring Powers of Attorney (Amendment) 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): Enduring Powers of Attorney (Amendment) Bill 2011.

Council went into Committee.

Committee Stage

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

ENDURING POWERS OF ATTORNEY (AMENDMENT) BILL 2011

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Enduring Powers of Attorney (Amendment) Bill 2011.

CLERK (in Cantonese): Clauses 1, 4 to 8 and 11.

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 as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 3, 9, 10, 12 and 13.

SECRETARY FOR JUSTICE (in Cantonese): Chairman, I move the amendments to the clauses read out just now. The Committee stage amendments (CSAs) to the above clauses as well as other CSAs to be moved later have already set out in the paper circularized to Members.

I have already explained the objective of the majority of CSAs in my earlier speech on the resumption of Second reading of the Bill. Other amendments mainly involve textual and technical amendments which can generally be categorized as follows.

The first type of CSAs, including those to clauses 3(5) and (7), involve changes to the wording of the Chinese text of the Enduring Powers of Attorney (Amendment) Bill 2011 to specify clearly that the instrument was signed on the donor's behalf.

We also propose to amend the Chinese text of paragraph 3 of the proposed Schedule 2 to the Bill, so as to ensure consistency with the relevant provisions in section 15 of the Enduring Powers of Attorney Ordinance in relation to the appointment of joint and several attorneys.

The second type of CSA is intended to further clarify the rationale behind the relevant provision. It is proposed that the section 4(2) of the proposed Enduring Powers of Attorney (Prescribed Form) Regulation be amended by deleting "donor becoming mentally incapable" and substituting "donor's mental incapacity", so as to clearly specify that the provision is referring to a particular moment when the donor becomes mentally incapable.

The third type of CSAs are consequential amendments. For instance, given the amendment to section 10 of the existing Ordinance, we propose to add a new paragraph 13 to the proposed Schedule 1 under the bold type heading of "Information you must read", so as to provide additional explanatory information on the commencement of an EPA. In addition, we propose to add a new section 4A under the bold type heading of "Form of enduring power of attorney (for appointment of only one attorney)" to allow the donor to specify the commencement date of an EPA.

We also propose to make similar amendments to the proposed Schedule 2 for the purpose of providing additional information to the donor.

The Bills Committee on Enduring Powers of Attorney (Amendment) Bill 2011 has discussed and expressed support for the above CSAs. I implore Members to support the relevant amendments.

Proposed amendments

Clause 2 (see Annex I)

Clause 3 (see Annex I)

Clause 9 (see Annex I)

Clause 10 (see Annex I)

Clause 12 (see Annex I)

Clause 13 (see Annex I)

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

DR MARGARET NG (in Cantonese): Chairman, regarding the terminology used in law drafting, particularly for the bilingual laws of the Hong Kong Special Administrative Region (HKSAR), we hope that suggestions can be made in the course of scrutiny on various Bills by the Legislative Council so that both the Chinese and English renditions will be improved gradually.

The present Bill is an interesting example for different views were held by Members and the Law Draftsman. The Law Draftsman prefers modern terminology. For example, in the past, the word "shall" would always be used and the law would always be drafted in the present tense, rather than the past tense and the word "must" would not be used. However, given his decision to modernize law drafting, the Law Draftsman decides to adopt more idiomatic expressions and hence, he prefers to use the word "must". As a result, arguments had occurred when we discussed the choice between these two words.

Chairman, the present discussion on textual amendments relates to the wordings used in the prescribed forms and hence, no legally binding provisions are involved. Rather, it is about how to enable the public to have a better understanding of the contents of these forms.

In an example quoted by Members, the use of "must" in the expression "you must delete" in the English text may give rise to the uncertainty of "what if" when no deletion is made. That is a difficult question to answer. Hence, in the case of some amendments, by using the word "must", it means that "certain action has to be taken in order to achieve certain consequence". Therefore, by adding the expression "if you do not your EPA will not be valid" in paragraph 13 of the proposed form, it means that "you have to take certain action; otherwise, there will be some other consequence".

As the legislative process was drawing to a conclusion, Members consider that the resumption of Second reading of the Bill should not be delayed due to textual considerations. However, I hope that the right balance can be achieved by officers of the Law Drafting Division when dealing with forms in future. On the one hand, the forms should be drafted concisely as they are incorporated as schedules to the legislation with legislative effect, and on the other hand, consideration should be given to public access of these forms in terms of readability to avoid excessive uncertainties and doubts on the possible effect of not taking certain actions. My comments above are related to the English text of legislation.

Regarding the Chinese text, it involves another kind of questions arising from the unique situation of the HKSAR because we speak in Cantonese and write in vernacular Chinese, which are completely different. Hence, interesting results may occur. For instance, while the word "須" is used to denote some actions which must be taken, a person completing the relevant form may still have the same query of "what if such action is not taken".

Chairman, let me just read out a message. Clause 12 of the Bill relates to the provisions under the heading "Information you must read", part of the Chinese text reads, "如你希望以某較後的日期或某較後的事件發生之時作為本持久授權書生效之時，你可如此選擇。在此情況下，你須在A部第4A段指明該較後的日期或事件。" ("..... if you wish, you may choose a later date or later event, on which the EPA will take effect. In such case you must specify this later date or event in paragraph 4A of Part A.") Although the Chinese is quite awkward, the meaning is understandable if read carefully word by word. Rather than denoting a wish (希望) *per se*, the Chinese expression "如你希望" means an effect the donor wants (想) to achieve.

I also note that the Chairman often uses the expression "有沒有議員要發言", rather than "有沒有議員想發言". Chairman, while I have no idea whether you use the expression deliberately, I think it is a deliberated decision because what you mean to ask is whether other Member actually wants (要) rather than merely wish (想) to speak as "想" actually means "要" in Cantonese. Therefore, by the expression "如你希望以某較後....." in the above provision, it means that the donor wants (想), rather than wishes (希望), to have the EPA take effect not on the day of execution. In fact, the term "簽立" ("execution") is also an invented term meaning both signing (簽署) and making (訂立). The

provision means that if the donor wants something to happen, that is, the EPA to take effect later, he is required to express the choice through certain action. The meaning of "如你希望……你可如此選擇" indicates a choice of actions for the donor if he wants something to happen. Nonetheless, I think the use of Chinese language as in the text of "你可如此選擇" is quite unique to Hong Kong.

The expression "在此情況下，你須……" ("In such case you must……") towards the end of the quoted text is far from idiomatic. In another provision, the expression "請刪去該句子" (meaning please delete that sentence) is used to indicate the action required for the donor if he wants the EPA to take effect later or on the day of execution. According to that provision, if the donor wants to achieve a certain effect, he is required specifically to delete the relevant sentence; otherwise, the original course will follow. Hence, the use of the word "須" (must) in the cited example is quite unnecessary, as the meaning of the provision can be expressed clearly by using the word "請" (please).

Chairman, I know that Members may be at a lost if they are not reading the actual texts. Yet I think the Secretary for Justice perfectly understands what I am saying. I express the above views not for nit-picking, but as a person who respects the Chinese language, we wish — this time, it is really our wish — that the Chinese texts of official documents and legislation are fluent, easy to comprehend as well as elegant. Even though the goal of elegance may be difficult to achieve, the Chinese texts must read fluently. Regrettably, we are now used to writing vernacular Chinese. If the provisions are to be drafted in classical Chinese, there would be no problem at all because expressions such as "如欲" (meaning if and wish) can be used to indicate that certain action has to be taken if certain consequence is desired.

Chairman, this is a mammoth task. While the Law Draftsman himself is not a native speaker of Chinese, I think he is very particular about the use of words. I hope the Chinese texts of legislation will improve gradually as he learns more about the Chinese language. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary to speak again.

SECRETARY FOR JUSTICE (in Cantonese): Chairman, while the issue just raised by Dr Margaret NG has a relatively wide scope and is not necessarily confined to this Bill, I would like to give a reply here.

First of all, let me explain our approach of law drafting in English, and I will talk about legislation in Chinese later. I think Members will understand that it is a global trend to draft laws in simple and plain language to ensure comprehensibility for members of the public. I think this principle is accepted by all and hence, we are committed to promoting law drafting in plain English. All along, major jurisdictions in the world have been working towards this direction of development. It is an initiative where the incumbent Law Draftsman is greatly concerned about and has put in a lot of efforts on promotion. Some difficult terms are indeed found in our written laws, both Chinese and English texts alike. In addition, there are terms which we are accustomed to. We may not get used to the new terminologies adopted in the course of reform, and the meaning of the terms may differ. I know that more efforts are required in the process, and I call for Members' understanding of our intention to increase public comprehensibility in the legislation.

Under the circumstances, I understand that Members may have different views on the matter, for example, regarding the use of "shall" and "must" mentioned just now. But the underlying intention remains that of achieving consistency in legal concepts or terminology so that when a particular term is used in laws, its meaning is understood readily. As a priority, we hope that in our quest for further improvements, disputes can be minimized with our best efforts because I think it is important that we should stay focused on such development. Apart from the public perspective, consideration should also be given to ensure that laws enacted in Hong Kong, as an international city, are in line with international standards, our English laws in particular, because many countries are concerned about how our laws are written. Hence, in this regard, consideration should be given as to whether our practices have deviated from those of other jurisdictions or whether any improvements are required. Going back to the Bill under scrutiny, we have already responded to the concerns raised by Members about the relevant forms which are most crucial. Most importantly,

instead of arguing about the meaning of particular terms, we have specifically drawn the attention of persons signing the instrument that if they do not comply with certain requirements, serious consequences may follow. These matters are very important. In this connection, I thank Members for their reminder so that amendments can be proposed specifically to these critical provisions, for example, the provision about the instrument being rendered invalid if certain provisions have not been complied with, to highlight the consequences for the users' attention.

Regarding Chinese legislation, Chairman, I think we all note the difference between "有否議員想發言" (meaning "Does any Member wish to speak") and "有沒有議員發言" (meaning "Does any Member speak"). We indeed have difficulties because there is a difference between spoken and written Chinese. If we are only going after fluency, a lot of work would have to be done, and this is a challenge not only in the perspectives of legislation or law drafting, but for the public as a whole as well.

Nonetheless, I wish to point out that — of course, I absolutely acknowledge that there is room for improvement in respect of Chinese terminology, and I thank Members for their views — I nonetheless want to highlight two difficulties for Members' attention. Firstly, we must achieve a balance in our bilingual laws, and it is most important to ensure consistency between the Chinese and English texts. In order to achieve consistency on some occasions, fluency in the Chinese text may have to be compromised to a certain extent. I hope Members will understand that it is by no means easy to achieve the right balance.

Separately, in the case of some terminology, such as the term "簽立" for "execution" mentioned just now or other legal terms, the relevant expressions may have already appeared in the relevant legislation. In such cases, it is not simply a question of diction because these expressions may have already been explained by the Court in precedent cases. If a new term is used instead, it is not simply a question about the replacement term *per se*, but the underlying legal basis. Hence, a cautious approach must be adopted in this matter. Nonetheless, I agree that continuous efforts in this regard should be made by Hong Kong as a bilingual jurisdiction. Chairman, notwithstanding the time taken for my explanation, I think this is an important matter of concern.

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

(Members raised their hands)

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

(No hands raised)

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 2, 3, 9, 10, 12 and 13 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 2, 3, 9, 10, 12 and 13 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 3A

Section 10 amended
(Commencement).

SECRETARY FOR JUSTICE (in Cantonese): Chairman, I move the Second Reading of new clause 3A. As the new provision has already been covered in my speech earlier, I have nothing further to add.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 3A be read the Second time.

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 as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 3A.

SECRETARY FOR JUSTICE (in Cantonese): Chairman, I move that new clause 3A be added to the Bill.

Proposed addition

New Clause 3A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 3A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

ENDURING POWERS OF ATTORNEY (AMENDMENT) BILL 2011

SECRETARY FOR JUSTICE (in Cantonese): President, the

Enduring Powers of Attorney (Amendment) 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 Enduring Powers of Attorney (Amendment) 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): Enduring Powers of Attorney (Amendment) Bill 2011.

MOTIONS

PRESIDENT (in Cantonese): Motion. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Building (Minor Works) (Amendment) Regulation 2011.

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

PROPOSED RESOLUTION UNDER SECTION 34(2) OF THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed. This motion aims to amend the Building (Minor Works) (Amendment) Regulation 2011 (the Regulation).

The Legislative Council endorsed the Building (Amendment) Ordinance in late June 2011 to provide the legislative framework for Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS). In October 2011, I introduced four pieces of legislation relating to the implementation of MBIS and MWIS into the Legislative Council, namely the Building (Inspection and Repair) Regulation, Building (Administration) (Amendment) Regulation 2011, Building (Minor Works) (Amendment) Regulation 2011, and Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2011. The Legislative Council subsequently formed a subcommittee to scrutinize the relevant subsidiary legislation.

I am grateful to Ms Audrey EU, Chairman of the subcommittee, and other members. They have held a total of seven meetings to discuss the content of the Regulation, and have also put forward a lot of valuable views on the implementation of MBIS and MWIS. The subcommittee has invited the relevant trade bodies and stakeholders to express views. On the other hand, we have also briefed the subcommittee on the progress of the preparatory work undertaken by the authorities and their partners in respect of the implementation of MBIS and MWIS. The subcommittee supports the implementation of these two mandatory schemes.

The subcommittee accepted the *modus operandi* for the implementation of MBIS and MWIS as set out in the relevant subsidiary legislation, and does not have any objection to the provisions on the *modus operandi*. Some members have raised technical viewpoints on certain provisions. Noting that the pronouns "he" and "she" are used in the newly-added provisions, they considered this inconsistent with the provisions of the principal Regulation. After discussion with the Department of Justice, the Development Bureau decided that propose amendments to sections 5, 6 and 11 of the Building (Minor Works) (Amendment) Regulation 2011 to the effect that the newly-added provisions are consistent with

those of the existing Regulation. Here, I wish to stress that the relevant amendments are purely revisions made for law drafting purposes, and will not have any implication on the substance of the relevant provisions.

We understand that members of the public, especially owners of old buildings, may need some time to learn how to comply with the statutory requirements under MBIS and MWIS. After enactment of all the relevant legal provisions today, the Buildings Department (BD) will shift its focus from the preparatory work of MBIS and MWIS to the publicity and promotion of the new schemes. The BD will launch widespread public education activities to introduce the relevant system to the public and the trades, and brief members of the public on how they can obtain assistance and support.

Meanwhile, after the Legislative Council finishes the examination of the abovementioned subsidiary legislation today, we will proceed with the registration of the Registered Inspectors under MBIS at the end of this month so that eligible building professionals may submit their applications for registration. Also, the BD will convene selection panel meetings to select the first batch of target buildings. After the selection panel finalized the selected buildings, the BD will issue letters to the relevant owners in the second quarter of 2012, informing them of the statutory requirements of prescribed inspections and prescribed repairs, as well as notifying them that statutory notices will be delivered to the relevant building in six months. We project that the first batch of statutory notices relating to MBIS will be delivered by the end of 2012.

President, the policy of mandatory building and window inspections has brewed for years and there has been widespread consultation and discussion in society. In general, various professional bodies and members of the public acknowledge that the policy direction to mandatorily require owners to constantly inspect and repair their buildings is correct. Also, Members of the Legislative Council have provided strong support to us in the legislative work to implement the relevant proposals. Once the preparatory work is completed, the BD will exert its best effort to implement MBIS and MWIS, and the Development Bureau will also closely monitor the effective implementation of the new schemes. President, I move that the motion be passed. Thank you, President.

The Secretary for Development moved the following motion:

"RESOLVED that that the Building (Minor Works) (Amendment) Regulation 2011, published in the Gazette as Legal Notice No. 148 of 2011 and laid on the table of the Legislative Council on 2 November 2011, be amended as set out in the Schedule.

Schedule

Amendments to Building (Minor Works) (Amendment)
Regulation 2011

1. Section 5 amended (section 31 amended (documents to be submitted on completion of class I minor works other than demolition works))
Section 5(3) —
Repeal
"his or her opinion"
Substitute
"the opinion of the person or inspector".
2. Section 6 amended (section 32 amended (documents to be submitted on completion of class I minor works that are demolition works))
Section 6(3) —
Repeal
"his or her opinion"
Substitute
"the opinion of the person or inspector".
3. Section 11 amended (section 52 amended (duty of authorized person on being delivered notice under section 51(1)))
Section 11(2), Chinese text —
Repeal
"他或她"
Substitute
"該人士或人員".

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

MS AUDREY EU (in Cantonese): President, in my capacity as Chairman of the Subcommittee on Building (Inspection and Repair) Regulation, Building (Administration) (Amendment) Regulation 2011, Building (Minor Works) (Amendment) Regulation 2011, and Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2011 (the Subcommittee), I now report on the deliberations of the Subcommittee.

The main purpose of the abovementioned subsidiary legislation is to stipulate the *modus operandi* for the implementation of Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS).

The Subcommittee has held a total of seven meetings to scrutinize the four pieces of subsidiary legislation. Members noted that the Administration would select a total of 2 000 and 5 800 target buildings for MBIS and MWIS respectively each year on the basis of the buildings' age, condition, repair and inspection records, as well as location. For buildings with less than 50 units, the estimated inspection cost falls within the range of \$10,000 to \$20,000 per building block (or an average of \$800 per unit). Some members queried the accuracy of this estimation. According to the Administration, this is a rough estimate of the range of inspection cost based on the cost incurred from maintenance and repairs works carried out by building owners in the past. As the inspection cost of different projects may vary, the estimated cost is merely for general reference.

Under MBIS and MWIS, the owners or owners' corporation (OC) of a building must appoint a Registered Inspector to carry out a prescribed inspection. As the supply of Registered Inspectors will have a direct implication on the inspection cost, the Subcommittee urged the authorities to ensure that the market has an adequate supply of Registered Inspectors to facilitate healthy market competition. Some members were concerned that the owners might not have the ability to assess the performance of the Registered Inspectors. They opined that apart from conducting random audit checks, the authorities should also consider requiring the Registered Inspectors to comply with the codes of practice issued by the Buildings Department (BD) by legislation, so as to avoid malpractices. The

Administration advised that there were adequate sanction and disciplinary provisions under the Buildings Ordinance (the Ordinance) against malpractice of Registered Inspectors. Given the administrative nature of the codes of practices, non-compliance with the guidelines set out in these documents does not and should not constitute violation of the Ordinance. To facilitate owners to assess the performance of Registered Inspectors, the authorities have taken on board members' suggestions to provide a checklist on the major duties of Registered Inspectors and the channels of complaint against malpractices in the publicity materials about MBIS and MWIS.

The Subcommittee also noted that some owners may not possess adequate knowledge or financial ability to fulfil the requirements of prescribed inspection and repair. Members urged the authorities to provide suitable assistance to building owners in need, especially owners of buildings without any form of management. The Administration advised that together with the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA), a comprehensive range of assistance will be provided to building owners during various stages of building inspection and repair. The two organizations will try to reach the owners of buildings without any form of management through different means and channels, and understand their needs so as to work out appropriate follow-up strategies. If the owners are still unable to co-ordinate and organize the relevant work, the BD may, for public safety reasons, undertake the relevant work and subsequently recover the costs and surcharges from the owners concerned.

For financial assistance, the Subcommittee noticed that the HKHS and the URA will subsidize owners in need the cost of first building inspection. Some members suggested that the eligibility criteria for financial assistance should not only base on the rateable values of properties, but should also consider setting a target percentage for buildings eligible for assistance under MBIS and MWIS. The Administration explained that this proposal might not be the best use of public resources lest some eligible buildings might not be those in genuine need. Given that rateable values are on the rise, the HKHS and the URA are reviewing the eligibility criteria based on the latest rateable values provided by the Rating and Valuation Department. The authorities will make reference to the findings of the review and determine the eligibility criteria for the subsidy for first inspection.

On the legal drafting perspective, members have raised concern over the addition of reference to the female gender in amendments to provisions with references of masculine gender in the Building (Minor Works) (Amendment) Regulation 2011. Since the Interpretation and General Clauses Ordinance has already provided that words and expressions importing the masculine gender include the feminine and neuter genders, the Subcommittee considered that such drafting would give rise to provisions having references to different genders within the same regulation, which is not satisfactory. After considering members' views, the Administration advised that it would not propose the addition of references to the female gender in the Amendment Regulation, and that the phrase of "the person or inspector" would be used.

In conclusion, the Subcommittee supported the implementation of MBIS and MWIS to ensure building safety.

President, next I will speak on behalf of the Civic Party and myself. President, I wish to state our stance on the legislative work with regard to the relevant regulation to be endorsed today and amendments previously approved to, the principal ordinance (that is, the Buildings Ordinance) on the inspection of buildings and windows.

I recalled that when Mr Alan LEONG and Donald TSANG stood for the Chief Executive election in 2007, Mr LEONG proposed that the Government should expeditiously legislate for the sale of first-hand residential properties. Donald TSANG, who was not yet the current Chief Executive at that time, considered the proposal despicable and accused the Civic Party of resorting to legislation in every case. He said that lawyers always resorted to legislation. Notwithstanding this, the present MBIS and MWIS are very good examples indeed.

In fact, any legislation may have serious impacts on a certain group of people in society. For instance, for those belonging to the "three have-nots", that is, owners of residential buildings with no owners' corporation, no owners' committee and no management company; and in particular, owners with financial difficulties, they would definitely find it very troublesome to unite together and carry out inspections of buildings and windows. And yet, should we refuse to legislate simply because of this? Apparently, we have urged the Government to consider legislating on a number of social issues, such as the sale of first-hand

residential properties mentioned by me just now, and a white bill was ultimately introduced for public consultation. We have also discussed the introduction of a legislation on trees, I have highlighted the need to enact legislation to regulate infant formulas this morning; we have also discussed the need to introduce an archival law. However, very often, the Government did not see the need to do so and thus declined our requests. Yet, Members may notice that the inspection of buildings and windows under discussion today is actually related to the problem of building safety, which has been discussed for quite some time. Although we agree in principle that there is a need to enact legislation, amendments to the principal ordinance were only formally endorsed in June this year after the Bills Committee on Buildings (Amendment) Bill 2010 had held 20 meetings.

However, approving the amendment bill does not mean that the inspection of buildings and windows can commence. Today, we still have to discuss four pieces of subsidiary legislation, among which, the Commencement Notice stipulated that the relevant ordinance will come into operation by the end of this year. What is the Notice about? It provides that anyone who is interested to work as a Registered Inspector is allowed to register. With an adequate pool of Registered Inspectors, the keen competition will in turn lower the inspection cost and consideration will then be made to implement the remaining subsidiary legislation. However, before they come into operation, the Government should first issue notifications, but not statutory notices, to the owners. After the owners are informed of the situation upon receipt of the non-statutory notifications, the Government will subsequently issue statutory notices to inform them that they would have a few months' time to carry out the inspection of their building and windows. We can therefore see that the process is pretty long.

Actually, in many cases, when a problem is identified in the community, the Government is obliged to expeditiously conduct consultations on the issue and draft the relevant law. This is because from the drafting of law to be introduced into the Legislative Council to the endorsement of the relevant principles, a number of subsidiary legislation will have to be enacted to stipulate the *modus operandi*. Even if the major principles are endorsed, it may still take at least three years, and sometimes five years, before the commencement date of the legislation can be finally announced. That is why the community is always full of grievances and grudges, denouncing the governance of our Government. The Government has failed to identify problems before they actually occur and

take the necessary precautions. Hence, our legislation is always lagging behind the actual situation upon enactment. The inspection of buildings and windows is a very good example.

During our deliberation, many Members have raised a lot of questions on the *modus operandi*, which have not been reflected in the provisions of the relevant ordinances or rules. In brief, many Members asked if the inspection results of buildings and windows would be made available to ordinary owners because, very often, there are conflicts between owners and owners' corporations. Thus, owners may have difficulty in obtaining the relevant information. What if the inspection of buildings involves some common areas and owners would like to know the results or reports on the inspection, is there a more convenient way to obtain the relevant information, say, to search for the relevant information in the BD? Most of these problems can be resolved by administrative means, and the Bills Committee has already discussed these issues. Fortunately, we have obtained the consent of the BD or the Administration in this regard.

Another issue of grave concern is building management, where problems such as tender-rigging and corruption have occurred. In many cases, owners who lodged the complaints were unable to provide any evidence, or the authorities, especially the Home Affairs Department (HAD), failed to provide sufficient assistance on these cases. How can we address these problems then? The key is certainly the mediation and assistance rendered by the HKHS, the URA, the BD or the HAD to owners, which may include various kinds of assistance like the provision of application forms and information. The enactment of ordinances or rules alone cannot resolve all the problems, administrative measures are also needed in many cases.

Financial assistance is another issue. When I spoke earlier, the HKHS and the URA were still in the process of discussion. Although I have raised relevant questions time and again, the eligibility criteria for financial assistance have yet to be finalized. We eagerly hope that the problem can be expeditiously resolved so that we can figure out the type of owners eligible for assistance before the relevant legislation comes into effect.

President, there was also an episode concerning the use of the pronouns "he or she". The last part of my speech mentioned an issue on drafting. While the phrase "he or she" appears in several parts of the Amendment Regulation,

amendments were only made to some provisions. For instance, section 52 has been amended but the word "he" still appears in section 51. Many members considered this very absurd. Fortunately, the problem was finally resolved and the Secretary will introduce amendments later on. A more gender-neutral drafting would be adopted by removing "or she" from the phrase "he or she". I think that the issue has been resolved satisfactorily, and I am very grateful about this.

MR IP KWOK-HIM (in Cantonese): President, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports the endorsement of the relevant Regulation to enable the expeditious implementation of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS), with a view to safeguarding public safety.

President, in the advertisement produced by the Buildings Department (BD) to encourage owners to properly repair their windows, an animated window said, "I have been beaten by the wind and the rain for more than 30 years, and become very dangerous now!" I believe this is the actual situation and the "voice" of numerous dilapidated windows in Hong Kong. Windows can easily fall from height due to the lack of proper maintenance and improper use, which may pose serious threats to public safety. Therefore, lack of proper maintenance of either buildings or windows will incur a high price for the community and individuals.

The policy of mandatory building and window inspection was formulated after sufficient mooting and discussion. The community has already reached a consensus many years ago that building owners should be responsible for and bear the repair cost. This is to give thought to oneself and others. Therefore, in the course of discussing the relevant rules, members did not have any objection to the provisions on the *modus operandi*, given that the relevant legislation had already been discussed at over 20 meetings of the Bills Committee, as mentioned by Ms Audrey EU. Nonetheless, as I have stressed during the discussion process on endorsing the relevant legislation, the success of the MBIS and the MWIS owes much to the support of owners and the provision of appropriate support to owners in need. This is particularly important in certain communities, such as the Central and Western District which I am very familiar with, Sham Shui Po and Mong Kok. There are many private buildings in these

districts, and many of them are indeed very dilapidated. Most owners of these buildings are elderly people, and many of them live alone, they really need time to learn about this new policy. However, after learning the policy, they may feel helpless and worried, as they do not have the financial means, capabilities and technical knowledge to undertake regular inspection and repair work for their buildings and windows in order to comply with the law. Therefore, the Government must provide support to them to comply with the law. This point has been highlighted during our discussions on the principal ordinance and the present Regulation. Certainly, there are financial and technical implications. Furthermore, regarding the support rendered to owners, the eligibility criteria set must be clear, fair and reasonable.

Although the Government has used rateable values as the eligibility criteria for subsidy, the exact percentage of rateable values has yet to be determined. The DAB considered this arrangement unsatisfactory. Just now Ms Audrey EU said that financial assistance should not be provided by the Housing Authority, but by the URA and the HKHS. In view that the rateable values tend to be rising, we hope that the Government will get hold of accurate data when determining the level of financial assistance, such that the grassroots or elderly owners in need of financial assistance will benefit. Or else, the provision of financial assistance will become meaningless. Furthermore, the Government has undertaken to step up publicity and promotion, especially in the dissemination of information. The publicity material should be printed with larger font size, so as to make these materials easier to read, particularly for elderly building owners. The DAB welcomes these measures.

President, there are currently 40 000 private buildings in Hong Kong. Among the target buildings aged 30 years or above and considered to be in need of inspection, about 26% are "three nos" buildings with no owners' corporation, no management company and no owners' committee. In the face of these buildings, the Government must ensure that the resources provided are used in an efficient and focused manner, so that support will be provided to the most-needy building owners, thereby facilitating the implementation of the Regulation.

Dilapidated buildings and windows lacking proper maintenance are long-standing problems in Hong Kong. Members have now reached a consensus and agreed to tackle the issue in a mandatory way, mainly for ensuring the structural safety of buildings, thereby alleviating the heavy burden of

dilapidated buildings on society. Therefore, President, I support the passage of the Regulation on behalf of the DAB. Thank you, President.

MR WONG KWOK-HING (in Cantonese): President, I speak in support of the motion.

There have been long-standing problems with the inspection of buildings and windows, particularly those of old buildings, but the relevant Regulation will finally be passed today. This is a bit late, but better late than never. Foreigners may find the names of the regulations pretty absurd — inspection of buildings and windows, why windows but not anything else? This is because there had been numerous accidents of old windows lacking proper maintenance falling from height. The falling of windows onto the ground is just one of the indications of the dilapidated state of old buildings. The names of the regulations only represent a starting point to impose regulation. With regard to the name of the legislation, foreigners may wonder why only windows and not other aspects are inspected.

President, in connection with these regulations, I would like to draw the Government's attention to three aspects. Firstly, after the legislation is passed, the Government must look squarely at issues relating to implementation. First of all, it must closely monitor the quality of inspectors and their companies, so as to ensure their eligibility and good performance. This is a decisive factor for the effectiveness of the legislation. The case is comparable to seeking medical consultation or body check-up, the first step is the examination of the doctor, which is of vital importance, as the examination result forms the basis for the follow-up medical treatment, healthcare or other necessary steps. The first step is of paramount importance. Therefore, the Government should pay special attention to ensure a sufficient supply of quality inspectors after the legislation has come into operation. Secondly, the Government must work closely with the Independent Commission Against Corruption and draw its attention to possible tender-rigging activities of contractors in inspection works. Thirdly, there is another problem that calls for more attention than tender-rigging activities, that is, the possible collusion and collaboration between contractors responsible for inspection and contractors responsible for future repair works. Contractors who engage in inspection may collude with contractors engage in repair through some pre-arranged means; under which, the inspection contractor may require a certain

building to carry out A, B, C and D works. If this is the case, the quality and costs of the repair works, as well as the owners' rights will not be sufficiently protected. I therefore hope that the Government will look squarely into the unauthorized collusion between contractors engaging in inspection and repair works.

Fourthly, it relates to the additional works. I have a lot of experience in this regard as I have handled many cases concerning building management and the formation of owners' corporation, and have assisted in their repair works. In many cases, contractors will first use a low premium to win the tender, and then use an even lower premium to win other tenders. Like the method used by the camel getting in the tent — the camel first gets its head in the tent, followed by its neck and upper limb, until the entire body gets in the tent. Using a similar logic, the contractors will seize control of the entire repair works. As such, the minority owners cannot say no and the pain is too deep for tears. We must therefore ensure that this situation would not happen. This is my first concern.

My second concern is how various government departments can help owners of "n-nos" buildings upon the implementation of the legislation. Generally speaking, "n-nos" buildings are those with no owners' corporation, no mutual committees, no management companies and are left unattended. The recent tragedy at Fa Yuen Street has clearly demonstrated that the problem definitely involves more than windows lacking proper maintenance. Rather, it is a matter of how the Government will comprehensively co-operate, support or assist minority owners in the areas of knowledge, capital, resources, experiences and other channels in implementing the legislation, with a view to protecting the value of their most precious fixed assets so that they can live in peace and work with contentment. In this connection, I must express my disappointment to the Government's refusal to increase the number of liaison officers responsible for building matters in the Home Affairs Department (HAD). I am very worried if the HAD has adequate manpower and resources to tie in with the implementation of the ordinance. What is more worrying is that the work concerned does not fall within the purview of the Secretary for Development. In response to my concern on the matter in the past, the Secretary for Development said that she would relay our proposals to the Home Affairs Bureau. However, unfortunately, no concrete effects have been seen after all these years. Regarding the 40 000 old buildings covered by the ordinance, there is a need for the HAD's liaison

officers to promote the implementation of the ordinance and bring the necessary knowledge and concerns pertaining to the problems into the community. Yet, there is a lack of such personnel in the Government. I therefore implore the Secretary for Development to consider how she is going to exert greater effort to promote the work of the HAD in this regard, and seek additional resources from the Government for the implementation of this legislation. Otherwise, the passage of the ordinance will become nothing but empty words.

My third concern is, President, I hope that the Government will conduct a review shortly after the implementation of the ordinance, preferably within one year, to see how things go. For instance, whether the coverage of inspection as prescribed by the ordinance is adequate, appropriate and viable, and whether the support can genuinely help owners to inspect their buildings on their own initiatives. Also, the review can help to ascertain the difficulties encountered by minority owners, and the possibility of corruption, tender-rigging activities and collusion between contractors engaging in inspection and repair works during the implementation of the ordinance. Given that this is a brand new law, the Government should conduct a review shortly afterwards. This is also an important step to protect the interests of minority owners, through which we can summarize and learn from past experiences within a relatively short period of time and make further improvements.

I eagerly hope that the Government will consider my three concerns. Thank you, President.

MR KAM NAI-WAI (in Cantonese): President, the Democratic Party has all along supported this legislation on mandatory inspection of buildings. The principal ordinance was endorsed last year and was subsequently ready for implementation. The related Building (Minor Works) (Amendment) Regulation 2011 is now being amended Just now, many colleagues have raised a lot of questions on the issue. As Members may recall, when the principal ordinance was passed last year, I had suggested in this Chamber to include certain codes of practice into the principal ordinance. Unfortunately, back then, neither the Government nor Members from other political parties and affiliations supported my suggestion, especially those from the pro-establishment camp.

Just now, I heard many colleagues from the pro-establishment camp talk about the quality and quantity of some professionals. In my district, about one third of the cases handled by me are related to building maintenance. Every week, I have to spend one or two nights discussing with residents about the problems encountered by them in relation to the maintenance of tenement buildings or other buildings.

Many colleagues just now asked if the Government would deploy additional manpower. In my opinion, the Government should not take this problem too lightly. There are currently 18 500 buildings aged above 30 years territory-wide, but the Government pointed out at that time that the Buildings Department would only inspect 2 000 buildings each year. In handling district work, we learn that there are some residents, though the buildings which they live in only aged 25 or 26 years, they told me when I had a meeting with them two days ago that they were eager to comply with the upcoming legislation which targets at buildings aged 30 years, and would carry out major repair works in their buildings. As Members may aware, residents will have a higher desire to repair their buildings after the legislation comes into operation. Secretary, you must not think that only 2 000 buildings will be involved each year as other more proactive residents may also participate. While there are certainly buildings which will ignore these legal requirements, there are also buildings with better management showing interest in the new scheme. Is the estimated manpower adequate to handle all the work?

Let me first talk about the relevant professionals. Previously, in discussing the principal ordinance, I had mentioned that these professionals Just now, the Secretary said that the registration of Registered Inspectors will roll out upon the passage of the Amendment Regulation today. I would like to ask the Secretary: When will the principal ordinance come into operation so that the inspection of buildings can kick off? This is very important. Will there be an adequate pool of eligible inspectors in the market to conduct inspection of buildings?

About 1 000 buildings will benefit under the Operation Building Bright (OBB), 500 in the first batch and another 500 in the second batch. Although data shows that there are about 2 500 authorized persons in the market, only 75 consultant firms have undertaken projects under the OBB. We can therefore see that the market participation rate in these projects is pretty low.

During the deliberation of the legislation, the Government told us that the number of Registered Inspectors was estimated to be 6 500. What indicators will the Secretary use to decide when the principal ordinance should be implemented if the Legislative Council passes the four pieces of subsidiary legislation today? Will the Secretary decide to implement the principal ordinance when 10% (650 people) or 20% (1 200 to 1 300 people) of the 6 500 inspectors have registered? I note that the authorities will submit the commencement date to this Council for deliberation before the ordinance actually comes into effect.

According to the experience obtained from the OBB, there are 2 500 authorized persons or registered architects in the market, but only 75 consultant firms are willing to undertake the relevant projects Members are really eager to see the early implementation of the mandatory inspection of buildings. The Secretary, on the other hand, has urged us to pass the legislation expeditiously; otherwise incidents of building collapse and fire will recur again here and there. Furthermore, she hoped that this Council would not stand in her way and expeditiously pass the legislation, so as to get the job done. However, is the market ready for this? I am very worried and have great doubts. Many colleagues just now highlighted the varying standards of the consultant firms, the prevalence of corrupt and illegal practices, and whether these people would be caught. Being a Member of this Council, I am weighed down with the work. How many Registered Inspectors are required before the Government will implement the legislation? I wish to hear what the Secretary thinks about this.

This is all about the "quantity" of professionals. As for "quality", how can we monitor these eligible persons? Prof Patrick LAU is not present at the meeting today No, he is here. He always reminds me, "Mr KAM, remember to tell building owners to engage consultant firms which are members of certain professional institutes. This would be easier for them to lodge complaints. I have certainly relayed this message to owners when I met them, but it is impossible for me to meet all owners in Hong Kong. There is no way I can get this message across to every singer owner in Hong Kong. Therefore, I have expressed my wish for the Government to establish a complaint mechanism and clearly lay down the methods for lodging complaints. Is there any authority to receive complaints from members of the public if they are dissatisfied with the Registered Inspectors? If the complaints are substantiated, will the relevant information be uploaded to the Internet for public access? Information such as,

among the complaints lodged against the CHAN Tai-man Consultant Company, five are substantiated, can be provided.

At that time, I had suggested the Government to make reference to the marking scheme for lift contractors established under the Electrical and Mechanical Services Department. By categorizing the Registered Inspectors into A, B and C ratings, building owners can choose not to hire consultant firms having more complaints and lower rating. This has at least opened a channel for buildings owners to lodge and process their complaints, and to inform them of the results. Thus, this is not only a matter of "quantity", but also "quality". It is very important to safeguard the interests of minority owners in hiring Registered Inspectors and eligible personnel.

Secondly, Ms Audrey EU, Chairman of the Subcommittee also mentioned that we have discussed what should be done to help building owners. The Government advised that "one-stop" services would be provided. I remember that the Secretary informed this Council that I have actually urged the Government time and again to consolidate the schemes to make things simpler.

Secretary, I know you have read that lengthy pamphlet and this is the enlarged version. Yet, I still have difficulty reading this enlarged version. Regarding the "one-stop" integrated services mentioned by the Secretary, elderly people will be scared off by this pamphlet. It is not only lengthy, but I must have it enlarged before showing it to owners and elaborating to them item by item. I need to explain to them, for instance, which issues are handled by the Hong Kong Housing Society (HKHS) and which issues are handled by the Buildings Department, and from where the owners' corporations can borrow money. Can the so-called "one-stop" service be further consolidated so that a single department can handle all the procedures?

Secretary, please take a look at this application form. I was so muddled when I helped some elderly people fill out the application forms yesterday. There are a total of 10 to 20 pages. Filling out the forms alone Secretary, do you know what I have done? I have to deploy a staff to the building concerned, just like paying home visits during elections, and set up a service counter at the lobby. We told the elderly people, "I can fill out the application forms for you, or else you may not be able to complete them." I have to provide

such service. Filling out the application forms alone needs much explanation. What kind of services is actually provided under the so-called "one-stop" services?

There is a telephone number printed in large font size in the pamphlet. Secretary, can you please try to dial the number 3188 1188? Very often, the staff answering the hotline cannot answer the questions you ask. What kind of hotline is that? Just now some Members have already asked what kind of support is provided under the so-called "one-stop" services.

I am a registered social worker and I am not soliciting business for the trade which I belong to. Nonetheless, the inspection of buildings does not only require publicity and education, but also involves building up relations with residents and helping them understand the importance of building inspection and repair. This kind of work cannot be handled by civilian staff of the HKHS. I hope that the Government will strengthen its support in this regard. Apart from the Home Affairs Department (HAD), can social workers be deployed to take up some work? This is the second question I wish to put to the Secretary.

I know that whenever Secretary TSANG Tak-shing is requested to increase manpower We have discussed with Secretary TSANG Tak-shing and requested the HAD to increase manpower. He then frowned and declined, saying that no such funding had been provided in his operating expenditure envelope and thus manpower increase was impossible. Then, can he set up some social workers' teams under your purview to handle the relevant work? This is something you can do within your purview, right? I hope the Government will strengthen its support.

I have one last point to make. Just now many colleagues (including Ms Audrey EU) mentioned that at present Last week, I attended a meeting in a building at Lok Ku Road, Sheung Wan, where repair works will soon be carried out. This buildings falls within my District Council constituency area, but I am not going to name it. One of the owners has a flat of some 400 sq ft, but the rateable value per annum exceeds \$100,000. The owner asked me, "Mr KAM, am I eligible for the subsidy?" The rateable value has completely failed to reflect Can you imagine that the rateable value of a building aged over 20 years with an area of some 400 sq ft in Sheung Wan is over \$100,000 per annum?

I wonder how many buildings are eligible for subsidy under the scheme. The fact is that the abovementioned building is not located in those luxurious residential areas or at the Mid-level.

We have asked time and again at the Subcommittee meetings what subsidy scheme would be adopted and how subsidy would be provided. But the Administration just beat around the bush and failed to provide an answer. I hope that before the implementation of the legislation, you can This is my third question. I hope that you will come to this Council again and advise us the exact amount before the implementation of the legislation, so that we can discuss and see if I am not asking you to provide subsidies to all building owners, but only those in need of financial assistance. I think that buildings occupied by the grassroots should be subsidized. To achieve this end, the Secretary needs to use her wisdom to get the job done.

All in all, we hope that the authorities will provide "one-stop" information when owners are in need of help. Regarding the telephone hotline mentioned earlier, we hope that the staff concerned would know how to answer the enquiries. Furthermore, we hope that telephones hotlines can be set up to receive public complaints, so that issues relating to the quality and quantity of the relevant professionals can be properly dealt with. As there are six months before the principal ordinance comes into effect, the Government should have sufficient manpower to prepare for the work just mentioned by me during this period of time.

I wish to reiterate that the Democratic Party supports the four pieces of subsidiary legislation and the proposed resolution of the Government to amend them. I hope that the Government will not make the good thing become worse by turning the protection of building safety into something arousing public resentment. I wish the Secretary will take note of this.

Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank the four Members who have spoken on the four pieces of subsidiary legislation and today's resolution, and their speeches have touched on a wide range of issues relating to building safety in Hong Kong. The Government is not unfamiliar with these issues. We have already mentioned similar problems with the Legislative Council in discussing building safety on previous occasions.

First of all, Ms Audrey EU said that the legislative process is usually pretty long but also very important. I cannot agree with her more. Take the protection of building safety as an example. It seems that the legislative work in this area has not stopped over the past few years, and there are always bills in the pipeline. I believe that soon after we enact the subsidiary legislation on mandatory building and window inspection, the Legislative Council will, perhaps later today, form another bills committee to discuss another amendment bill to the Buildings Ordinance tabled by me some time ago. The difficulty of all legislative work is to forge, as far as practicable, a certain degree of public consensus on the proposed legislation. The legislation on mandatory inspection of buildings and windows mentioned in my earlier speech has actually been mooted for more than a decade, and initially, it seemed that we failed to get a widespread public consensus about the relevant legislative proposals. Although the principal ordinance has already been enacted and even the legislative work of its subsidiary legislation has been completed, it does not mean that our preparatory work has come to an end. We still have to deal with a large number of *modus operandi*. Therefore, I will deal with the issues highlighted by the four Members with great care, especially the regulation stipulated in the Buildings Ordinance. We have all along said that the Ordinance has provided a very complicated three-tier framework, through which regulation is being exercised. That is why Mr KAM Nai-wai has reiterated, during the deliberation on building safety, his wish to include the administrative practice notes/guidelines in the third tier into the legal framework. We think that this would have a significant impact on the regulation of buildings and thus jeopardize our efforts to continuously promote building safety in the future.

The issues raised by Members in their speeches today, as well as in the previous meetings to deliberate the subsidiary legislation are indeed very important. These issues include the dissemination of information, the building management work which is the great concern of the Government, the Home Affairs Bureau and the Home Affairs Department, as well as the potential problems relating to tender-rigging, corruption, as well as the impartiality and integrity of the inspectors that may arise in arranging contractors to take up the maintenance work. I think perhaps there is a need to invite Prof Patrick LAU to be the Chairman of the subcommittee on building safety and related matters to follow up on the matter. We would be very pleased to brief Members of the progress of our preparatory work. However, regarding Mr WONG Kwok-hing's proposal to conduct a review one year later, I wonder when is the commencement date of this "one year". If the commencement date starts from today, it seems that we will not have enough time to review the effectiveness of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS).

As Mr KAM Nai-wai has pointed out, we intend to pass the Notice, one of the four pieces of subsidiary legislation, to put into effect the part of the Regulation on Registered Inspectors today. This would enable us to ascertain the number of eligible Registered Inspectors engaging in the relevant field as early as possible. According to our current projection, another commencement notice will be introduced in mid-2011 if we can ascertain the availability of about 300 eligible inspectors within a short period of time at the preliminary stage, with a view to putting the entire mandatory building inspection scheme into effect. As I have said in my first speech, we will inform owners of the selected buildings in mid-2011 to give them ample time for preparation. Six months later, formal statutory notices will be issued to request them to carry out the necessary work. Certainly, I cannot say for sure that the registration will go as smooth as expected. However, I believe Mr KAM may recall that the same approach has been adopted when we introduced the minor works control system earlier. We had first ascertained, through registration, if there was an adequate pool of the relevant personnel before the minor works control system was introduced towards the end of last year. The same approach was adopted this time, but the difference is that we may not need to have an adequate pool of professionals to do the job at the initial stage. Like the minor works control system, there are still contractors applying to register as minor work contractors and thus help promote the relevant system. Nonetheless, Mr KAM can rest assured that we will not take our work too lightly. According to him, everything will be rendered meaningless if both

implementation and enforcement are not properly carried out upon enactment of the legislation, and consequently, it would not be conducive to the building safety of Hong Kong.

Many Members talked about our support to building owners, and we completely agree with them. Members may be tired of hearing me talk about the four-pronged approach adopted in respect of building safety over the past few years. Apart from legislation and law enforcement, support and public education are also two important measures. Therefore, as Mr IP Kwok-him has said earlier, if the legislation on mandatory inspection of buildings and windows in particular do not have the participation and support of building owners, the relevant schemes can never be successful. Even if we step up our enforcement actions by issuing warnings and instituting prosecutions, or even carrying out the necessary works for owners, it will be not successful. This is because preventive efforts in respect of building safety must be sustainable. Therefore, regarding our support to owners, a lot of work has actually been done to make the implementation of MBIS and MWIS today much easier than before the current-term Government took office, that is, four years ago. The reason is we have better supporting facilities nowadays and our partners have also grown stronger to support the relevant work.

Simply put, in order to help owners comply with the two mandatory schemes, we are planning to provide assistance to them at various stages. At the earliest preparatory stage, that is, before they receive a notice informing them that they are selected to carry out mandatory inspection of buildings and windows, the Urban Renewal Authority (URA) and the Hong Kong Housing Society (HKHS) will provide general professional advice to owners and inform them of the schemes that will soon be launched. On the other hand, professional advice will be provided to owners who wish to engage inspectors and contractors to carry out the inspection or subsequent repairing works of buildings. The major difficulty lies in buildings with no owners' corporation and no management companies. Both the URA and the HKHS have worked proactively in this regard by helping these buildings to form owners' corporations, and even giving incentives to each owners' corporation by providing a maximum subsidy of \$3,000 and technical support.

Our support to owners is even greater when they carry out inspection and repairing works for their buildings. Earlier, we have undertaken to subsidize owners in hiring Registered Inspectors to carry out first building inspection,

subject to a maximum amount. After listening to Members' views, I hope that we can expeditiously lay down the relevant details. When determining the level of subsidy based on the rateable values of properties, we must consider the latest social conditions, such as the high inflation rate and the rising costs of repair personnel. I can tell Members that I will definitely get involved. I hope that I can revert to Members in the first half of 2012 on the level of subsidy determined on the basis of the estimated inspection costs of various buildings after negotiating with the HKHS and the URA, and in consultation with some professional institutes.

For matters relating to the inspection and repairing of windows, we will also provide technical consultation services. The URA and the HKHS have set up a Building Maintenance Assistance Schemes Hotline. However, Mr KAM just now said that this hotline is very difficult to get through. I will look into the matter after the meeting. As for the "one-stop" service, I have actually received a lot of positive feedback over the past few months. Owners really hope to get one-stop service without having to fill in too many forms. It is called "one-stop" service because building owners can either approach the HKHS's Property Management Advisory Centres or the URA's offices or its Urban Renewal Resource Centre to be opened in Tai Kok Tsui in 2012 to obtain the necessary application forms and assistance, subject to their eligibility. For instance, so far, the loan scheme is operated solely by the Buildings Department (BD). Instead of inviting owners to go to the BD to apply for loans, we will assist them to apply for loans in the abovementioned centres. We consider this a genuinely integrated and one-stop scheme. Notwithstanding this, Mr KAM and other Members are free to point out the necessary improvements identified by them. In the new Urban Renewal Strategy promulgated in February 2011, I have already fine-tuned the core business of the URA, namely renewal and building maintenance. Compared with the so-called "4R" in the past, our focus is now building maintenance and the URA will have a more important role to play.

A wide range of subsidies and interest-free loans have been made available to owners. As I have said earlier, apart from the subsidy for first inspection fee, the Building Management and Maintenance Scheme has been launched, under which the HKHS and the URA will share the work of building maintenance. Furthermore, there is also the Building Safety Loan Scheme launched by the BD and the Building Maintenance Grant Scheme for Elderly Owners rolled out a few years ago. Upon completion of the repairing works, we will grant an insurance premium for third party risks insurance for common areas of the building. At

present, such premium will not be granted for more than a consecutive of three years and the subsidy is 50% of the insurance premium, subject to a ceiling of \$6,000 per annum. The various technical and financial support schemes provided for the owners will subsequently be made available to MBIS and MWIS. It is hoped that they will be genuinely people-based and can help building owners to comply with the legal requirements, thereby ensuring the safety of buildings in Hong Kong through MBIS and MWIS.

Last of all, President, I would like to thank Members for their support in the work of buildings safety over the past years, and the precious views expressed during the deliberation of the various regulations. I sincerely implore Members to endorse today's resolution so as to enable our work on building safety to make a big step forward. Thank you, President.

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

(Members raised 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.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of the first and second motions may speak, including reply, for up to 15 minutes; and the mover of the second motion may have another five minutes to speak on the amendments. The movers of amendments to the second motion

each may speak for up to 10 minutes. Other Members who speak on the motions each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

PRESIDENT (in Cantonese): First motion: Expeditiously regulating the investment and over-the-counter trading activities of Loco London gold.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr WONG Kwok-hing to speak and move the motion.

EXPEDITIOUSLY REGULATING THE INVESTMENT AND OVER-THE-COUNTER TRADING ACTIVITIES OF LOCO LONDON GOLD

MR WONG KWOK-HING (in Cantonese): President, this debate was arranged to be held today near Christmas — today, before the meeting commenced, members of the "Alliance of London Gold Victims" had given me a big envelope and some Christmas cards which read "Wishing for peace in Christmas, kick out financial fraudsters". They asked me to give them to the Financial Secretary and the Director of Bureau, I will do so later.

President, these Christmas cards were signed individually by members of the public, urging the Government to solve this rampant problem of London gold trading fraud which is totally unregulated. President, according to the files and past information of the Legislative Council which I have checked, as early as 1996, that means before the reunification, the Legislative Council had already discussed the issue relating to London gold trading fraud. After the reunification, in 1998 the Provisional Legislative Council Panel on Financial Affairs also had discussions at its meetings on the monitoring of Loco London gold trading and detailed records were made. However, up to this moment, we have seen no improvement in the situation over the past decade, and the investors' interests are not protected either. As I have just said, London gold trading is totally unregulated, while such "financial fraudsters" are still unchecked. Hence, I very much hope that today's motion will, with Members' unanimous support,

succeed in requesting the Government to actively consider amending the legislation to tackle the problem of London gold trading fraud at root, thereby safeguarding Hong Kong's reputation as an international financial centre.

President, in the past 26 months prior to today, Members' offices of the Hong Kong Federation of Trade Unions, especially those of mine and Dr PAN Pey-chyou, have received 70 complaints, excluding those received from Mainlanders. The amount of investment involved totalled \$18,969,591, while the losses amounted to \$17,937,291. The amount evaporated was as much as 94.56%. Let us look at the plight of those victims. The biggest loss was over \$1 million. If our Government really concerns about people's livelihood and cares to preserve Hong Kong's established reputation as an international financial centre, it absolutely should not turn a blind eye to such a situation.

President, our victims reported their cases to the police for being swindled, but very often the police would pass the buck around, saying that there was no such legislation and it was difficult to collect evidence, claiming that the issue was not their business, and asking them to complain to the Hong Kong Monetary Authority (HKMA). In the end, with one shirking the responsibility onto another, a lot of victims who reported to the police were at a loss for what to do. Some cases were even not accepted by the police. It was not until Dr PAN Pey-chyou and I accompanied them to the police that the Commercial Crime Bureau of the Police Force reluctantly took up their cases — perhaps because we are legislators. However, 26 months have passed since the cases were reported, and there was not even one single successful prosecution. It was zero. The case to which the Government had responded earlier was related to the relationship between the broker and the company. It is absolutely not a case about victims of London gold trading which we are discussing right now. At present, the general public has no avenue to lodge complaints and it is futile for them to report their cases to the police as law enforcement is ineffective, how can a responsible government be of no help at all? Zero prosecution. I consider it a joke. Such a joke is a very good signal for fraudsters. They can come to Hong Kong to make money without worries because Hong Kong is the paradise for swindlers.

President, we have accompanied the victims to the HKMA to lodge complaints one after another. In August 2009, the HKMA told us that such operations were not under their regulation. We complained to the Securities and

Futures Commission (SFC), and in April 2009, the SFC told us that they would not attend to such trading. We complained to the Security Bureau, but the Security Bureau advised that complaints about the operations of financial organizations should be lodged with the Financial Services and the Treasury Bureau, which should be responsible for such issues. We helped the victims to ask the Department of Justice (DoJ) why no prosecution was made, but the DoJ said that there was insufficient evidence, so it was difficult to institute prosecution, while the police advised that it was difficult to collect evidence. In general, the Theft Ordinance can be invoked to lay charges for suspected fraudulent offences, but since it is difficult to collect evidence, the police cannot do anything.

Recently, we accompanied the victims to meet with the Commercial Crime Bureau of the Police Force. Excluding the 20 earlier cases, they advised that the investigation on half of the 50 recent cases, that means 25 cases, had ceased. As for the other 25 cases, they would reply after looking into the cases.

President, when we asked the Financial Services and the Treasury Bureau, their reply to our oral questions in 2009, 2010 and 2011 was all the same: "Companies providing gold trading services in general in Hong Kong are not required to register or obtain a license from the SFC. These over-the-counter (OTC) gold trading activities are conducted through direct negotiation between buyers and sellers." That is to say, there is no need for regulation, and there is no need for legislation as well. In other words, the trading is totally unregulated, is that the case? Is that right?

President, the Consumer Council has pointed out long ago that at present, the trading of London gold in Hong Kong is conducted through the Chinese Gold and Silver Exchange Society (CGSE). Yet the CGSE is not a statutory body. It is merely a registered society, a self-disciplined organization. Although the CGSE has been operated for almost a century, it has not been empowered by law to exercise regulatory power. Many of its "well-behaved" members have joined to become its accredited members and take their own initiative to promote intermediaries' and brokers' registration under its registration system, but that is not required by law. Under such circumstances, the Consumer Council also mentioned this grave crisis of similar frauds appearing in a variety of ways in its *CHOICE* magazine (issue no. 398), but the Government just paid no attention.

President, today I have brought with me a letter of reply dated 2 March 2010 from the CGSE's President to my Member's office. This is the CGSE's reply. Being a century-old society, it can be considered authoritative, and we simply wish to help members of the public. What is the most important point in this letter written in black and white? That is, "Our society sincerely implores Members to actively promote the formulation of appropriate laws and regulations or measures by the Government to regulate London gold trading" — such forceful words came from the CGSE, which has a history of more than a century. Why did the Government refuse to listen? If the Government did not listen to Members' views, I would not be bothered. Yet the CGSE has a century's experience. Is it kind of unacceptable for a responsible Government not to listen to its view?

President, the Government keeps saying that there is no such regulation overseas, so Hong Kong cannot be exceptional. President, I have looked up the information to see if there is indeed no regulation overseas. In fact, regulation has been put in place in foreign countries and overseas places, yet Hong Kong has not followed suit. It does not learn from the good practices of others, but it follows the bad practices fully. Let us first look at London.

London is the biggest gold trading market in the world. The average turnover in Hong Kong is only one-tenth of its turnover. The London Bullion Market Association announces the London gold fixing price twice every day as the pricing benchmark generally accepted by the international gold trading sector. The association conducts transactions by OTC trading. The responsibility of monitoring the gold trading market in London mainly falls under the Financial Services Authority in the United Kingdom. Capitals and reserves engaged in the market and their flow are regulated so as to reduce trading risk and enhance transaction efficiency. Regulation has been put in place. It is not true that there is no regulation.

President, let us then look at Zurich. Zurich is the second biggest gold trading market in the world. Gold trading there is under the charge of the banks, which are in turn regulated by the Government. Hence, trading is put under regulation.

President, let us then look at New York and Chicago. Trading is carried out in New York Mercantile Exchange and Chicago Mercantile Exchange, which

are government-regulated exchange companies. Hence, regulation has been put in place by the Government.

President, let us also look at Tokyo and Shanghai. The gold trading market in Tokyo is regulated by the Surveillance Commission. In recent years, in order to enhance protection for investors, various measures and systems have been implemented in Tokyo, such as the introduction of a detection system which enables cancellation of orders and checking of comprehensive information including past transaction status, thereby closely monitoring the trading. Let us look at the Shanghai Gold Exchange on the Mainland, which has the latest start, it was set up in 2002 and falls within the ambit of regulation of the People's Bank of China.

President, as Hong Kong claims itself an international financial centre, why does it not learn from the good practices of overseas places? Even Shanghai, which started later, has exercised regulation. It can only be said that Hong Kong has become a haven for fraudsters, a place where they are totally unregulated. So, how can anyone say that there is no need for regulation, and that there is no need for legislation? I hope the Government will give me some convincing justifications.

President, here I would like to express my commendation for the CGSE. Although it is simply registered as a society rather than a statutory body, it has dedicated much effort to exercise regulation on its own, and it has squarely criticized the Government for not conferring on it the power to regulate gold trading in Hong Kong. It has actively requested the Government to introduce legislation. In 2009, it introduced a registration system for practitioners and at the same time formulated by-laws and rules to regulate the sales approach and conduct of its members and practitioners. At present, it has 171 approved members (that means companies), all of which are companies actually engaged in gold trading. However, since no data is available, full implementation of regulation is not practicable. We cannot blame the CGSE for that. We can only blame the Government.

President, the CGSE has also implemented a registration system for brokers (that is, the practitioners or intermediaries). More than 5 000 people are engaged in gold trading in Hong Kong, and 1 700 of them have voluntarily registered with the CGSE. Training and courses are also provided on a regular

basis to enhance their skills, conduct and professional knowledge. Such things have been done merely by a community organization. May I ask, what has the Government done? The Government did nothing. It has done nothing at all. Is that appropriate?

President, the examples and cases which I have quoted above illustrate that it is not true that no work can be done. It is only that the Government would not do it. It is not true that no work can be done and there is no way to do it. In fact, there are ways to do it. Even a community organization has done something. Yet the Government is being slothful — slothful and irresponsible. It just turned a blind eye to the plight that some investors have lost all their money. To solve the issue of London gold trading fraud, first of all, the Government can no longer be so slothful.

I will leave one minute for further response later. That is all for my speech. Thank you, President.

Mr WONG Kwok-hing moved the following motion: (Translation)

"That in recent years, fraudulent investment cases involving over-the-counter ('OTC') trading of Loco London gold are increasingly rampant, and many members of the public have been deceived and victimized, with cumulative losses amounting to more than \$10 million, but there are at present no laws and statutory bodies in Hong Kong to regulate OTC trading of Loco London gold; this not only deprives victims of complaint avenues and means of recovering losses, but at the same time, results in fraud cases persisting and severe damage to Hong Kong's reputation and status as an international financial centre, because the financial firms and practitioners engaged in OTC trading of Loco London gold are of mixed standards and they make use of the vacuum created by the lack of legislative regulation to operate; in this connection, this Council urges the Government to expeditiously study the enactment of legislation to regulate OTC trading activities of Loco London gold, so as to expeditiously bring the operation of this industry back to the right and healthy track for the protection of investors' interests; the relevant measures should include:

- (a) to proactively study the formulation of specialized rules and regulations and the establishment of a statutory regulatory body, so that the trading of precious metals, including OTC trading of Loco London gold, can be brought under legislative regulation and protection;
- (b) to proactively study the introduction of a licensing system to regulate the trading bodies engaged in the aforesaid business, including imposing penalties on and instituting prosecutions against companies contravening the relevant licensing rules;
- (c) to proactively study the further expansion of the existing voluntary registration system for practitioners of the Chinese Gold and Silver Exchange Society to form a central registration system covering practitioners of the entire industry, stipulating that persons with no registration are not permitted to engage in OTC trading of the relevant precious metals, so as to regulate the professional expertise and conduct of practitioners; and while implementing a central registration system, to make reference to the experience of the Chinese Gold and Silver Exchange Society and organize training programmes on relevant professional expertise for practitioners, so as to upgrade practitioners' conduct and quality;
- (d) to assist the industry in formulating model sales documents and procedures on making investments in OTC trading of Loco London gold, including the requirement that at the time of signing an investment agreement, the salesperson must clearly explain to the investor the rights and liabilities as well as the investment risks associated with OTC trading of Loco London gold;
- (e) to request the Police to conduct in-depth investigations into fraudulent investment cases involving OTC trading of Loco London gold, set up a task force designated for follow-up work, enhance enforcement efficiency, and rigorously eradicate related fraud cases; and
- (f) to strengthen education and information on OTC trading of Loco London gold for investors, raise public understanding about the

operational details and risks of OTC trading of Loco London gold, enhance public alertness, and disclose the various tactics employed in similar fraud cases.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr WONG Kwok-hing be passed.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the Government is highly concerned about cases of fraud and deception which involve the trading of Loco London gold and has been paying close attention to the latest trend, with a view to combating such illegal behaviour effectively.

I would like to talk about the operations of the London gold trading market. London is currently the largest over-the-counter (OTC) gold trading centre in the world. Other major markets include New York, Zurich, Tokyo, Sydney and Hong Kong. London gold refers to a type of product which follows the standards of London Bullion Market Association (LBMA). Delivery of gold is usually conducted in London, while clearing takes place in New York in US dollars. The fixing prices are determined by five members of LBMA, namely, Barclays Bank, Deutsche Bank, HSBC Bank USA, Scotiabank and Societe Generale. The prices are fixed twice daily at 6.30 pm and 11 pm Hong Kong time.

Participants in the London gold trading market are mainly international banks, central banks, precious metals companies and manufacturers, institutional investors and fund managers. Transactions are mainly conducted by way of OTC trading through direct negotiation between buyers and sellers with reference to the fixing prices in the London market. Usually the trading unit for each transaction is 5 000 ounces, which is worth about US\$8 million. The daily turnover of LBMA's gold trading reaches 20 million ounces, amounting to about US\$35 billion.

In Hong Kong, the main participants in London gold trading are also banks, precious metals companies and institutional investors. Due to time zone differences, market participants will conduct trading through direct negotiation

between buyers and sellers at different time in a trading day, having regard to factors such as the fixing prices in the London market, gold futures prices in Tokyo Commodity Exchange, as well as the demand and supply for gold in the Asian market.

Complaints about London gold trading are mainly related to suspected fraud and deception. In almost all such cases of complaints, the victims have signed an authorization with or without knowledge, authorizing the brokers concerned to operate their accounts. The brokers concerned will make use of two particular points, that is, trading in the international gold market is mainly conducted at night in Hong Kong time, and prices in the international gold market are relatively volatile, to persuade the victims to authorize them to operate the accounts on their behalf. Then they will carry out a large amount of trading within a short time to defraud the victims of commissions, thus causing the victims to suffer huge pecuniary losses.

As far as we know, other major international financial centres, including London, have not enacted any specific legislation to regulate gold trading. In view of the global nature of the trading market for gold and precious metals, introducing legislation to regulate the trading market for precious metals including London gold and implementing the proposed licensing system will affect Hong Kong's competitiveness as an international financial centre.

Moreover, such proposal will affect the whole industry as well as people and organizations having genuine participation in London gold trading, including banks, precious metals companies and institutional investors. They have nothing to do with such fraudulent and deceptive acts which are committed by making use of the special characteristics of the London gold trading market.

In 2010, the Chinese Gold and Silver Exchange Society (CGSE) implemented the "practitioners' registration system", requiring managers, traders and customer service officers appointed by CGSE's members to register with the CGSE before engaging in the business of its transaction contracts. The Government supports the CGSE's continuous enhancement work, and believes that the registration system is of considerable help in raising the professional standard and qualifications of practitioners in the CGSE.

Nevertheless, I must point out that the major participants in the London gold trading market, including banks, institutional investors and fund managers, may not be CGSE's members, and it is not necessary for them to conduct trading through CGSE's members. They may already be LBMA's members themselves, who can carry out trading with the association's members directly. Hence, we find it infeasible to turn the relevant registration system into a central registration system covering practitioners of the entire industry.

Regarding the proposal to assist the industry in formulating model sales documents and procedures on making investments in London gold trading, as I have just mentioned, almost all the suspected fraud cases relating to London gold trading involve victims who have signed an authorization to authorize the brokers concerned to operate their accounts. Even if model sales documents and procedures are available, investors cannot be prohibited from making authorization. Investors have the right to decide on authorization in view of their actual needs. For this reason, such proposal may not be effective in the prevention of fraud relating to London gold trading, but it will affect the normal operation of the whole industry.

The Government understands Mr WONG Kwok-hing's concern and totally agrees to the need to enhance efforts to combat this kind of suspected fraudulent and deceptive acts involving London gold trading.

Fraudulent and deceptive acts are criminal offences regulated under the Theft Ordinance (Cap. 210). The police have set up a special team under the Commercial Crime Bureau to assist in preventing and combating London gold trading fraud. Measures include: closely monitoring the trend and the change in the *modus operandi* of London gold trading fraud, enhancing public awareness by education through the mass media and other means, liaising with the Consumer Council to collect intelligence, and investigating suspicious cases or providing assistance to relevant investigation units in the police districts.

Since such fraud cases relating to London gold trading involve victims who have signed authorization documents with or without knowledge to authorize brokers to operate their accounts, it is most important to enhance investor education so as to combat such fraudulent behaviour effectively.

The police have from time to time publicized common fraudulent practices relating to London gold trading through various publicity channels, including their website and the Police Report television programme. We are co-operating with the police to produce a new series of Announcement of Public Interest to further enhance public awareness of fraudulent practices involving London gold trading and especially remind members of the public not to sign any authorization casually. We will also co-operate with the Consumer Council and the proposed Investor Education Council to enhance public knowledge of the London gold trading market and remind the public about the risks they need to note in London gold trading.

President, I so submit. I will respond again after listening to Members' views.

Thank you.

MR CHAN KAM-LAM (in Cantonese): President, with rising inflation, depreciation of US dollars and low interest rates in recent years, the price of gold has soared, and the investment value of gold has caught the eyes of investors all over the world again. Such an atmosphere has given rise to a number of fraud cases relating to the trading of London gold in both Hong Kong and Shenzhen at the same time. It is understood that the relevant fraud cases which have taken place in Hong Kong centred around several investment companies. Some of these companies are indirectly related to members of the Chinese Gold and Silver Exchange Society (CGSE), while some merely operate in a company name which is very similar to those in the industry. They use such tactics to mislead the public. Under heavy persuasion in investment seminars or upon receipt of cold calls, members of the public have been easily deceived owing to their lack of knowledge of London gold.

Why do I say they have been deceived? What actually is London gold trading? After looking up the information, we learn that London gold refers to a type of product which follows the standards of the London Bullion Market Association, and which involves the trading of physical gold. Major participants are large investment banks, jewelry traders, central banks, and so on — as pointed out clearly by the Secretary just now — it is a type of over-the-counter trading conducted through direct negotiation between buyers and sellers. Different from

the existing official London gold trading, London gold trading frauds are cases where companies or intermediaries, by means of unscrupulous practices or fraudulent activities, made their clients sign a contract which authorized them to conduct trading, very often without their clients' knowledge. Then, acting as an intermediary, they will mobilize their clients' money, approach other people to offer a price, negotiate about the price and carry out trading in private. Since the price which they negotiated on behalf of their clients with the other party in the transaction is not a reference price in the international market or an open price in the market, there is a disparity between the two prices, and their clients who made the investment are not clear about such a situation. In fact, it is quite easy for intermediaries to manipulate the transaction price. How will such trading be favourable and fair to their clients? Moreover, since the intermediaries will charge their clients US\$30 to US\$50 as the commission for the trading of each lot, these brokers will often conduct frequent trading without authorization in order to gain commission, thereby quickly depleting their clients' capitals.

We have received a number of complaints where the complainants said that on some occasions they had made a trading instruction, but the companies concerned just ignored it, and these clients were therefore unable to lock in profits or liquidate positions. Under such circumstances, it is not surprising that these clients were deceived and incurred heavy losses.

Hence, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) urges the Government to further enhance publicity and education, which include updating the information publicized in television advertisements and other forms of advertisements, as well as expeditiously revamping the contents of the "Dr Wise" column of the Securities and Futures Commission to elaborate on, for example, how investors can conduct certain transactions through the proper channels and effectively avoid being cheated, and enhance public awareness against fraudsters' practices. At the same time, the police should also conduct in-depth investigation into the relevant complaints, enhance their enforcement efficiency and strictly put an end to such illegal behaviour.

President, the Government pointed out that complaints in relation to London gold trading involved unscrupulous and illegal activities of only a very small number of companies and intermediaries and had nothing to do with genuine London gold trading. Nevertheless, as we all know, fraud cases relating to London gold did not just emerge in these several years. As early as 1990s to

2000s, with economic downturn and poor employment environment, such cases had appeared many times. However, at that time the targets were mainly job seekers, who were lured to inject all the money they had and were defrauded until they lost their investment in the end. After a lapse of some 10 years, fraudsters make use of London gold trading as their means of deception again. Hence, London gold trading frauds actually keep recurring in the market. The only difference is that on each occasion, the culprits will grasp a favourable opportunity to present their fraud in a new package.

Therefore, the DAB opines that given the repeated occurrence of London gold trading frauds in the past 10 to 20 years, the Government really should not stick to its past stance, that is, absolutely refusing to review the lack of regulation in the existing mode of operation of London gold trading on the grounds that the current practice in Hong Kong is consistent with the mode of regulation in overseas places. We consider that apart from exerting pressure on companies related to CGSE's members and putting them in order through CGSE, in the medium and long run the authorities should also conduct studies on the need to eradicate any easy opportunities for culprits to carry out more fraudulent activities, establish a registration system for financial organizations and practitioners engaged in London gold trading service, and standardize the procedures covering the relevant sales documents and format of contracts to make it easy for investors to identify qualified organizations, so that they will not commit the same mistake again and be deceived.

With these remarks, President, I support the motion.

DR PAN PEY-CHYOU (in Cantonese): President, imagine that you have the following experience: at the entrance of a bank, you meet a well-dressed gentleman who claims to be a bank manager. He starts to persuade you to open an account and says that you can invest various types of products through this account to gain higher interests and profits. Then he arranges for you to go to a splendidly decorated bank and meets you in an elegant office there. Seeing that it is a well-known bank, you think it is unlikely for anything to go wrong. Unable to resist the persuasion of this well-dressed gentleman, you decide to open an account and invest \$500,000. When you are about to sign the documents, you find that he has brought a thick pile of documents printed with tiny font size. After you have signed them without much thinking, he asks you to sign one more

document, saying that it is required by the procedure. You complete this procedure, and two weeks later, you want to see how to operate the \$500,000 deposited in your account. When you contact this gentleman by phone, he says, "Oh, too bad! There is only \$50,000 left in your account." You ask him what has happened. You say that it is not okay and request him to stop operating your account immediately so that you can check what has happened. A few days later, you contact him again. When you arrive at the bank, he says out of the blue that there is only \$5 left in your account. I believe anyone in such a situation will sweat with great anxiety. How come things will be like that? How come my \$500,000 has shrunk to only \$5? So you demand to check the transaction records to see what has happened, but you are stopped by other people, who say that it is not necessary to check the records. After many twists and turns, you finally see the transaction records. Only then did you realize that the company which conducted the trading for you is not the bank which you entered at the very beginning. The name is a bit similar, but it is not exactly the same. In fact, it is a different name. The company which signed the contract with you is another organization. In other words, your money was deposited in another organization.

A large number of transactions were carried out within several hours on the same day, and commission was charged for each transaction. That sum of money — the \$500,000 — was evaporated after dozens of repetitive transactions within the same day. You had ordered to stop trading, but to your surprise, you found that trading kept going on after that day until the balance in your account dropped from \$50,000 to \$5. I believe that anyone who encounters such a situation will tremble in confusion and does not know what to do. Fortunately, this is just a dream, a dream which is not real. After you wake up the following day, you go to the bank to take a look. Your deposit of \$500,000 is still there. Everything is fine. It is only a bad dream. This is what happens to a bank client.

However, when the same story happens to a victim of London gold trading, it will be totally different. Similarly, he is persuaded by a well-dressed gentleman to make investment and then taken to a splendidly decorated bullion trading company, which claims to be a member of the Chinese Gold and Silver Exchange Society (CGSE). After signing two very thick documents written in tiny font size, he will have to say goodbye to his lifetime savings of \$500,000. After pursuing into the matter, what does he find out? It turns out that he has

authorized the broker to conduct trading for him, and the company which signed the contract with him is not that company which he entered at the very beginning. The name is a similar, but a few characters in the name are different. The company which signed the contract with him is actually that company's subsidiary. The splendidly decorated bullion trading company which he entered in the first place is a member of the CGSE, but the company which signed the contract with him is not. Similarly, his money has been used to carry out trading continuously and repeatedly, during which commissions were charged, and thus his capital evaporated quickly. However, the endings of the two stories are vastly different. As we have just mentioned, what happens to the man who deposits money in the bank is only a bad dream which will not happen. It will not happen in Hong Kong. As for the victim of London gold trading who steps into the bullion trading company, even if he wakes up a thousand times, he will never be able to get out from such a nightmare.

We have met a lot of victims of London gold trading. They have really endured great mental sufferings. Being defrauded of money is not the worst part. After suffering from such a serious blow, they try to eat but cannot taste what they are eating; they try to sleep but cannot get a wink of sleep. Why is there such a big difference? For banks in Hong Kong, if we deposit money in a bank, no matter whether it is an integrated banking account or whatever account it is, we feel safe. The money deposited there is solid and real. Even in the previous cases where people had bought the Lehman minibonds and suffered losses under the once-in-a-millennium financial tsunami, they were eventually compensated with quite a large proportion of their investment capital. In other words, being bank clients, we are rather safe. If we go to securities firms to buy shares, we will not be cheated as well. Brokers in securities firms are highly reliable. However, why are members of the public who buy London gold turn out to be so unsafe? The reason lies with the word "regulation". Banks are regulated by the Hong Kong Monetary Authority while securities firms are regulated by the Securities and Futures Commission. Yet London gold is simply unchecked. London gold has become a fleecing ground. Members of the public were defrauded of all their hard-earned money, while the bullion sector genuinely engaged in proper business was implicated by these black sheep in the trade. Not only local people but also our compatriots on the Mainland have suffered.

The Secretary has put forth many reasons, saying that there is no such regulation in foreign countries, that members of the public should read the contract carefully before signing it, and that they may choose to invest in other ways. These are just words to shirk responsibilities. As Mr WONG Kwok-hing has mentioned earlier, regulation is available in foreign countries. One should read the contract carefully before signing it, but frankly speaking, with such a thick pile of documents, is it really that easy to read them carefully?*(The buzzer sounded)* Hence, the Government absolutely cannot shirk the responsibility.

PRESIDENT (in Cantonese): Dr PAN, the speaking time is up.

DR PAN PEY-CHYOU (in Cantonese): I so submit.

MR CHIM PUI-CHUNG (in Cantonese): President, I believe that today's debate will set the record of having the smallest number of participants in the discussion. Anyway, President, as far as we understand, there are four channels to engage in gold trading in Hong Kong: firstly, the Chinese Gold and Silver Exchange Society (CGSE); secondly, over-the-counter trading of London gold; thirdly, the futures market under the Hong Kong Exchanges and Clearing Limited (HKEx); and fourthly, the Hong Kong Mercantile Exchange (HKMEx), which was recently established. Of course, President, we also understand that when it comes to gold trading, there are also many shops which trade in physical gold in Hong Kong. You cannot hear what I am saying? These shops trade in physical gold. Hence, there are many different channels for gold trading in Hong Kong.

Nevertheless, President, the product with the biggest trading volume is London gold. The Secretary and other Honourable colleagues have just set out the relevant fraudulent practices and facts. However, I must point out that after all, the Government needs to shoulder the biggest responsibility. Why? Knowing the existence of such unfair contracts, unfair circumstances and real facts in society, how can a responsible government not knowing how to handle the issue and even refrain from handling it? With such an attitude and approach, how can it be accountable to the law-abiding citizens? For this reason, I have talked umpteen times to the Secretaries of Departments and Directors of Bureaux

concerned I talk to Secretary K C CHAN less often, because after all, being a professor, he does not really find it necessary to listen to others' opinions. He will only work according to the policies. If there are not enough votes, he will ask other colleagues to lobby us, but if there are enough votes Since many Honourable colleagues in the Council are actually not familiar with these financial issues, their attitude is to flee if possible. As a result, very often the Government can get sufficient votes. Having sufficient votes, the Government will just ignore me, treating me simply as a representative of the trade who always likes to bring up views for discussion. Not only Directors of Bureaux but also Secretaries of Departments keep stalling and making excuses. Consequently, such an attitude has indeed given rise to great grievances in various sectors in society against the Government's administration.

President, as I have said before, there is a clear gaming law in Macao. Calling itself an international financial centre, however, Hong Kong just allows international fraudsters to cheat Hong Kong investors in Hong Kong freely. The HKEx is going to extend the futures trading hours to 11 and 12 pm every night. How can local Chinese brokers deal with such long trading hours in Hong Kong? Hence, I dare to say that in the near future, if futures trading really operates until 11 and 12 pm, the international fraudsters will certainly seize every opportunity — in vulgar words — to "make easy money", openly capitalizing on the incompetence of the HKEx and the Hong Kong SAR Government to rob and plunder. In the past, if someone in the financial business wanted to deceive investors, he would have to put up a smokescreen to make them fall into his trap without being aware of it. However, President, as you can see, since the Lehman incident, what the fraudsters did was actually daylight robbery. Hong Kong has always boasted about making itself comparable to other countries around the world. Yet it pays no regard to people's hard earned money here, especially that of our Mainland compatriots. In that case, how will members of the public be convinced?

Of course, President, we also agree with what the Secretary has just said, that is, it is necessary to provide participants with better education. However, regarding London gold, the subject of today's discussion which has the biggest trading volume, the Government has merely advised investors never to conduct trading through brokers who lack credibility. I have already reminded the Government, regarding the four types of trading mentioned by me just now, the Government can require organizations or major banks engaged in gold trading in

Hong Kong to be: first, CGSE's members; or second, HKEx's members who can trade in futures; or third, HKMEx's members. The Government will not impose intervention or assume control, but at least it should require these three organizations to exercise regulation strictly and even, as mentioned by the Honourable colleagues just now, implement measures to penalize their members.

Besides, President, actually the Commercial Crime Bureau of the Police Force also has the need to conduct a review, since such behaviour is connivance at fraud. Hence, I support today's motion.

MR RONNY TONG (in Cantonese): President, the trading of London gold is not as complicated as investing in Lehman Bonds, and the risk involved may be a bit lower. However, I think, to most people, it is still a very risky investment activity. It is therefore justifiable for our colleagues to be concerned about such trading activities. According to the information in hand, there are about 70 active traders in the Loco London gold market. Most of them are banks, investment companies and local gold traders. According to rough market estimates, the average daily trading volume of Loco London gold is about US\$190 million, which is around seven times of the volume at the Chinese Gold and Silver Exchange Society. It is by no means a small number.

According to the information in hand, between 2007 and August this year, the police only received 12 cases which were categorized as London gold trading fraud. Yet, we should note that, among the six companies involved in those cases, five of them had been complained more than once. In view of the high daily trading volume and the large number of daily trades in Hong Kong, I think the number of complaints and frauds concerning London gold trading is likely to increase.

Let us carefully examine the acts in dispute and the main subject of these complaints. First of all, we must examine the act of deception or fraud. Actually, the current legislation has provided sufficient safeguards against this act. Lying that a trade has been done is itself a criminal act, even if there is no specific measure to guard against this particular act. The police must enforce the law in this situation, but the problem is, can the police enforce the law effectively? Is it because the police do not know much about this kind of cases and consider it unlikely to convict the defendants, so that the enforcement actions

are not strict enough to give deterrent effect? To address this problem, Mr WONG Kwok-hing has put up a recommendation in his motion. I think the Government should face up to it and explore the possibility of making this act a common law crime.

Secondly, we have to examine block trades, the main subject of complaints, which are often regarded as having been conducted in an unfair manner. We must note that the trading hours of London gold fall on the night of Hong Kong. General investors therefore have to authorize their agents or executors of their accounts to make transactions on their behalf, and these transactions often give rise to disputes. What is the authority of these agents? Have they acted *ultra vires*? As I have just said, a criminal act can be dealt with under the criminal law in the common law jurisdiction. Hence, the acts which warrant consideration are those which are not of criminal nature. We have to consider the necessary safeguards against these acts.

The major safeguard would be the provisions set out in contracts signed between investors and their agents. If the contract provisions are fair and clear, theoretically, the acts mentioned above, which are either unfair or *ultra vires* but are not of criminal nature, should not arise. Even if these acts arise, the disputes can be resolved by civil means and the party in breach of contract will be penalized according to the contract provisions.

In view of this, is it necessary for Hong Kong to establish a regulatory system? I think the views just given by the Secretary make sense. We must understand that, even if we impose regulation, even if our regulatory measures cannot be in line with that of London, they must not be in conflict with those introduced by London. Therefore, very limited actions can be taken in terms of regulation.

President, up till now, I am not convinced of the need to impose regulation. However, the request made by Mr WONG Kwok-hing in his motion is moderate, if not "humble". He only urges the Government to consider introducing legislation as soon as possible. As I have just said, since the trading volume of London gold is high in Hong Kong and the relevant trading activities have significant impact on investors, it will be unacceptable if the Government refuses to consider introducing legislation on the trading of London gold. President, the Legislation Council always believes that it is right to ask the Government to study

ways to address issues which we think may cause problems. Therefore, although I am not convinced of the need to devise regulatory measures for the trading of London gold in Hong Kong, I think there is nothing wrong to consider the introduction of legislation.

In response to the issues that I have just raised, the police should conduct in-depth investigation and be vigorous in prosecution. This is also the fifth recommendation proposed by Mr WONG Kwok-hing in his motion. As for the strengthening of education and information on over-the-counter trading of Loco London gold for investors, I do not think there is a reason to oppose to it. For all discussions about investments, including the investment in London gold, education is always a key issue for consideration. For example, in the report on the Lehman Brothers minibond incident that we are drafting now, investor education is also one of our focuses. Proper education and advice is essential for high risk investments.

Regarding the introduction of licensing system, I do not think there will be many technical problems in linking up the new licensing system with the licensing system established under the securities law. Some people may think that, after the introduction of a licensing system, some practitioners may no longer be able to engage in this business. However, by giving a careful thought to this matter, we may agree that it is more important to protect the interests of investors than the livelihood of practitioners.

President, after consideration, I think this motion deserves our support. Thank you, President.

MR JAMES TO (in Cantonese): President, I wonder how our debate will go if the topic for today is changed to "Expediently regulating model scouting on the street to reduce fraud". I say such words because I am familiar with this topic and other kinds of fraud cases, and that makes me worried. Why? That is because when you know more, you know better that things are not that simple.

President, is there anything that we can do? Yes, but there will be a cost. Let me first share with you my findings after studying fraud cases for 20 years. In 1991, when the then Legislative Council studied a piece of legislation on leveraged forex trading, it already knew that such trading would give rise to

fraud. At that time, the then legislators had alerted the Government of this possibility.

I know that the number of complaints and fraud cases concerning leveraged forex trading has been greatly reduced when compared with the situation 20 years ago. Yet, today, what is the problem in regulating the trading of Loco London gold? A strict regulation will bring great inconvenience to people who are not swindlers. People may even think, as London gold trading is not regulated in other parts of the world, those who propose to impose such regulation in Hong Kong must be mad.

Big firms which do their business legitimately will also consider Hong Kong "dumb" in imposing such regulation. However, if one day we have to impose such regulation, we must explain to them that someone have turned the trading of London gold into a scene of fraud, just like model scouting. The difficulty in regulating these trades lies in the features of London gold trading. Firstly, as stated by Mr Ronny TONG just now, a swindler will usually ask investors to sign an authorization form, giving him the authority to make transactions on their behalf. This practice is not common in stock investment; we seldom make discretionary investment when we buy stocks. No matter what kinds of stocks we buy, say, stocks listed in Hong Kong, the United States or other places, it is uncommon for us to give such authorization. However, when it comes to London gold trading, as gold price fluctuates greatly in the depth of night, a dishonest agent may tell you that it is difficult for you to make money on your own as you cannot capture every single change in price. Sometimes, he may suggest that you make transactions by yourself. When it turns out that the profit you make is less than expected, he will say that if he is authorized to make transactions for you, he will get the profit first and then place another order for you since he expects the price will go up. He will claim that the profit will be much less if you make the transactions by yourself.

It is possible to "throw away the apple because of the core", and big firms will not be affected, as big firms will not ask their clients to sign authorization forms which give their agents the authority to make discretionary investment. If clients want to make transactions late at night, they have to place orders by themselves. In this case, the number of frauds will be reduced greatly. Actually, I find that many complainants have become more alert about these deceits after seeking my advice.

Certainly, the problem can easily be solved if such measure is adopted. However, for those who trust their agents wholeheartedly, what is the point of stopping them from conducting discretionary trading? Will that be limiting their investment freedom? By doing so, we will be saving a few persons from being deceived at the expense of others' right in making discretionary investment. If we must do so, it is not impossible. We only have to take away a little freedom, but the freedom of investment will definitely be reduced. Alternatively, the authorities may allow investors to conduct discretionary trading under strict conditions. Hence, I would say that the first option is to "throw away the apple because of the core", banning discretionary trading, and investment firms will be forbidden to accept this kind of authorization agreements as well.

What is the second feature? We note that, for most victims, they made profits when they first engaged in the trading of London gold. Sometimes, they might make money for quite a long time. The actual circumstances vary in different cases. If the case in question is really a fraudulent case, there will always be an initial profit to induce investors to fall prey to fraud.

The problem is, if transactions which incurred losses are accused as fake, should only transactions which make profits be regarded as authentic? If only profit-making transactions, but not the loss-making ones, are regarded as authentic, it will complicate police investigation. The police will have to consider which transactions are authentic and which are fake. Sometimes, investors may make a profit after losing some money. After that, they may suffer a loss again. However, their stories always end in a big loss which comes at a stroke. If the investor concerned claims that the very last transaction is fake, people may query if there have been other fake transactions before. How can he justify that he is not a bad loser? It is not easy for him to substantiate his claim.

One last point, it is possible to impose various strict regulatory measures, such as audio or video recording of the transaction process or making detailed record, these measures are absolutely possible. It is possible to impose very strict measures that swindlers cannot cheat. However, despite all these measures, we can hardly distinguish the "crooked" firms from the good. We cannot judge from the firm size because some "crooked" firms have become large in size, though genuine multinational corporations and renowned international firms will not deceive investors through intermediaries. As regulators cannot

make such distinction at first sight, regulatory measures are needed; yet they are likely to be challenged by judicial review, causing big headaches.

In conclusion, I think that if the government really wants to regulate the trading of London gold, it may consider to start with abolishing discretionary trading agreements. It should examine if this measure, which will slightly restrict our freedom, can help save many from the trap of fraud. While some people may still be cheated, I think the chance for members of the public to fall victim to fraud can be greatly reduced by at least 70%.

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

(No Member indicated a wish to speak)

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I would like to thank Members for their valuable opinions. They have just raised their concerns about London gold trading fraud and made a meaningful discussion on whether we should legislate to curb illegal activities which involve London gold trading.

As stated in my opening speech, gold is traded in the international market. Here, I reiterate that none of the international financial centres, including London, has enacted any legislation on gold trades which are directly bargained between buyers and sellers. This kind of legislation does not exist.

In the earlier discussion, Members have expressed their views on how the London gold trading should be regulated and whether a licensing and registration system should be established for intermediaries and agents. In my previous speech, I have already pointed out that the major participants of the London gold market are banks, institutional investors, fund managers and so on. They are not members of the Chinese Gold and Silver Exchange Society. Sometimes, they may not even be members of the Hong Kong Exchanges and Clearing Limited (HKEx) but may only be members of the London Bullion Market Association (LBMA). Therefore, it is not possible to set up a registration system to cover all practitioners.

Of course, we have studied the features of London gold trading fraud. As stated by Members earlier, the relevant complaints are mainly against some individual companies which provide London gold trading services. Given that investors are not familiar with the London gold market and the major trading of the international gold market falls on the night of Hong Kong, in almost all these complaint cases, the agents concerned were found to have taken advantage of these two factors and persuaded the victims to give them the authorization for operating their accounts. After obtaining the authorization, the agents would make a large number of transactions for the victims and caused them a huge loss in a short period of time. These are what we have observed in the fraud cases.

Therefore, instead of enacting legislation to regulate the whole industry, we think that at this stage, it is better to strengthen law enforcement, promote investor education and tighten regulation to deal with the London gold trading fraud.

Regarding the strengthening of law-enforcement efforts, the Commercial Crime Bureau of the Police Force has set up a taskforce to assist in the combat and prevention of London gold trading fraud. The police will follow up all reported cases as appropriate by considering their nature. For cases which have sufficient evidence, the police will initiate prosecutions and there have been some successful cases before.

The police are now actively investigating 11 cases which have been categorized as London gold trading fraud. So far, the police have arrested a total of 12 suspects for eight of these cases. The remaining cases are still under investigation.

As for the promotion of investor education, there are two major tasks. Firstly, we have to raise public awareness of the fraudulent devices in London gold trading fraud and warn the public against authorizing a third party to operate their accounts without paying due care. In this respect, we are co-operating with the police to produce a new announcement of public interests.

Secondly, we have to enhance public awareness about the risks of trading in the international gold market, which are market risks and counterparty risks. For example, the public should note that gold price may fluctuate greatly in the

international market even on a single day, and the active trading session falls on the night of Hong Kong.

With regard to gold fixings, while gold price is fixed by the LBMA twice a day, companies which provide London gold trading services in Hong Kong will only take the fixings in the London market as reference. They will see what bids they have got from their counterparties in the market, and they will then determine the bid and ask price that they offer to individual clients by themselves.

As the transparency of London gold fixings is low, investors have to pay extra attention to the conduct of their agents and the reputation of the companies that their agents work for. They also have to be cautious about whether the bid and ask spread is quoted honestly in discretionary trading.

The above market and counterparty risks are specific to the trading of London gold. We will work with the Consumer Council and the Investor Education Council to be established to enhance public awareness of these risks, and remind the public of the need to choose gold-related investment products according to their own affordable risk.

When we talk about gold products, now, there are many ways for members of the public to invest in gold and other related products. Among them, Gold ETFs listed on the HKEx, gold futures, paper gold schemes, gold derivatives and funds investing in gold mining companies have to be endorsed or approved by the Securities and Futures Commission.

I have to emphasize again that the Government will not tolerate London gold trading fraud. We will continue to keep a close eye on the latest development of the relevant fraud cases and the effectiveness of existing measures in curbing these illegal activities. If necessary, the Government will consider taking further actions, including the enactment of legislation, to step up its fight against these illegal activities.

President, I so submit. Thank you.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, you may now reply and you have one minute and five seconds.

MR WONG KWOK-HING (in Cantonese): President, I would like to thank Mr CHIM Pui-chung, who represents the financial sector, for his speech and support to the motion. His remark was succinct in saying that the greatest responsibility lies on the Government. Hence, I hope that the Government can legislate for the regulation, as stated by Secretary Prof K C CHAN in the last paragraph of his speech.

According to the Secretary, it is impossible to establish a unified registration system and useless to formulate model sales documents. Yet, the authority is not doing its part in prosecution. All these make me deeply disappointed. President, I want to urge the Government to get to the root of the problem by actively considering the enactment of relevant legislation.

Indeed, the crux of the entire motion is to urge the Government to impose statutory regulation. As the Government is in support of the rule of law, why does it not impose statutory regulation for the trading of London gold? Swindlers can now do whatever they want. I hope that the Government and Secretary Prof K C CHAN can take one step forward and consider imposing statutory regulation.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr WONG Kwok-hing be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Second motion: Improving the voter registration system to rebuild people's confidence in the electoral system.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

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

IMPROVING THE VOTER REGISTRATION SYSTEM TO REBUILD PEOPLE'S CONFIDENCE IN THE ELECTORAL SYSTEM

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

President, when the vote-rigging incident first emerge, we definitely remember the Chief Executive's comment that it is "nothing unusual", thus wiping off at one stroke all the efforts of the defeated candidates in the District Council Election made in the past four years. Mr TSANG, the Chief Executive returned by a coterie election, is actually a Chief Executive hand-picked by the Central Government. He certainly cannot understand the rage which candidates have when they found that Hong Kong has turned into a place of all sorts of rigging, particularly vote-rigging. The Chief Executive certainly fails to understand this feeling.

"One unit, seven surnames, 13 households" has almost become a synonym for vote-rigging. Yet, cases of five or six voters of different surnames registered under one unit are equally common. There are many imaginary voters as well. We call them "ghost" voters. There are many of them. For instance, in the recent examples that we have come across, some voters allegedly declared that they lived on 32/F, Wah Fu Estate, but the Estate only have 21 storeys; over 100 voters declared that they live in Western District, in buildings that have long been demolished; and Sai Kung District Council member Mr LAM Siu-chung, a member of the Democratic Party, had received poll cards of unknown voters. In fact, these are not unusual cases. Many people have similar experience.

Certainly, we are also aware of cases in which a candidate of a certain constituency moved closer to his constituency area days before the election. He

rented a 200-sq ft flat and then used that address as the registered address for his father, mother, father-in-law and mother-in-law. We, the Democratic Party, have recently collected a lot of such information, involving 400-odd cases. We have referred the cases to the Registration and Electoral Office (REO), the Independent Commission Against Corruption and the police, and requested investigations be conducted over the cases. Apart from the Democratic Party, political parties and groupings such as the Democratic Alliance for the Betterment and Progress of Hong Kong and the Liberal Party have also indicated that they found similar or suspected cases of vote-rigging and requested the police and various institutions to expeditiously conduct investigations. Of course, the Government has acted swiftly and arrested several people. The complainants reported the cases to the police on Monday and by Friday, the authorities arrested several suspects. It seems that swift actions have been taken.

However, as early as 2006, the Audit Commission had already warned in its report that the voter registration system, which relied on voters to declare their residential address on their own initiative and did not have a verification mechanism, might in extreme cases impair the element of fairness in elections due to possible vote-rigging. The Audit Commission recommended in 2006 that the Government should request suspected registered voters to provide address proof, and lay down a verification mechanism for random checking of voters; it particularly reminded government departments to cross check voters' residential information. In retrospect, in a paper recently submitted to the Panel on Constitutional Affairs on voter registration system, it was mentioned that the Government would implement the proposals. In other words, after the recommendations were put forth in 2006 and discussions were held, the Government will only implement the recommendations in 2012. In the report, it was stated that "the self-declaration mechanism is a desirable method because it is cost-effective as the REO does not need to secure substantial resources to verify the information." This comment was not made by the Audit Commission, but by the REO at that time. In fact, two days ago at the meeting of the Panel on Constitutional Affairs, the REO admitted that the Office had been adopting a *laissez-faire* approach, to such an extent that it might have given rise to the so-called vote-rigging without their notice (Certainly, the second sentence is added by me. It only said the first sentence.) As such, the so-called *laissez-faire* approach in effect encourages vote-rigging in disguise.

We hold that the former Secretary for Constitutional and Mainland Affairs (not the incumbent Secretary Raymond TAM, but the then Secretary Mr Stephen LAM who is now the Chief Secretary for Administration) has only himself to blame for today's predicament. He had created such a mess, which has to be tidied up with a lot of resources, and in particular law enforcement is required. The Government has all along advocated a fair and impartial election. In the end, the voter registration system has changed people's impression on election overnight, thinking that it is perfunctorily conducted without making due consideration.

Secretary, the Democratic Party has recently conducted a telephone survey with 500-odd interviewees, asking their opinion about vote-rigging. The result shows that 10.8% of the interviewees consider vote-rigging a very serious problem and 26.7% consider it a serious problem. These two groups of people account for 37.5% in total. In other words, almost 40% of the people of Hong Kong consider vote-rigging a serious problem. Have people lost confidence in this system?

As I have just mentioned, the Constitutional and Mainland Affairs Bureau has submitted a paper to the Panel on Constitutional Affairs. Just by reading this paper, people may think that nothing special has happened; and if foreigners, who know nothing about Hong Kong, have read the paper, they may even think that the election system has been running smoothly. It is stated in the paper that the election system in Hong Kong is highly transparent, and that clear proofs and a stringent verification system are in place. It goes on bragging about how perfect the system is. Certainly, there is not a word on vote-rigging in the paper. The paper has not mentioned what has really happened in Hong Kong.

The Government has proposed some new recommendations in the paper. At that meeting, we have also discussed whether some of the recommendations should be implemented at all costs. For instance, people who register as voters should provide residential address proof. The public support the recommendations because many interviewees in our survey consider that the Government must strengthen its measures to stamp out vote-rigging. Regarding the practice of requiring people who wish to register as a voter or change his personal information to provide residential address proof, 24.8% of the interviewees (that is a quarter of them) support it.

Certainly, there are controversies regarding the recent Government's proposal that voters who have moved to another residence without notifying the Government shall be penalized. As for how the penalty will be imposed, whether in the form of imprisonment or fine, the Government does not have the details yet. But penalties will definitely be imposed. According to the information we have looked up, the Transport Department and the Inland Revenue Department are the only departments which have the authority to mete out punishment to people who do not update their address with the departments. In other words, if you hold a driving licence and you do not update your residential address with the Transport Department, you will be punished. The case is similar for the Inland Revenue Department. This requirement is related to the payment of fines and the address to which the penalty tickets should be sent. I hope Secretary Raymond TAM will later tell us which places in the world where people are punished for not updating their residential address or not providing residential address proof. I think it is rather uncommon to punish registered voters who do not update their residential address. Hence, it is evident that the Government has changed from a *laissez-faire* approach, which is prone to vote-rigging, to a very stringent approach. People may have to be punished, which can be in the form of a fine or imprisonment, for a small error they have made or for forgetting to update their address the sudden change from one extreme of *laissez-faire* to another extreme of strictness is not what people in Hong Kong would like to see.

Hence, the Democratic Party has put forth some specific recommendations. In the past, the Government would conduct random sampling checks on 3% to 5% of voters, the Democratic Party proposes to increase the percentage to 10%, as we think more efforts can be made in this respect. At the meeting of the Panel on Constitutional Affairs held earlier, I said that a survey could be conducted in a form similar to a census, but the Government queried the cost-effectiveness. In our view, in order to establish an election system which can win the confidence of the people, the Government must conduct a comprehensive survey, not a random one, so as to ensure that people have confidence in the voter registration system. Only when the information is genuine and not fabricated will we have confidence when we cast our votes.

Hence, the Government recently undertook to send letters to voters early next year to ask them if they have changed their residential address. I wish to tell Members that I often receive many letters. I believe the same is true for the

Secretary. There are at least three to five letters in the mailbox every day. When we get home with these letters, we usually put them aside and may not open them; after some time, perhaps one week later, when we realize that we have to pay the water or electricity bill, we will open some letters but not all of them. Hence, is sending letter an effective way to remind voters to update their residential address? I am doubtful. If the Government is going to send these letters, the Democratic Party proposes that the Government should add one more question to ask voters whether they have received poll cards or related documents that are addressed to some other people. Although we do not think the Government's approach of sending out letters is effective, it may well add this question in the letter.

Moreover, we hope that the Government can deploy more people to handle the work. No political parties will disagree, I believe. If the Government needs to allocate more resources to conduct a voter registration survey similar to a census, I believe the Legislative Council will not stand in the way of funding approval, so that more people can be deployed to conduct the survey. Hence, I hope the Government can be more proactive in the regard, particularly regarding the three-pronged efforts of re-checking, random checking and conducting surveys.

Certainly, some cases should be handled as soon as possible, such as the case of "one unit, seven surnames". Likewise, cases involving five or six different surnames registered under one address, which Mr LEE Wing-tat mentioned last time, should also be handled. The survey should be conducted without raising much attention. There are not many such cases. According to the information provided by the Government last time, such cases only involve some 2 000 residential addresses. The survey need not cover aged homes. However, if the address is not that of an aged home, but of a household with seven or five voters with different surnames, efforts should be made to investigate into such cases. I believe there should not be no more than 5 000 such households. Why not take immediate actions to check these households? If a voter registration survey is not feasible, some surprise checks or random checks can at least be done before the Legislative Council Election in September.

We cannot uphold a fair, impartial and clean election with slogans alone. The voter registration system in the past has failed to give due consideration, leading to numerous irregularities today. The information in the voter register

must be accurate in the first place before it can win the confidence of the public that the election concerned is fair and just. If someone later lodges an election petition to challenge the result If voters lodge a petition against the Legislative Council Election in September on the ground of problems with the voter registration system, the consequence will be unimaginable as the operation of the Legislative Council will be affected. That is why today I moved a motion on improving the voter registration system to rebuild people's confidence in the electoral system. I hope Members will also share their views about the subject.

I so submit.

Mr KAM Nai-wai moved the following motion: (Translation)

"That the media have recently disclosed the discovery of many suspected vote-rigging cases after the District Council Election held on 6 November this year; besides, after every Legislative Council Election and District Council Election in the past, the Administration also received tens of thousands of returned poll cards; as there is a lack of an effective verification mechanism under the voter registration system, law-breakers may easily register as voters with falsified addresses, thus ruining the electoral system and causing voters to lose confidence, this Council urges the Administration to spare no efforts in investigating suspected vote-rigging cases, institute prosecutions against law-breakers, and comprehensively review the voter registration system, so as to ensure that before the Legislative Council Election to be held in September next year, the loopholes are plugged and people's confidence in the electoral system is rebuilt."

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

PRESIDENT (in Cantonese): Three Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the three amendments.

I will first call upon Mr Ronny TONG to speak, to be followed by Dr Philip WONG and Mr Albert CHAN respectively; but they may not move the amendments at this stage.

MR RONNY TONG (in Cantonese): President, it is no exaggeration to say that the election law in Hong Kong is not simple at all. Why do I say so? It is because the election law in Hong Kong is made up of at least five ordinances, namely the Chief Executive Election Ordinance, the Legislative Council Ordinance, the District Councils Ordinance, the Village Representative Election Ordinance and the Electoral Affairs Commission Ordinance. President, even professionals such as lawyers would often mix up the inter- and joint-relationship among the provisions of the ordinances, not to mention the general public.

Given the complexity of the system, is there a need to review the system? In the wake of the incidents in the past two months, I believe most people in Hong Kong, or even the Secretary himself, would agree that there is a genuine need to conduct a review. The focus of the five ordinances is provided under section 24(2), that is, Part V, of the Legislative Council Ordinance, which says, "A person is not, by virtue of being registered as an elector in an existing final register of geographical constituencies, entitled to be included as an elector in any subsequent register of geographical constituencies if the Electoral Registration Officer (ERO) is satisfied on reasonable grounds that the person (a) has since ceased to ordinarily reside in Hong Kong; or (b) no longer resides at the residential address recorded against the person's name in that existing register and that Officer does not know the person's new principal residential address (if any) in Hong Kong." Besides, section 28 provides that the ERO has the right to omit from the register of electors the name of an elector if the elector fails to prove that he ordinarily resides in Hong Kong and that the residential address the elector has declared is his only or principal residence in Hong Kong.

Are these requirements necessary? Many people, even colleagues of this Council have the same query mainly on the ground that the Basic Law does not have such stipulations. Article 26 of the Basic Law specifically stipulates, "Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law." If so, should this right to vote be restricted to people who "ordinarily reside in Hong Kong" and have an address that is their "only or principal residence"? Members

also know that the rights stipulated in the Basic Law are not absolute. Each right has its reasonable restriction under the law and the question lies in whether the restriction is reasonable and proportional.

Let me cite a simple example. All Hong Kong people should have the right to vote, but can people below 18 exercise their right to vote? Should an age limit be set for the Chief Executive? Many countries around the world have laid down restriction to forbid citizens or nationals who do not reside in the country to vote. These restrictions are absolutely reasonable and appropriate. Let me cite another example. If a person who has emigrated for some 10 to 20 years now returns to Hong Kong and says that he should still have the right to vote, will his request be accepted by society? I believe these are the questions we must face squarely and examine. However, preliminary observation shows that, as I have just said, all civilized and democratic countries have laid down legitimate restrictions, including those on the residential address. I hold that the present restrictions under the law are in line with the Basic Law.

However, the question lies in where we should draw the line. If our understanding is correct, a citizen may have violated the provision on corrupt conduct in an election if he has moved to another residence but still goes to vote. He may have done so because he is unaware of the legal trap hidden in this complicated election law and assumes that he still has the right to vote according to the Basic Law. Many people have recently been prosecuted because of this reason.

How should this problem be tackled? In my view, the present election law is very complicated and there is no clear provision to clearly inform the people of Hong Kong of the reasons why they have to notify the Registration and Electoral Office (REO) when they have changed their residential address and of the consequences if they do not do so. In other words, we need provisions that are straightforward and simple. For example, we can lay down a provision to clearly point out that if a person wishes to exercise his right to vote, he must first notify the REO or the ERO of his updated address before he can vote. I hold that such provisions are necessary.

President, under the existing system, the five ordinances mentioned just now actually seek to place the principal responsibility of ensuring the accuracy of the register of electors entirely on the REO. If we look at the five ordinances

that I have just mentioned, almost all of them stipulate that a person can only be included in the register of electors if the ERO is satisfied that the person has provided the information required when he registered as an elector. The ERO needs to know where the applicant lives before he can take the administrative procedures to include the applicant's name in the register of electors.

However, in the 10-odd years after the reunification, has the REO duly discharged its duty? President, I am afraid the answer is more than obvious. The numerous suspected cases of vote-rigging today, which can be thousands of them, are entirely attributable to the *laissez-faire* approach which the REO has adopted over the past decade or so. Besides, the ambiguous provisions have also played a part in escalating these cases accumulated in the past into the irrevocable outcome today.

President, let me cite an example which can be found on formal record. Recently, in handling a case concerning a defendant who wished to change his information on the voter register, I found that many defendants, not just one defendant, have only declared "Hong Kong" or "Tsuen Wan" as their address. One can hardly imagine how the ERO could accept applications with such addresses. It is simply impossible for the REO to send poll cards to these voters by such addresses. However, why did the ERO accept something like this as the declared address?

The case that I handled is not related to the direct election of a geographical constituency, but a village representative election, but the voter register concerned was formulated using the same mechanism. Although an voter's right to vote does not hinge on whether he lives in the village concerned, it is also subject to the regulation of the legal system. Why does the ERO allow these people to register with such addresses? President, to date, the authorities have taken no actions. I can tell Members that regarding these legal cases, we have succeeded in seeking a judicial review on the ERO's decision to de-register over 200 voters. However, has the REO taken any legal actions against those 200-odd voters? The answer is no.

Our system has placed a heavy responsibility on the ERO who, in the end, has not discharged his duty at all, and his decision can be Unless a judicial review is initiated, his decision will be final. President, in response to a question raised by Dr Margaret NG this morning, the Secretary has clearly said that unless

a judicial review has been initiated, the decision of the ERO is deemed final. Nevertheless, in many circumstances, we simply cannot lodge a judicial review. For instance, in respect of the Election Committee which is the coterie responsible for electing the Chief Executive, we cannot initiate a judicial review against members who are returned to the Election Committee because there is no contender in the subsector of agriculture and fisheries. Then, who is the legitimate person to initiate a judicial review? This is a big problem. Any dereliction of duty on the part of the ERO will lead to a long-lasting consequence because the voter register today will become the provisional register in the coming year, which will then form the basis for the final register, so on and as forth. The register this year will be compounded into the register next year and the same will be done year after year. Thus, a mistake in the register this year will be a mistake forever.

President, I have put forth many proposals in the amendment and I must commend the Secretary for his attitude, which is much better than that of his predecessor. He said that he would consider my proposals. I need not repeat the changes that I have proposed, but I do wish to tell the Secretary that the proposed changes are necessary. I hope the Secretary will use the few months left to seriously look into the proposals that we have put forth. Thank you, President.

DR PHILIP WONG (in Cantonese): President, I wish to bring out a few points in relation to my amendment.

First of all, I support the Government to enhance the voter registration system and implement some of the proposals put forth by Members.

According to the law, a person may have violated the Elections (Corrupt and Illegal Conduct) Ordinance if he has declared a falsified address and then went to vote; such cases will be followed up by the Independent Commission Against Corruption (ICAC). If a person has declared a falsified address but did not vote, he has also violated the relevant regulation on voter registration; such cases will be followed up by the police.

The Election Registration Officer has received a number of complaints after the District Council Election this year, concerning suspected cases of vote-rigging and involving thousands of voters. Some of the cases allegedly

involve voters who have provided falsified addresses and about half of the cases do not have any *prima facie* evidence or do not require any follow-up actions. The authorities have decided to step up the intensity of the investigation and thoroughly investigate the suspected cases of vote-rigging, so as to bring the offenders to justice. The police and the ICAC have initiated formal investigations and taken swift actions to arrest a few people.

The Government has repeatedly indicated that it intends to require newly registered voters or voters who wish to change their personal information to provide residential address proofs as well as to conduct sampling checks. The authorities have also indicated that publicity programmes will be brought forward to early next year, so as to call on registered voters to update their residential address in time.

I hold that the Government is duty-bound to maintain a fair, open and honest electoral system and it must fully demonstrate its determination in perfecting the voter registration system. I thus support the Government to strictly enforce the laws and seriously handle the cases concerned. I also echo that it should adopt administrative means to expeditiously implement the proposals we have put forth, such as providing residential address proofs, strengthening verification and conducting publicity programmes, and so on.

Secondly, regarding whether the law should be revised or all related ordinances should be consolidated into an electoral law for stronger regulation, particularly the imposition of penalties to voters who fail to update their address, I hold that this is a serious matter and should not casually jump to a conclusion. Instead, views from different parties in society should be sought and care must be exercised in handling this matter.

At present, people register as a voter on a voluntary basis. We hope that more eligible citizens can register as voters. However, the introduction of penalty provision is a controversial proposal, which may discourage eligible citizens from registering as voters. I thus think that the proposal should be thoroughly discussed in society, so as to examine whether there is a genuine need to implement this proposal now.

According to Article 26 of the Basic Law and Article 21 of the Hong Kong Bill of Rights (HKBOR), permanent residents of the Hong Kong Special Administration Region (HKSAR) shall have the right to vote and the right to

stand for election. Moreover, Article 31 of the Basic Law and Article 8 of the HKBOR ensure that Hong Kong residents shall have freedom of movement within the HKSAR, the freedom of emigration to other countries and regions, and the freedom to travel and to enter or leave the HKSAR. In my view, the right to vote is a basic and important right of the Hong Kong people. In taking forward any policy or measure to tighten an existing system, the Government should not unreasonably deprive people of their basic rights, including the right to vote.

Thirdly, a recent subject under discussion in society is that the existing voter registration system requires voters to ordinarily reside in Hong Kong and have a residential address which is their only or principal residence in Hong Kong.

In fact, the real situation in Hong Kong is that there are many Hong Kong people who work in the Mainland and there are also many Hong Kong people who live in the Mainland but work in Hong Kong every day. These people may not have a permanent residence in Hong Kong. Moreover, many elderly people choose to move to the Mainland for retirement. The government policy also encourages people to return to their hometown to spend their golden years. These elderly people have spent a few decades of their life in building a solid foundation here and have worked very hard for Hong Kong. They are 100% Hong Kong people. Their contribution to Hong Kong's economic success today should not go unnoticed.

I hold that the Government needs to look after the basic rights of all these permanent residents of the HKSAR, including their right to vote which is protected under the Basic Law. Their right to vote should not be casually taken away just because control on the voter registration system has to be tightened. Certainly, the voter registration system should be kept abreast of the times, but the legitimate rights of Hong Kong people who have been travelling between Hong Kong and the Mainland and those who have returned to their hometown for retirement, which I have just mentioned, should not be disregarded either.

Fourthly, as the voter registration system affects the rights of millions of Hong Kong people, the Government must take the whole picture of Hong Kong into consideration and strike a suitable balance.

I hope that in taking forward new measures for voter registration, the Government would avoid creating new tougher problems without solving the old ones. It must seek to safeguard the creditability of the election system in Hong Kong without creating too much nuisance to the people.

Based on the views above, I proposed an amendment to Mr KAN Nai-wai's motion. The most important point I wish to say is that, apart from upholding fair elections as well as reviewing and improving voter registration measures, I wish to urge the Government to safeguard the voting right of the HKSAR permanent residents in accordance with the provisions of the Basic Law, so as to rebuild people's confidence in the rule of law and the electoral system.

Incidentally, it has been reported by certain local newspapers that a certain consul-general has recently been making comments about electoral affairs in Hong Kong and has been in close contact with certain people, he has even talked about the suspected cases of vote-rigging. I wish to take this opportunity to reiterate that we are against vote-rigging and we detest corruption in elections. Yet, we do not welcome any consul-general to use any means to interfere with or intervene in Hong Kong's electoral affairs.

President, I so submit.

MR ALBERT CHAN (in Cantonese): President, the vote-rigging saga unveiled firstly by the media this year can be attributed to the Government's procrastination and lacking in foresight for more than two decades in the past. The former Secretary for Constitutional and Mainland Affairs should take considerable blame, for in the past eight to 10 years, there have been ongoing complaints relating to vote-rigging, as well as false information provided on voter registration.

President, according to the information I have reviewed, in 2006, I wrote to the Home Affairs Department (HAD), the Registration and Electoral Office (REO) and the Independent Commissioner Against Corruption (ICAC) to point out that serious problems were found in the voter registers for a certain district. The problems could be classified into three categories. First, the names of many registered voters had suddenly disappeared from the register. As a result, the public complained about the loss of their data as voters, and they were deprived

of the eligibility to vote without any reason or explanation. Since the statutory procedures had already been completed, they could not register again and cast their votes at the election. Second, the data of some residents who had moved elsewhere long ago were still kept in the register, yet those residents no longer lived in those addresses for many years. Third, a new scenario was found in the register. According to the residents in the district, they were 100% certain that some newly registered voters were not residents of the estate. Moreover, there were nine registered residents living in a 300 sq ft unit. This three-page letter had been sent to the REO, the ICAC and the HAD respectively. However, no prosecutions had been initiated, and the incident was left unaddressed after the investigation was completed.

Regarding vote-rigging, I have pointed out at the meeting of the Panel on Constitutional Affairs earlier that as early as 1986, I already found in the voter register that 35 voters had registered under one address and some of the addresses were department stores, which obviously involved vote-rigging. The problems still exist to date. How would the Government not know about that? It is impossible that the Government does not know about this situation. I believe that in the past two decades, individuals, organizations and residents had made constant complaints. However, the government officials concerned turned a blind eye to the problem. Their condoning, supporting and encouraging attitude towards those activities had prompted certain well-known figures and persons of special status to blatantly use their addresses for extensive vote-rigging activities. I would say that the prevalence of this kind of abnormal and special political phenomenon is due to the Government's connivance and support of such activities. It is ridiculous that such phenomenon exists in Hong Kong.

According to the legal provision, voter registration forms are legally enforceable documents, anyone who provides false information should be liable to prosecution. The situation is just the same as the applications for public rental housing (PRH) and the Comprehensive Social Security Assistance (CSSA). We notice that the Housing Department has never stopped in conducting investigation on the provision of false information in PRH application, and prosecutions have been initiated and the applicants concerned have been convicted and imprisoned. However, for cases involving the provision of false representation and incorrect information in voter registration, no actions have been taken.

Recently, I once again approached the departments concerned and enquired about the reasons for not initiating prosecutions against such activities. They said that letters had been sent to the Department of Justice (DoJ) and the DoJ replied that no prosecution would be initiated. President, personally, I suspect that the DoJ has not initiated prosecution not because the evidence is unsubstantiated or the provision of false information does not constitute an offence under the laws of Hong Kong, I strongly believe that this is a political decision made by the Policy Bureaux concerned or officials of senior ranks out of political considerations. First, the cases may involve a large number of people, particularly a large number of people with close ties with the Government, and to cover up and protect these people with special relationship with the Government, no prosecutions have been initiated.

The second political consideration is to protect the reputation of the Government. The SAR Government does not hope that after the return of sovereignty, the elections held in Hong Kong would involve reports of illegal practices and prosecutions, which would convey the fact that corrupt and illegal conducts are readily found in elections here, where vote-rigging has been a common practice. As the Government cannot initiate prosecution selectively, once prosecutions are initiated against suspected cases, I strongly believe that there will be tens of thousands of prosecution cases. The extensive and numerous number of prosecution cases would definitely bring shame to Hong Kong, revealing that the election system in Hong Kong, hailed to be fair and just, has in fact been plagued by illegal, law-breaking and dirty practices and political manoeuvres, where large-scale vote-rigging activities have been manipulated by an invisible black hand behind the scene. Definitely, this will tarnish, ruin and damage the impression and reputation that democratic elections have been held under "one country, two systems" in Hong Kong after its reunification with China in 1997. It is out of the second political consideration that the authorities have decided not to initiate prosecution. Hence, I definitely will not believe that the decision DoJ is an independent professional decision made purely from legal perspective.

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

After the wide coverage of the media, the Government can no longer turn a blind eye to the situation. It then perfunctorily initiated prosecution against some selected cases. I believe the situation will only be "all thunder but no rain". After initiating a number of prosecutions, the problem will be left unsettled. We will not expect that some 10 000 people will be prosecuted. However, judging from the situation of providing false representation, there are certainly tens of thousands of such cases.

Regarding the new proposals put forth by the Government recently, I must commend the Secretary for his outstanding political ploys and strategy; he handles the cases with the tactics of "proposing a harsh option for an expected compromised option". Since people said that there were so many problems with the system, he then put forth some very harsh proposals, requiring the provision of proof of residence and the submission of a lot of other information. This is definitely a wrong approach. The People Power adamantly opposes the new proposals put forth by the Government. In fact, the Government can adopt a very simple approach by linking voter registration with the information declared by them. In normal circumstances, people are not required to provide residence address proof when they apply for PRH flats or CSSA, the authorities may require the applicants to provide further information if they are in doubt. The simplest approach is to verify the voter registration information with those related to the Hong Kong Identity Card (ID card). The ID card system in Hong Kong can be regarded as a rare, comprehensive and popular policy which has earned worldwide high esteem. The authorities may simply handle all issues relating to voter registration based on the registered addresses provided for ID cards. This will substantially reduce vote-rigging activities, for the registration for ID cards is very important, unlike voter registration where false representation and amendment can be easily made. After all, voter registration should be made according to the registered addresses provided for ID cards, whereas false representation should be regarded as an offence liable to criminal prosecution as required under other existing ordinances. I believe this approach will help reduce false representation and vote-rigging activities.

In fact, the best approach is to follow that of Taiwan by allowing every holder of identity cards to be voters, for all eligible voters in Hong Kong must be holders of ID cards with three stars, which means they have resided in Hong Kong for at least seven years I also hope that you will get seven stars, and political prisoners serving sentences in Stanley in future may have seven stars.

According to the address declared for the 3-star ID card, the authorities should be able to confirm the constituency that person belongs to, and he will automatically become a voter without making specific declaration. I believe this approach will increase the number of voters, which will have all the good effects in promoting democracy.

If the Government can handle the false representation of address in a stringent manner as it has been doing with the applications for PRH units and the CSSA, and initiate prosecution against a few more cases, it will impose deterrent effect and people will not dare to act recklessly in providing false addresses. Thank you, Deputy President.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Thank you, Deputy President. I would also like to thank Mr KAM Nai-wai for proposing the motion, and Mr Ronny TONG, Dr Philip WONG and Mr Albert CHAN for proposing the various amendments today.

Deputy President, regarding the recent complaints about falsified addresses, the Administration will definitely handle the issue in a serious and just manner. The police and the Independent Commissioner Against Corruption (ICAC) have taken swift actions to follow up reports relating to false representation and election corruption, where corresponding arrests and prosecutions have been made and initiated. The Registration and Electoral Office (REO) will seriously examine complaints reported by the media and directly received by the REO each day. As of 20 December, the REO have issued inquiry letters to over 1 500 electors requiring for the provision of proof of residence, and it is conducting follow-up investigation on another 1 700-odd electors. If the electors concerned give no response or fail to provide the proof of residence on or before the deadline, the REO will transfer the cases of reasonable doubt to law-enforcement agencies for follow-up investigation. Upon the completion of the relevant legal procedures, the REO will include those electors in the omissions lists in compiling the register of electors for next year.

In the light of the recent public concerns about the voter registration system, we have conducted a review of the existing arrangements and identified areas for improvement.

We had submitted a paper to the Panel on Constitutional Affairs of the Legislative Council a few days ago (Monday), setting out the proposed improvement measures, and an initial discussion had been held with Members. However, I would like to highlight a few key points at the Legislative Council meeting today and listen to the views of Honourable Members.

In considering possible improvement measures, we are guided by a number of principles.

Firstly, I must stress that the SAR Government attaches great importance to the integrity, fairness and openness of elections.

Secondly, voting right is a fundamental and important right, and voter registration is voluntary at present. The proposed improvement measures aim at preventing fraud or corruption in order to protect the fairness and credibility of elections. At the same time, these measures should not unreasonably deprive the permanent residents of Hong Kong of the voting right enjoyed under the Basic Law and the Hong Kong Bill of Rights (HKBOR).

Thirdly, the proposed improvement measures should be feasible while not creating undue nuisance and disturbance to the public as far as possible.

Fourthly, the existing voter registration cycles are very frequent, and the REO receives volume of new applications and applications on change of particulars before the deadline for voter registration every year. In considering the improvement measures, we have to strike a proper balance in various aspects, including the provision of sufficient time for the public to inspect the register of electors, and the resource implication and cost-effectiveness, and so on, to determine the scope and intensity of checking.

Based on these principles, we proposed a number of measures to improve the existing voter registration system a few days ago.

The first proposal is to introduce a requirement on the provision of proof of residence. In future, when a person applies for registration as a geographical constituency elector or when a registered elector applies for change of his residential address, he should provide address proof as standard supporting evidence at the same time. The REO will accept address proof commonly used

by the general public, including electricity, water and gas bills, and the correspondence issued by the Government and banks, and so on. For a person who does not have address proof, the REO will also accept the address proof of another inhabitant who resides in the same address. But that inhabitant should furnish a signed declaration to prove that they reside in the same residential address. An alternative is for the person to make a statutory declaration that the information on the residential address he provides is correct.

In this connection, before any amendment is made to the relevant legislation, we plan to implement the address proof requirement on an administrative basis first. We plan to commence the arrangement on 1 January 2012, in order to tighten the existing system as soon as possible.

The second proposal is about the enhanced checking performed by the REO. On top of checking addresses with seven or more electors, the REO will step up the effort by adding new parameters to check different types of address, say when the number of surnames of electors in an address exceeds four.

We will also conduct random sampling checks on the current register of electors. We will strive to achieve three targets in respect of the enhanced checking. Firstly, it can cover around three to five percent of the electors on the final register. That is about 100 000 to 180 000 electors out of the 3.56 million registered electors at present. Secondly, it can cover all the 412 District Council Constituency Areas. Thirdly, the parameters for sampling should be reasonable, effective, and scientific. On this, the REO will seek the professional advice of the Census and Statistics Department.

In conducting the random sampling checks on voter registration, and the follow-up checks on undelivered poll cards, electors will be asked to provide address proof. We will refer any suspicious cases to law-enforcement agencies for follow-up.

Under the existing arrangements, voter registration cycles are very close, and the REO is required to undertake checks only after the publication of the register of electors. To tighten control and the intensity of checking, we will advance these checks, so that they can be completed before the publication of the final register. As a result, electors who have to be removed from the register could not vote at the elections following the publication of the final register.

However, sufficient time should be allowed for the Electoral Registration Officer to complete the checking and the verification processes, and it is thus necessary to advance the statutory deadline for new registration and reporting change of addresses.

The third proposal is to consider imposing new penalties. The provision of false information is subject to the penalty provision under the existing regulations relating to the Electoral Affairs Commission. Under the section 22(1) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A), it is stipulated that any person who makes any statement which the person knows to be false is liable on conviction a fine at level 2, that is, a maximum fine of \$5,000 and imprisonment for six months. Under subsection (2) of the same provision, it is stipulated that any person who directly or indirectly by himself or any other person on his behalf conspires with, incites, compels, induces, coerces, intimidates or persuades another person to make a false statement is liable on conviction a fine at level 2 and imprisonment for six months. Moreover, penalty provisions have also been included in the Elections (Corrupt and Illegal Conduct) Ordinance, where a person gives to an electoral officer information that the person knew to be materially false or misleading, and subsequently votes in an election, is liable on conviction to a fine of \$500,000 and imprisonment for seven years. According to the new proposal we put forth at present, we will consider whether a new penalty other than the two aforesaid penalty provisions is necessary. We will consider amending the legislation to require electors to report changes of registered address, and to introduce sanction for registered electors who fail to report change of address before the statutory deadline and subsequently vote at an election afterwards. Over the past week or so, I notice that many people and Members have indicated reservation or worries about this proposal. We will examine the relevant legislation carefully, and take into account the opinions of various parties, before deciding whether or not to adopt this measure.

The fourth proposal is to step up publicity measures to drive home the messages on honest and clean elections and to promote public awareness of the new arrangements. We plan to send a letter to all of the some 3 million registered electors early next year, say February. The letter will remind them to update their residential addresses if there is any change and explain to them the new requirement on address proof. It will be complemented by other publicity

measures such as Announcements in the Public Interest and newspaper advertisements.

The fifth proposal is an additional measure. The REO is liaising with the Buildings Department and the Rating and Valuation Department to conduct checking in the coming months on the list of buildings which have been demolished recently and buildings which will be demolished soon. This will help identify electors who may not have reported change in their addresses.

All of the above new measures will incur a lot of work for the REO. For this, the REO has set up a special team headed by a Deputy Chief Electoral Officer to take forward the work. The Government has undertaken internally to provide the necessary additional resources to the REO.

Moreover, I must reiterate that the authorities attach utmost importance to safeguarding a clean and honest voter registration system. The REO and the law-enforcement agencies will handle any suspicious cases seriously.

At the meeting of the Panel on Constitutional Affairs held on Monday, Members in general agreed that the so-called "vote-rigging" activities should be combated and many Members inclined to support the proposed improvement measures. However, some Members were concerned that those measures might cause inconvenience and nuisance to the public, affect the willingness of electors to make registration, or affect the rights to vote of permanent residents. Some Members said that careful consideration should be given as regards whether a public consultation should be conducted before introducing the administrative measure of requiring the provision of proof of residence. Members hoped that the authorities would carefully consider the impact on the public and the views of the public.

I fully appreciate these concerns. The improvement measures on the voter registration system will affect some 3 million electors at present and other eligible people. The Government hopes that in making proactive response to the aspirations of society in improving the voter registration system, the measures proposed may strike a balance of various factors for consideration. Hence, today, I would like to listen to further views expressed by Members on the various proposed measures.

Regarding the motion of Mr KAM Nai-wai and the amendments proposed by Mr Ronny TONG, Dr Philip WONG and Mr Albert CHAN, I would like to take this opportunity to briefly respond to the three amendments, and I will give further response later when I give my conclusive speech.

The amendment of Mr Ronny TONG mainly urges the authorities to consider five points. One of the proposals is to "consolidate all existing laws relating to eligibility requirements for voters and voters' exercise of their voting right into a centralized, clear and easy-to-understand electoral law". I would like to point out that at present, separate ordinances and subsidiary regulations are put in place for the elections of the Legislative Council, District Council and the Chief Executive respectively, where appropriate provisions are formulated to address the specific needs of various elections. On the other hand, the Electoral Affairs Commission Ordinance stipulates the practical arrangements for the respective elections, whereas the Election (Corrupt and Illegal Conduct) Ordinance regulates corrupt and illegal conduct in election.

Mr Ronny TONG's proposal is to consolidate five principal ordinances and tens of subsidiary regulations into one, which I believe will be an extremely complicated and uphill task. In view of the uniqueness of each election and the specific functions of each election ordinances at present, a consolidated ordinance will be enormous in volume and difficult to read. I think it may not necessarily serve the purpose of formulating "a centralized, clear and easy-to-understand electoral law" as Mr Ronny TONG so intends. Moreover, for those who intend to stand for election, and those who have taken part in elections over the past many years, they have already gained considerable knowledge about the existing laws, and they may find it hard to adapt if substantial changes are introduced or they may find it difficult to understand the new law.

On the other hand, in the process of heading towards the implementation of universal suffrage, the framework of election legislation will change accordingly. In considering the amendment to the legislation concerned, the authorities will definitely discuss with the Legislative Council and conduct public consultation. Hence, in our view, the first specific proposal of Mr Ronny TONG may not necessarily be practicable at the present stage.

On the contrary, regarding the other four proposals put forth by Mr Ronny TONG, that is, proposals in paragraphs (b) to (e), we have examined them

carefully and consider them practicable or further consultation of the public on the proposals may be conducted.

Since the first proposal of Mr Ronny TONG is not appropriate at the present stage, we cannot agree with the amendment of Mr Ronny TONG.

As for the amendment of Dr Philip WONG, it mainly urges the authorities to strike a balance in the implementation of the improvement measures, giving due regard to the right to vote of permanent residents of Hong Kong and the other rights protected under the Basic Law. I wholeheartedly agree with the point of view of Dr Philip WONG.

The right to vote of Hong Kong permanent residents is protected under the Basic Law and the HKBOR. Moreover, protection is also offered under Article 31 of the Basic Law and Article 8 of the HKBOR to Hong Kong residents of their freedom of movement within Hong Kong, freedom of emigration to other countries and regions, and the freedom to travel and to enter or leave the Region.

The authorities are determined to improve the voter registration system and maintain the credibility of election in Hong Kong. In considering the implementation of various new measures, we should at the same time endeavour to ensure the rights of the people of Hong Kong. I support the amendment proposed by Dr Philip WONG.

The amendment of Mr Albert CHAN mainly seeks to state that the problem of so-called vote-rigging is long-standing but the Government has all along disregarded the problem, and to express condemnation of the Government. I would like to point out that it has always been the primary principle of the voter registration system to encourage and facilitate the registration of voters. Hence, in the past, the key point was to ensure the convenience for making registration. Since the reunification, the registration rate of electors has increased from 62% in 1997 to 75.6% in 2011, an increase of nearly 1 million voters. Certainly, recently, society is concerned that the registration-friendly approach may affect the credibility of the electoral registration system of Hong Kong. As such, the Administration has conducted a review swiftly and has responded appropriately to the concerns of society.

Hence, I cannot agree with the amendment of Mr Albert CHAN. Yet, I must stress that the authorities will handle any cases of irregularities seriously. We are determined to make concerted efforts with the public and the Legislative Council to further improve the voter registration system.

Deputy President, I wish to listen to further opinions of Honourable Members today. Thank you.

DR PRISCILLA LEUNG (in Cantonese): Deputy President, vote-rigging is certainly unacceptable. Hence, I strongly support the Government's strict measure against such conduct once such acts are identified. However, in handling suspected cases of vote-rigging, the Government should consider which cases involve violations due to ignorance, which cases involve deliberate violations and which cases involve deliberate vote-rigging conduct.

The motion proposed by Mr KAM Nai-wai today offers a good opportunity for Members to discuss the problems of the existing voter registration system. I very much support the basic content and principles in his motion. However, regarding certain specific content in the amendment proposed by Mr Ronny TONG, I have some reservation. Today, our discussion is about the potential loopholes found in the voter registration system. To plug these loopholes, we must first identify the causes of the current suspected vote-rigging cases or the various complaints related to the election system, so as to confirm whether the inadequacies are originated from law enforcement, the system or the legislation.

To maintain the public's confidence in the voter registration system, the current approach to be adopted by the Government is to impose additional requirements, which include considering the requirement to provide proof of residence. I think the authorities may consider in this direction. However, it must be cautious in considering the requirement for the provision of proof of residence. We have taken part in voter registration and we know that water, electricity and gas bills People who have employed foreign domestic helpers would know that the Immigration Department does not accept bank statements as proof of residence; only water, electricity and gas bills or tax demand notes are accepted. Regarding the provision of bank statement as address proof, there are many cases in which people who have emigrated abroad will use the address of his friends in Hong Kong to open a bank account for

making investment in Hong Kong. Actually, certain types of people in Hong Kong, including the elderly and street-sleepers, are unqualified to apply for a bank account. In such cases, how can they provide address proof?

Moreover, for permanent residents of Hong Kong who work, retire or live overseas, the Government has stated on public occasions the issue to be discussed, that is, how to prove these people are ordinarily living in Hong Kong. I would like to point out that some years ago, when we discussed whether prisoners have the right to vote, one of the issue under discussion was whether prisoners could use prisons as their registered addresses if they were given the right to vote. People had considerable reservation about this arrangement. In certain small districts with prisons, say Stanley, the voting preference of prisoners may have a decisive effect on the voting results of District Council elections.

Hence, at that time, Members agreed that the last-dwelling place should be used. It may be possible that many drug addicts under treatment may live together, and we allow them to use places they reside in before undergoing treatment as their last dwelling place. Since the place is at least a residence, it is acceptable. This is one of the principles we have adopted in the discussion of the right to vote of prisoners.

In recent years, it has been the policy of the Administration to encourage Hong Kong people to seek employment or development opportunities northward on the Mainland. Many young people have been working on the Mainland and some elderly people have retired on the Mainland in view of the high living cost in Hong Kong. These people working or retiring on the Mainland are Hong Kong citizens, they are permanent residents of Hong Kong. If their right to vote is redefined, they may lose their right to vote when they return to Hong Kong one day. This is a matter of great implication which may provoke a big crisis. Hence, the Government must be extremely cautious in defining the eligibility to vote of these permanent residents working or residing outside Hong Kong upon their return to Hong Kong. We should have adequate time for discussion and consultation. Otherwise, these people may find that they have suddenly lost their right to vote upon their return to Hong Kong, for the Government has indeed encouraged them to work on the Mainland Requirements in this respect should not be introduced hastily, and I think consultation on this issue is essential.

Regarding the amendment of Mr Ronny TONG, I think the third point in his proposal is the most important and must be handled cautiously. He proposes "to add to statutory voter registers the listing of voters' particulars by residential addresses, so as to facilitate public inspection". I think this arrangement may easily infringe the privacy of voters. The existing requirements are very strict. When we register as candidates of an election, we will receive a CD with information of registered voters a few days later. Each and every candidate knows very clearly that the information on the CD can only be used for election purposes but not otherwise. And if the information is disclosed inadvertently, and consequently used for commercial or promotion purposes by others, this constitutes an offence. If the requirement is relaxed to make the information easily accessible by others, the information will be prone to be used by others for other purposes. Hence, I think this issue must be handled with extreme cautiousness.

The Government should review the existing system to examine whether there are problems with regard to enforcement or the system itself. I think reviews are essential, and the authorities should not go to another extreme of stringent requirements. In my view, after the review (*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

DR PRISCILLA LEUNG (in Cantonese): the public should not be sacrificed. Hence, we must be careful

DEPUTY PRESIDENT (in Cantonese): Dr LEUNG, your speaking time is up.

DR PRISCILLA LEUNG (in Cantonese): Deputy President, I so submit.

MR LEE WING-TAT (in Cantonese): Deputy President, I speak in support of the original motion and all the amendments.

After the discussion for over two months, the Constitutional and Mainland Affairs Bureau and the new Secretary seem to have a better grasp of public sentiment. In respect of public sentiment, there have been many slips and omission in the work of the Secretary — indeed it is not you but the former Secretary — and the Registration and Electoral Office (REO) in the past few years. I have spent some time studying the legislation and the report of the Audit Commission. I found that had the REO seriously addressed the problems pointed out by the Audit Commission in the report issued a few years ago, the current problems arisen would not have been so serious.

I have raised many follow-up questions, but some of the questions have not yet been answered. For instance, in the past, the Audit Commission had indicated that the REO had failed to fully exercise its examination power conferred by laws to verify, through other departments, the accuracy of the information provided in voter registration, the efforts made in this respect had been very inadequate. I have pointed out repeatedly that the law confers the REO with the power of a public statutory body, which can verify the adequacy and accuracy of registration information provided by voters with other public authorities. In this respect, the verification of information with the Housing Department, the Rating and Valuation Department and other department has been rare. The only department with which the REO makes frequent verification of information is the Immigration Department, for it has to check whether or not the person has passed away. Its work has been very clear in this respect. In respect of information verification, there must be negligence on the part of the REO. It must shoulder the responsibility.

The second point is about the sloppiness of random checks. Some colleagues have criticized the presentation of the voter register in table form, yet I will not argue about this. However, there is no reason that the REO would not harbour any doubt when it discovered from the simplified table that 13 voters with seven surnames had registered under the same address. Similar cases abound over the years. How much efforts have the REO made in this respect? What achievement has it made? The answer is obvious to all. It may have taken measures to address the issue, but the approach is considered less than stringent and no prosecution has been made. Hence, I think the REO cannot escape the blame in this respect, for it has been negligent in actuality.

I have said that I hope the Secretary will stop making remarks like "checks will definitely be carried out when it is found that seven voters with four surnames are registered under the same address". I really hope that you will not mention these figures again, for you have mentioned this again today. If cases involving seven voters with four surnames registered under the same address will definitely be checked, I may as well carry out vote-rigging by limiting it to six voters with three surnames. People may attend to details in vote-rigging. They may use persons with the same surnames to register under the same address, say putting a surname CHAN person in the Chan's household. They may work on the details for vote-rigging. If it is difficult to include persons with different surnames in the same household, they may include one in each household. Hence, once again, I urge the Secretary to stop giving remarks about conducting checks on cases involving seven voters with four surnames under the same address. Otherwise, law-breakers will resort to more scientific and sophisticated methods in vote-rigging. If you say this again, I will throw things at you. I will not do so, I am just kidding.

Deputy President, I would like to put forth another point. The measures now introduced only targeted at voters, yet as I have said, this can only "get the chicks but not the eagle". If the head of household or the owner intends to get involved in vote-rigging, they must co-operate with the people concerned. As the Secretary is conducting investigation in this respect, I hope you will work hard to communicate with the police and the Independent Commissioner Against Corruption at catching the mastermind behind the scene rather than only "getting the chicks but not the eagle". This phenomenon of suspected vote-rigging is not only a matter about voters, but whether any organizations may mastermind or may be involved in vote-rigging activities, as I have mentioned before.

I hope the Secretary has also read the report of the *Next Magazine*, though I do not have any evidence that the report in the *Next Magazine* is true. According to the report, some Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC) have urged members to make an effort in voter registration at their joint meeting or social gathering. Voter registration is a legal conduct, and I am not saying that it is illegal. Yet, what a coincidence that the case in Mei Foo, the unit involving 13 votes with seven surnames is the registered address of a member of the CPPCC. I have no evidence to prove that he involves in illegal activities. However, when we put all the information together, we cannot take things lightly. We should

ask whether certain people from the Liaison Office of the Central People's Government in the Hong Kong SAR (the Liaison Office), the provincial committee of the CPPCC or persons in other capacities have taken part in boosting the number of registered voters, such that some individuals but not all people have gone overboard. What do I mean by "going overboard"? That is when the "Grandpa" demands them to increase the number of registered voters and they fail to achieve the target, they will arrange their relatives and friends to get involved in vote-rigging. If you ask me whether this is possible, I would say that we cannot rule out this possibility.

Though I do not have much speaking time left, I have to put forth one more point. In the case of WONG Chun-ping, it is right that he is a legal resident and is eligible to stand for election. However, I cannot help but think, through what procedures can he, being a staff member of the Liaison Office under "one country, two systems", and returned to reside in the Mainland for over three years, come to Hong Kong and become a permanent resident. Now, we are not sure whether he has come to Hong Kong under the Quality Migrant Admission Scheme (the Scheme). Yet, does it mean that persons who have been the secretary in leftist organizations may migrate to Hong Kong via the Scheme? Whenever we ask the Secretary for Security about this, he would only say he would give no comment on individual cases. When an increasing number of such cases are found, people of Hong Kong will inevitably worry whether "one country, two systems" has been eroded.*(The buzzer sounded)*

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR LEE WING-TAT (in Cantonese): Thank you, Deputy President.

MR FREDERICK FUNG (in Cantonese): Deputy President, the latest District Council Election had ended. What are the messages that have left behind? Is it the "disastrous defeat of the democratic camp" and the perish of political stars, or the contempt for offering snake feasts, vegetarian feasts, moon cakes, rice dumplings to local residents, or the struggles with the enemies and "lofty and vague" principles? There are indeed too many unsubstantiated comments. On the contrary, the steps taken to move forward and implement genuine measures

are not enough and the pace is too slow. Certainly, people engaging in politics should reflect deeply on these issues. We in the democratic camp should rally our force, restore unity and revamp our thoughts, so as to show our commitment to society and our capability to be in rule in future.

However, Deputy President, to the surprise of the public, the current District Council Election has left behind a large number of vote-rigging incidents. These incidents have seriously tainted the good reputation that elections in Hong Kong have all along been honest, fair and just. They also revealed that the existing voter registration system is problem-plagued or there are evidently corrupt practices.

Luckily, laws in Hong Kong are still effective in monitoring the situation. However, for deliberate actions taken behind the scene or the secret manipulation of the overall situation by influential people, the Administration is at its wit ends and can only restrain in silence, thus leading to the present predicament. The vote-rigging incidents have been carried out in a haughty, overbearing, flagrant and blatant manner, impeding the result of the current District Council Election.

Deputy President, regarding this incident, the response of the Chief Executive had been most disappointing. When reporters asked the Chief Executive about the large scale vote-rigging conduct in the District Council Election, he responded in a rash and almost flippant manner, stating that there was nothing unusual with the incident. He has intentionally and inadvertently brought the fair and just core values of Hong Kong to naught. In that case, how would people manipulating the election and pulling the string behind the scene scare him? How would they not take more drastic actions?

Regarding the inadequacies and demerits of the voter registration system, does the Government really know nothing about it or is it just condoning silently? In fact, it had been pointed out in the Director of Audit's Report No. 47 issued in October 2006 by the Audit Commission, and I quote, "Without verifying the residential addresses of electors, there is insufficient evidence to ensure the accuracy of the GC final registers. In extreme cases, the fairness of an election may be impaired due to possible vote planting." The Audit Commission had recommended the Registration and Electoral Office (REO) to consider implementing a checking system to verify the residential addresses of registered voters recorded in the registers on a sampling basis. However, over the past few

years, how many times have the authorities conducted such checks, how much resource and manpower have been put in to complete the registration and address verification of voters?

The Secretary may explain later that at present, the Electoral Registration Officer will examine the final register annually to identify registered addresses with seven or above voters for verification. Since 2006, 2 250 addresses of registered voters have been checked, involving 29 000 voters. Are such checks adequate? How many cases are related to the manipulation of legal loopholes which cannot be unplugged due to inadequate checks or insufficient manpower of the authorities, to control the results of this Election? It is particularly evident with the disclosure of the large-scale vote-rigging incident lately. The ridiculous situation of "one unit, seven surnames, 13 persons" is really alarming.

Deputy President, you are also involved in political party work. Actually, in respect of political party participation and the District Council election, we all know that work at district level is tedious and difficult. This is particularly so for the democratic camp, for our resources are inadequate. Due to the prolonged distortion in politics, the political landscape may not necessarily reflect the true picture, for the support gained by political parties may not be in proportion with the seats they secure, which have a bearing on the result of the discussion in the legislature. A case in point is the appointment system adopted under the District Councils.

We have been working diligently and humbly, earning every vote with great efforts. We hope that a fair, just and open election system is put in place, so that the choices and preferences of the public are protected under a fair competition, and that they can truly express their wish and select the candidates they preferred with their votes. However, some people take the shortcut by playing tricks with the particulars of election. They exploit the loopholes found in the verification of voters' addresses to plant votes, thereby ruining the most important core value in a democratic system.

Hence, the authorities should restore the just and fair reputation of elections. More importantly, it should ensure that elections can truly reflect the choices and preferences of voters. The Government must right the wrong and be fearless of those in power. It should review the entire election system to identify potential loopholes and reform the election laws. Regarding the vote-rigging

incident this time, the Government has just announced the remedial measures, including requiring voters to provide address proof for first-time registration and change of addresses, imposing penalty on voters failing to report changes of addresses to the REO, increasing checks on voters' registered addresses with "seven voters in one unit" or "four surnames under the same unit". The authorities should also adopt effective measures to verify the addresses of existing voters, which include cross-verification carried out by Registration Officer with other government developments.

Deputy President, I so submit.

MS EMILY LAU (in Cantonese): Deputy President, I speak in support of the motion moved by Mr KAM Nai-wai.

Deputy President, as revealed by the Secretary earlier, with more than 1 500 letters issued and more than 1 700 cases being followed up, the Administration has to handle 3 000 or so cases in total, including those referred by the Democratic Party. In our meetings with the Administration (the latest one was held with the Secretary and his colleagues last Wednesday), we urged the Administration to put in adequate resources in its investigation work and be determined to arrest those who engaged in vote-rigging or illegal and corrupt conduct. At the same time, we hope that people will not feel so annoyed that they even refuse to register as voters or cast the vote. The Administration has to strike a proper balance in this respect.

We have to endeavor to restore people's confidence in this problem-plagued electoral system. In releasing the results of the University of Hong Kong's latest opinion poll yesterday, Dr Robert CHUNG attributed the decline in people's confidence to vote-rigging cases and the upcoming coterie election for the Chief Executive. True as his advice may sound, we really hope that the Administration can handle the issue with great caution.

Deputy President, with the Legislative Council Election set to take place in September, time is really running out. At the meeting of the Panel on Constitutional Affairs held on Monday, we asked the Secretary to review the timetable in general. If the polling day is in September, there is a need to publish the final voter register, as well as the provisional register; people should

be given the time to lodge objections, and investigation has to be conducted. There may be some delays, and it seems that new registrations may not be accepted by February or March. If that is the case, the Administration has to make it clear to the public and encourage early registration. Deputy President, some people would definitely prefer to have a longer registration period, but if time is running out, the last thing I wish to see is that when the Secretary submits a proposal to the Legislative Council by March or April, things are messy with no positive outcomes, and the system cannot be improved. I believe this is the worst scenario.

I cannot see any urgency in the Administration's proposal to amend the law to include penalty provision. Yet, as pointed out by many people, if one moves to a new residential address but forgets or refuses to update his voter information, he will be penalized for casting the vote. This measure is too stringent. Instead, we hope that the authorities would encourage these people to update their voter information.

Just now, Mr LEE Wing-tat suggested that checking should be conducted on 3% to 5% of voters, perhaps the Administration may further raise the ratio to 10%. It may also conduct a cross-matching exercise with the Housing Department, the Hong Kong Housing Society, the Transport Department and other government departments under the consent of the Privacy Commissioner for Personal Data. These are all effective measures that can be adopted.

Deputy President, the Secretary also mentioned that by January or February next year, letters would be sent to 3 million or so registered voters in Hong Kong, reminding them of the new functional constituency (thanks to the Democratic Party and those who support the addition of the 10 seats). Deputy President, in our meeting with the Secretary last Wednesday, we proposed that an extra message could be added in the letter, that is, voters could be asked to report any anomaly in their addresses. After sending out the letters, the Administration should be able to obtain a lot of replies through its website. We hope that they would seriously consider our proposal, and take our advice on how to make better use of the letters to be sent to voters.

Deputy President, regarding Mr Ronny TONG's proposal of regulating all cases by a single ordinance, this may not be done so easily. Just now, the

Secretary said that there is currently an ordinance governing the Electoral Affairs Commission, and one on illegal and corrupt conduct. We proposed to the Secretary last Wednesday that this kind of cases be all pursued under the ordinance regulating illegal and corrupt conduct, as it involves a person declaring a falsified address and proceeding to vote. Under the present practice, the police would look into the part concerning the declaration of a falsified address; and if that person has really voted, the Independent Commission Against Corruption (ICAC) would follow up the investigation. As the transfer of information across departments takes time, thus affecting the efficiency, all relevant cases had better be regulated under the legislation against illegal and corrupt conduct. Therefore, in that meeting, we urged the Secretary, while this may not be done in a few months time, in the long run, the whole investigation should be undertaken by a single department (the ICAC); in that case, anyone who makes false statement during voter registration will violate the law.

Deputy President, in our view, there is a need to step up promotion during the process to encourage people to register as voters and provide correct information. Deputy President, what is the best promotion? Just think, if there are a few sensational cases, with people being arrested and trials to be held, there will certainly be a stir with the commencement of a trial. I also concur with the views of some Honourable colleagues that apart from the law-breakers, the masterminds behind the scene should also be brought to justice. The foreign media claim that Beijing is the string puller, if you believe in that, then in the words of a Mainland official broadcast in television news yesterday, "mother pigs can climb trees".

I believe the media would only make such claim after they have got hold of solid information. We hope that the authorities should, during the investigation, find out who is causing all these troubles behind the scene, which have dealt a big blow to our system. If there are any major findings, I believe the incumbent Secretary will still be in office (this is really hard to tell); yet whoever is in this position should spare no effort to conduct a full investigation. If eventually only the perpetrators are punished, many people would not be satisfied, as in the case of Mr Albert HO being assaulted years ago, only the perpetrator was arrested and people wondered what had happened to the mastermind.

In my view, the trials should be heard in a high profile manner to attract wide attention; however, we should not scare the public, making them feel disgusted or too frightened to vote. Certainly, we would not like to see this scenario. I hope that the Secretary can strike a right balance in this regard.

I so submit.

MS AUDREY EU (in Cantonese): Deputy President, the Chief Executive's remark that there is "nothing unusual" after the media has reported on the problem of vote-rigging has highlighted the crux of the problem, that is, vote-rigging has long existed. I have even heard that as many as 300 000 votes were involved in the current incident. However, over the years, "zero cases" have been identified, "zero prosecutions" initiated and "zero misrepresentation" discovered. Apart from the hundreds of cases provided by the Democratic Party as mentioned by Ms Emily LAU earlier, the Civic Party has also provided more than 500 cases to the authorities to follow up in due course.

Since the problem has been unveiled by local media, more and more vote-rigging cases have been disclosed, thereby arousing the attention of foreign media, so the SAR Government can no longer remain silent. Secretary Raymond TAM has thus proposed five measures, whereas Mr Ronny TONG has raised five proposals in his amendment. I would like to remind Honourable colleagues that we are not asking the Administration to adopt all his five proposals at once. We just want Members to examine how these proposals can be implemented, as implementation is often a problem in itself. For example, should all election-related legislation be put under an umbrella ordinance? Or should we adopt Ms Emily LAU's idea of putting some issues (such as the Electoral Affairs Commission or the corrupt conduct in elections) under a single ordinance? Hence, we are not requesting for a full implementation of Mr TONG's proposals, we just ask you to examine the issue in this direction.

To me or to the Civic Party, our biggest worry is that the Government cannot prescribe the right medicine to curb vote-rigging, and on the contrary, law-abiding people are wrongly targeted. Take one of the proposals of Mr Ronny TONG as an example, in fact, Secretary Raymond TAM has also put forward this proposal, that is, newly registered voters should be required to provide residential address proof starting from 1 January. As a matter of fact,

the proposal of requiring the applicant to provide address proof can hardly be disputed, because if the authorities do not have such power, people can arbitrarily declare an address. Hence, the authorities should exercise such power as necessary. However, in exercising this power, will those who really wish to register as voters be deprived of the right to do so? In this connection, the Secretary told us that the application will be handled with flexibility. For those who cannot provide any address proof, they can make a declaration to verify their declared addresses. Yet, making a declaration may still be difficult for the grassroots who have no permanent residences. On the other hand, if people intend to plant votes, it is not difficult for them to provide address proof. Hence, the key is how the authorities will implement the measure without ending up with a blunder with law-abiding people being wrongly targeted.

In addition, Secretary Raymond TAM's proposal that voters would be penalized for forgetting to update their declared addresses will only affect the law-abiding people. While it is not unusual for members of the public to forget to update their new address, those engaged in vote-rigging will not be deterred by the measure. We agree in principle to some of the Secretary's proposed measures, but we have reservations as to how they are put into practice.

I would prefer stricter law enforcement to rigid voter registration arrangements. First of all, given the importance of conducting sampling checks on voters' information, the current sampling ratio of 3% to 5% is a far cry from creating any significant deterrence. I hold that at least 10% of voters should be checked. Should there be solid evidence from the checks of the prevalence of vote-rigging, deterrent actions have to be taken. No one will take a few hundred dollars of fine seriously, particularly those who engaged in vote-rigging as someone will pay the fine for them. Hence, the penalty should certainly be stringent.

Members of the public must also be fully engaged in deterring vote-rigging. Public access to the provisional voter registers has to be simple and convenient. Public access is not easy right now: the registers are open for access for two weeks only; one has to access them in person; and one can only check the names of voters but cannot conduct a search based on the address. Hence, the authorities should adopt measures to enhance transparency or improve public monitoring, so that people may take note of any abnormalities in connection with their address or that of their neighbours; or any discrepancies

regarding the names of some registered voters. If such cases have been identified, people may take the initiative to report. On the contrary, the authorities' prior announcement that checks will be conducted for addresses with voters more than a certain number of surnames cannot serve the purpose of deterring vote-rigging. People who engage in vote-rigging would be careful in planting voters with the same surnames. If the authorities announce that checks will be conducted for addresses exceeding a certain number of voters, say checks will be conducted if a unit has more than five voters, the persons involved in vote-rigging will naturally not register more than five voters, or they will at most register five voters. Hence, the prior announcement that checks will be conducted if certain threshold is met cannot solve the problem at all.

With regard to Dr Priscilla LEUNG's speech just now and her question raised in past meetings on whether Hong Kong people living in the Mainland, having emigrated abroad, not ordinarily residing in Hong Kong or having no principal address in Hong Kong may come back to vote, I think the Administration owes us a clear explanation. As for the complaint that voters are carried by coaches to the polling station on the election day, the Secretary should advise us on the legality of the practice in his reply later on. Thank you, Deputy President.

DR LAM TAI-FAI (in Cantonese): Deputy President, with the Government's strenuous effort in promoting voter registration over these years, the number of registered voters has reached a record high this year, exceeding 3.5 million. With a voter turnout rate of 41.4% in this year's District Council Election, over 1.2 million people had voted, indicating that there is a growing civic awareness among Hong Kong people. I believe this phenomenon is welcomed by members of the public and the Government.

Regrettably, behind the fair silhouette hides an ugly face. The number of vote-rigging complaints lodged after the Election is also unprecedentedly high. The Registration and Electoral Office has received about 3 800 complaints on suspected vote-rigging, of which about 1 400 people are under investigation. It remains unknown as regards the number of people who will be convicted and be penalized. It is my wish that the Government will expedite the investigation.

As indicated by the suspected vote-rigging cases unveiled, the tactics adopted are multifarious and highly imaginative. As Honourable colleagues have mentioned, apart from cases of multiple voters with different surnames registered under one address, there are also ghost voters who live in non-existent addresses, as well as voters who live in cinemas, buildings and warehouses that have been torn down. Deputy President, vote-rigging is highly unethical in the sense that the long-established reputation of our honest and clean elections has been tarnished, thereby affecting the acceptability of the election. It would also shake people's confidence in the electoral system, upset social harmony and stability, as well as blemish Hong Kong's international image. Besides being illegal, vote-rigging is a barbarous attempt to tamper with the results of an election in a violent manner. If vote-rigging is allowed to escalate to the extent that it has become "nothing unusual" as in the words of the Chief Executive, it will have serious impacts on the election results, the defeated candidates are unfairly treated and public funds are wasted as re-election may have to be held in certain constituency areas.

Obviously, as the motive behind vote-rigging is very likely to be linked to enormous tangible or intangible interests, the Government has to act according to the law with no compromise and tolerance. It must increase the penalty for organized and intentional vote-rigging if it is to deter such practice. Deputy President, I believe that the Government has well understood the problem and thus, it has proposed some enhancement measures. While this is desirable, I think the proposal of requiring people to produce address proof when they register as voters with effective from 1 January is implemented too hastily, such that many problems that may arise have not been taken into consideration. In my opinion, there should be sufficient public consultation, and work has to be done to weigh the pros and cons of the proposal before determining its feasibility with respect to society's current development and conditions.

The existing provision that a voter must ordinarily resides in Hong Kong and that his registered residential address must be his only or principal residence has become outdated under present circumstances. Given the Government's recent effort in encouraging Hong Kong people to work, reside or retire in the Mainland, those who do so should no longer meet the requirement of ordinarily residing in Hong Kong. As these people work or reside in the Mainland to tally with the Government policy, it is both unfair and ridiculous to deprive them of the right of vote. This makes me think of the situation of the industrial sector.

In order to tie in with the State's policy of upgrading and restructuring, members of the industrial sector relocate their machines to the Mainland, and in doing so, they cannot enjoy the depreciation allowances for machinery. This is equally absurd and ridiculous. I fully understand this kind of mentality, but it is awful to see that Secretary Raymond TAM has inherited this kind of mentality in tackling election matters.

As a matter of fact, many grass-roots people are now living in "sub-divided units" or cubicle apartments, the Secretary may not be aware that they have to move elsewhere every two or three months because of work or rent hikes. In other words, they do not have a permanent address and they wander around. The proposal of penalizing those for not updating their addresses is unsympathetic to the conditions of the grassroots, and it is unfair to deprive them of their right to vote. As the proposed measure is to combat vote-rigging but not wrong the law-abiding people, I hope that Secretary Raymond TAM should exercise discretion in this respect so as not to deprive these people of their right to vote.

Deputy President, as functional constituency (FC) elections have long been criticized as coterie election, it is essential to ensure they are honest and clean and well recognized. At present, there are different kinds of registered voters under FC, including those holding organization votes and corporate votes. The Government needs to urge them to clarify their membership registers, whereas the Registration and Electoral Office has to check whether any of them are shell companies and de-register them accordingly. Using a shell company for voter registration is *de facto* vote-rigging. The Administration should endeavor to carry out these checks to make sure FC elections are honest and clean.

All in all, education and promotion are the keys to prevent the recurrence of the illegal conduct of vote-rigging. Whom should we educate? The targets include voters, candidates and their canvassing teams. If there is a clean and honest election, vote-rigging can be eradicated. The Government should make the canvassing team understand that if a candidate wins through vote-rigging, it is not a glorious victory; the candidate merely enjoys the fruits of others' work without taking any practical actions, consequently affecting the quality of people engaged in politics. As I mentioned earlier, voters should also be educated to say no to vote-rigging so as not to become a puppet of others. If they are coaxed to do so, they should take the initiative to report such cases as good citizens.

Finally, candidates should also be educated that they have to make solid contribution rather than resort to improper means if they are to gain voters' support and win an election; otherwise they will still be manipulated by those who engage in vote-rigging and become their puppet and cannot serve the public in an upright manner.

Lastly, I would like to remind the Secretary that before any measure is put in place, please remember that the real target should always be those involved in vote-rigging instead of the law-abiding people, bearing in mind that encouraging *(The buzzer sounded)*

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

DR LAM TAI-FAI (in Cantonese): encouraging people to register as voters is always not easy.

Deputy President, I so submit.

MS CYD HO (in Cantonese): In the United States presidential election in 2000, George W. BUSH narrowly won with 537 more popular votes in Florida, thus enabling him to get all the 25 electoral votes of the state under the "winner takes all" system. As a result, despite being outrun by GORE in the national popular vote by 544 000, BUSH was still the winner of the election with 271 electoral votes, *vis-à-vis* GORE's 266.

Later, corrupt practices and irregularities were allegedly unearthed in Florida, where BUSH's brother was the Governor. Examples of these included: voters were barred from voting as their names had been removed from the registers with no special reasons; electronic voting terminals were out of order; ballots were not properly punched; and ballots from overseas voters were counted even without any signatures. The controversy dragged on for a month or so and was taken to the Supreme Court, which ruled in a 5-4 vote that Florida's bid to recount the votes should cease. For the sake of national solidarity, GORE eventually opted not to pursue an appeal and accepted the result of the election. As the news media, academics, think tanks and the public were unconvinced of

the result, BUSH failed to win the trust of most Americans in the ensuing four years. As a result, despite being an incumbent President seeking to be re-elected after his first term of office, he only managed to win the next election with a record-low vote margin of 2.5%.

(THE PRESIDENT resumed the Chair)

In a democratic election, the outcome is decided in accordance with civilized and unbiased procedures. Procedural unfairness will give rise to allegations of illegal and corrupt conduct and erode the Government's credibility in respect of governance regardless who will be elected. If people cannot get involved in politics through rational and healthy participation, more people will be forced to take radical actions against the government, since they query the rationale of abiding the law enacted by a government coming to power through improper means. How can such a government effectively implement the law?

If a government turns a blind eye to the illegal and corrupt conduct related to elections, it is putting the credibility of its governance in jeopardy, and even if it can resume power, it cannot enjoy stability. This is more so in the case of our Government, which does not come to power through a democratic election, and it has no public mandate. Yet, our Chief Executive reacted strangely. His remark that the incident is "nothing unusual" is incompatible with his status of being a politician, as he claimed himself to be. He has no idea of how to get his job done. If the Chief Executive is so indiscreet in upholding the Government's credibility, people may wonder whether he regards himself to be Vladimir PUTIN of Russia.

President, the Administration's currently proposed measures, such as verifying registered addresses or conducting sampling checks, are just secondary work. More important still is the gate-keeper's role performed by the Registration and Electoral Office (REO). It is baffling that registrations in which the declared address is the name of the constituency area were accepted as valid, and that there were only 200 similar cases being followed up in a year. If front-line staff (especially those responsible for inputting data and compiling voter registers) are familiar with the strict guidelines set out by the management of the REO in handling the first stage of work, and if junior officers comply with

the guidelines as requested by the REO, and random sampling checks are conducted to see if front-line staff have complied with the guidelines, the voter registers will be more properly compiled, and the Secretary's proposals to conduct regular sampling checks or require voters to produce address proofs may not be necessary. These proposed measures should be supplementary but not essential in nature, as those involved in vote-rigging can still circumvent them with fake address proofs. Sampling checks will only catch those who have made mistakes inadvertently, while those who have made well planning and intentionally engaged in illegal and corrupt conduct cannot be identified.

In the last Panel meeting, we were told by the Administration that voters could still update their registered residential addresses via fax. Despite complaints that voters' signatures are pasted to the fax documents to change their registered addresses to another constituency area, without the knowledge of the voters concerned, the REO still acts irresponsibly by accepting the change of address by fax.

Next year, the Legislative Council Election will be held, to which the public will attach greater importance. I recall that in the election held in 2004, some polling stations had to be closed for more than an hour due to insufficient supply of ballot boxes, and voters who got irritated for having to wait outside the polling stations simply turned away. Coincidentally, the candidate winning the final seat in that election did so with a very narrow margin of 0.17%, to the dislike of many voters in the ensuing four years. When people realize that an election held in a civilized manner is nothing but a hoax, many of them will take radical action against the Government, which I believe is the very last thing we would like to see.

Lastly, the Secretary remarked earlier that he is against Mr Albert CHAN's bid to condemn Stephen LAM, the former Secretary for Constitutional and Mainland Affairs. Since the Secretary has just taken up this post, he is not held responsible, but if he goes on suggesting that his predecessor should not be held responsible as well, does it mean that no one is to take the blame? Can the Secretary please give us a clear reply later.

MR CHEUNG KWOK-CHE (in Cantonese): President, facts rather than remarks by the Chief Executive or the Secretary, should offer a litmus test on

whether Hong Kong's electoral system is fair, open and just. Even if the system is fair, open and just, any deviations in respect of implementation will tarnish the reputation of our electoral system.

The spate of recent cases alleged to involve vote-rigging, bribery or corrupt conducts may not be unusual in our society. Nevertheless, when commenting on media reports on suspected vote-rigging, Chief Executive Donald TSANG, as head of the SAR, remarked in a rather frivolous manner that there was nothing unusual after all, and that it was normal for people to feel upset after an election was held. I am really astonished that the Chief Executive has made such a remark on such a serious topic.

Despite the absence of a specific provision against vote-rigging in our current electoral law, people declaring a falsified address when they register as voters should be liable to a criminal offence. Hence, government officials should by no means condone this kind of conduct, nor make casual comments on election-related illegalities without first verifying the cases. They should not make rash comments without give due regard to their positions held.

Furthermore, I also think that the Registration and Electoral Office (REO) has been derelict of its duties in handling the suspected vote-rigging cases in this District Council Election. As the REO has received at least 10 000-odd returned poll cards due to incomplete address in connection with this election, why did it not take the initiative to follow up and investigate, but only reluctantly and involuntarily do so after the media had disclosed some flats alleged to be involved in vote-rigging? With a work attitude of "less work, less error; no work, no error", how can the REO guarantee that our elections are fair and just?

President, the current voter registration system is really perfunctory and, as pointed out by Honourable colleagues today, there is a lack of a monitoring mechanism. Basically, members of the public can just fill in any address, even if the address supplied is non-existent, the REO will still send out the poll card. In other words, after a person has gone through the registration formality, he will only have his identity card checked when he casts the vote. There is no way to verify whether he really resides in his declared address.

Therefore, if a person is required to provide an address proof when he registers as a voter or when he, as a registered voter, applies to update his

declared address, it will definitely enhance the fairness and impartiality of the elections. I welcome the Secretary's bid to respect public opinions by accepting the suggestion that an address proof should be provided when one registers as a voter. This may cause some nuisance to voters and may discourage them from registration, but on balance, impartiality of elections should never be compromised. In view of the diverse opinions raised, I agree that the Government should listen to more views before making a final decision.

President, with the impending Legislative Council Election, the Government has to expeditiously plug the loophole in the current voter registration arrangements, step up enforcement and spare no effort in identifying voters with falsified addresses. I am glad to see that the police and the Independent Commission Against Corruption have been doing what is required of them over the month. Their effort, though belated, is integral to restoring voters' confidence in our electoral system.

President, I so submit.

MS MIRIAM LAU (in Cantonese): President, although the current District Council Election has ended more than a month, the audience has not dispersed even though the play has come to an end, which is rather unusual. In view of the vote-rigging allegations and the unprecedentedly large number of questionable ballots, matters relating to the Election are still high on the media's radar and are creating quite a buzz among the public, with the concern that the impartiality of our election is at stake.

President, a fair and impartial election is most vital to the healthy development of democracy, and this in turn hinges on the accuracy of the voter registration information. If the information of the voter registers is neither complete nor accurate (including the element of vote-rigging), the election result will be distorted, which will in turn seriously affect the recognition of the election result and undermine people's confidence in the election, as well as run contrary to the true meaning of democracy. Therefore, the Liberal Party holds that the Government is duty-bound to ensure the accuracy of the information in the voter register, so as to combat vote-rigging.

Regrettably, even though the Director of Audit's report published in 2006 had already reminded the Registration and Electoral Office (REO) of the serious loopholes in the voter registration system that might open the way for vote-rigging, the REO had taken the matter lightly without paying any heed, leading to the present predicament. As the authorities are to blame squarely for being derelict of duty, it has to make an effort to patch up the system with a view to restoring people's confidence.

The Liberal Party welcomes the numerous remedial measures suggested by Secretary Raymond TAM earlier, such as beefing up the sampling checks on voters' registered addresses, and so on. As a matter of fact, should the REO really adopts the measures as claimed, that is, to take pro-active checks of cases in which more than a certain number of voters or surnames are registered under a single address, even if not all cases are duly followed up, I believe the current problems identified will not emerge at all; and even if there are still problems, the scope may not be so extensive.

Regarding Secretary Raymond TAM's proposal on penalty provisions, that is, voters who fail to update their registered addresses will be penalized, and the proposal of requiring applicants for first-time registration and voters for updating addresses to provide address proofs, the Liberal Party urges the Government to study the proposals carefully, so as to ensure that the measures can be effective in the first place, and secondly, they will not cause nuisance to the public, or at least they will not cause too much nuisance to the public. The most important point is that the measures will not discourage people from registration as voters or from voting.

Actually, quite a lot of people will only register as voters when they happen to see roadside counters set up by the REO or during the voter registration campaign. Requiring them to produce address proofs during the registration process might cause nuisance and turn them away. Allowing people to complete part of the registration first and submit address proof afterwards is even more troublesome, as they may forget to do so after they have returned home. To them, the requirement is too troublesome.

Moreover, residential address proofs are usually not readily available, and the relevant document normally contains important particulars of an individual, which should not be readily given to a third party or allow a third party to make a

photocopy. Given all these potential problems, the authorities have to exercise caution and strike a good balance in figuring out a solution.

Last Thursday to Saturday, the Liberal Party conducted an opinion poll on the topic of voter registration. Although 75.8% of the 682 individuals successfully interviewed agreed in principle that residential address proof should be required for voter registration or update of registered addresses in a bid against vote-rigging, 40.7% of them said that they might not want to register as voters should such measure be put in place, whereas 47.5% opined that the impact on them was minimal. This meant that roughly half of the respondents indicated that the requirement had an impact on them, while another half of the respondents thought otherwise.

Their views were also split over the Government's proposal to penalize voters for not updating their registered addresses, with 44.1% of them support the proposal and 42.6% against the proposal. Therefore, the Administration needs to take these views into account cautiously to see if any fine-tuning can be made to its original proposal.

President, having a simple and convenient voter registration system is highly conducive to encouraging registration. The Director of Audit's report mentioned above merely recommended that the authorities might require voters in doubtful cases to provide supporting evidence for verification purposes, rather than making such evidence mandatory for both voter registration and update of registered address, as currently proposed by the Administration.

The current proposal is like searching every student entering the classroom just because two of them are naughty, even though the remaining 98 are well-behaved. It is my wish that the well-behaved should not be implicated when action is to be taken against the naughty ones.

The Liberal Party holds that the authorities should not cover up its failure in verifying the accuracy of the information in the voter registers by subjecting members of the public to a set of procedures that are neither necessary nor justified.

On the other hand, under the current system, no change is allowed to be made to the voter registers four months prior to the election. If people want to

register as voters or update their registered addresses, they need to do so at quite an early stage. Yet, according to the opinion poll of the Liberal Party, people would like to see changes to such arrangements.

According to the opinion poll, 67% of the respondents were of the view that those aspiring to become eligible voters for an upcoming election should be allowed to complete the registration shortly prior to that election (say a month before it), as long as they are able to produce their residential address proofs. People are inclined to be lazy, they will not take actions until the very last minutes. This explains why a shorter time gap between the registration period and the date of the election is preferred.

Therefore, the Liberal Party holds that a dual-track approach should be adopted for the voter registration system, under which residential address proof is in general not required for voter registration except for suspicious cases identified in the sampling checks. The authorities should also take the initiative to verify the information of the voter registers to facilitate investigation into suspicious cases. The authorities really have to take action instead of mere talk.

Of all the amendments to be moved to today's motion, we fully support the one proposed by Dr Philip WONG. As for what the Government should do with respect to the right to vote of permanent Hong Kong residents who need to commute across the border frequently or have emigrated abroad (*The buzzer sounded*) their right to vote as enshrined in the Basic Law should never be deprived of.

PRESIDENT (in Cantonese): Ms LAU, your speaking time is up.

MS MIRIAM LAU (in Cantonese): Thank you, President.

MR ALAN LEONG (in Cantonese): President, the vote-rigging cases recently found in the District Council (DC) Election in Hong Kong have been covered by *Wall Street Journal* in the United States. Why would such cases turn into a scandal of international concern? As indicated by government statistics, over 3 800 people have been involved in the suspected vote-rigging complaints

received since this DC Election, with more than 1 000 people from many Constituency Areas (CAs) subject to investigation. All this shows that there is almost a "vote-planting field" nearby. Thanks to the disclosure by the press, we have come to know that these suspected vote-rigging cases do not simply involve voters forgetting to report changes of their residential addresses after home removal, but their deliberate false declaration of residence in certain CAs.

President, with suspected vote-rigging cases on such a large scale, people cannot help but ask, why is this DC Election marked by a sudden emergence of several thousand law-breakers? Is it just a coincidence that the residential unit suspected of vote-rigging is owned by a mainland representative of the Chinese People's Political Consultative Conference, or has vote-rigging become an organized illegal practice? Does the Electoral Affairs Commission (EAC), being an independent gate-keeper, exist in name only? And, how can Stephen LAM, the former Secretary designated to handle constitutional affairs over all these years, refuse to assume responsibility?

According to the Electoral Affairs Commission Ordinance, the functions of the EAC are to oversee the voter registration system, as well as determine and review the demarcation of constituencies for Legislative Council elections and DC elections, so as to ensure that elections will be conducted in an open, honest and fair manner. However, this scandal has brought to light at least three blunders on the part of the Constitutional and Mainland Affairs Bureau and the EAC. President, the first blunder is the voter registration and verification. As we can learn from the Director of Audit's Report Number 47, the Registration and Electoral Office (REO) under the EAC is merely a "photocopier", meaning that it only inputs whatever information registered by voters on voter registers without any checking of dubious cases. As pointed out in the Report five years ago, there was no evidence indicating that the REO had verified voters' identities; neither was there any evidence indicating that the REO had carried out any checking on whether registered voters should be disqualified from being registered as voters. Worse still, the REO even turned a deaf ear to the Audit Commission's advice on vote-rigging, thus condoning registration with falsified information for all these years.

President, the second blunder is the design of CAs for DC elections, which serves as an "accomplice" to vote-rigging. The pan-democratic camp has long been advocating the expansion of CAs for DC elections, so as to avert the return

of DC members by only a thousand and several hundred votes. The smaller the CAs, the more susceptible they are to orchestration. By registering voters in CAs in which the candidate has a high chance of winning or can be elected uncontested, the candidate can increase his chance of winning a seat. This is a very simple truth.

In the case of Legislative Council elections, since the constituencies are larger, tens of thousands of votes may be needed for getting one seat, hence, it is relatively more difficult to influence election outcomes through vote-rigging. On the contrary, the victory or defeat in DC elections hinges on a margin of one or two votes. Therefore, the planting of one vote may affect the DC election outcomes. Nonetheless, it is a pity that the Government has paid no heed to the proposal of expanding CAs over all these years.

President, what is the third blunder? In demarcating CAs for this year's DC Election, the EAC has been criticized for unfairness as in the past. An apt example of unfairness involves the redevelopment of So Uk Estate and Lei Cheng Uk Estate before the DC Election. The redevelopment had led to a reduction in the numbers of residents in these two estates to 3 100 and 13 000 respectively, making them unable to form two individual CAs. Hence, it was all the more reasonable to group the two estates together to form one single CA. Instead of doing so, the EAC grouped one building in So Uk CA with around 200 residents with Lei Cheng Uk Estate to form the Lei Cheng Uk CA. Besides, the EAC, on the ground that residents of So Uk Estate had moved to Un Chau Estate, grouped Un Chau Estate with a cluster of private residential buildings to form the Un Chau and So Uk CA, thus enabling the return of two pro-establishment candidates as DC members, and averting a one-or-the-other situation resulting from the redevelopment of the two estates and reduction in the number of residents. In contrast, the electioneering campaign of a DC member from the Hong Kong Association for Democracy and People's Livelihood, who initially belonged to the Un Chau CA, had been impacted by the division of the Un Chau CA into two CAs. Such demarcation is not in line with the guiding principle of preserving community integrity. Mr CHAN Keng-chau, a pro-establishment appointed DC member previously, is a beneficiary of such an arrangement, and his identity has aroused concern recently. Inevitably, people question the EAC's political neutrality.

However, President, the Government's response to these suspected vote-rigging incidents is pretty disappointing indeed. Chief Executive Donald TSANG said "nothing unusual" initially; and in the paper submitted by the Government to the Legislative Council later, only the need for enhancing the relevant mechanism was mentioned. Evidently, the Government has not admitted the three blunders that I mentioned a moment ago. It even attempts to underplay the dereliction of duty on the part of the Constitutional and Mainland Affairs Bureau and the REO over all these years. Had the Constitutional and Mainland Affairs Bureau and the REO duly discharged their duties, the situation of "one unit, seven surnames, 13 households" would not have arisen, right?

President, as indicated by the current development, the Government probably resorts to prompt actions, trying to "cut through tangled hemp with a quick knife", so to speak. It has proposed, on the face of it, decisive measures in response to public concern about vote-rigging. However, the Constitutional and Mainland Affairs Bureau needs to give a serious account to address people's concern about whether any large-scale or organized acts were involved in these incidents, so as to return to Hong Kong a set of just, fair and open electoral arrangements.

President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): President, several Members have just risen to express strong resentment at the Chief Executive's response — "nothing unusual" — to the vote-rigging problem. Some Members have even commented that his performance reflects his lack of political wisdom.

However, upon hearing the Chief Executive's response that day, I did not react strongly, as I found that his attitude is nothing unusual. Why do I say so? The main reason is that he was not returned by a fair, just and democratic election. Therefore, his feeling, if any, that all such vote-rigging incidents were marked by grave inappropriateness will actually suggest that his election to office was also inappropriate. As he was returned by an unfair and unjust election, why on earth should he strive to uphold a fair, just and democratic election?

For this reason, I rather find it normal that he made such a response. In 2006, the Audit Commission already reminded the SAR Government of the

inappropriateness in this mode of voter registration, advising the Government to expeditiously put in place a mechanism for verifying voters' registered addresses, and to identify areas for improvement. However, the Government paid no heed to the report after reading it, reflecting that it has all along lacked the determination and intention to uphold a fair, just and democratic election. Otherwise, why do the authorities only propose remedial measures after members of the public have uncovered many suspected vote-rigging cases? All this reflects that there are problems with the Government.

Therefore, I think that in our discussion today on what remedial measures should be taken, the first important direction is that we must completely eradicate any electoral systems that are unfair, unjust and undemocratic, including functional constituencies elections and coterie elections for hand-picking the Chief Executive. Or else, we cannot possibly bring forth any fair, just and democratic election.

Apart from this, what is more important on the other hand is how we should improve certain unreasonable systems. I very much agree to Mr Alan LEONG's earlier remarks. What have become of our District Council (DC) elections now? They are no longer parliamentary elections as such, but have turned into what we commonly call "village representative elections", meaning selecting one representative for each village. The "village" I refer to comprises several buildings with around 10 000 residents and votes, and a representative is to be elected by some 10 000 people. Very often, he only needs several hundred votes or even some 1 000 votes to be successfully elected. Our DC elections are no different from elections for selecting a village representative.

Hence, I very much agree that the relevant system must be improved. DC Constituency Areas (CAs) should not be so small. With an expansion of CAs, the situation will be very different. I hope that in conceiving ways to prevent vote-rigging today, the Secretary will also reconsider how to develop our constitutional system. Should we adhere to the current constitutional system or should reforms be introduced?

Third, the Secretary has remarked twice today This morning, you replied to Members' oral questions, and you reiterated just now that something has to be done to verify the voters' registered addresses. You proposed that there must be residential address proof. I very much agree to certain Members'

comment that this proposed arrangement will result in much inconvenience and arouse voters' concern. In fact, it is by no means a desirable arrangement.

Quite the contrary, I do not think that the problem lies in the provision of residential address proof. How to enhance verification is most important. If a proper verification mechanism is in place, problems associated with voters' registration of erroneous information can all be resolved, and people will not be discouraged from registering as voters by the requirement of furnishing residential address proof. In my opinion, the Secretary should seriously consider how to proceed with this. In fact, the Audit Commission already offered a direction. In my view, it is already good enough that the authorities follow its direction without having to consider other alternatives.

We opine that there must be a direction for voters' registration, one which seeks to facilitate people's registration as voters. This is a good practice in my view. If the relevant arrangement only serves to scare people away and bring them much trouble, thus discouraging them from registering as voters, our democratic progress will in turn be impeded.

Actually, voter registration is an important factor for reflecting our democratic progress. With a greater number of people registering as voters, people's aspiration for democracy can be manifested. We opine that the authorities must properly undertake voter registration, rather than hindering people's registration as voters. I hope that the Secretary can think twice.

President, I so submit.

MR PAUL TSE (in Cantonese): President, needless to say, I believe that Members must be very concerned about the fairness of electoral systems. However, I wish to do some more thinking, so as to ascertain the nature of the problem and how long the problem has existed. I wish to ascertain whether it is true that all faults lie solely with the Registration and Electoral Office (REO), as Members have said, without any other reasons. In conceiving a solution, we need to understand the crux of the problem first.

President, what can be considered as vote-rigging? In my view, vote-rigging should be defined as any deliberate arrangement involving corrupt,

unlawful or dishonest acts made prior to an election for enabling someone to be successfully elected, or for enabling voters to select a particular candidate in that particular election. And, more importantly, voters connected with vote-rigging must have cast their votes.

Among the many cases found in this election, I certainly do not have any information for ascertaining the number of those in which the reported addresses have been erroneous over all these years, and that of those involving the deliberate provision of falsified addresses for this particular District Council Election. In my view, in order to meet the aforesaid definition, the registration of incorrect addresses must not be too remote from now, and cases that happened a long time ago can by no means be regarded as vote-rigging. Certainly, any unusual arrangements that came into existence shortly before the Election can be considered vote-rigging. Therefore, I hope that when initiating investigation and prosecution, the authorities can classify various cases clearly, and as many Members have said earlier, we should refrain from dragging the innocent people into trouble, wronging the law-abiding people, and causing much nuisance to the public.

President, I am afraid that whenever we wish to ban any acts that are not considered unlawful initially, or acts which are not previously considered as significant, and whenever the Government, due to certain reasons, suddenly wishes to combat such acts with immediate law enforcement, the public will realize that acts which they do not know to be unlawful or those which they do not consider a problem are now subject to the authorities' clampdown. Therefore, we must not go from one extreme to another because this is not an attitude and practice conducive to social stability or law enforcement.

President, very often, people understand better that in applying for Comprehensive Social Security Assistance or any welfare assistance, they must state under oath or declare that the information provided is correct. In so doing, they have to bear certain criminal liabilities and any resultant consequence. However, under other circumstances, although we should also be obliged to state the facts clearly, we may hold slightly different views. Job application and blood donation are two apt examples. Before donating blood, we are required to state clearly our medical history and previous places of visit. In theory, we are required to do so under oath. However, normally we will only be more careful when material benefits or pecuniary interests are involved, because we know that

the consequence will be more serious, and that we may be prosecuted. On the contrary, if the benefit or the amount of money involved is not substantial, we may be careless and even slapdash. Blood donation is an apt example. I do not believe many people are aware that making a false declaration in blood donation will constitute a criminal offence. Certainly, the consequences in making a false declaration may be very serious, because if the blood is donated by a person with AIDS, the result is devastating.

How about elections? The right to vote has all along been a right to which people attach great importance, but meanwhile, many people regard voter registration as a civic responsibility, and not many people think that significant interest is involved. Therefore, it has been the Government's stance to encourage people to register as voters. With the advocacy of political parties and groupings, as well as the Government, people therefore register as voters in the spirit of doing you a favour. Previously, people did not consider that the registered addresses and other information provided in voter registration are very important. However, they have learnt a civic education lesson from this incident, realizing the need of addressing the problem squarely. In my view, on law enforcement, rather than "taking every bush for a bugbear", the authorities had better first ascertain the number of cases that genuinely meet the definition of "vote-rigging" and that of those left behind from history before making a choice in law enforcement and prosecution.

Second, while we wish to straighten out the relevant voter registers before September next year, we do not wish to cause too much disturbances to the public. In that case, should we consider adopting an amnesty arrangement for people to de-register any unclear or erroneous information, or any information registered out of carelessness, sloppiness or even dishonesty, so that we can spare the need of investigating into and prosecuting one case after another every time? As mentioned by some Members just now, transparency should be enhanced, so as to enable mutual monitoring and revamp the voter register arrangement.

President, more importantly, we should conduct a review of the way forward in the long run: in the several decades to come, do we want to continue to encourage people to tread the path of democratic constitutional development, and encourage them to fulfil their civic responsibility by registering as voters as far as possible? Or, do we consider that elections are susceptible to crime outbreaks and thus should be closely monitored by laws? We definitely have to take the middle course. However, I think that certain government measures are

seemingly going to the extreme. A case in point is windows falling from height. In the past, we did not perceive this a big problem. However, following the occurrence of accidents involving windows falling from height one after another, the Government turns panic-stricken and "takes every bush for a bugbear", thinking that all windows in Hong Kong invariably pose hazards. This is true in the case of hawker stalls, as well as the case of unauthorized structures. Whenever there is a massive outbreak of incidents, people are prone to think that a certain problem is serious and therefore over-react. I do not want to see this happen in the present suspected vote-rigging cases. In the past, we did not care so much, and our law-enforcement was not strict. Therefore, we should not straighten the crooked to excess this time because this does no good to Hong Kong's democratic development and law enforcement. In particular, we have to take into account of people who travel between Hong Kong and the Mainland for work, and people who retire to live in the Mainland, as mentioned by some Members earlier. I also know that there are some South Asian people, who work as security guards, have to work in different places every night, hence they have to share one correspondence address. As such, some 20, 30, 50 or even 60 people may register under one single address. When required to provide an address for registration, they may use the same address. This practice probably did not draw so much attention in the past, and people just did not care so much about it. Strictly speaking, doing so is certainly not right, but after all, this problem has existed for many years. And, not all falsified addresses are connected with vote-rigging. Therefore, a suitable balance should be struck in law enforcement and the handling of this problem, so as to avoid causing too much nuisance to the public. Thank you, President.

DR MARGARET NG (in Cantonese): President, a clean, reliable, fair and just election is crucial to maintaining Hong Kong's international reputation and public confidence.

President, initially after the reunification, many people worried how the resumption of sovereignty by the Communist China over Hong Kong would affect the elections in the territory. Therefore, many foreign organizations came to Hong Kong to monitor the 1998 Legislative Council Election. As the Election had complied with the principles of openness and fairness, many people had regained confidence in Hong Kong, or at least their confidence was less shaken. Hence, this is of vital importance.

Secondly, we have all along emphasized the importance of encouraging the public to register as voters and vote in elections, in particular, with the introduction of direct election to the Legislative Council, we have stronger desire to encourage more people to register as voters. Hence, the voter registration arrangements are very lax, and at times sloppy, lenient, or even tolerating. As it was mentioned repeatedly these days, the electoral arrangements at one point simply did not comply with the legal requirements. For example, applicants for voter registration are required to declare their address on the registration form. If they have more than one address, they have to declare their principal residence. To be eligible for voting, applicants not only have to be permanent residents of Hong Kong, they also have to ordinarily reside in Hong Kong. However, due to the lax arrangement, these legal requirements have not been enforced, resulted in today's predicament.

Mr Paul TSE just mentioned that he did not know for how long the addresses suspected of vote-rigging have been in existence. In fact, there are two types of misrepresentation: one is caused by negligence or carelessness in declaration, and the other is related to vote rigging. Vote-rigging is a corrupt conduct, which is a criminal offence.

President, as we have now entered a new stage, I think we should seize the opportunity to enhance our system and improve the administrative measures; as well as rationalize the voter registers, so as to restore public confidence. In addition to implementing reforms, we should also draw reference from other regions on how they handle such issue. Many Members have pointed out that no address proof is required for voter registration at present. Registration is also carried out rashly, as the addresses declared are too generalized, some of them even cannot be regarded as an address. For example, some addresses only contain names of housing estates. Such problems exist owing to the lack of verification. Is address proof necessary? Such proof is indeed necessary for verification. Some regions have already considered that according to the information we have on hand, the voter registers of some places are not compiled based on the voter registration information, but from other registration systems and some centralized information system.

In Britain, a consultation document on reforming the voter registration system was published recently. Voter registration in Britain used to be on a household basis (that is, the head of the household will declare the number of

voters in his/her family). However, the authorities now considered that the above system should be replaced by a personal registration system. If a personal registration system is to be implemented, do people need to register in person? If they have to do so, what problems will arise? As mentioned in the consultation document, the British authorities had considered using some established systems, such as the National Insurance system — under which everyone has an account — to compile a voter register. I have no idea about that insurance system, except that everyone has one such account.

In Hong Kong, the simplest way is by using the identity card database. The identity cards are issued to serve as a centralized registration of persons record. It is different from the system adopted by the Inland Revenue Department which requires the public to notify their address changes within a month, and failure to do so will incur a penalty. Nonetheless, the public are still required to register for any address changes in accordance with the Registration of Persons Regulations. Is it worth exploring this way?

Another problem is the compilation of the voter registers. People indeed have to register as voters four months ahead of the election. If the deadline has been missed once, one probably has to register nine or 10 months in advance next time. Many people are disappointed with the fact that voters listed in the provisional register are not allowed to cast their ballot. Take the year 2008 as an example, when the authorities announced on 2 June the election day to be 10 September, the deadline for voter registration (16 May) had already passed.

Let us take a look at the situation in Britain. Citizens are only required to register 11 days ahead of the election for voting. In 2010, for example, 500 000 people were able to cast their last-minute votes just in time for an important election there. Therefore, we should make improvements in this respect to prevent voters from missing the deadline for voter registration, such that they cannot register as voters in time. As elections are approaching, the Government should seize this opportunity to encourage the public to vote.

As regards the ordinary residence requirement, does the Government intend to let the public judge on their own whether they meet the requirement of ordinary residence? The authorities should consider advising people more specifically as to how they will meet the ordinary residence requirement for voting in the respective year. If specific rules for compliance are in place, the

public would not be so confused not knowing whether or not they have met the requirements. Also, can the authorities provide transportation, such as coaches or planes to bring citizens back to Hong Kong for voting?

The reform taken place in Britain served dual purposes. It aimed for "completeness" on the one hand, and "accuracy" on the other — that is achieving universal voter registration while ensuring accuracy in the register of voters. In fact, we can also set them as our goals. While vote-rigging should be severely punished, we should also grasp this opportunity to tidy up the register of voters in order to pave the way for universal suffrage. Thank you, President.

MR TAM YIU-CHUNG (in Cantonese): President, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) opposes vote-rigging. The DAB is also a victim of vote rigging. We have referred some suspected cases of vote-rigging to the Registration and Electoral Office for follow-up actions. Recently, the Government has actively investigated into the matter, arresting and laying charges against some people, with cases scheduled for hearing. For the time being, we do not know the investigation results, how many people have been involved in deliberate vote-rigging, how many people simply forget to report change of address after moving homes, as well as how many deceased voters were still in the voter register.

To be fair, many people are very busy and have to handle various matters when moving homes. I believe updating residential address for voter registration is less important for them. It is suggested that legislation should be introduced to require voters to report changes of address to the Registration and Electoral Office before the statutory deadline if they wish to cast their votes in the upcoming elections, and those who fail to do so will be penalized. Some people regard such regulation too harsh that it would probably scare off voters, prompting them to forfeit their voting rights eventually. Therefore, I support the Government to conduct public consultations as it is necessary to hear more opinions. To go too far is as bad as not going far enough, the Government should therefore avoid giving an impression that it always errs on the side of overreacting whenever something happens.

However, there are things that should be pushed through proactively. I heard the Secretary also mention issues like publicity. Every year, the

Government devotes much effort to promote voter registration and even lines up pop stars and singers to throw a publicity rally, calling on the public to register as voters. But such publicity drives are usually rather simple, without advising people of the areas to which they should pay careful attention when they fill in the application form; what they should do if they change addresses after moving homes, or what legal liability they have to bear for giving inaccurate information. A publicity drive generally would not bring across so many messages. It would just call on the public to make registration.

When launching voter registration campaigns on the streets, members of DAB, including me, would sincerely call on people to register as voters as it is their civil rights and responsibilities. Local residents who have not yet registered would seriously come to us for registration. Those who have difficulties would ask for our help to filling in the form. We would fill in information for them carefully to avoid errors that may make them unable to receive poll cards and thereby lose their voting rights. In this regard, we would double check carefully their information before finishing the voter registration process.

The Government has recently indicated that applicants for first-time voter registration or voters updating their addresses are required to provide address proof with effect from 1 January. I of course support this measure as information would be more accurate with address proof. However, it would also cause inconvenience to those voters who would like to change their addresses and discourage those who have difficulties in providing address proof, such as youngsters who have just reached the age of 18. As our colleagues have mentioned earlier, it would, to a certain extent, be difficult for some people — such as those living in "sub-divided units" or shared rented flat with others — to provide such information. With such difficulties, these people would probably give up and simply forfeit this right. It is out of a sheer sense of duty that they register as voters. As such, they may not bother to register if it is so troublesome. What is more, Hong Kong people tend to stay away from things that are too troublesome. Unlike other issues, voter registration is kind of civil duty.

Counting down to 1 January, there are no more than 10 days left. Is it desirable to implement these measures hastily? Besides, I think we have to raise many questions at this Council, asking the Secretary whether some measures are feasible, whether photocopies are acceptable, and which sort of documents can be

accepted as proof. We have a whole lot of further questions to ask the Secretary, not to mention the community and the general public who would be even more puzzled with what is acceptable and what is not. As a result, they would probably give up registration altogether as it is so troublesome.

In this regard, I therefore think that measures should be well thought out when implemented, so that everyone can have a clear idea. The Secretary also said that public consultation would be conducted on the legislative amendments needed for voter registration in January and February next year. As such, I suggest clarifying those issues altogether in this consultation exercise and publish a timetable, so that people can have a deeper understanding. Implementation would be more effective after a consensus has been reached in the community. Having said that, the "three initiatives" must be implemented actively. I think it is necessary for the Government to step up publicity, random checking and prosecution, and implement relevant measures proactively. With such a flurry of widespread media coverage, I believe we all should have a deeper understanding of this issue and a stronger sense of responsibility.

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

MS STARRY LEE (in Cantonese): President, the Government used to adopt a very loose voter registration system for the purpose of encouraging more people to register as voters. The system which relies on declaration by voters even allows the return of completed registration forms by fax. The Registration and Electoral Office (REO) will step up publicity on voter registration before each major election, but if we review the contents of such publicity, there is nothing to remind people the meaning of principal residential address, the liability of voters who vote in their original constituency areas after moving, and so on. The registration system is indeed very loose.

After the discovery of suspected vote-rigging cases, the Government has swung the pendulum of regulation from very loose to very strict. The Secretary said a few days ago that five stringent measures would be adopted to prevent vote-rigging, which include the provision of address proofs as a mandatory requirement when a person applies for registration as a geographical constituency (GC) elector or when a registered voter applies for change in his residential

address. Moreover, the Government proposes to introduce legislative amendments to the effect that registered voters who fail to timely report change of addresses after moving shall be liable to a fine if they vote in their original constituency areas.

Firstly, regarding address proofs, it may be impracticable to require some members of the public, particularly the grassroots and young persons, to provide address proofs. According to the Government, acceptable address proofs may include utility bills, as well as Government and bank correspondence. But for persons who are not household owners, or those who have just reached the age of 18 and live with parents, they will have difficulty in providing such address proofs.

Although the Government supplements that any person who cannot produce these address proofs may confirm his address by providing a written confirmation from the household owner or making a declaration, given the increasing trend of individualism in our society, we must ask ourselves just how many young persons would be willing to ask their parents or co-inhabitants to confirm their addresses merely for the sake of voter registration, or how many persons would go to the District Offices to make a declaration? By proposing such an arrangement, has the Government overestimated the people's enthusiasm to be registered as voters even with all these trouble?

Moreover, the Government proposes to introduce further legislative amendments to the effect that registered voters who fail to timely report change of addresses to the REO after moving shall be liable to a fine if they vote in their original constituency areas. This requirement is blatantly an over-correction. After all, I have taken part in direct elections of the GCs for over a decade, and I have been asked many times by voters, even on the election day, where they should go for voting. President, I think other Honourable colleagues may also share my experience. Many voters may be uncertain about the constituency area they belong to because such areas are relatively small and close together. Should the people find themselves liable to a fine when they vote in a wrong constituency area, I think their propensity to vote will definitely be undermined seriously.

I have also received a complaint recently involving an elderly person who received a letter from the REO after the suspected vote-rigging cases, requiring him to confirm his address. As the said voter cannot produce any utility bills as

proof, he submitted the resident card issued by his housing estate to the REO. It turns out the REO has become so strict that it refuses to accept the resident card issued by his housing estate as address proof, and requests that other information be provided, or else the case will be referred to other departments for follow up. This has really scared the living daylights out of this elderly person. From the REO's refusal to accept resident cards issued by housing estates as address proofs, we can clearly see that the Government has swung the pendulum of regulation from very loose to very strict.

All in all, the measures proposed by the Government are intended to prevent vote-rigging. While there is no denying that loopholes exist in the voter registration system, I cannot help but ask whether it is necessary for the Government to change its stance from one extreme to another?

In fact, any person who has taken part in elections, or who has an understanding of or inspected a voter register would know that even if several voters with different surnames are registered under one particular address, it does not necessarily mean vote-rigging. Many of the so-called vote-rigging cases now involve voters who have forgotten to update their new addresses after moving, or voters who have passed away. In fact, these situations are quite common. If Members conduct home visits in the district, it is not difficult to find cases involving registered voters who have passed away. As pointed out by many commentators, vote-rigging involves actual persons with names, and it is not difficult to detect and investigate the suspected cases. I believe that once the suspected irregularities are detected and investigated, the problem of vote-rigging will be addressed. Together with criminal sanction, I think a good deterrent effect will be achieved.

Moreover, the REO has proposed a number of measures to step up verification on the accuracy of registration particulars. I think if the Government can become more proactive in conducting random sampling checks — I think not many random checks have been conducted previously — the problem will be addressed.

I speak today primarily to highlight my recent observation that the Government's regulatory approach always tends to swing from extremes, that is, from relatively loose to extremely strict. The same tendency is detected in law enforcement in the aftermath of the Fa Yuen Street fire, with law-enforcement agencies adopting a diametrically different regulatory approach from relatively

loose to extremely strict. As a result, many stall traders have been affected seriously. I do not want to see a repeat of this "Fa Yuen Street Phenomenon" in respect of voter registration as the last thing we want is a complete reversal of the existing registration system from very loose to very strict just because of the sudden emergence of some cases.

President, I so submit.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, the response given by Donald TSANG the other day on various irregularities in elections (that is, suspected vote-rigging cases) is quite laughable. He said that the defeated candidates were bound to be unsatisfied with the outcome, and it was quite natural that they should seek a judicial review or appeal.

His response reminds me of a television programme I watched last night, in which a party secretary in the Mainland lamented that people were becoming smarter, having a bigger "appetite" and getting more unruly. That epitomizes the Chief Executive's mentality: Whenever there are complaints, he blames it on persons who create trouble for the Government; whenever there are complaints, he blames it on persons who do not want to admit defeat.

The pro-establishment camp cannot speak out in the Council, but there are numerous comments in *Ta Kung Pao*, *Wen Wei Po* and *the Hong Kong Commercial Daily* because these newspapers are controlled by the Communist Party of China (CPC). Under its strategy, the CPC dares not speak out in the Council, yet it makes endless noise with the media. President, please look at me.

As the Cantonese saying goes, our Government is now defending an indefensible case like "a dead chicken popping up the cooking lid" (*Mr LEUNG Kwok-hung pressed a yellow article in the shape of a chicken to make some sounds*). That is the "chicken" sounds of Donald TSANG (*Mr LEUNG Kwok-hung pressed the chicken-like object again to make some sounds*)

PRESIDENT (in Cantonese): Mr LEUNG, please continue with your speech.

MR LEUNG KWOK-HUNG (in Cantonese): That is the "chicken" sounds of Donald TSANG, both shrilling and most shrilling indeed. Nobody acts more like this chicken than the Chief Executive. He not only refuses to acknowledge the problem, but tells the world that it is nothing serious.

Secretary Raymond TAM, is vote-rigging nothing serious? As your predecessor — I mean the person who only cared about the replacement mechanism — as he only concentrated on the replacement mechanism, he of course had no time for electoral matters. In 2006, the Audit Commission has already highlighted the irregularities in elections, but this is what he did (*Mr LEUNG Kwok-hung pressed the chicken-like article again to make some sounds*)
.....

PRESIDENT (in Cantonese): Mr LEUNG, please stop making those sounds again.

MR LEUNG KWOK-HUNG (in Cantonese): No, this is an expression of views, and it is how the chicken

PRESIDENT (in Cantonese): Please continue.

MR LEUNG KWOK-HUNG (in Cantonese): It is how the chicken sounds; it is "a dead chicken popping up the cooking lid". He said no irregularities were detected. President Secretary Raymond TAM, is there any irregularity? Please provide a paper to the Legislative Council to illustrate how many cases have been investigated by the authorities previously. How could he dismiss the irregularities found in elections simply by one remark? In 2006, investigations had been conducted by the authorities on these so-called "irregularities". In that case, please submit the relevant report to the Legislative Council immediately! Moreover, why has no investigation been conducted on such irregularities from 2006 to 2010, and likewise in 2011? That is a very serious problem.

I have even heard some more laughable remarks. Some people said that overly stringent requirements would deter people from voting. That is indeed quite laughable, and it comes from the same mentality (*Mr LEUNG Kwok-hung pressed the chicken-like object again to make some sounds*). It is how the chicken sounds

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please stop making those sounds again.

MR LEUNG KWOK-HUNG (in Cantonese): It is how the chicken sounds.

Of the seats of the Legislative Council, 30 are not returned by direct elections. Do the authorities really have a high regard for the voting results of the people? In the impending "bogus Chief Executive election", all 60 Members of the Legislative Council are eligible to vote, together with a limited few of around 1 100 persons. If the authorities really have a high regard for the voting right of the people of Hong Kong, how come they do not fight for greater voting right for the people?

When it comes to investigation — I am just asking Secretary Raymond TAM to make some slight efforts in investigation; it only takes the authorities some slight efforts in investigation — it is quite simple. Secretary, instead of giving us further explanation, he just needs to hand over the suspected vote-rigging cases to the Independent Commission Against Corruption (ICAC) — there is the Election Committee — and once you hand over the information to the ICAC, everything will follow. Can he do so? He has the power to act once there are irregularities

I am asking him to hand over all suspected cases such as the one with "one unit, seven households, 13 surnames" to the ICAC, and then submit a report to this Council. Does he have the courage to do so?

The pro-establishment camp is correct in chiding him because he is not even aware of the details of such "irregularities". Ms Starry LEE is correct in saying that it is not necessarily

When I contested with CHOY So-yuk, I was aware of case of "one unit, 13 surnames, 39 people", but I just did not bother to complain at that time. It turns out that the registered address is a guesthouse, buddy.

That is exactly the crux of the problem. Whether a clear account has been given by the authorities In fact, today's motion is redundant. If the authorities refuse to account for the matter, what causes of complain do we have? Is it necessary for the authorities to conduct investigations through the ICAC? They have to make their stance clear first. They should not talk about amending the relevant arrangements because it is the prerogative of the authorities to introduce amendments.

President, I believe you also have some knowledge about the history of the Ming Dynasty. There were two well-known reform initiatives in the Ming Dynasty, namely the "Fish-scale Register" (meaning land register) and "One Whip Law" (meaning unified taxation system). The "Fish-scale Register" and "One Whip Law" were introduced as a result of the people fleeing famine or dying, as well as the exorbitant taxes and levies. Buddy, registers were compiled by the imperial government in the Ming Dynasty even well before the invention of computers. How come the authorities say that it cannot be done now? Is that not the stance of the authorities that the "five geographical constituencies referendum" was a waste of money? There is now a serious call in the community and even the pro-establishment camp considers it necessary to conduct investigations. In that case, the authorities should allocate the financial resources to conduct investigations. Mr WONG Kwok-hing always says that many kaifongs consider it a waste of \$100 million to hold the "five geographical constituencies referendum", then why do the authorities not spend \$100 million to conduct investigations, President? The Government is just "a dead chicken popping up the cooking lid".

President, it is the fault of the Government that the constituency areas are getting smaller and smaller. Vote-rigging is made possible with the reduction in the number of Policy Bureaux, and that is also the fault of the authorities. What good measures have been introduced by the authorities in respect of elections? However, I am most disheartened by the impending mock primary election to choose a candidate to stand for the Chief Executive election on behalf of the pan-democratic camp. I really think that such a move has crossed the line. Notwithstanding the criticisms and attacks, I still called on the people of Hong Kong to participate in the "five geographical constituencies referendum" in 2010 so as to state clearly their stance on universal suffrage. However, the present primary election in which only some 10 000 persons are expected to take part in voting is really lousy.

President, this chicken (*Mr LEUNG Kwok-hung pressed the chicken-like object again to make some sounds*) must be killed; it is just "a dead chicken popping up the cooking lid". Secretary Raymond TAM, you must submit a report on the matter and file complaints with the ICAC. (*The buzzer sounded*)

PRESIDENT (in Cantonese): Mr LEUNG, your speaking time is up.

MR WONG KWOK-KIN (in Cantonese): President, in fact, you should have told Mr LEUNG Kwok-hung not to bring a chicken into the Chamber because avian influenza has just been detected today, and dead chickens certainly involves health risks.

President, the Hong Kong Federation of Trade Unions (FTU) agrees that elections held in Hong Kong must be fair and impartial so as to gain credibility with the people. Hence, we consider that the Government must perform its gate-keeping role properly to prevent any events which may prejudice the impartiality of elections or undermine the credibility of elections.

Dire consequences are created by vote-rigging as the integrity of election activities will be widely perceived with scepticism and the entire election is seen as It looks as if many serious cases of vote-rigging have happened. The Government is duty-bound to crack down on vote-rigging by fully investigating into the suspected cases and prosecuting the law-breakers. Nonetheless, I consider that actions taken against illegal conduct should not be over-correcting, excessively stringent, or even create nuisance to the public.

In today's *Ming Pao*, there is an editorial entitled "Prevention of illegal conduct should not err on over-correction" by MA Ngok, a commentator belonging to the pan-democratic camp. Let me read an excerpt for Secretary Raymond TAM. One paragraph of the article reads as follows, "Voting right, being the most basic civil right of the people, should not be qualified with any pre-conditions. The requirement that newly registered voters or voters who have changed their addresses must provide address proofs before they are entitled to vote will likely breach the equality principle of political rights at least on three aspects. Firstly, an additional hurdle of voter registration is created for the grassroots given their difficulty in producing address proofs. Secondly, as the relevant requirement does not apply to the 3 million voters already registered or

who have not changed their residential addresses, it becomes effectively a hurdle for newly registered voters or voters who have changed their addresses to acquire the right to vote. Thirdly, persons who do not ordinarily reside in Hong Kong also have the right to vote under the Basic Law, but this basic right would be undermined if they cannot become registered voters without the necessary address proofs." Secretary Raymond TAM, we consider that the Government must fully consider the proposal on address proofs. So far, the Government has yet to answer a number of technical issues to our satisfaction; and if the proposal is implemented hastily, I think additional problems may be created in the community.

Let me illustrate with an example. Dr PAN Pey-chyou, who is sitting next to me, has been living in Fan Ling for a long time. All his address proofs should be his residential address in Fan Ling. But I know that in recent years, he has acquired a place in Kowloon for the convenience of going to work. He probably spends more time at his Kowloon residence now than in his flat in Fan Ling. I always say that I wish to have a lift home, but it is quite impossible now because he usually goes back to his Kowloon residence. In Dr PAN's case, should his registered address be the one in Fan Ling or Kowloon? I think even he himself cannot answer that question readily because while he may be living primarily in Kowloon now, his original residence as well as his belongings and family members are still in Fan Ling. I think there are many similar cases. I also have information about some cases involving people who live in the Mainland but work in Hong Kong. As they commute between Hong Kong and Shenzhen by train every day, they have no residential address as such in Hong Kong. Unless they are allowed to use their office address for the purpose of voter registration, there is simply no way they can produce address proofs.

Therefore, the Government must resolve these technical issues satisfactorily or formulate relevant guidelines for reference by the public before the proposal can be put into implementation. While the FTU generally supports the overall direction of improving the electoral system, we hope the Government can provide us with more satisfactory answers to these operational or technical issues before the proposal is put into implementation.

President, regarding today's motion, we support the spirit of the original motion as well as Dr Philip WONG's amendments. Originally, we also support Mr Ronny TONG's amendments. But as issues surrounding the technicalities as well as operability of the proposal on address proofs remain unresolved, we may

not be able to vote for Mr TONG's amendments. Regarding the measures to improve the voter registration system, we hope the Government would satisfactorily resolve the technical and operability issues just raised by Honourable Members before the relevant proposals are put into implementation.

President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr KAM Nai-wai, you may now speak on the three amendments.

MR KAM NAI-WAI (in Cantonese): President, regarding the amendments, I would like to talk about Mr Ronny TONG's amendment first. The Democratic Party holds that it is necessary to consolidate and revise the relevant ordinances because using different ordinances to handle voter registration matters is not desirable. Hence, the Democratic Party will support Mr Ronny TONG's amendment.

Likewise, Dr Philip WONG's amendment states that the Basic Law provides for voters' rights to vote and to stand for election. This is indisputable. We certainly will support his amendment. However, many colleagues have specifically asked the Secretary about people who now reside in the Mainland on a long-term basis Let us not talk about people who now reside in the Mainland on a long-term basis for the time being, let's say, I have friends who have returned to Hong Kong from Australia and they still hold Hong Kong Permanent Identity Card; there are also people who live in Canada or Toronto but hold Hong Kong Permanent Identity Card, how should we handle these people? They still have They are still Hong Kong permanent residents and, according to the Basic Law, they are entitled to the right to vote. However, under the election system in Hong Kong, whether it is a District Council Election or a Legislative Council Election, particularly the District Council Election which is a district election, voters need to have residential proof before they can vote for candidates in their district.

As many colleagues have just mentioned, one or two votes can make a difference to the result of an election. However, what should be done if we wish to retain the rights to vote and to stand for election for those who do not reside in Hong Kong? I think the Government has been dodging this point and has not answered how it is going to deal with these people. Although these people's right to vote has to be safeguarded, they are not residing at a certain address at the time of the district election. I hold that the Secretary should not dodge the question on how to tackle the basic rights of these voters or citizens. He has to answer the question.

Certainly, many colleagues mentioned just now the basic personal particulars of voters, including the background of individual voters. For instance, recently people raise doubts as whether a previous employee of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region is a member of the Communist Party sent from the Mainland. Do members of the public know about this? Such information is not directly related to voter registration. However, if the existing system causes people to suspect that people sent from the Mainland can be registered as voters and then possibly be elected, people will query whether under "one country, two systems", it is "Hong Kong people ruling Hong Kong" or "Beijing people ruling Hong Kong". People will raise this point again. Thus, under the voter registration system, related issues such as the right to stand for election, the basic rights of the people and the "one country, two systems" provided under the Basic Law are all matters of concern to us.

Finally, I wish to briefly mention something about Mr Albert CHAN's amendment. I echo the point that he has just made. If the incumbent Secretary said that he is not responsible and the previous Secretary also said that he is not responsible, who should be responsible then? Should our destiny be blamed? It is evident that the Audit Commission had already pointed out in what respect the work of the departments concerned should be improved. However, the previous Secretary, Mr Stephen LAM, had not properly discharged his duty. The Democratic Party and I thus find it legitimate to express strong condemnation of him, and will thus support Mr Albert CHAN's amendment.

President, I so submit.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, on a rough count, I think 21 Honourable Members have spoken on this motion tonight. I think a useful discussion has taken place. As I said in the press conference last Tuesday after we presented our paper to the Legislative Council, the five proposed measures were merely suggestions that we wanted to discuss with Members and obtained feedback from the community such that our wisdom could be pooled together. At that press conference, I have also indicated clearly that if suitable adjustments were considered necessary after listening to various views, the Government would gladly oblige and introduce the necessary refinements to our proposals.

In Mr KAM Nai-wai's original motion, it was mentioned that "law-breakers may register as voters with falsified address, thus ruining the electoral system and causing voters to lose confidence"; and Members have focused on the measures to stop such activities in tonight's motion debate. Mr KAM Nai-wai called on the Government to investigate into the vote-rigging cases and review the voter registration system so as to rebuild people's confidence in the system. Hence, my reply may not cover the issues raised by some Members tonight other than that of voters registering with falsified address as I would like to concentrate on the issue of voters registering with falsified addresses.

A number of Members have misunderstood my stance. I have never said that I will not accept responsibility. On the contrary, I have said on television that I would accept full responsibility myself. Being the official in charge of electoral matters, I must accept responsibility and I have no choice but take actions accordingly.

Different views have been expressed by Honourable Members tonight, and I think they can be summarized into four themes with common directions or similarities.

First, they hope that the Government's proposals are measured and balanced, such that a suitable balance can be struck among voting right, integrity of the system and credibility. They also consider that the proposed measures should be practical and feasible.

Second, the proposed measures should be as convenient to the people as possible, and no innocent persons should be caught inadvertently. That is a relatively clear message I get from Members.

Third, while the laws should be enforced stringently, any new measures to be implemented should not be excessively strict. That is the third point I gather.

Fourth, from the many views and opinions expressed by Members just now, I think most Members would like to see the Government implementing the relatively uncomplicated proposals first, to be followed by the more complicated ones. In particular, the Government should ensure adequate consultation on the difficulties involved and listen to the views of the public.

Hence, I will reply along these four common themes and take Members through our proposals and measures to be adopted in the next stage.

First, in respect of publicity, we plan to send a letter to some 3.5 million electors early next year, say February. While publicizing the forthcoming elections and voter registration, we hope the letter can at least disseminate two messages to the electors. Firstly, if the principal residential address of an elector has been changed or will be changed soon, the elector concerned is encouraged to update his registered address with the Registration and Electoral Office (REO) as soon as possible. We hope the letter can serve as a reminder for the some 3 million electors in this regard. Secondly, we hope that the some 3 million electors will know from the letter that if they receive election correspondences addressed to persons not belonging to their households, they can always take the initiative to report such irregularities to the REO simply by crossing out the address or writing a simple remark on the envelop to indicate that the recipient does not live in the relevant address and return the correspondences to the REO by post. Upon receipt of such cases, the REO will follow up accordingly. Some political parties have also made similar suggestions to us previously such that the opportunity is taken to introduce an active reporting mechanism. We will beef up the details along this direction.

Second, I believe a consensus has been reached that the REO should work with relevant departments as much as possible to enhance checking of registered addresses. In the process of cross-checking information with individual departments, we will seek the advice of the Privacy Commissioner for Personal Data. With his approval, we will conduct more comprehensive checks with the

relevant departments, for example, some political parties and Members have suggested over the past couple of weeks that such checks with the Housing Department should proceed first. In the past, checks are mainly conducted when tenants move in or out. Now, we will consider whether comprehensive checks should be conducted for all households living in estates under the Housing Department and the Hong Kong Housing Society. We will work towards this direction.

Moreover, as I mentioned in the opening speech, under one of the five proposed measures, we will identify electors who have definitely changed their addresses by checking against the list of buildings which have been demolished recently and buildings which will be demolished soon as provided by the Buildings Department and the Rating and Valuation Department. We can then remind the relevant electors to update their registered addresses. That is something we will definitely do.

Regarding the work of the Immigration Department (ImmD) as mentioned by some Members, the REO will receive relevant information from the ImmD on an annual basis, such as the names of citizens who have deceased. When the citizens apply for the smart identity cards, ImmD staff will encourage them to register as voters. We can also step up our efforts in this regard. As to whether more departments should get involved in similar initiatives, we will consider the suggestion actively.

Third, I think there is relatively strong consensus and greater mainstream support for the early implementation of the random checking and verification system. In this regard, I have not heard any objection from Members that from 1 January, random checks be conducted for residential addresses registered with a certain number of electors or electors with different surnames. In this connection, I will ensure that arrangements be made by the REO that from 1 January, all addresses in the register with registered electors or registered electors having different surnames exceeding a certain number will be checked, and the relevant persons will be required to produce address proofs, and so on, for follow up. At the same time, we will conduct random checks territory-wide, and the target is expected to be maintained at 3% to 5% for the time being. If the territory-wide random checks conducted after 1 January is considered feasible and effective, we may increase the sampling rate accordingly. We will review this matter taking into account the implementation results.

Fourth, regarding the proposal to implement the address proof requirement for newly registered electors and electors who have changed their residential addresses on an administrative basis from 1 January, I note that some Members have advised me that I should reconsider the matter carefully and that other Members have asked me to listen to more views first. I think further public discussion on the proposed measure is required so that we can listen to more views. Moreover, some Members have just cited similar views expressed by Prof MA Ngok in an article in today's *Ming Pao*. Hence, I think we should first conduct public consultation on the proposed measure next month. If we find that members of the public generally accept that some slight trouble is needed to maintain the integrity of the voter registration system, and they are willing to take this step, we will ensure its early implementation. But on the other hand, if members of the public consider that the Government should not adopt this approach hastily due to the inconvenience involved, we will go along with the public's views.

Lastly, there is the proposal as to whether new penalty provisions should be introduced. It seems that Members who have spoken on this issue just now basically consider that such a proposal may be too stringent. While I also consider this relatively stringent personally, I do not think we should reject the idea so soon because Ms Miriam LAU of the Liberal Party just told us that according to an opinion poll they conducted, support and opposition for the proposal were tied at about 40% respectively. Hence, I think we can further consult the public on the proposal. Under our plan, a relevant paper will hopefully be prepared by mid-January for consultation with the Legislative Council and the public. Initially, we hope that the consultation will last for two months. Very roughly, I think the scope of consultation should mainly focus on whether new measures are to be introduced in the long run, and which would require legislative amendments. From the views I heard at the meeting of the Panel on Constitutional Affairs held on Monday as well as tonight's debate, I note that there are essentially six points as follows.

The first issue is, as I just said, whether the address proof requirement should be introduced for newly registered electors and electors who have changed their residential addresses. That is the first point of our consultation.

The second issue is whether various statutory deadlines concerning voter registration should be extended, particularly whether the so-called public inspection period of two weeks can be suitably extended so as to allow sufficient

time for the public and the Electoral Registration Officer to complete the checking and the verification processes, and whether the statutory deadline for the public to inspect the provisional register and to make an objection to or make a claim on the registration can be suitably extended. That is another point of our consultation.

The third point of our consultation is — incidentally, this point has been raised by Members at the Panel meeting held on Monday, as well as by Mr Ronny TONG in his amendment today — whether the listing of voters' particulars in the voter register should be changed. As the particulars are listed by surnames of registered electors under the existing legislation, is it possible to provide another listing by residential addresses in the register of electors, so as to facilitate detection of those addresses registered with a certain number of electors or electors with different surnames? As legislative amendments will be involved, we will also include this point in the consultation document.

The fourth issue is whether legislative amendments should be introduced to require registered electors to report change of registered addresses to the REO, and whether sanctions should be imposed on registered electors who fail to report change of addresses before the statutory deadline and who vote in an election afterwards. Just now, many Members have expressed reservation about this proposal. I have also heard views of reservation expressed by many members of the public over the past one or two weeks. Yet I think we should listen to more views in this regard carefully during the consultation exercise before a final decision is made.

The fifth issue — I recall that this suggestion was raised by Members of the Civic Party at the Panel meeting on Monday — is whether a new requirement should be introduced such that the electors must produce their poll cards before they are allowed to vote. We also hope to hear the views of the public on this suggestion as part of our consultation.

The last issue concerns the point raised by Ms Emily LAU just now as to whether the provisions under the existing Electoral Affairs Commission Ordinance and Elections (Corrupt and Illegal Conduct) Ordinance on the provision of false information for the purpose of soliciting votes to affect election results can be rationalized. As there are different treatments for the same situation under the two Ordinances, we will also include the question of whether

they should be rationalized as part of our consultation. The relevant penalty provisions may also have to be standardized as a result.

The six issues I highlighted above would involve legislative amendments, and some may require further public consultation. In other words, we will proceed with the enhanced measures on publicity, random checks and verification next month as scheduled, while a two-month consultation exercise on the above six longer-term issues which require legislative amendments will hopefully be launched by mid-January. Thank you, President.

PRESIDENT (in Cantonese): It is shortly after 9.30 pm now and I decide that today's meeting will be adjourned only after all items on the Agenda are finished.

PRESIDENT (in Cantonese): Mr Ronny TONG, you may now move your amendment.

MR RONNY TONG (in Cantonese): President, I move that Mr KAM Nai-wai's motion be amended.

Mr Ronny TONG moved the following amendment: (Translation)

"To add "the existing voter registration system has room for improvement, and" after "That"; and to add "including studying the adoption of the following measures: (a) to consolidate all existing laws relating to eligibility requirements for voters and voters' exercise of their voting right into a centralized, clear and easy-to-understand electoral law; (b) to require newly registered voters to provide residential address proof for verifying their declared residential addresses; (c) to add to statutory voter registers the listing of voters' particulars by residential addresses, so as to facilitate public inspection; (d) to extend the deadlines for lodging notices of objection regarding provisional registers, so as to facilitate members of the public and groups to check voters' particulars; and (e) to specify that voters must report any changes in their residential addresses to the Administration within a statutory time frame, " after "review the voter registration system,"."

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

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

(Members raised their hands)

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

(Members raised their hands)

Mr TAM Yiu-chung rose to claim a division.

PRESIDENT (in Cantonese): Mr TAM Yiu-chung has claimed a division. The division bell will ring for five minutes.

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

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

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO and Dr Philip WONG voted against the amendment.

Ms Miriam LAU, Ms LI Fung-ying, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr Albert CHAN voted for the amendment.

Dr Priscilla LEUNG voted against the amendment.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Ms Starry LEE, Mr CHAN Hak-kan and Mr WONG Kwok-kin abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 12 were present, four were in favour of the amendment, two against it and six abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, 15 were in favour of the amendment, one against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Improving the voter registration system to rebuild people's confidence in the electoral system" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

PRESIDENT (in Cantonese): 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 respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the motion on "Improving the voter registration system to rebuild people's confidence in the electoral system" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): Dr Philip WONG, you may now move your amendment.

DR PHILIP WONG (in Cantonese): President, I move that Mr KAM Nai-wai's motion be amended.

Dr Philip WONG moved the following amendment: (Translation)

"To delete "as there is a lack of an effective" after "returned poll cards;" and substitute with "in this connection, this Council considers that the Administration should further enhance the"; to delete "law-breakers may easily register" after "under the voter registration system," and substitute with "so as to prevent law-breakers from registering"; to add "; on the other hand, the right to vote is a very important right, and under Article 26 of the Basic Law, permanent residents of the Hong Kong Special Administrative Region ('HKSAR') shall have the right to vote and the right to stand for election in accordance with law; in this connection" after "to lose confidence"; to delete "and" after "against law-breakers,"; and to delete "so as to" after "review the voter registration system," and substitute with "and, while upholding HKSAR permanent residents' right to vote,."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr Philip WONG to Mr KAM Nai-wai's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr Albert CHAN, as the amendment by Dr Philip WONG has been passed, you may now move your revised amendment.

MR ALBERT CHAN (in Cantonese): President, I move that Mr KAM Nai-wai's motion as amended by Dr Philip WONG be further amended by my revised amendment

Mr Albert CHAN moved the following further amendment to the motion as amended by Dr Philip WONG: (Translation)

"To add "the problem of vote-rigging is long-standing and has existed for many years, but the Government has disregarded its gravity, causing the problem of vote-rigging to worsen acutely in recent years; and," after "poll cards; as"; and to add "expresses strong condemnation of Mr Stephen LAM, the former Secretary for Constitutional and Mainland Affairs and incumbent Chief Secretary for Administration, and the Registration and Electoral Office for bringing disgrace to Hong Kong through their dereliction of duty, and" after "this Council"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr Albert CHAN's amendment to Mr KAM Nai-wai's motion as amended by Dr Philip WONG be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

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

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

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

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Dr Philip WONG, Ms Miriam LAU, Ms LI Fung-ying, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Wai-ming and Dr PAN Pey-chyou voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr Albert CHAN voted for the amendment.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 12 were present, four were in favour of the amendment and eight

against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, 15 were in favour of the amendment and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr KAN Nai-wai, you may now reply and you have one minute 12 seconds.

MR KAM NAI-WAI (in Cantonese): President, I thank the 20 Members who have spoken today. The number accounts for one third of our colleagues in this Council, showing that colleagues attach great importance to the motion.

However, when the Secretary spoke on my motion just now, he said that he would spare no efforts in investigating the suspected cases of vote-rigging and instituting prosecutions against law-breakers. I only hope that the Government is not using beautiful words to cover its blunders; that is, I hope that it would not just initiate prosecution against a few cases, as if making a show, and then call it a day. I have such a feeling because one of our candidates, Winfield CHONG, of the Central and Western district constituency has lodged a complaint which is still being circulated among the police, the Registration and Election Office and the Independent Commission Against Corruption. He only sought to find out whether the voters whose registered address is a demolished building have voted. One month has gone, but he is still unable to get an answer, causing people to query the efficiency of the investigation. Has the Government really spared no efforts in conducting the investigation? This is what we query.

Hence, if the Government will prosecute and punish the law-breakers, as what we have proposed in the motion today, I hope the Government can truly and pragmatically conduct investigation on the suspected cases of vote-rigging.

I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr KAM Nai-wai, as amended by Dr Philip WONG, be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

PRESIDENT (in Cantonese): Motion for adjournment.

Under Rule 16(6) and (7) of the Rules of Procedure, I determine that I shall extend the period of the debate until all Members who wish to speak have spoken, and the public officer has given a reply.

Each Member (including the mover of motion) may speak for up to five minutes. The speaking time limit for the public officer making a reply is 15 minutes.

PRESIDENT (in Cantonese): It is now 9.46 pm. The debate shall now proceed.

Members who wish to speak will please press the "Request to speak" button.

I now call upon Ms Starry LEE to speak and move the motion.

**MOTION FOR THE ADJOURNMENT OF THE COUNCIL UNDER
RULE 16(4) OF THE RULES OF PROCEDURE**

MS STARRY LEE (in Cantonese): President, I move "That this Council do now adjourn for the purpose of debating the following issue: the impact of the announcement made by CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC) to substantially increase tariffs from 1 January next year on the general public and enterprises, as well as the Government's corresponding measures."

President, this morning, CLP has bowed to intense media pressure and announced a lowering of the tariff increase from 9.2% to 7.4%. And yet, this belated news has failed to soften CLP's image as a profit-maximizer. This is because, firstly, the rate of increase is still very high, which outpaces inflation and is completely unreasonable; secondly, while the rate of increase has been reduced, it does not mean that CLP will earn less profit as it has only tentatively increased payments to the Fuel Clause Account (FCA), which will nonetheless be recovered later on.

Therefore, CLP is not taking the initiative to perform its social responsibility, it just adopts a tactic of procrastination amid intense pressure. In this connection, the Democratic Alliance for the Betterment and Progress of Hong Kong considers that CLP has fallen far short of public expectation.

Furthermore, the tug of war between CLP and the Environment Bureau has again reflected that the SAR Government's existing monitoring system is pretty weak. In the face of large enterprises like CLP, it has completely lost its bargaining power and is even worse than a "toothless tiger". In the end, it only succeeded in forcing its rival to make a little compromise by using media pressure.

Since we only have limited speaking time today, I just want to focus briefly on two points. Let me first say something about the 7.4% tariff increase.

As I have said, although the tariff increase has been reduced, the increase in Basic Tariff has remained unchanged and there is still an increase of 5 cents from 80 cents to 85 cents. According to rough estimation, given that the total

units sold by CLP in 2010 were 33.5 billion units and there will be an increase of 5 cents per unit, CLP will earn an additional \$1.7 billion per annum.

President, CLP has already earned \$10.3 billion in 2010 and can be said to have "reaped a huge fortune". In spite of the huge profits, CLP only agreed to increase payments to the FCA, whereas the Basic Tariff which people pay in cold cash has remained unchanged. It refused to make the slightest compromise in view of its \$1.7 billion profits. What is this if this is not maximizing profits?

Secondly, under the protection of the Scheme of Control Agreement (SCA), the capital investment of CLP enjoys a guaranteed return of 9.99%. There has been much criticism and I am not going to repeat here. I just want to highlight another "uncontrollable" issue, and that is, CLP's operating expenditure under the SCA.

President, the annual tariff increase is subject to many factors. While one is the 9.99% permitted rate of return, the other is the operating expenditure, which is even more uncontrollable than the permitted rate of return. Under the SCA, every \$100 of investment can only receive \$9.99 of permitted return.

And yet, the operating expenditures can be reimbursed under the SCA. In other words, every single dollar of spending from wages to major operating expenditures can be reimbursed. Given that there is no chance of suffering a loss, both CLP and HEC do not have any incentive to enhance their efficiencies or explore new income sources and reduce expenditure. Nonetheless, members of the public are totally unaware of such an arrangement.

President, amidst the current fierce competition, most enterprises have streamlined their structure, explored new income sources and reduced expenditure to increase their efficiencies. Nonetheless, under the existing mechanism, the bill of CLP's operating costs is automatically footed by members of the public. Worse still, in order to maximize profits, CLP may over estimate its operating costs so as to have a greater tariff increase. Even if the operating costs drop in the future, tariff has been increased and the money has already gone into the pocket of CLP. Therefore, the series of problems arising from this is worthy of our concern and discussion.

The Environment Bureau had initially raised four queries concerning CLP's tariff increase. First of all, it pointed out that CLP's projected increase in

operating costs will reach as high as 11.2% next year, which will far outpace inflation. CLP argued that 2011 is a special year during which the operating costs were pulled down by some extraordinary income, thereby resulting in an extraordinarily sharp increase in operating costs in the coming year.

I am, however, still not convinced and have reservation about this. One of the reasons is that, as the Secretary has disclosed earlier, CLP's operating costs in 2011 were not low at all. What is more, according to its Annual Report, it has recorded an increase of 11.8% in operating costs in 2010 when compared to 2009. We can therefore see that the rising operating cost is not a special phenomenon of CLP in any particular year, but a predictable outcome under an uncontrollable situation.

President, here, I would like to remind CLP again that the anti-rich resentment in society is actually caused by individual enterprise's negligence of its social responsibility, as well as maximizing profits in an unreasonable and irrational manner. President, building a good corporate image is no easy task, but it can be destroyed with a fingertip.

Ms Starry LEE moved the following motion: (Translation)

"That this Council do now adjourn for the purpose of debating the following issue: the impact of the announcement made by CLP Power Hong Kong Limited and The Hongkong Electric Company Limited to substantially increase tariffs from 1 January next year on the general public and enterprises, as well as the Government's corresponding measures."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That this Council do now adjourn.

MR WONG KWOK-HING (in Cantonese): President, in the next five minutes' speaking time, I would like to dedicate the following "poem on tiger hunting" to Secretary Edward YAU, hoping that he can help us beat the "Power tigers". The "poem on tiger hunting" is as follows:

"CLP unscrupulously maximizes profit to take all,
Clients should defer payment till the last call.
Thanks to the Government's lead to hit,
Power tigers reluctantly bow and submit."

President, when Secretary Edward YAU came to this Council to respond to our urgent questions this morning, he told us he was informed this morning that CLP Power Hong Kong Limited (CLP) was willing to reduce the tariff increase to 7.4%. I hope that the Government will not thus feel complacent. How should we interpret this 7.4%? This figure outpaces inflation and may create a vicious chain effect, which will impose an even heavier burden on the general public. Secretary Edward YAU said he would follow up on the matter. But what is he going to do? If the Government fails to demonstrate any power or strength in the negotiation with CLP, the latter will simply not be bothered to pay heed.

Last Friday, I said publicly that we were totally helpless in the face of the frantic tariff increase, and could only resort to an unco-operative attitude. Therefore, last Friday, I called on all CLP clients to defer tariff payments until CLP issues warning letters. Our concerted effort will place CLP's cash flow under intense pressure, thereby enabling it to vividly feel the strong public resentment. I believe this will be fruitful and time will tell.

The Government indicated that it would pursue the matter with CLP. Does the Government have the patience and bargaining power to do so? Given that the Scheme of Control Agreement (SCA) has enabled CLP to earn a profit of 9.99%, the Government actually does not have much bargaining power. In that case and coupled with the fact that CLP maximizes profits, we can only defer tariff payments until the very last minute. I consider this approach legal, reasonable and rational.

President, in order to give full play to our efforts, it is essential to have the Government assuming the leading role. I reckon and believe that the Government is the largest client of CLP. Therefore, if the Government takes the lead to defer tariff payment until the last payment date, CLP will certainly have to take some actions. If the Government assumes the leading role and the rest of CLP clients follow suit, I believe CLP will definitely adopt a more serious attitude in the discussion with the Government.

President, I will surely defer the tariff payments of my residence and office until CLP issues warning letters. I hope that Secretary Edward YAU will respond to my proposal. If the Government defers its tariff payment, then CLP will not only sense public indignation, but also feel the pressure. Such pressure is not at all distant and indirect, but vivid and immediate.

I hope that Secretary Edward YAU will seriously consider my proposal and liaise with the relevant government departments for joint actions. If the Government and the few major merchants' associations (which are CLP's major clients) are willing to take the lead, I believe the "Power tigers" will definitely make appropriate compromises and postpone the frantic tariff increase.

Of course, in order to tackle the problem at root, I think that the authorities should thoroughly review the SCA and closely monitor CLP's accounts and his next five-year Development Plan.

Thank you, President.

MISS TANYA CHAN (in Cantonese): It seems that everyone is pointing their gun at CLP Power Hong Kong Limited (CLP) these days, but actually The Hongkong Electric Company Limited (HEC) — Members must not forget that up till now, as CLP has said, the tariff of HEC is about 30% higher than that of CLP before it lowered the increase. Members should not forget that HEC's tariff increase is not low as well. However, it serves CLP right to be condemned.

The cause of the entire incident is the Scheme of Control Agreement (SCA). If the Internet version is correct, the documents in my hand are the SCAs for CLP and HEC. While the agreement itself only has a few pages, its annex has tens of pages, which is not simple at all. It is precisely because of the complexity of the SCA that has alerted us of the need to make improvements in many respects. Since the SCA will expire in 2018, there is a need to first ascertain the need for renewal for another five years in around 2016. As it is now late 2011 with only four to five years to go before 2016, Members may consider the improvements to be made. I recalled that during the discussion held a few days ago, many Members sought information from the Secretary, who then asked us what kind of information was required. After reading the SCAs, we found that the two power companies are only required to supply information

to the Government alone. Therefore, if the Government wants to share the information with Members, it will have to obtain the consent of the two power companies. It seems that there is a lack of transparency, which certainly needs further exploration.

Very often, we have placed our emphasis on the 9.99% rate of return alone. However, speaking of "maximizing profits", the power companies are, I believe, earning more than 9.99%. This is because according to the agreement as I said this morning, after signing the SCAs with the two power companies, the Secretary revealed some details of the agreement in the press release issued on the same day — bonuses were given to the two power companies as incentives for developing cleaner energy or other forms of energies. A certain percentage points of profits have been granted by the Government to give incentive or impetus to the power companies. According to our observation, the two power companies did honor their words and it is very likely that their profits have exceeded 9.99%.

Today, we have read some press comments on a rather simple logic, that is, since the return of public utilities may not necessarily be directly proportional to the amount of investment at the initial stage of their establishment, it is reasonable to grant a slightly higher permitted rate of return to attract investment. And yet, as time passes, the 9.99% rate of return is really too high today. Is a revision necessary? We hope that the Government will have greater bargaining power when it negotiates with the two power companies next time, that is, upon the expiry of the existing SCAs. After all, I still wish that the Secretary will take this opportunity to explain what is meant by "when the time is ripe". So far, we have only heard steps on the staircase, but have not seen any plan for opening up the power market. No concrete proposals have been proposed. I hope that the Secretary will give us some hints on this when he gives a response later. Furthermore, CLP has diversified away from its main business. The site at Prince Edward Road, where CLP's headquarter sits, is supposed to be used for power-related projects or businesses. However, it is now used for the construction of buildings. While conservation is seemingly the concern, it is actually a project of real estate development in which no member of the public will benefit. Therefore, it is hoped that the Government will take note of this in its future reviews. Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, I have not seen Hong Kong people being so united for quite some time. For this, I have thank the two "power overlords", CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC).

Recently, the two "power overlords" proposed a frantic increase in tariffs. Despite serious public resentment and outcries, CLP has maintained a substantial tariff increase of 9.2%. This morning, we learned from the Secretary's announcement and the news reports that CLP would cut down on the fuel surcharge, thereby reducing this year's increase to 7.4%, but we all understand that this is just a game of words. The reduced sum will only be deposited into the account and will definitely be recovered in the future. I think CLP's tactic can be likened to one of Zhuang Zi's stories, in which monkeys are deceived into thinking that "four in the morning and three in the evening" is better than "three in the morning and four in the evening". Hong Kong people are being fooled like monkeys as the new proposal is even worse before the reduction.

HEC, on the other hand, is also playing a game of numbers with us. While it argues that the increase is only 6.7%, members of the public still find it unacceptable as HEC has also maximized its profits. What is more, the increase has apparently outpaced inflation.

The two "power overlords" have both reaped huge surpluses last year, with CLP earning \$10.3 billion whereas HEC earning \$7.2 billion. Hong Kong will face an extremely uncertain economic condition in the coming year. Notwithstanding that people are already living in dire straits under sustained inflation in 2011, these two "power overlords" continues to exhaust every means to squeeze every single penny from the pockets of the general public.

There is nothing wrong to make profits in doing business, but it is downright unnecessary to earn like a thug, especially when they are monopolistic enterprises providing public services. If a member of the public is robbed in the street, usually his wallet and mobile phone will be taken away. It is not likely that he will be stripped naked. But this time, the two power companies have not only robbed us, but also confiscated all the properties of our families and that of Hong Kong people. Except for those who do not use any electricity or have a power generator at home, who else in Hong Kong can immune from the tariff increase of the two "power overlords"?

CLP's annual surplus was about \$10.5 billion between 2007 and 2008, and it is \$5.8 billion for the first half of this year. As Mr Paul CHAN has said today, the surplus of the latter half year will be even greater. Therefore, CLP's surplus for this year will definitely not be lower but higher than that of last year. Of course, CLP can put forward many reasons and there can be millions of them, such as a surge in the operating costs by 11.2%, a lower tariff than HEC and a low balance of the Stabilization Fund. There can be different kinds of reasons.

However, according to the latest half-yearly report released by CLP, it still recorded a surplus growth of 12.7%. In view of the fact that local business expansion has become so difficult, local population has not recorded rapid growth and no industrialization is underway for the time being, CLP must boost the income of local business in order to reap larger profits. The only way to achieve the target of reaping the maximum return of 9.99% is by raising tariff as far as possible.

Honestly speaking, the two power companies have enjoyed too much preference and protection under the Scheme of Control Agreement (SCA). In other words, they are immune from suffering losses. I would like to ask colleagues who are doing business, which enterprises in Hong Kong can secure the Government's undertaking of only gain but no lose? Frankly, there is none.

Both CLP and HEC are franchised public utilities in Hong Kong, which have a different nature from ordinary commercial companies. As their businesses are closely related to our daily living, an increase in tariff will definitely affect all Hong Kong people. Although the SCA has provided clearly that the two power companies can enjoy a permitted return of 9.99%, they have to take into account people's livelihood. It should be noted that nowadays, members of the public also have a say in politics, which will in turn have a say in the SCA. Even though the present approach adopted by the two power companies may comply with the SCA, it is unreasonable and will certainly give rise to rebounds.

Therefore, I strongly request the two power companies to immediately stop the frantic increase in tariff and freeze it for one year, so as to tide over the difficulties with the general public.

MR CHAN HAK-KAN (in Cantonese): President, the tariff increase announced by the two power companies has aroused public indignation and one-sided public criticism. In particular, the performance of CLP Power Hong Kong Limited (CLP) has been extremely disappointed and dissatisfied. Most people strongly criticized CLP's tariff increase.

President, when the two power companies increased tariff in the past, the reason cited was higher fuel costs, which could be understood by the public. However, the current tariff increase of CLP includes the Basic Tariff, and the rate of increase is even higher than the inflation rate. The public can hardly be convinced to accept the rate of increase. According to CLP, one of the reasons for the tariff increase is the estimated 11.2% increase in operating costs next year; such a high rate is alarming. As a large enterprise, CLP performs badly in the area of cost-effectiveness control. In the face of rising cost, CLP has not considered cutting expenses; instead it just thinks of increasing costs, raising tariff and increasing investments. I earnestly doubt if the CLP management has done a good job.

As we have noticed, CLP has repeatedly stressed that, after the increase, its tariff is still lower than that of The Hongkong Electric Company Limited (HEC). President, I cannot agree with that. First, as CLP has a larger number of customers than HEC, the impact of its tariff increase will be great, and CLP has totally neglected its social responsibility. Second, as HEC's tariff has always been higher, CLP should not compare itself with HEC to rationalize its decision to increase tariff and this is simply sophistry.

President, the other major reason given by CLP for tariff increase is to meet the Government's emission reduction requirements. As Chairman of the Panel on Environmental Affairs of the Legislative Council, I consider that CLP is, in the name of promoting environmental protection, using emission reduction as an excuse to increase tariff to reap profits.

Not long ago, Secretary Edward YAU pointed out clearly that CLP had spent \$9 billion on the installation of desulphurization units for emission reduction, and most of the works have been completed. Starting from a few years ago, the costs have been credited to the accounts in phases. Therefore, emission reduction does not constitute a reason for tariff increase. CLP emphasized that the project has been incorporated into its development plan and it

has been approved by the authorities. I am not sure if the Government or CLP is right, but I wish to ask why the general public are required to bear wholly the emission cost of \$9 billion. Why has CLP not borne part of the cost? President, as far as I remember, I already mentioned at previous meetings that environmental protection would incur additional expenditures, and such expenditures should be borne by the business sector, the Government and the public. Hence, it is unfair and unreasonable for CLP to ask ordinary people to bear its expenditure of \$9 billion.

President, as I have just said, the costs related to environmental protection should be borne by three parties. CLP is being generous with other people's money for the sake of meeting the emission reduction requirements. It has also used environmental protection as an excuse to increase investments, so as to maximize profits shielded by the Scheme of Control Agreements (SCAs); it is extremely greedy. What worries me more is that CLP's explanation may mislead people into thinking that environmental protection is costly, and hence thorough considerations should be made before implementing environmental protection projects. We definitely do not want to see this happen.

President, I think it is unacceptable for CLP to insist on a 7.4% tariff increase despite public opinion and community pressure. The Government can do two things: firstly, it can ask CLP to provide more financial information, so that the public can judge objectively if its decision to increase tariff is as reasonable as it claimed. Secondly, it can ask CLP to return to customers any rent and rates rebate made by the Government, so as to reduce the rate of increase and relieve people's burden. In the long run, the authorities must consider if the SCAs should be maintained. I hope the Government would join hands with Legislative Council Members and the public to fight against the avaricious "power overlords", so as to safeguard people's livelihood.

Thank you, President.

MS LI FUNG-YING (in Cantonese): President, with an inflation rate of higher than 5% in Hong Kong and soaring prices, people can hardly make ends meet. At a time when people are living in dire straits, the two power companies announced a considerable tariff increase, 9.2% increase for CLP Power Hong Kong Limited (CLP) and 6.3% increase for The Hongkong Electric Company

Limited (HEC), both of which have outpaced inflation. I believe the two power companies can anticipate a strong reaction from the community when such announcement was made. This morning, CLP has revised downward the rate of tariff increase to 7.4% amid strong opposition from the community as a whole. With minor concession made by HEC earlier, the rates of tariff increase have been forcibly revised downward.

From the business perspective, making profits gives little cause for criticism. But, there is an old saying about the gentleman's love of money in a proper way. As public utilities, the two power companies have the basic responsibility to make money in a proper way. Concerning the tariff adjustment announced by the two power companies, it is emphasized in the publicly disclosed information that international fuel prices have remained high in recent years. According to HEC, coal prices have increased by 20% and natural gas prices by 47% as at October this year. CLP has also stated that tariff must be adjusted as fuel prices have increased by over 30% on average.

Owing to increased costs, it is understandable that tariff must be adjusted, but there must be justifiable reasons to convince the public. Evidently, the reasons for significant tariff increase this time are unjustifiable, leading to public discontent. The crux of the problem is that the two power companies do not increase tariff to make up for the increased fuel costs; they just want to get the permitted rate of return of around 10% under the Scheme of Control Agreements (SCAs).

First, tariff increase by the two power companies will have a direct impact on domestic customers and increase their livelihood burden; second, tariff increase will increase the operating costs of business customers who will ultimately transfer the increased costs to the general public. Thus, the general public will be victimized by the excessive tariff increases. Even if the two power companies have made some downward adjustments, the rates of tariff increase is still higher than the inflation rate. I hope the two power companies can seriously consider reducing further the rates of tariff increase.

President, lastly, I have to criticize the Government for its pretence in the course of negotiation with the two power companies on tariff increase. It has adopted an indifferent attitude though it hypocritically appeared sympathetic. Donald TSANG, the Chief Executive, organized an opinion poll on Facebook,

calling upon the public to "like" if they think that the two power companies as public utilities should take into consideration their social responsibilities and the public's affordability when making tariff adjustment and that they should reconsider their position towards tariff increase. President, the problem is that the current SCAs are reached between the present government and the two power companies. Hence, the Government cannot shirk its responsibility for the substantial tariff increase by the two power companies today and the problem cannot be covered up by political whitewashing.

President, I so submit.

MS AUDREY EU (in Cantonese): President, I earnestly agree with Ms LI Fung-ying's remark about pretence. First of all, we notice the pretence of CLP Power Hong Kong Limited (CLP) as it initially proposed a 9.2% increase and insisted on not making any concessions, but it has revised the rate downward to 7.4% this morning, as though it has responded to public opinion and fulfilled its social responsibility. However, it has just reduced the Fuel Clause Charge (FCC) while the Basic Tariff has not been reduced at all. Sooner or later, it is going to increase FCC again. This is totally unacceptable.

I also agree with Ms LI Fung-ying's comment on the Chief Executive's remark on Facebook. We can say that his remark is the exemplar of pretence. Regarding this issue, the culprit is actually the Scheme of Control Agreements (SCAs) signed between the Government and the two power companies which specified a permitted rate of return of 9.9% and that the rate of return should be calculated on the basis of fixed assets, which is seriously out of line with the market situation. Why is it calculated on the basis of fixed assets rather than equity investment? The fact that the rate of return of 9.9% cannot be changed has given rise to the problem of maximizing profits. As it has not been stipulated that the two power companies have to consider other factors, such as inflation, people's affordability, and no arbitration mechanism has been put in place, we can only become "meat on the chopping board". All this is the own making of the present government.

Apart from the SCAs, the Government has always allowed oligopoly by the two power companies and it has never had any preparation and commitment to seriously and solemnly consider how to introduce competition. For example,

the Government has never considered how to segregate the generation sector from the network sector. Many Members have asked these questions during the urgent question session which lasted more than an hour this morning, but Secretary Edward YAU has still not given a serious response.

Another example is that, two years ago, the Government hinted the possibility of electricity generation with landfill gas, but landfill gas has eventually been sold to Town Gas, and consequently, the cost of electricity generation cannot be reduced. The Environment Bureau has recently been promoting projects such as incinerators and an organic resource recovery centre at Siu Ho Wan and so on, and it has frequently said that the electricity generated in these ways can be fed back into the electricity grid. Nevertheless, the Bureau has never explained whether the two power companies have consented to these projects or is that just the wishful thinking of the SAR Government. If it has secured the consent of the two power companies, how much is charged for connection to the grid? How can emission reduction be achieved? How much can electricity tariff be reduced? The Government has never accounted for these matters.

In the final analysis, the oligopoly problem has existed for a long time and Members have repeatedly made proposals on how to gradually introduce competition. Yet, the Government has not taken any actions or measures to brief us on the direction of work or the timetable. Hence, the Civic Party can only resort to the second-best alternative with regard to CLP's proposed tariff increase, that is, CLP may consider using part of the Tariff Stabilization Fund (TSF) to lower the increase rate of the Basic Tariff in the light that the TSF has a balance of \$300 million. Moreover, the Civic Party requests CLP to enhance its operational efficiency and control costs. I know that the Development Bureau has recently played a verbal trick by asking the Town Planning Board to approve CLP's in-situ luxurious flat development project. As reported, this will bring CLP an income of \$3 billion, but this extra income will not bring down the tariff. Hence, we think the Government has the responsibility to tell us whether it has played a verbal trick in this connection, and whether it makes verbal accusations without taking any actions and let go the two power companies, especially CLP.

In the long run, the Government certainly needs to give an account and conduct an interim review as soon as possible. It should explain how, in

reviewing the annual tariff increase, greater consideration can be given to people's livelihood within the scope of the SCAs.

Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, although the two power companies have finally lowered to a certain extent the original rate of increase amidst strong opposition of the community, the increase rates still outpace inflation. This will stimulate a price surge and under the resultant chain reaction, the situation of soaring prices will aggravate. Therefore, I and the Neighbourhood & Workers Service Centre to which I belong strongly oppose the present increase rates, and we hope that the Government would effectively demonstrate its determination to curb the surge.

The present tariff increase by the two power companies also highlights the incompetence of the SAR Government and the Environment Bureau to regulate the two power companies and safeguard the interests of different sectors of society. The adverse consequences of the SAR Government's indifference to the monopolization of the electricity market in the past have been fully reflected. Given the ineffective monitoring of the two power companies, the Neighbourhood & Workers Service Centre and I strongly request the SAR Government to play an active part in the electricity market, enhance its role in energy saving, investment and regulation, so as to ensure that the public can get electricity supply at an affordable and reasonable cost.

President, the current tariff increase by the two power companies has also reflected another issue. A very important factor is that the rate of permitted return in the Scheme of Control Agreements (SCAs) is determined on the basis of the fixed asset value. As such, we think that the SAR Government must proactively consider participating in the development of an electricity transmission grid, so as to pave the way for opening up the electricity grid in the future by reducing the investment of the two power companies through cutting down their non-core businesses.

We have also noticed that many issues related to the current tariff increase had been raised in 2006 when there was a review on the future development of our electricity market. Nevertheless, the Environment Bureau has not taken any

follow-up action; making it possible for the two power companies to press for tariff increases. The SAR Government must set a roadmap in respect of establishing a mechanism to determine the tariff. We also need to set an explicit roadmap for opening up the electricity grid and reforming the interconnection between the two power companies. The authorities will then be able to put pressure on the two power companies, urging them not to impose an unreasonable rate of tariff increase.

Under the current SCAs, no mechanism has been put in place to determine the tariff. The tariff is wholly determined by the two power companies; the public and the Government do not have the rights to regulate them. Therefore, I strongly request the Government to expeditiously review the SCAs, to impose restrictions on the two power companies such that they cannot do whatever they want in connection with tariff increase. I hope the Government would play a more active role instead of shedding crocodile tears, claiming that it has made the best efforts. Yet, in the end, it just says that nothing can be done. What purpose does that serve? I hope the SAR Government would not wink at the monopolization of the market by consortia, and victimize the general public.

President, I so submit.

MR IP WAI-MING (in Cantonese): President, at the last meeting of the Panel on Economic Development when the issue of tariff increase by the two power companies was discussed, I described the increase as an antagonistic act against the public. Why did I say so? Hong Kong people have opposed the tariff increase by the two power companies for many years, but the Government has never directly indicated its opposition, just like what it has done this year. Therefore, the two power companies could eventually increase tariff at a rate they ask for. It seems that members of the public are utterly helpless and have to yield. Under such circumstances, I believe the two power companies have become bolder, thinking that they can also extort the public and ask for an exorbitant increase this time. This verifies the saying that "Those whom God wishes to destroy, he first makes mad". This is also one of the reasons why the two power companies ask for a frantic tariff increase this time. They have simply ignored public opinion and people's livelihood.

As I have pointed out, there was only around 3% to 4% real growth in wage earners' pay last year. For every 0.1% of wage increase, we have to fight with employers over extended period of time. CLP Power Hong Kong Limited (CLP) has proposed to increase tariff by 9.2% this time. Can the general public not become furious? It is even more irritating that CLP has indicated today that it is ready to lower the increase rate to 7.4%. On the whole, the Basic Tariff has not been reduced and only the Fuel Clause Charge (FCC) will be lowered. Many Honourable colleagues have remarked that CLP is playing a game of numbers and it is very likely that the relevant expenses will still have to be borne by the public in the future. In playing the game of numbers, CLP is basically cheating the general public; it considers the public as fools who are vulnerable to deception and ignores their wisdom.

Today, CLP announced that the increase rate will be reduced to 7.4%, which has conversely made the public more indignant. I trust that it is very appropriate for some people to describe the present situation as annoying to all. A lot of Honourable colleagues have commented that it is understandable that a company would like to make profits. Nevertheless, I hope CLP and The Hongkong Electric Company Limited (HEC) would understand that, even though they always emphasize that each customer will only be charged an extra of \$10 to \$20 after the increase, the business customers may ultimately transfer the additional tariff to consumers. Last year, people struggled really hard due to soaring prices and they were unsure about the future economic development. Given such high profits (\$10.3 billion for CLP and \$7.2 billion for HEC), can the two power companies so righteously insist on maximizing profits at 9.9%, totally ignoring the situation in Hong Kong? They should know that they are earning Hong Kong people's money, "while water can carry a boat, it can also overturn it". I hope the two power companies would think twice.

Lastly, I still request the Government to study in-depth the segregation of the generation sector from the network sector and the introduction of competition, especially when the two power companies are now instituting proceedings against the Government, and there is a possibility that they can get refund of the overcharged rent and rates. I hope the Government would take proactive measures to ensure that the refund of the overcharged rent and rates to the two power companies will be returned to all Hong Kong people.

Thank you, President.

DR LAM TAI-FAI (in Cantonese): President, as the European debt crisis continues to spread, there will surely be a downturn in our economy next year. With high inflation at present, people have difficulties making ends meet and small and medium enterprises (SMEs) have operational difficulties. However, the two power companies, disregarding their social responsibilities and commercial goodwill, ignoring the opposition of the Government and the community, as well as the advice of the Government, and paying no heed to social harmony, have obstinately increase tariff through various means and excuses, with a view to making maximum profits.

President, I find it really distressing and infuriating that these large enterprises in Hong Kong value profit more than justice, fattening themselves by exploiting the public and craving to drink all the blood of Hong Kong people. The tariff increase by the two power companies has caused boiling resentment and it is most miserable that even the Government is unable to perform its gate-keeping role or control these almighty "power overlords".

President, the two power companies, as public utilities, have made huge profits in the past few years. The Hongkong Electric Company Limited (HEC) had a profit of \$7.2 billion and CLP Power Hong Kong Limited (CLP) had an even higher profit of \$10.3 billion last year. The two power companies have still crazily proposed to increase tariff at this difficult time with high inflation, and they have turned a deaf ear to the advice given by the Chief Executive in person.

President, I heard this morning that CLP is ready to adjust downward the increase rate from 9.2% to 7.4%; it is certainly desirable for CLP to make a concession. President, I believe you also understand that the current increase rate still outpaces inflation and the tariff level is basically not affordable by the public and SMEs. President, you may also remember that Lam Tai Fai College applied for an increase in tuition fees last year with the support and consent of all parents of our students. We have the support of many parents because they understood that the purposes of increasing school fees were to enhance the school quality and improve students' learning environment. They also understood that the school fee of Lam Tai Fai College was the lowest among all Direct Subsidy Scheme (DSS) schools in Sha Tin, and we have never increased fees since the founding of the school. Nevertheless, it was not the right time for fee increase. When we proposed an increase, the Audit Commission was conducting an audit

on all DSS schools and the audit result gave the community a negative impression on DSS schools and caused much misunderstandings and concerns. There were also comments about insufficient monitoring by the Education Bureau and that we might be profiteering. Even though I knew that their criticisms and accusations might not be right, the school authority also understood the difficulty of the Government. Hence, to take the overall situation into consideration, the school authority voluntarily adjusted downward the increase rate, hoping that social harmony and stability could be achieved and the increase would not result in confrontation.

President, even a small non-profit-making school sponsoring body like ours will take into consideration the overall situation and give due regard to the feelings of the public and the Government, as well as the social conditions, so as to make decisions in a rational and forbearing manner. However, for large profit-making organizations such as the two power companies which have enormous resources and huge profits each year, they only have the interests of shareholders in mind, and ignore social responsibilities, the overall situation, the public and the Government.

I really hope that senior staff and the management of the two power companies would seriously review their corporate culture and business ethics. As the saying goes, "people will probably meet one another again one day", they should not act unflinchingly. President, I would like to solemnly make two demands to the power companies: first, I hope they would wake up to danger at the last moment and reduce the increase rate. They may increase tariff but not at a higher-than-inflation rate, and they must help people tide over difficulties. President, the two corporations are large local enterprises which owed their success and profits to Hong Kong people, as their profits come from Hong Kong people's hard-earned money. People and enterprises alike should be grateful, maximizing profits at the expense of the livelihood of the public and SMEs is not a sustainable business practice.

Second, with less than two weeks to go, we will have the New Year; as the decision to increase tariff is made hastily, I request the two power companies to postpone the tariff increase to three to six months, so as to allow time to formulate a reasonable and feasible proposal. Surely, the power companies should not forcibly increase tariff, as this will put them in confrontation with the Government and the general public. I believe this will ruin their relationship

with over 7 million Hong Kong people; and in the long run, their international reputation and status, as well as profits, will be seriously affected.

President, I so submit.

MR FRED LI (in Cantonese): President, some Honourable colleagues have asked the two power companies to freeze tariff while some others have asked them to reduce the increase rate. I can only say that Ms LI Fung-ying has rightly said that the Government is putting up pretence while the Chief Executive is putting up an act. How come the two power companies can become ferocious "overlords"? The Democratic Alliance for the Betterment and Progress of Hong Kong and the Hong Kong Federation of Trade Unions have just described them as "overlords". Why have they turned into "overlords"?

The two power companies have been connived from the era of the British Hong Kong government to the rule of the SAR Government. The present Scheme of Control Agreements (SCAs), signed in 2008, have inherited the historical mistakes left behind by the British Hong Kong government. The biggest mistake was that the rate of return was calculated on the basis of fixed assets. The rate of return was reduced from 13.5% to 9.99%, which appeared pleasant to the ear. I have looked up the record for what I said in the Legislative Council in 2006 — not here but in the old Legislative Council Building. I said that the biggest problem with the SCAs in the past was that, there was a high permitted rate of return and profits were calculated on the basis of fixed assets. The two power companies actively invested in power plants and a very painful lesson involved the eight natural gas turbine units at Lung Kwu Tan — Secretary Edward YAU was not yet a director of bureau at the time. Back then, Henry TANG and I were members of the Panel on Economic Services and we strongly requested for the postponement of the commissioning of these eight turbine units because the reserve capacity would reach 70% upon commissioning. We basically do not need such a large amount of electricity but the construction had been approved long ago and the capital costs were linked with the profits of power plants.

Have the two power companies earned less when their profits are lowered to 9.99%? They have not earned less as power companies would certainly make big money. Last year, CLP Power Hong Kong Limited (CLP) had a profit of

\$7 billion from electricity sales and it also had profits from electricity sales to the Guangdong Province. In the consultation document issued around 2005 and 2006, the public were asked of their views on the new SCAs and the role of the Government. The Democratic Party submitted a proposal at that time and I found that the wisdom of the proposal is still applicable today.

At that time, we proposed several methods for calculating the rate of return. We considered the calculation of the return rate on the basis of net fixed asset values outdated, and such method was no longer adopted by many countries. Nevertheless, the SAR Government insisted on adopting this approach in the finalized proposal. We had suggested the adoption of methods such as CPI-X, weighted average and weighted average capital costs to calculate the return. There are a variety of methods for calculating the capital return, which need not be based on fixed asset values.

What is the biggest problem of calculating the rate of return based on fixed asset values? The problem is that the two power companies will continuously expand and invest. It would be fine for power companies not to construct new power plants as they can consider the introduction of natural gas. The Secretary has said that natural gas can be introduced to improve air quality. The introduction of natural gas necessitates the laying of new pipes, which are assets. The natural gas receiving stations in Shenzhen and Lung Kwu Tan are assets as well. No doubt, the costs are lower than \$10.4 billion required for the construction of a liquefied natural gas receiving station in Hong Kong as originally planned by CLP. Thus, the Government has proudly indicated that the project has been cancelled and it did not allow CLP to carry out the project.

Nonetheless, the Government has not told us that the situation will still be extremely bad because the introduction of natural gas is very costly and the new source of natural gas is much more expensive than that on Hainan Island. In addition, the amount of \$3.1 billion for West-East Pipeline Project has not been included in the \$39.9 billion for the five-year Development Plan. The Government has earlier approved the \$39.9 billion development plan but it is now asking for a lower rate for various reasons. The power companies play by the rules stipulated by the Government, yet the Government is now making much noises. Why is it making a row? Is the Government not the culprit? Now that the Government has provided the two power companies with room for maximizing profits, how can it monitor them? Indeed, I am not sure how many

people can monitor the accounts and assets of the two power companies, which are indeed very complicated.

The Democratic Party has raised two demands to the Government. First, the next five-year Development Plan should not be discussed behind closed doors and it should allow Legislative Council Members to participate in the discussions on behalf of the public. The same also applies to the next five-year plan and the next five-year plan. Second, the current SCAs will expire in six years or so and the Government is asked to conduct a review early. If the Government is dissatisfied and there are controversies, it should propose a review. We will support the Government's request for the two power companies to include the relevant provisions in order to make them less ferocious. Can the Government do so? We have made a proposal and supported an early review of the SCAs by the Government, forcing the two power companies to revise the provisions and enhancing the bargaining power of the Government and all of us. I hope the Secretary would actively respond to these views.

MS MIRIAM LAU (in Cantonese): President, the two power companies have completely ignored their social responsibilities and the objective fact that the economy will most probably experience a downturn, and they have substantially increased tariff by 9.2% and 6.3%, and the increase rates are far higher than

PRESIDENT (in Cantonese): Ms LAU, have you worn a microphone?

MS MIRIAM LAU (in Cantonese): yes the rate is higher than inflation and higher than the increase rates of the past two years, which will impose heavier burdens on the public and business customers. We should really condemn such acts which are apathetic to the sufferings of the people and added insult to injury.

Using environmental protection as a magic cloth and the considerable increase in operating expenses as a magic wand, the two power companies attempted to combine the two and put on a mystical magic show to illustrate that it is imperative to increase tariff. Unfortunately, the magic show failed to bring

applause because the data and reasons provided are vague and unconvincing. Given strong public opposition, The Hongkong Electric Company Limited (HEC) have adjusted its fee structure to even things up, though the rate of tariff increase for 90% of domestic customers has been slightly lowered, the overall increase rate remains at the 6.3%, and the rate is even as high as 7.48% for some customers. This reflects that the concession is merely a game of numbers, manipulating public relations tricks. The fundamental aim is still to strive for maximizing profits and getting the highest rate of return at 9.99%, with no concessions made to earn even 1 cent less.

The practice of "lower charge for low consumption, higher charge for high consumption" means that customers with lower electricity consumption will have reduced tariff while those with higher electricity consumption will have increased tariff. In spite of the fact that this practice can encourage energy saving by domestic customers, the arrangement is unsuitable and unfair for ordinary business customers and public organizations with higher electricity consumption such as hospitals, schools and the MTR Corporation, because electricity consumption is essential to the business operation or service provision by these business customers and organizations. In the question session today, the Government has stated that it has reservations about whether the energy-saving objective can simply be achieved through the approach of "higher charge for higher consumption". That is why I ask the Government to fight for a fairer and more reasonable arrangement for these business customers and organizations. My concern is that, once the increase rates are unaffordable by these business customers, they will be forced to increase prices and transfer the costs of higher tariff to consumers, tying down the general public.

CLP Power Hong Kong Limited (CLP) announced this morning that the increase rate would be reduced from 9.2% to 7.4% as it proposed to carry a bigger Fuel Clause Account (FCA) deficit. However, the increase rate is still far higher than the inflation rate and is thus unacceptable. All of us should not forget that a bigger Fuel Clause Account (FCA) deficit as CLP proposed is just an outstanding receivable item, and the amount will eventually be paid by consumers.

The Government and CLP have divergent views on how capital expenditures should be credited. We can hardly know if both sides are collaborating or mutually shirking responsibilities because the relevant financial

information is not disclosed and it is difficult for us to judge who is right or wrong in this Rashomon incident. Anyway, it is an indisputable fact that the Government has performed its gate-keeping role ineffectively. The authorities had already given in when they signed the new Scheme of Control Agreements (SCAs) with the two power companies in 2008. It was impossible that the Government failed to anticipate at that time that the two power companies would increase tariff in a perfectly justifiable manner under the provision of the SCAs that "the maximum rate of return would be 9.99% on the average net fixed assets of the power companies". In signing the new SCAs, the Government has apparently planted a time bomb for every member of the community and business customer, which will be detonated once a year.

Hence, the Government cannot shirk all responsibilities onto the two power companies, disguising itself as a victim to cover up its incompetence. In the next seven years, the two power companies will continue to increase tariff through increasing net fixed assets in a taken-for-granted manner. It is essential for the Government to think of ways to solve this structural problem of "being robbed with hands tied". For example, the Government must consider if it can take the opportunity of an interim review on SCAs in 2013 to convince the two power companies to amend certain provisions, such as reducing the highest rate of permitted return or increasing transparency. Even though this approach may be unrealistic, it is after all better than just playing verbal tricks. The Government should also actively consider opening up the electricity market and introducing competition in 2018, so as to thoroughly solve the related problems.

MS EMILY LAU (in Cantonese): President, in reply to the urgent questions this morning, the Secretary said that the Government's current review of the tariff increase as proposed by the two power companies has unprecedented results. The Secretary has also said that there was mutual respect between the Government and the two power companies and consensus would be reached in the past but there are divergent views on this occasion.

At the Panel meeting last week, divergent views still existed and the two power companies were asked to reconsider the increase. However, the tariff increase will come into effect on 1 January. As Members have asked at the

Panel meeting and this meeting today, has the Government already approved the two power companies to increase tariff?

One of the Executive Council Members, Mr LAU Kong-wah, said this morning that the Executive Council did not have much information in hand, some information was not comprehensive and some others had even been exaggerated. President, do you consider this situation lousy? Therefore, many Members have commented today that the authorities have not effectively performed the gate-keeping role.

It was good news when the SCAs were announced in 2008 as we thought that they could help the public because the rate of tariff increase would not be too high. Under the SCAs, the overall arrangement has struck a balance between the interests of the consumers and shareholders of the companies. How can a balance be struck? That is, to give the latter the necessary assurance to continue to invest in electricity supply facilities. What about the interests of the consumers? The affordability of customers or consumers is mentioned in other agreements but not in the SCAs.

The Secretary has also mentioned his gate-keeping role in answering Members' questions this morning. What gate-keeping measures has he currently taken? We have been discussing this subject today and it is almost 12 midnight now; and tariff will be increased a few days later. Members have requested the Government to urge the two power companies not to increase tariff; does the Government have the ability to do so? Has the Executive Council obtained all necessary information? Even members of the Energy Advisory Committee have spoken up and played verbal tricks like the Chief Executive. Can the authorities perform the gate-keeping role by playing verbal tricks, President? Is that how the Government plays its gate-keeping role for the interests of 7 million people? It has spoken up but it has told us soon afterwards that nothing can be done.

The two power companies can give alms of 1% to 2% to the public if they feel like to; or they will increase tariff at the proposed rate if they are displeased. How can the authorities be accountable to Hong Kong people? How can the Executive Council be accountable to the public? We must ask these questions. As stated in the SCAs a few years ago, it was resolved to introduce competition into the electricity market in 2018 at the soonest. But, what has been done so far? Many questions have been asked but there is no answer. The Secretary

has said this morning that the power company has spent too much money on premature investments. And, a press release was issued in the afternoon by the power company, stating that a part of the premature investments (\$78 million) was used on a research. What is the subject of the research? The power company has already told the authorities that it is a research on ways to meet the anticipated growth in electricity demand.

After opening up the market and introducing competition, the increase in demand will have nothing to do with the two power companies. So, this is a research conducted in advance but the expenses will be paid by us. Hence, the truth is that the Administration has ineffectively performed its gate-keeping role and the two power companies have got everything they want under the SCAs, and they are now considering how tariff can be further increased in the future. Yet, the authorities can do nothing as tariff increase is imperative. What exactly does the Government want Hong Kong people to do?

President, I believe that the Secretary and the Executive Council need to give the Legislative Council and 7 million people an account of how they have ineffectively performed the gate-keeping role and how they are going to save this mess in the future.

MR RONNY TONG (in Cantonese): President, today, many colleagues put up a placard with the words "Universal Outrage" at their seats. President, the "outrage" is directed not at the plundering acts of the two power companies, but at the Government's failure to play a gate-keeping role and at its hypocrisy. I very much agree with the remarks of various colleagues just now.

President, there are only two possibilities. One possibility is that the two power companies, especially CLP, have not miscalculated the figures. Under the Scheme of Control Agreements (SCAs), they are entitled to such rates of tariff increase. If so, we can only resign ourselves to fate and blame ourselves for signing such humiliating agreements forfeiting our own rights. However, there can be another version of the story, which is the two power companies are in fact guilty of "foul play" and have exploited legal loopholes to produce calculations that are not in keeping with the SCAs. The Government is right in saying that the two power companies should not calculate their tariffs like this. Thus, there is room to lower the electricity tariffs.

President, how can we unravel this Rashomon-like situation? President, we cannot. This morning, President, I asked an oral question, requesting the Secretary to give us and Hong Kong people as well the figures he had, so that we can decide whether he is right or the two power companies are right. President, he refused to do so. He gave a totally irrelevant reply to my question. I have no idea why the Administration is acting like this. On the one hand, the Chief Executive made various comments on his microblog, sounding pitiful and insisting that he was on the side of Hong Kong people. But on the other hand, the Secretary refused to give the data we asked for. Not only this, President, when I followed up my oral question this morning and asked why he did not take legal actions if he was right in saying that CLP was deceiving Hong Kong people, he gave a ridiculous reply. He said it was a political question rather than a legal one. President, this is a totally absurd reply. Either the Secretary is illiterate, or he is deceiving Hong Kong people. As we all know, an agreement is an agreement, and we can learn about its content through the Internet. The Secretary should not take all Hong Kong people for illiterates.

The SCA with The Hongkong Electric Company Limited provides for an arbitration mechanism. Apart from one clause, any dispute and controversy relating to the SCAs can be settled by arbitration. President, the clause that is excluded most probably has nothing to do with this controversy. While this clause is specifically excluded from arbitration under the contract, it does not mean that one has no recourse to the law. On the contrary, the clause that is excluded from arbitration can be taken to court. However, the clauses that can be submitted to arbitration must be settled by arbitration, rather than being settled at court.

However, President, the SCAs with CLP does not contain a clause on arbitration. There is no such provision. This means that lawsuits can be initiated. Either you prove that the method of calculation is in accordance with the SCAs and is correct, or we let the Court decide whether it is correct. President, how come the bureau refuses to explain the matter clearly and do something for Hong Kong people, instead of pretending to raise a hue and cry, and making us feel that we are being exploited at will?

President, I totally fail to understand the Secretary's position. Is there something that he cannot disclose? Or, as Mr Fred LI of the Democratic Party has said, maybe he has already given his consent and cannot go back on his word.

But in view of seething public sentiment, he pretends to be on the side of Hong Kong residents and is thus deceiving them.

President, I think today's debate is most timely. Secretary, would you please explain clearly to Hong Kong people and tell us whether you are lying or whether your hands are really tied?

MR LEUNG KWOK-HUNG (in Cantonese): President, the first question is about the Government's view that CLP should shoulder its social responsibility, since it is a big corporation. I want to ask the Secretary: if CLP has social responsibility because it is an enterprise, what is your responsibility and what is the responsibility of government officials? They have political responsibility. The Government is supposed to regulate the two power companies, but it only asks them to bear their social responsibility. I can only think of the expression — "mutilating oneself before guarding a pass". You break your four limbs before playing in goal, and then tell them "not to shoot so hard". Afterwards, you pretend it hurts a lot.

First, there are of course more profound reasons for criticizing CLP today. This has to do with the fact that China Power, run by LI Peng's daughter in the Mainland, wants to operate in Hong Kong as well. This matter has been under discussion for a long time. Regarding the notion of segregation of the generation sector from the network sector, it is time to criticize the power companies. If the criticism mounts, the Government can take over the companies or buy them up. That is why I suggest that the Government should buy them up and acquire them according to Article 105 of the Basic Law. When I proposed this earlier, the President asked me to mention this point at this time. If the Government thinks that CLP has shirked its social and corporate responsibility and that it has signed a wrong agreement, why not acquire it or buy it up? This is the only solution.

Second, how much can the Government do? Power generation has to do with energy. All enterprises are now buying from mainland consortia. The higher their prices, the more these enterprises can increase the net value of their fixed assets. As a result, everyone gets rich. So the Government even supports the West-East Pipeline Project. Donald TSANG tried to appease Neena WONG

but failed to get the deal. Now, the Secretary has finally got the deal to secure gas supplies to Hong Kong through the West-East Pipeline Project.

This is a huge backroom deal. The mainland consortia selling energy and fuel carry out plundering, and CLP colludes with them. While we ordinary people are at their mercy, the Government pretends to be powerless. Mainland's China Power will take its business to Hong Kong. That is called the segregation of the generation sector from the network sector. The Yangjiang Nuclear Power Station will still generate power, and the 12th Five-Year Plan arbitrarily It is the same thing. The 12th Five-Year Plan is formulated by the government and footed by the people. In our case, the Government does the planning, the enterprises make money and collude with mainland enterprises, while we are the one who foot the bill. The situation in the Mainland and in Hong Kong is the same.

The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) talks about the segregation of the generation sector from the network sector. Have they not heard of the "power overlords" in the Mainland? Have they not heard of the condemnation of the monopoly of mainland power enterprises? Do they want an even bigger consortium to exploit us? Have they asked LI Peng's daughter? Does she intend to do so? I know what they are getting at as soon as they drop a little hint. The DAB is really good at this. In Kowloon East, they support the development of a cruise terminal by big consortia. Developing another centre means an opportunity to make money. Henry TANG pushes the development of West Kowloon, so as to make money from it. At the Legislative Council, the Executive Council and the Government, they divide the spoils. LEUNG Chun-ying represents the interests of Chinese consortia or the "bosses" behind them who could not get on the bandwagon before or who could not get on the bandwagon after leaving office. As for Henry TANG, he represents people like LI Ka-shing. They collude with one another. The war between the TANG camp and the LEUNG camp is a war "between the pig and the wolf".

Actually, it is quite simple. There is only one solution, which is the Government should give us a clear explanation. If it accuses the two power companies of shirking their social responsibility, what exactly is this responsibility? Did the officials shoulder their political responsibility? If not, they should step down and the truth must be disclosed. Second, we need to have

options and we need to consult Hong Kong people. If it goes on like this, even if we let Mainland enterprises operate in Hong Kong and separate power generation from transmission and distribution, it is still one monopoly on top of another. Should the Government acquire the companies? Should we allow this business to become a money tree? It is as simple as that.

This is what happens when we have small-circle elections. That is why I am wasting my breath talking to them.

MR TAM YIU-CHUNG (in Cantonese): President, even if he has wasted his breath, it was only for five minutes.

President, the electricity tariff hikes will affect tens of thousands of households and increase the burden on the general public. This time, the rates of tariff increase proposed by the two power companies are much higher than the inflation rate. As a result, they are condemned by the whole community. During the past week, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) staged protests in front of the headquarters of CLP Power Hong Kong Limited (CLP). Apart from launching a signature campaign and collecting tens of thousands of signatures from the people, it also complained about the tariff increase of the two power companies on different occasions. This Monday, DAB legislators Starry LEE and CHAN Kam-lam met with the management of CLP to reflect the people's demands and ask CLP to provide the relevant data on the tariff increase.

We believe that the Government has obtained the data on the CLP's tariff increase. However, the points raised by the Government seem different from those raised by CLP at its press conference last Friday. That is why I hope the Government can promptly point out which parts of the data submitted by CLP are misleading or which parts are true.

The Government should learn from this experience and draw a lesson from the drastic tariff increase of CLP. While we understand that the Scheme of Control Agreement (SCA) reached in 2008 — I recall that the Government had to play its "trump card" in the end by threatening to legislate unilaterally if an agreement could not be reached. Finally, the permitted rate of return was set at the single digit figure of 9.9%. At the time, we thought this ceiling was good

and was lower than before. However, when the current tariff increase comes close to this ceiling, everyone reacts strongly against it.

Therefore, when the interim review is carried out in 2013, I believe the Government should seriously think about how to deal with these situations, as they may recur again. Moreover, what preparations should we make before the SCA expires?

Today, the Honourable WONG Kwok-kin talked about the segregation of the generation sector from the network sector. I listened to the Secretary carefully and heard him say that even such separation had its problems and there was no guarantee that we could get cheap electricity supply. What other options do we have if this option does not work? Currently, CLP owns the power networks. Even if other regions, such as the Pearl River Delta region, can provide stable and reasonably priced electricity, what can we do if the Government does not have any power networks? In dealing with such problems, the Government should make early preparations to avoid situations like the current one.

As I have pointed out today, while the Secretary repeatedly said that the Government is playing a gate-keeping role, it does not seem to be making much effort. That is why I think it should learn a lesson from this experience, and exercise more influence if similar situations come up again in future. In this respect, I think there is a need to review its role.

MR LEE CHEUK-YAN (in Cantonese): This morning, CLP Power Hong Kong Limited (CLP) held a press conference, announcing that the rate of tariff increase would be lowered from 9.2% to 7.4%. However, as we all know, this is just CLP's strategy of bargaining by starting at the high rate of 9.2%, and then reducing it to 7.4%. Still, I find its attitude deplorable, just like alms-giving. It reduced the rate to 7.4% as if out of charity after hearing views from various sectors. We want to reason and not ask for charity. We do not want it to give handouts to people under pressure.

However, even the reduction that CLP is offering is not real. It is merely juggling with the deficit balance in its Fuel Clause Account. This will increase the deficit in the Fuel Clause Account to a historic high later on. The question

is, any deficit in the account will have to be made up in future and will ultimately be borne by the public. This means that there is no downward adjustment of the increase rate at all. It is a good illustration of how CLP is leading the Government and the people a merry dance.

Yet, what I am most disappointed is that the Government seems to be completely helpless. We the Labour Party have always criticized the Government for the structural problems in its regulation of the two power companies. These structural problems render the Government powerless in regulating them. The Secretary's speech today also suggests that his hands and feet are tied. He said he has played a gate-keeping role, but how? Maybe he was tied up first and could not do any gate-keeping at all. He kept saying that the Government approved a five-year Development Plan. After approving it, it will conduct a review of the five-year Development Plan every year. The Secretary kept saying that after raising queries, the Government would talk to the two power companies, and presumably reach a consensus after the talks. However, if no consensus can be reached after the talks, the power companies can say that they only apply for tariff increases within the range approved by the Government under the five-year Development Plan. The Government can do nothing about this.

I asked the Government today if it can do anything about it in case no consensus can be reached. The secretary only avoids the question. I believe the reason he avoids it is that he has failed to play a gate-keeping role and cannot think of a way out. Thus, the problem is structural and lies with the Scheme of Control Agreements (SCAs). These SACs are unreasonable, giving the two power companies a permitted return of 9.99%. The Secretary may disagree and say that the rate of increase was even greater before, at 13.5%. Getting it reduced to 9.99% was already a remarkable feat. However, the Government said last time that it would legislate to regulate the companies. We believe regulating by means of legislation is the best. We should legislate directly and clearly to regulate the two power companies. But in the end, the Government did not do so.

The Secretary put the blame on this Council, saying that some legislators opposed it and talked about a "free market". This is not surprising. Members from the functional constituencies would of course oppose it, since they talk about the free market all the time. But what kind of free market is this? CLP and Hong Kong Electric are basically monopolies, and monopolies mean that it is

not a free market at all. That is why the Labour Party always advocates that monopolies should be nationalized. Private monopolies will do harm for many generations to come. That is why monopolies must be nationalized.

However, let us not talk about nationalization for now. Let us go back to the present SCAs. They provide for permitted returns, rather than guaranteed returns. But actually, they are guaranteed returns in practice. The Government can do nothing about it. It said repeatedly today that it had no choice but to give approval to the two power companies — that is what it practically said. Even though it did not use the exact words "have no choice but to give approval", it kept avoiding the issue, showing that the Government is powerless to play a gate-keeping role. Hence, Donald TSANG asked people to "like" him on Facebook as a last resort. But what did he do afterwards? The Government should exercise the powers that it has.

However, I want to say a bit more about the structural problems. If we do not get rid of the SCAs, we will face these deplorable situations where the companies earn the maximum return and bleed the people dry every year. These incidents will happen not just this year, but year after year. That is why we have to strike at the heart of the problem. SCAs are certainly not feasible. We must re-negotiate other arrangements. But the worst thing is that this is only the interim review and not much can be done. Lastly, President, I want to stress that monopolies should be nationalized. Thank you, President.

DR RAYMOND HO (in Cantonese): President, the Government and the two power companies signed the Scheme of Control Agreements (SCAs) in 2008. Under the SCAs, the permitted return of the two power companies was reduced to 9.99% from 13.5% to 15%. Relatively speaking, the profits of the two power companies became lower under the SCAs. After the two power companies have announced a considerable rate of tariff increase this year, many people queried about the SCAs. However, as an international commercial city, Hong Kong has always respected the spirit of agreements and I believe Honourable colleagues would agree. Anyway, we must comply with the provisions of the SCAs. Since there is some time before the expiry of the SCAs in 2018, the Government should spare no effort to ensure that tariff is maintained at a reasonable level through reviewing the five-year Development Plans of the two power companies and the annual capital investments and operating expenditures submitted by them.

Yesterday, I discussed twice with the senior management of CLP Power Hong Kong Limited (CLP) that people were indignant and they had raised oppositions. Hong Kong people asked CLP to consider revising downward the increase rate because they are now facing an unstable external economic situation, the risk of an economic downturn has become increasingly higher and there are signs of a deteriorating employment situation. Moreover, there are internal economic problems due to high inflation; thus, substantial tariff increase will definitely increase people's burden, which is hardly acceptable. At this difficult time, people have certain expectation of the two power companies as large enterprises and they hope that they could bear some social responsibilities and help people tide over difficulties.

In response to people's concern, CLP has announced today that the tariff increase rate next year will be revised downward from the original 9.2% to 7.4%. Based on information provided by CLP, tariff for 80% of domestic customers will be increased by \$22 each month, an increase rate of less than 4.6%. The increase rate of CLP or The Hongkong Electric Company Limited (HEC) still puts some pressure on business customers with higher electricity consumption. I hope that the ultimate increase rate of the two power companies would meet people's expectation and be close to the inflation rate.

When the Secretary for Environment, Mr Edward YAU, answered Honourable colleagues' urgent questions earlier, he referred to Fuel Clause Account (FCA) and the Tariff Stabilization Fund (TSF). In years when there is increased pressure on tariff increase, the two power companies can reduce the increase rate by increasing the projected FCA deficit balances, so as to alleviate the impacts of tariff increase on people's livelihood and enterprises. The TSF saves the net incomes of the two power companies exceeding the permitted return and provide funds when necessary to reduce the impacts of an upward tariff adjustment on customers.

According to him, CLP can carry a bigger FCA deficit and there are conditions for its forecast deficit of \$800 million to be increased to \$1.4 billion. He has also disclosed that CLP has underestimated its TSF balance in eight years. Should the Government follow up the situation and continue to negotiate with CLP if the increase rate can be lowered through transfers from the TSF to relieve the public's burden? The Government should monitor cost control by the two power companies so that their high operating costs will not be transferred to the

customers, and it should also try its best to find space for a reduction in the basic tariff.

President, I would like to take this opportunity to call upon the two power companies to shoulder their corporate responsibilities and help the public tide over difficulties. They must ensure a reasonable level of tariff increase. Thank you, President.

MR TOMMY CHEUNG (in Cantonese): President, while small and medium enterprises (SMEs) and grass-roots people are suffering from the pain of inflation, the two power companies have still proposed substantial tariff increases in order to make maximum profits. They are impervious to people's misfortune and hitting people when they are down. They apparently tread on dying people in a cold-blooded and selfish manner. It is more unreasonable that the tariff adjustment system pinpoints SMEs; customers with higher electricity consumption have to subsidize those with lower consumption. This stirs up differentiation so that SMEs have become antagonistic to most people.

The catering industry is really infuriated. They have recently been operating under enormous pressure as operating costs such as rents, wages and ingredient costs have increased considerably, and they are on the verge of "explosion". The two power companies have tyrannically proposed tariff increases, which add fuel to the flames on our heads, forcing SMEs who seldom step forward to protest in the past few days.

The two power companies are willing to make concessions after being denounced throughout the territory. Today, CLP Power Hong Kong Limited (CLP) has announced that the tariff increase rate will be reduced from the original 9.2% to 7.4% but the Basic Tariff will remain unchanged. The Hongkong Electric Company Limited (HEC) will slightly adjust downward the tariff increase rate for 70% of business customers from the original 6.3% to 6.08%, but the overall increase rate will remain unchanged. The slight adjustment is insignificant but just better than nothing, and the increase rate is still far higher than the latest inflation rate of 5.7%, which will not be acceptable to the grassroots and SMEs.

In the past week, the two power companies had not shown any sincerity and they had just played with numbers. HEC claimed that its business customers are small merchants. Under the new revised proposal, 70% of the business customers have lower electricity consumption and their monthly tariff will increase by only \$129.5. CLP claimed that the monthly tariff for around 50% of business customers will increase by less than \$41. These words seem very appealing. How much more tariff will the remaining 30% of HEC's business customers and the remaining 50% of CLP's business customers have to pay?

These tariff increases are pinpointing SMEs. The two power companies are charging SMEs with higher consumption higher charges to even things up and they are playing with numbers for the sake of window-dressing. They are simply bullying the disadvantaged SMEs and supporting those in more favourable situations. In particular, CLP has also abolished the regressive tariff concession for SMEs and standardized tariff, which is actually a double increase and the tariff increase rate for SMEs is much higher than 10%.

President, electricity costs generally account for 3% to 5% of the income of the catering industry, and some food establishments are more pitiful. As they have recently been persuaded by CLP to change from using gas to using electricity, the electricity costs take up a higher proportion of total costs. Most of these food establishments have higher electricity consumption, especially Chinese restaurants and tea cafés, and their electricity costs generally range from tens of thousands of dollars to two to three hundred thousand dollars. Given a 10% tariff increase, their substantive expenditures may increase by a few thousand dollars to nearly ten thousand dollars. I believe the catering industry will suffer most as we have to bear the biggest increase.

The operators of many food establishments may not have profits of twenty thousand dollars a month. In the past year, their earnings were meagre due to the implementation of the statutory minimum wage, labour insurance, higher management fees and ingredient costs, and so on. The operators of many food establishments have told me that the business volume has increased but the profits has become less. There have already been undercurrents of closures and closures may merge at any time after the Lunar New Year. At that time, I will certainly blame the two power companies for being the culprits.

We cannot blame the two power companies for increasing tariff if they have losses but they currently have lucrative profits and the annual net profits are \$10.3 billion (for CLP) and \$7.2 billion (for HEC). They still want to make maximum permitted return at 9.99%, totally ignoring their social responsibilities as public utilities and there is a lack of justice.

Anyway, the two power companies should not think that we are at our wit's end under the SCAs. I know that SMEs have already reached a critical point. If the two power companies do not show their sincerity and continue to play with numbers, other Honourable colleagues and I will not give up. For all SCAs and development projects of the two power companies in the future, we will assess and approve them according to the most stringent standards. The two power companies must think twice and they should never become the enemies of the public.

I so submit, President.

MR ALAN LEONG (in Cantonese): President, although CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC) have made concessions under the pressure of the community's outrageous sentiment, their tariff increases will still put heavier pressure on the grassroots, the middle class and small and medium enterprises (SMEs) in respect of livelihood and business operation.

We cannot survive in this city without electricity. When the electricity grid has not been opened up and there is no market competition, the two power companies will definitely have profits. However, it is not enough for them to have profits because they want maximum profits.

Under the Scheme of Control Agreements (SCAs) signed between the Government and the two power companies in 2008, the return on fixed assets is taken as the basis for determining the permitted return, and the two power companies can have greater profits if they increase investment in fixed assets. However, these profits are brought by increasing tariff. Even though the Government has revised downward the permitted profit to 9.99% of fixed assets when it subsequently assessed and approved the five-year plans of the two power companies, it knew and allowed the two power companies to respectively spend

\$39.9 billion and \$12.3 billion as the capital on which profits could be made. In other words, the Government already foresaw a few years ago that tariff would increase, but it could not do anything to stop the power companies, giving rise to the present situation. We can say that the tariff increase this year is just a prologue.

After the two power companies have announced the tariff increases, the Chief Executive and the Secretary appeared infuriated and condemned the excessively high increase rates. As some Honourable colleagues have noticed, the Chief Executive has commented on Facebook that, in proposing tariff increases, the two power companies as public utilities should take into consideration their social responsibilities and the affordability of the public, and he has invited people dissatisfied with the increases to press the "Like" button. Indeed, many people have pressed the "Like" button because of his comment. However, these acts are mere pretense. Since the Government made things easy for the two power companies when the SCAs were signed, Hong Kong people have to bear the consequences together. Now, the Government pretended that it suddenly realized the problems when they surfaced. Regardless of what the Government does, it cannot shirk its political responsibility for its negligence when the SCAs were signed.

It is surreal to talk about the social responsibilities of enterprises when there is no competition in the market, thinking that there will be a gentleman's agreement and the increase will be constrained. We have heard the Secretary's answers in the urgent question session this morning. In a nutshell, the Government can do nothing if the increase rates of the two power companies are lower than 9.99%. This is the truth.

Though the Government does not have other means to make the two power companies give in, it is not true that we do not have any chips in hand. First, President should have noticed that the public, the operators, various parties and groupings and the four major business associations have expressed dissatisfaction with the tariff increases of the two power companies; hence, the Government has public support. Next, when the two power companies want to make maximum profits, the Government should actively make preparation and conduct researches to find out if the electricity grid can be opened up, with a view to expeditiously introducing competition upon the expiry of the SCAs.

As a matter of fact, there are \$300 million in the Tariff Stabilization Fund of CLP and the Government will repay with interests to the two power companies the rent and rates that it overcharged in 2004 and 2005. Now that the two power companies will have these amounts, I hope that they would heed good advice and refrain from maximizing profits, so as to help relieve the livelihood burdens of SMEs and Hong Kong people.

I so submit.

MR PAUL CHAN (in Cantonese): President, I have the following views on the tariff increase by CLP Power Hong Kong Limited (CLP).

First, I think the Administration and CLP should respectively be reprimanded. The Administration has not effectively performed its gate-keeping role when it signed the Scheme of Control Agreements (SCAs). For instance, it has not taken the affordability of the public into account when it assessed the tariff increase. We all know that the affordability of the public should be taken into account during fare adjustments by buses and MTR.

Second, the arbitration provisions in the SCAs do not cover tariff adjustment. In other words, the permitted profits it is more appropriate to call them "guaranteed" profits instead of "permitted" profits. So long as the two power companies have the guts, they can increase tariff to an extreme extent, and there is no way to say no under the current mechanism. The term of the SCAs is as long as 10 years, and during the period, there is no mechanism for a review. If the electricity grid is to be opened up, there is a "stranded provision" in the SCAs — if there are any policy changes after the two power companies have made capital investments, they can enjoy guaranteed profits for five more years, and the money spent can be collected from the public in the form of electricity tariff.

President, as I already mentioned this morning, though CLP has announced a lowering of the tariff increase rate this morning, I think it is playing with numbers and fooling the public because it has just reduced the Fuel Clause Charge but not the Basic Tariff. As CLP cannot make profits from fuel costs, this is an outstanding receivable item. In another words, the reduced tariff will be collected from the public at a later time. Nevertheless, the reduction rate as announced this morning confirmed our observation of the financial statement, this

is, CLP will get \$600 million more for reducing the tariff by 1.5 cents, and a reduction of the Basic Tariff by 5 cents enables CLP to get \$2 billion more. Let us look at its interim accounts of last year, it is not difficult for us to note that its total operating expenses in 2011 had increased more than \$200 million, the depreciation for the whole year had increased \$500 million. Thus, the total sum is approximately \$700 million to \$800 million. CLP can have a net profit of approximately \$1 billion by increasing the Basic Tariff by 5 cents.

President, CLP had provided some figures to explain why the income in the first half of the year was unsatisfactory, and thus more than \$800 million have been transferred from the Tariff Stabilization Fund (TSF) to increase its profits. However, CLP's incomes in the second half of the year have always accounted for 55% of its annual incomes. For this reason, I believe that there is no need to transfer money from the TSF again in the second half of the year, and money may even be transferred into the TSF just like last year. The present tariff increase is not intended to make up for the increase in expenditures; it will actually increase the profits.

President, I have checked the actual rates of return of CLP as stated in its annual reports in the past few years. From 2001 to 2008 — the period covered by the last SCA, although the rate of permitted profit was 13.5%, its actual profits sometimes ranged between some 12% and 13%. In the year 2009 and 2010, its permitted profit was 9.9% but its respective rate of profit was 9.27% and 9.15%. Why is there such an extreme increase this year? President, we notice from its annual report, especially its interim report, that CLP has a major acquisition in Australia, which increased its liability from \$44.6 billion to \$65.8 billion, a 50% increase. Furthermore, following an amendment to the Australian law, it needs to write off Au\$245 million for some energy facilities, roughly equal to HK\$1.9 billion. I have reasons to doubt if the senior management of CLP would like to maximize profits in Hong Kong under this pressure — to add more profits to the overall accounts — so as to make up for the losses in this respect. This is an extremely irresponsible act.

President, CLP has all along conducted market surveys and attached great importance to its image on the public, in particular its social responsibilities. Hence, I call upon CLP to make a timely turn and take up its social responsibilities. It must not increase tariff at an excessive rate. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, Members have already spoken. I now call upon the Secretary for the Environment to reply.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, first of all, I would like to thank Ms Starry LEE for moving the adjournment debate, and through the urgent question session this morning, the Government can respond to the concerns of the public. My impression is that the tariff increases by the two power companies this year have caused greater responses than the past few years; the following are some of the major reasons.

First, the rates of tariff increase this year are higher than those in the past few years. As far as we remember, since the new Scheme of Control Agreements (SCAs) were reached in 2008-2009, there was substantive tariff reduction in the first year, and the increase rate was at lower levels in the following years; the increase rate was only 2.8% last year. The increase requested by the two power companies this year, in particular, one of them has asked for a 9.2% increase, is much higher than public expectation.

Second, during the deliberation of the tariff increase, some issues have indeed aroused queries by the Government and the public, and in this connection, the two power companies must give an explanation.

Third, given the high increase rates and the queries raised, people worried if the two power companies have made the best efforts to reduce costs to relieve people's burdens.

Fourth, many Members have put the blame on the Government's gate-keeping role and have questioned if it has been effectively performed such role.

I believe the above reasons are justifiable, and I believe that the public and Members are not raising opposition whenever increases are proposed. Similarly,

the reason for refusing to pay the bill is not due to the higher expenditures incurred in the past for environmental protection or clean energy measures. I trust we all hope that the rates of tariff increase of the two power companies can be determined under a reasonable mechanism which can both meet the assessments of the Government and the monitoring of the public. As I have said at the previous Panel meetings, when the proposed increase rate is high, the Government would support reasonable items but we would also raise queries. The power companies should respond to the queries.

I hope that the two power companies would act in a responsible way by, on the one hand, give adequate explanations to the queries raised by the Government, and on the other hand, understand the public's burdens and take certain measures to help people tide over the difficulties.

We have all along considered that the Government is duty-bound to perform its gate-keeping role well. If there are ways to strengthen its gate-keeping work, the Government will certainly accept them.

It is true that the way in which the Government handles the tariff increases of the two power companies this year is unprecedented, as Mr Fred LI has said when he asked his question. In the annual review this year after the implementation of the new SCAs, the Government has asked the two power companies some questions which were not asked in the past. In the course of examination, we think the four questions are raised with good reasons.

I have previously mentioned the four questions, including whether the operating expenses were higher than inflation; whether the capital expenditure was premature or excessively large, thus affecting the installation of additional generating units in the future; whether the Tariff Stabilization Fund (TSF) and Fuel Clause Account (FCA) deficit balances can be fully utilized to relieve the increase rates; and whether the special revenues can be credited to account as early as possible, so as to relieve the especially high increase rates this year.

In these areas, we have noticed that the two power companies have respectively given their responses. On the four questions I just mentioned, CLP Power Hong Kong Limited (CLP) has taken measures this morning related to the FCA balances, and has increased the amount to \$1.4 billion, thereby reducing the net tariff increase rate of to 7.4%. Concerning special proceeds, we learn that

CLP has made a commitment to expeditiously return to customers any repayments of rents and rates made by Government. These are positive actions.

Regarding operating expenses and capital expenditure, we still hope that CLP would provide a more positive response and explanation, especially on capital expenditure items. Some Members have just asked if this will lead to premature investment in future generating units or additional expenditures or investments in future which may not be absolutely necessary. In this connection, we hope the two power companies can give further responses. At the meeting of the Panel on Economic Development to be held on Friday, we would like to have further discussions with the two power companies so that actions can be taken on the basis of facts and reasons.

Members have expressed concerns about the SCAs. Each year, we will explain to the Panel concerned the tariff adjustments proposed by the two power companies. I believe there is a very good opportunity this year for the Government to further perform its gate-keeping role by focusing on the five main points of the SCAs at two levels, as I mentioned this morning in reply to Members' questions. This is a very important point because there are restrictions on the Government's work in this regard, which mean the framework set with the consent of the two parties when the SCAs were signed and the room for development.

I have mentioned before that the room for development is essential. If the two power companies lack room for future investment and development, it may affect the future electricity development in Hong Kong. Nevertheless, this room is not absolute, and it is subject to the "proper use" principles of the two parties or reasonable explanations must be given when the Government raises questions. Apart from the development plans, I have repeatedly emphasized that the Government conducts annual tariff reviews. Even if the two power companies have proposed some leading principles under their development plans, the work is still carried out each year with the prior consent of the Government.

We raise questions each year. If Members think that the Government merely concerns whether the increase rate will exceed the anticipated tariff as stated in the five-year Development Plan plus an additional 5%, and that the Government will not carry out the work in case of compliance, I believe the annual tariff increase rates would have been higher in the past few years.

Because we express our views or raise questions each year on the development plans or tariff adjustments, some expenditure items have been reduced.

I will not repeat what has been done for large projects such as Liquefied Natural Gas (LNG) terminal involving an expenditure of \$10.4 billion. Members should learn from my answers to the questions raised by most Members that the Government has not approved the installation of additional generating units by the two power companies in the past few years. In other words, the two power companies may request for installing additional generating units each year. In fact, we have not approved such installation these few years, but it does not mean that the two power companies have not made the relevant proposals. We sometimes do so in relation to the development plans or annual adjustments, and that is why we are particularly concerned about capital investment items this year. Even though the relevant items involve insignificant amounts, we raise questions about whether this may lead to the installation of additional generating units in the future. In the future review on the development plans, we will not approve the installation of additional generating units unless there are extremely convincing reasons.

Some Members have also asked if the SCAs can achieve the objectives. I would like to say that money is not the only guideline for achieving the objective of the SCAs because I have repeatedly stressed that the electricity policy has four pillars, namely safety, reliability, environmental-friendliness and reasonable prices, and a balance must be struck among these four pillars.

If we examine the current SCAs, significant amendments have been made to the SCAs in the year 2008-2009, as I have previously remarked. After the amendments, we can see that the performance in the two aspects of electricity safety and stable supply within the new regulation period is not much different from the past, and high levels have been maintained in these aspects. About improving the environment, the overall electricity development in the past few years has been geared towards emission reduction and the use of clean fuels; thus, the air quality has been greatly improved. I have given a lot of data in the past, such as the data concerning the substantial reduction in pollutants.

Concerning reasonable prices, we have made efforts in the past few years to properly perform our gate-keeping role. As regards the total net tariff in the past few years, up till today, the tariff of one of the two power companies is still

lower than that before the regulation period, and the tariff of another company has only increased by around 3% even when fuel costs have been included.

It does not mean that the SCAs do not have any room for improvement. I remember that I had three discussions with Members in the Legislative Council in July, October and December in 2007 over the need to review the SCAs. There were very different views at that time, and some Members have expressed today that there were views in support of a drastic change at that time and proposed to carry out the work through legislation. Actually, the Government also engaged in preliminary law drafting at that time.

After decades of implementation of the SCAs, some Members asked if this well-tested practice should continue to be adopted with amendments made, such that the directions mentioned by the Government could be followed. In the revised SCAs later signed by the Government and the two power companies, some important amendments had been made, such as reducing the rate of return and shortening the term of the SCAs with a view to introducing competition in the future when necessary, as Members have just mentioned. In connection with the retained earnings of the two power companies, we have imposed restrictions through reducing the TSF balance, and we have linked the permitted return with environmental protection so as to protect the environment. I think these changes have made certain contributions to the overall development of the electricity market and to environmental protection, as requested by the public in the past few years.

In the course of the work, the Government and the two power companies must co-operate with one another and share some responsibilities. So, in conducting an annual review, we should provide the two power companies with appropriate room to do a good job and improve services, and we should also play a monitoring role and confirm through researches the proposals made, so as to determine whether such expenses are necessary.

As regards the questions asked by Members, I have stated at the outset that the tariff adjustments by the two power companies this year have caused louder responses than that in previous years. I hope Members would understand that the Government has encountered greater difficulties in the course of review, and some questions have been asked. However, I believe Members should have observed that the Government is ready to enhance the transparency of the whole process. Furthermore, some Members wonder if there is any room for

improvement under the present approval mechanism of the SCAs, especially in respect of the permitted rate of return, the TSF balance, as well as the future competition and development. We will explore these issues in the review to be conducted later.

Having heard Members' views, we should continue to follow up with the two power companies on issues that have not been fully and clearly explained and request them to respond. Moreover, we will have direct discussions with the two power companies at the Panel meeting of the Legislative Council to be held on Friday. We would be pleased to provide support as far as possible. If Members need certain information, we will directly provide them with such information and exchange views with them with the consent of the two power companies. If the two power companies consider that the Government's justifications are unreasonable in some areas, the Government can explain or elaborate on the relevant arguments.

Lastly, we will examine if the SCAs have any room for improvement and we will continue to listen to Members' views. Once again, I would like to thank Members for giving the Government an opportunity to explain its current practice during this debate.

Thank you.

PRESIDENT (in Cantonese): As this motion debate lasted more than one and a half hours, according to Rule 16(7) of the Rules of Procedure, I shall adjourn the Council without putting any question.

NEXT MEETING

PRESIDENT (in Cantonese): Members, at this time when the whole world joins in the jubilation (indignation), I wish that we may hear some good news during Christmas so that Members and the public would have a happy New Year.

I now adjourn the Council until 11 am on Wednesday, 11 January 2012.

Adjourned accordingly at sixteen minutes to Twelve o'clock at midnight.

Annex I

Enduring Powers of Attorney (Amendment) Bill 2011

COMMITTEE STAGE

Amendments moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting “3” and substituting “3, 3A”.
3(5)	In the proposed section 5(2)(d)(iii), in the Chinese text, by deleting “確認該文書是在授權人在場並在其指示下由他人” and substituting “該文書是在授權人在場並在其指示下由他人代其”.
3(7)	In the proposed section 5(2)(e)(iii), in the Chinese text, by deleting “確認該文書是在授權人在場並在其指示下由他人” and substituting “該文書是在授權人在場並在其指示下由他人代其”.
New	By adding— <p style="margin-left: 40px;">“3A. Section 10 amended (Commencement)</p> <p style="margin-left: 80px;">(1) Section 10—</p> <p style="margin-left: 120px;">Renumber the section as section 10(1).</p> <p style="margin-left: 80px;">(2) After section 10(1)—</p> <p style="margin-left: 120px;">Add</p> <p style="margin-left: 160px;">“(2) To avoid doubt, an enduring power does not commence as a power of attorney before it is executed.</p> <p style="margin-left: 160px;">(3) For the purposes of subsections (1)(b) and (2), an enduring power is executed when it is duly signed before the solicitor in compliance with the requirements in</p>

section 5.

- (4) Subsections (2) and (3) do not affect any enduring power executed before the commencement date of the Enduring Powers of Attorney (Amendment) Ordinance 2011 (of 2011).”.

9 In the proposed section 4(2), by deleting “donor becoming mentally incapable” and substituting “donor’s mental incapacity”.

10(1) In the proposed section 5(2A), in the Chinese text, by deleting “事預” and substituting “事項”.

12 (a) In the proposed Schedule 1, under the heading “**Information you must read**”, by adding—

“13. This form takes effect as an EPA in accordance with section 10 of the Enduring Powers of Attorney Ordinance (Cap. 501) when it is signed by you or the person signing on your behalf and under your direction before the solicitor. You should note that unless and until this form is so signed, it has no effect either as an EPA or an ordinary power of attorney. However, if you wish, you may choose a later date or later event, on which the EPA will take effect. In such case you must specify this later date or event in paragraph 4A of Part A.”.

(b) In the proposed Schedule 1, under the heading “**Form of enduring power of attorney (for appointment of only one attorney)**”, in Part A—

(i) in paragraph 2, by deleting “*If you do, your EPA will not be valid.*” and substituting “*If you do, your EPA will not be valid.*”;

(ii) by adding—

“4A. **Commencement of EPA**

[This EPA takes effect on the date it is signed before the solicitor in paragraph 6 or 7 below. If you want to specify a later date or later event on which this EPA will take effect, please fill in the gap in the sentence marked with an asterisk below. Delete that sentence if you wish this EPA to take effect on the date it is signed before the solicitor.]

*This EPA takes effect on
 (insert a later date or event).”.

13

(a) In the proposed Schedule 2, under the heading “**Information you must read**” —

(i) in paragraph 3, in the Chinese text, by deleting “個” and substituting “各”;

(ii) by adding—

“14. This form takes effect as an EPA in accordance with section 10 of the Enduring Powers of Attorney Ordinance (Cap. 501) when it is signed by you or the person signing on your behalf and under your direction before the solicitor. You should note that unless and until this form is so signed, it has no effect either as an EPA or an ordinary power of attorney. However, if you wish, you may choose a later date or later event, on which the EPA will take effect. In such case you must specify this later date or event in paragraph 5A of Part A.”.

(b) In the proposed Schedule 2, under the heading “**Form of enduring power of attorney (for appointment of more than one attorney)**”, in Part A—

(i) by deleting paragraph 2 and substituting—

“2. **Whether attorneys must act jointly**

*[You must decide whether your attorneys are to act (a) jointly; or (b) jointly and severally. See paragraph 3 under the heading “**Information you must read**” and delete either (a) or (b) from the statement below. If you do not, your EPA will*

not be valid.]

My attorneys appointed under paragraph 1 are to act—

(a) jointly.

or

(b) jointly and severally.”;

(ii) in paragraph 3, by deleting “*If you do, your EPA will not be valid.*” and substituting “*If you do, your EPA will not be valid.*”;

(iii) by adding—

“5A. **Commencement of EPA**

[This EPA takes effect on the date it is signed before the solicitor in paragraph 7 or 8 below. If you want to specify a later date or later event on which this EPA will take effect, please fill in the gap in the sentence marked with an asterisk below. Delete that sentence if you wish this EPA to take effect on the date it is signed before the solicitor.]

*This EPA takes effect on
..... (insert a later date or event).”.