OFFICIAL RECORD OF PROCEEDINGS

Thursday, 10 January 2013

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT
THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.
THE HONOURABLE ALBERT HO CHUN-YAN
THE HONOURABLE LEE CHEUK-YAN
THE HONOURABLE JAMES TO KUN-SUN
THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.
THE HONOURABLE LEUNG YIU-CHUNG
THE HONOURABLE EMILY LAU WAI-HING, J.P.
THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.
THE HONOURABLE ABRAHAM SHEK LAI-HIM, S.B.S., J.P.
THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.
THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.
THE HONOURABLE WONG KWOK-HING, M.H.
DR THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P.
THE HONOURABLE JEFFREY LAM KIN-FUNG, G.B.S., J.P.
THE HONOURABLE ANDREW LEUNG KWAN-YUEN, G.B.S., J.P.

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

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

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN, J.P.

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

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

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

THE HONOURABLE CLAUDIA MO
THE HONOURABLE MICHAEL TIEN PUK-SUN, B.B.S., J.P.

THE HONOURABLE NG LEUNG-SING, S.B.S., J.P.

THE HONOURABLE STEVEN HO CHUN-YIN

THE HONOURABLE FRANKIE YICK CHI-MING

THE HONOURABLE WU CHI-WAI, M.H.

THE HONOURABLE YIU SI-WING

THE HONOURABLE GARY FAN KWOK-WAI

THE HONOURABLE MA FUNG-KWOK, S.B.S., J.P.

THE HONOURABLE CHARLES PETER MOK

THE HONOURABLE CHAN CHI-CHUEN

THE HONOURABLE CHAN HAN-PAN

DR THE HONOURABLE KENNETH CHAN KA-LOK

THE HONOURABLE CHAN YUEN-HAN, S.B.S., J.P.

THE HONOURABLE LEUNG CHE-CHEUNG, B.B.S., M.H., J.P.

THE HONOURABLE KENNETH LEUNG

THE HONOURABLE ALICE MAK MEI-KUEN, J.P.

DR THE HONOURABLE KWOK KA-KI

THE HONOURABLE KWOK WAI-KEUNG

THE HONOURABLE DENNIS KWOK
THE HONOURABLE CHRISTOPHER CHEUNG WAH-FUNG, J.P.

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE SIN CHUNG-KAI, S.B.S., J.P.

DR THE HONOURABLE HELENA WONG PIK-WAN

THE HONOURABLE IP KIN-YUEN

DR THE HONOURABLE ELIZABETH QUAT, J.P.

THE HONOURABLE MARTIN LIAO CHEUNG-KONG, J.P.

THE HONOURABLE POON SIU-PING, B.B.S., M.H.

THE HONOURABLE TANG KA-PIU

DR THE HONOURABLE CHIANG LAI-WAN, J.P.

IR DR THE HONOURABLE LO WAI-KWOK, B.B.S., M.H., J.P.

THE HONOURABLE CHUNG KWOK-PAN

THE HONOURABLE CHRISTOPHER CHUNG SHU-KUN, B.B.S., M.H., J.P.

THE HONOURABLE TONY TSE WAI-CHUEN

MEMBERS ABSENT:

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

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

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.
PUBLIC OFFICERS ATTENDING:

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

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

CLERKS IN ATTENDANCE:

MISS FLORA TAI YIN-PING, ASSISTANT SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL
MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Good morning, Council now resumes. We will deal with the third Member's motion.

MR CHAN CHI-CHUEN (in Cantonese): President, I request a headcount.

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

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

PRESIDENT (in Cantonese): Comprehensively reviewing the Mandatory Provident Fund Scheme. Members who wish to speak in the motion debate will please press the "Request to speak" button.

PRESIDENT (in Cantonese): I now call upon Mr TANG Ka-piu to speak and move the motion.

COMPREHENSIVELY REVIEWING THE MANDATORY PROVIDENT FUND SCHEME

MR TANG KA-PIU (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed. The motion is: Comprehensively reviewing the Mandatory Provident Fund (MPF) Scheme.

My colleague, Mr WONG Kwok-kin, proposed a motion debate on 1 December 2010. We in the Hong Kong Federation of Trade Unions (FTU) will continue to follow up the reform of the MPF System until three problems, including low return, high fees and a lack of transparency, are addressed.

In fact, many of my colleagues are very concerned about the MPF scheme. After looking up the records of proceedings of the last-term Legislative Council, I
found that a total of 22 questions were raised in the Legislative Council. This number is quite staggering. These questions were asked by various political parties and groupings, Members representing the grassroots, business sector and professionals. I notice that one of these questions is very interesting. On 10 March, 2010, Mr Ronny TONG asked the Government about the projected amount of MPF accrued benefits that can be withdrawn by employees currently aged 50 with a monthly income of $10,000 when they reach the age of 65 based on the investment returns of the MPF schemes in the past 10 years. In reply, the Secretary said, "According to the estimation made by the Mandatory Provident Fund Schemes Authority (MPFA), assuming that they have begun to make contributions since the inception of the MPF System in December 2000 and the annual rate of investment return is 5%, the amount of their accrued benefits when they reach retirement age of 65 would be $557,000." Is the Secretary's reply a beautiful lie? In fact, we know the answer pretty clear without waiting until 2015. If wage earners with a monthly income of $10,000 will get $557,000 after making contributions to the MPF schemes for 15 years, I think there would not have been a lot of negative news about the effectiveness of MPF.

I have on hand several annual benefit statements given to me by a worker named "Ah Kwan". Her situation is similar to the background described in that question. In 1987, she began working in a clinic. In December 2000, she was required to participate in the MPF System when she was 48 years old with a monthly income of $10,000. After 11 and a half years, her salary has risen to $11,000. After making MPF contributions for 11 years and six months, the accrued contribution is $201,500. The target of accumulating $550,000 in 15 years as mentioned by Secretary Prof K C CHAN will be reached in three and a half years. Let me ask this question: How can the accrued benefit be doubled from $200,000 to $550,000 in three and a half years? Will the Government make up for such a big difference from public coffers? I am certainly not blaming anyone. But the fact is, if a retired worker is ultimately forced to apply for Comprehensive Social Security Assistance (CSSA) after spending all his pension, it will be the Government which has to foot the bill. Therefore, the effectiveness of the MPF scheme is our concern.

Regarding the situation of Ah Kwan, assuming that in the end everything goes smoothly and she gets $300,000 upon retirement. It will be quite satisfactory when the accrued benefit has risen from $200,000 to $300,000 in a few years. Retiring at the age of 65 with a pension of $300,000, she can spend $1,250 per month in the next 20 years, given that the average life expectancy of a
woman is 85 to 86 years. Assuming that she can apply for Old Age Living Allowance (OALA) in the future, she will get a total of $3,450, which, however, is lower than half of the median income of a one-person household, which stands at $3,500. In other words, a person who has worked hard throughout his life with a stable job and Form Five qualification will fall into the poverty line once retired. Thus, the situation of Ah Kwan has reflected the woes of the majority of workers in the middle and lower social strata, as well as prospective retirees.

The problem of elderly poverty will become increasingly serious if the people rely solely on the MPF schemes which is characterized by low return and high fees. On 26 November 2012, Ms Anna WU, Chairman of the Mandatory Provident Fund Schemes Authority (MPFA), commented that although the MPF System is the second pillar of retirement protection, the Government has not specified the role of the MPF System in retirement protection and the income replacement rate. The income replacement rate of Ah Kwan is more than 10%, meaning that she can hardly save up for her old age. Hence, in item (11) of my motion, I propose the implementation of a universal integrated retirement protection system in addition to the MPF System. This has also been proposed by the community: a scheme based on tripartite contributions without any means test. This will provide basic and reasonable retirement protection to a person without any labelling effect. To put it simply, this can also be called a "defined benefit scheme", which should brook no more delay in my opinion because the elderly population will reach 30% by 2041 due to the ageing population. The policy address to be announced next Wednesday should give an account on issues such as ageing population, elderly poverty and retirement protection.

However, my motion is mainly focused on mending the MPF. Otherwise, workers will only get a "mandarin orange" (ending up getting nothing). It is not a basket of mandarin oranges, but only a mandarin orange in a sieve of small mesh eyes. My work focuses on mending the loopholes, lest all the money will leak to those fund managers, intermediaries and mysterious sponsors. To address the problem of "low return, high fees and a lack of transparency", I have put forth 10 recommendations for a thorough reform of the MPF with a view to restoring public confidence in it.

In fact, Ah Kwan's story is not yet finished. If she gloriously retires at the age of 65 after working for 20-odd years since 1987, she should be entitled to long service payment, which is perfectly justified. Moreover, it is the commitment of the employer who should give recognition to the long service of
his employees. But the fact is that half of the accrued benefits derived from her employer's contribution under the MPF System will be used to offset the long service payment payable. In that case, she will end up getting nothing. The name of MPF should be changed to "employers' savings plan" for it will foot the bill for the employers.

Some workers who have worked for more than 10 years in cleaning companies or security service companies which serve as contractors of government departments have often reflected to me that when they change to a new company after being made redundant in every three years or so, their long service payments will be offset by employers' MPF contributions. In fact, the balances in their MPF accounts are less than $10,000 though they have made contributions for more than 10 years. Can this amount of money provide retirement protection to them? To offset the benefits of workers by their retirement protection is definitely a problem. According to my estimation, at least $15 billion from the MPF schemes has been used to offset the benefits of wage earners such as severance payments and long service payments over the past 12 years.

In fact, this problem has indirectly led to a situation where employers are eager to sack long-time employees because their long service payments will be paid by MPF. So, employers will sack their employees most willingly. Many employees with long years of service who are entitled to relatively high salaries and high benefits will be sacked at will, connoting a problem of social cost and social price. In fact, if the Government is determined to implement a full portability arrangement for MPF, the legislative provisions concerning the offsetting mechanism should be abolished simultaneously. Otherwise, how can the Government ensure that money will follow the wage earners when the full portability arrangement is implemented? When employers' contributions, employees' contributions and preserved accounts are combined together after the implementation of the full portability arrangement, how can the accrued benefits derived from employers' contributions be identified in these combined accounts when the offsetting mechanism is triggered? This is not feasible at all.

Therefore, it is necessary to abolish the offsetting mechanism for the sake of workers' interests and the operation of the MPF System. Moreover, the Chief Executive and government officials under the accountability system have a responsibility to abolish the offsetting mechanism in order to honour the Chief Executive's manifesto. So, I hope that the Government can present a timetable
on abolishing the offsetting mechanism at the same pace with the implementation of a full portability arrangement. Also, there are some proposals seeking to address the problem at the structural level: the implementation of a full portability arrangement, the abolition of the offsetting mechanism and the "one lifelong account" as mentioned in my motion. If these three features can be combined, it will be a simple and efficient model which will facilitate management. More importantly, administrative costs will be lowered in the long run.

The most effective way to address the problem of high fees is certainly to set a ceiling for the Fund Expense Ratio (FER). It is estimated that in 2012, $7.2 billion was drawn from the $420 billion MPF reservoir by wage earners as payments to trustees, intermediaries, administrators, fund managers and sponsors. In other words, $18 in every $100 contributed to the MPF schemes annually is spent on administrative fees. Such a proportion is staggering. Some people argue that the proportion of fees is high simply because the current amount of MPF assets is not large enough, only $400 billion. Regarding this point, I beg to differ. In the United Kingdom, for example, the specified FER of the National Employment Savings Trust launched by the British Government in 2012 is specified as 0.3%, and only 1.8% on each contribution is collected as charge. This shows that a new scheme can be operated in such a manner.

In recent year, some post-developed countries such as Poland and Hungary in Central Europe or Eastern Europe which have set up private superannuation systems similar to the MPF System in Hong Kong have set a ceiling for the FER. There are three models: first, a certain percentage of fee is collected from each contribution as the upper limit; second, a ceiling for the FER on the total fund; third, the fees capped at the investment return. I opine that only by enacting legislation will trustees be compelled to reduce the administrative costs, improve performance, rationalize and eliminate substandard funds, as well as establish low-fee funds. This is the biggest drive for them to do so.

Here I would like to thank the Consumer Council (CC) for its efforts in publishing a 20-page detailed report and its completion of a large-scale comparison of fund performance last year. I remember that the Secretary and I were using this report as reference in October. Among those 400-odd funds selected for comparison, the average asset value is $850 million as at 30 June last year. But according to my calculation, 25 types of funds fall under the category of substandard as I mentioned just now. No one can criticize a fund as substandard unless justifications can be provided. According to my calculation,
there are 25 types of funds which have been operating for more than 10 years with assets less than $100 million. Their return rates have been lagging behind the average return rates. If they are not substandard, then what are they?

However, those substandard MPF funds have filled up the list of so-called choices, thereby pushing up the administrative costs. At present, the MPFA has no authority to eliminate those substandard funds. It has the authority to approve the introduction of funds, but it does not have the authority to eliminate or rationalize them. Therefore, the best way is to set a ceiling for the fees charged by funds, a statutory ceiling. Certainly, the management fees should be linked to the performance of funds, meaning that management fees can be charged only when there is a surplus or profit. By then, the trustees will naturally rationalize the funds of their own accord and eliminate those substandard ones.

Speaking of the CC, I solemnly appeal to the MPFA in the Legislative Council …… the MPFA is allocated more than $100 million per year for operation. Here I would like to appeal to the MPFA to learn from the CC in providing information online, including fund management fees and a platform for comparing the performance of various funds. This is the MPFA's unshirkable responsibility as it is related to the public's right to know.

A frequently discussed topic in recent years is whether the Government should get "involved". I cannot agree more that the Government should get "involved" by setting up a public body. Some Honourable colleagues even say that the MPFA should be the 20th trustee. Here I would like to advance a humble suggestion for Members' consideration. For instance, two or three types of funds can be selected. The first one is index funds which are linked to the Exchange Fund. Another type of fund is similar to iBOND in concept. It is a kind of inflation-linked capital preservation fund which can assure low administrative fees as investment managers can be dispensed with, apart from the fact that the general public will have sufficient confidence in it. Of course, these are sprats thrown to catch herrings. Nevertheless, the suggestion that the Government should take the lead to become the 20th trustee is worthy of consideration.

In fact, there are similar examples in the United Kingdom and Sweden. Even in countries of strong neo-liberalism such as New Zealand and Chile, tenders will be invited for their MPF schemes. Major funds will also be selected as default funds for the consideration by wage earners in terms of costs, risks and
performance. Therefore, government intervention is not a rare example. I hope the Government will reconsider my suggestion.

In fact, in the MPF System, there is a scheme sponsor whose role is so mysterious that there is no mention of it either in the law, websites of MPF funds or various guidelines. But on 26 November last year, the MPFA revealed the role of scheme sponsors in a press conference and study report. Furthermore, the profits of scheme sponsors account for more than 20% of total fund expenses. Hence, I wish to hear from the Government of any plans and measures for the regulation of such sponsors. Most absurdly, these sponsors, which are often the parent companies of the trustees, are the true large consortia. I hope that the Government can give us an account on the profits earned by them.

Owing to the time constraint, colleagues of the FTU will give further details on other aspects and viewpoints. Here, I would like to quote a study report on the fees of private superannuation funds by the Organization of Economic Co-operation and Development in 2008. In the report's conclusion, it is pointed out that some countries have erroneously thought that by opening up their markets, it will encourage competition in the sales of funds which will in turn help reduce fees. The fact is that this will only lead to a substantial rise in transaction costs because wage earners are not sensitive to the details relating to costs and fees as contained in the sales documents in reality.

Once again, I urge the Government to not rely on the full portability arrangement solely (The buzzer sounded) ……

PRESIDENT (in Cantonese): Mr TANG, your speaking time is up.


Mr TANG Ka-piu moved the following motion: (Translation)

"That the Mandatory Provident Fund ('MPF') Scheme has been implemented for 12 years since December 2000, and its effectiveness has always been of major concern to society; according to the statistics of the Mandatory Provident Fund Schemes Authority ('MPFA'), at present, there are over three million employee's contribution accounts and around four
million preserved accounts in Hong Kong; as at September 2012, the net asset values of approved constituent funds under the MPF Scheme reached HK$412.4 billion; yet, the expensive MPF administration fees, the lack of supervision over fund performance and the erosion of contributions by intermediaries and sponsors, coupled with the use of the accrued benefits derived from employers' contributions to offset severance payments and long service payments, have become the major loopholes in the MPF Scheme which directly affect employees' retirement protection; in this connection, this Council urges the Government to:

(1) abolish the mechanism whereby the accrued benefits derived from employers' contributions under the MPF Scheme are used to offset long service payments and severance payments, and retain Hong Kong employees' rights to severance payments or long service payments under the relevant provisions of the Employment Ordinance, so as to provide employees with better retirement protection;

(2) implement a full portability arrangement for the MPF Scheme to enable employees to choose trustees on their own, establish 'one lifelong account' for employees and credit the MPF accrued benefits derived from employer's and employee's contributions to this account, so as to prevent them from having multiple preserved accounts due to change of jobs, and require trustees to introduce a simple and easy to understand method to inspect accounts similar to that of 'bank books', so as to enable employees to better manage their MPF accrued benefits;

(3) enact legislation to set a ceiling for the Fund Expense Ratio ('FER') of MPF funds, and require trustees to set out the actual amounts and ratios of various fees and FER in the annual reports issued to employees;

(4) strengthen the regulation of MPF investment products, regularly review the sales practices of intermediaries and establish a mechanism for facilitating people to claim losses;

(5) set up a public trustee that operates under the Government, a public body or a voluntary organization which charges lower
administration fees, and provide low-risk capital preservation funds which are guaranteed to be inflation-linked for employees to choose, so as to achieve the objective of increasing competition to make other trustees to lower fees and improve performance;

(6) rationalize and eliminate substandard MPF funds to reduce total fund expenses, and establish a monitoring system under which the total amount of fees charged by MPF funds are linked to performance;

(7) regulate sponsors of MPF Schemes, enhance the monitoring of Scheme sponsors' performance and profits, and establish a clear tripartite relationship among Scheme sponsors, intermediaries and contributors;

(8) step up law enforcement to combat default contributions, including sentencing employers convicted of contravening the law to immediate imprisonment, and blacklisting the law-breaking companies concerned in the tendering exercises for government services as a penalty, etc.;

(9) amend the legislation to reform the Occupational Retirement Schemes (i.e. 'provident fund') system, requiring that when employers implement the provident fund, the vesting scales of the provident fund offered by them to employees are no less than the total amount of employers' contributions under the MPF Scheme, so as to plug the loopholes in the provident fund;

(10) establish an inter-bureau group to implement, within the term of the current Government, the various proposals for improving the MPF Scheme put forward by MPFA on 26 November 2012, and regularly report the progress to the Legislative Council; and

(11) study the implementation of a universal integrated retirement protection system in addition to the MPF Scheme, so as to make up for the inadequacies in the MPF System."
PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr TANG Ka-piu be passed.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, Mr POON Siu-ping, Dr KWOK Ka-ki and Mr CHAN Kin-por will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the four amendments.

I will call upon the Members who intend to move amendments to speak one by one; but no amendments are to be moved at this stage.

MR LEE CHEUK-YAN (in Cantonese): President, numerous debates on the issue of MPF have been held since 2000. I sometimes feel that Secretary Prof K C CHAN is speaking like a "human tape recorder". Later on, he will certainly say that he is studying how to improve it. Every time the Government will say that it will study the issue. But 12 years have passed since 1 December 2000, the problem remains unsolved. The same problem remains unsolved after 12 years' discussion. Sometimes, I really think that the Government has got the concept wrong. The MPF System, instead of providing retirement protection to workers, seeks to transfer benefits to those big consortia. Such benefits amount to hundreds of billion dollars. The current net asset value of MPF schemes has accumulated to more than $400 billion. With more than $30 billion being accumulated every year, the accumulated net asset value has reached $400-odd billion. It is really like a "money printing machine" which has printed a large amount of money for them.

Back then, we — I opposed the MPF on behalf of the Hong Kong Confederation of Trade Unions and I discovered some major problems. First, the contributions to MPF schemes can be offset by severance payments; second, even though the low-income people have saved money for scores of years, they still do not have adequate retirement protection in the end. Therefore, we have all along supported the implementation of a Universal Old Age Pension Scheme. Unfortunately, we were unable to veto the MPF System when it was discussed in 1995 and 1996. During the past 20 years since 1995, the Government has not implemented a universal retirement protection system while the problems of the MPF remain the same. Regarding this issue, I have a lot of feelings about it and wonder how many decades a person will live. Now the MPF has been operating
for more than 10 years and many workers have tolerated the shortcomings of the MPF for 10-odd years. Yet, no improvement has been made and no universal retirement protection system has been put in place.

Therefore, President, in the first proposal of my amendment, I wish to make it clear that the Universal Old Age Pension Scheme should be implemented as a supplement so as to enhance the retirement protection system for workers. The second issue is the offsetting mechanism between MPF contributions and severance payment that we have discussed and striven for over the past 10 years. In our opinion, the Government is most hypocritical. President, many workers have telephoned the MPFA and the Government requesting to get back the money in their MPF accounts on the ground that they have lost their jobs or suffered from serious illnesses. However, the Government keeps saying "no" on the pretext that the MPF System aims at providing retirement protection. Thus, the money saved in the MPF accounts from hard work over the past 20 years or so should not be used for meeting emergency needs due to unemployment and supporting family.

The Government does not allow workers to get back their money in the MPF accounts when they are facing financial hardship on the ground that it is reserved for retirement on the one hand, it permits employers to use their MPF contributions to offset severance payments and long service payments on the other. This is wrong. When an employee is made redundant, part of the employer's MPF contributions can be used to offset the long service payments and severance payments immediately. May I ask whether this is a fund for severance payment or retirement? I think it has become a fund for severance payment. While employers can draw on the MPF to make severance payments, workers who have worked so hard are not allowed to get back the money to cope with their daily expenses. What kind of logic is this? What kind of retirement protection is this? It is not retirement protection at all. If a worker who is so unfortunate to have been made redundant or laid off time and again, he has to claim long service payment. Or without any misfortune, he is entitled to long service payment when reaching the age of 65. After a service of five years, he will be entitled to long service payment upon retirement. However, the employer's contribution to the MPF has all been used up to offset the long service payment. How much is left in the end? Nothing. When the worker retires, he will get nothing.
President, the existing offsetting mechanism has exposed the drawback that the MPF scheme as a whole does not aim at providing workers with retirement protection. LEUNG Chun-ying claimed that he would study some of the problems. But I am not sure whether Prof K C CHAN would deliver today. LEUNG Chun-ying, in his manifesto, has promised that he will address the problem of offsetting ratio. But he has not promised to resolve all the problems.

President, in my second proposal, legislation should be enacted to set a ceiling for fees and charges of MPF funds. Speaking of the MPF semi-portability arrangement — there is no full portability arrangement at present — I can predict with confidence that the efficiency will definitely not be good enough to lower the fund expenses. By then, however, the fund providers will lower the fees and charges a little bit half-heartedly. It is always the same. Whenever there is any controversy, fees and charges will be lowered a little bit half-heartedly. But the current situation in Hong Kong is extremely ridiculous. From 2011 to the first half of 2012, the Fund Expense Ratio (FER) is 1.74%, of which 0.75% is administrative fees. In other words, the ratio between these two figures is 1.74:0.75. Comparing this with that of other countries, we can see that the ratios of the United States and Chile are 0.83:0.1 and 0.6:0.27 respectively. The former figure of the ratio represents the FER of a fund as a whole while the latter figure represents administrative fees. At present, the respective ratio of administrative fee in Chile, the United States and Australia is 0.27%, 0.1% and 0.42%, whereas the ratio of administrative fee in Hong Kong is as high as 0.75%. In my opinion, the only and quickest way to lower the ratio is to set a ceiling for the fees and charges of MPF funds by way of legislation in order to lower the administrative expenses. Let us think about this scenario, which is really terrible. If a person makes a monthly contribution of $1,000 for a consecutive period of say 40 years, the accrued benefits on the current average return rate of 3.4% will be $1.02 million after 40 years. If the FER is reduced by 1%, the accrued benefits will rise by $260,000, representing 25% of $1.02 million. In other words, $250,000 will be saved by lowering the FER by 1%. Let us think about this again. To impose an 2% as fee chargeable is tantamount to taking away $400,000 from $1 million. To share a pie by the ratio of 6:4, it means that 40% of the pie will be taken away by big consortia, banks and insurance companies.

In the second proposal of my amendment, I suggest that the Government make MPF contributions for low-income persons. I hope that the Government can make contributions for low-income persons because, as we all know, employees with a monthly income of less than $6,500 are not required to make
any MPF contributions. Therefore, this group of people will have grave financial needs after retirement. Meanwhile, we do not wish that the Government will make contributions to MPF only for employees with a monthly income less than $6,500. If the Government can make MPF contributions for employees with a monthly income less than $10,000 so that they can enjoy a contribution supplement in the future, they will have savings for a rainy day after retirement. An employee earning a monthly income of $10,000 will be given $300 as contribution supplement monthly by the Government. Under such circumstances, our 2 million employees will be benefited. Basically the Government can help employees save money.

Certainly, another problem is that not only the low-income persons but also the non-working persons will face hardships. Can the Government help the non-working persons make MPF contributions? However, we propose that it should be on condition that they are also required to make contributions. The Government will make contributions if they are willing to do so. With such an approach, everybody can prepare for their retirement, including the non-working persons.

In my last proposal, I suggest that employees should be allowed to choose to deposit part of their contributions into the Exchange Fund. As I mentioned earlier, the biggest problem is investment per se which has resulted in a situation where MPF has become a "mandatory deficit fund". The Government has forced employees to lose money to the benefit of big consortia, gigantic banks and insurance companies. Is this reasonable? Certainly not. Why are they forced to lose money? How can we prevent a situation where employees are forced to lose money? The only way is to adopt the second type of fund to cushion fluctuations in the market as far as possible.

The past performance of MPF schemes is really worrying because the average return rate is only 3.4%. However, the MPF funds have all along incurred deficits. Between 2008 and 2009, the deficit reached 25.9%. On the other hand, within a long period of 18 years (from 1994 to 2011), the Exchange Fund has incurred deficit only once, whereas the MPF funds have incurred losses for four times in 12 years since its inception. In comparison, the Exchange Fund has outperformed the MPF funds. Why are workers not allowed to select funds with better performance? Therefore, we urge the Government to become a public trustee. The Government should serve as a trustee itself so as to rival the other 19 competitors and set the standards. When contending with these 19
competitors, the Government will adhere to the standards. As a result, these
competitors will be obliged to lower their fees and charges in order to stay
competitive. Besides, I also propose that an alternative investment option be
provided to employees by opening up the Exchange Fund into which employees
are allowed to deposit their contributions. The annual return rate, which will be
similar to that of the fiscal reserve, will be calculated on the basis of the average
return rate of the Exchange Fund investment portfolios over the past six years.
In doing so, the MPF (The buzzer sounded) …… will not be reduced to the
"mandatory deficit fund". Thank you, President.

MR POON SIU-PING (in Cantonese): President, since the implementation of
the MPF schemes in December 2000, the accrued asset values have reached
$400 billion, with the contribution amount last year exceeding $40 billion and
involving more than 2.83 million people, or 75% of the labour force of the
territory. These two high figures bring us to two issues. First, is MPF
value-for-money for retirement protection for employees? Second, what can the
remaining 20% of persons in the labour force not covered by MPF schemes do
with their retirement life?

Today, I have proposed this amendment to the original motion because the
Federation of Hong Kong and Kowloon Labour Unions (FLU) considers it
necessary for persons in the labour force who are currently not protected by MPF
schemes, predominately family carers, to be included for minimum retirement
protection when the MPF scheme is reviewed. This proposal is not new. In
the Legislative Council of the last term, this proposal was already put forward by
Ms LI Fung-ying of the FLU, and it was included in my election platform, too.
Our proposal is not at all complicated. It merely seeks to link the MPF scheme
with age in addition to employment, with the Government making the minimum
MPF contribution for persons in the labour force who are neither in employment
nor engaged in full-time studies, predominately housewives and the unemployed.
With reference to the current minimum relevant income set in relation to
employee's contribution, the contribution amount should be 5% of $6,500, that is,$325.

According to the information published by the Census and Statistics
Department, the numbers of family carers in Hong Kong were 670 000, 660 000,
700 000 and 670 000 in 2008, 2009, 2010 and 2011 respectively, and the average
number of family carers in Hong Kong was 675 000, which was relatively stable.
If monthly MPF contribution is made by the Government for family carers, it will cost the public coffers $2.6 billion per annum. In addition to the contribution made for the unemployed, with the current unemployment rate standing at 3.4%, only $3 billion or so per annum will be involved. Hence, it is absolutely financially feasible for the Government to make MPF contributions for family carers and the unemployed.

Certainly, we do not think that a MPF scheme including family carers can replace a better retirement protection scheme. For instance, if a person gets married at the age of 30 and becomes a family carer immediately, the Government will, according to the proposal, make MPF contributions for him until he reaches the age of 65. If the current level of wages is used as the basis for calculation, his MPF account will ultimately have around $150,000 only. Assuming an average rate of return of 5%, less than $200,000 will eventually be left in his MPF account, even though the MPF fee is not deducted. If an average life expectancy of 83 years is used as the basis for calculation for Hong Kong people, a pension of less than $200,000 is obviously inadequate to support the living of a family carer in his twilight years. Hence, we agree to the original motion's proposal of studying the implementation of a universal integrated retirement protection system in addition to the MPF scheme, so as to make up for the inadequacies in the MPF System.

Nevertheless, I believe the FLU's proposal still carries some positive significance, for it means that the Government recognizes the contribution made by family carers to society and is willing to repay them for doing so without reward. It will also make up for the MPF scheme's defect of neglecting completely the retirement life of family carers. Given the current tug-of-war in society over the implementation of a universal retirement protection system, our proposed reform of linking MPF with age will not affect the existing system. What is more, it will cause little controversy and is financially feasible. I sincerely hope that colleagues in the Legislative Council will support this proposal and the Government will take it on board.

In our opinion, the matching proposal put forward by the Labour Party in its amendment to provide non-working spouses of MPF scheme members and low-income employees with a contribution supplement can be studied further. In principle, however, we consider that a family carer should be regarded as a separate entity for the recognition of their contribution to society. Hence, matching is not an ideal approach. Furthermore, this proposal involves some
practical problems which have to be resolved, such as how MPF matching accounts can be set up under a cohabitation relationship, how to deal with unemployed workers who have not made any MPF contributions, and so on.

As regards the unreasonable aspects of the existing MPF System, the most obvious example is the mechanism whereby accrued MPF benefits are used to offset long service payments and severance payments. Given the extremely high mobility of the labour market in Hong Kong, such an arrangement will only result in the continual erosion of employees' accrued MPF benefits. This completely runs contrary to the objective of MPF in protecting the retirement life of employees. It has been the aspiration of the labour sector and members of the community who are concerned about labour interests to abolish this arrangement whereby accrued MPF benefits are used to offset long service payments and severance payments. Hence, we request that the Government should expeditiously plug this loophole. On the other hand, the proposal put forward in Mr CHAN Kin-por's amendment that stakeholders be consulted again on the abolition of the offsetting arrangement appears very reasonable, but the argument over this issue has dragged on for a very long time. Moreover, the justifications are pretty clear, and the diverse views can be heeded during the formulation of the implementation policy, too. I am afraid that purely emphasizing consultation without setting a timetable for the abolition of the offsetting mechanism will only procrastinate the implementation of the policy, thus preventing the loophole of MPF from being plugged.

President, the fees and performance of more than 500 MPF schemes provided in Hong Kong were published earlier in the CHOICE magazine by the Consumer Council (CC). It was pointed out that, alongside the increase in the net asset values of MPF funds, there had been an extremely rapid growth in the fees charged under the MPF schemes, with the total amount of fees having increased by 35% from $4.9 billion in 2008 to $6.6 billion in 2012. In a comparison made by the CC of four similar MPF schemes provided in overseas countries, it was found that the average Fund Expense Ratios (FER) for the schemes operated in Chile, the United Kingdom, Australia and Singapore were 0.56%, 1.19%, 1.21% and 1.41% respectively. In comparison, the average FER of 1.74% in Hong Kong is the highest. However, there is no relationship between the fees charged by MPF schemes and their returns on investment. Among the samples compared in the study report published by the CC, the results of investment made by 159 MPF funds recorded negative returns over a period of five years from 2007 to 2011, with the worst MPF fund recording a -14% return.
During this five-year period, the overall rate of return of MPF funds was a mere 0.24%, which was far behind the average rate of inflation of 2.8% during the same period. No wonder the public in general have queries about the effectiveness of MPF.

President, there is room to compress MPF fees further while employees should be allowed to enjoy greater autonomy in MPF investment. Nevertheless, we also understand that there is a great difficulty in a free market in prescribing the investment performance of MPF funds. It is precisely for this reason we consider that a full portability arrangement for MPF should be handled with prudence. MPF funds are a major pillar for the retirement protection for the majority of employees. If losses are incurred due to imprudent MPF investment, society has to pay a price in the end. Hence, a balance must be struck between respecting the autonomy of employees in managing their MPF funds as well as establishing a system to provide retirement protection for employees and reducing the risk of investment made by MPF funds. If the full portability arrangement for MPF is implemented hastily merely through publicity and public education, they will only become excuses for passing the buck when MPF funds run into troubles. Therefore, proper risk management in the system is essential to the implementation of a full portability arrangement for MPF. It is also the foremost prerequisite for this arrangement to be implemented.

I so submit.

DR KWOK KA-KI (in Cantonese): President, as our discussion today is on MPF, we should review the reasons for its establishment in the first place.

In the 1960s when Hong Kong was in need of relief, the then British Hong Kong colonial government already commissioned Dr WILLIAM from the University of London to conduct a feasibility study on the provision of social services in Hong Kong. It was already stated clearly in the study report that social security or insurance plans were required to resolve the envisaged elderly problems.

In 1986, a consultation document on the evaluation and analysis of a central provident fund (CPF) was published by the Government, but the setting up of a CPF was considered infeasible in 1987 by Sir David WILSON, the then Hong Kong Governor. In 1993, Mr Chris PATTEN, the then Governor,
proposed in his policy address the establishment of an old age pension system and stated that if persons reaching the age of 65 could get $2,300 a month, they could receive about $4,000 a month by 2012. His remarks stirred up great controversy in society at that time. I think Members should still recall the remark of "getting killed in a car crash" made by a Chinese representative of the Sino-British Joint Liaison Group. In the end, the plan was nipped in the bud.

In fact, the adverse consequences we can see today are the result of a mandatory private provident fund system subsequently launched by the Government in 1995. If MPF can prepare us for retirement, what matters the most is actually not how much administration fee has to be paid. Hence, Members can hardly oppose the patch-up measures proposed in the original motion and amendments proposed by colleagues in relation to MPF, but can these measures guarantee that working people can live their twilight years happily after retirement?

The latest study has revealed that, during the past decade, more than 45% of the MPF schemes have incurred losses. We have no idea when we can retire, but if the MPF schemes we have chosen are not performing well due to wrong decisions made by either ourselves or our employers, we can only have ourselves to blame for bad luck because 500 MPF funds are available in Hong Kong. As there are so many MPF funds to choose from, why do we not make a wise choice? Every day, we may encounter some people on the streets who have not much time or lack common sense and they will ask, "How can I choose from these 500 MPF funds?" We must understand the objective of the establishment of the MPF Scheme. Secretary, I do not know if your family members are still working for major organizations or "big masters", but I know that the former Financial Secretary is working for a well-known fund. I do not wish to frequently mention collusion between business and the Government, but I know that large financial institutions, insurers and the so-called sponsors or trustees have benefited the most from the MPF scheme. On the face of it, $7.3 billion of the current amount of more than $400 billion has been brought to credit. I do not know how much more money will be pocketed during the "buying and selling" transactions. In fact, this is an enormous black hole. The Government is requesting members of the public to throw their most important savings and retirement protection in their lives into this hole and then telling them that everything is fine.
A couple of days ago, Ms Anna WU gave a lengthy speech here. She said that patch-up measures would definitely be taken. First, I reckon that these measures will not be launched until 2016. Second, since the Legislative Council is dominated by the commercial and industrial sectors, as we all know, how many Members can reflect the aspirations of the grassroots and enable the relevant motion to be passed here? We have seen something like this before. As we all know, the Competition Bill, which can distinguish between right and wrong as well as black and white, was eventually turned into a "toothless tiger" by representatives of the commercial and industrial sectors in a blatant manner. I do not know what changes will be made to the MPF scheme in the end. But a government with some conscience should understand that we should seek to address problems concerning people's retirement lives rather than how much profits MPF providers can make.

When I told a government official responsible for financial and monetary affairs that some colleagues suggest appointing the Exchange Fund as a trustee, he immediately rejected the idea on the ground that fund managers were ferocious and insurers were terribly smart. Although he was only joking and his remarks were not made here in this Chamber or in front of journalists, I believed his words represented the thinking of other government officials. Can we get back a "fat piece of pork" worth more than $400 billion from the pockets of fund managers? Secretary Prof K C CHAN, you will certainly not do so, and neither does the Government behind you dare to do so. Hence, requesting the Government to take action to improve the MPF scheme is like negotiating with a tiger for its hide.

It is a great pity that the Old Age Living Allowance (OALA) was passed a couple of weeks ago at a meeting of the Finance Committee after lengthy discussions. In fact, the discussions on the OALA were an excellent opportunity. As we all know, the Legislative Council as a whole and community organizations have indicated to the Government that it would be better to really implement universal retirement protection than to spend public money on OALA payments. We have pointed out in the report submitted by us as well as my proposed amendment today that, according to the estimation made by some academics and actuaries with the present level taken as the basis for calculation, long-term retirement protection of at least $3,000 monthly can be provided without increasing taxes and the burdens on employers and employees. Why is this important? It is because, according to this proposal, all persons are eligible, regardless of whether they themselves or their employers have handed their MPF
contributions to unscrupulous or poor-performing MPF providers described as "black holes" due to their wrong decisions, people will not be left alone and helpless thanks to universal retirement protection. Currently, MPF covers approximately 70% of the people in Hong Kong, but many low-income earners, people with disabilities, housewives and the chronically ill are not protected at all. No wonder we find people hoisting the colonial flag from time to time. While even such an unscrupulous colonial government knew in 1993 that it should propose universal old age protection, our self-proclaimed people-oriented Government and our socialist Motherland, which should have proposed retirement protection in the interest of the people, turn out to oppose this proposal and continue to share this piece of "fat pork" with the business sector. I have no confidence at all in the future patch-up to MPF. This is an excellent policy of procrastination, for the Government can delay at least three to four years and a further two to three years after the relevant bills committee is set up, so that the business sector can seize another break to fleece Hong Kong people of all their money.

Today, if the Government still holds fast its complacency and refuses to consider a major review of retirement protection by scrapping the seriously flawed MPF scheme and formulating afresh universal retirement protection, all our arguments today are useless because, despite all the discussions, all insurers, the business sector and major banks will not give up this piece of "fat pork", which is now worth hundreds of billion dollars or even reaches $1,000 billion in 20 years. In the end, the business sector will become the sole beneficiary. The Government will not be better off because, thanks to its assistance rendered to the business sector, MPF will become unprofitable. As a result, it has to offset MPF by CSSA, which means that it will subsidize major businessmen with our hard-earned money.

I so submit. Thank you, President.

MR CHAN KIN-POR (in Cantonese): President, the MPF scheme has been implemented for 12 years and I must say that 12 years is not a short period of time. But for a retirement protection scheme, the MPF scheme in Hong Kong is far from reaching maturity. In recent years, there are views which criticize the MPF System. As a long-term retirement protection system, there is indeed a need for the MPF System to undergo constant improvement. But that does not mean that there are serious loopholes in the MPF System itself. The problems
associated with it, such as the high administration fees charged are mainly due to reasons like the fact that the local MPF System has not reached a mature state, the system being too complicated and there is excessive reliance on manual operation.

According to the Report on a Study of Administrative Costs in the Hong Kong Mandatory Provident Fund System compiled by Ernst & Young, the development of a retirement protection system can be divided into five stages, spanning 40 years in total. The MPF System in Hong Kong has been in operation for 12 years and it is just at the second stage. In other countries which have introduced a similar retirement protection system such as Australia, Chile, the United Kingdom, Singapore and the United States, their systems have been in operation for 20 to some 40 years. To make a simple comparison, the system in Hong Kong is now still in its childhood while those in the abovementioned countries are now in their adulthood. The Report points out that the size and administrative costs of a system have an inverse proportional relationship, that is, the larger the asset size, the lower will be the ratio of administrative costs. In Hong Kong, the asset size is still very small. It is really a comparison between a child and an adult if we pitch the asset size of Hong Kong against that of Australia which is 30 times bigger or the United States which is 60 times bigger. Hence the criticism is not justified.

As a matter of fact, at the initial stages of the setting up of any retirement protection system, the administrative costs are bound to be high. This is because the MPF trustees have to inject hundreds of million dollars of capital into the development of computer programs and systems for actuarial and management purposes and the administrative work for processing monthly contributions is far more complicated than that required by ordinary funds. However, according to overseas experience, when such a system has accumulated a certain amount of assets, the fees charged will drop. Hong Kong is moving in this direction. The average fees charged for MPF schemes has dropped from 2.1% in 2008 to the present 1.74%. According to projections made in the Report and provided that the relevant recommendations are implemented, and coupled with streamlined procedures and automation, the fees charged may drop to 1.14% in 2018. This is even lower than the rate of 1.21% in Australia, a country which has implemented a similar system for more than 20 years. So if we can improve our system, and when our asset size has increased to a level comparable to other mature regions, the fees charged may even be lower than those in these countries.
A noteworthy point is that according to the Report, if the administrative costs are viewed separately from other charges, we can notice more relevant information. In other kinds of fees charged under MPF, such as expenses on investment management, sponsor charge and trustee profit, these are actually not very much different from those found in other countries. Now the charges in Hong Kong for these expenses are 0.99%, whereas in Australia, it is 0.8%, 0.73% in the United States and 0.95% in Mexico. It can be seen that as compared to other mature systems, the fees under the MPF System in Hong Kong are quite similar to these other systems. But the Report also points out that promotion costs only take up 0.03%. I do not know if this is an accurate reflection of the expenses on commission, but I know that it is because the commission is so low that the intermediaries are not very interested in selling MPF products. So I do not agree that MPF contributions are being eroded by the intermediaries and sponsors.

The main reason why the total fees charged by MPF schemes in Hong Kong are high is its high administrative expenses. The administrative fee charged in Hong Kong is 0.75%, whereas in Australia it is 0.42%, 0.1% in the United States and 0.39% in Mexico. The differences are very marked. If we want to solve this problem, we would really have to address the problem and find the right solution. The main reason for high administrative fees in Hong Kong is that most of the administrative expenses here are used in services like support, contributions and the payment of benefits, and so on, and a lot of manpower is needed to handle several million MPF accounts in total. The expenses are huge. So if we wish to reduce the fees charged under the MPF System, we should pinpoint the problems and automation in administrative operations and streamlining the procedures are therefore necessary.

As to the problem of rate of return, the Report has pointed out that the annualized rate of return after deduction of the fees charged is 3.4%. While it cannot be said that this rate is satisfactory, it is not too bad. As a matter of fact, the greatest problem with MPF is that it was not introduced at the right time. In 2000 when it was formally launched, both the economy and the investment market are sluggish and this has lasted a long time and the rate of return is consequently affected. I have made such an analysis many times and so I do not wish to repeat it now. Actually, the knowledge in financial management of the public and the choices they make will also affect the rate of return directly. Figures show that the MPF schemes have a net asset valued at $400 billion, but it
is surprising to find that there is as much as some $60 billion in the form of bank deposits or cash. The rate of return of such funds is zero or close to zero and this will push down the overall rate of return.

When members of the public opt for conservative funds, the management fee they pay is low but the rate of return is only 0.1%. This is because a conservative fund will put 80% of its asset into the bank or keep it as cash. There are funds in the market which charge lower fees but offer a high rate of return. Of course, the risk borne is higher than the conservative funds. These are the so-called index funds such as the Tracker Fund. The return of these funds changes with the ups and downs of the stock market, but their return may in the long run not be any less than those securities funds. However, the fees they charge are usually less than 1%. While these funds may not be suitable for those who are going into retirement soon or those who do not want to take any risk, they are a good choice for those who do not know much about investment. At least, the fees they pay can be reduced substantially. I have urged the Government earlier to promote such funds and I am glad to see that the Government has shown a positive response to my suggestion.

Next I would like to talk about the justifications for my amendment in detail. The original motion proposes to abolish the mechanism whereby the accrued benefits derived from employers' contributions under the MPF scheme are used to offset long service payments and severance payments. Basically, I do not have any strong views against the proposal. However, I would think that for every important decision, there must be a full discussion among all the stakeholders and a decision can only be made after a consensus is reached. This applies especially to labour issues. At the time when the employers agreed that MPF be launched, one of the conditions they prescribed was the offset mechanism. When a proposal is made now to abolish this mechanism, I would think that discussions should be held with the employers.

In addition, the original motion proposes that a full portability arrangement for the MPF scheme should be implemented and employees should have a "lifelong account". I agree very much with this idea. The amendment is only aimed at stating clearly the advantages of a policy on one account for each employee in cancelling a large number of preserved accounts and reducing the administrative expenses direct. We should know that there are some 2 million employees and self-employed persons in Hong Kong, but there are some
7 million MPF accounts. This wastes a vast amount of administrative expenses and so the proposal should be put into practice as soon as possible.

The original motion also proposes to set a ceiling for the FER. I think that the idea is really putting the cart before the horse. This is because setting such a ceiling does not solve the problems of a complicated system and waste of resources. And it is difficult to find any objective criteria to set such a ceiling. If the ceiling is set too high, it will not serve any practical purpose; if it is set too low, it will cause difficulties in the operation of funds and in the end, the number of funds will dwindle and this is not benefit to the contributors. So I would think that the best idea is to cut the administrative procedures and implement automation. Now as much as 65% of the administrative work of MPF schemes depends on manual operation, the result is high administrative fees. Therefore, the most urgent task at hand is to introduce automation.

Another suggestion made in the original motion is to set up an inflation-linked fund operated by the Government, a public body or a voluntary organization which charges lower administration fees. It is doubtful whether or not this suggestion about a fund operated by a non-profit-making body can work. If the public body or voluntary organization does not have the experience of operating funds, the suggestion cannot work. If it is to go ahead regardless and some financial experts are hired, the result is that the management fees will not be lowered and since there is no economy of scale in operation, the administration fees will only go up. As for the idea of letting the Government or the Hong Kong Monetary Authority to undertake such a task, it will become using taxpayers' money to subsidize such a task. I do not think these bodies will want to do it and even if they do, the expenses incurred by a government agent will be far higher than a private company.

As for the idea of consolidating the MPF funds, I would agree to that. For certain funds with a very small number of participants, the administration fees are bound to be high. So if these funds can be consolidated, such administration fees can be lowered. But I wish to stress that any consolidation attempt should be underpinned by consultation of the views of stakeholders first. Or else, it is hard to achieve any cost efficiency. Likewise, I support enhancing the monitoring of scheme sponsors and establishing a clear relationship between the sponsors and the stakeholders. This will protect the interest of scheme participants.
Lastly, I would like to suggest that more efforts should be made to educate members of the public to manage their MPF accounts, as well as on the concept of long-term investment for retirement. MPF is a kind of investment tool and provided that members of the public have sound knowledge of financial management and that they can adjust their investment fund combinations according to the prevailing trends in the market, I am sure that over time, the rate of return is likely to surpass the average rate of return under the MPF System. But first of all, members of the public should have knowledge of financial management. So I would think that the Government has a lot to do regarding educating members of the public in their investment knowledge. And the people should be taught how to invest in index funds (The buzzer sounded) ……

PRESIDENT (in Cantonese): Mr CHAN, speaking time is up.

MR CHAN KIN-POR (in Cantonese): …… before we can expect any benefit to be gained from this.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I have said in this Council and on many occasions that the Government agrees that a comprehensive review of the MPF System should be undertaken and to adopt resolute measures to enable MPF fees to be further adjusted downwards, thereby raising the return for members of MPF schemes.

The motion proposed by Mr TANG Ka-piu on "Comprehensively reviewing the Mandatory Provident Fund Scheme" and the amendments proposed respectively by Mr POON Siu-ping, Mr LEE Cheuk-yen, Dr KWOK Ka-ki and Mr CHAN Kin-por give us a good opportunity to collect and exchange views on the subject.

The MPF System is an important link of the retirement protection system in Hong Kong and it complies with the requirements of the second pillar as advocated by the World Bank on retirement protection system, that is, by virtue of its being mandatory, managed by private bodies and with a contribution system defined by adequate capital. The MPF System was launched in 2000 and it has since enhanced retirement protection in Hong Kong. Compared to the situation of only one third of the working population having any retirement protection
before the system was implemented, as many as 85% of the working population or more than 2.5 million employees and self-employed persons now enjoy various forms of retirement protection under the MPF System and other retirement protection schemes. As at 30 September 2012, the MPF scheme has accumulated a total asset value of about $412.4 billion. After deducting the fees, the annualized internal rate of return for MPF is about 3.4% while the change in annualized Composite Consumer Price Index is 1%.

With the increase in the number of contribution years by the working population, there will be more marked results in enhancing retirement protection and driving the sustainability of the overall retirement protection system in Hong Kong. However, as a retirement protection system, the MPF System has only been in operation for 12 years and it has not yet reached a mature stage. For many years, the Government and the Mandatory Provident Fund Schemes Authority (MPFA) have rolled out a number of measures aiming at perfecting the system, and these measures have achieved some effects especially in terms of enhancing market transparency and promoting competition. As an example, the FER has been revised downwards from 2.1% in 2008 to 1.75% at present, that is, as at 31 December 2012.

The latest measure is the "employee choice arrangement" which was implemented on 1 November last year and it has increased employees' freedom in choosing funds. It is the hope of both the Government and the MPFA that this arrangement can lead to a further reduction in the fees charged by MPF trustees.

However, we do not consider that we can rely on this "semi-portability arrangement" alone to reduce the fees charged. This is because the results of this semi-portability arrangement such as more competition, lower fees and raised level of service are all based on the assumption that the public will have some knowledge of the funds available as choices. I would think that by relying on this "semi-portability arrangement" alone, we cannot hope to meet our demand of improving the MPF System. So the MPFA has engaged in a cost study and this cost study on the trustees has just been completed. The consultants have made a number of strategic recommendations on reducing the administrative fees under MPF schemes in order to enable further reduction in fees be made. These strategic recommendations include industry-wide measures like end-to-end online electronic payment and data processing procedures, measures helping scheme members consolidate their accounts, and so on. Also, these will eventually
migrate to full freedom of choice by MPF scheme members of their own schemes and assistance given to the industry in consolidating MPF schemes and setting up administrative platforms for investment funds and trustees. Currently, the Government and the MPFA are taking active steps to follow up and take forward these recommendations.

Considering that the MPF System is an important link of the retirement protection system and fees charged will have a compound effect on the accrued retirement benefits of employees, so the Government and the MPFA will study some fundamental reforms to be carried out to enable a greater reduction in MPF fees in line with public expectation. For example, the developments to date have seen the MPF System offering a diversified investment platform similar to that in the retail market, and companies in the industry tend to engage in competition by offering more choices in funds than by lowering the fees. A number of Members have said earlier that there are some 500 funds available in the market and the public find making choices difficult. However, with the large number of funds available as choices, it will to a certain extent offset the economy of scale that may be brought about by the increase in the total asset worth of the funds.

At the same time, it is our view that the investment platform for assisting in the basic retirement savings of the working population should be simple and not complicated. Therefore, there is a need to undertake a review of the fund options available. We will have to consider also the question of whether or not these numerous funds for choice can bring any actual benefits to employees in retirement protection. This is an area into which we will conduct studies.

Besides, the motion also mentions that the Government should set a ceiling for fees charged under the MPF System and there should be full portability for MPF Schemes, and so on. These are the subjects for further studies by the Government and the MPFA. On the question of a ceiling for fees, I will talk about it in detail later. I have pointed out in many of the speeches I made in the past that setting such a ceiling is a direction which I would agree. So there should not be any great divergence among us in this regard and I would inform Members later as to how this can be done.

President, I will give an overall response later after I have listened to speeches from Members on the motion and the amendments. When my
colleagues in the Government and the MPFA are to formulate plans to perfect the MPF System, I am sure they will take into account the views and suggestions of Members.

Thank you, President. I so submit.

MISS ALICE MAK (in Cantonese): President, by now, the Mandatory Provident Fund (MPF) scheme has been implemented for over 10 years. The blind spot of the scheme is that over 300,000 people of the employed population in Hong Kong now, including home helpers and hawkers, do not have any retirement protection. Under the MPF legislation, home helpers and hawkers are exempted from the legislation. According to the figures of the Government, as at December 2011, there were 6,480 licensed fixed-pitched hawkers, 505 itinerant hawkers and around 1,920 unlicensed hawkers. When the legislation on MPF was enacted, the number of home helpers was small. However, with the restructuring of society, many women are now engaged as home helpers. They are also part of the labour force, but why they are not taken care of under the retirement protection system?

The existing retirement protection system is linked with employment. As such, a group of family carers, which are housewives in general, are not covered by the retirement protection system. The 658,000 housewives are undertaking the important back-up role in society. They are carers of families, who have to take care of children, disabled and sick family members, nurturing future pillars and facilitating development of society. However, their efforts are not compensated. Under the existing retirement protection system which is linked with employment, they cannot receive any retirement protection. It is good that their children are willing to take care of them when they grow old. But if their children are unwilling or incapable of taking care of them, they will be left with no support at their old age.

According to the figures of the Census and Statistics Department, the number of working female earning less than $6,000 is 437,000, which is far higher than the current number of working male, which is, 96,000. The life expectancy of women in Hong Kong is 86.7, higher than the 80.5 of men. The problem of ageing is more serious for women. Also, the problem of retirement faced by women is more serious than men, for women are either non-income or low-income earners who live longer. Hence, family carers and low-income
working women will enjoy comprehensive retirement protection only when a universal retirement protection system is implemented.

Moreover, there are about 360,000 persons with disabilities in Hong Kong, accounting for about 5.2% of the total population. We do not have the statistics on the employment of persons with disabilities. However, according to the figures provided by the Joint Council for the Physically and Mentally Disabled, the employment rate of persons with disabilities is very low, with only around 40,000 of them being employed and accounting for less than 10% of the several hundred thousands of persons with disabilities. According to some wheelchair users, though the MTR Corporation Limited employs persons with disabilities, it states clearly that wheelchair users will not be employed. Even for the greatest employer in Hong Kong, the Government, the rate of employment of persons with disabilities in the Government is only 2%.

In one case, a person with disabilities who possessed tertiary qualification and a diploma in design but suffering from congenital thalassaemia sought assistance from the Labour Department, and he was referred to dish-washing and delivery jobs. He had to wait for 10 years before he got a proper job, that is, a full-time assistant post in the Environmental Protection Department. In view of their employment difficulties and inability to work, persons with disabilities are facing the same problem under the existing retirement protection system which is linked with employment, where they are not provided with any retirement plan or retirement protection.

The Government estimates that by around 2030, the number of persons aged over 65 in Hong Kong will account for 28% of the total population, which is 2.3 million. From the perspectives of development of society and the entitlement to retirement protection of all people, Hong Kong should no longer rely merely on MPF and personal savings to cope with retirement life. The Hong Kong Federation of Trade Unions (FTU) has all along proposed the setting up of a universal integrated retirement protection system, so that Hong Kong people excluded from the MPF, including hawkers, home helpers, family carers and persons with disabilities, will enjoy retirement protection. In this way, they will be enabled to lead a dignified life in their twilight years, thus being prevented from slipping into reliance on Comprehensive Social Security Assistance in the lack of financial support in their old age. Early preparations will alleviate the burden of social security in future.
Moreover, I have to respond to Mr CHAN Kin-por's earlier remark that the Government should educate the public to enable them to grasp knowledge about wealth management. President, the prerequisite for grasping knowledge of wealth management is the possession of wealth. As I said earlier, these people have no money and no jobs, so how can they have wealth to manage? Hence, I think the most important point is to review the MPF System as a whole and implement a universal integrated retirement protection scheme, so that Hong Kong people may lead a dignified life in their twilight years.

I so submit. Thank you, President.

MR WONG KWOK-HING (in Cantonese): President, today, I have brought with me the props used in the past in delivering speeches on Mandatory Provident Fund (MPF) in the Legislative Council. Regarding the slogan "MPF for the future" designed by the Government in promoting MPF, is it true? No, it is not. Honourable Members, look at this little piggy bank. You can put in money from the top, yet you never expect that there is a hole at the bottom, through which the money will be withdrawn via severance payment, long service payment and administration fees. As employees continue to make contributions to MPF, money is being withdrawn unceasingly. This piglet looks chubby, but it is indeed stupid, for employers can continue to take money out of it. Therefore, when it is said that MPF is "for the future", it is for the future of employers when they lay off employees, terminate employment contracts and fold their businesses.

It is an extremely unreasonable system. In the first year of implementation of MPF, an amount of $166 million, accounting for 0.46% of the contribution at that time, had been withdrawn. However, 10 years later in 2010, the amount of levy set aside for severance payment and long service payment in assisting employees to handle terminations of contracts, dismissals and redundancy issues had exceeded $14.73 billion. The withdrawal had increased significantly by 20 times in 10 years' time. Is it reasonable? If such practice is regarded as fair and reasonable, it is much conscienceless. All wage earners in Hong Kong are like this little pig, which is subject to exploitation in that their money is being withdrawn by others at will, so it is useless for them to make every effort to keep savings. For this reason, the Government has to subsidize over 150 000 elderly persons, persons in poverty and Comprehensive Social Security Assistance (CSSA) recipients every year. More importantly, the
number will continue to increase as the population of Hong Kong ages. We can see how ridiculous the system is.

President, let not talk about distant concerns but cases around us. You and all other Members have assistants in your employ. Since each term of the Legislative Council lasts for four years, we have to terminate the employment of our assistants upon the completion of the term, unless we are re-elected. Members' assistants will be subject to another round of offset arrangement four years later, where the money they save in the MPF have to be used to offset their long service payment. As Secretary Prof K C CHAN said, the Government employs tens of thousands of contract staff every year, where the contract period ranges from two to four years. In other words, the money saved by employees will be used to offset the severance payment or long service payment payable by their contractual employers every two, three or four years. This arrangement is so good. No wonder employers shout in support that "long live MPF for ten thousand years", for they may make "thousands of withdrawals in ten thousand years". As long as the MPF is implemented, they may make continual withdrawals, and the longer it is implemented, the more they can withdraw. In that case, how can we say "MPF for the future"? Actually, half of the MPF is used to serve the future needs of employers in arranging for closures, making severance payment and termination of contracts. This is most unreasonable.

CY was elected the Chief Executive last year. At that time, Mr LEUNG Chun-ying stated in the paragraph 16 of page 11 of his manifesto that, *and I quote*, "We will adopt measures to progressively reduce the proportion of accrued benefits attributed to employer's contribution in the MPF account that can be applied by the employer to offset long-service or severance payments. ' (End of quote) This is one of the reasons the FTU supports CY in implementing the new policy. As reflected by the quote, he as the Chief Executive at least considers there is no reason that accrued benefits attributed to employer's contribution in the MPF should be used for making long service payment and severance payment for employers. Moreover, he has proposed that the proportion concerned should be reduced progressively and lowered continuously. However, in the earlier response from Secretary Prof K C CHAN, not a word is said about this point. I am really disappointed about this. Therefore, I hope Secretary Prof K C CHAN will tell me in his reply shortly that given the statement made by LEUNG Chun-ying, what you will do and what corresponding arrangement will be made to the MPF.
Some time ago, the Chairman of the Mandatory Provident Fund Schemes Authority, Ms Anna WU, attended a meeting of a committee of the Legislative Council. At that time, she stated in response to my question that she hoped this Government would solve the problem of the offsetting arrangement of long service payment and severance payment under MPF within its term. I highly commend her for stating so. As such, I expressed on the day that I would give her full support. Hence, I hope the Secretary will respond to this.

President, I hope Honourable Members will support us in this aspect. Actually, as early as 27 July 1995 when the Mandatory Provident Fund Scheme Bill was passed by the Legislative Council, Mr TAM Yiu-chung had voted against the Bill on behalf of the FTU at the Second and Third Readings of the Bill. The main reason for our opposition was the unreasonable arrangement of allowing severance payment and long service payment to be offset by the contributions made by employers.

Hence, I implore Honourable Members to act in accordance with their conscience by supporting the original motion of Mr TANG Ka-piu, for the original motion has reflected the aspiration of workers (The buzzer sounded) ……

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

MR RONNY TONG (in Cantonese): President, the Mandatory Provident Fund (MPF) scheme has long given cause for criticism. It has many inherent defects, and one of the most fundamental sins of it can be seen here in the Legislative Council. We see that Secretary Prof K C CHAN is in the Chamber, but why is the Secretary for Labour and Welfare not with us here? This is indicative of the Government's mindset on retirement protection or old age protection in Hong Kong, that is, the Government regards the MPF as an investment, and Secretary Prof K C CHAN is in this Chamber because he is the Secretary for Financial Services and the Treasury. That said, this is not where the problem lies. MPF is an important safety net that protects the living of Hong Kong people in retirement, and MPF does contain the element of investment and therefore, I have no objection to Secretary Prof K C CHAN giving a response to this motion. But why is it not necessary for Secretary Matthew CHEUNG to respond to this motion?
The Government has all along considered that the MPF has nothing to do with it. As we can see from history, there were a lot of discussions before the MPF was launched in 2000 and at that time, many people considered it some sort of temporary emergency relief but this temporary relief has hitherto remained and the Government apparently hopes to turn it into a permanent solution. Certainly, this is not a solution but the Government wants to wash its hand of it and cut all connections with it. The entire MPF structure is a fierce struggle between employers and employees. They have to settle the problem by themselves without bothering the Government as the Government is only responsible for providing the framework. Secretary Prof K C CHAN can sit here comfortably shaking his legs because this is not the most important and pressing issue that his Policy Bureau needs to handle. He thinks that he has done his part by only providing a framework for regulation to ensure that the fund companies are up to a certain standard in respect of their capital and investment. What is most regrettable is that the Secretary has failed to do even this. But actually, the kernel of the problem is that the MPF is not an investment.

The second sin is that this system is incomprehensive and transitional, and it is an evil consequence of the Government's mindset on the protection of retirees. So, the Government has attached little importance to the protection of wage earners. The problem that people engaging in unpaid work are not provided with protection is a concern raised by all colleagues but worse still, not even the low-income earners are provided with protection because people who are paid the minimum wage are not required to make contributions. Is it better not to require them to make contributions? Of course not. If they are not required to make contributions, it means that they will not have any return in future. In fact, these are the people most in need of protection but they are not going to receive any return. Such being the case, what purpose can the MPF serve? No wonder colleagues have said that the Government is actually enabling financial services practitioners and fund managers to reap profits and fatten themselves. This may not be as bad as collusion between the Government and business, but there is suspected transfer of benefits between them.

Third, when wage earners with a meagre income make no contributions or only a small amount of contribution, they clearly know that their contributions will eventually fail their purpose upon their retirement as it will be impossible for the accrued benefits to provide protection to them. Therefore, these people, especially young people, may come up with the idea that they might as well take
a chance, and this is exactly why Secretary Prof K C CHAN is here. To take a chance means that they choose to make contributions to high-yield, high-risk funds. But this is basically not the original intention of this system. This system is intended to ensure protection for the people at retirement, rather than encouraging them to take their chance. The Mandatory Provident Fund Schemes Authority (MPFA) allows MPF companies to provide over 400 types of funds for the public to choose in the hope that more people will be interested in the scheme. This is more or the less the same as going to the race meet every week. But in horse racing, one can at most pick only one horse out of 13, whereas in the case of MPF, a contributor has to pick his choice out of over 400 funds, and a quarter of these funds have recorded a negative return over the past five years, meaning that the contributors have lost their bets. Why has a retirement system degenerated into a system of gambling? How will the Government explain this to the public?

Fourth, Members can take a look at the statistics. Statistics provided by the MPFA show that the annual amount of contributions is around $17.8 billion. Our fees are the highest in the world, and as many colleagues have mentioned earlier, they are 50% higher than other places on average. Assuming our average management fee is 1% — as it is over 1.7% on average — it means that $178 million are spent annually without yielding any return. To the community, or insofar as the intended purpose of the MPF is concerned, this sum of money is but wastage. Over the last 12 years, we have lost about $2 billion. Can this sum of money be spent on more useful causes? More importantly, there are 3.67 million employees in Hong Kong, but the MPF provides protection only to around 2.6 million employees who are currently participating in MPF schemes. It means that the MPF cannot protect people in employment, not to mention people who are not. Therefore, I think the entire scheme is hopeless. Despite that the MPFA has proposed many ways to make improvement, I think it is now time to adopt a broad-brush approach and replace it by universal retirement protection to ensure that the fundamental objective is to truly protect the interests of the public in retirement. Thank you, President.

MS STARRY LEE (in Cantonese): President, I think many Members returned by direct elections, like me, may have been stopped on the street by the public from time to time in order to reflect their various views to us, and it is all the
more common that they will convey to us wide-ranging views on the MPF. I would like to share some of these views with the Secretary here.

Many people who stopped me on the street said, "Ms LEE, please fight for a reform of the MPF for me or at least please fight for an account that allows me to choose to put the balance in my MPF account in a bank account, or provides me with an option similar to a fixed deposit. I do not need investment, and I want to put my MPF benefits in a fixed deposit account or a bank account and I will fight for it even though I have to bear the risk of inflation by myself." I think this choice is very important and all the more so especially to people who will retire soon. It allows a contributor to choose to transfer at a reasonable time his MPF benefits after investment to a fixed deposit account or a passbook savings account which he thinks will not suffer any loss. But it seems that not even this option is available.

This view aside, there are other views that I think the Secretary must have often heard of. Many residents said to me, "When I am sick but have no money for medical treatment, do I still care about retirement life or whatsoever? Just let me use my MPF benefits for medical treatment, will you?" Some people who are more radical even said, "MPF only serves to benefit the fund managers. Let it be abolished." These complaints are indeed no stranger to us as we have heard them so often, and a synonym of MPF now is "high fees, low return".

In fact, this Council has discussed the reform of the MPF System for many times. This is the third year in a row that a motion is proposed under the title of comprehensively reviewing the MPF scheme. This is the third time that this topic is discussed in this Council. If we take a look at the progress of the reform, a more obvious step that has been taken is the implementation of the "semi-portability" arrangement. We can see that the reform of the MPF System is indeed too slow and that it is being carried out at a snail's pace.

The Mandatory Provident Fund Schemes Authority (MPFA) has recently published the report on a study on the administrative costs of MPF schemes, putting forward a series of reform proposals in four major areas. Frankly speaking, nobody will object to the proposals on these four major areas. But I think even if all these proposals are put into practice, public aspirations still may not be met and their complaints may remain unresolved. So, I hope that the
Government, when implementing these four proposals, can think out of the box and consider issues that the public have long requested for inclusion in the MPF.

Let me start with the fee cap. As many colleagues have mentioned earlier, according to a comparison of fees charged by funds similar to the MPF System in 21 territories and countries made by the International Organization of Pension Supervisors, the fees in Hong Kong rank the fourth after Turkey, the Czech Republic, and Serbia. Our average fee for MPF schemes is 1.7% now, compared to below 1% in most countries according to the report.

Let us further look at the report published recently. In order to reduce the Fund Expense Ratio (FER), let us first look at the components of the fund expenses. Of the 1.74%, investment management takes up 0.59% whereas administration takes up as much as 0.75%. That is to say, even if the public will, in future, choose a passbook savings scheme, which means that I do not make any investment, and when I have contributed $100, I will at least get $100 upon retirement, but when the public still have to pay administrative fees at a rate as high as 0.75%, that will be a very big problem.

Frankly speaking, under the current design of the MPF System, employers and employees are required to make contributions equivalent to only 5% of the salary with the amount of contributions being capped. Under the environment of a low return on investment, coupled with the administrative fees, employees can hardly find a fund that does not record a loss. Therefore, the administrative fees are a very crucial element.

I have been thinking about this all the time. I think the design of the MPF System which requires that the administrative fees be paid out of employers' and employees' contributions is unreasonable. Just imagine, with regard to these so-called administrative fees, as far as I understand it, the purpose is to engage these fund companies to carry out administrative work for us, such as recovering contributions from employers or computing the accrued benefits. In fact, regarding the payment of wages, recovery of wages, and so on, there is now a government department, namely, the Labour Department, handling such work for us. Why is it that the administrative procedures and the administrative fees of MPF cannot be handled by a government-funded organization and that all these costs have to be shifted onto the MPF contributions of wage earners? If the Government will consider lowering the fees charged by MPF schemes, apart from the Government's proposal of legislating for a cap on the fees, I think it is more
important to look into how the administrative fees should be handled. If the administrative fees are not lowered, as I have just said, even if the public choose not to make any investment and even if they do not have to pay this fee of 0.59%, they still have to pay 0.75% as administrative fees, and this is indeed very unreasonable.

Therefore, in order to thoroughly address this allegation of high fees for MPF schemes, I think the problem cannot be resolved simply by enacting legislation to cap the investment management fees. Rather, consideration should be given to whether these administrative fees must really be borne by wage earners, and whether the Government or the MPFA can take up some of the administrative work to reduce the burden of wage earners in their share of the fund expenses.

Capping the fees aside, another proposal is that the MPFA should engage a public body to operate a simple and low-fee MPF scheme. In fact, this arrangement has been adopted in Singapore and our Motherland. Put simply, it means that the Government will be entering the playing field.

The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), including myself, has made a proposal many times and on various occasions, including proposing to the Secretary in the Panel on Financial Affairs that the Secretary should study the provision of MPF products which are linked with the Exchange Fund of the Hong Kong Monetary Authority as an option for employees, so that the public can truly choose a trustworthy option.

President, due to the time constraint, regarding the motion and all the amendments proposed today, as many concrete proposals are made and no consensus has been forged in the community on some of the proposals and no consultation has been conducted on some others, therefore, with regard to these proposals on which consultation has yet been conducted (The buzzer sounded) ……

PRESIDENT (in Cantonese): Ms LEE, please stop speaking.

MS STARRY LEE (in Cantonese): …… we will abstain in the vote.
MR SIN CHUNG-KAI (in Cantonese): President, during the resumption of the Second Reading debate on the Mandatory Provident Fund Scheme Bill in July 1995, the Democratic Party opposed the legislation. Today, as we reviewed the reasons for our opposition at that time, we found that our views were correct. We considered that this scheme would not provide universal coverage in that it only targeted some people in employment and excluded the elderly, housewives, persons with disabilities and the chronically ill. Besides, this scheme failed to provide adequate protection for people with a low income. Even if these low-income earners have made contributions for 30 or 40 years, the accrued benefits receivable by them at retirement might not even be sufficient to meet the basic needs of their retirement life. Last but not least, we could already see back then that the administrative costs might be very expensive, which is the focus of our discussion today, and particularly, the low-income earners would be hard hit. It is because they already do not make much in contributions and if their contributions are further eroded by the administrative fees, they will have difficulties in making ends meet in retirement life.

The Democratic Party is caught in a dilemma in putting forward a series of improvement proposals for the MPF scheme today because these minor patch-ups that we have proposed to the MPF scheme cannot achieve a real kind of universal retirement protection scheme for us. We have put forward a myriad of proposals today and it may take a few years' time before they can be gradually put into practice. But if the Government can start discussions on universal retirement protection to, just as Mr Ronny TONG has said, replace the MPF scheme by another proposal, I think this may provide a more thorough solution. However, it seems that the Government will not implement a universal retirement protection scheme at this stage. On this basis, we, being legislators, consider that we still have to do something to plug the inherent loopholes of MPF.

The Mandatory Provident Fund Schemes Authority (MPFA) has made several proposals which include capping the fees of MPF funds, mandating the provision of low-fee funds in MPF schemes, providing a basic, low-fee, default fund arrangement, or introducing a not-for-profit operator to operate a simple and low-fee MPF scheme. These are worthy of support, but still inadequate. As the representative of the FTU has clearly pointed out earlier on, the thrust of the problem lies in the offsetting of long service payments and severance payments by MPF benefits. This is a fundamental reason that precludes a full portability arrangement for MPF. The authorities have to protect the employer-funded
portion of the benefits but this portion of the benefits is used to offset long service payments and severance payments. The Secretary has just mentioned that the implementation of the portability arrangement does not necessarily mean that it must be abolished — I hope I understand it correctly — he said that the implementation of a full portability arrangement does not necessarily mean that the offsetting mechanism must be abolished. I do not quite understand this, and I hope that the Secretary can fully explain the views of the Government on the abolition of the offsetting arrangement in his closing response.

Our views are simple. During discussions on this legislation in 1995, we already stated that there were voices against the setting up of the offsetting mechanism. But in order to press for the passage of the legislation and to obtain support from the industrial and commercial sectors, the Government decided to maintain the offsetting mechanism. Some Members have pointed out repeatedly earlier that over $10 billion of MPF benefits were spent for offsetting purposes. Where there is the offsetting mechanism, it is impossible to implement a full portability arrangement, or perhaps the Government can instead explain to us how a full portability arrangement can be implemented. It is because a full portability arrangement means that employees will decide on the choice of funds and where the money should be invested. Therefore, the employers can say, "If you invest everything in high-risk funds, how can there be protection for my portion for offsetting?" This is why the so-called full portability arrangement is not allowed, and this is the crux of the problem.

The Government has repeatedly mentioned ways to monitor the fees. One of the ways is mentioned by Mr LEE Cheuk-yan in his amendment today, which proposes that employees should be allowed to choose to deposit part of their contributions into the Exchange Fund, with the annual return rate calculated on the basis of the average return rate of the Exchange Fund investment portfolios over the past six years and the introduction of a minimum return guarantee, so as to ensure that the annual return will not be lower than the average yield rate of Exchange Fund Bills of three-year maturity in the preceding year. It means implementing a non-mandatory scheme which allows employees the choice of public trustees and relevant funds, and this is similar to a non-universal central provident fund. During the debate in 1995, a number of proposals were put forward, one of which was the "pay as you go system" first proposed by Chris PATTEN. Under this scheme, the contributions received today are immediately used as payments for the retirees, meaning that this generation of people supports
the living of the last generation of people. This proposal was rejected at that time.

Besides, a central provident fund scheme is implemented in many places elsewhere in the world, such as Singapore, and the proposal made by Mr LEE Cheuk-yan is actually suggesting in one way or another the implementation of a non-mandatory central provident fund scheme. This scheme has merits, and the Government should take it into consideration. Certainly, it leads to the question of whether it will be implemented through the Exchange Fund. If so, the Financial Secretary may have to propose amendments to the Exchange Fund Ordinance to specify this function of the Exchange Fund.

Mr POON Siu-ping's amendment is, in one way or another, a *de facto* universal retirement protection scheme. Mr POON's amendment pointed out that the MPF Scheme should be linked with age in addition to employment, with the Government making the minimum MPF contribution for persons in the labour force who are neither in employment nor engaged in full-time studies. In this connection, a former Member, Ms LI Fung-ying, also proposed in November 2011 a relevant motion which was supported by the Democratic Party. But I think Members may not have done the calculation, because according to the Government, this may require contributions amounting to $8 billion or $9 billion per annum.

The Democratic Party supports Dr KWOK Ka-ki's amendment. But as for the core problem mentioned by Mr CHAN Kin-por, he has glossed over the problem of the offsetting mechanism under the MPF System. The original motion today calls for the abolition of this mechanism as soon as possible, but Mr CHAN Kin-por still said that consultation should be conducted. We hold that if the offsetting mechanism is not abolished, it is indeed difficult for the MPF benefits of wage earners to take a turn for the better. Therefore, insofar as today's motion is concerned, the Democratic Party supports the original motion and several amendments, but we oppose Mr CHAN Kin-por's amendment.

**MR CHEUNG KWOK-CHE** (in Cantonese): President, the SAR Government implemented the Mandatory Provident Fund (MPF) scheme on 1 December 2000 in response to the strong demands in society. In fact, as early as 1996, the British-Hong Kong Government began to study the feasibility of establishing a central provident fund and subsequently, in 1987, 1991 and 1993, this was
discussed in the Legislative Council on a number of occasions and the conclusion was always the same: "There are divergent views in society.". In 1995, the Government announced that it would not introduce the Old Age Pension Scheme and proposed a privately-managed provident fund scheme instead. The Legislative Council passed the Mandatory Provident Schemes Ordinance and it came into effect on 1 December 2000, for the purpose of ensuring that the public can have some retirement protection. Simply put, the actual operation of the MPF is to mandate employees aged between 18 and 65 years in the employed population in Hong Kong to make monthly contributions together with their employers for the purpose of retirement, and self-employed people also have to join the scheme. Therefore, the crucial issues in the discussion this time around should not just lie in such issues as how the funds are managed, whether or not the funds of the public would be eroded, and so on. What matters even more is a review of this system to see if it can give all members of the Hong Kong public, be they poor or rich, greater protection in their living in old age. In other words, we have to discuss whether or not the MPF scheme can perform the function of caring for the elderly effectively.

First, let me first talk about the return of the MPF. Take 2011 as an example, although the European debt crisis, which all Members still have a fresh memory of, led to a general global economic downturn, as at the end of last year, the annual return of the American stock and bond markets still recorded a return of 5% and 9% respectively, far outstripping the return for MPF schemes in Hong Kong in the same period. What are the reasons? For one thing, this is because of the infamously high administration fees of MPF schemes but another more important reason is that since the MPF scheme is a protection system for employees, no importance is attached to the return. It is inherently a mistake for the authorities to leave a system designed to protect people's livelihood to market operation and rely on investment return to provide protection.

As I said earlier on, MPF funds have been heavily eroded by fund management companies. According to information, the annual net return of MPF funds over the past decade was only 3.4% on average and the gross rate of return so far is only 59%. However, the gross rate of return for the Tracker Fund, which charges lower fees, was as high as 136% in a decade. Although the Mandatory Provident Fund Schemes Authority (MPFA) requested in 2008 that the fees be lowered, the administration fees for MPF schemes last year were still as high as 1.74%. Compared with other countries — for example, it is 1.19% in the United Kingdom and 1.41% in Singapore — the fees levied in Hong Kong
turn out to be the highest. If we base our calculation on the more than $400 billion accumulated under the MPF scheme at present, the hard-earned money of wage earners is still being eroded at a rate of some $7 billion each year, so it pains me just to hear this. The reason for such high administration fees is the emergence of oligopoly in the market. At present, there are 15 MPF trustees in Hong Kong and together but the five trustees of the largest scale manage a total of 80% of the MPF schemes and nearly 80% of the assets. In these circumstances, how would these five major trustees have the incentive to carry out reforms? In addition, a consultancy report also points out that in each type of MPF schemes, there are as many as six areas in which administration fees are levied and "one is bound to wet one's feet when wading through water", so how can the administration fees of the MPF schemes not be so high?

An academic once proposed that the Hong Kong Monetary Authority (HKMA) should get involved by acting as the public trustee of MPF schemes — just now, a number of Members also raised this point — because not only can doing so reduce the administration fees, it can also strengthen the "public component" of the fund. However, the Chief Executive of the HKMA, Mr Norman CHAN, has turned this down categorically, saying that doing so does not conform to the statutory duties of the HKMA. Given a total asset of more than $2,500 billion in the Exchange Fund managed by the HKMA, it is actually most capable of ameliorating the existing problems relating to the MPF scheme. I hope that Mr Norman CHAN can assume his responsibilities as a public officer and I also demand that the Government take the initiative to intervene by enhancing the functions of the HKMA and instructing the HKMA to examine this proposal.

The directions of reform proposed by the MPFA include four proposals, namely, capping the fees of MPF funds, mandating various types of low-fee funds in each MPF scheme through legislation, providing a type of basic default fund arrangement and introducing a not-for-profit public trustee as the operator. The motion proposed by Mr TANG Ka-piu this time around exactly addresses these areas. Among them, I am most concerned about abolishing the mechanism whereby long service payments and severance payments are offset. However, ultimately, what we need to discuss is how to protect the living of the Hong Kong public after retirement. Academics and civil groups have already done some thorough calculations. Under the MPF scheme, the money that the public receive on retirement is insufficient for them to lead a secure life in their twilight years. Moreover, recently, the survey on retirement protection conducted by the
Hong Kong Catholic Commission For Labour Affairs among grass-roots and middle-aged or older women indicates that more than 80% of the grass-roots women did not have any MPF account and that over 60% of the working women were employed in part-time, temporary and casual jobs, whereas over 40% of the working women earned less than $5,500 monthly. We cannot just turn a blind eye to this group of women with a life expectancy of 86.7 years who are not covered by the MPF scheme and the over 650,000 homemakers who work without pay. I once again demand that the Government study and launch a universal retirement protection system immediately.

President, I so submit.

MR KENNETH LEUNG (in Cantonese): I thank Mr TANG Ka-piu for moving this motion on comprehensively reviewing the Mandatory Provident Fund (MPF) scheme today. I actually support Mr TANG Ka-piu's motion insofar as its principle and direction are concerned but of the 11 proposals put forward by him, I wish to comment further on three of them.

In fact, the MPF scheme is inherently deficient in its structure. All along, the Government has not explained to the general public what role the MPF scheme actually plays in the retirement arrangement for the public. What percentage of income can the public count on the MPF to provide them after retirement? The Government must clarify to us what role MPF plays in the arrangements for our retirement.

On some of the specific proposals put forth by Mr TANG Ka-piu, in particular, point (1) concerning the offset arrangement, I have to add a few words. As Mr TANG Ka-piu and other Honourable colleagues said, if we do not abolish the offset arrangement, it would be technically difficult to put in place a full portability arrangement under the MPF scheme, so that employees can only have one "lifelong account". This gives rise to another question, that is, at present, in raising this issue with the Secretary for Financial Services and the Treasury now, are we barking up the wrong tree? Because some time ago, I discussed the offset arrangement with the Secretary for Labour and Welfare and actually, this matter falls precisely within the policy areas under the charge of the Secretary for Labour and Welfare. Moreover, as far as I know, the passage of the legislation on the MPF scheme back then was attributable to the consensus reached with many Members of the business sector on retaining the offset mechanism. If we
want to resolve the issue of abolishing the offset mechanism now, we have to wield our sword quickly, not to cut the Gordian Knot but to reach a consensus with Honourable colleagues and friends in the business sector. Of course, I hope very much that employees' welfare can be safeguarded, rather than allowing long service payments and severance payments to be completely offset.

As regards point (3) in Mr TANG Ka-piu's motion, that is, to set a ceiling for the Fund Expense Ratio (FER) of MPF funds, I also agree with it. Apart from setting a ceiling for the FER, I think it is also necessary to mandate the provision of low-fee funds, perhaps a couple of them, under each MPF scheme. Of course, a voluntary system can be proposed when we initially raise this proposal with fund managers but if fund managers are not co-operative, the Government has to consider if it is necessary to mandate the provision of low-fee funds under each MPF scheme.

Point (5) of Mr TANG Ka-piu's motion proposes the establishment of a public trustee that operates under the Government, a public body or a voluntary organization, and an Honourable colleague also suggested that perhaps we could ask the Hong Kong Monetary Authority (HKMA) to serve as a public trustee. I have to explain one point. When the MPF scheme was initially put in place, that is, from 1998 to 1999, I submitted applications on behalf of many trustees. In fact, under the MPF System, the role of a trustee carries very heavy responsibilities, so we have to explore in depth such issues as the internal management and the liquidity of each trustee. Therefore, I do not support having a public body or voluntary organization serve as a public trustee, nor should the HKMA serve as a public trustee. Nevertheless, I support this arrangement of setting up a public trustee. In the long run — I do not mean short-term or medium-term measures — I hope the Government can set up an independent public trustee organization. In the long run, I hope that the role performed by all existing trustees can be centralized under a single public trustee. Of course, my proposal has not gone through extensive consultation and it is a long-term reform proposal. If one single public trustee remains under the MPF scheme and various types of funds are offered under it for all members of the public to choose from, then, apart from the proposal to reduce fees put forward by the accountancy firm, Ernst and Young, the administration fees can also be reduced substantially. If the Government has such a vision, I hope it can consider if introducing a single public trustee should be a long-term reform goal for the MPF scheme.
In addition, in December 2010, that is, at the 10th anniversary of the implementation of the MPF scheme, the Hong Kong Retirement Schemes Association also put forward several proposals, so I also wish to talk about them. First, it is hoped that after clearly defining the role of the MPF scheme, the Government can consider increasing the proportion of mandatory contributions; second, whether or not the Government has to offer tax concessions if it wants to encourage more members of the public to make voluntary contributions and third, many Honourable colleagues have certainly mentioned a universal retirement scheme and before careful consideration or careful study, I do not have any view on this scheme. But at this stage, is it possible to allow non-working people or the spouses of working people to open accounts, so that they can also put their savings under the MPF scheme?

President, I so submit.

MR CHAN CHI-CHUEN (in Cantonese): President, the Mandatory Provident Fund (MPF) scheme has all along been faulted and criticized by members of the public, who say that the fees are high, the returns are low and there is a lack of transparency and that each month, it looks as if they receive their pay on a discount. For all these reasons, the public think that making contributions to their MPF accounts is like dumping money into the sea. The returns of MPF schemes have remained in negative territory and in the red for long periods of time. Although it seemed there was some improvement last year and some gains were made, the funds are still underperforming. Last year, the Hang Seng Index rose by 22.91% and the Tracker Fund rose by 23.55% in the full year, but the average return for MPF funds was only 12.07%, so MPF funds have turned from being tasteless chicken ribs to even worse than a chicken's butt. Do Members still remember that the year before, the Government proposed that it deposit the $6,000 to be handed out to all Hong Kong residents into their MPF accounts? At that time, this proposal aroused an outpour of angers in the whole city, so the Government withdrew the proposal immediately and changed it to that of handing out money directly instead. I believe Hong Kong people still have a very fresh memory of this incident.

If we look in retrospect again at late November 2011, the Legislative Council approved an increase in the upper income limit for contributions to MPF, raising it from the original $20,000 to $25,000. At that time, the great majority of Members voted in favour of this proposal and expressed support. Only Mr
Albert CHAN and Mr WONG Yuk-man of the People Power and Mr Tommy CHEUNG cast opposing votes, while Mr CHIM Pui-chung abstained. At that time, I had not yet become a Member and was only an ordinary member of the public. However, I was very puzzled no matter how I thought about this. Those Members criticized the MPF so harshly, saying that making contributions to the MPF was just like dumping money into the sea or putting money into a bucket with a hole. But why did they vote in favour of raising the upper income limit for contributions from $20,000 to $25,000? If one dumps more money into the sea, would one not suffer even greater losses? Is not contributing more money to the MPF tantamount to giving fund managers, trustees and sponsors more money? In this way, would they not make even more money?

Subsequently, in an election forum, some Members of the pro-democracy camp were grilled by some candidates who were strongly opposed to the MPF. Eventually, half way through the question session, I heard a Member of the pan-democratic camp who had supported the motion on that day explain, "After the upper income limit for contributions was raised, workers have to contribute more money but so do employers, so is this not something desirable for wage earners?" That means in his heart, he believed that on balance, there was more to be gained from a bad deal but in fact, he did not even know that he had been fooled. He thought that employers' contributions came from employers but he did not realize that "wool comes off the sheep's back", and that in fact, the MPF contributions made by employers — Members can ask employers and they would then know — were also part of their operating costs. If employers have to make larger amounts of contributions, that means they would pay workers less in wages and the next time they give workers a pay rise, they would also factor this in. Does he think that workers can have such a good deal as to get more money from their bosses?

The argument is actually very simple. We often criticize the MPF scheme for its high fees, but why did those tycoons and big bosses not come forth together in opposition of the high fees of MPF schemes? The reason is very simple: Because they do not care. In fact, the money is not theirs but that of wage earners. Therefore, Members must not be so naïve as to think that the contributions made by employers would also increase, that on balance, there is more to be gained from a bad deal and that more money can be obtained from employers.
The People Power opposes the MPF, but since universal retirement protection is unlikely to materialize in the foreseeable future and it would not be possible to abolish the MPF scheme immediately. Generally speaking, we agree with the short-term patch-up proposals put forward by Mr TANG Ka-piu. However, I have some reservation about the amendment proposed by Mr LEE Cheuk-yan, for example, the proposal of allowing employees to choose to deposit part of their contributions into the Exchange Fund. In actual operation, it would be quite difficult to implement this proposal through private funds. If Members think that the Exchange Fund is better, it would be preferable to hand everything over to it, as in the case of Singapore, where a central provident fund system is implemented. Although Members opposed it back then, since they now find that the fund companies in Hong Kong are doing such a bad job but the Exchange Fund is doing so well, they can actually raise this matter for discussion again.

Moreover, I also have reservation about the proposal to "require MPF trustees to provide annuity plans" because the risk cost of it is very high. As I said earlier, if bosses have to do so, they would surely factor the cost into their staff costs. Moreover, this measure would only lengthen the time that MPF funds remain in the hands of trustees. As a result, they would be able to charge more fees and earn more fees. If Members really want annuity plans to be implemented, they should let the Government offer and underwrite for the plan to convert MPF schemes to annuity plans.

As regards Mr CHAN Kin-por's amendment, his viewpoint is entirely founded on the interests of the banking and insurance sectors and Members can all understand this quite well because he is a functional constituency representative. He advocates consultation, studies, further consultations and further studies, and carrying out feasibility studies and consultations on stakeholders continually, so that the measures to reduce the fees of MPF schemes can be put on hold as a result of continual studies. Therefore, we must voice our opposition to this.

The People Power supports the provision of universal retirement protection but a simpler and more effective approach is to raise the amount of "fruit grant" to $3,000, so that elderly people can benefit from it immediately. As regards the contribution arrangements, which have all along been the bone of contention, that is, whether or not the contributions should be tripartite and whether or not the funds should be financed by an increase in profits tax or general revenue, we can
discuss these issues in due course. Here, I have to reiterate that the amount of interest earned by the Government from the existing reserve — and I am only talking about the interest — is already enough to fund our proposal of providing $3,000 in "fruit grant" for 20 years. I so submit.

MR MICHAEL TIEN (in Cantonese): President, MPF is the most important link in the whole retirement protection system. Although there are still many problems with it and there is much room for improvement, I think that the authorities must engage in a full review of it. However, I think there are some problems in the original motion proposed by Mr TANG Ka-piu and I would like to share my thoughts with Members.

First, there was prolonged discussion among various sectors across the community during the mid-1990s on how to implement MPF and the employers had negotiated with the Government on the subject as well. Before the law on MPF came into force, the Employment Ordinance already allowed employers to use contributions made to retirement schemes registered under the Occupational Retirement Schemes Ordinance or the end of contract gratuity payable to employees according to the number of years of service to offset severance payments and long service payments. In 1995, the former Legislative Council passed the MPF law and extended this long-standing offset procedure for application to the MPF scheme. The Labour Department pointed out that the MPF System was the result of years of study and extensive consultation and in the end the authorities decided that long service payments and severance payments could be used to offset employer's contributions under MPF schemes. The move was made in exchange for the support of employers for the proposal. So the MPF was implemented on this basis of a consensus reached on offsetting the severance payments and long service payments. If it is requested now that this arrangement be abolished, it would not just be a question of money but also an ethical problem. If the Government is requested to break its former promise made, it is actually bad loser's attempt to salvage a lost cause, which is most unfair to both the Government and the employers.

Second, point (5) of the original motion moved by Mr TANG echoes the fourth reform proposal made by the MPFA last November. On the proposal to set up a public trustee that operates under a public body or a non-profit-making
organization in order to reduce the administration fees, I have doubts about the feasibility of this proposal. Since there is a lack of qualified operators and intermediaries in the market, I would think these non-profit-making organizations will in the end have to rely on the industry to manage the investments. Even if the aim is only recovering the costs, it may not be possible for administration fees to decrease substantially.

Compared with other countries, such as the central provident fund in Singapore and CalPERS in the State of California in the United States, their total investments are valued at US$170 billion and US$230 billion respectively. In 2011, the total MPF assets in Hong Kong were HK$356 billion. Suppose one tenth of the employees will shift to using a public trustee operated under a public body or a non-profit-making organization, the total amount of investment funds is only some US$4 billion. This is far less than the central provident funds in other countries. Non-profit-making organizations in Hong Kong do not have a large amount of capital for investment and it is difficult for them to make flexible investments. So the rate of return on investments made would be low. However, according to Mr TANG's proposal, it is desired that the risk should be low while the rate of return should be high. We consider that this is too idealistic and can hardly be achieved in reality.

Besides, it is proposed that inflation-linked low-risk capital preservation funds should be offered to the employees. This idea sounds attractive, but unfortunately, under the existing MPF System, employees are allowed to switch to other trustees and vary their fund combinations to a limited extent. If there are people who have opted for these inflation-linked funds but over the following years, the inflation rate may drop and if they find the rate of return of other funds more attractive, they will naturally want to make a switch. On the contrary, if the rate of return of other funds is low and if it is even lower than the inflation rate, the people may want to switch to some inflation-linked funds.

Unless members of the public have undertaken some long-term planning and, when they have chosen some low-risk capital preservation funds, promised not to switch their funds within 20 or 30 years and that they would refrain from making frequent changes, or else it would lead to a great trouble. It is because if people, all keeping a watch on the changes in the inflation rate and the returns of other funds, make frequent switches, it will not be able for them to get any desired outcome in the long run. Is there any consensus in our society on not to
allow people to change their trustees for the following 20 or 30 years after they have chosen one? I would think that if there was such a consensus, then we might as well consider this proposal.

The New People's Party thinks that MPF is basically a mandatory savings scheme, of a kind long-term investment. Therefore, we must analyse the data across the economic cycles before we can compute the return rate accurately. The MPF System has only been set up for 12 years and as many people have said, it is still a very small child.

Information from the World Bank shows that the MPF System in Hong Kong is sound and it has a positive impact on the development of the bond market. As a matter of fact, Singapore is studying the Hong Kong model, with a view to enhancing the flexibility of its central provident fund. The New People's Party agrees that the present system should be improved to enhance the basis of the MPF System as the core of our retirement protection system. We believe that a sound MPF System plus a living allowance for the elderly which is sound enough and able to really address people's needs can be seen as a safety net. This is the most pragmatic method to enable the elderly to get the minimum protection in their twilight years.

I have been reading out this draft speech fast on purpose in the hope that I can have some time to talk about the meaning of universal retirement protection. Every time when I hear this term, I would be confused. I have just read the amendment by Dr KWOK Ka-ki which says: "such a universal retirement scheme should be funded by tripartite contributions from the Government, employers and employees, and under the principle of no tax increase, no increase in employer's contribution ratio and no increase in employees' contribution burden, provide each elderly person aged 65 or above with a monthly pension ……" First, with "no tax increase", where can the Government get the money to make contributions? This is baffling and I cannot figure it out. Second, the MPF is a kind of mandatory savings for a person after doing a lifetime's work in the hope that the money saved can be drawn later for his own use. But his amendment points out that our mandatory savings plus employer's contributions will be drawn out for everybody to share. Take the example of someone with a high income, he has been paying tax all his life and this has helped many people, but in the end his savings will be subject to another redistribution of wealth for the purpose of
helping other people. Is this the core value we profess in Hong Kong? Does this conform to the so-called spirit of the Lion Rock? I would therefore wish to know if there is such a consensus in our society. I would not mind lending my support to this idea if there is (The buzzer sound) …… Thank you.

DR LAM TAI-FAI (in Cantonese): President, before any policy is formulated and introduced, all the relevant information must be thoroughly collected and it is only after making an analysis, conducting rounds of consultation, engaging in repeated verifications, and making a lot of efforts and spending money on it that a policy can become a good one. So it is never easy to roll out a good policy.

Once a policy is rolled out, the question of whether or not it can achieve the desired objectives, benefits or results will very much depend on how it is enforced and monitored. So the power of enforcement is very important. And likewise is the power of monitoring. As a policy will not move forward by itself, it must be taken forward by humans. With respect to government policies, they must depend on how the government will enforce and monitor them. Or else notwithstanding the excellent contents and aims of a policy, it will only become empty talk. The quality in monitoring and enforcement may turn a good policy into a bad one and a policy which is expected to benefit the public may backfire and the public will be affected. The result may be counterproductive. So when introducing a policy, we must not just leave the policy alone and let it chart its own course. There has got to be some quality assurance before the objectives, results or benefits desired can be attained.

We all know very well the original purpose and objectives of MPF and, that is, to offer some protection to the life of retirees and make arrangements for wage earners to save up for their retirement. But over the past 12 years since the MPF System is fraught with problems, it cannot achieve its expected objectives and effects. Mr WONG Kwok-hing and Mr CHAN Chi-chuen have earlier on put all the blame of the problems that have emerged on the employers. I would not blame them. This is because I know them very well. They have all along been wage earners and they have never been an employer. So their views are one-sided. But I am different from them in that I have been both an employer and an employee. I have the experience of these two parties and understand what employers and employees think. So when I look at the issue, I think I am
all-rounded and objective and I am reasonable and sensible. This is somewhat different from Mr CHAN Chi-chuen because at times he is quite biased. Although he blames the employers wrongly and says that the employers or the SMEs are unscrupulous, I will tolerate his opinion because it shows that his view is one-sided. But that does not matter.

Why do so many people in society criticize the MPF? The greatest problem is that there is some sort a shortfall. What is meant by this shortfall? Mr CHAN Chi-chuen is very much correct when he says that the return is low while the fees are high and it is the most stupid kind of investment. According to a report, the rate of return is as low as 3.4% on average. If the rate of return is 13.4% or 20%, I am sure no one will slam at the MPF. People will only give it rounds of applause. Now the fund management fees are 1.7% on average, but if it were 0.7% or if no fees are charged, people will certainly give a resounding applause. So the question is, there is a shortfall.

The Government always stresses that it is being pragmatic in doing its work, and that nothing about people's livelihood is trivial. I would advise the Government to approach the problems from the idea of a shortfall. The rate of return should be raised to a level at least higher than the inflation rate and the interest rate for time deposits. Or else, people had better make time deposits. The fees should be lowered to a level that makes people feel comfortable. Now the greatest problem is no matter what the rate of return is, the fees charged will just rise non-stop. There is no control on this. It is like the public utilities such as the Hongkong Electric which know only making tariff hikes. I therefore think that if the Government is being pragmatic, it must address these problems.

The MPF is mandatory and if people do not join it, they will be arrested and punished. Since it is the Government which forces the people to get onto this boat and leaves them in the midst of this ocean of problems, it must first teach them to swim and find a way to survive. About this question, Mr Ronny TONG has used the analogy of horse racing earlier. He said that when picking a horse for placing a bet in a race, a person would refer to the racing tips and find out the past performance and pedigree of the horse, the jockey concerned, the gate drawn, and so on. For the MPF scheme, there are hundreds of funds available and it is outright confusing when one is faced with the dazzling array of funds.
President, you are very learned and you know about everything, including finance and economics. But for an ordinary man in the street, irrespective of whether he has read a university degree, and even if he has, I would say that not everyone will know about economics and finance like Secretary Prof K C CHAN. So one can say that people hardly know anything about these funds and they are practically and effectively ignorant about them.

Often times the people will rely on the salesman's recommendations. And they may even bank on the names of the funds concerned. If the name of a fund sounds attractive, like the horse "Absolute Fantasy" (太奇妙), then people will think it is a sure win. But we should not just look at the names, for we should also know the contents well enough. Now we are forced to join the MPF, but the Government has not set up any platform or channel to help us learn more about the funds and which ones are good and which ones are bad. I know that it is not possible for the Government to educate all the 7 million people of Hong Kong on this kind of knowledge. The people cannot be asked to take classes and learn slowly. With the MPF System having operated for 12 years, the Government should screen all the funds and stop the operation of those funds which show a deplorable performance and blacklist them. A chart on fund performance should be compiled for easy reference by the public like what those people who give horse racing tips do. Since the MPF is mandatory, the Government should intervene. And if people are asked to make investments, a chart showing the performance of funds should be compiled so that they can know easily which funds are good and which funds are bad. The Government should help the people choose the funds that best suit them and they should not be left at the mercy of the fund salesmen. It will simply not work if these fund salesmen only rely on their good looks or their oily tongue because, after all, this will boil down to a question of knowledge.

I therefore hope that the Government will set up a platform or channel for the people to choose their funds and do planning for themselves. It remains, of course, that the question of a shortfall which I have just talked about, that is, the ceiling for fees charged, must be put under careful control. Moreover, if any fund is found to have performed badly, it should be asked to return the fees charged. The reason is, since it is managed badly, why should people pay so much management fees? Apart from this ceiling, as regards fees, I would also hope that the Government could set up a platform to handle such matters and we
cannot say that once this goes electronic, the fees will come down. Actually, there are many aspects *(The buzzer sounded)* ...... in which fees can be reduced.

President, I so submit.

MR WONG TING-KWONG (in Cantonese): President, I must say that Dr LAM Tai-fai always makes moving and exciting speeches. First of all, I must declare that I am the Chairman of the Mandatory Provident Fund Schemes Advisory Committee of the MPFA.

As many Members have said, ever since the MPF scheme was introduced, it has been criticized as charging high fees and yielding a low return. The contributions by employees are eroded and they cannot get any sufficient protection of their retirement life. Therefore, there is always a view in society that a review should be conducted of the MPF scheme. This Council has conducted a number of motion debates on the subject. In view of this, the MPFA launched a measure last November, namely the "semi-portability arrangement", in order to enhance competition in the market and it also appointed an independent consultancy to undertake a study on the costs of MPF trustees. A report on the study was published last November in which a number of reform recommendations were made to the Government. I would think that in response to the demand in society and considering that the MPF scheme has gained some scale after operating for 12 years, there is really a need for a review to improve the MPF scheme gradually.

I think that if the MPF contributions from the employees are to be protected for their retirement, the main approach to take is to study how the administrative fees charged can be reduced and whether or not there is a sufficient number of quality products available as choices for employees.

Currently, the annual rate of return for MPF investments is only 3.4% and the FER is 1.74%, meaning about $6.2 billion is spent every year on the administrative fees, investment management fees, sponsor charges, and trustees profits. According to a study by a consultancy, the administrative costs of trustees take up the largest share of the total expenses and they are 0.75% or about $2.7 billion. And member support, contributions handling, benefits
payments and reporting account for the largest share in the administrative costs. With such high administrative fees, and despite the gradual decrease in charges in recent years, there is undoubtedly still room for further adjustment downwards.

I would think that if administrative costs are to be lowered, the first thing is to study how administrative procedures can be streamlined and the operation efficiency of the system itself raised. Therefore, I agree with the recommendations made by the MPFA, that is, first, the trustees should aim at streamlining their operation and the procedures should become electronic and both employers and employees should be encouraged to use some online platform and electronic payment and settlement system; second, scheme members with more than one account for making MPF contributions should be assisted in consolidating their personal accounts; and third, MPF schemes or funds of a smaller scale or lower efficiency should be consolidated. I also think that when it is proved that the above measures are not effective, then more vigorous measures should be adopted such as setting up a ceiling for FER and requiring the trustees to state the amount of each item of fees levied on scheme members.

Apart from adopting these measures to reduce the administrative fees, it is also very important to make sure that the market has a sufficient number of quality products available as choices for members and to meet their needs. This applies especially to those employees who lack investment experience or are not able to bear much risk in investment. For these employees, products with a low charge and low risk would be more suitable and more beneficial for them. So the trustees should offer more kinds of funds which have a low charge so that employees can have more choices. However, since these funds charge a lower fee, the trustees may be affected by business considerations and so the support services, management efficiency and investment return of these schemes with funds of low charges may be compromised.

I would therefore think that studies should be conducted on the introduction of a public body to operate as a trustee and offer some simple and capital preservation funds with low fees. This will enhance market competition. However, as to the recommendation made by the MPFA that consideration can be given to asking some social enterprise or trade union to act as an operator, I am worried that in case these bodies do not operate so well, problems like closure or liabilities will arise. In addition, some members of the public have made a suggestion to me, that consideration can be given to handling MPF contributions
like the banks accepting deposits made at regular intervals and allowing the clients to take out the total amount of deposit after a specified date. I hope the authorities can give serious thoughts to this idea.

As for the proposal made in the original motion to abolish the mechanism whereby employer's contributions can be used to offset the long service payments and severance payments, I have reservations about it. As the saying goes: it is difficult to start a business, whereas it is much more difficult to keep it afloat. This is especially the case now with the uncertainties in the external economy, sluggish business, rising production costs and the employers having to face problems like minimum wage, environmental protection as well as the impending issue of standard working hours, and so on. The SMEs have been struggling for survival in recent years and some of them have even folded. So I have often heard people who want to start a business express the concern that as they prepare to start a business, they should also be prepared to fold it.

President, if employees want to get any proper retirement protection, they should not just rely on improvements made to the MPF scheme but also the introduction of other social policies to complement it. These include investment education, healthcare reform and the CSSA system, and so on. I hope that when the MPF scheme is reviewed in future, the authorities should also study how to promote sustainable development in society (The buzzer sounded) ……

President, I so submit.

MR JEFFREY LAM (in Cantonese): President, we are once again discussing the MPF today. It is a well-known fact that the MPF charges high fees but the rate of return is low. The wage earners think that there is a great shortfall between their initial expectations for the MPF and its performance now. So the Government and the MPFA must proactively address the various deficiencies, especially the high fees and a low rate of return, such that wage earners can be assured of enjoyment of the fruits of their labour when they go into retirement.

Hong Kong faces an ageing population which brings a very significant issue of retirement protection, and this needs a sustainable plan that can balance the interests of all sectors across the community. When the MPF was launched
more than a decade ago, it could be considered as the first step, only that this step taken was too commonplace. Hong Kong people hate being forced into doing anything, but the MPF is mandatory. Both the wage earners and bosses have strong opinions about the present MPF System. Although the MPF System may help those people who do not have a habit of saving up money form such a habit, the return is not satisfactory and a large part of it is eroded by the management fees. No wonder the wage earners are disappointed with the present MPF System which cannot inspire any confidence in the people.

The MPF is only part of retirement protection and we should not see it as comprehensive protection. The MPF is set up for the employees and the self-employed, such that they can make savings while in employment and make preparations for retirement. In 1995 when the Mandatory Provident Fund Schemes Bill was read the First time in the former Legislative Council, the then Secretary for Education said that the MPF would benefit those in employment while social security would be another matter.

Retirement protection is not only the responsibility of employers alone. It is the responsibility of every person to learn to manage their finance well and to keep their money. As children have to take care of their elderly parents, the Government should help those who do not have the ability to be self-reliant by providing them with the basic protection. We cannot shift the responsibility entirely to employers because some people may live a hard life after retirement. Nor can we blame the bosses for not fishing out more money. Also, everyone should make his own decision in investment and when he or she makes money from the MPF, there is no need to share the profits with the Government. And when he or she runs into losses, this should not constitute a cause to blame the Government for not doing well enough.

All along there have been voices in society calling for the abolition of the mechanism for offsetting the severance payments and long service payments. Before the MPF was launched, employers were already allowed to use the money in provident funds to offset severance payments and long service payments. So this permission for employers using their contributions to MPF schemes to offset such payments can really be dated back to a consensus reached at that time. And this arrangement should not be changed before any consensus is reached.
President, I would like to tell Members that the bosses of SMEs are the group of people who are the least protected. They do not enjoy any welfare and no one make MPF contributions for them. Mr CHAN Chi-chuen pointed out earlier that the money does not come from the bosses or the employers, for it is money owned by the employees. I must say that this is not correct. For the SMEs and especially given such bad circumstances, every cent they make is a result of toil and sweat. The money they make is used to take care of the employees. So we should be kind to the SMEs and treat them well. Moreover, they are really in the same boat as the staff and so they should care for and help each other. We should not do anything to sow division among them.

For the employers, they should make sound preparations and foster self-reliance. Or else if they fail in their business, they will really get nothing when they are old. As I have said before, the boss may have to fish out money from his own pocket. At times when business is bad, even if it is running into losses every month and the boss may want to fold the business, he may have to struggle to keep the company afloat because he cannot afford the severance payments. He may have to place his properties as collateral in order to keep the company afloat. Now people want to add to their burden in MPF, would this not be unfair to them?

When someone does business, he will have considered well in advance the amount of money he wants to spend on hiring workers. He must also have thought about the amount of severance payments and long service payments required. He will start to do a business only after making all these calculations and having been convinced that he can afford them all. But if this offsetting mechanism is abolished, it will become all of a sudden that this amount of some $200 billion which the employers have contributed to the MPF for more than a decade will not be available to the employers for their disposal. And they will have to fish out another sum of some $200 billion. If this is really the case, I am sure many companies will close down, regardless of how good or bad the economy is. Also, many employers will dismiss first those employees who have long years of service and they will not enter into any employment contract for more than five years. For if not, who can afford the vast sum of additional long service payments? Would this be beneficial to the wage earners? There are no jobs when there are no companies around. If the employers cannot really make the payments, it is useless to talk about employees' benefits. For who are there to be protected?
Certainly, we know that it is both silly and naïve to think that one can lead a carefree retirement life simply by relying on the MPF. But we know that the better the MPF System operates, and when the better the return is, the burden of wage earners upon retirement will be lighter. And likewise, the burden borne by society as a whole will be lighter. I agree that the Government should continue to adopt various measures to improve the MPF and increase the protection for the people, but we must be careful and sensible. What exists between the employees and the employers is not a zero-sum game, for there can be a win-win situation that affords wage earners the greatest protection possible.

President, I so submit.

MR NG LEUNG-SING (in Cantonese): President, the MPF scheme was set up by the Government towards the end of the last century in line with social developments of the time and after a long period of effort and enacting a relevant piece of legislation. The MPF is meant to offer a retirement protection system to employees in Hong Kong and it is one of the pillars of retirement protection for the elderly people.

Throughout the 12 years of its implementation, the MPF has been a cause of concern for various sectors across the community. The issues of concern are that the fees are too high and the rate of return is too low. These are coupled with the downward trend in the financial and investment markets. As a result, the rate of return is even unable to offset inflation. At times there are even losses in investment. It is only natural that the employees do not think that their retirement life is protected.

During the past couple of months, there has been much discussion on the life of the elderly people and likewise there has been much information about the MPF. These reports include the ups and falls in the rate of return of the MPF as the stock market fluctuated, the "semi-portability" arrangement of the MPF introduced lately, and a recently released chart showing funds with a lower FER offered by the MPF trustees, and so on. More importantly, the MPFA has published the "Report on a study of the administrative costs in the Hong Kong Mandatory Provident Fund system". A letter is also sent at the beginning of this year to about 1 million MPF personal account holders to urge them to consolidate their accounts into not more than two in order to reduce the administrative fees,
and so on. The study report stresses that a timely review of the MPF System is a good recommendation made to improve the system.

President, before I talk about a review of the MPF System, I would also like to declare that companies with which I have a working relationship also provide relevant services. I would like to share with Members my view of the MPF scheme.

First, the MPF is only meant to be one of the pillars in the policy framework for retirement protection and what can be offered is only a low level of retirement protection, and this extent of protection is in direct proportion to the income of employees making contributions. When adding up the present minimum percentage of contributions and the investment return, it is true that affluent and sufficient retirement protection cannot be offered. This is especially so when we consider the fact that for those low-income employees, they cannot hope to see their retirement life fully protected given the short period since the implementation of the MPF scheme which is just 12 years. They may therefore need the safety net of our society as follow-up protection. In order to strike a balance between achieving self-protection and social security, the Government may introduce more incentives to encourage employees to save up their money or increase their voluntary contributions to the MPF.

Second, the MPF has been in operation for only 12 years and as the analysis made in the Report which says, the scheme is now at the second stage of the maturity trajectory of a retirement protection system and there is considerable disparity between it and the time of 40 years expected for such a system to mature. After operating for 12 years, the amount of assets accumulated under the MPF System is only some $400 billion. So it is small in scale and the fragmented operation will naturally place some restraints on benefits. The costs for fragmented management will be high. I therefore suggest that apart from encouraging voluntary contributions and given that the conditions are right, the minimum contributions should be increased in order to enlarge the amount of capital involved, with a view to maximizing the benefits.

Third, the MPF is a half-public and half-private system and it is a scheme with government monitoring and investment from private bodies, so it is different from other kinds of economic activities. It is a public and social policy which is
mandatory in nature. So the kind of monitoring on MPF should be different and it should be enhanced. This includes monitoring the investment products. Now there are 41 investment schemes under the MPF and there are more than 460 funds. The funds are divided into the major types of growth, balanced and conservative; and there is a difference among them in terms of risk and return. The Government should offer proper monitoring so that these products should not be too complicated and serve the purpose of retirement protection. For those growth products, their risk should not be too high either.

Moreover, there are 14% of the employees under the MPF scheme who have not made any investment options. This shows that some employees do not know much about investment. So we can provide some simple and straightforward products for these employees to choose. For conservative investment, at least it should achieve the purpose of capital preservation in the real sense. There are good reasons for those management institutions to reduce their management fees substantially and pay an interest higher than term deposits.

Fourth, with government monitoring, the management companies can be urged to provide reasonable and proper products and also enhance the transparency of investments. This will enable scheme participants to know more about the investment situation and raise both their confidence in the management companies as well as the quality of these companies, hence resulting in a win-win situation for the MPF scheme participants and the industry.

President, I agree with the recommendations made to improve the MPF System and I am sure the industry will exert its best in co-operation. This will raise the scale of the capital market and increase the MPF return, thereby achieving the desired effect of bringing benefits to the whole community.

President, I so submit.

DR KENNETH CHAN (in Cantonese): President, the Government has admitted that population ageing has become increasingly evident in Hong Kong. In view of this, the retirement protection policy has become increasingly important and a comprehensive review is required. Meanwhile, we have often heard government officials repeatedly harp the old tune of "three pillars", namely the CSSA system,
savings and the MPF System, and indicate that studies will be carried out on ways to enhance them.

The objective of the debate today and the repeated discussions held on numerous problems over the past two months or so since the commencement of the current-term Legislative Council is to convince the Government that the aforesaid three pillars are actually the roots of the problems. Should the policy address and budget to be announced soon fail to present a serious and solemn review of these three pillars, thus making it impossible for the Government to promote new policies and adopt a new vision, the three pillars which have been mentioned by us repeatedly might create rather than resolve problems.

President, I would like to voice out for women in Hong Kong in particular. The current population structure of Hong Kong clearly shows that there is an imbalance between male and female with the former being outnumbered by the latter. Coupled with population ageing and a longer life expectancy of females, we cannot overlook the needs in society for public policies, particularly visionary ones, and resources. The emergence of policies and laws devoid of a gender perspective is caused by the indifference to the gender-based division of labour as a social phenomenon. As a result, males and females in society are rewarded differently, and females are offered fewer resources. Things like this are objective facts. In the long run, gender disparity will only continue to widen, and the situation of females will become even less favourable.

Let me cite the MPF System as a pillar of the retirement protection system, also the subject of this debate today, as an example. As we all know, only the employed can enjoy protection under the MPF System. The unemployed and workers of part-time or casual jobs, who are mostly women, cannot enjoy such protection.

Under the influence of the traditional concept of the gender-based division of labour whereby "men make houses, women make home", 70% of the people in the labour force in Hong Kong were males whereas less than 50% were females, according to the data published in 2010. Furthermore, the percentage of females who cannot join the labour market because of the need to look after their family members is close to 15%, which is far higher than the 1.7% recorded for males. In order to look after their families, many females can only work mainly as part-timers, casual workers or temporary workers on a long-term basis.
It is thus evident that the Government's insistence on using the MPF System as a substitute for a universal retirement protection system has not only resulted in the exclusion of family carers, who are mainly women, from retirement protection, but also made their situation increasingly difficult in tandem with population ageing. Under the MPF System, only women at work can be benefited, whereas housewives are completely unprotected. So, can they rely on their husbands or children? The answer is definitely in the affirmative. However, if a husband has to support his entire family, does he have adequate capability and money or even savings to provide for his spouse? In fact, women are in an increasingly difficult position.

What about their children? Nowadays, many young people are struggling very hard for their careers or families, and they do not want their parents to worry. However, are they capable of providing for the retirement life of their elderly parents? It can be said that they are facing increasing difficulties.

What about CSSA? They will not be eligible to apply for CSSA if their husbands have accrued MPF benefits or savings. Hence, all of their accrued MPF benefits or savings have to be spent before they are eligible for protection under this pillar. Actually, for homemakers or housewives, the three pillars frequently mentioned by the authorities are utterly meaningless. For many Hong Kong people, the idea of "raising children for old age" appears to be wishing thinking only.

What about working women? As mentioned by many colleagues in today's debate, the protection for working women is inadequate currently. As families in general are not necessarily capable of employing helpers to look after their children, many women have to quit their jobs in order to take care of their family members and the next generation. As we all know, the existing childminding services in Hong Kong are inadequate. The Government's policy merely encourages voluntary or community care childminding services. This will indirectly further exclude homemakers from any protection. Nowadays, women can very often take up part-time jobs only, so the amount of their accrued savings or MPF accrued benefits is certainly very small. Some women who can only work as temporary workers on a long-term basis to support their families simply enjoy no protection at all.

On the one hand, some women wish to take up full-time jobs, but on the other, they wish to rear children. As a result, they might tend to delay their child-bearing plans. This has directly caused certain retirement protection
problems. The result of the delay in their child-bearing plans is that many parents in their 50s or 60s might still need to provide for their younger children and finance their education. As a result, the amount of their retirement protection funds and resources will continue to shrink. As we all know, like other wage earners, women with full-time jobs are affected by the problem of "high fees, low returns" plaguing the current MPF System, too. The Government has simply not delivered if gender mainstreaming is not taken into consideration in the policy address and the budget which will be delivered shortly.

The reason for some colleagues to advocate the adoption of a universal retirement protection system today is that they know that the MPF System and the existing three pillars can simply not protect women, release their labour and, what is more, take care of the retirement life of housewives.

I call on the Government to launch an in-depth consultation and study on the implementation of a universal retirement protection system. In the short run, the MPF scheme can definitely be enhanced by lowering the management fees and introducing more competition for the purpose of increasing returns. Things like this are the responsibility of the Government, its due tasks. Nevertheless, we should not thus give up studying ways to promote a universal retirement protection system. More importantly, the Government must consider whether or not it should follow the practice adopted by other advanced economies to offer subsidies to homemakers in order to do justice to them, respect their contribution to Hong Kong society and the various benefits brought by them to society.

I so submit. Thank you, President.

**MR ANDREW LEUNG** (in Cantonese): Before delivering my speech, President, I would like to declare that that I am a Non-Executive Director of the MPFA. It has been quite a while since the introduction of the MPF scheme in 2000. I agree that improvements are required in many areas, and it is now timely for a full review to be carried out.

Certainly, fees are a matter of great concern to both Members and me. However, I would like to remind Members that it is not the most important issue. Instead, our greatest concern should be the net return.
Since 2011, I have been repeatedly put forward various proposals on matters pertaining to MPF fees at the meetings of the Board of Directors and calling for the announcement on the same platform of the levels of fees prescribed by trustees in a simple and comprehensible manner as well as a full disclosure of MPF fees to facilitate the making of comparisons by scheme members, so as to exert pressure on MPF trustees in lowering fees. In fact, a working group was already set up by the Board of Directors to study ways to reform the MPF scheme with a view to further lowering fees.

Subsequently, the MPFA commissioned an independent consultancy to conduct a detailed study on the costs involved in the administrative functions performed by MPF trustees, and a report was published in November last year. This report was also introduced at the meeting of the Panel on Financial Affairs this Monday. It has not only expounded on a number of points and clearly set out the components of MPF fees, but also made a number of recommendations to the MPFA and the Government.

Here I will focus on two points only. One point which is not mentioned by many people concerns the recommendations for the MPFA to clearly define the roles of sponsors and trustees in order to enhance governance and for legislation to be enacted to provide that MPF trustees are duty-bound to ensure that the investment managers appointed by them act in the interest of scheme members. This point is very important. I think this proposal is worthy of consideration by the Administration.

In fact, the MPFA has met with various sponsors and trustees in recent years to urge them to provide a range of funds charging low fees for each kind of MPF schemes and promote the relevant funds. This is indeed a good direction. However, as I pointed out just now, a low fee does not a high return. Hence, it is the net return that we should be concerned about.

President, MPF is not only one of the major links of retirement protection for wage earners, but also their long-term investment. Therefore, in addition to the concern about the level of fees, our greater concern should be about the net return of MPF funds. The MPFA website has now provided a MPF Performance Table for public inspection. However, when I asked my assistant about the Table, he told me that he still had no idea at all of the performance of the MPF scheme he had chosen even after reading the Table. In fact, although I
have some knowledge of investment, I do not understand the content of the Table either. Hence, it is imperative for the MPFA to replace this Table with one which is more comprehensible to facilitate understanding by scheme members who do not have any investment experience.

I think it is necessary for the MPFA to include a benchmark for reference for investment purposes. Through a table clearly setting out the performance of funds of the same kind and the relevant benchmarks, people can understand everything at a glance and find out whether their chosen funds are up to standard in terms of performance and whether there is a need to make a switch. I believe such a clear and comprehensible table will make investment managers responsible for fund management pay more attention to the performance of their funds because MPF contributors will switch funds automatically if the performance of their funds is unsatisfactory.

Furthermore, in order to make trustees pay more attention to managing the performance of their funds, I suggest that the Government take on board the recommendations made in the consultancy report of the MPFA to ensure that both trustees and responsible investment managers act in the best interest of scheme members. In my opinion, a responsible investment manager will definitely strive to surpass the MPF benchmark performance. They should also know that their fundamental responsibility is to ensure an investment return which is higher than the benchmark.

Many organizations have now handed their employees' retirement protection schemes, that is, provident fund schemes, to financial investment companies or banks for investment and management. Very often, the relevant companies are required to report on the investment position regularly, and their quarterly or half-yearly reports must set out the returns on the funds, the net returns after deducting management fees and the benchmark returns. If the performance of a fund is unsatisfactory, the relevant investment company must clearly explain this during its report to the board of directors.

Furthermore, such provident fund schemes are normally required to meet the requirements laid down by the organizations on investment portfolios. For instance, half of the investment products must be relatively low-risk bonds, stocks can only take up 40% to 50% of the investments, and the overall investment risk must be moderate. In my opinion, the future MPF reform should proceed in this
direction to prevent all contributions made by employers and wage earners from being invested in high-risk investment portfolios, which might result in the shrinkage of the amount of pension receivable by employees upon retirement.

Currently, there are more than 500 MPF funds on the market. Not only do people find it confusing in handling their own accounts, the administrative costs have also increased indirectly as a result. I propose that assistance be given to the industry in consolidating various MPF schemes and investments and, in particular, relatively small MPF schemes with low cost-effectiveness and little profit, such that the cost-effectiveness of the MPF scheme can be enhanced as a whole. The authorities concerned should all the more educate members of the public on ways to deal with their MPF funds, understand the risks of the funds and select investment portfolios suitable for them.

Regarding the offsetting mechanism mentioned by many Members just now, Mr Jeffrey LAM of the Business and Professionals Alliance for Hong Kong has also expressed our view that it must be handled with care. President, the MPF System is designed for the working population. It was initially designed not to cover the non-working population. As a member of the commercial and industrial sector, I think it is inappropriate to turn the MPF scheme into a universal retirement protection scheme (The buzzer sounded) …… I so submit.

MR CHUNG KWOK-PAN (in Cantonese): President, although the MPF System has been implemented for 12 years, our retirement system is still at its initial stage, with a lot of operational and procedural issues requiring constant adjustments and improvements. Hence, the effectiveness of the MPF System should be reviewed and evaluated from time to time. As the population ageing problem continues to worsen in Hong Kong, it becomes all the more necessary for the Government to address squarely the defects of the existing MPF System.

Since the implementation of the MPF System, there have been a lot of views and criticisms in society, with high fees and low returns of MPF funds being the most criticized. Although it is necessary for the MPF System to be reviewed and improved, we disagree with the first two points put forward in the original motion regarding the implementation of a full portability arrangement for the MPF Scheme and the abolition of the mechanism whereby the accrued benefits derived from employers' contributions under the MPF scheme are used to
offset long service payments and severance payments. Since the introduction of the "semi-portability" arrangement on 1 November last year, only 18,000 applications for switching MPF funds have been recorded over the past several months. Many wage earners and even employers have still not adapted to the new change. Further implementing "full portability" is not only unrealistic, there is also a possibility of bringing about unpredictable opposite effects.

The Liberal Party would like to reiterate that the offsetting mechanism was the consensus reached following extensive consultations on a review of the MPF arrangement. It was due to this mechanism that quite a number of enterprises agreed to implementing the MPF scheme. Hence, we should not undo everything and start afresh rashly. What is more, an abolition of this mechanism will impose a double burden on employers, for they have to allocate an additional sum of money in one go to meeting long service payments and severance payments. This will exert serious financial pressure on them.

Not all enterprises in Hong Kong are large consortia, and most of them are in fact SMEs. Currently, there are more than 280,000 SMEs in Hong Kong. In addition to their tight liquidity, many of them are now struggling for survival and operating under immense difficulties. I believe they can hardly bear a double burden.

Furthermore, if "full portability" is implemented, employees might constantly switch their MPF trustees, and when employers need to make use of their contributions to make severance payments, they will find it difficult to keep track of their contributions. Or they might have to spend a lot of time and make a lot of efforts before they can find out the whereabouts of their contributions. As a result, the existing arrangement whereby employers' contributions are used to offset long service payments and severance payments will be affected, and employees might have to wait longer for the granting of severance payments.

(THE PRESIDENT'S DEPUTY, Mr Andrew LEUNG, took the Chair)

Under the existing model, MPF schemes are decided by employers, who are only required to choose from 19 trustees to handle MPF matters relating to their employees. If "full portability" is implemented, however, decisions will be
made by employees. Hence, the MPF intermediaries and schemes chosen by employees might be different. This means that enterprises will have to change from co-ordinating with just one MPF intermediary in handling MPF matters relating to their employees to co-ordinating with different trustees in handling such matters. In the most extreme case, an employer might need to co-ordinate with 19 MPF intermediaries, which would mean complicated administrative work and rising administrative costs. Hence, insofar as SMEs facing manpower shortages and limited resources are concerned, the implementation of "full portability" for MPF will indeed bring more demerits than merits. Therefore, it is impossible for the Liberal Party to accept the first two proposals put forward in the original motion.

In the second point put forward in the original motion, it is proposed that "one lifelong account" be established for employees to prevent them from keeping a preserved account following each change of jobs, which might result in every MPF contributor having more than two to three preserved accounts, for not only will the administrative cost borne by MPF contributors be raised, the MPF fees can hardly be lowered.

Hence, the Liberal Party holds that reducing the number of accounts held by each MPF contributor is an effective way to lower administrative costs. We also agree that a greater incentive should be offered to encourage MPF contributors to consolidate their MPF accounts of their own accord, though they are not necessarily obliged to do so.

As regards the proposal on enacting legislation to set a ceiling for the Fund Expense Ratio (FER) of MPF funds and require trustees to set out the actual amounts and ratios of various fees and FER in the annual reports, the Liberal Party basically does not object to raising the transparency of the fees, but we think that enacting legislation to set a ceiling for the FER is not in line with Hong Kong's long-standing principle of relying on market force. Furthermore, how can the ceiling be set? If revisions have to be made in future having regard to the economy, inflation and changes in MPF development, a lot of legislative and administrative problems will arise. Meanwhile, doing so will also indirectly encourage MPF trustees to charge maximum fees and is entirely useless in achieving the original objective of lowering fees by the greatest margin possible.
All in all, the Liberal Party supports reviewing the MPF scheme expeditiously, including striving to lower management fees, enhancing competition in the market and improving quality. However, we must not allow any measures, in particular the abolition of the offsetting mechanism and the implementation of a full portability arrangement for the MPF scheme, to cause negative impacts on Hong Kong's overall business environment.

Thank you, Deputy President. I so submit.

MISS CHAN YUEN-HAN (in Cantonese): Deputy President, this motion debate is on the MPF System, which has been condemned even for its percentage of contribution made by members of the public, even though it has been implemented for 12 years for offering retirement protection to wage earners. While listening to the speeches delivered by Members today, I find that it is a great loss for Secretary Matthew CHEUNG to have failed to attend this Council meeting today because he has many supporters from the commercial and industrial sectors. Nevertheless, do we have to wait for employers and employees to reach a consensus on this labour issue, as Members from the commercial and industrial sectors and Secretary Matthew CHEUNG have said, before Members can deal with our proposal to revise the offsetting mechanism under the MPF scheme?

Despite being the Secretary for Labour and Welfare, he has missed the floor today. My remarks just now were meant to ridicule the Government, including Secretary Prof K C CHAN. I think all the views expressed just now by Members of the commercial and industrial sectors in opposition to ours boil down to one point, namely the offsetting mechanism about which Mr WONG Kwok-hing spoke at length just now in great frustration. He said that whenever the MPF contributions made by our assistants, the Government's non-civil service contract staff and people without long-term jobs were offset, they would receive very little money. In the end, it is impossible for many wage earners who constantly face layoffs to enjoy retirement protection. This is why Mr TANG Ka-piu raised this issue for Members' rational discussion.

Unfortunately, I was quite disappointed with Michael TIEN after listening to the speeches delivered just now by Members from the commercial and
industrial sectors. I welcome his participation in politics and running in direct elections. I also hope some open-minded Members from the commercial and industrial sectors can treat the labour problems objectively. Just now, he challenged a Member who said that the Government, employers and employees might not be required to make contributions if universal retirement protection was launched and asked how this could be possible. I wonder whether he has received any education and took the Land Fund into consideration. Many funds are already in existence. If you do not pay today, the Government will have to pay with its tax revenue in the future. I have once joked that he should understand the thinking of poor people because he had once worked as a street sweeper. So, why did he object to our proposal right at the beginning and use exaggerated words to accuse us rather than conducting a study? I think he should not make such remarks since he should understand the plight of the poor because he had once worked as a street sweeper.

Furthermore, I would like to raise another point. Right, we objected to the mechanism whereby MPF contributions were used to offset severance payments and long service payments, even though we faced immense difficulties at that time. However, this does not mean that it is impossible to make any change now. Mr CHUNG, it has been 12 years. Among the numerous cases received by "Ah Piu", all our colleagues and me, one of them involves a person who had stayed in the same job for 10 years and switched jobs three times but received retirement protection of only a few thousand dollars or $10,000 in the end. In another case, a person was more than 40 years old when he was offered a job and now he has to find another one even though he is more than 50 years old. How can he possibly spend his twilight years happily? In the end, he will have to apply for CSSA to be borne by taxpayers. This is why I was terribly shocked when I heard such remarks from Michael TIEN just now. Should he continue to pursue the path of direct elections …… He has simply failed to treat the current problems confronting wage earners in society objectively and misled the Government by misjudging these problems.

Originally, I had a good impression of Dr LAM Tai-fai because he could be quite outspoken sometimes. However, he described himself as an all-round person because he used to work as an employee but now he is an employer. Regarding his remark that he used to work as an employee, sorry, I have to make this remark here — though it seems inappropriate for me to make such a remark here and it is not my style to do so, I must ask this question — Does it mean that
those who know how to speak the human tongue must be human beings, including parrots?

I wish to tell Members a story. If you believe you understand the thinking of wage earners just because you have once worked as an employee, have you ever suffered the hardships as wage earners do? Have you ever worked 12 years and switched three or four jobs but received very little money in long service payment in the end? As the MPF scheme continues to develop, we have received many cases, including those from our assistants and employees of Radio Television Hong Kong, about the wages they received when they quit their jobs. A programme presenter once said to me, "Miss CHAN, there was nothing left after offsetting this and that when I quit my job." I told this well-known programme presenter that I had to open a case file for him. There are countless unfair cases like this one. Why did the Member make the remark that he had a full understanding of wage earners? I think it does not work.

There is another issue I wish to discuss. After listening to the remarks made by a number of Members from the commercial and industrial sectors and other Members in this discussion today, I think we should sit down quietly and think. There was a group of employers in the 1980s who would never object to us when we put forward some proposals. Even though the MPF scheme, which has now operated for 12 years, encountered serious problems at that time, they would still not object to us easily. I really missed those people in the business sector at that time, including Mr HO Sai-chu and Uncle Kau. Strictly speaking, I have great expectations for those businessmen who are willing to stand in direct elections. I hope they can understand the situation of the grassroots and the problems with the mechanism in addition to paying attention to issues concerning the commercial and industrial sectors.

I come from the retail industry. People in this industry emphasize the fact that both employers and employees are sitting in the same boat. If we adopt this attitude but are unable to reach consensus on some issues, Secretary Matthew CHEUNG will be benefited, for he can do nothing at all by blaming the business and labour sectors for failing to reach agreements. Secretary, is it what the Government supposed to do? If you ever again accuse us with these excuses, we can take all sorts of actions against you. Why? I already explained to you that there were many solutions, and there must be a way to resolve the matters. Now that wage earners do not receive the retirement protection due to them, who
should pay for their protection? If we do not study the universal retirement protection issue today, who will pay for retirement protection when the number of wage earners continues to shrink, the population pyramid is reverted and the population ageing problem continues to worsen? In the end, you will let all the taxpayers in Hong Kong down. They will definitely condemn you. Even if it does not happen today, it will happen in 10 years' time. These problems will become more and more prominent. In the end, no retirement protection can be offered to these poor people 20 or 30 years into their retirement life. What can be done by then? Taxpayers will definitely be made to pay for their retirement protection, and you will definitely be scolded harshly by wage earners.

I would like to remind the Government again that you are doing a disservice not only to taxpayers but also to people who have been working very hard for Hong Kong. These people are not only the grassroots, but also clerical assistants and clerical staff, including all the temporary staff in the Legislative Council Secretariat. How should the Government address this problem? This is a social conflict. Do we have to organize ourselves in groups to take to the streets to overthrow the Government?

I emphasize again that under the original system, we should have objected to this. However, some Members are still trying to hold on to this approach, but how can they manage to do so? The Government should indeed face up to and resolve these issues with courage. To avoid disappointing Hong Kong people \( \text{(The buzzer sounded)} \) will the Government please deal with the problem arising from the offsetting mechanism under the MPF scheme.

**DEPUTY PRESIDENT** (in Cantonese): Miss CHAN, speaking time is up.

**MR CHARLES PETER MOK** (in Cantonese): Deputy President, the challenges brought by an ageing population have become an increasingly pressing problem for Hong Kong. Moreover, the question of how support can be given to meet the daily needs of the elderly is one of the key policy issues brought by the ageing population, as putting in place an effective retirement protection system to enable wage earners who have been working for decades to enjoy a relatively secure retirement life is extremely crucial to social stability.
At present, Hong Kong's retirement protection system may be divided into four major areas: retirement protection offered by the Government (namely CSSA and the "fruit grant"), MPF, personal savings and the support of children. Even if many wage earners dare not harbour the wishing thinking that they can rely on retirement protection under the MPF schemes to support their living in their old age, they at least hope that their investment will not go down the drain. However, since its establishment, the MPF has been known for its low return but high management fees, with an average net return of a mere 3.4% but an average management fee of up to 1.74%. Given the trend of a global economic slowdown and the depreciation of the Hong Kong dollar against other major currencies, it is foreseeable that wage earners can rely on MPF to be financially self-reliant is no more than a myth.

The four reform recommendations made by the MPFA to the Government earlier in the hope of lowering administrative costs through different channels have failed to pinpoint this fundamental problem of MPF, namely a low return. I agree with the various proposals put forward by colleagues to improve the MPF scheme, but in the long run, I think that the Government must consider studying how MPF schemes can yield a better and stable return on a long-term basis to meet our retirement needs.

In its study report published last year, the Professional Commons analysed the major reasons for the low return of MPF schemes. Besides the exorbitant management fees, a more crucial point is that the investment return went up and down like a roller-coaster. In my opinion, pensions should put emphasis on long-term investment and rely on re-investing the interest earned in exchange for better protection for living in twilight years. On the contrary, Hong Kong's MPF schemes rely mainly on higher-risk stock investment.

Of the 464 MPF funds currently available on the market, 37% are equity funds. As at mid-2012, stock investment accounts for 60% of the total amount of MPF investment. According to a 10-year Investment Performance Review of the MPF System published by the MPFA, the level of risk of equity funds is the highest, with its margin of return reaching 36% over the past decade. As these equity funds face the risk of dramatic ups and downs in the stock market, fund managers have to trade and manage their stocks constantly. As a result, the costs involved are relatively high.
Not everyone is necessarily capable of bearing the risk entailed by stock investment. Furthermore, high risks do not necessarily bring high returns. I believe the majority of people investing in MPF funds hope to get stable returns rather than making meagre gains this year but huge losses next year. According to experts, if bond investments can be made to yield compound interest by continuing to accumulate the interest earned for investment in a persistent manner, the majority of the returns will be yielded by the compound interest in 20 years' time. It is a more proper approach to accumulate returns over a long period of time for long-term investment.

It was pointed out in a study report by Ernst & Young in 2012 that, compared to other countries, the MPF in Hong Kong has a higher ratio of investment on high-risk investments. As the Hong Kong dollar bond market is limited in scale, local funds wishing to invest in bonds have to invest in overseas bond markets, thereby increasing their management costs. Hong Kong is thus in need of a Hong Kong dollar bond market with sound circulation for diversification of investment portfolios by MPF funds for the purpose of yielding stable returns. At present, the Hong Kong dollar bond market is unable to cope with the retirement investment needs. Hence, it is necessary for the Hong Kong Government to assume the responsibility of establishing a new Hong Kong dollar bond market.

As I mentioned earlier in the Legislative Council, Mr SIN Chung-kai already put a question to the Government in 2001 on how best the local retail bond market could be developed. Now, a decade down the line, the relevant Policy Bureau and the Hong Kong Monetary Authority are still saying that they will examine what can be done to promote the development of the retail bond market. Except for the issuance of inflation-linked bonds in 2011 and 2012, there has been no marked progress. However, due to a conflict of interest, private retail banks lack incentives to promote the development of the local bond market. Hence, more efforts on the part of the Government are required to lead the retail bond market.

The credit risks of many quasi-government organizations, such as the Hong Kong Mortgage Corporation Limited, the MTR Corporation Limited, the Airport Authority and the Urban Renewal Authority, are as sound as that of the Hong Kong Government, for they borrow money mainly from banks and institutional investors and seldom issue bonds for investment by the public. If Hong Kong has a sound and sophisticated retail bond market which can enable these quasi-government organizations and the public sector to raise funds from the
public, the Government's flexibility in financial management will be enhanced. While the Government may consider funding its development projects through the issuance of bonds, members of the public can also participate in these investments.

Deputy President, members of the public definitely do not wish to take tranquilizers when making MPF investments for fear that they might lose a large amount of money upon retirement. The current MPF scheme still has a lot of room for improvement. In addition to lowering management costs, as we discuss today, we hope that the Government can assume the responsibility of promoting the development of the Hong Kong dollar bond market and devising more ways to save management costs and stabilize Hong Kong dollar bonds, so that the reliance of MPF on the stock market can be reduced and members of the public given lower-risk investment options. This multi-pronged approach will enable practical work to be done to address our problem of ageing population.

Deputy President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, just now, I heard some colleagues say that it was actually inappropriate to replace the existing MPF System with universal retirement protection. I find such remarks most regrettable. Why is it inappropriate to do so? It is inappropriate to do so unless Members do not understand the MPF System at all. Come to think about this. The MPF System is originally designed to provide assistance and channels to resolve the retirement problems faced by Hong Kong people. But the question is: Can it achieve the desired effectiveness? As everyone knows, it has failed to achieve it. Why? The simplest answer is that only wage earners can make MPF contributions, whereas jobless people cannot do so. As housewives are without a job, they cannot make any MPF contributions. What are they going to do when they grow old? This is an insurmountable problem.

Another problem is that MPF trustees charge administrative fees. As pointed out by a colleague just now, the more trading is conducted, the more administrative fees will be charged; the more administrative fees are levied, the smaller the amount of MPF benefits will be received by contributors. The amount of money they can get in the end is also an issue.
The third problem is related to the risks. Whether funds trading can reap profits depends primarily on market sentiment. If the market sentiment is poor, as pointed out by many colleagues, however investments are made will end up in losses. This is out of our control. For instance, losses were really serious two years ago. Under such circumstances, the so-called MPF System is not beneficial to employees. Hence, the MPF simply cannot achieve results when it comes to resolving the retirement problem mentioned by the Government.

Members must bear in mind that the newly introduced Old Age Living Allowance (OALA) of $2,200 is subject to asset ceilings, which means that some people are ineligible. Are all these people as rich as Li Ka-shing? The answer is definitely not. Some people at risk are ineligible. What can they do? The Government has kept saying that the problem of ageing population will continue to worsen, and that one in every four persons will be an elderly person by 2033. So, what can be done? The Government has again told us that it does not matter, for the elderly can then receive $2,200 to resolve their problem. But the question is: Where does the money come from? Certainly, it does not come from heaven. Under the existing system, OALA payments are funded by the public coffers. But where does the money come from? What else can it be if it is not tax revenue? Or else how can the Government afford this amount of money? But how can the Government make OALA payments with tax revenue? As we can see, the rates of profits tax paid by companies are so low, OALA payments can only be met by the indirect tax levied on other members of the public. What good will it do?

Hence, in the face of retirement problems, the most important point is that we hope to introduce universal retirement protection and the community has already expressed the willingness to resolve the resource problem with tripartite contributions from the Government, employers and employees. Why do some people find this idea not good? I really do not entirely understand their point. Tripartite contributions will reduce the expenditure of the public coffers. In other words, an additional income will be generated to resolve the problem. Furthermore, the number of CSSA recipients will be reduced after the introduction of universal retirement protection. In fact, this is not only a way to kill two birds, or even third birds, with one stone, but also a long-term solution to the old age retirement problem in Hong Kong. But to my surprise, many colleagues have said today that it is undesirable and inappropriate to introduce universal retirement protection. I am really baffled. What are the benefits of the existing MPF? Besides compelling workers to make MPF contributions,
there is no guarantee at all. Hong Kong is different from Singapore. In Singapore, the Central Provident Fund is being implemented whereby all contributions are pooled together and contributors may even use their contributions for studies or home purchase purposes. In Hong Kong, however, we cannot do anything now. Hence, our existing system is indeed seriously flawed, and the number of beneficiaries is not at all large. Members of the public can only get back their principal at the most. Sometimes, it is already the best and happiest thing to get back the principal.

Under such circumstances, it is already too late for us to discuss reviewing the MPF scheme today, for the review should have been conducted earlier. In fact, I cast an opposition vote at that time because I considered it unsuitable for Hong Kong to set up the MPF System and it was simply inappropriate to do so. Although MPF contributions are nominally made by employers and employers, they are actually made entirely by employees most of the time. Why? It is because the costs are already included by employers in the calculation of salary. For instance, an employer who originally intends to offer a new recruit a monthly salary of $10,000 will reduce it to $9,500 owing to the need to make 5% MPF contribution. This is the present situation. Hence, MPF contributions are made entirely by workers, and all payments are settled by them, too. However, many colleagues from the business sector now say that Members have to sympathize with SMEs caught in business difficulties. I am aware of the operational hardships currently faced by SMEs, but they should not blame their hardships entirely on wages and MPF. In fact, their biggest problem is rent. If their rental problem is not resolved, many SMEs will face closure. As landlords will double their rent, many shops, especially restaurants, will have to close down. Members must not blame the operational hardships faced by SMEs entirely on wages or staff benefits. I hope the Secretary can give consideration to the fact that the development of SMEs is now affected by their rents. If no action is taken by the Secretary and rent control is not implemented, the problem will become even worse.

The amendments proposed by a number of colleagues today are merely short-term botches to the MPF scheme. In the long run, the Government should expeditiously replace the MPF scheme with universal retirement protection. I very much agree that some funds be set up for the future (The buzzer sounded) ……
MR ALBERT HO (in Cantonese): Deputy President, the Government has all along emphasized that we have three retirement protection pillars, but they are actually three short piles. As regards the first pillar, namely savings, many low-income families can simply not make ends meet and have no idea how they can scrape a living until retirement. This is already a major issue. Even though they wish to give their children a good education, it is very difficult to accomplish. So, how can these low-income families count on their savings as retirement protection? They might simply have no or even negative savings. What is more, they might have to live on loans.

The second pillar is social security. As everyone knows, basically, our Comprehensive Social Security Assistance (CSSA) system can only protect CSSA recipients from hunger and the cold, but it cannot make them enjoy a retirement life with dignity. So, how can we treat the CSSA system as retirement protection? The last pillar is MPF. As we all know, it is really plagued with problems. Some colleagues have described MPF as seriously flawed. In brief, the operation and structure of the entire MPF System is extremely unfair. First, as Members are all aware, the requirement on low-income earners to make MPF contributions will aggravate their burden as there are many low-income families. Very often, employers' mandatory contributions are included in the calculation of wages, as pointed out by Mr LEUNG Yiu-chung just now. It is most unfair that employers may use their contributions to offset long service payments and severance payments, so that they do not have to bear the responsibility of making these payments to employees. Broadly speaking, however, the amount of accrued MPF benefits is so small that it can hardly be used to support post-retirement living.

With their prolonged average life expectancy, if Hong Kong people retire at the age of 65, they still have an average of 15 to 20 years …… more than 15 years to go, so how can they rely on MPF to support their post-retirement life? Hence, MPF can only slightly delay their applications for CSSA. Certainly, it is most unjust that many so-called family carers, especially women, are working at home without reward. So, how can we treat MPF as effective retirement protection?
Furthermore, why are members of the public dissatisfied with the existing MPF System as a whole? First, it can be easily seen that the fees are high. Even though fund managers are making an indecent profit out of this lucrative business, they still charge such a high level of fee, but what sort of return can employees receive? If the return is barely satisfactory, it can still be regarded as "chicken ribs" which, though tasteless, are yet a bit wasteful to be thrown away. However, despite the charging of exorbitant fees, most of the time we can even see negative growth, which means that even the capital cannot be preserved. Hence, Secretary, you should understand why last year — I am not sure whether it was last year or the year before last — there was such a furious public outcry when the Government intended to inject a sum of money into MPF accounts. In fact, we can see from this incident the degree of dissatisfaction of members of the public with the operation of MPF.

In dealing with a lot of things, problems cannot be resolved with piecemeal remedies. In fact, "MPF portability" is not very helpful to many members of the ordinary masses because they simply have no idea how to make choices. Furthermore, members of the public have chosen certain MPF funds because they are willing to lower fees and guarantee a handsome return. However, if these MPF funds go wrong, will the Government underwrite everything?

Broadly speaking, the pro-democracy camp has several reform proposals. In the short-to-medium term, a public trustee should be set up as a non-profit-making statutory body. In our opinion, it can borrow the experience of the existing model of the Hong Kong Monetary Authority (HKMA) and adopt its investment strategy. As everyone knows, the HKMA has a large investment research department, and its past investment strategy was prudent and its return was relatively good. The public in general also trust its investment. Certainly, another way is for the HKMA to set up some funds for public investment. If the HKMA cannot be made a public trustee, we may make use of a statutory body and make reference to the HKMA's investment strategy.

Our second proposal is to abolish the offsetting mechanism. I understand that pressure will thus be exerted on SMEs, but I believe MPF contributions should be regarded as part of employers' expenditure, and such contributions should absolutely not be used to offset severance payments for employees.
Thirdly, I certainly agree with strengthening the regulation of other trustees and imposing a ceiling on fees charged.

Fourthly, we think that it is necessary to study and reform the existing Protection of Wages on Insolvency Fund (PWIF), and employers' contributions should also be included in the compensation coverage of the PWIF. As we all know, the coverage is currently confined to employees' contributions only. However, employers' contributions are actually employees' entitled wages. Though universal retirement protection ought to be established in the long term, the existing MPF should be regarded as the starting point for a transition to be followed by a study on tripartite contributions with the objective of providing the public with long-term protection and enabling them to live their post-retirement life with dignity under this arrangement.

I so submit.

MR CHAN HAK-KAN (in Cantonese): Deputy President, the Mandatory Provident Fund (MPF) scheme has been implemented for more than 10 years, during which calls for reform have never stopped. Though the Mandatory Provident Fund Schemes Authority (MPFA) implemented the semi-portability arrangement for MPF last year, the arrangement fell far short of the public's aspiration for reform. Earlier on, Mr WONG Ting-kwong of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has put forth some proposals on enhancing the MPF, and Members from the DAB will express our specific views shortly. Here, I will not talk about these for the time being. However, I would like to share with the Deputy President a post on the Internet which has caught my attention.

I notice that in an interview of a media practitioner by a media organization, the practitioner was asked to select the most annoying government policy. The young media practitioner answered straight away that, "I hate the MPF the most", or "I hate the forced MPF", or "I hate the mandatory deficit fund". Deputy President, it is evident that the MPF is regarded as an annoying policy or an unwelcome policy to young people, rather than a policy they like or support. Why?

Deputy President, when a young man is asked whether he will get any return from the MPF as retirement protection in future, the answer is definitely an
unknown. Yet if he is asked whether the MPF is affecting his life, he will definitely say "yes". For he can only use the money he now puts in the MPF 30 to 40 years later, where for the time being, he can do nothing but accept the deduction of a thousand dollars or so from his account every month. The deduction will not only reduce his savings, but also aggravate the adversity he experiences in his uncertain life. Thus, Members may understand why the young media practitioner mentioned earlier would ascribe the MPF to such descriptions.

The Deputy President should have heard my repeated mention of the housing and home purchase concerns of young people in this Chamber. I think a major reason for young people failing to purchase flats to set up their cozy homes is that young families have no way to save enough money for the down payment for home purchase even after 10 to 20 years of work. As such, I think the Government and the MPFA should examine the option of allowing young MPF contributors to use part of their MPF contributions for down payment. Deputy President, my proposal is not made out of thin air, neither is it invented by me, for similar arrangement is adopted in Singapore.

The retirement protection system adopted in Singapore is abbreviated as CPF, Central Provident Fund, and mandatory contributions are required like Hong Kong. However, the Government of Singapore acts as the trustee of the fund, providing a guaranteed return of at least 2.5%. The major difference between the two schemes is that Singaporeans may retrieve their contributions before the age of 55, or they may apply for early retrieval of their contributions for home purchase or paying mortgage instalment. Certainly, to ensure protection for their retirement life, each CPF account is required to maintain a minimum saving balance. This arrangement has introduced flexibility to the policy. I think this is a win-win approach.

On the contrary, the MPF System in Hong Kong segregates the contributions and investment of the public from their actual life. As I said earlier, when a young man living in a sub-divided unit or a public housing flat is asked whether he is concerned about his housing needs or his retirement life, the answer will be obvious. For in his position, housing is an imminent concern whereas the retirement protection system is something more distant and of secondary importance to him.
The Government always emphasizes the retirement protection provided by the MPF. But strictly speaking, Deputy President, I think housing is also part of retirement protection. It is particularly so in the traditional values of Chinese, where the possession of a shelter is of the utmost importance, for they think they will at least have a place to live even when they do not have any income in their old age. In Hong Kong, the problem of retirement protection and housing is handled separately, which I consider a fragmented approach. By linking the MPF with property, I think it will offer double protection for our retirement.

Deputy President, my proposal does not necessarily require the retrieval of MPF contributions for home purchase. The authorities may consider the provision of appropriate loans to contributors by the trustees based on the financial status of the contributors' MPF accounts, where the return on their MPF will be used for repaying the loan. The arrangement will not only enable contributors to secure loans for home purchase but also offer greater incentive for trustees to manage the MPF accounts properly to ensure a reasonable return.

Deputy President, I understand that we could not rely solely on the MPF in addressing the housing problem, yet the aforesaid proposal will at least provide persons in need with a sum of money which they can use flexibly. In other words, they can use the money saved by them to make the down payment. If this can be done, I think it will be more than adequate. The MPFA's advertisement often stresses that "Your MPF, Your Choice". If it really wants to ensure that employees can have choices, we should give employees the right to decide how to spend their contributions to provide better protection for their retirement.

Deputy President, I so submit.

MR WONG YUK-MAN (in Cantonese): Deputy President, the Hong Kong Federation of Trade Unions (FTU) proposed a motion this year to review and reform the Mandatory Provident Fund (MPF). The 10 items set out in total speak volumes about the MPF, being one of the so-called three pillars for retirement protection, failing to protect wage earners. The MPF is unjust in nature for the Government requires the public to make mandatory contributions while blatantly condones financial organizations to reap indecent profits. This is another piece of proof of collusion between the Government and the business sector in Hong Kong. To solve the problems of ageing population and elderly
retirement, the only solution is to set up a universal retirement protection system.

Today in this Chamber, I notice that the FTU continues to uphold its established
stance on universal retirement protection. Their position and ours are basically
the same. However, colleagues from the pro-establishment camp continue to
defend financial hegemony, and protect and defend the Government by
supporting the retention of the MPF.

During Donald TSANG's era, the ostrich approach of no consultation, no
discussion and no studies was adopted in respect of universal retirement
protection, and the public's fervent aspiration for the provision of universal
retirement protection by the Government was simply ignored. When LEUNG
Chun-ying took the helm, he went even further by introducing the Old Age
Living Allowance (OALA) to end the discussion on universal retirement
protection. Elderly people applying for OALA have to undergo means tests,
which will sow division among the elderly. Since the cash values of insurance
policies are not counted, insurance companies may make profit from the
arrangement. On the premise of establishing prestige and authority, the
LEUNG's team refused to make any amendment. Public money was spent
abusively to carry out overwhelming promotion via television advertisements to
mould public opinions. On the other hand, the FTU was made to keep quiet
while the DAB was made to make a *volte-face*. Then, Mr WONG Kwok-hing
from the FTU jointed hands with the mouthpiece of the DAB to make profuse
remarks to insult Mr LEUNG Kwok-hung who had been doing the filibuster.
Eventually, the Government employed the most immoral practice to bulldoze
through OALA.

More importantly, the passage of OALA resulted in the loss of the
battlefront for public discussion on a universal retirement protection scheme,
making the implementation of universal retirement protection nowhere in sight.
Back then, the FTU had put forth clear justifications to support the
implementation of a non-means-tested OALA, but when "Grandpa" "blew the
whistle", they all shut up. As for Members from the pro-establishment camp, be
they Members from the FTU representing grass-root workers or Members biased
towards the business and industrial sectors, they are all "hatchet men" of the
Government. All the talk about the livelihood of the elderly and universal
retirement protection is mere words without action.

Take a step backward, if the Government and the Hong Kong Monetary
Authority were to become the public trustee, a spree of MPF account transfer
would definitely emerge, and other MPF trustees would probably lower their charges significantly. There would then be a chance to right the wrong of the MPF. It might be a desirable approach. However, many people are doubtful about this. Who would trust that Members from the pro-establishment and functional constituencies aiming only to protect the interest of consortia will endorse a proposal of this kind? It is impossible. Hence, I am afraid that even a motion with no binding effect will not be passed. If otherwise, under the so-called review, how much will the return on MPF be increased and how much will the expenses of the MPF be reduced?

Let us return to the FTU. They have conducted a lot of surveys and studies, and had no survey and study been done, they would have no right to speak. According to a survey conducted by the FTU, after the implementation of the MPF semi-portability arrangement, the administration fees of funds had increased rather than decreased, and over 60% of the public stated that they would not participate in the semi-portability arrangement. In the case of a wage earner earning a monthly salary of $10,000 or so, if the market is not experiencing a slump on the day of his retirement, he will be able to retrieve tens of thousand dollars in savings and accrued benefits for his retirement. However, subject to the erosion by inflation and the medical expenses incurred due to poor health, he will not be able to live on that sum for a long time, will he? If so, the situation of housewives or grass-root workers will be even worse for they, not covered by the MPF, cannot but wait for death after they have spent all their savings.

As at September 2012, the asset value of the MPF exceeds $410 billion. According to the estimate by economics scholars, MPF trustees are charging $7 billion administration fees every year, which is divided among the five major trustees. Under the protection of the SAR Government and Members from the pro-establishment camp, banks and financial organizations may rob workers in general of the fruits of their toil. When the interest of a small number of people is put before the life and death of a generation, how will it not provoke a massive public outcry? How will the Government not be condemned? The stance of the People Power is extremely clear. We urge as persistently as ever the Government to conduct consultations on universal retirement protection immediately and implement it as soon as possible, and to abolish the MPF. We proclaim unswerving commitment to this stance and we will strive for universal retirement protection to the very end. Thank you, Deputy President.
MR MA FUNG-KWOK (in Cantonese): Deputy President, the Mandatory Provident Fund (MPF) System has been implemented for more than 10 years. During this long period in the past, the Government and the public had been holding almost entirely different views. From the perspective of the Government, the MPF System may alleviate its direct commitment to and pressure in retirement protection, yet from the perspective of the public, it is natural that they will support the MPF System if it can serve its expected functions. However, the objective reality is that the inadequacies of the MPF System have caused most of the contributions of the public to go down the drain. The MPF System has simply failed to achieve the target of investment and accumulating savings, as well as protecting the retirement life of the public in the long term.

What has actually gone wrong? Back then, when the Government implemented the MPF System, some people had put forth the view that if the finance industry could make thriving development, it would support Hong Kong as a whole. To take it as an act out of good intentions, the Government might have been trying to kill two birds with one stone, hoping to use the retirement protection schemes to promote the development of the finance industry. However, upon implementation and after experiencing the financial fluctuations over the period in the past, many problems have been exposed. These problems indicate that the MPF schemes may have a problem of inverted objectives, tilting in favour of the finance industry, for the objective of developing the finance industry though achieved has resulted in the erosion of the money the public sweated blood to earn.

In Hong Kong, inflation has been extremely serious in recent years. Increases in salaries have fallen behind rises in inflation, leading to a drop in the living standard of the public, about which the middle class has a particularly strong feeling. After paying mortgage instalments or rents, expenses on children's education, support for parents and medical expenses, as well as the various expenses on clothing, food, transport and housing, middle-class families in general will not have much income left, let alone making savings or investments. According to a survey conducted by The Hong Kong Institute of Education at the end of last year, 41.5% of the employees have not made savings for their retirement. The MPF is the only investment for many people, where the investment return from the MPF will be their major source of financial support after retirement. However, a certain part of their contributions will be
pocketed by the intermediaries, meaning that their personal assets have been eaten up.

The success of the MPF System hinges on three conditions. First, there must be sufficient contributions; second, the investment period must be long; and third, the rate of investment return should exceed the inflation rate. For the first two conditions, they should be able to fulfil with the passage of time, and contributors will not have strong views about that. Yet the concern lies in the third condition. Over the 12 years since the implementation of the MPF, the annual rate of return was only about 3% on average. The return from the MPF, when offset by the average inflation rate of 1.1% for the past 12 years, has barely surpassed the inflation rate.

The Composite Consumer Price Index recorded an increase of 3.7% last year, yet the rate of return of the MPF for the same period was only 0.8%. Nonetheless, fund managers and intermediaries continue to charge management fees and charges as usual, which is a colossal and increasing amount. As such, the MPF System has become the target of criticism of the public and the policy arousing the greatest grievance.

In 2011, the New Century Forum conducted a survey on the MPF System. The results indicated that only 2.3% of the interviewees considered the MPF System could provide protection for their retirement; 81.4% of the interviewees considered that MPF trustees and agents benefited the most under the MPF System; and over 65% of the interviewees supported lifting the existing restriction on the investment of MPF to funds to provide contributors with more choices.

The statistics and findings reflect the impression of the public on the MPF System as a whole that "harm is suffered before any benefit is gained". Since the MPF system is mandatory in nature, the public have the impression that they are being stripped of a certain amount of income every month and the money they sweated blood to earn is contributed to fund managers.

The motion proposed by Mr TANG Ka-piu and the various amendments proposed today focus on the problem-fraught MPF System despite the implementation of the semi-portability arrangement.
In the face of the discontent in society, the Mandatory Provident Fund Schemes Authority released the "Report on a study of administrative costs in the Hong Kong Mandatory Provident Fund system" last year, putting forth a number of recommendations on lowering the administrative costs. As regards the numerous inadequacies of the MPF System pointed out and improvement measures proposed in the original motion, I very much agree with them. However, I would like to point out that a more thorough reform approach is to work on the introduction of non-profit-making operators into the system, for this will bring a more radical reform to the MPF System.

First of all, given the non-profit-making nature of non-profit-making operators, people will reasonably believe that the administrative and management costs of these operators will be lower than those of the existing trustees. Besides, the objective for setting up non-profit-making operators is not to replace existing fund managers in the market and compete for profits with the public. The proposal only seeks to offer choices to promote competition in the MPF market, so as to prompt trustees to lower their fees, thereby ensuring minimum protection for the contributions made by the public.

In fact, according to the experience of other countries, such as Singapore, the Government there has not only set up the CPF system but also engaged directly in the management of the CPF. The Government of Singapore has set up investment companies to take up management and investment work, and it underwrites any loss incurred in investment. This arrangement will on the one hand save management costs and assure investment return on the other.

Moreover, the proposal on the participation of non-profit-making operators in the MPF market has been mooted for some time in society, which is the mainstream opinion in society now. There are comments which consider this the only way out for reforming the MPF System.

Actually, the Government should change its mindset. It should give up the consideration of giving priority to the development of the finance industry and return to the primary objective of the policy, that is, to provide retirement protection to the public and strive for their greatest benefit. It is only by doing so will the Government be able to advance with the times and win the recognition and support of the public.
Moreover, some colleagues have proposed the studying of universal retirement protection, and they even urged the Government to implement this in the short term. I have to point out in particular that despite the many supporting views in society, the opposing voices should not be overlooked. Indeed, we understand at heart that the implementation of universal retirement protection virtually means an increase in tax. Are the public psychosocially prepared in paying the cost? Could society bear this burden? I think relevant studies and analyses have to be conducted, and the authorities should listen to the views of the public further.

No matter how, I consider the authorities should first work on comprehensive and immediate improvement in the operation of the MPF System, which should form the foundation for considering progressive coverage expansion with a view to achieving the desirable long-term target of providing universal protection.

I so submit. Thank you, Deputy President.

MS CYD HO (in Cantonese): Deputy President, the Mandatory Provident Fund (MPF) System is really fraught with problems and has caused widespread discontent. Members should have noticed that the amount of contributions made by employees earlier will have shrunk significantly when they retrieve their contributions in the end. The only beneficiary of the system is the high-income class in the finance industry. There are a lot of problems with the MPF System indeed. First, it compromises the rights and interest of workers, for low-income earners are not required to make contributions — perhaps this is better, for otherwise they would have to make the 5% monthly contribution to this bottomless abyss. The system has compromised the rights and interest of workers for employers are allowed to use their contributions to offset long service payments and severance payments. Second, this is a system discriminating against women, for the majority of domestic workers are women or housewives. They work hard all their lives to take care of the elderly, bring up children and care for the chronically ill. They have taken up many social responsibilities which should have been borne by the Government. But since these domestic workers do not have an official employer and monthly salaries, they cannot benefit from the MPF System when they reach retirement age.
During the term of the previous Government, policies formulated were focused on developing the finance industry. Be it policies involving cash handouts or the MPF System, the objective was fund injection, and the $50 billion medical protection to be introduced will be another case in point. However, the principal generating the high income for those in the finance industry, the $400 billion "hot money", comes from the 5% monthly contributions made by wage earners who have been working hard. Besides, these high-income earners will not spend all their income in the domestic market. Firstly, due to their high income, they may continue to make savings and engage in speculation. Secondly, their spending may be made overseas and on imported goods rather than products generated from economic activities of the grassroots in Hong Kong. In the past, the Government said that the system would bring about the trickle-down effect by producing the high-income class. The information technology industry overseas was cited as an example to show that the existence of a 25% high-income middle class would support the district as a whole. However, in Hong Kong, it does not work this way. As a result, the MPF is reduced to a system perpetrating the abnormal phenomenon that a group of fund managers, who have become a high-income group in society, are supported by the 5% monthly contributions made by the general public and grassroots.

Deputy President, the MPF can only serve as a complementary measure in retirement protection, and it can in no way replace universal retirement protection. At present, we are not only required to deal with the problems of the MPF, not only to remedy the problem-fraught MPF System, but also to address the need for retirement protection arising from the ageing population. In the population of Hong Kong, 2.1 million people fall in the age group of 50 to 60. However, the current age profile of Hong Kong shows a pentagon shape, where the number of birth is only 550 000, including the births of babies whose parents are non-permanent residents of Hong Kong, so there is a discrepancy of about 550 000 people. The Government points out that given the present birth rate, it is impossible for the Government to support the retirement welfare of this ageing society. However, the point is that the Government has already put in place the taxation mechanism to charge profits tax, rates and stamp duties. If the Government still says that it cannot afford supporting retirement protection in view of the ageing population, how can individual families earning less than $40,000 a month, the great majority of families and the 85% of families put up
with this? It will be much more difficult for them, for they can only rely on their family members to shoulder their family responsibilities.

In fact, elderly persons are not the only group giving the staunchest support to the establishment of universal retirement protection. According to the information we obtained during the district visits made during the election, the middle class approaching retirement were most concerned about the issue. They are concerned for they know they have to support their parents approaching 70 to 80 years of age, whereas their next generation is presented with opportunities less favourable than before. As such, they are quite worried that they will fall into the grass-roots class once they retire. Moreover, the young people are also worried. Since the life expectancy of people is increasing nowadays, where women will live to 87 and men will live three years less than that of women — no telling if it is fortunate or unfortunate. Therefore, when the children of one-child family reach the age of 30, and if they remain single, it is very likely that each of them will have to support five persons, namely their parents and their grandparents. And if they are married, the couple will have to support 11 persons together. What can they do?

Hence, Deputy President, we must grasp the present opportunity where a group of people aged between 50 and 60 in the working population are still capable of making contributions to a universal retirement protection scheme. The Government should implement the system immediately. Otherwise, when this group of people aged above 50 reaches the retirement age 10 years later, the burden of the Government will become even greater. As the Government often says, savings is one of the pillars of retirement protection. Actually, Hong Kong people have been making savings all along. Had they not made savings and paid tax, how would there be a reserve of $2,500 billion? However, if there is only the deposit but no payout, the Government is no different from the chit fund heads several decades ago who lured people to place money with them and ran away with the money, is it? The only difference is that you do not have to run away, and you may instead sit brazenly here to ask people to solve the problem and shoulder their responsibility.

LEUNG Chun-ying is most adept at criticizing others, yet he himself will do nothing. He said that the previous Government had wasted time and procrastinated, delaying the progress of many issues. In this matter of universal retirement protection, let us see whether he will respond in the same manner he
did in handling the illegal structure incident, and whether he simply knows how
to criticize others but will make similar irremediable mistakes himself.

Thank you, Deputy President.

DR PRISCILLA LEUNG (in Cantonese): Deputy President, it is the traditional
concept of Chinese that children are raised to provide support in one's old age.
However, in our generation, like many Members in the Chamber, we will become
elderly persons 10 years later. As the elderly population in Hong Kong
increases rapidly, the traditional culture of raising children for support in the old
age becomes inapplicable in Hong Kong nowadays.

Hence, I very much agree with a comment made by the Honourable
colleague just now, that apart from the retired elderly, people approaching
retirement, those in the 50s and approaching 60s, are most worried and anxious.
They receive the monthly statement of their Mandatory Provident Fund (MPF)
Scheme, yet it will only bring on a headache, for they do not how it is related to
their retirement.

Honestly, if anyone relies on the existing MPF System for retirement
protection, he or she will only be regarded as a laughing stock in the community.
As many colleagues said earlier, during the district visits made by Members
returned by direct elections, the current mode of operation of the MPF scheme is
the second major source of grievance, just after the housing problem. The
grievances thus accumulated should not be underestimated. The management
fees are very expensive, and the beneficiaries do not know how much profit has
been eaten up. The regulation is inadequate. The data and information are so
complicated that even Members in the Chamber may not understand them.

Against this background, everyone thinks that their MPF contributions
seem to have vapourized. Employers will deduct a certain amount from
employees' salaries to put it in their MPF accounts, however, employees do not
feel that they can really benefit from the contributions made. Many people will
agree will these comments at heart.

Today, Mr TANG Ka-piu has proposed a motion on a comprehensive
review of the MPF scheme, and I think many of his proposals are particularly
welcome. From the perspective of the public, if the MPF scheme is not
amended, it will only aggravate public grievances towards the scheme. Yet in the discussion on the MPF, should we pull it down and start all over again? Some colleagues say that they will not give up till a universal retirement protection system is established and the satanic MPF is removed immediately, yet should we act this way? If we were to abolish the MPF and start anew, would we eventually be left with no protection at all? I believe in the course of improving the system, particularly under the incumbent Government and the bureaucratic framework, Members know that it is impracticable to abolish the system all at once and start anew.

Besides, universal retirement protection is a subject of great controversy. Hence, I personally think that we should be pragmatic. We should examine ways to improve the existing MPF System, so that it can better cope with the needs of the grassroots, the middle class and the elderly who are in retirement.

The original motion of Mr TANG Ka-piu includes 11 proposals, which is comparable to a Christmas tree with a lot of decorations. This approach is widely adopted by Members of the Legislative Council of the past two terms, but this practice has prompted certain colleagues to vote against the motion as a whole when they actually disagree with only one or two proposals included under the motion. I hope this situation can be avoided. I hope Members will put aside minor differences to seek common grounds in most circumstances, while expressing reservation about certain proposals over which a consensus can hardly be reached. I hope Members will adopt this attitude in trying to secure the passage of the motion on comprehensively reviewing the MPF scheme by all means.

However, I must point out that according to the views known to me, the public have considerable reservation about certain proposals in the motion. One of these is the proposal under paragraph (1), which is about the abolition of the offsetting mechanism. This is a concern which has aroused enormous worries among many SMEs. Moreover, I often receive views expressing disagreement with this proposal.

Nonetheless, many proposals set out thereafter are worthy of consideration, particularly the one under paragraph (5) proposing the setting up of a public trustee that operates under the Government, a public body or a voluntary organization. Mr CHAN Kin-por also proposes in his amendment the setting up of a non-profit-making service organization. These directions may be
considered. Regarding the many studies conducted by us, we hope the Government will consider them seriously. In respect of management and regulation, the options offered by many MPF funds at present are really poor, failing to guarantee the reward for employees upon their retirement.

For this reason, the Government must proactively consider these proposals, which I think can be regarded as pragmatic, including the proposal under paragraph (10) on the establishment of an inter-bureau group to examine ways to ensure that the enhanced MPF scheme will be more comprehensive, and in case it cannot be achieved, the MPF will at least enable people to have some savings at hand when they go into retirement. This is a very important point.

On the other hand, we have conducted studies on full-time carers. Under the existing retirement protection or MPF System, they are actually ignored completely. In concert with certain representatives of women's organizations, I have submitted to the Social Welfare Department a request for the Government to consider providing subsidies to full-time carers or the temporary unemployed to enable them to have a regular income, so that their retirement protection will not be overlooked.

Here, I would like to make a particular call on employers and employees that they should not go to their own extremes in this issue of improving the MPF scheme. Both sides may consider the views of the other side unacceptable, if so, a consensus cannot be reached. In fact, concerning the perfecting of the MPF scheme, I think the Government indeed has no choice but to introduce improvements. In respect of the motion today, apart from paragraph (1), I think all the other proposals are worthy of the Government's consideration. As for the proposal on the implementation of a universal retirement protection scheme under item (11), I think the word "universal" will arouse a great controversy in society. If it is revised as an "enhanced" integrated retirement protection scheme, it may arouse less opposition and controversy, giving us the leeway to seek improvement in this direction. (*The buzzer sounded*) ……

Deputy President, I so submit.

**DEPUTY PRESIDENT** (in Cantonese): Dr LEUNG, your speaking time is up.
DR FERNANDO CHEUNG (in Cantonese): Deputy President, the Mandatory Provident Fund (MPF) is a social enterprise. However, it is different from our understanding of a social enterprise. According to our understanding, a social enterprise will make achievements involving public interests by applying corporate strategies. However, the MPF is achieving corporate objectives, that is, making profit, in the form and name of society and on the pretext of public interest. Certain newspapers have dubbed the MPF as a scam, and I agree with this description.

The MPF was launched on the pretext of providing retirement protection to and taking care of the elderly in their retirement, but we should check who have actually benefited the most from the MPF. By now, the MPF System has been implemented for 12 years, who are the beneficiaries and who are the victims in actuality? The answers are crystal clear. There are just too many stakeholders in the MPF. Apart from the wage earners and employers who have to make contributions, many others are involved to take advantage of it. These people come under all kinds of titles, including trustees, intermediaries, sponsors, investment managers, administrators and custodians, as well as the Mandatory Provident Fund Schemes Authority (MPFA) …… The character "強" (meaning "mandatory") is no longer included in the Chinese abbreviation of the MPFA, for it sounds unattractive.

I have checked the annual report of the MPFA for last year. Last year, over $400 million expenses were incurred, whereas the current amount in the pool exceeded $400 billion and the annual contributions exceeded $30 billion. As Mr TANG Ka-piu said earlier, we all know that the administrative fees incurred in the year before last amounted to $6-odd billion, at a rate of 1.74%, which will continue to increase in future. If we continue to make contributions as we do now, the administration fees incurred will increase to $7-odd billion, $8-odd billion or even over $10 billion. It is really ridiculous. Who is the winner? It is the MPFA. Officials in the MPFA are enjoying handsome salaries and prestigious positions. The Chief Executive Officer of the MPFA was earning an annual salary of over $5 million, a sure-win position. After Rafael HUI had left the Government, he also worked in this post for some time and received a pay rise. The people I mentioned earlier are all sure-winners; they are making investment on behalf of contributors, yet they charge contributors irrespective of the performance of the investment, be it making
profits or incurring losses. Who else will be the winner? It is the large enterprises. Why would large enterprises be the winners?

I do teaching in The Hong Kong Polytechnic University (PolyU). In the past, PolyU provided retirement protection under the Occupational Retirement Scheme Ordinance (ORSO), where the employer had to make two shares of contribution and employees had to make one share of contribution, and if the length of service of the employee was long, the employer would have to increase its share of contribution. This was the case for most of the large enterprises in the past, for they wanted to retain talents. Besides, large enterprises were capable of providing better retirement protection to employees. The implementation of the MPF is so great to them, for it has given them an opportunity to save a lot of expenses. Employers no longer need to make two shares or even three shares of contribution. They just need to pay the employers' contribution. All enterprises follow this practice now. Hence, after the implementation of the MPF, all large enterprises have made considerable savings. It is so great to them. However, the protection for employees has worsened.

How about the small and medium enterprises (SMEs)? The SMEs are also the victims. Deputy President, you often say that you represent the SMEs. We notice that with the implementation of the MPF, the burden of the SMEs has been increased. In the past, the SMEs might not afford providing retirement protection, but now with the introduction of MPF, they are required to provide such protection. Yet, to lure the SMEs into the scam, the authorities chose to deceive us. It offered the offsetting mechanism for employers' contributions, so employers considered the scheme acceptable. For many trades, companies will change their names after operating for some time, or they may transfer the company among the many companies they have, so that the long service payment or severance payment which the employers are required to paid will be offsetting. In that case, employers will not be put in an unfavourable position. Hence, if the offsetting mechanism is abolished at this stage, many SMEs will have complaints.

But if the mechanism is not abolished, it is definitely exploitation of wage earners, the swindling of employees. In the end, all contributions from employers will be offset, whereas the remaining contributions from employees will be eaten up by fund managers and intermediaries. According to the "Longhair" of the stock market, David Webb, the present rate of 1% to 2% will
result in the erosion of 20% to 30% of employees' contribution in 40 years. This is obviously exploitation. Yet this poor system has been implemented for a dozen years.

Deputy President, I think I may be one of the Members stating the earliest opposition to the MPF in the Legislative Council. In 1997, not long after I had returned from the United States, I knew that the system was impractical when I first learnt about it. Back then, I joined the Hong Kong Social Security Society. I, together with Prof Henry MOK, wished to introduce a universal retirement protection system running under the mode of social insurance, which is practicable around the world. I recalled that Miss CHAN Yuen-han and the FTU also supported this at the time.

Regrettably, for various reasons — political reasons — the Government did not implement the scheme in the end. As a result, the desirable universal retirement protection scheme to be implemented was replaced by this "mandarin". As for the attitude adopted by the FTU, I am really disappointed, for Miss CHAN had taken part in the promotion of the MPF. I have a clear memory of this. I recalled that she even helped with photographing the publicity materials. I found this heartrending at the time, and I still have this feeling even now. It is regrettable. We took the wrong path back then, so now we should clean up the mess.

For all these reasons, I think the very least the authorities should do is to set up a public trustee in the short term to provide an option to the public, so that their contributions may be placed with a central institute rather than subject to exploitation by those companies. Capping the fees charged is definitely (The buzzer sounded) ……

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

DR FERNANDO CHEUNG (in Cantonese): Thank you, Deputy President.

MR WU CHI-WAI (in Cantonese): Deputy President, Honourable colleagues have talked a lot about the loss which the MPF has inflicted on wage earners.
Its misdemeanors are really too numerous to put down in writing. The MPF is one of the Government's three most important pillars of retirement protection. Has the Mandatory Provident Fund Schemes Authority (MPFA), in the course of its calculation, quantify the offsetting mechanism into a ratio so that we can see the gravity of the damage that the mechanism has done on wage earners' long-term retirement benefits?

I have read some annual reports and all publicity materials of the MPF scheme. Striving for higher returns and lower management fees, they only focus on yields. But they never tell the public how the offsetting mechanism will affect the accrued benefits under the MPF. The Government, be it the Secretary Matthew CHEUNG or MPFA, has failed to give a satisfactory account to the whole community as well as the wage earners. The offsetting mechanism has made the MPF System fail to fulfil the heavy responsibility of being one of the three main pillars of retirement protection.

Secondly, as for the current fees and charges of MPF funds, there has been a constant debate on the need to reduce the rate of administration fees. However, there is an unjust mechanism built into the existing MPF fund fees, that is, the higher the contributions, the higher the administration fees will actually be payable. But let us try and think about this. The expenses incurred in the management of these MPF funds are actually fixed costs. As the contributions for investment become larger in amount, the management fees to be shared should be less than the units invested or purchased. But it is not the case at present. Whether it is one unit or 10 000 units of contributions, the administration fees payable are equally high. As a result, the mechanism absolutely does not encourage wage earners to seriously consider merging their funds, not to mention making a better choice. How can we promote better management of MPF funds like what we often say?

I would like to point out that the very nature of MPF is retirement protection, which is the retirement benefits of employees. Others like long service payment, severance payment and compensation for breach of contract are the labour rights of employees. They should be treated as two different issues and dealt with separately. Hence, the public officer attending today's meeting on this MPF motion is Secretary Prof K C CHAN. But when talking about labour rights of employees, we would normally see Secretary Matthew CHEUNG. This means that they have to be handled separately. In the existing legislation
concerning the MPF, however, the two issues are regarded as one. It obviously shows where injustice is.

(THE PRESIDENT resumed Chair.)

Let us review our study on retirement protection. As early as 1965, the Government had already commissioned Mrs WILLIAMS, a professor of the University of London, to study Hong Kong's retirement schemes. There is a part of the speech I think, even now, is still worthy of mentioning and making reference to. It was made some four decades ago. The general meaning is that some people were of the opinion that a universal retirement protection scheme might be a heavy burden for society, but the most practical question is that our next generation would face a much bigger pressure if we kept kicking the can down the road while the majority of our population were still working. As Members of the pan-democratic camp who represent the interests of wage earners have said, we should start formulating and promoting a universal retirement protection scheme as soon as possible. We should also treat the MPF scheme as a transitional arrangement which enables us to have a mechanism to move over to universal retirement protection. The MPF scheme is riddled with gaping wounds and we have been reluctant to implement universal retirement protection. How do we survive our later years in life? We may have to rely on the same supporting pillar, be it OALA or CSSA. The liability still goes back to society and the Government itself.

With an available surplus of more than $2,000 billion in the treasury and while a relatively large proportion of wage earners can afford to participate in this tripartite contributory scheme, why do we not commence the work as soon as possible? Kicking the can down the road means the problem as well as pressure will only become bigger as the ageing population grows. Just like what the MPF funds always say: we have to look at our contributions and savings from a long-term perspective, which is not a matter of 10 or 20 years. But when we mention universal retirement protection, the Government completely ignores the societal problem of an ageing population. Our number of wage earners is decreasing. If we keep on delaying, we may end up wasting money on irrelevant areas. This will only expose our next generation to an even larger liability.
Today, Mr Albert HO stated the Democratic Party's basic stance earlier. In my opinion, although it is a method of patching it up here and there, a public trustee is something we can do at the very moment (The buzzer sounded) …… and we should start studying and working on universal retirement protection immediately ……

PRESIDENT (in Cantonese): Mr WU, your speaking time is up.

MR WU CHI-WAI (in Cantonese): Thank you, President.

MR FREDERICK FUNG (in Cantonese): President, the Mandatory Provident Fund (MPF) Employee Choice Arrangement, which is commonly known as "MPF semi-portability", was formally implemented in November last year. The authorities earnestly hoped that enhanced competition under the arrangement would drive down the fees. But it turns out that only 1% of the employees have applied for MPF transfers since the implementation of the arrangement. Such an unsatisfactory figure reflects that it is the wishful thinking of the authorities to drive down the fees by introducing imperfect competition. Obviously, people do not want to make transfers because it is troublesome and administrative costs are also involved. More importantly, they think the "semi-portability" arrangement will not help drive down the fees because these trustees are in the same gang and of the same ilk regardless of which one is chosen. As all the trustees will charge exorbitant fees, it makes no difference in choosing any one of them.

President, the public basically do not place any trust in the MPF System at all. Since the establishment of MPF, the average annual net return is only 3.4%. But the average fee level was as high as 1.74% last year. The management fees are really too high. Although the assets of MPF schemes have reached $410-odd billion, the trustees can take whatever they want and $7-odd billion is eroded annually. More outrageously, they can charge exorbitant management fees regardless of the fund performance. The MPF is characterized by "low returns, high level of fees and exorbitant charges". We can say that the MPF is completely tilted in favour of the trustees and employers. As revealed by a study report of the Mandatory Provident Fund Schemes Authority earlier, a MPF
scheme may involve as many as six tiers in its structure, with each one imposing fees. Each one of these tiers, including trustees, fund managers, sponsors, intermediaries, administrators and custodians, will impose fees whenever they are involved. Thus, streamlining is necessary for such a typical example of duplications in structure.

According to my memory, in order to alleviate employers' reaction and attract service providers' participation, the Government allowed many practices and regulations to be relatively lax when initially setting up the MPF Scheme. For instance, under the Employment Ordinance, employers' contributions can be used to offset long service and severance payments; there is no control over the transparency with which the MPF is operated; and there is no effective monitoring over the different categories of fees invented by trustees, thus resulting in a situation of exorbitant management fees.

All these drawbacks have led to one final consequence, that is, the people's accrued retirement benefits being seriously eroded. President, as a social policy, the MPF System was set up for providing retirement protection to the employees. But in the end, the hard-earned savings of wage earners will have been heavily eroded when they go into retirement. For example, if the calculation is based on the average Fund Expense Ratio (FER) of 2%, then as much as 40% of the benefits due to an employee who has made contributions for 40 years at retirement will be eroded by the management fee. This is compared with a situation where no fee is levied. It illustrates how exorbitant the management fee charged by MPF trustees is.

President, reform of the MPF System can brook no further delay indeed. Minor refinement such as "semi-portability" arrangement is not at all useful. Instead, a full portability arrangement should be implemented and a ceiling should be set for the FER. Apart from that, simple and low-fee MPF schemes should be provided by non-profit-making and public organizations, and employees should be allowed to choose to deposit their contributions into the Exchange Fund, with the annual return rate determined on the basis of the average return rate of the Exchange Fund investment portfolios over the past six years.

President, in the final analysis, it is a fruitless pursuit to look to the operation of the market or some greedy financial institutions for the protection of people's retirement. Both the Hong Kong Association for Democracy and
People's Livelihood (ADPL) and I have always emphasized that the Government has an unshirkable responsibility towards the people in retirement protection. It should play a role in it instead of staying aloof or adopting an indifferent attitude as it does in the existing MPF schemes. In the face of a rising proportion of elderly population in Hong Kong, it is projected that 28% of our population will be aged 65 or above by 2039. We desperately need a sound retirement protection system and the authorities may consider the idea of tripartite contribution.

President, the ADPL considers that the involvement of the Government in the retirement scheme as a whole has not been sufficient right from the start to the present moment. There is a lack of commitment. At present, the problem with MPF is not just one of excessive reliance on the market. There is an even more serious problem of inadequate coverage. For instance, the system does not look after the retirement of groups consisting of individuals like housewives, seniors and low-income workers. Although economically they make potential contribution to society, they are rejected by the MPF System. The ultimate result is that they are unable to lead a comfortable life in their old age. If they look to the existing welfare system, they cannot even be assured of a basic standard of living.

Therefore, the ADPL thinks the Government should combine the MPF with the existing welfare system and make every effort to bring in a universal retirement protection scheme. This will let these people, the ones disregarded by the mainstream society, enjoy retirement protection, too. At the same time, to lessen the impact on the accrued retirement benefits caused by fluctuations in the market, it is advisable to have the Government's involvement.

I so submit.

**MR YIU SI-WING** (in Cantonese): President, the Mandatory Provident Fund (MPF) scheme is a retirement protection plan covering 70% of the working population or nearly 2.34 million employees and self-employed individuals in Hong Kong. However, the performance of MPF schemes has been far from satisfactory in the past 12 years since their implementation in 2000. The major criticism is the high fees and low returns of funds.
The relevant criticism is not made without sound justifications. The Consumer Council, in its report, revealed that 45% of the 341 MPF products offered by 15 MPF companies have recorded negative annualized returns for the past five years. According to a study by the Mandatory Provident Fund Schemes Authority (MPFA), the average fee-to-asset ratio of MPF funds in Hong Kong is 1.74%, the highest among the ratios in countries which have implemented similar pension schemes such as Australia, Mexico, the United States and Chile.

It usually takes 30 to 40 years for a retirement protection system to become mature. In comparison, the local MPF System is still relatively new. But as the MPFA said, it is time to conduct a comprehensive review of the scheme as it moves into the second decade.

In fact, the introduction of MPF semi-portability arrangement in November last year has lifted the curtain of the MPF System reform. Two months after its launch, there are 25,000 applications from employees who intend to make a transfer to other trustees through the arrangement. Some MPF trustees have planned to cut the fees of certain MPF products. It reflects that the mode of "semi-portability" has gained the support of MPF scheme members and succeeded in producing an effect of lower fees through enhanced competition.

President, the MPF System is designed for employees. Although they are the major beneficiaries, they are invariably the group of people who are most helpless. First of all, employees cannot choose not to make contributions or not to opt for investment choices under the system. Secondly, the employees are not allowed to select their trustees to make investment on their behalf although the money belongs to them. This is most unreasonable to the employees. The main purpose of implementing MPF full portability is to induce a downward adjustment of fees by opening up the market. More importantly, however, employees should be given the free choice in MPF investments.

In the original motion, it is suggested that the implementation of MPF full-portability arrangement be accompanied by new mechanisms, that is, a "one lifelong account" and something like "bank books" for employees. It has also mentioned the mechanism for offsetting employers' contributions against severance and long service payments. This implies a radical change to the existing MPF scheme which may have far-reaching implications. The
authorities should ensure that extensive consultations will be conducted before implementing any new measures on the premise of forging a consensus among stakeholders.

President, the introduction of competition into the market may be a solution to the problem of high fees charged by MPF funds. However, the crux of the problem lies in the fact that the trustee companies operate on commercial principles with profit-making as their objective. It is believed that the MPFA's recommendations of introducing a public trustee and providing low-fee MPF products will constitute an incentive for the market to launch similar products. Therefore, these suggestions are worthy of consideration.

But given that a public trustee is different from other trustee companies in the private sector, the public will certainly have high expectations of the fees and returns. Under the existing social and political circumstances, it may end up in a situation where the Government has to provide subsidy in case of ineffective management. If the public trustee lacks professional investment experience, the deficits incurred may cause losses to employees, thereby giving rise to criticisms in society. The authorities should address various problems that may arise in a cautious manner.

As the second pillar of retirement protection in Hong Kong, the MPF can provide neither effective retirement protection to those low-income employees nor universal coverage for all Hong Kong people, thereby intensifying the call for study on the implementation of a universal retirement protection scheme. The Chief Executive, in his election manifesto, has proposed exploring the conduct of a comprehensive enhancement of the MPF scheme and setting up of an old age accumulation fund in the long term. I hope that the Commission on Poverty can launch a relevant study expeditiously by making reference to the National Social Security Fund (NSSF) in the Mainland or the Central Provident Fund in Singapore.

The NSSF in the Mainland, for instance, covers various insurance funds for basic old age pension, retirement, basic medical care, work-related injuries and maternity. Employees of state-owned enterprises, privately-run enterprises or foreign companies or even peasants have to make contributions to the funds when they have a job, whereby they can receive a monthly fixed amount of money after retirement and enjoy a certain amount of medical subsidy. Although the amount of subsidy is limited, the people basically do not have to worry about their
It usually takes years of preparation from the study to the implementation of old age pension funds or social security funds. In the short term, the authorities should consider including the Government's responsibility in the MPF System by exploring the possibility of setting a security line for the MPF System, thus enabling the Government to take on a certain commitment.

President, I so submit.

MR ALAN LEONG (in Cantonese): President, today, the number of Members who have spoken on this motion moved by Mr TANG Ka-piu can already bear out fully this Council's genuine and eager desire for a good retirement arrangement that can care for the elderly, and we feel as if we were ants in a frying pan. The Civic Party is grateful to Mr TANG Ka-piu for moving this motion today, so that we can once again fully express our concern about this issue here. We definitely can, and will, support Mr TANG Ka-piu's motion.

President, just now, I heard a Member say that we should not replace the Mandatory Provident Fund (MPF) System. First, I have to make it clear that no one has ever talked about replacing it. However, the so-called "three pillars" at present, that is, the MPF, personal savings and CSSA, are really not very effective, nor can they put the minds of elderly people going into retirement in the future at ease. Therefore, the most eagerly discussed issue among the general public is just the proposal to establish a universal retirement system with tripartite contributions from employers, employees and the Government. Therefore, President, I must point out that the issue at stake is not the abolition of the MPF because it can really enhance retirement protection.

However, how can the MPF be enhanced? President, you may also remember that when the Chief Executive, LEUNG Chun-ying, proposed granting $2,200 in Old Age Living Allowance, the pro-democracy camp was very united in its stance. We hoped that in the discussions, this sum of $2,200 would only be regarded as a transitional arrangement. The position of the Civic Party was even clearer. We pointed out that it was time that a study was conducted on providing better universal retirement protection. We even proposed that he be
given two years to make a decision because many actuaries with whom we have working relationships have come up with a calculation method …… perhaps Secretary Prof K C CHAN also has his own calculation method because ultimately, it is necessary to make some assumptions in actuary and perhaps the assumptions of the Government are different from ours. However, the Civic Party hopes very much that the Government could seize this opportunity and formulate a policy in no more than two years. Why do we set the time limit at two years? Because our actuaries told us that if this scheme was not launched within five years, we might as well just forget about it.

President, no matter what, the Government still has to commit more public funds and the question now is actually how to go about it. One of the ways is the one mentioned by me just now, that is, to study the establishment of a universal retirement protection system with tripartite contributions. The Government has said that it may be necessary to make a one-off injection of $50 billion — or even $100 billion — but at present, we are capable of injecting this sum of money. Apart from this, another way of injecting public funds is to wait until 2030. According to one estimate, people aged 65 or above in the population will reach 2.3 million by 2030, so if the population in Hong Kong reaches 8.5 million to 9 million by then, that means there will be one person aged 65 years or above in every 3.5 persons. If the CSSA scheme could not cope at that time, personal savings are insufficient and the amounts of money accrued under the MPF are also small, the Government could not just sit by and in that event, it will also have to commit public funds.

The President may also remember that when the Chief Executive, LEUNG Chun-ying, proposed issuing the sum of $2,200, we also asked him to do some calculations. For example, at present, each elderly person only has to go through the process of what he calls making a simple declaration before he can receive $2,200. However, can the authorities tell us for how long the Government will pay this sum of money before elderly people can live with peace of mind? Is it going to meet the grant forever? Or are we waiting for lady luck?

On this issue, today, I wish to reiterate that it is indeed high time that the Government was requested to carry out an analysis on universal retirement protection, so as to enhance the complementary systems necessary for the elderly to lead peaceful lives, otherwise, this bomb would explode sooner or later. By
then, perhaps the present Chief Executive would no longer be in office and Secretary Prof K C CHAN would no longer be the Secretary for Financial Services and the Treasury. However, as a responsible Government, it is necessary to prepare for rainy days at this time. For this reason, once again, the Civic Party appeals in earnest to the Government to formulate a sound policy for Hong Kong’s elderly care in the future.

I so submit.

MR KWOK WAI-KEUNG (in Cantonese): President, all the people seated here will be old one day and they will also retire one day. Having worked for the better half of our lives, we also hope that we could lead peaceful lives in our old age. Unfortunately, if we look at the lives of the elderly at the grassroots, how many of them can really lead peaceful lives in their old age? Members can just take a random walk in the street and have a look. Elderly people who sleep rough, who worry about their basic necessities every day, whose sorrows can be seen on their faces and who scavenge for cardboards for the sake of $10 or $20 can be seen everywhere, and this is indeed a sorry sight. Is such a scene what we expect of Hong Kong as an international financial centre? Our economy is making steady progress, but have any corresponding improvements been made to retirement protection? I can tell Members that the answer is in the negative. At present, the so-called "giving the elderly a sense of support and a sense of security" has just degenerated into a slogan-style idea that has yet to be realized.

At present, some 180 000 of the 420 000 cases under the Comprehensive Social Security Assistance (CSSA) system involve elderly aged 60 years or above and the number of elderly people receiving "fruit grant" also stands at 530 000. The idea of just relying on the three pillars of CSSA, the Mandatory Provident Fund (MPF) and personal savings to provide retirement protection is actually a very backward one that cannot meet the needs of the great majority of the public for retirement protection at all. For this reason, the FTU has all along requested the SAR Government to address people's pressing needs by formulating a proposal on a comprehensive retirement protection system to provide universal retirement protection as soon as possible, so as to take precautions against an ageing population. However, we have talked about this for a long time but so far, the Government is still unwilling to do so. If the Government is unwilling to do so, I call on it to properly deal with the problems relating to the MPF facing
us now first. The Government wants the public to save up but it does not let them have any say. Before the implementation of the semi-portability arrangement for the MPF, the trustees for the public were chosen by their employers and it is the Government that decides how much employees have to contribute, so wage earners have practically no way of voicing their views. Although the semi-portability arrangement has now been introduced, they can only control part of their contributions and they actually do not have many choices.

For this reason, the FTU pointed out at the 10th anniversary of the introduction of the MPF — that is, in 2010 — that there were many loopholes in the MPF, including the fact that the offsetting mechanism would harm the rights of wage earners seriously. However, so far, the Government has still turned a deaf ear to this. Before the implementation of the MPF, employers were quite strongly opposed to it, saying that this would impact on the expenses of their companies because additional contributions were required. However, if we look at this offset mechanism, we will see that employers do not have to pay any additional sums of money actually. They only pay the long service payments or severance payments in advance by reserving some funds for this purpose, spreading them out and issuing them to their employees every month, whereas the long service payments or severance payments stipulated by labour laws would all go down the drain and employees will not be able to get a cent back, so employers have actually made careful calculations in this regard. What we demand now is that employees' rights under the Employment Ordinance be enforced, so that long service payments or severance payments can be issued to wage earners. What is wrong with this? Why is the Government so bent on blocking this proposal? Moreover, abolishing the offsetting mechanism would also be greatly helpful to the future implementation of a full portability arrangement for MPF and this is also a realistic technical issue that has to be considered, so why is this measure not implemented as soon as possible?

At present, not only is the offsetting mechanism under MPF retained, the problem of excessively high administration and management fees also remains. According to the information of the Consumer Council, in the past three years, the net assets value of MPF schemes increased significantly from $249.5 billion to $384.3 billion, an increase of over 50%, and annual fund charges also increased from $4.9 billion to $6.6 billion. The average Fund Expense Ratio
was still as high as 1.7% and that for guaranteed funds even reached 2.24%, higher than overseas countries with similar schemes, such as Chile, the United Kingdom, Australia and Singapore.

Precisely because the administration and management fees are not linked to fund performance, even if the rate of return is not high and even if losses are incurred, employees still have to surrender their incomes to their trustees and sponsors every year. In these circumstances, even though you made it a point to choose low-risk capital preservation funds, in fact, they cannot preserve your capital in any way. This kind of funds may even become "mandatory deficit funds" as no gains can be made but it is still necessary to pay administration fees, so this is quite disadvantageous to wage earners.

What is even more absurd is that trustees have concealed the actual amounts of administration fees levied by showing them as a percentage in the accounts in an attempt to muddle through and deceive wage earners. It is also difficult for us to find out the actual amount of money in statements. In view of this, it is necessary for the authorities to impose effective regulation as quickly as possible. We believe that in order to protect the rights of wage earners, first of all, it is necessary to abolish the offsetting mechanism as soon as possible; in addition, it is necessary to significantly enhance the transparency in the levy of fees and at the same time, a full portability arrangement should be implemented as soon as possible. The Government should also consider the establishment of a public trustee as soon as possible. Just now, an Honourable colleague expressed the concern that a public trustee may not be versed in making investments. However, I wish to point out that a public trustee is mainly responsible for offering capital preservation schemes to provide an alternative for wage earners who wish to choose low-risk funds, rather than having their contributions placed in the stock market for a gamble by the Government. I hope the Government can give more consideration to the views of wage earners. Thank you.

MR LEUNG KWOK-HUNG (in Cantonese): President, yesterday, when debating whether or not LEUNG Chun-ying should be impeached, Members all said that he should be given more time and room to do his work, saying that it was human to err and that he should be allowed to carry on, so on, and so forth.
Members, please look at the line-up today. On the issue of the Mandatory Provident Fund (MPF), the Government only sent someone who is in charge of the money here, dismissing the MPF as a kind of protection. Whenever the Government is asked about retirement protection, it would say that there are three pillars, that is, the MPF, personal savings and Comprehensive Social Security Assistance. All they can see is money and the MPF means money.

What should he be given time for? Where is Secretary Matthew CHEUNG now? Of the three pillars, the MPF is the one introduced by the SAR Government to support the living of retirees. LEUNG Chun-ying also said in his manifesto that a review would be conducted on the sustainability of these three pillars. However, today, only someone who has just banknotes in his eyes and manages Hong Kong's finance is present. Just think how pathetic this is!

I have heard the comment "give him a little time" so often that I have become tired of it. Initially, the FTU was also forced to do so and could only adopt the thinking of "let's eat rotten oranges for the time being". However, once it began to do so, it has had to do so for over a decade. Buddy, this would give you loose bowels! Even now, it still has to beseech others. On that day, an official of the Hong Kong and Macao Affairs Office of the State Council (HKMAO), CHEN Zuoer, gave Mr KWONG Ki-chi a dressing-down loudly, saying that the expenditure on welfare of the Hong Kong Government was too high and that eventually, it would lead to a deadly car crash. He has now retired and his daughter is a talent in Hong Kong who has entered the core of power — the Central Policy Unit — in Hong Kong, making money in Hong Kong without blushing. Of course, the daughter of CHEN Zuoer does not need the MPF. Perhaps it is for this reason that someone has shown special favour to CHEN Zuoer. How is he different from Zhang Xiaoming? The people in the HKMAO are connected to the powerful and rich in some measure.

Let us come back to the subject matter. On the offsetting mechanism …… back in those years, employers thought that the debate was too heated and the reunification was just a round the corner but Chris PATTEN was playing cunning tricks, saying that another way of handing out money — pension, which shares some similarities with the principles underlying universal retirement protection being discussed by us now — would be introduced. On the offsetting mechanism, was it actually employers who deceived the Government, or was it the Government who deceived employers? Now, no one knows. In sum, one
cannot but describe these people as being involved in the collusion between Government and businesses because they know full well that the system is lame.

The Government says that the offsetting mechanism is implemented because of its promise to employers back then and that if one wants to revise it, it would be necessary to — Secretary Matthew CHEUNG is an expert in saying this, "It would not do if issues relating to labour relations are not discussed by the Labour Advisory Board (LAB).". I have queried a number of times if there is such a requirement under the constitutional framework of the Basic Law. He said that there was not but this proven practice had been in place for decades. It is surprising that there is a Secretary of such a standard in Hong Kong. If the LAB says that the issue of the offsetting mechanism must be discussed by it first, this issue can surely be discussed for one or even two decades. Do not fool us.

Yesterday, the royalist camp requested that more time and room be given to LEUNG Chun-ying to do his work. Today, in the discussion on this issue that would "save lives", I have to filibuster, so that the issue of universal retirement protection can be discussed. However, the issue relating to the MPF is just as simple as the Chinese character "一" (one), that is, it is a matter of retirement protection.

Members can look at the line-up today. Yesterday, in order to save LEUNG Chun-ying, all the top brass in the Government was present. In contrast, today, Secretary Matthew CHEUNG, who is related to the subject matter today, has not come here. The three pillars were proposed by the Government itself, so why was Secretary Prof K C CHAN alone tasked to come here? Secretary Prof K C CHAN is only responsible for financial affairs. Does the Government think that the present issue is only about full portability and semi-portability? Sorry, this is only a misconception and the crux of the problem does not lie here.

If universal retirement protection is to be implemented …… I have to say in passing that as soon as this issue is discussed, the situation is always the same. Yesterday, Mr TAM Yiu-chung kicked up a row here. He was the former Chairman of the Elderly Commission. In 1997, he was ordained by TUNG Chee-hwa to head the Commission. Where is he now? He broke away from the FTU. Back then, Mr TAM Yiu-chung was a half-godson of the FTU and
DAB, that is, a "cross-breed of a great many cross-breeding". All of a sudden, he has morphed into a member of the DAB and what responsibility does he have to assume? Therefore, why is this not related to politics?

Has the situation of the elderly in Hong Kong fared any better? Two decades ago, Chris PATTEN proposed that old age pension be granted and people who were 30 years old back then are now already 50, while those who were 50 years are now 70. We have gone through three changes in the administration. TUNG Chee-hwa could not make any improvement, nor can Donald TSANG. At that time, Members of the royalist camp said, "Give him more time! Mr TUNG has worked hard and performed meritorious service because the shares of the Orient Overseas (International) Limited was flipped until its price rose from $5 to $31 and doing so was not easy, so let him recover his capital first!" Although he won a second term, he was not able to get rich first and then become a better person, so eventually, he was kicked out.

The second one also had the support of all people. The royalist camp and the pro-establishment camp, which gave their support to LEUNG Chun-ying yesterday, also said in the past that more time should be given to Mr TSANG but when Mr TSANG dined on abalones, they said that doing so was improper and that perhaps Mr LEUNG should be asked to take over but now, Mr LEUNG has lost all credibility and is at the end of his tether.

Secretary Prof K C CHAN, you have an organization called the Hong Kong Monetary Authority under your charge, have you not? Have you ever thought about taking the money out to establish a sovereign fund? Have you ever thought about distributing the money to us? Let the Government be the underwriter, so that we do not have to be exploited, just as other governments act as underwriters. In that case, everything would be fine. The administration fees can be paid by the Government and everything would be fine. Abolish the offsetting arrangement and everything would be fine. Give him time? Where are you people in the royalist camp? Have you ever spoken? This is a waste of time.

It turns out that the impassioned speech yesterday was just a one-off matter. "Give LEUNG Chun-ying some time!"; "LEUNG Chun-ying made a misdiagnosis by mistaking the appendix as the colon but it does not matter. LEUNG Chun-ying got a gold Rolex but it does not matter. His conscience
would smote him.". Would he please return the golden Rolex and the appendix to me?

Now, all the people here have gone out to socialize. Alas! Please summon the people first! President, I want to summon them. *(The buzzer sounded)* …… I request a headcount.

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

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

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

**MR ALBERT CHAN** (in Cantonese): President, on the problems relating to the MPF and conducting reviews of it, each year, this legislature would hold comprehensive and in-depth discussions. Basically, the general view is that the MPF is fraught with problems. If Members looked up the figures, they would find that initially, only Members representing the grassroots talked about it but subsequently, academics also conducted more studies on it and eventually, even the statutory bodies of the Government, such as the Consumer Council, also conducted many studies on it. These studies further prove and substantiate the comments made over the years, that is, the MPF is paying salaries to the "financial hegemonists" and acting as a money printing machine for the "financial hegemonists".

The relevant figures are very much horrifying. The overall total fee of the MPF is far higher than those in other regions, including those in advanced countries: That in Chile is as low as 0.6%, that in the United States is 0.83% and in Australia, it is 1.21% but in Hong Kong, it is 1.74%. Based on the total asset of $356 billion managed by MPF schemes last year, the administrative costs and other fees added up to a total of $6.19 billion and this amount of $6.19 billion was the hard-earned money of wage earners in Hong Kong.
Who charges and receives these fees? The more we look at this, the more terrible we would find this to be. If I ask ordinary people whether or not they know to whom the fees on their MPF funds have gone, I think they would say that the fees have gone to their trustees, who would make investments and carry out management for them. However, if Members look at it more closely, they will find that in an MPF scheme, six "vampires" may extract fees, including the trustee, fund manager, sponsor, administrator, custodian and intermediary.

Wage earners earn their money in various ways through hard work, thinking that the Government requires them by law to make savings — of course, the mode of employers and employees making contributions is also a form of savings — however, there are six hands or six mouths that snatch and suck and in just one year, $6.1 billion was gone. This is the amount for just one year but in a wink, the MPF has been implemented for 11 or 12 years and each year, money was sucked away in this way and each year, money was squeezed in this way but the Government has been turning a blind eye to this. Often, retired senior officials would work for the financial hegemonists. Not to mention senior government officials, many officials at the middle-upper level also hold prominent positions in financial organizations or holding companies that are related to MPF organizations. Some of them are being investigated by the ICAC or have already been prosecuted, so it is inappropriate for me to rub salt into the wound here. Members can see that the relevant officers who strongly advocated the introduction of the MPF were subsequently given generous treatment by certain organizations or consortia, so there is little wonder that the more we talk, the larger the number of people who echo and support our claim of "collusion between the Government and business and the transfer of benefits" that we have been talking about for some 10 to 20 years.

Precisely because of the tilt in policy, the Government's evasion of its responsibilities and the design of government policies and legislation, which resulted in a free rein being given to the financial hegemonists, there have been calls for such a review for years. Looking at the actual situation, I believe that except those people who are benefiting from this system and plutocrats, no one is happy with the existing MPF System.

Given the existing situation in Hong Kong, many studies have pointed out that under the universal retirement protection scheme that has been proposed by us for many years, and based on a minimum pension of some $3,000 per person, if a small additional sum of money is added to the existing total sum of money
under the existing schemes, basically, the money would be sufficient, provided that the Government is willing to assume the responsibility for management and the financial hegemonists are not allowed to hold sway anymore. Let us do a simple computation: In fact, if the existing MPF, CSSA, the Old Age Living Allowance to be introduced — "Long Hair" has already been set up once — and such other relevant subsidies as the Transport Subsidy and School Textbook Assistance, as well as the administration fees, were added together and put under the charge of a central body, then distributed in equal shares under a retirement protection scheme, the amounts required would more or less be the same. Therefore, it is time the Government made plans to abolish the MPF and implement a universal retirement protection scheme.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr TANG Ka-piu, you may now speak on the four amendments. You have five minutes.

MR TANG KA-PIU (in Cantonese): President, I have seldom found Mr Albert CHAN's speeches to be so gentle. Anyway, having heard 38 Members speak on this motion, apart from the New People's Party and the Liberal Party, which basically did not level any criticism at this system — the New People's Party even said that it wanted to recommend this system to overseas countries — I found that the great majority of Members think that there is an urgent need to change the existing Mandatory Provident Fund (MPF) System.

Be it minor botchery or enhancement, basically, Members think that the existing system cannot command the trust of the public. The proposal of the FTU is very simple. We believe that if botchery alone is carried out, even if the semi-portability arrangement is changed to full portability, the system would still not inspire confidence in the public. They would just continue to criticize the Government. Therefore, we hope that at the same time, some even more radical and structural approaches can be found to improve the MPF System.
Of course, what I refer to in point (11) of my motion actually amounts to universal retirement protection because at the beginning of this Session, I already moved a relevant motion, so I have put all the proposals in the relevant motion into point (11). In fact, it also represents the views of the FTU.

However, in the debate, I heard the great majority of Members — at least half of them — talk about this issue and some Members' speeches were even confined solely to this issue. Therefore, I urge ……

PRESIDENT (in Cantonese): Mr TANG, these five minutes are meant for you to comment on the four amendments.

MR TANG KA-PIU (in Cantonese): Yes. Concerning the second amendment, I find that Mr LEE Cheuk-yan, Mr POON Siu-ping and Dr KWOK Ka-ki have all placed greater emphasis on this issue in their discussions, believing that be it in the terms of the effects of the replacement rate or the coverage, the existing MPF System is flawed. For this reason, they have put forward the proposal of universal retirement protection as mentioned and deduced by me just now and urged the Government to seize the time and scope in its administration to really respond to this in the policy address. One suggestion is that even if in the end, the proposal is not implemented, there is nothing one can do but this proposal must go through genuine consultations and studies, so I hope that they can really carry out consultations.

As regards the amendment proposed by Mr CHAN Kin-por, sorry, I think it is far too retrogressive. First, his speech basically does not agree with imposing a ceiling on the fees, so I find this unacceptable and second, he also said clearly that he did not support the abolition of the offsetting mechanism. The FTU hopes keenly that since the LEUNG Chun-ying Administration plans to implement all the policy visions in his manifesto and since it is stated clearly in his manifesto that the offsetting mechanism would be abolished, or the proportion of funds to be offset would be cancelled step by step, I hope that they could present a timetable on this.

With these remarks, I hope that the motion today can be passed. Thank you.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I wish to reiterate that the Government and the Mandatory Provident Fund Schemes Authority (MPFA) will certainly take into full consideration the views of Mr TANG Ka-piu and other Members as they are to commence the new phase of work in perfecting the MPF system.

The motion proposed by Mr TANG Ka-piu and the amendments proposed respectively by four Members cover a wide scope. I will try to classify them into five major areas and give a general response to them. This includes some initial views of the Government which I am going to share with Members on certain reform proposals of a fundamental nature.

The first area is on lowering the fees charged under the MPF schemes. Although the FER for the MPF has been revised downwards from 2.1% in 2008 to 1.75% at the end of last year, it is still very high. And the actual amount of fees charged by trustees has increased with the growth in the assets under the MPF System and it is estimated that it is going to increase from about $5.5 billion to $7.1 billion each year. Compared to the fees under similar systems overseas, such as those in Australia and Chile, the fees charged in Hong Kong are high. To a certain extent, it can be said that these overseas funds enjoy greater economies of scale and so in comparison, our fees are high. However, as I have said on many occasions, I think that the charges can be lowered. The findings of a study report compiled by consultants commissioned by the MPFA also show that there is absolutely room for downward adjustment in MPF charges.

With respect to this issue, the Government and the MPFA have adopted a series of measures in the short, medium and long terms. With respect to long-term measures, we will keep a close watch on the implementation of the "Employee Choice Arrangement" which came into force on 1 November last year and ensure that it will operate smoothly. Work in this aspect includes ensuring that fit and proper advice is given by intermediaries as they recommend MPF schemes and funds to the employees in accordance with the new statutory regulatory regime applicable to MPF intermediaries. Also, I believe Members may have noticed that since the latter half of last year, the MPFA has enhanced its investor education efforts. The scope of these includes matters to be considered by employees as they make decisions to choose MPF schemes and funds. The Bureau will enhance further the dissemination of information on its website and through other channels such as by providing a list of funds with lower charges as well as strengthening the information concerning the charges under MPF funds.
(including the FER and the actual amount of fees charged), the rate of return as well as service quality. So as assistance is given to employees in choosing MPF funds, more pressure is exerted on the trustees to lower their fees. Concurrently, the Government and the MPFA will liaise with the trustees and sponsors and urge them to consider lowering their fund charges in response to market competition and public aspiration. I notice that some trustees have already made a positive response including lowering the fees charged under the existing schemes and also pledged to introduce some passive investment options such as index funds as a less expensive option for those employees who are interested in investing in the stock market. Both the Government and the MPFA will continue to work on this aspect.

In addition, in my opening speech I gave a brief introduction on the consultancy report of the MPFA on lowering the costs of trustees and increasing the room for downward adjustments in MPF fees. Currently, the MPFA is following up some measures that can be put into practice under the existing legislation. An example of these is that now there are more than 7 million MPF accounts and this shows that many members have not been taking any active steps to manage their retirement investment and this would impede the achievement of economies of scale. In this connection, the MPFA will start in 2013 to notify more than 7 million scheme members with more than one personal account, telling them how many accounts they have and under which MPF scheme these accounts are set up. They will be encouraged and assisted in consolidating their accounts. The MPFA will organize large-scale activities to educate scheme members in line with this measure.

Apart from these short-term measures, the consultants have also suggested conducting some feasibility studies or amending the legislation. An example is, under the existing Mandatory Provident Schemes Ordinance, it is mainly by regulating the MPF trustees to ensure that they comply with the various requirements under the law. In the view of the consultants, the design of many MPF schemes such as in the fees of the funds and the choices of funds is such that they are mainly decided by the sponsors, therefore, consideration should be given to whether or not elements defining the responsibilities of sponsors should be added to the law. In this connection, we will study with the MPFA with a view to increasing its powers so as to regulate MPF schemes and funds more effectively, including giving consideration to the fees charged when vetting and approving the relevant applications.
At the same time, we are determined to effect some fundamental changes to the MPF System with a view to facilitating reduction of MPF charges by a greater margin. I would like to make use of the opportunity today to share with Members our initial views on that subject.

With respect to setting a ceiling for MPF fees, in principle, we think that a direct method to handle this issue of fees is by legislating for regulation of MPF fees. Of course, we have to consider whether or not the market has failed and whether these measures will suit the free market economy of Hong Kong. Ever since we have expressed this view on legislating on a ceiling for fees, I have noticed that there are voices in the market saying that this runs counter to the principle of free economy. I would like to point out that the MPF System carries an important social policy consideration. Therefore, in this regard, I think that imposing a ceiling on the fees is in line with our policy and it does not run counter to the principle of free market in Hong Kong. As we are to impose a ceiling on fees, we will certainly need to consider some details so that employees will have a full range of choices in selecting a fund. These details include, for example, what kind of ceiling on fees should be imposed, including the question of imposing a ceiling on the fees charged by certain funds or to set a uniform or different ceilings for all the funds. These different proposals to reduce the fees may have different effects and will affect product choice in the market. For example, if we apply a uniform ceiling on fees to cover all the funds, it may be able to achieve a positive effect in reducing the fees, but it will lead to fewer funds being available in the market. Therefore, we need to strike a balance among market consolidation, reducing the fees and fund choice by employees. The public will also have to be consulted on this. Of course, we should not underestimate the difficulties involved when we want to impose a ceiling on fees and to set up a mechanism for future adjustments.

As for the suggestion on appointing a public trustee to be operated by the Government, a public body or a non-profit-making organization, our initial views are this idea does not tackle the problem of high administrative costs. Insofar as the industry as a whole is concerned, this non-profit-making organization acting as a trustee will need to install a new operation system and repeat the same administrative work done by private sector trustees. This will add to the operation costs of the industry as a whole and reduce the effect of the economies of scale of certain trustees. Therefore, when a new service provider is added, this may on the other hand aggravate the problem of lower economies of scale.
caused by too many trustees and schemes. Moreover, the question of whether the fees charged by such a non-profit-making organization or service provider can be lower than that of the other trustees will depend on whether a certain degree of economies of scale can be achieved within a reasonable period of time. We can never overlook the difficulties in this aspect because the existing private sector trustees have gathered much operation experience, built their sales network and carved out a share in the market.

On the view of Members about full portability for MPF, we agree that employees should be given greater freedom in their choice of MPF schemes. In fact, in the policy address delivered last year, we urged the MPFA to undertake studies on matching measures to facilitate MPF portability. The MPFA is studying the setting up of a central database to prepare for the full portability of MPF later.

I am sure Members will agree that any reform to the MPF System will entail very complicated considerations and the impact produced is far-reaching. We will be very careful about this and we will make in-depth analyses. We will also make reform recommendations, consult the political assemblies and stakeholders for their views.

The second area is choices of funds under the MPF System. The original motion and the amendments have made many suggestions on the choices of funds, including work to consolidate or even fix up or eliminate MPF funds of a poor quality, requiring the trustees to offer annuity plans and inflation-linked low-risk capital preservation funds, and allowing employees to invest in the Exchange Fund, and so on.

As I said earlier, the Government and the MPFA will undertake a review of the funds available under the existing MPF System. Another relevant measure is to expressly allow scheme members to withdraw their accrued benefits under the MPF in phases so that they can enjoy relatively continuous protection after their retirement. The MPFA has completed the relevant consultation and we are following up the details and law drafting work with the MPFA. The Government and the MPFA will report to the Legislative Council on the progress made in the review and also the proposals on legislative amendment.

Now I would like to respond to the suggestion on allowing employees to place their contributions in the Exchange Fund. The Exchange Fund Ordinance
provides that the main objectives of the Exchange Fund are to directly or indirectly affect the exchange rate of the Hong Kong dollar so as to maintain stability in the Hong Kong monetary and financial systems and to keep them sound. It is also meant to maintain our position as an international financial centre. The investment products under the Exchange Fund are to follow a certain specified design in management and investment combinations and as such, it may not be fully suitable for use in retirement investment. At present, the MPF market offers a great variety of funds with different investment strategies and risk for choice by scheme members. We believe granting demand in this respect, the market will study investment products similar to the Exchange Fund for the employees to choose.

The third area is the mechanism of using the accrued MPF benefits to offset long service payments and severance payments. It is suggested in the original motion that this mechanism be abolished and there are amendments which suggest that the stakeholders should be consulted on this proposal and some studies should be conducted on whether the mechanism should be abolished. Now there are strong views from various sectors of the community on this offsetting mechanism and it is hard to reach a consensus. In fact, this offsetting arrangement originated from the Employment Ordinance and when it was extended to the MPF System, the decision was made only after much work done to consult various sectors and balance their views. It is a very complicated issue with very extensive effects including those on employee benefits, operation costs of employers, and so on. Hence the issue must be handled very carefully.

The fourth area is the responsibility of employers under an occupational retirement scheme and work to combat employers who default on MPF contributions. The best way to deal with this problem is enable employees to know clearly their benefits and the contributions made by their employers. An occupational retirement scheme is meant to be a retirement plan offered by employers on a voluntary basis and in accordance with their welfare policy for the employees and the operation objectives. Now the law requires that employers must set up a MPF scheme when an occupational retirement scheme is offered for the choice of employees. The MPFA acts on this requirement and asks employers to enhance their work in briefing employees and providing sufficient information to help employees make a choice that will suit themselves.
As for dealing with the problem of employers defaulting on MPF contributions, we must rely on effective enforcement action to achieve a greater deterrent effect on any action which violates the law. Over the past 10 years, we have submitted a number of amendment bills aiming at enhancing enforcement action. An example is that in 2008 and in mid-2012, laws were passed in the Legislative Council to greatly increase the maximum penalties for default on employer contributions from a fine of $100,000 and imprisonment of six months on first conviction to a fine of $450,000 and imprisonment of four years. The offence is also regarded as continuous and is subject to a daily fine. Since May 2011, the MPFA publishes a record of non-compliant employers and senior officers on its website for inspection by the public. We have included records of past offences by contractors including non-compliance with MPF requirements for our consideration when holding tender exercises for government contracts.

All the above measures have achieved a certain desired effect. The number of complaints made against defaults on contributions has been on the decline from about 7,700 for the year 2008-2009 to about 4,200 for the year 2011-2012.

The fifth area is retirement protection arrangements other than the MPF System. The MPF System is designed for the working population and meets the requirements for the second pillar of retirement protection as advocated by the World Bank. These requirements are: mandatory in nature, managed by private sector bodies and with a contribution system defined by sufficient capital. The original motion of Mr TANG and the amendments by Members have made suggestions on retirement protection models other than the MPF System, including universal retirement protection or a kind of retirement protection targeting non-working spouses and low-income workers. With respect to these, we have consulted the Labour and Welfare Bureau. We know that the present mode of a multi-pillar retirement protection system in Hong Kong was adopted in the 1990s after extended discussions held among various sectors. We know that some of the elderly persons in this generation cannot fully benefit from this three-pillar retirement protection system, but a universal retirement protection scheme is a very complicated and controversial issue. We have to consider many factors such as whether or not taxpayers are willing to undertake the long-term expenses associated with it and whether or not the scheme is sustainable in the long run. There has not been any consensus reached in
society. The Government has revived the former Commission on Poverty. The new Commission on Poverty will set up six Task Forces, one of which will focus on exploring social security and retirement protection. The Chief Secretary for Administration will be the Chairperson of that Task Force while the Secretary for Labour and Welfare will be the Vice-chairperson. Members of the Task Force will come from various sectors across the community. Mr LEE Cheuk-yan, Mr POON Siu-ping and Dr KWOK Ka-ki have asked in their amendments to implement universal retirement protection or that the Government should make MPF contributions on behalf of non-working persons. This is undesirable because no in-depth discussion or study has been conducted on the issue. Therefore, we oppose the amendments proposed respectively by these three Members.

At the present stage, apart from the various measures which I have mentioned on improving the MPF System, we will introduce the Old Age Living Allowance to supplement the living expenses of needy persons above the age of 65. The amount of this allowance is $2,200 per month. This new allowance is expected to benefit more than 400,000 elderly persons and enhance the pillar of social security in our retirement protection system.

President, the MPF System has been in operation for 12 years and it has certainly contributed to the retirement protection of the working population in Hong Kong. Its importance to retirement protection in Hong Kong will become more marked with the increase in the number of contribution years. We will work with the MPFA to improve the MPF System and take forward some in-depth reform. We will report to the Legislative Council on the progress and consult the public with respect to major proposals made on the subject.

Thank you, President.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, you may now move your amendment to the motion.

MR LEE CHEUK-YAN (in Cantonese): President, I move that Mr TANG Ka-piu's motion be amended.
Mr LEE Cheuk-yan moved the following amendment: (Translation)

"To delete "the" after "That" and substitute with ", as the existing"; to delete "has been implemented for 12 years since December 2000, and its effectiveness has always been of major concern to society;" after "'(MPF)' Scheme" and substitute with "fails to effectively protect the retirement life of low-income and non-working persons, this Council urges the Government to, using the Universal Old Age Pension Scheme put forward by community groups as a model, set aside HK$50 billion to HK$100 billion as start-up funds, and implement within five years a universal retirement protection system with tripartite contributions from employees, employers and the Government as well as elements of pre-funding; on the other hand,"; to delete "Fund Expense Ratio ('FER')" after "ceiling for the" and substitute with "fees and charges"; to delete "FER" after "various fees and" and substitute with "the Fund Expense Ratio"; to add "(6) allow employees to choose to deposit part of their contributions into the Exchange Fund, with the annual return rate calculated on the basis of the average return rate of the Exchange Fund investment portfolios over the past six years and the introduction of a minimum return guarantee, so as to ensure that the annual return will not be lower than the average yield rate of Exchange Fund Bills of 3-year maturity in the preceding year; (7) provide non-working spouses of MPF Scheme members and low-income employees with a contribution supplement, so as to strengthen their retirement protection; (8) require MPF trustees to provide annuity plans, so that employees can choose to withdraw a fixed amount of money on a monthly basis upon retirement, thereby ensuring a stable income for them after retirement;" after "and improve performance;"; to delete the original "(6)" and substitute with "(9)"; to delete the original "(7)" and substitute with "(10)"; to delete the original "(8)" and substitute with "(11)"; to delete the original "(9)" and substitute with "(12)"; to add "and" after "loopholes in the provident fund;"; to delete the original "(10)" and substitute with "(13)"; and to delete "; and (11) study the implementation of a universal integrated retirement protection system in addition to the MPF Scheme, so as to make up for the inadequacies in the MPF system" immediately before the full stop."
PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr LEE Cheuk-yen to Mr TANG Ka-piu'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 CHAN Kam-lam rose to claim a division.

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

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

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

Functional Constituencies:

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Dr Joseph LEE, Mr CHEUNG Kwok-che, Mr Charles Peter MOK, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Dennis KWOK, Mr POON Siu-ping and Mr TANG Ka-piu voted for the amendment.

Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr NG Leung-sing, Mr Frankie YICK, Mr YIU Si-wing, Mr
MA Fung-kwok, Mr Christopher CHEUNG, Ir Dr LO Wai-kwok and Mr CHUNG Kwok-pan voted against the amendment.

Mr WONG Ting-kwong, Ms Starry LEE, Mr IP Kwok-him, Mr Steven HO and Mr Kenneth LEUNG abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Ms Emily LAU, Mr WONG Kwok-hing, Mr Ronny TONG, Ms Cyd HO, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the amendment.

Dr Priscilla LEUNG, Mrs Regina IP and Mr Michael TIEN voted against the amendment.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr CHAN Hak-kan, Mr Paul TSE, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Dr Elizabeth QUAT and Dr CHIANG Lai-wan abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, 11 were in favour of the amendment, 12 against it and five abstained; while among the Members returned by geographical constituencies through direct elections, 31 were present, 19 were in favour of the amendment, three against it and eight 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.
MR ANDREW LEUNG (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Comprehensively reviewing the Mandatory Provident Fund Scheme" or any amendment 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 Mr Andrew LEUNG 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 and by the Election Committee, 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 "Comprehensively reviewing the Mandatory Provident Fund Scheme" or any amendment thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.
PRESIDENT (in Cantonese): Mr POON Siu-ping, you may move your amendment.

MR POON SIU-PING (in Cantonese): President, I move that Mr TANG Ka-piu's motion be amended.

Mr POON Siu-ping moved the following amendment: (Translation)

"To add " given that" after "That"; to delete "of major concern to" after "its effectiveness has always been" and substitute with "queried in"; to delete "the lack of supervision over fund performance" after "MPF administration fees," and substitute with "the awaited improvement in fund supervision"; to add "as well as the non-inclusion of family carers in the protection coverage of MPF," after "offset severance payments and long service payments,"; to delete "employees" after "which directly affect" and substitute with "people's"; to add "(1) link the MPF Scheme with age in addition to employment, with the Government making the minimum MPF contribution for persons in the labour force who are neither in employment nor engaged in full-time studies;" after "urges the Government to:"; to delete the original "(1)" and substitute with "(2)"; to delete the original "(2)" and substitute with "(3)"; to delete the original "(3)" and substitute with "(4)"; to delete the original "(4)" and substitute with "(5)"; to delete the original "(5)" and substitute with "(6)"; to delete the original "(6)" and substitute with "(7)"; to delete the original "(7)" and substitute with "(8)"; to delete the original "(8)" and substitute with "(9)"; to delete the original "(9)" and substitute with "(10)"; to delete the original "(10)" and substitute with "(11)"; and to delete the original "(11)" and " and substitute with "(12)"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr POON Siu-ping to Mr TANG Ka-piu'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 Jeffrey LAM rose to claim a division.

PRESIDENT (in Cantonese): Mr Jeffrey LAM 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:

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Dr Joseph LEE, Mr CHEUNG Kwok-che, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr POON Siu-ping and Mr TANG Ka-piu voted for the amendment.

Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr Frankie YICK, Mr YIU Si-wing, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Christopher CHEUNG, Ir Dr LO Wai-kwok and Mr CHUNG Kwok-pan voted against the amendment.
Mr WONG Ting-kwong, Ms Starry LEE, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr MA Fung-kwok and Mr Dennis KWOK abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Ms Emily LAU, Mr WONG Kwok-hing, Ms Cyd HO, Mr WONG Kwok-kin, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the amendment.

Dr Priscilla LEUNG, Mrs Regina IP and Mr Michael TIEN voted against the amendment.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr Ronny TONG, Mr CHAN Hak-kan, Mr Paul TSE, Mr Alan LEONG, Ms Claudia MO, Mr CHAN Han-pan, Dr Kenneth CHAN, Mr LEUNG Che-cheung, Dr KWOK Ka-ki, Dr Elizabeth QUAT and Dr CHIANG Lai-wan abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, nine were in favour of the amendment, 12 against it and seven abstained; while among the Members returned by geographical constituencies through direct elections, 31 were present, 14 were in favour of the amendment, three against it and 13 abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Dr KWOK Ka-ki, you may move your amendment.
DR KWOK KA-KI (in Cantonese): President, I move that Mr TANG Ka-piu's motion be amended.

Dr KWOK Ka-ki moved the following amendment: (Translation)

"To add ", as the Government has all along insisted on supporting people's retirement living expenses through 'three pillars', i.e. the Comprehensive Social Security Assistance Scheme and the Social Security Allowance Scheme, individual or family savings, and" after "That"; to add ", it has all the time failed to conduct detailed studies or extensive consultation on the implementation of universal retirement protection; although employers and employees must make MPF contributions at present, the MPF Scheme does not cover the unemployed, casual workers, persons with disabilities and housewives, rendering their retirement life unprotected; the" after "Mandatory Provident Fund ('MPF')"; to delete "study the implementation of" after "(11)" and substitute with "implement"; to add ", i.e. a universal retirement protection scheme," after "universal integrated retirement protection system"; and to add "; such a universal retirement protection scheme should be funded by tripartite contributions from the Government, employers and employees, and, under the principle of no tax increase, no increase in employers' contribution ratio and no increase in employees' contribution burden, provide each elderly person aged 65 or above with a monthly pension sufficient to maintain a reasonable standard of living; and the Government must expeditiously establish a universal retirement protection fund managed by the Hong Kong Monetary Authority to manage the Government's contribution" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Dr KWOK Ka-ki to Mr TANG Ka-piu'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 CHAN Kam-lam rose to claim a division.

PRESIDENT (in Cantonese): Mr CHAN Kam-lam 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 stop and the result will be displayed.

Functional Constituencies:

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Dr Joseph LEE, Mr CHEUNG Kwok-che, Mr Charles Peter MOK, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Dennis KWOK, Mr POON Siu-ping and Mr TANG Ka-piu voted for the amendment.

Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr NG Leung-sing, Mr Frankie YICK, Mr YIU Si-wing, Mr Christopher CHEUNG, Ir Dr LO Wai-kwok and Mr Christopher CHUNG voted against the amendment.

Mr WONG Ting-kwong, Ms Starry LEE, Mr IP Kwok-him, Mr Steven HO, Mr MA Fung-kwok and Mr Kenneth LEUNG abstained.
Geographical Constituencies:

Mr LEE Cheuk-yan, Ms Emily LAU, Mr WONG Kwok-hing, Mr Ronny TONG, Ms Cyd HO, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the amendment.

Dr Priscilla LEUNG, Mrs Regina IP and Mr Michael TIEN voted against the amendment.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr CHAN Hak-kan, Mr Paul TSE, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Dr Elizabeth QUAT and Dr CHIANG Lai-wan abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, 11 were in favour of the amendment, 11 against it and six abstained; while among the Members returned by geographical constituencies through direct elections, 31 were present, 19 were in favour of the amendment, three against it and eight abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr CHAN Kin-por, you may move your amendment.

MR CHAN KIN-POR (in Cantonese): President, I move that Mr TANG Ka-piu's motion be amended.
Mr CHAN Kin-por moved the following amendment: (Translation)

"To add ", given that" after ", That"; to delete "yet, the expensive MPF administration fees, the lack of supervision over fund performance and the erosion of contributions by intermediaries and sponsors, coupled with" after "HK$412.4 billion;" and substitute with "however, MPF as a long-term retirement protection system still has inadequacies at present and is in need of improvements having regard to its actual operation; at the same time,"; to delete ", have become the major loopholes" after "offset severance payments and long service payments" and substitute with "has become one of the most controversial issues"; to delete "affect" after "MPF Scheme which directly" and substitute with "affects"; to delete "abolish" after "(1)" and substitute with "consult the stakeholders on the study of the abolition of"; to delete ", and retain" after "used to offset long service payments and severance payments" and substitute with "and the retention of"; to delete "trustees" after "employees to choose" and substitute with "MPF schemes"; to add "and amend legislation to" after "on their own,"; to delete "and credit" after "'one lifelong account' for employees" and substitute with ", requiring each employee to have one MPF account only and crediting"; to add "while achieving the objective of reducing MPF administration fees, thereby creating room for reduction in fees and charges" after "manage their MPF accrued benefits"; to delete "enact" after "(3)" and substitute with "promote the automation of MPF administration and operation to streamline work processes and reduce administration expenses; and should automation ultimately fail to effectively reduce administration expenses, the Government should study the feasibility of enacting"; to delete "(FER') of MPF funds, and require trustees to set out the actual amounts and ratios of various fees and FER in the annual reports issued to employees" after "Fund Expense Ratio" and substitute with "of MPF funds"; to delete "set up a public trustee" after "(5)" and substitute with "study whether the setting up of a non-profit-making service organization"; to delete "which charges lower administration fees, and provide low-risk capital preservation funds which are guaranteed to be inflation-linked for employees to choose, so as to" after "voluntary organization" and substitute with "can effectively lower administration fees and"; to delete "to make other trustees to lower fees and improve performance" after "increasing competition"; to delete "rationalize and eliminate substandard MPF funds to" after "(6)" and substitute with "consult the stakeholders on the consolidation of MPF
schemes and funds to achieve better cost-effectiveness and"; to delete ",
and establish a monitoring system under which the total amount of fees charged by MPF funds are linked to performance" after "total fund expenses"; to delete "regulate" after "(7)" and substitute with "conduct a study on regulating"; to delete "sponsors' performance and profits" after "monitoring of Scheme" and substitute with "sponsors"; to delete "tripartite relationship among Scheme sponsors, intermediaries and contributors" after "establish a clear" and substitute with "relationship between Scheme sponsors and the relevant stakeholders"; to delete "and" after "Legislative Council"; and to add "; and (12) step up investor education to enable the public to have a more in-depth understanding about MPF and the concept of long-term retirement investments" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr CHAN Kin-por to Mr TANG Ka-piu'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 Christopher CHEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Christopher CHEUNG has claimed a division. The division bell will ring for one minute.

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

MR LEUNG KWOK-HUNG (in Cantonese): May I ask that the voting result be amended? I wish to declare that I meant to vote against the amendment.

PRESIDENT (in Cantonese): Will Members please check their votes.

MR LEUNG KWOK-HUNG (in Cantonese): I meant to vote against the amendment.

PRESIDENT (in Cantonese): Mr LEUNG, have you got other questions?

MR LEUNG KWOK-HUNG (in Cantonese): I pressed the green button by mistake. Actually, I should have pressed the red one.

PRESIDENT (in Cantonese): What kind of vote do you wish to cast?

MR LEUNG KWOK-HUNG (in Cantonese): I wished to vote against it, but I pressed the wrong button.

PRESIDENT (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed. Mr LEUNG Kwok-hung should have voted against it.

Functional Constituencies:

Mr CHAN Kin-por and Mr MA Fung-kwok voted for the amendment.
Mr Albert HO, Mr James TO, Mr Abraham SHEK, Mr Frederick FUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr LAM Tai-fai, Mr CHEUNG Kwok-che, Mr Frankie YICK, Mr Charles Peter MOK, Miss CHAN Yuen-han, Mr Kenneth LEUNG, Mr KWOK Wai-keung, Mr Dennis KWOK, Mr Christopher CHEUNG, Mr TANG Ka-piu, Ir Dr LO Wai-kwok and Mr CHUNG Kwok-pan voted against the amendment.

MR WONG Ting-kwong, Ms Starry LEE, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr YIU Si-wing and Mr POON Siu-ping abstained.

Geographical Constituencies:

Dr Priscilla LEUNG, Mrs Regina IP and Mr Michael TIEN voted for the amendment.

Mr LEE Cheuk-yan, Ms Emily LAU, Mr WONG Kwok-hing, Mr Ronny TONG, Ms Cyd HO, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted against the amendment.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr CHAN Hak-kan, Mr Paul TSE, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Dr Elizabeth QUAT and Dr CHIANG Lai-wan abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, two were in favour of the amendment, 19 against it and seven abstained; while among the Members returned by geographical constituencies through direct elections, 31 were present, three were in favour of the amendment, 19 against it and eight abstained. Since the question was not
agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Since Mr TANG Ka-piu has used up his speaking time, he cannot speak in reply now.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr TANG Ka-piu 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.

(Members raised their hands)

Mr CHAN Kam-lam rose to claim a division.

PRESIDENT (in Cantonese): Mr CHAN Kam-lam 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 stop and the result will be displayed.

Functional Constituencies:

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Dr Joseph LEE, Mr CHEUNG Kwok-che, Mr MA Fung-kwok, Mr Charles Peter MOK, Miss CHAN
Yuen-han, Mr Kenneth LEUNG, Mr KWOK Wai-keung, Mr Dennis KWOK, Mr POON Siu-ping and Mr TANG Ka-piu voted for the motion.

Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr Frankie YICK, Mr YIU Si-wing, Mr Christopher CHEUNG, Ir Dr LO Wai-kwok and Mr CHUNG Kwok-pan voted against the motion.

Mr WONG Ting-kwong, Ms Starry LEE, Mr IP Kwok-him and Mr Steven HO abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Ms Emily LAU, Mr WONG Kwok-hing, Mr Ronny TONG, Ms Cyd HO, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the motion.

Mrs Regina IP and Mr Michael TIEN voted against the motion.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr Paul TSE, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Dr Elizabeth QUAT and Dr CHIANG Lai-wan abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 27 were present, 13 were in favour of the motion, 10 against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 31 were present, 19 were in favour of the motion, two against it and nine abstained. Since the question was not agreed by
a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

**PRESIDENT** (in Cantonese): Fourth Member's motion: Safeguarding the rule of law and judicial independence.

Members who wish to speak in the motion debate will please press the "Request to speak" button.

I now call upon Mr Dennis KWOK to speak and move the motion.

**SAFEGUARDING THE RULE OF LAW AND JUDICIAL INDEPENDENCE**

**MR DENNIS KWOK** (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, I believe in this Council today, some people may consider this motion unnecessary, for they think that the rule of law always has a good foundation in Hong Kong and do not see the need to carry coals to Newcastle and raise this issue for further discussion. However, Mr Justice Kemal BOKHARY, non-permanent Judge of the Court of Final Appeal (CFA), has warned us of a storm of unprecedented ferocity gathering over judicial independence in Hong Kong. That an outgoing Judge did not speak words of blessings or share his vision for the future but raise concerns and sound warnings is something that is very solemn and unusual. Most unfortunately, the prophecy of Justice BOKHARY has come true.

Some time ago, former Secretary for Justice Elsie LEUNG who is currently Deputy Director of the Basic Law Committee mentioned the NG Ka-ling case of 1999 again. She said that the legal profession, including Judges, lacked understanding of the relationship between the Central Authorities and the Hong Kong Special Administrative Region. Elsie LEUNG remarked later that Hong Kong people had misconceptions about "remaining unchanged for 50 years" and that the interpretation of the Basic Law would not jeopardize judicial independence. She said that Hong Kong courts have sought an interpretation of the Basic Law on four occasions, showing that the legitimacy of interpretation of
the Basic Law is recognized by Hong Kong courts. She even said that changes could be made to the legal system in Hong Kong. These remarks by Elsie LEUNG have laid a hidden hint. As she is a former Secretary for Justice, we cannot consider her remarks unimportant.

Article 19 of the Basic Law clearly provides that "The Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication." Other than cases involving the State, defence and foreign affairs, our Courts have the right to make final adjudication on all other cases. All requests for interpretation of the Basic Law should be put forward by the CFA to the Standing Committee of the National People's Congress (NPCSC). If such a request is made by the Government instead, it would deal a heavy blow to judicial independence and the judicial system in Hong Kong.

Immediately after Elsie LEUNG had made those remarks, the incumbent Secretary for Justice suggested that the CFA should seek an interpretation of the Basic Law by the NPCSC on the right of abode case of foreign domestic helpers to clarify the issue of "doubly non-permanent resident pregnant women". Meanwhile, the Secretary for Justice was unwilling to undertake not to seek an interpretation on his own initiative if the CFA refused to accept his proposal of seeking an interpretation of the Basic Law. This is tantamount to placing the sword of Damocles over the Court, implying that one who refuses to drink a toast only to be forced to drink a forfeit. The Government's intention is to resolve some highly controversial social issues with an interpretation of the Basic Law, but have they considered that the interpretation of the Basic Law is per se a most controversial means? Each interpretation of the Basic Law will invariably undermine Hong Kong's long-established judicial system which does not come by easily. Once this has become a habitual practice, it means that the executive authorities would override the Courts, and the system of the executive, legislature and Judiciary exercising checks and balance among each other would hence vanish into thin air.

President, the separation of powers among the executive, legislature and Judiciary has all along been the cornerstone of the success of Hong Kong, with the executive, legislature and Judiciary exercising monitoring among each other, while the rule of law is to ensure that justice is done. But if we take an overview of Hong Kong today, the executive authorities are a weak government which is unpopular and devoid of integrity, and it is increasingly more difficult for the Legislative Council to exercise monitoring effectively. Judicial independence
has always been the last bottom line of justice in Hong Kong and if even this bastion is eventually be taken, what will Hong Kong become in future? Some people think that it is alarmist talk to call for discussion on the crisis of the rule of law in Hong Kong. But the rule of law is a vitally important factor that enables Hong Kong to continuously command the trust of the people and uphold its image in the international community under "one country, two systems". Our economic and urban developments cannot depart from a rule of law system which upholds justice, and one wrong step taken will put us on a path of no return.

The storm has now arrived. We absolutely cannot treat it lightly. As the saying goes, "only the toughest grass can stand the test of strong winds". I hope that Hong Kong people and the legal profession can stand united on the same side to resist the storm which is gathering above our heads now, in order to build a more solid and stronger society where the rule of law prevails.

MR DENNIS KWOK: President, if I may use the mother tongue of the common law to make the rest of my speech.

It is said that the price of freedom is constant vigilance. I say it is also the very price that we must pay to safeguard the rule of law today.

Mr Justice BOKHARY warned of an impending storm for the rule of law in Hong Kong. In the light of the recent developments, I am sad to say that the verification of his prophecy is now painfully self-evident.

Fifteen years after the handover, it is time for us to remind ourselves in this very Chamber the cardinal principles of the rule of law. The common law tradition, the rules of natural justice and procedural fairness, due process, *habeas corpus*, an independent judiciary, access to court for all, and an independent legal profession — President, therein lay the foundations of the legal system we have, and I dare say of the fundamental pillar under "one country, two systems" under the Basic Law.

These very principles form the bright constellation which has gone before us, and guided our steps through an age of transition and reformation.

The Hong Kong people helped founded this Special Administrative Region. We have helped crafted a constitution known as the Basic Law. And
in this constitution came the powers that were bestowed on our Government. We have made it an executive government subject to checks and balances. We have defined its authority. We have restrained it to the exercise of such powers as are granted to it by the law. And we have not stopped there.

Who, then, shall construe this grant of power under the constitution? Who shall interpret this constitution? With whom do we repose this right of deciding on the powers of the Government? Are we at the complete mercy of state discretion and state construction of our constitution? President, if we are, then in vain, will be our attempt to maintain and protect our constitution.

In the constitution itself, a proper and suitable mode of tribunal for settling questions of law have been established. Article 19 of the Basic Law states, "The Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication." Apart from cases involving acts of state, defence and foreign affairs, our courts have jurisdiction over all cases, and that their judgment shall be final. The constitution has itself pointed out, ordained, and established the authority of our courts.

The rule of law and democracy must go hand in hand. For democracy may disarm an oligarchy, a privileged class, but it can still crush individuals as merciless as any dictator can if we live without the rule of law.

The rule of law is what makes Hong Kong shine as the gem under "one country, two systems". The rule of law is what will make our nation not only great; but shall transform it into a good and moral one.

Our present cause is to protect and treasure the rule of law in Hong Kong so that when the national impetus for change arrives, what we have in Hong Kong shall shine in the rest of our nation. This is the very task set upon us. Let us look into our country and our cause, elevate ourselves to the dignity of pure and disinterested patriots, and drive our country towards that of a just and peaceful nation.

I know that there are many who believe that the time is gone when one can appeal to those high and honest impulses that were one the mainstay and the element of our character. Yet I believe it is a noble thing to have the opportunity to guide the development of our nation, and to influence the destinies
of our people, and if ever it was an object of hounourable ambition, more than ever must it be so at the moment which we are speaking.

This is an hour when the foundation of the rule of law is under threat from those who disagree with its basic premise. They are the enemies of the rule of law and they represent the powerful forces that threaten what we hold most dear to our hearts. They are the soulless men who believe in nothing except the brutality of power alone without constitutional restraint.

Whether this threat is real or imagined, as some would blindly try to argue today, we must nevertheless safeguard the rule of law with all our might and with all our strength, President. For history shall blame us for our false sense of complacency should we allow the rule of law to fade, to slip away, and to leave its foundations broken and unrebuilt whilst under our guard.

We must continue to provide ample resources to support the work of our Judiciary and Judges, to protect their status, and to safeguard their independent judicial role. We must ensure access to justice for all irrespective of one's economic condition hence the need to continue to expand both civil and criminal legal aid. Justice ought to extend her protection with rigid impartiality to the rich and to the poor, to the powerful and to the humble. And likewise the independence of our legal profession must also be guarded against any infiltration. A health and independent legal profession is key to maintaining the rule of law in Hong Kong.

President, there are politicians in this Council — men and women who have looked with ambition to the honours of high public office. These are the same men who have now been pressed into a groove from which they can neither escape nor retreat, holding high public office, but maintained there at the expense of their present convictions which do not harmonize well with their early opinions under a different role.

May I remind those that the rule of law does not change depending on one's role or standpoint. The principles of the rule of law do not change no matter where one is stationed in life. Be you now speaking as the Chairman of the Bar, the Secretary for Justice, a member of the legal profession or an ordinary citizen seeking a day in Court. No — the impartial and fair scales of justice do not change.
President, I contemplate the progress of the rule of law in this nation will be slow and painful, but I look forward to it with perfect composure and confidence. For establishing the rule of law for our nation begins with upholding our constitution here at home, by means of an independent judiciary, and from a conviction of its benefit that will accrue to the great body of the people in this nation.

I urge this Council to support the motion.

Thank you, President.

Mr Dennis KWOK moved the following motion: (Translation)

"That this Council urges the Government to uphold 'one country, two systems', and safeguard the rule of law, the legal system and judicial independence in Hong Kong."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Dennis KWOK be passed.

PRESIDENT (in Cantonese): Ir Dr LO Wai-kwok, Mr IP Kwok-him and Mr Gary FAN wish to move amendments to this motion, while Mr TAM Yiu-chung wishes to move an amendment to Ir Dr LO Wai-kwok's amendment. This Council will now proceed to a joint debate on the motion and the amendments.

I will call upon the above Members to speak in the said order, but they may not move the amendments at this stage.

IR DR LO WAI-KWOK (in Cantonese): President, the main wordings of the original motion, which include "one country, two systems", "rule of law", "legal system" and "judicial independence", are generally supported by the community of Hong Kong. As a matter of fact, it is universally recognized that since the reunification with the Motherland in 1997, Hong Kong has been enjoying "a high degree of autonomy" and upholding judicial independence. In proposing an
amendment, I hope to call on Members to pay attention and attach importance to the need to safeguard the legal system and judicial independence in Hong Kong in accordance with the principle of "one country, two systems" and the provisions of the Basic Law. I think any discussion on this issue must be based on the actual circumstances of Hong Kong, having regard to the concerns of all sectors of the community.

Both the amendments of Mr TAM Yiu-chung and Mr IP Kwok-him have added the word "continue", stressing the need to continuously maintain the status quo. This, I do not oppose.

"One country, two systems" are a term widely known to Hong Kong people, and many people will carry it on their lips all the time. But what exactly is the relationship between "one country" and "two systems"? This may not be clearly explained by everyone, for this is a very complicated issue under the actual political circumstances. I think we should have a comprehensive and objective understanding of "one country, two systems".

The so-called "one country, two systems" is a concept with two closely knitted elements. "One country" is the basis, from which "two systems" derives, because all powers in the Hong Kong Special Administrative Region (SAR) are granted by the Constitution of China and the National People's Congress. It would be undesirable and impractical to emphasize only one element intentionally or unintentionally to the neglect of the other. "One country" and "two systems" should accommodate and complement each other and it is most important to properly handle the relationship between the right of governance of the Central Authorities and "a high degree of autonomy" of the SAR, so that all relevant parties can respect the principle of "one country" while accommodating the differences of "two systems", so as to prevent conflicts between them.

In fact, the principle of "one country, two systems" has been thoroughly embodied in the Basic Law. Since 1997, the Basic Law has no doubt provided a "mini constitution" for Hong Kong, making Hong Kong the first constitutional society under "one country, two systems". Therefore, we should understand the Basic Law comprehensively and objectively.

Under Article 2 of the Basic Law, "The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high
degree of autonomy and enjoy executive, legislature and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law." As pointed out by many experts and academics on law, what warrants attention most in this Article is the word "authorizes", for it clearly defines "one country" and "two systems", as well as the relationship between the powers of the Central Government and those of the SAR, and it also prevents "a high degree of autonomy" from being wrongly interpreted as "full autonomy".

I think the issue about safeguarding the rule of law, the legal system and judicial independence in Hong Kong can be understood comprehensively and objectively only in accordance with the principle of "one country, two systems" and the provisions of the Basic Law. Indeed, the concept of judicial independence has a significant status in the Basic Law in that three independent Articles of the Basic Law, namely Articles 2, 19 and 85, have established the judicial power, including the power of final adjudication, of the SAR, and ensured that the Hong Kong courts and judges are free from any interference in the performance of their functions.

Certainly, in any country or territory, the judicial jurisdiction of the Courts is not unrestricted; nor is it the case that the concept of judicial independence can be expanded without limits. In this connection, Article 158 of the Basic Law provides that "The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress …… shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region." Article 158 also stipulates that "if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region." It also provides that "When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected."
President, from this we can see that the Basic Law not only deals with the issues of the legal system and judicial independence of Hong Kong, but also defines the authority of the Standing Committee of the National People's Congress (NPCSC) and the CFA. In the meantime, the request for an interpretation of the Basic Law through the CFA has been established as part of the legal mechanism. The community generally considers that each of the four interpretations sought after the reunification was justified and served only to provide a legally-binding interpretation on specific legal issues without affecting the daily operation of the legal system in Hong Kong. The power of the Hong Kong Courts to apply and interpret the Basic Law and other laws of Hong Kong in general proceedings has not been jeopardized. From this we know that under the provisions of the Basic Law, seeking an interpretation from the National People's Congress (NPC) under specified circumstances should not be considered as dealing a blow to the rule of law and judicial independence in Hong Kong. Therefore, in discussing such issues as "a high degree of autonomy", judicial independence, and so on, it is necessary to have a comprehensive understanding of the principle of "one country, two systems" and the provisions of the Basic Law in order not to reach any lopsided conclusion. I very much agree with the analyses made by some local experts and academics on law. They consider that the challenge now faced by the Hong Kong Courts is how to continuously uphold the legal system and judicial independence in Hong Kong on the one hand and prevent the role of the Courts from being overly politicized on the other. After all, the Courts are only in a position to deal with legal issues.

President, given that the Basic Law is the "mini constitution" of Hong Kong and in order to uphold the statutory authority and stability of the Basic Law, we must take a very prudent attitude towards any amendment of the Basic Law, rather than yielding to expediency. Therefore, I cannot agree with Mr Gary Fan's amendment because if we amend the Basic Law to resolve the problem of babies born in Hong Kong to "doubly non-permanent resident pregnant women" having the right of abode in Hong Kong this time around, we can also amend the Basic Law to resolve other problems in future. In that case, the amendment of the Basic Law can become a never-ending process. It is precisely based on this consideration that a very stringent amendment mechanism is set out under Article 159 of the Basic Law, which expressly provides that the power of amendment shall be vested in the NPC, and this is not something that can be done unilaterally by Hong Kong. As for finding ways to resolve certain pressing
problems in the society of Hong Kong, an amendment of the Basic Law is obviously too distant for solving any immediate problem.

President, I so submit.

MR IP KWOK-HIM (in Cantonese): President, during the past 15 years after the reunification, the Basic Law has been implemented successfully in Hong Kong. This is attributed not only to the Central Government and the SAR Government, but also the efforts made by all Hong Kong people. During the initial period following the reunification, Hong Kong people, who might not have a thorough understanding of the Basic Law then, were still concerned about whether the Basic Law can protect the freedoms and rights previously enjoyed by Hong Kong people and whether it can safeguard the rule of law, the legal system as well as judicial independence in Hong Kong as mentioned in this motion today. However, through a correct understanding of "one country, two systems", strict compliance with the Basic Law, and the efforts of the SAR Government and members from various sectors of the community, Hong Kong people can continue to enjoy the freedoms and rights conferred on them by the Basic Law today.

According to a survey conducted by the University of Hong Kong on the confidence of the public in "one country, two systems", public confidence in "one country, two systems" has since the reunification remained at a relatively stable level with the public thinking quite highly of it. This shows that the work of the Government in safeguarding people's freedom of assembly, freedom of speech and freedom of the press, as well as the rule of law has been recognized by the general public. But social conditions are ever changing, and in order to continuously give effect to the spirits of "one country, two systems" and "Hong Kong people ruling Hong Kong" as well as the provisions of the Basic Law on safeguarding various freedoms and rights of Hong Kong people, the SAR Government must remain vigilant at all times. It must continue to maintain its position faithfully, listen to views in a humble manner, and accept monitoring by the Legislative Council and Hong Kong people as well as their reminders for spurring the Government to move forward. This is also my intention in proposing an amendment to the motion. Meanwhile, in order to effectively implement "one country, two systems" and safeguard the rule of law, the legal system and judicial independence in Hong Kong, I think it requires more than the
efforts by the SAR Government, for this is not just the duty of the SAR Government but also an obligation of each and every Hong Kong citizen.

The spirit of the rule of law means not only acting in accordance with the law, but also equality for all before the law. Even if it is a tycoon or a bigwig, or an accountable official or a civil servant, or even the Chief Executive who is alleged to have acted against the law, the law-enforcement authorities must take appropriate actions in accordance with the law, including arrest, investigation and prosecution. In fact, the SAR Government has effectively discharged the duties expected of it in safeguarding the rule of law.

In order to give effect to the rule of law, a good and sound legal system alone is not enough, as it also requires the perseverance of the Government and the public in strictly abiding by the law. The Basic Law protects the right to procession and demonstration of Hong Kong people, but it also protects other people's right to be free from nuisance in their living. This is why the authorities have put in place the system of the Letter of No Objection to balance the rights of all sides, and the validity of this system has been established by the Court of Appeal and CFA in a number of cases.

Here, let me cite from newspaper reports the comments made by Mr Joseph TO, Magistrate of the Eastern Magistrates' Courts, on procession and demonstration. Magistrate Joseph TO said to the effect that the freedom of procession and demonstration is a core value of Hong Kong, but the rule of law is equally important and no person can override the law! Therefore, when the police, in discharging their duties to uphold law and order and to manage demonstration, face conditions in breach of the Letter of No Objection and demonstrators who willfully provoke conflicts and clash with the police, and when the police perform their duties in accordance with the law and make arrests, these actions taken by the police have best shown their strict compliance with the law and commitment to safeguarding the rule of law. Hong Kong has a law-abiding, professional Police Force that safeguards law and order, and we also have impartial and strict Judges guarding the gate of the law. All these are the fruits achieved by the concerted efforts made by Hong Kong people and the SAR Government over the past decade or so. We hope that this spirit of the rule of law underpinned by strict compliance with the law can continue to be upheld.
Judicial independence, which is a cornerstone for safeguarding the rule of law in Hong Kong, is highly cherished by the Central Government, the SAR Government and members of the general public. In the past, there were people who did not fully understand the Basic Law and hence considered that the interpretation of the Basic Law made by the NPCSC amounted to interference with the jurisdiction of the CFA in Hong Kong. But just as the new President of The Law Society of Hong Kong, Mr Dieter YIH, has pointed out, although great controversies were aroused every time an interpretation of the Basic Law was sought, the rule of law in Hong Kong has not been affected by the several interpretations of the Basic Law made in the past. In fact, under Article 158 of the Basic Law, the power of interpretation of the Basic Law is vested in the NPCSC. Therefore, the NPCSC is only performing its duty under the Basic Law in making an interpretation of the Basic Law. But having considered the concerns of Hong Kong people, the SAR Government has proposed to the CFA that the CFA should seek an interpretation of the Basic Law from the NPCSC in respect of two important cases recently. It fully shows that the SAR Government, in taking this approach and making such consideration, has struck an appropriate balance in accordance with the principle of "one country, two systems" as it has worked in accordance with the Basic Law stringently and carefully while precluding suspicions of government interference with judicial independence in the community.

Having said that, in order not to give the public an impression of interference with judicial independence, it takes more than just government efforts, for this is also a responsibility of Hong Kong people, especially the legal professionals. Regrettably, we can see that some political parties have, on the one hand, talked a great deal about the importance of the rule of law and judicial independence but on the other, under the pretext of discussing political issues and targeting the right of abode case of foreign domestic helpers, unrestrainedly and openly advanced arguments and comments to oppose an interpretation of the Basic Law in the Panel of the Legislative Council and seminars held in the community. What they have done may exert political pressure on the CFA and affect the CFA's decision on whether or not to seek an interpretation from the NPCSC. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), therefore, finds this most regrettable. We hope that the mover of this motion, in proposing to safeguard the rule of law and judicial independence,
can do what he preaches and refrain from making any further remarks to interfere with judicial independence.

The DAB considers that since the reunification, the SAR Government has exercised the power of governance conferred on it by the Central Authorities strictly in accordance with the provisions of the Basic Law, while endeavouring to safeguard the freedoms and rights of Hong Kong people. The initiatives and efforts made by the Government have been recognized and supported by the Central Authorities and Hong Kong people. In order to more accurately reflect the current situation in Hong Kong in safeguarding the rule of law and judicial independence, I have proposed a simple amendment to the motion in the hope that the current situation can be reflected more accurately. I hope that Members will support it.

I so submit.

MR GARY FAN (in Cantonese): President, first of all, I thank Mr Dennis KWOK for proposing this motion on "Safeguarding the rule of law and judicial independence" today which enables colleagues in the Legislative Council to discuss how this principle can be truly embodied in the formulation of public policies.

President, in proposing this amendment today, I mainly wish to point out and to state my view that the Government should not seek an interpretation of the Basic Law but should seek an amendment to the Basic Law, in order to resolve at root the problem of babies born in Hong Kong to "doubly non-permanent resident pregnant women" having the right of abode in Hong Kong. The Neo Democrats has repeatedly followed up the problem of "doubly non-permanent resident pregnant women" over the past two years or so. These "doubly non-permanent resident pregnant women" have taken up the healthcare and social resources in Hong Kong, causing difficulties to many Hong Kong people in having to scramble for hospital beds and infant formula. This year, the school places in three school nets in the North District are occupied by a large number of "doubly non-permanent resident students". As a result, the children of many residents in the North District cannot study in schools in their districts and have to take a cross-district journey to go to schools in Tai Po which is farther away from home.
President, the Government of the Chief Executive, Mr LEUNG Chun-ying, always says that the problem of children born in Hong Kong whose parents are not Hong Kong permanent residents ("doubly non-permanent resident children") can be solved by administrative measures. But according to the figures provided by the SAR Government to the Legislative Council, in the seven months between April and October 2012, which was after Chief Executive LEUNG Chun-ying had said that the problem could be solved by administrative measures, there were still about 15,600 "doubly non-permanent resident babies" born in Hong Kong. In other words, three out of every 10 births in Hong Kong are "doubly non-permanent resident babies". This shows that the "administrative measures" as referred to by the Chief Executive have limited effects.

Hong Kong people wish that the Government can adopt effective measures to resolve the problem of "doubly non-permanent resident children". But it does not mean that we have to neglect all consequences and solve the problem through an interpretation of the Basic Law which we think will damage the rule of law in Hong Kong.

Mr QIAO Xiaoyang, Deputy Secretary-General of the NPCSC, said in 2012 (that is, in the middle of last year) that an amendment of the Basic Law is not the way to solve the problem of "doubly non-permanent resident children" and that the problem should be rectified by the CFA. Finally, on the ground of the case concerning the right of abode appeal by foreign domestic helpers, Secretary for Justice Rimsky YUEN made a suggestion to the CFA at the end of last year that an interpretation of the Basic Law should be sought to clarify whether the Opinions of the Preparatory Committee cited in the interpretation on the NG Ka-ling case of 1999 reflected the legislative intent of the Basic Law and formed part of the interpretation.

In other words, the Government has made use of the right of abode case of foreign domestic helpers to indirectly settle the problem of "doubly non-permanent resident children" altogether. This right of abode case is an internal affair of Hong Kong and does not come under "provisions ...... concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region" in Article 158 of the Basic Law. Interference by the Central Authorities through an interpretation of the Basic Law is actually unnecessary.
On the other hand, the Opinions of the Preparatory Committee cited in the interpretation on the NG Ka-ling case of 1999 came into being only six years after the Basic Law had come into effect. If the interpretation made in the Opinions is said to be reflecting the true legislative intent, sorry, I must say that this is actually putting the cart before the horse, that these opinions were given only with the benefit of hindsight, and that this is a "bad-loser" approach.

President, all governments in the world have the power to vet and approve applications for residency. The People's Republic of China has this power too, except that the Hong Kong Special Administrative Region does not have the power to approve applications for residency from Mainland immigrants as we cannot refuse the entry of "doubly non-permanent resident pregnant women" to Hong Kong to give birth. This is most ridiculous.

In fact, if the Government wishes to truly resolve the problem of "doubly non-permanent resident children", it should seek to amend the Basic Law, rather than making use of the case of foreign domestic helpers, which is not quite related to the problem, to suggest the CFA to seek an interpretation from the NPCSC. The SAR Government is actually trying to pass this political issue to the CFA at the expense of judicial independence and the rule of law that we very much cherish. If the CFA accepts the proposal of seeking an interpretation of the Basic Law, it would be overthrowing its past verdict to the detriment of the judicial system in Hong Kong. If the CFA does not accept the proposal of seeking an interpretation, Chief Executive LEUNG Chun-ying could then kick up a big fuss over this in a bid to shirk his responsibility for failing to effectively tackle the problem of "doubly non-permanent resident children". This is the wishful thinking of "the wolf's camp".

President, what is most worrying to us is that the Government would become reliant after resorting to interpretation time and again. When the independent judicial system makes a judgment which, in the Government's view, is unfavourable to the Government, the Government would directly or indirectly request the NPCSC for an interpretation of the Basic Law to meet its political needs. Some colleagues in the pro-establishment camp, such as Ir Dr LO Wai-kwok, consider that my concern excessive. But what has happened in reality is that in a short period of just 15 years following the reunification, there
have been four interpretations of the Basic Law in Hong Kong and now, we are likely to face an interpretation for the fifth time. Every time when the Basic Law is interpreted in Hong Kong, the independence of the judicial system is invariably undermined and we have also seen ourselves gradually moving away from the rule of law towards the rule of man.

President, some Hong Kong people or the pro-establishment camp may argue that the interpretations by the NPCSC have not caused any damage to Hong Kong. Just as Prof Albert CHAN from the Faculty of Law of the University of Hong Kong said last Sunday, the interpretations of the Basic Law by the NPCSC have not created any adverse impact on the daily operation of the legal system in Hong Kong. This is not true in reality. If an interpretation is provided by the NPCSC on Article 158 of the Basic Law this time around, the NPCSC will have the power to further interpret all the rights now enjoyed by Hong Kong people. This is tantamount to a castration of the rule of law. President, the interpretation of the Basic Law is sugar coated poison which seems on the surface to be a solution to the problem. However, the interpretation of the Basic law is actually like a person swallowing arsenic trioxide in order to poison a tiger. The interpretation of the Basic Law is actually like XIE Xun's "seven damaging fists". The interpretation of the Basic Law is actually like an inexperienced doctor completing a surgery successfully but only finding the patient dead.

President, the pro-establishment camp considers that any amendment of the Basic Law is like a scourge, for they are worried that this would compromise the solemnity or authority of the Basic Law. They hold that the procedures for amendment of the Basic Law must not be initiated casually because if the Basic Law is amended to resolve the problem of "doubly non-permanent resident pregnant women", many more requests for amending the Basic Law for various causes may possibly arise in future, just as Ir Dr LO Wai-kwok has said, and this would take toll on the solemnity of the Basic Law. However, these concerns are not tenable. Why? One can tell by just looking at the historical facts and the true information.

1 XIE Xun is a character in a martial arts novel by JIN Rong, The Heaven Sword and Dragon Sabre, who practised the "seven damaging fists", a martial arts skill that causes its learners to inflict injuries to themselves before injuring others.
Some academics have found from studies on comparisons of constitutions that in human history, there have been over 600 written State Constitutions with an average lifespan of 17 years. It has been 22 years since the promulgation of the Basic Law in the SAR in 1991, and it has been 16 years since its implementation in 1997. In other words, according to international experience, the Basic Law has already entered its "middle age". We are now requesting a review of this mini constitution of the SAR, namely the Basic Law, to identify problems and make amendments, in order for it to progress with the times. This is actually the most pragmatic course of action.

In fact, the Constitution of China has been amended at least five times in the 60 years after the founding of the People's Republic of China, meaning that an amendment was made once every 12 years. The Constitution of the United States has been amended as many as 27 times in the 250 years after the founding of the nation, meaning that their Constitution was amended once every nine and a half years. This goes to show that every constitutional document is like an organism. It needs to progress with the times as society advances and evolves. Although an amendment of the Basic Law is a long process, it is indeed a correct way to effectively resolve the problem of "doubly non-permanent resident pregnant women". I do not understand why the pro-establishment camp and the Central Government of the Communist Party of China care about keeping their face but not the overall situation of Hong Kong in refusing to amend Article 24 of the Basic Law to abolish the right of abode for children born in Hong Kong to "doubly non-permanent resident pregnant women", in order to resolve the problem of "doubly non-permanent resident children".

President, giving priority to Hong Kong people and preserving our core values are the convictions of the Neo Democrats during the election of this term of the Legislative Council, and these are also the directions of our work. The problem of "doubly non-permanent resident children" involves Hong Kong people's right to give birth and the long-term demographic planning in Hong Kong. We must safeguard the rule of law and judicial independence in Hong Kong, and we must also safeguard the local interests in Hong Kong; all this can brook no delay. Therefore, in order to solve the problem of "doubly non-permanent resident children" which has caused conflicts between the Mainland and Hong Kong, the Neo Democrats absolutely cannot accept the approach of seeking an interpretation of the Basic Law. Let me reiterate that an amendment of Article 24 of the Basic Law is the most effective, thorough and
correct approach to solve the problem of "doubly non-permanent resident children" at root.

President, I so submit.

MR TAM YIU-CHUNG (in Cantonese): President, the rule of law and judicial independence are important assets of the prosperity and stability of Hong Kong. However, these important assets must be premised on the policy principle of "one country, two systems" and the legal framework of the Basic Law. Therefore, anyone who completely neglects or deliberately distorts the principles of "one country, two systems" and the Basic Law but makes empty talk about safeguarding the rule of law and judicial independence will only shake the foundation of the rule of law and judicial independence in Hong Kong, which will do more harm than good to the upholding of the rule of law and judicial independence.

There is no doubt that "one country, two systems" are a novelty and there is no precedent in history for us to follow. This is why during the initial period after the reunification, the Court, in handling cases requiring an interpretation of the provisions of the Basic Law, had failed to comprehensively and thoroughly understand the spirit and legislative intent of the Basic Law and made judgments purely according to the literal meanings of the provisions of the Basic Law. Eventually, it was necessary for the NPCSC to exercise the power to interpret the Basic Law under Article 158 of the Basic Law to make rectifications. For example, in 1999, the NPCSC made an interpretation on the judgment of the CFA on the right of abode case.

However, when the NPCSC exercised its power of interpretation in accordance with Article 158 of the Basic Law, some people in Hong Kong refuted the NPCSC's power to interpret the Basic Law on the ground that the interpretation of provisions in law should fall under the responsibility of the Court under the common law system. They even resorted to alarmist talk and hurled attacks by saying that the NPCSC's interpretation would jeopardize judicial independence in Hong Kong. Even now, they are still claiming that the Court in Hong Kong has the power to rule that the NPCSC's interpretation or decision is illegitimate. Mr Gary FAN's earlier speech has fully expressed this point.
Disregard of the provisions of the Basic Law and disrespect for the powers vested in the Central Authorities in accordance with the law will damage the basic policy principle of "one country, two systems". This is not conducive to safeguarding the rule of law and judicial independence in Hong Kong and worse still, it will damage the basis of the constitutional powers of the Hong Kong Special Administrative Region (SAR). Therefore, all sectors of the community should respect the power of the NPCSC to interpret the Basic Law. We should not query the powers of the NPCSC; nor should we make comments and express views in opposition to the interpretation of the Basic Law before a decision is taken by the CFA on whether to seek an interpretation from the NPCSC on the right of abode case of foreign domestic helpers, in an attempt to put political pressure on the CFA and influence its decision. In his speech earlier on, Mr Dennis KWOK described the CFA decision as one that would be facing a situation where one who refuses to drink a toast would only to be forced to drink a forfeit. Such remarks are belittling the CFA. Mr KWOK is the Member representing the Legal Functional Constituency, and I felt dismayed by this remark of his.

President, apart from understanding judicial independence in the context of the Basic Law, I also wish to give an account of the definition and principles of judicial independence in the international community. According to the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA (The Law Association of Asia and the Pacific) Region, which is derived from Article 10 of the United Nations Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights, judicial independence is assessed on four major principles: (1) Appointment of Judges — Safeguards must be provided against improper influences, so that only persons of competence, integrity and independence are appointed on the principle of fairness and impartiality; and in the selection of Judges, no person should be excluded on the basis of race, colour, gender, religion, political opinion or national origin. (2) Security of tenure — Judges should not be removed without good reasons during their term of office. (3) Jurisdiction — The judiciary must have exclusive authority over all disputes, and neither the executive nor the legislature is in a position to undermine the jurisdiction of the court. (4) Judicial administration — The responsibility for the administration of the judiciary must be vested in the court. The executive or the legislature should not be involved; nor do they have the power to manage these affairs. Assessing the Judiciary in
Hong Kong on these four major principles, I find that the operation of our Judiciary in Hong Kong is highly independent.

President, the SAR Government, various political parties and political organizations, as well as members of the general public have all along made continuous efforts to safeguard the rule of law and judicial independence, and the achievements made are evident to all. Therefore, I have proposed a simple amendment to Ir Dr LO Wai-kwok's amendment today mainly in the hope that the actual situation prevailing in Hong Kong can be reflected more accurately and fully.

President, Hong Kong people must not be affected by remarks such as those about a storm gathering over our heads. Let us keep up with what we have been doing and make continuous efforts to safeguard "one country, two systems", the rule of law, the legal system and judicial independence. Thank you, President.

SECRETARY FOR JUSTICE (in Cantonese): President, whether in respect of the institutions or their implementation, the Hong Kong Government has all along endeavoured to safeguard the rule of law, the legal system and judicial independence in Hong Kong in accordance with the principle of "one country, two systems" and the provisions of the Basic Law. In the years to come, the Government of the Hong Kong Special Administrative Region (SAR) will continue to uphold this position.

"One country, two systems" is a basic principle of the State in the establishment of the SAR. It is under this principle that the State, in resuming the exercise of sovereignty over Hong Kong, established the SAR where a high degree of autonomy is exercised. It is clearly provided in the Basic Law that the SAR enjoys a high degree of autonomy and also executive, legislative and independent judicial power, including the power of final adjudication.

Since the reunification, the SAR has, in accordance with the Basic Law, maintained independent finances; we have not handed over our financial revenues to the Central People's Government; we have not implemented any foreign exchange control policy; we have continued to issue the legal tender in the SAR; and the SAR Government has issued SAR passports to eligible Hong Kong
permanent residents. All these have pointed to the successful implementation of "one country, two systems".

In respect of the legal system, the Basic Law has clearly provided that the laws previously in force in Hong Kong shall be maintained, except any that contravene the provisions of the Basic Law. The rights and freedoms of Hong Kong residents and other people are protected by the Basic Law, human rights covenants and other relevant statutes. Article 19 of the Basic Law further safeguards the independent judicial power, including the power of final adjudication, of the SAR.

The Basic Law provides constitutional safeguards for the basic principle of "one country, two systems" and implements the State's basic policy principle for Hong Kong. During the past 15 years since the reunification, the SAR Government has all along endeavoured to uphold "one country, two systems" in all aspects, while giving effect to the safeguards in the Basic Law.

Judicial independence and the rule of law are the cornerstones for the development of Hong Kong. They are also the core values of Hong Kong society. Article 85 of the Basic Law expressly states that the Courts of the SAR shall exercise judicial power independently, free from any interference.

The major provisions relating to the Judiciary in the Basic Law have made clear stipulations on the appointment of Judges and safeguards for their employment. Moreover, Judges must be appointed according to established procedures, and the pay and benefits of Judges are protected by the law. Even if their judgment is not consistent with the preference of the executive or the public, the appointment of Judges and all their conditions of service will not in the least be affected.

Under the provisions of the Basic Law, a Judge may only be removed for inability to discharge his or her duties, or for misbehaviour, in accordance with the established procedures. This mechanism has effectively safeguarded judicial independence in Hong Kong.

To maintain the vitality and dynamics of the common law system in Hong Kong, the Basic Law even provides that the Courts of the SAR, when adjudicating cases, may refer to precedents of other common law jurisdictions.
The Court of Final Appeal (CFA) may, as required, invite Judges from other common law jurisdictions to sit on the CFA.

Since the establishment of the SAR, the legal and the judicial systems of the SAR have achieved continuity and development smoothly thanks to the safeguards in the Basic Law. Under the new constitutional order of the Basic Law, access to justice is assured in the constitutional system. The Basic Law provides that all are equal before the law, and individuals or the Government cannot override the law. The judgments of the Judiciary are made purely on the basis of the provisions and spirit of the relevant legislation and shall not be subject to the views or actions taken by the executive authorities.

The legal and judicial systems of the SAR have been widely supported and recognized in the international community. The establishment of the Asia Pacific Regional Office of the Hague Conference on Private International Law in Hong Kong last month constitutes a vote of confidence cast by international legal organizations in the legal and judicial systems as well as "one country, two systems" in Hong Kong.

Under the Basic Law, the Courts of the SAR enjoy judicial independence and the power of judicial interpretation, but Article 158 of the Basic Law has made a clear provision on the power of interpretation of the Basic Law. Article 158 of the Basic Law expressly provides that the ultimate power of interpretation of the Basic Law is vested in the Standing Committee of the National People's Congress (NPCSC). The Courts of Hong Kong may, in adjudicating cases, interpret on their own the provisions of the Basic Law, but if the circumstances specified in Article 158(3) of the Basic Law are involved, the CFA is duty-bound to seek an interpretation of the relevant provisions of the Basic Law from the NPCSC.

Article 158(3) of the Basic Law provides for a mechanism which is part of the SAR's constitutional system and also part of the legal and judicial systems of Hong Kong. Besides, whether an interpretation should be sought from the NPCSC is entirely a decision to be made by the CFA on its own in accordance with common law and the provisions of the Basic Law. The SAR Government or the NPCSC will not and cannot influence this decision of the CFA.
As the appeal made by foreign domestic helpers is still pending court hearing, I shall not go into detail the arguments to be presented in the CFA by the legal representative of the SAR Government, but I would like to make two points in brief: First, based on the above explanation, the Department of Justice, in requesting the CFA to consider seeking an interpretation from the NPCSC under Article 158(3) of the Basic Law in respect of the case of foreign domestic helpers, has only sought to resolve a legal issue through a lawful channel under the judicial system in Hong Kong. There is absolutely no question of damaging the rule of law or judicial independence; nor will damages be done to the separation of powers among the executive, legislature and Judiciary, just as Mr Dennis KWOK has said. Second, regarding the issue on which an interpretation is sought, we are not suggesting that an interpretation be sought on Article 24 of the Basic Law. We firmly believe that the Courts of Hong Kong, including the CFA, will definitely make fair judgments strictly in accordance with the law in line with the usual practice.

"One country, two systems" is the fundamental principle of the establishment of the SAR, whereas the rule of law and judicial independence are the most important part of "one country, two systems" and one of the most important factors for the development of Hong Kong into an international financial and trade centre. The SAR Government and the Department of Justice have all along endeavoured to safeguard "one country, two systems" as well as the rule of law and judicial independence in Hong Kong, and we undertake to make continuous efforts to uphold this position.

President, I will further give a response after listening to the speeches of Members. Thank you, President.

MS CLAUDIA MO (in Cantonese): The original motion urges the Government to safeguard "one country, two systems" right at the very outset. This is just like motherly love, which is indisputable. I very much agree with the amendment proposed by Mr Gary FAN. He said that if an interpretation will be sought, it would be exactly like learning XIE Xun's "seven damaging fists". I will elevate the level a bit higher by drawing an analogy with a martial arts skill in a novel by JIN Rong which causes ultimate self-injuries to the learners. It is the miraculous skill taught in the "Sunflower Manual" which requires a person to castrate himself in order to master the skill.
As we all know, President, under "one country, two systems", Hong Kong enjoys "a high degree of autonomy", except for matters relating to defence and foreign affairs. But what is most controversial now is the meaning of "a high degree". Does it mean my understanding of "a high degree" or yours? Perhaps my understanding of "a high degree" is very low by your standard, or perhaps our understandings are exactly opposite to each other. The meaning of "a high degree" varies from one person to another.

Since the reunification, we have seen that the SAR Government has repeatedly sought interpretations of the Basic Law from the National People's Congress. From the situation of the rule of law in Mainland China that we have seen, and to describe it in modern Chinese language, I would say that there is still a lot of room for improvement. LIU Xiaobo was awarded the Nobel Peace Prize and why is he still imprisoned? Why was LI Wangyang "suicided"? Regarding what has happened to Southern Weekly recently, how do you explain it to the children? I only have to cite these three major examples and Hong Kong people will rally to voice their support. Some people said that "one country, two systems" means that "well water does not encroach on river water", and that insofar as the internal affairs of "one country" are concerned, Hong Kong people should not make irresponsible comments and act like a back-seat driver.

But President, the examples that I have just cited all involve human rights and justice, freedom of the press, and the rule of law, which are not just the values of Hong Kong, but also universal values. In the final analysis, Hong Kong people are actually most worried that what can be seen on the Mainland today will happen in Hong Kong in future, that is, today's Mainland is tomorrow's Hong Kong. So, put it in Mr Gary FAN's words, we must defend the local values and features of Hong Kong. We must insist on using Cantonese for communication, and we must continue to use traditional Chinese characters that have been passed down onto us for several centuries.

President, Hong Kong attaches importance to the rule of law, whereas the Mainland always emphasizes the rule by law. Mainland China does not only act in accordance with the law, their officials have even racked their brains to lay charges against you by focusing on one piece of legislation. This has given people the feeling that their judicial system is far from independent. Worse still, there are also many problems resulted from the rule of man.
If what I have said is not true, President, we will not be able to explain why LIU Xiaobo, a Nobel Peace Laureate, is still jailed. Although the Constitution of China has provided safeguards in black and white for the freedom of publication, freedom of speech, and so on, how can they explain the recent incident of *Southern Weekly* and also what happened to *The Beijing News* as reported in the press today?

President, about these incidents of suppression of dissenting voices through the law and various means of the Government, I dare not say that they are now widely seen in Hong Kong, and I would say that they have not yet taken place blatantly before our eyes, but Hong Kong people are indeed very frightened. A press photographer who had a minor dispute with a security guard while performing general news reporting duties outside the Government Headquarters was nevertheless charged for assault, though he was fortunately acquitted. Some people will, of course, say that it is good that he is now acquitted, and that we should be happy about it and we can stop worrying. But it is entirely unimaginable that a person can be arrested and taken to court for no reason at all. The authorities had kicked up a big fuss over this and he was acquitted eventually. This society of Hong Kong nowadays is just sending shivers down our spines.

President, the freedom of the press is the last line of defence of a civilized society because without the freedom of the press, the rule of law will be in great peril anytime. If the freedom of the press does not have the media to guard the gate and if it does not have the media to act as the watchdog, we will not know what is happening. Even if I wish to safeguard the rule of law and judicial independence, but if I know nothing about what is happening around me, I would not even know for what causes I am taking to the street.

Recently, the Government has proposed that the Companies Ordinance be amended to proscribe inspection of information on company directors. This is most shocking. I think in any civilized society, public interests must always override privacy rights and indeed, privacy rights may not be equal for all. Artistes, celebrities and senior government officials absolutely cannot say that their privacy rights should be on a par with those of Mr CHAN who lives next door. The Companies Ordinance has allowed access to the relevant information and enabled the media in Hong Kong to bring to light a lot of significant news stories. If the rule of law does not have the freedom of the press to go along with it, nothing can actually be done because we would not know who should be
arrested and we would not know with whom we should conduct a dialogue. If there is only the rule of law, we cannot punish the villains in accordance with the law.

President, apart from safeguarding the rule of law and judicial independence, we must also safeguard the freedom of the press in Hong Kong. Today's Mainland must not become tomorrow's Hong Kong. I so submit.

MR LEE CHEUK-YAN (in Cantonese): President, first of all, I wish to state on behalf of the Labour Party that we oppose the amendment by Ir Dr LO Wai-kwok. Insofar as concept is concerned, the amendment proposed by Mr TAM Yiu-chung to Ir Dr LO Wai-kwok's amendment is similar to the amendment by Mr IP Kwok-him in that they both have the words "to continue". They appear to say that what is being done is very good and if this can be continued, the rule of law can be safeguarded. But the fact is, what is being done now does not work. The rule of law is very fragile and it is threatened. Justice BOKHARY said that judges should be prepared to rise up in the eye of the storm. This shows that he has got a very strong sense of crisis. Come to think about this. Why do the Judges have such a strong sense of crisis? Because they find themselves in a storm and they feel that that a storm is coming. So the words "to continue" entirely defy the reality. I mean that the rule of law in Hong Kong is very fragile and it is being threatened not just on this occasion but it has been so before.

Maybe Members should think about this. There have been examples of interpretation of the Basic Law by the NPC before. On the last occasion when an attempt was made to seek an interpretation of the Basic Law by the NPC, the procedures themselves were problematic. This is because the attempt was made by the SAR Government directly to the NPC for an interpretation of the Basic Law. Under Article 158(1) of the Basic Law, the power of interpretation is vested in the NPC. As for Article 158(2), Martin LEE, a former Member of this Council and also a member of the Basic Law Drafting Committee said that at that time, he was fighting for the Courts in the SAR to be given the power to hear cases and to arrive at an interpretation of the legal provisions within the realm of the SAR's autonomy, and with the exception of two kinds of provisions in which the Courts shall seek an interpretation from the NPC. These provisions are those related to affairs under the control of the Central Authorities and those provisions
on the relationship between the Central Authorities and the Hong Kong SAR. Well, Article 158 of the Basic Law does not point out that the SAR Government can take the initiative to seek an interpretation of the Basic Law from the NPC. Of course, you may say what you like and that Article 158(1) covers all matters.

Where is the safeguard for Hong Kong? If the Hong Kong Government which is an executive authority can ask another legislative authority, that is, the NPC, to interpret the Basic Law for the Courts of Hong Kong, what kind of rule of law is this? So apart from our being unhappy with the words "to continue", we are outright unhappy about the stipulations in the Basic Law. This is because it constitutes a threat to the rule of law itself by enabling the Government to do something secretive. Perhaps we should not use the word "secretive" because they are making a blatant and unabashed attempt to seek an interpretation of the Basic Law from the NPC. All the people in Hong Kong know well enough that they are doing this bad thing. The worst thing is that they are not doing it secretively. Had it been secretive, they might still be said to have a fraction of conscience. But they are making an open attempt to seek an interpretation of the Basic Law from the NPC. This is destroying the rule of law in Hong Kong and threatening our Courts. We should remember that there was once an attempt to seek an interpretation of the Basic Law from the NPC and it was regarded as a threat to the rule of law. At that time, the barristers took to the streets, dressed in black. Mr KWOK, maybe you should say later whether or not you were in that march. I hope that you were there and I hope you could recall your sentiments at that time. That was the first time, and it was because we were all worried that the rule of law in Hong Kong would be threatened.

What about this time? This time around it is an undisguised attempt to seek an interpretation of the Basic Law from the NPC and it is not a request made by the Government direct. The case this time is strange. The foreign domestic helpers are demanding for the right of abode. But what has this to do with the provisions on the relationship between the Central Authorities and the SAR which I have just mentioned? And what has it got to do with the affairs to be managed by the Central Authorities? There is absolutely none. It is only an attempt to make use of the opportunity to deal also with the issue of "doubly non-permanent resident children". I do not really know what this has to do with the concept of the rule of law. Why can this issue of the right of abode of foreign domestic helpers be added to the issue of "doubly non-permanent resident children", and then it is said that the interpretation is to be made to solve the
problem of "doubly non-permanent resident children"? Mr TAM Yiu-chung has just criticized Mr Dennis KWOK for likening it to a case of someone refusing to drink a toast only be forced to drink a forfeit, that is, exerting pressure on the Court of Final Appeal (CFA). But I think he was really putting the cart before the horse, deliberately misrepresenting. Now who is exerting pressure on the CFA? It is the SAR Government.

How does the SAR Government exert pressure on the CFA? Mr Dennis KWOK has just said that the move is like placing the sword of Damocles over the Judges. What is the Government's move like? It is holding a knife and asking someone to castrate himself or else the Government will do it. The other day we attended a seminar and Prof Johannes CHAN made it very clear that the Government had never given any reply to the question raised by them and that was: If on this occasion the Courts refuse to listen to the Government and do not seek an interpretation of the Basic Law from the NPC, will the SAR Government undertake to respect the judgment handed down by the Courts and will not take the initiative to seek an interpretation of the Basic Law from the NPC? Can the Government give a reply that it will not? If the Government cannot give this reply, I think I can borrow the remark by Prof CHAN and that is, the Government intends to play bad loser. In my own words, it is, "If you do not castrate yourself, I will take the knife on you." Is this the case? Will the Government be willing to state today that if the CFA refuses to seek an interpretation of the Basic Law from the NPC and hears the case itself, will the Government play bad loser? If the Government cannot give a reply to this question, what would it be if it is not exerting pressure on the CFA? What would it be if it is not forcing the CFA to do something?

Moreover, on the question of interpretation of the Basic Law, the speakers in that seminar had explained the case very clearly. They said that many lawyers on the Mainland were questioning whether or not the NPC should have the power to interpret laws. If Hong Kong is still taking such a retrogressive step of defending the power of the NPC to interpret laws, then compared to people in the legal profession on the Mainland, we are even more deplorable. How can we be more backward than the Mainland? Hong Kong claims that the rule of law is a universal value treasured here, but it is disgusting to see that it is taking such a retrogressive step.
Finally, I wish to say that with respect to the amendment from Mr Gary Fan, we would abstain on it. It is because we think that on the question of whether or not to amend the law because of the problem of "doubly non-permanent resident children", *(The buzzer sounded)* …… we should decide on it only after considering the population policy as a whole.

Thank you, President.

**MR ALBERT HO** (in Cantonese): President, as we all know, it is a monumental task to implement "one country, two systems" and it is very hard to gain people's confidence in it. The reason is very simple. It is because the two systems are full of contradictions. One system is under the control of the Central Government and it has a territory stretching 3.6 million sq km while for Hong Kong, it has an area of only 1 000 sq km. The strength between the two is simply beyond comparison. And for the stronger of the two, the one with an area of 3.6 million sq km, what is practised is one-party dictatorship, a collective power system with the so-called "four insistences". And there is no judicial independence as such in it. As for Hong Kong which is the weaker of the two, it does not have democracy. But speaking of the present, we do have separation of powers, and the tradition of the rule of law and judicial independence. Therefore, would it not be very difficult if we want to see these two systems exist together?

Besides, the Central Government which is tasked with the management of this territory of 3.6 million sq km still has a certain measure of the right to govern Hong Kong in the realization of the so-called sovereignty.

As we all know, the idea of "one country, two systems" involves the question of delegation of powers. The Secretary for Justice told us not to worry because there is the Basic Law and there is even Article 31 of the Constitution of the People's Republic of China to protect Hong Kong, and under this delegation of powers, we have the right to "a high degree of autonomy". However, we should know clearly what is meant by this delegation of powers. If we do not understand this idea of delegation, I do not think we can ever discuss the problems before us. Why? Many people have said that if I am a government with a single source of power, when I delegate powers to you, there are still many ways that I can exert control over you. So just do not make any mistakes, or else I can step in. This view is not correct. Why? The design of the Basic
Law as a whole is meant to give Hong Kong complete judicial, executive and legislative powers so that we can practise "a high degree of autonomy". It is within this scope of "a high degree of autonomy" that the powers we exercise are complete and exclusive. If you can meddle with affairs within the scope of "a high degree of autonomy", then the idea would only exist no more than in name. What more can be said about it? You can point a finger at me today and say I am wrong and you can do the same the next day and say I am wrong. So it is very important to make ourselves clear about this concept. This concept does not mean giving powers to another person like what is being done under the word "delegation". It is a transfer of powers in full, and in the sense of "devolution of powers" found in the constitutions of foreign countries.

We can take a look at Article 158 of the Basic Law, which is clear enough. Let us give an example. In section 1, that is, Article 158(1), it is about the source of power. This is, of course, the Standing Committee of the NPC (NPCSC) and this is provided in the Constitution. Section 2 is on delegation and this separates affairs within the scope of "a high degree of autonomy" from national defence, foreign affairs and those matters of the Central Authorities. And we are given power under "a high degree of autonomy". Section 3 is about our exercise of this power under our judicial system, and if it is something falling within the scope of power of the Central Authorities, what procedures are there for us to submit a request to the Central Authorities so that they can exercise their duties and powers. This is actually very clear and the relevant system is expressly stipulated. Therefore, if we exercise the power under Article 158, I do not think we should have too many worries. On the interpretation of the Basic Law on the four past occasions, the case of the Republic of Congo is less controversial and it is about the immunity of a sovereign state. It is because the relevant power is exercised pursuant to Article 158. Although we are somewhat unhappy about the result and we think it seems that the interpretation made is too broad, this is still all right. So even if there are disputes, I do not think the controversy is too serious.

However, the interpretation of the Basic Law on the other three occasions is way over board. The first was made in 1999 when the Government lost a case about the right of abode in the CFA. At that time the Government did not submit a request to the NPC for an interpretation of the Basic Law and it was the NPCSC which took the initiative to interpret the Basic Law subsequently. Article 158 does not provide for such a delegation of powers and the SAR Government permitted the NPC to interpret the Basic Law on its own and
subsequently quashed the decision made by the CFA. Although it cannot be said that the decision of the Court was affected in any way, it has overridden the precedent set. It is not correct for the Government to resort to taking such a move after it has lost a court case. The result is that in 1999 when I went to Geneva, a member of the Human Rights Committee of the United Nations asked me whether or not Hong Kong still had any power of final appeal. So we are all worried about this. In this case, the Government appealed to a political body to override a decision made by the Judiciary.

On the second occasion, the most outrageous thing is that the power to interpret the Basic Law was used in the issue of constitutional reform. All the people in Hong Kong were unaware of this and they did not know what was going on. The move was made without going through the due process and there was no procedural justice whatsoever. We were not given an explanation on the basis of what written text the step was taken and why the so-called three-step procedure was changed into a five-step procedure. We knew nothing about it. There was no consultation beforehand and no one was able to make any submission on the matter and once the decision was announced, everybody in Hong Kong had to follow and it was like a stone placed on our head.

The third occasion on which an interpretation was made of the Basic Law was on the powers of the Chief Executive and his term of office, and an explanation was given on what was meant by a residual term of office. At that time, the case was being heard in the Court, and I recall Mr Albert CHAN had filed a judicial review. But what they did was to interpret the Basic Law at their own initiative at the time when legal proceedings were going on. In other words, they did not exercise any self-restraint whatsoever. They can resort to making an interpretation of the Basic Law at any time and irrespective of whether there may be a court case or what legal proceedings are going on or after the legal proceedings are complete. Can we not have worries when the right to interpret the Basic Law is exercised in such a manner? What is more, the result of their interpretation carries a retrospective effect. This retrospective effect does apply even if the rights of some people as decided in a court case cannot be influenced in any way and all the people who are not involved in that particular court case are affected. This is a very important point.

Moreover, if the Secretary for Justice acts on the strength of Article 24 to seek an interpretation on this occasion, I am sure all the people in Hong Kong
will be flabbergasted. Fortunately, and I hope I have heard it right, that you have said that it has nothing to do with Article 24. I do not know what you think should this be about. It is because Article 24 states very clearly that this is something within Hong Kong's autonomy and we can decide by ourselves exclusively, that is, this can be decided by our CFA. This is therefore a very important point.

The question which now remains is: Secretary for Justice, why do you want an interpretation of the Basic Law from the NPC? Can you tell us about it? It is because your decision may affect many people as it has retrospective effect and all the people in Hong Kong will be affected. In this connection, why can we not hold some discussions about it beforehand? You should remember that all the parties which are not directly involved in the interpretation are all unaware of what is going on. The procedure is not of judicial in nature, nor is it of a legislative nature. Then what kind of procedure is this? This is a political procedure. So we are very worried. If we act solemnly according to the procedure as provided in Article 158, I am sure we will not be as worried as we are now. Therefore, when Mr TAM Yiu-chung was criticizing Mr Dennis KWOK and also other Members earlier on, he did not know what he was doing. He was actually perpetuating a mistake and he practically did not know what was meant by the rule of law. I hope he can go home and learn more about it.

MR RONNY TONG (in Cantonese): President, once upon a time, there were two good friends and let me call them A and B. One day, they met up again and A said, "Recently, I went to India and saw a very strange animal called an elephant. It has a long trunk and two very big ears.". B said, "I don't think you are right. I have also been to India and seen an elephant. It has two very large ears and a long trunk.". They began to argue over this and in the end, they said they should perhaps go to India together to see if what they talked about was actually the same thing. So, A and B went to India and found an elephant. A said, "You see, as I said, it has a long trunk and two very big ears.". However, B said, "Have you put it wrong? It is just as I described it. It has two very large ears and a long trunk.". The two had a fight on account of this and in the end, both sides suffered and from then on, they fell out with each other.

We may also lose the "one country, two systems" principle for the same reason because I have read the amendments proposed by many Honourable
colleagues. I found them very strange. What does "…… in accordance with the principle of 'one country, two systems' and the provisions of the Basic Law, to uphold the rule of law ……" mean? What is the difference? Just now, I listened very carefully to the speech delivered by Ir Dr LO Wai-kwok and in fact, we are all talking about things that are as simple as "mother is a woman", only that one Member said that the trunk of an elephant was more important and that the two ears were not important, while another Member said that the two ears were more important but the trunk was not, so is this not a very childish dispute? In fact, ultimately, "one country" has to respect "two systems" and "two systems" also has to respect "one country". Whoever says that "one country" or "two systems" is more important and has the intention of playing down the importance of the other half is actually destroying "one country, two systems" because ultimately, if both sides insist on their views, with one side saying that "one country" is more important and the other saying that "two systems" is more important, the principle of "one country, two systems" would be so seriously undermined that nothing would be left of it ultimately.

President, the story told by me actually does not bear any relevance to the motion today. In principle, the rule of law is the rule of law and if there is the principle of "one country, two systems", of course, there should be the rule of law. Even if there is no "one country, two systems", there should still be the rule of law. There is the rule of law even on the Mainland, but whether or not it can really be realized is perhaps something that we should not comment in this legislature. But this does not have any relationship with the "one country, two systems" either. In that case, what do we actually want to discuss today? President, I think that Mr Dennis KWOK proposed this motion because of his personal feeling. Although he is very reserved and there is no mention of the fact that recently, the Secretary for Justice, Mr Rimsky YUEN, made a request to seek an interpretation of the Basic Law by the NPC, we all know what we are talking about.

In fact, the rule of law is perhaps the most important aspect. Not only should everyone be equal, the Government also has to be restricted and bound by the law. This is perhaps the most important aspect of the rule of law in society nowadays and also the cornerstone of all democratic and free societies. If the Government does not accept the law and circumvents the basic requirements or principles of the law for the sake of political expediency, such a Government is undermining the rule of law. An interpretation of the Basic Law would not
undermine the rule of law *per se* because the interpretation of the Basic Law is stipulated in the Basic Law. Since the Basic Law is the mini constitution of Hong Kong, it is part of our law, so we do not have to worry about the rule of law being undermined. However, if someone uses the interpretation of the Basic Law to achieve political ends, this would undermine the rule of law.

After the reunification, a prime example of someone undermining the rule of law was TUNG Chee-hwa. I remember this very clearly, President. Back then, when an appeal was lodged in the CFA in relation to the NG Ka-ling case, the then Chief Justice, Mr Andrew LI, asked Mr Geoffrey MA, who represented the Government, if it was necessary to request an interpretation of the Basic Law and Mr Geoffrey MA replied in the negative because he thought the Government would surely win but in the end, the Government lost the case. Subsequently, on returning from Europe, the very first thing TUNG Chee-hwa said upon getting off the plane was that the ruling would be highly detrimental to Hong Kong, that we would not be able to bear the consequences because 1.6 million people would flock to Hong Kong. Of course, this has been proven to be a political lie. History has already proven this. The biggest damage to the rule of law is the Government behaving like a bad loser. When it loses, it would seek an interpretation of the Basic Law, in total disregard of the stipulations in Article 158 of the Basic Law.

President, what is happening now looks all too familiar. The issue at stake is the tens of thousands of children whose parents are both non-Hong Kong residents and who flock to Hong Kong to compete for formula powder, school places and welfare payments. I do not know if this is a political lie but the situation this time around is even worse than that of seeking an interpretation of the Basic Law over the NG Ka-ling case. Why? In the NG Ka-ling case, at least, Article 22 of the Basic Law was mentioned and it has to do with the relations between China and Hong Kong. However, what is the case on which an interpretation of the Basic Law is sought about now? It has to do with foreign domestic helpers, so what relationship does this have with the China-Hong Kong relations, President? If there is no relationship, why do we have to overturn the CHONG Fung-yuen case for political ends and go on to request an interpretation of the Basic Law? Why does the Government have to do this? If the Government is not undermining the rule of law, what is it doing? Not only is it undermining the rule of law, it is also undermining "one country, two systems" because this would create great division among many people on
whether "one country" or "two systems" is more important under the "one country, two systems" principle and such allegations have very far-reaching implications.

I hope Secretary Rimsky YUEN can think twice and ask the Government to withdraw the request for an interpretation of the Basic Law.

MR FRANKIE YICK (in Cantonese): President, "one country, two systems" is a direction and policy formulated by the Central Authorities for the Hong Kong SAR and is also the core spirit of the Basic Law. The most important core values of Hong Kong, including the rule of law, the legal system and judicial independence mentioned in this motion today, are all indispensable elements of the "one country, two systems" principle. Once these core values are lost, the prosperity and stability of Hong Kong, and even our present way of life, which enables us to live in peace and work with contentment, will all lose their foundation.

For example, since Hong Kong is an international city and one of the global financial centres and shipping hubs, without a fair and just legal system, the Courts would not be able to uphold their independence and litigations would not be dealt with fairly, so the confidence of the international business community in making investments in Hong Kong could be wiped out completely at any time. Needless to say, in that event, the public's way of life and freedom cannot be guaranteed and they would also lose their confidence in Hong Kong's future, so the implications are very great.

For this reason, the Liberal Party absolutely supports upholding the "one country, two systems" principle and attaches great importance to defending the core values of Hong Kong people, including the rule of law, the legal system and judicial independence.

Although the original motion moved by Mr Dennis KWOK and the amendments proposed by Ir Dr LO Wai-kwok, Mr IP Kwok-him and Mr TAM Yiu-chung respectively are slightly different in their thrust, the main drift is to support "one country, two systems" and defend the rule of law and judicial independence, so we support all of them.
However, Mr Gary FAN's amendment says from the outset that "the
Government should not seek an interpretation of the Basic Law, but should seek
an amendment to the Basic Law" to resolve the problem of babies born in Hong
Kong to "doubly non-permanent resident pregnant women" having the right of
abode in Hong Kong. We cannot agree with this point.

The Liberal Party believes that while an interpretation of the Basic Law
should certainly be avoided as far as possible, amendment of the Basic Law is
also a very important matter that should be considered as the last resort. The
Basic Law is the mini constitution of the Hong Kong SAR. If an interpretation
of the Basic Law is sought too easily and as a result, the law is changed
constantly, this would cause instability, which is not desirable.

The issue of babies born in Hong Kong to "doubly non-permanent resident
pregnant women" having the right of abode in Hong Kong can actually be traced
to the fact that the ruling on the CHONG Fung-yuen case back then was
inconsistent with the interpretation of the Basic Law made by the NPC. We
certainly hope that this issue can be resolved through Hong Kong's judicial
system and process. Recently, on a case relating to the right of abode of foreign
domestic helpers, the Secretary for Justice requested the CFA to consider seeking
clarification from the NPCSC on the effect of the interpretation made in 1999 on
the provisions relating to the right of abode in the Basic Law. Even Mr Justice
Kemal BOKHARY, a non-permanent judge of the CFA who is worried that a
storm may be imminent for the administration of justice in Hong Kong, also said
that the Secretary for Justice had lodged the application according to legal
procedures, so on the whole, he had great confidence in the rule of law in Hong
Kong.

The public still have to wait patiently for some time to see what the
outcome of the action taken by the Secretary for Justice this time around will be.
No matter how, the Liberal Party believes that the spirit of judicial independence
in Hong Kong must be respected. Although this time around, the Government's
move has drawn the suspicion that it is tantamount to seeking an interpretation of
the Basic Law from the NPC indirectly, in the final analysis, the decision still
rests with the CFA, so we do not think that this is totally unacceptable.
President, for the foregoing reasons, we oppose Mr Gary FAN's amendment.

I so submit. Thank you, President.

MR NG LEUNG-SING (in Cantonese): President, the Basic Law of the Hong Kong SAR was enacted in accordance with the Constitution of the People's Republic of China, in particular, Article 31 on "one country, two systems". As regards the specific policy basis for the formulation of the Basic Law, it came from the basic direction and policy of our country on Hong Kong as found in the Sino-British Joint Declaration and Annex I therein, with reference also to the actual circumstances in Hong Kong. On the relation between the SAR and the Central Authorities, Hong Kong is vested with executive, legislative and independent judicial powers, including that of final adjudication. Hong Kong has maintained its social and economic systems and its previous laws have basically remained unchanged. Of course, society is progressive, so the law and economic development have to adapt to each other and they should also keep abreast of the times. This is the case with the amendments made by this Council to such laws as the Companies Ordinance and the Banking Ordinance recently. The driving force to amend various laws in Hong Kong comes from Hong Kong's needs in economic development and it is necessary for Hong Kong to deal with them on its own, rather than waiting for the Central Government to make such requests.

Since the reunification, the rule of law, the legal system and judicial independence in Hong Kong have not experienced any change. Therefore, I think the three words "continue to uphold" found in one of the amendments are quite appropriate. This reflects the fact that the status quo has not experienced any change, nor is there any need to change it and that it is only necessary to continue in the original direction.

When the Secretary for Justice was interviewed by the press early this month, he said that criticisms were often voiced concerning the influence of the Chinese Government on judicial independence in Hong Kong, but he believed that Mainland China had always been helping to uphold and promote the rule of law. He also cited an example for illustration: The Hague Conference on Private International Law is a global inter-government organization striving to promote
international justice. Earlier on, it was able to establish its first Asia Pacific Regional Office in Hong Kong solely because the Central Government endorsed the discussions on the Host Country Agreement.

This time around, what arouses the concern of some members of the legal profession is the request made by the Secretary for Justice to the CFA to seek clarification from the NPC on the right of abode issue involving foreign domestic helpers and babies born in Hong Kong to "doubly non-permanent resident pregnant women" having the right of abode in Hong Kong. They believe that the Government does not respect the Court. The thinking of some people is understandable, but it is more appropriate to address the entire incident squarely and pragmatically by seeking appropriate solutions to social problems. Moreover, it is necessary to eliminate the differences and influence arising from political beliefs by all means. First, these issues are legal issues that cannot be dealt with through administrative approaches but must be resolved at root through channels in law. In addition, these problems were created by the rulings of the Court, so it is reasonable to find solutions to them through judicial channels.

Moreover, according to Article 158 in Chapter VIII of the Basic Law, the power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPCSC). The CFA may request the NPCSC to explain some provisions. Of the four occasions on which interpretations of the Basic Law were made after the reunification, on one occasion, it was the NPCSC that took the initiative to give an interpretation of the Basic Law. On two occasions, it was the Chief Executive who made the request and the most recent occasion was in June 2012, when the CFA in Hong Kong took the initiative to seek an interpretation of the Basic Law by the NPCSC regarding some doubts in the Congo Case. On these four occasions when interpretations of the Basic Law were made, it was possible to clarify the doubts and pre-empt unnecessary arguments, so this is obviously beneficial to society as a whole.

Would an interpretation of the Basic Law cause the so-called damages to the rule of law in Hong Kong? As a legal expert and academic specializing in studying this area, Prof Albert CHEN said that the last four occasions of interpreting the Basic Law all focused on specific cases, so the Courts, the legal system or the operation of common law in Hong Kong are not directly or adversely affected. Therefore, I believe the claim that interpretations of the Basic Law would impact on the rule of law in Hong Kong does not hold water.
In contrast, through interpretations of the Basic Law, future difficulties in Hong Kong society can be resolved, so it is indeed true that the interpretations of the Basic Law were made for the sake of the public, moves made on heeding sound advice.

President, I so submit.

MR CHARLES PETER MOK (in Cantonese): President, I think the motion on "Safeguarding the rule of law and judicial independence" moved by Mr Dennis KWOK is terrific because the wording of the motion is very to the point, using just some 20 words to spell out Hong Kong's greatest competitive edge. Now, I will read this golden saying out again, "…… to uphold 'one country, two systems', and safeguard the rule of law, the legal system and judicial independence in Hong Kong.".

President, on judicial independence and the rule of law, although I am not a lawyer, I have also operated and provided professional services before, so I am fully aware of the importance of the rule of law and judicial independence. I have also been involved in lawsuits and have come into contact with courts at various levels before, so all along, I have great confidence in the rule of law and judicial independence in Hong Kong. However, recently, the comments made by a number of people and the Government's actions have created unprecedented impact on judicial independence and the rule of law in Hong Kong and affected our confidence in them. Members can imagine this: In the future, if we have to take a matter to court but have doubts about the fairness and independence of the Court, the consequences would just be too dire to imagine.

In fact, what does the rule of law mean? While the English term is "the rule of law", in Chinese, we often say "法治精神" (the spirit of the rule of law), so it can be seen that the rule of law is actually a kind of spirit. This is often confused with "rule by law". Some people would consider rule by law as the rule of law but in fact, it is only "rule according to the law". No matter how the laws of a country are formulated and be it the laws of the Qing Dynasty prescribed by the Emperor, the national laws of such countries without democracy as China or the laws of other totalitarian states, even though these places are also ruled in accordance with laws, which are very harsh for that matter or are not even followed in some cases, this is certainly not the rule of law as we know it.
"Rule by law" has to do with law enforcement by the Government but "the rule of law" is the spirit that transcends the law. It does not merely require that the law be followed but counterbalances the power of "rule by law". In other words, the "rule of law" is designed to counterbalance "rule by law" to prevent abuse of power by the Government and arbitrary interpretation of the law by the Government. From this perspective, the rule of law overrides rule by law. Disobeying laws that allow the Government to abuse its power or those that are unjust does not necessarily amount to undermining the rule of law because even though we have to respect the rule of law, there is still room for civil disobedience. Otherwise, the revolutionaries of our country and the founders of the Republic could also be accused of opposing the rule of law. However, this is not the fact. They only opposed the unjust rule by law of the country.

President, therefore, the rule of law is the most important spirit with which society can safeguard "one country, two systems" and if this spirit is lost, only the "corporeal" legal provisions would remain. If we subsequently interpret the laws frequently or discuss with judges how to rule on a case, thus going on to destroy the "corporeal" legal provisions, this would be total disregard of the rule of law. In the face of a storm, we definitely cannot say, "The body is very strong and can pull through.". President, I am afraid "one country, two systems", the rule of law and judicial independence in Hong Kong will not be able to withstand it.

President, earlier on, I also said that the rule of law and judicial independence are very important to Hong Kong, and this is also definitely the case in respect of economic development. Each time I talk about the strengths of Hong Kong's business environment to business communities overseas or even to friends from the Mainland, or when we listen to the presentations on Hong Kong made by Invest Hong Kong to overseas companies, the rule of law situation in Hong Kong would always be mentioned. In the information technology sector to which I belong, in recent years, many companies have established data centres in Hong Kong and this is also attributable to the protection of intellectual properties and the privacy of personal data by our legal system, which ensures the flow of information and the freedom of speech, so that highly efficient matching facilities and services are available and a positive and effective business environment can be provided in Hong Kong.
In the free economy in Hong Kong, many people actually have great respect for the modern economist Friedrich AUGUST von HAYEK. How does HAYEK look at the relationship between the rule of law and the free market? He proposed that under the rule of law individuals would be able to make wise investments and future plans with some confidence in a successful return on investment. He said, "Within the known rules of the game the individual is free to pursue his personal ends and desires, certain that the powers of government will not be used deliberately to frustrate his efforts.".

President, this is the clearest statement on the relationship between the rule of law and economic benefits. I wish to tell a number of Members from the business sector and functional constituencies, regardless of they are in the Chamber or not, that undermining the rule of law and judicial independence in Hong Kong is to hurt Hong Kong's economy. HAYEK defined the rule of law as the opposite of "arbitrary government", that is, the opposite of arbitrary dictatorial governments. What is meant by arbitrary dictatorial governments? That means the Executive Council that has been unable to examine and approve the application for a free-to-air television licence in accordance with the law for a long time and the Government that disregards the judicial independence of Hong Kong by seeking an interpretation of the Basic Law by the Central Authorities. Without spelling out all such instances, the adverse consequences of the rule of law and judicial independence being undermined gradually and Hong Kong's international image in terms of the rule of law going downhill gradually are evident.

President, it is said that "golden melodies are worth listening to a thousand times and golden sayings are worth reading a thousand times". I believe we have to read out this motion moved by Mr Dennis KWOK aloud frequently and students should also read it out aloud in their Liberal Studies lessons from time to time, "Uphold 'one country, two systems', and safeguard the rule of law, the legal system and judicial independence in Hong Kong.".

"Uphold 'one country, two systems', and safeguard the rule of law, the legal system and judicial independence in Hong Kong.". President, with these remarks, I support the motion moved by Mr Dennis KWOK.

DR KENNETH CHAN (in Cantonese): President, all people know how to talk about the rule of law and all people would say that they support and defend the
rule of law. Having heard many Honourable colleagues speak in the legislature earlier today, if we do not make a careful analysis, we would get the impression that the legislature in Hong Kong is quite good because it seems Members from all parties and groupings share the very strong consensus that the rule of law and judicial independence are the cornerstones and core values on which Hong Kong's success is limit, so we must defend, protect and further them.

However, if we think and analyse them more carefully, it seems this is not the case. It seems the thrust of some comments is that so long as legislation has been enacted, one trusts those in power in their understanding of the laws formulated by them, all would be well; that it would do to trust the people holding public offices in the executive because they know what they are doing and that whatever they do is for the good of all people.

Therefore, I think some of the views were most puzzling. For example, it was said that under "one country, two systems", there is an organ called the National People's Congress (NPC) above us. However, they fell short of presenting a proper analysis of what kind of organ the NPC actually is. What is the composition of this highest power organ of the State, how does it function, is it representative and in the final analysis, what kind of power organ is it actually?

President, I believe you also have a good idea of the strong feelings of the public about the situation of lawlessness on the Mainland. In the past, many people who are now Hong Kong permanent residents swam to or sought refuge in Hong Kong in order to escape from the political struggles and disasters. It can be said that we all have a vivid memory and indelible impression of "one party dictatorship", "one party dominance" and "speech crime prosecution", as well as the sacrifices made and prices paid in various political struggles.

Therefore, Hong Kong people, in implementing "a high degree of autonomy" under the guarantee of "one country, two systems", also hope that genuine governance of Hong Kong under democracy can be seen as soon as possible, so to debate the rule of law and judicial independence here has acquired a special historical and constitutional significance. In emphasizing the rule of law and judicial independence in Hong Kong, we are not just doing so for the sake of Hong Kong but also thinking about China's development as a whole. Apart from hoping that the rule of law and judicial independence can continue to develop in Hong Kong, it is also hoped that the Chinese people can also enjoy the rule of law and judicial independence. Without the rule of law, central and
regional officials with power and financial might can intervene in Hong Kong affairs at will, even though they would not say so explicitly. As ZHANG Xiaoming said today, "Western District" would not run Hong Kong. Although he said so, it is up to you to decide whether or not you believe in this.

Without judicial independence, the executive will not be subject to any checks and balances and can do whatever it wants. The Chief Executive ordained by the Central Authorities can also impose his will as the superior and rule Hong Kong autocratically. Through a lot of unnecessary and unreasonable policies, he can cause interference and effect manipulation in Hong Kong.

The rule of law is also a pillar of the Hong Kong economy, a fact that we all know how to talk about and should bear in mind. Without the rule of law, a lot of commercial and economic activities would have no basis and it can even be said that in that event, it would be more preferable to know people then to know the law. Investors would lose the incentive to make investments in Hong Kong and some commentaries even say that without the rule of law, Hong Kong would degenerate into an ordinary Chinese city. Members can try to appreciate this kind of mood and sentiment. This exactly serves to remind us that without the rule of law and judicial independence, Hong Kong would no longer be a fair, just and open society. In that event, the speech crime prosecution and wanton suppression mentioned by Honourable colleagues just now would occur and even Hong Kong versions of LIU Xiaobo, LIU Xia and AI Weiwei would be seen. Without the rule of law, Hong Kong may become even more corrupt and decadent.

Perhaps Members already have a deep feeling of what sort of battering the rule of law has been subjected to in the past few months, and perhaps since the reunification. Recently, Elsie LEUNG made some comments and the slow reaction and response of the Government have disappointed many friends in the academic circle and the public who care a great deal about the rule of law and judicial independence in Hong Kong. This is not just a matter of the freedom of speech. We all know clearly the capacity of Elsie LEUNG. As a senior and important member of the Basic Law Committee, she did not even try to avoid suspicion in any way and criticized the judges in Hong Kong, so does anyone mean that this is still acceptable? The Government did not even bother to say anything for the Judges in Hong Kong, so what does this mean? The officials who should be accountable for this matter and defend the rule of law and judicial independence in Hong Kong are even absent at such an important time, so the
impression one gets is that they are being deliberately evasive and shying away from the challenges.

The Secretary for Justice was charged with conducting a study on how to deal with the problem of children born in Hong Kong to doubly non-permanent residents through legal channels but in the end, it turned out that the conclusion to seek an interpretation of the Basic Law and assistance from the NPC was reached. The interpretations of the Basic Law on several occasions in the past also battered judicial independence in Hong Kong, but the Secretary for Justice has gone so far as to put forward this proposal that I consider to be outrageous again.

For this reason, I do not understand why Mr IP Kwok-him used the word "continue" in his amendment. On what ground does he think that our Government — sorry, let me correct myself as this is not "our Government" — on what ground does he think that this small-circle Government has already tried its best to defend the rule of law and judicial independence? Or do Mr IP Kwok-him, the political party that he represents or the Members supporting his amendment all think that there is no need to protect the rule of law and judicial independence at all?

Ir Dr LO Wai-kwok's amendment is even more puzzling to me. He added words like "in accordance with the principle of 'one country, two systems' and the provisions of the Basic Law" to the original motion, said a great deal in his speech to present the importance of the NPC and the political system on the Mainland to Members and even educate them about this. I teach political science and international relations and I still teach in university, so of course, I understand the political situation and the actual situation on the Mainland. It is that of not following the law despite its existence, the law being tantamount to non-existent, using the law as a tool to suppress enemies and the law being applied inconsistently.

The rule of law in Hong Kong is meant to ensure that each Hong Kong resident can continue to enjoy dignity. The rule of law and judicial independence in Hong Kong are meant to enable Hong Kong to "stand firm" in its position on "one country, two systems", so that it can continue to make the contribution that it should be able to make (The buzzer sounded) ……
PRESIDENT (in Cantonese): Dr CHAN, your speaking time is up.

DR KENNETH CHAN (in Cantonese): I so submit. Thank you, President.

MR JEFFREY LAM (in Cantonese): President, during the past 15 years since the reunification of Hong Kong with the Motherland, society has remained stable with its overall development moving forward steadily despite a lot of ups and downs as well as hardships. All this is attributed to the successful implementation of the principles of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", as well as the concerted efforts made by the Government and members of the public. What is more, we owe this to our stable and balanced system.

President, Hong Kong can be compared to a small ship sailing in a stormy sea. In addition to its sound structure and quality, we must have a good captain and passengers who are prepared to make concerted efforts and, what is more, a sailing guide to pilot our direction and management of the ship. For us, this guide is the Basic Law of the Hong Kong SAR of the People's Republic of China.

Under the Basic Law, "one country, two systems" is the basic policy of the People's Republic of China regarding Hong Kong. The Basic Law, which was enacted by the National People's Congress (NPC), prescribes the systems to be practised in the Hong Kong SAR, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong.

It is clear that the implementation of the policy of "one country, two systems" has to be safeguarded by the Basic Law and is protected by it. Our executive, legislative and judicial systems, which are protected by the Basic Law, transcend its scope.

President, Article 11 in Chapter I of the Basic Law reads, "In accordance with Article 31 of the Constitution of the People's Republic of China, the systems and policies practised in the Hong Kong Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of this Law.".
Hence, although we agree with the wordings of the original motion, which read, "…… urges the Government to uphold 'one country, two systems', and safeguard the rule of law, the legal system and judicial independence in Hong Kong", the role and status of the Basic Law are equally important.

President, the Basic Law is the cornerstone of our success. Our rule of law, legal system and judicial independence are protected by the Basic Law which is respected and strictly enforced by both the Central and SAR Governments. Meanwhile, the power of interpretation of the Basic Law is vested in the Standing Committee of the National People's Congress (NPCSC). My interpretation is that the power of implementation of "one country, two systems" and a "high degree of autonomy" is conferred by the NPC under the Basic Law, too.

On this basis, Hong Kong's "high degree of autonomy" and its upholding of judicial independence have always been taken seriously. However, we can also see that some people in society place their own concept and interpretation of judicial independence above the Basic Law. Some people even think that the relationship between the Central Authorities and Hong Kong is confined to national defence and diplomatic affairs only, and under no circumstances can the Central Authorities interfere in the affairs of the SAR. What are the ulterior motives of these views? I do not wish to make any speculation, but I think that these interpretations and views are not in line with the principle of "one country, two systems".

President, there has been a change in social atmosphere in recent years, with many simple matters being politicized. In fact, members of the public can express their different views and expectations on Hong Kong's development and the administration of the Government through different channels and means. However, some people have often abused judicial proceedings in recent years to impede the administration of the Government.

Recently, there have been media reports about the Department of Justice (DoJ) having requested the CFA to seek an interpretation of the Basic Law by the NPCSC in respect of a lawsuit on the right of abode of foreign domestic helpers. Firstly, it is unfair and undesirable for some people to leak to the media information about a case pending legal proceedings. Secondly, the DoJ is one of the litigants, and it has been a long-standing practice for both sides to the
proceedings to state their arguments and express their own views in court. So, are acts of stating arguments in court now deemed as acts of pressurizing the Court?

Furthermore, some people often stress the importance of upholding judicial independence and repeatedly say that comments should not be made on cases which have commenced legal proceedings. However, they have chosen to criticize the DoJ for exerting pressure in this incident and expressed fears that the Chief Justice might not stand the pressure. May I ask who wishes to make use of public opinion to pressurize the CFA?

President, we have always respected judicial independence and are grateful to our judicial system for creating a fair social environment for us. While urging the Government to continue to safeguard the rule of law, we also wish to call on certain people in society not to adopt double standards and play bad loser.

President, I so submit.

MR WONG YUK-MAN (in Cantonese): President, it is the responsibility of Mr Dennis KWOK as a representative of the Legal Functional Constituency to propose this motion debate today on "Safeguarding the rule of law and judicial independence". As opposition Members, we certainly have to support this motion, though it is just mere talk.

President, as Hong Kong is under the indirect rule of the totalitarian Communist Party of China (CPC), a rule of law system whereby human rights are protected and liberties, especially judicial independence, are upheld will certainly continue to fade in the law of physics. It is common sense that there will be no rule of law as long as the CPC lives. In the 1980s of the last century, when one of the Eight Elders of the CPC, PENG Zhen, was asked whether the Party or the law was superior, his answer was, "Even I am not sure! (Putonghua)". WU Bangguo, the incumbent President of the NPCSC, has even admitted in his working report to this effect, "All of our laws and regulations were drawn up under the leadership of the Party, and they must be conducive to enhancing and improving its leadership as well as consolidating and perfecting its ruling position (Putonghua)".


Upholding the spirit that the Party is superior to the law, Mr Rimsky YUEN, the incumbent Secretary for Justice under the communist power in Hong Kong but once a member of the Guangdong committee of the Chinese People's Political Consultative Conference — though I do not know whether he remains so today — proposed to the CFA last month that, in order to resolve the problem involving babies born in Hong Kong to "doubly non-permanent resident parents", the NPC should be requested to clarify whether the remark that the report compiled by the Preparatory Committee for the Hong Kong Special Administrative Region (SAR) reflected the legislative intent of the Basic Law should be regarded as part of the interpretation of the Basic Law when an interpretation was made for the first time in 1999 in respect of the case of NG Ka-ling.

The interpretation of the Basic Law is an act of atrocity by the Communist Party and the communist power in the Hong Kong SAR to infringe upon judicial independence in Hong Kong. Everything was forced through right from the very beginning. In 1999, the Chief Executive in Council circumvented the CFA in contravention of Article 158 of the Basic Law to seek an interpretation of the Basic Law by the NPCSC; in 2004, the NPCSC took the initiative to interpret Annexes I and II to the Basic Law; and in 2005, the then Acting Chief Executive, Donald TSANG, requested the NPCSC for yet another interpretation of the Basic Law. There was dispute within the CFA prior to the fourth interpretation of the Basic Law in 2011.

President, I would like to cite this passage to the President, the Secretary for Justice and Members who remain here — a quorum is lacking in this Chamber, "During the proceedings for a case involving "illegal children" which was completed at the CFA in the Hong Kong SAR yesterday, a clear ruling was made in respect of the right of abode (ROA) of Mainland children born to Hong Kong residents …… meanwhile, Chief Justice Andrew LI of the CFA pointed this out in his judgment: There is no need for the SAR Government to seek an interpretation of the relevant provision of the Basic Law from the NPCSC. The courts in Hong Kong have the power to interpret the laws of Hong Kong, and it is in line with the principles of "one country, two systems" and a "high degree of autonomy to do so". Only provisions involving affairs managed by the Central Authorities and affecting the adjudication of cases are required to be handed to the NPCSC for an interpretation. Undoubtedly, the ruling made yesterday by the CFA in respect of the ROA of Mainland children born to Hong Kong residents is a full manifestation of the exercise of the power of final adjudication
in Hong Kong in accordance with the relevant provisions of the Basic Law under the spirit of "one country, two systems", "Hong Kong people ruling Hong Kong" and a "high degree of autonomy", as well as a display of the spirit of judicial independence of the highest degree.”.

(THE PRESIDENT'S DEPUTY, MR ANDREW LEUNG, took the Chair)

Let me cite another one, "The outcome of the ruling is in line with the spirit of "one country, two systems" and not in contravention of the relevant provision of the Basic Law. According to Article 24 of Chapter III of the Basic Law on Fundamental Rights and Duties of the Residents, persons of Chinese nationality born outside Hong Kong of Chinese residents of the Hong Kong SAR are Hong Kong permanent residents, and they shall have the ROA in the Hong Kong SAR and are qualified to obtain, in accordance with the laws of the Hong Kong SAR, permanent identity cards. The final ruling was made by the CFA in exercise of its power to interpret the relevant provision of the Basic Law. The determination demonstrated by the CFA in exercising its power, upholding the rights and interests of Hong Kong people and its manifestation of the principle of final adjudication and the spirit of judicial independence are unanimously welcomed and regarded highly by Hong Kong people. The relevant CFA ruling has enhanced the understanding of Hong Kong people of "one country, two systems", a "high degree of autonomy" and the principle of abiding by the Basic Law as well as their determination. It also represents a test as well as a breakthrough for the SAR Government since its establishment, and the consequences are positive.”.

Deputy President, I took the trouble to cite this passage for it is extracted from the editorial dated 30 January 1999 of the Ta Kung Pao, a mouthpiece for the CPC in Hong Kong. Has Secretary for Justice Rimsky YUEN ever read it? If you have read it …… it has never been cited by those barristers — I have often mentioned it, only that you did not take notice of it.

Despite a final ruling was made by the CFA on the ROA issue on 29 January 1999, the SAR Government did not act accordingly, but instead sought assistance from "Grandpa" to interpret the Basic Law. On the following day, however, the CFA ruling was highly praised by the editorial of the Ta Kung Pao. Have Mr Jeffrey LAM and all pro-establishment Members who have been
talking nonsense here today heard clearly the passage cited by me just now? The Legislative Council must put it down on record. It is nothing like a speech delivered by a barrister. It is indeed much better. Buddy, am I right? What does it show? It shows that, according to our understanding, the ruling made by the CFA was absolutely compatible with the provisions of the Basic Law, but the ensuing interpretation of the Basic Law was irrational.

Now you even dare to act so impudently and shamelessly! Do you think you can make such irresponsible remarks here? Who are you, Rimsky YUEN, to make irresponsible remarks here? The CFA has its own independent thinking to decide whether an interpretation from the NPC is required, right? How dare you voice your points here? I have to strongly condemn you here!

Deputy President, I so submit.

MS EMILY LAU (in Cantonese): Deputy President, I speak in support of Mr Dennis KWOK's motion to urge the Government to uphold "one country, two systems" and safeguard the rule of law, the legal system and judicial independence in Hong Kong.

Deputy President, after hearing the speeches delivered by a number of Members, including those from the business sector, Members should clearly understand that the rule of law is most crucial to social prosperity. One of the reasons for many overseas and local investors to do business in Hong Kong is that we have an independent judicial system. Whenever disputes arise, they may seek arbitration in court or by other means to deal with their disputes. Hong Kong people are keenly concerned about this because an independent judicial system can safeguard their human rights.

Deputy President, the United Nations Commission on Human Rights will convene a hearing in March on the implementation of the International Covenant on Civil and Political Rights in Hong Kong. I believe representatives of the Secretary for Justice — though he might not attend the hearing in person — or other departments will attend the hearing. Deputy President, as such a major consensus has been reached in this respect, I hope today's motion debate will not end up accomplishing nothing, or else the message thus conveyed will be very bad.
Although I heard some Members express support for Mr KWOK's motion earlier, the result can only be known when votes have been cast. Just now, a couple of Members mentioned the remarks made by the former Secretary for Justice, Ms Elsie LEUNG, who criticized Judges earlier for failing to understand the relationship between China and Hong Kong and, what is more, believed that an interpretation of the Basic Law by the NPCSC was the best way to resolve the problem of "doubly non-permanent resident pregnant women". Her remarks have triggered off great repercussions in both the legal profession and the community. Certainly, many people have linked her remarks with the comment made by Mr Justice Kemal BOKHARY about an imminent storm. Deputy President, Ms Elsie LEUNG may be a rather complicated person. Let us look in retrospect at the previous remarks of Mr Justice Kemal BOKHARY to see how he described Ms Elsie LEUNG. He used the expression "unsung hero" to describe her. During my conversations with some of the officials of the Department of Justice, all of them praised this former Secretary for Justice in private. Why? Deputy President, it was because she was able to stand up to the Central Government in Beijing. She might have asked TUNG Chee-hwa not to do something that the TUNG Chee-hwa clique was supposed to do. However, she might have made these such remarks upon the request of the Government in Beijing, too. I believe she is very obedient.

Deputy President, I have read a magazine called *iSun Affairs* recently. I think all Members should have received a copy of it. Deputy President, you should have received it, too. I wonder if you have the time to read it. On 29 November last year, it carried an interview of Prof LAU Siu-kai, a former top advisor of the Central Policy Unit, in which he was asked by a journalist about his views on the decade-old "one country, two systems" and, in particular, his observation of the current situation from the perspective of the Central Government. He said that he had seen many incidents in Hong Kong over the years. In his opinion, there was a gap between the Central Government and Hong Kong in terms of their respective understandings of "one country, two systems", and there were a lot of things that the Central Government was not pleased to see. For instance, some people had no respect for the reunification of Hong Kong; the executive-led Government could not yet fully perform its functions; and Hong Kong people had yet developed an affection for the reunification.

As regards the question of what is the relationship between the Central and SAR Governments under "one country, two systems", he said that the view of many people was vastly different from that of the Central Government.
According to Prof LAU Siu-kai, the voice of the Central Government was, to a certain extent, no longer heard in Hong Kong over the past decade or so. An interpretation by the NPCSC would be needed because the Central Government had gradually been deprived of its say. He said that there was a need to take a fresh look from different perspectives at some areas which had deviated from the original idea of "one country, two systems". Moreover, it was very difficult to deal with the relationship between both sides because they did not speak the same language. Regarding his question about why problems had occurred over the past decade or so, Prof LAU Siu-kai attributed them to the unilateral interpretation by the democratic camp of "one country, two systems", "a high degree of autonomy", "the relationship between the Central and SAR Governments", and "the democratic development in Hong Kong". Deputy President, he said that the relevant interpretations had become deep-rooted in the hearts of Hong Kong people, and it was very difficult to reverse their thinking. In spite of this, the Central Government would seek to deal with it. He said that conflicts would definitely arise in this course, and an interpretation by the NPCSC would be inevitable. He commented that while these matters might still be dealt with in an obscure manner, but once the position of the two sides were stated clearly, confrontation would turn bitter.

Deputy President, LAU Siu-kai actually does not know Hong Kong very well. It is not true that the democratic camp had all the say during our discussions on the relevant subjects. After years of discussion, even the SAR Government very much agrees that if the Central Government does not exercise self-restraint but instead destroys "one country, two systems" and the rule of law, then there will be no luck for everyone. Deputy President, these are the worries of many Members from the business sector. We are neither revolutionaries nor terrorists. We just hope that the Central Government can promise us that the rights given to Hong Kong are inalienable. Neither do I agree that the Central Government has not had any say over the past couple of years. In fact, it has made a lot of comments, and it has say over everything.

Deputy President, I hope the Central Government can think twice about this and refrain from destroying the system we have been working very hard to set up for Hong Kong. (*The buzzer sounded*) ……

**DEPUTY PRESIDENT** (in Cantonese): Does any other Member wish to speak?
MR MARTIN LIAO (in Cantonese): Deputy President, I support the original motion moved by Mr Dennis KWOK as well as the amendments proposed by Ir Dr LO Wai-kwok and Mr IP Kwok-him.

We cherish and must uphold "one country, two systems", for without it, Hong Kong could not have implemented the policy principles of "Hong Kong people ruling Hong Kong" and a "high degree of autonomy" in accordance with the Basic Law after the reunification as well as fulfilling the commitment of "keeping the previous capitalist system and way of life remain unchanged for 50 years". Nevertheless, "one country, two systems" is a novel and abstract concept that can be interpreted in different ways. The implementation of the arrangements must be codified and regularized in law. Hence, the Basic Law is not only the framework for the implementation of "one country, two systems", but also the only safeguard in law for "one country, two systems".

One of the major differences between the Basic Law and other laws in Hong Kong is that the Basic Law is not enacted by the Legislative Council in Hong Kong. Instead, it is a national law enacted by the national parliamentary assembly in accordance with the Constitution and continental law. Everyone in the country must abide by it.

The scope of the Basic Law is very wide. Today, I would attempt to look at the rule of law situation in Hong Kong under "one country, two systems".

Deputy President, the rule of law is a major pillar upholding social justice as well as an important cornerstone embraced by every society aspiring for civilization, equality and justice. It was crucial to Hong Kong's past success and is also the core value upheld by Hong Kong people.

Nevertheless, if ordinary Hong Kong citizens are asked what it is meant by the rule of law, I believe not many of them can answer the question. Moreover, those who can give an answer might interpret it differently. Aristotle, an ancient Greek philosopher, interpreted it as "law should govern", which basically meant "the rule by law". According to his interpretation, the rule of law embodies "universal compliance of the laws established and these laws should be well formulated". I think that this long-lasting viewpoint marks the beginning of the spirit of the rule of law. It is thus evident that the link between the rule of law and the law can simply not be broken. If the rule of law is the soul of laws, laws are the flesh and blood of the rule of law.
Deputy President, it is worthwhile for Hong Kong people to take pride in our rule of law which has always been very sound. Meanwhile, some people believe that the power of the NPCSC to interpret the Basic Law has challenged the rule of law in Hong Kong and the power of interpretation conferred on the NPCSC by the Constitution of China and the Basic Law has been distorted as a tool for suppressing judicial independence and the rule of law in Hong Kong.

In fact, Article 158 of the Basic Law provides that the power of interpretation of the Basic Law is vested in the NPCSC. Since the first NPC was held in Mainland China in 1954, the statutory interpretation system has been upheld whereby the laws are interpreted by the legislature. It is very different in Hong Kong where the common law system of judicial interpretation has all along been upheld, that is, the laws are interpreted by the Judiciary. This can be described as one of the differences between the two places in terms of legal culture.

I fully understand the various kinds of criticisms of legal interpretation by common law fundamentalists. I also think that judicial interpretation is better than statutory interpretation, and this is also a global trend. However, I must point out that statutory interpretation originated from continental law, and even as early as the Roman law. It was not invented by or unique to China.

In the modern world, statutory interpretation can still be found in some countries where the rule of law is respected. Even in the United Kingdom, the home of common law, the Parliament can also pass Explanatory Acts to reinterpret laws previously passed. This can be regarded as a kind of statutory interpretation, too.

I disagree that the NPCSC's power of interpretation of the Basic Law has challenged the rule of law in Hong Kong. First, the conferment of the power to the NPCSC to interpret the Basic Law under Article 158 of the Basic Law is part of Hong Kong laws and the rule of law in Hong Kong. Second, even the CFA admitted in the LAU Kong-yung case in 1999 that the power of the NPCSC to interpret the Basic Law stemmed from the Constitution of China, and this power was all-embracing and unrestricted. Since judgments of the CFA are part of Hong Kong laws and the rule of law in Hong Kong, the NPCSC has the power to interpret the Basic Law under both continental law and common law.

Certainly, no one likes to interpret the Basic Law arbitrarily, including the NPCSC. Insofar as the interpretation of the Basic Law by the NPCSC is
concerned, my long-standing position is that, unless there is no other feasible way to clarify the relevant provision, and the relevant legal issue has major and far-reaching implications on society, we must not resort to interpretation of the Basic Law. However, I must state clearly that this is a kind of political stance rather than a legal position. My legal position is very clear, and that is, interpretations of the Basic Law by the NPCSC are a constitutional and lawful act.

Deputy President, before a ruling is made by the CFA on the application for a legal clarification of the right of abode of foreign domestic helpers in Hong Kong, we should not express views intentionally or unintentionally to avoid influencing court judgments because doing so will, on the contrary, jeopardize the rule of law in Hong Kong. Irrespective of our views on this incident, we must exercise self-restraint, such that the Court can make judgments in accordance with the law in an independent manner.

Deputy President, I so submit.

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

DR FERNANDO CHEUNG (in Cantonese): My speech is certainly aimed at supporting the original motion moved by Mr Dennis KWOK to safeguard the rule of law and judicial independence in Hong Kong. As stated by Mr Justice Kemal BOKHARY, what we are facing today is indeed a judicial storm threatening Hong Kong's judicial independence. Can we still maintain the system of separation of powers and mutual checks and balances? This is precisely the change unfolding before us.

Deputy President, it is very clear that power corrupts. So, absolute power definitely corrupts absolutely. As we all know, it is difficult for us to rely purely on our self-restraint because human nature can be good or bad. Hence, a totalitarian regime tends to fall from the pinnacle of its power; and after a good emperor or leader has ascended to power, he himself or his descendants will be corrupted by power. Totalitarianism will inevitably bring disasters. Hence, powers must be separated. The so-called separation of powers represents a big progress of modern society. If the system of separation of powers in not in place
today, it is impossible for powers to be separated for mutual checks and balances to be achieved, and societies and countries will not last as a result.

Therefore, it is crucial for Hong Kong to preserve this system today. Even after the reunification, we know that under its totalitarian regime, there is no separation of powers in China. Instead, there is collaboration of powers, with the Central leadership being a totalitarian regime. Hence, one power is being served by three powers in China, namely the executive power, the ruler and the superior Party.

However, we pointed out very clearly prior to the reunification the enormous gap between this system and the one in Hong Kong. We knew that Hong Kong was way ahead of China in many respects, and hence there was a need for the Basic Law and the need to spell out clearly in the Basic Law that the CFA in Hong Kong had the power of final adjudication rather than had it handed to the Central Authorities. However, it must be subject to restrictions in certain areas, including our respect for the Central Authorities in national defence, foreign affairs and the relationship between Hong Kong and the Central Authorities, because after all, Hong Kong is part of China.

Nevertheless, "one country, two systems" should be interpreted in such a way that the system of separation of powers can still be maintained. After the reunification, we can indeed see from the Basic Law that the Central Government cannot completely put its mind at ease in handing all of its powers to the CFA in Hong Kong. Hence, a place must be reserved, such that the NPC can have the final power of interpretation.

In theory, the exercise of this power should be avoided or this power should not be exercised lightly. Briefly speaking, if there is really separation of powers, the final decision made upon the completion of judicial proceedings must be followed in respect of all matters, except for national defence, foreign affairs and our relationship with the Central Authorities. Only in doing so can independence be maintained. But now, the NPC still retains the power of interpretation. This means that in the event of a lost legal battle and a new interpretation of the law is made by the NPC, all the ensuing cases will have to be adjudicated in accordance with this interpretation. In other words, the NPC is a winner in all cases, and so we have to obey it in dealing with everything.
As everyone knows, each interpretation of the Basic Law by the NPC will deal a blow to judicial independence. It is very clear indeed. However, this is a kind of compromise. As the Central Government will not put its mind at ease unless the NPCSC has the power to interpret the Basic Law, what else can we do? We can only hope that this power is only there as a reserve resort.

However, this power has so far been exercised four times in dealing with the cases of NG Ka Ling, CHONG Fung-yuen, and so on, and has dealt a substantial blow on each occasion. At this stage, the Secretary for Justice has even once again resorted to an even more frightening solution by requesting the NPC for an interpretation of the Basic Law. I wonder if such an interpretation will include the so-called legislative intent of the Basic Law as interpreted in its report years after the completion of the drafting of the Basic Law by the Preparatory Committee, so that it will become part of the law.

Deputy President, this is most horrifying. To my understanding, in common law ….. I am by no means a legal expert, but at least we have to read the provisions in the law. We must not speculate the legislative intent, for it can be interpreted freely. Of course, the Preparatory Committee can make interpretations. But what can we do if it comes up with another legislative intent 10 or 20 years later? In other words, it can say whatever it likes.

Is the Secretary for Justice destroying the rule of law completely by acting in such a horrifying manner? Furthermore, there is no assurance by him that he will necessarily listen should the CFA rule that there is no need to seek an interpretation of the Basic Law by the NPC. Contrary to the case of CHONG Fung-yuen in which the then Secretary for Justice, Ms Elsie LEUNG, undertook to obey the Court, the incumbent Secretary for Justice, Rimsky YUEN, has refused to commit himself. Is he going to play bad loser? Is he going to give the CFA a slap on the face by overturning the ruling on the case of CHONG Fung-yuen with this approach? Has he informed those affected persons who are kept in the dark that they have completely lost their power to object? Is he destroying the rule of law?

For these reasons, I support the original motion. I so submit.

MR KENNETH LEUNG (in Cantonese): Deputy President, I speak in support of Mr Dennis KWOK's motion which urges the Government to uphold "one
country, two systems", and safeguard the rule of law, the legal system and judicial independence in Hong Kong.

What is meant by the rule of law? Let me quote the remarks made by Prof Benny TAI at a seminar sometime ago. One of the cardinal principles of the rule of law is that there are laws for the people to follow, and secondly, we must abide by the law. Regarding the second point, let me emphasize that the Government must also abide by the law, apart from the fact that each and every citizen is obliged to do so. At a higher level, we need a procedure and system of justice, which should be able to manifest result true to justice.

What is meant by justice? Certainly, different scholars of law have different interpretations and definitions for the term "justice". In his book, A Theory of Justice, John RAWLS, a scholar, remarked that justice is the basic social contract. Put simply, all social strata, including the Government, are parties to this contract and bound to observe the contract in order for justice to be done. For instance, if the government of a totalitarian country is dissatisfied with a court decision, what will it do? The judge may go missing or be made missing, or even sacked. Certainly, I do not wish to see such things happen in Hong Kong. Nor do I wish to see such things happen in Hong Kong in the future.

Let us take a look at the power of interpretation of the Basic Law. Certainly, there is an overriding interpretation clause in Article 158, Chapter VIII, providing that "The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.". If this power is enlarged without bounds, we will see that the power of interpretation of each and every provision of the Basic Law should be vested in the NPCSC because all other provisions also fall under Article 158.

However, the Central Government pledged that Hong Kong would enjoy "one country, two systems" upon signing the Sino-British Joint Declaration, and the core framework of "one country, two systems" lies in the constraint on the exercise of sovereignty. The Central Government will not intervene in Hong Kong's internal affairs, including judicial independence. Certainly, the Basic Law is Hong Kong's mini-constitution formulated under the framework of continental law and the Constitution of the People's Republic of China. Thus, it is a kind of continental law. But in Hong Kong, common law is practised. To
put the operating machine of the common law within the framework of the continental law, we can imagine that numerous problems and disputes will arise from time to time. Thus, in the end, I think there should be constraint on the exercise of powers by all relevant parties, including the Hong Kong Government and Central Authority. And the Hong Kong Government must also abide by the law.

Just now Mr Martin LIAO mentioned the power of judicial interpretation or power of statutory interpretation. In common law, we need to rely on the so-called legislative intent under some circumstances. But the legislative intent does not come from the discussion papers of the so-called Preparatory Committee of the Hong Kong Special Administrative Region as mentioned by Secretary for Justice Rimsky YUEN. The most basic lecture in the university, if Secretary Rimsky YUEN can still remember, is the House of Lords case, *Pepper v Hart* (1992). It was held that under some circumstances, the Court may clarify the meaning of some ambiguous provisions in law by referring to the records of proceedings of the Parliament or the Hansard rule. Generally speaking, if the provisions are crystal clear, the Court should interpret them in accordance with the existing provisions or legal approach. Certainly, this exception should be applied in a most cautious manner. Back then, Lord MACKAY pointed out that one should review the debates of the Parliament or legislature only when the meaning of the provisions is ambiguous or will lead to absurd or unreasonable circumstances. Only under such circumstances should we apply the principle in *Pepper v Hart*. As the wordings of the Basic Law are crystal clear, why did Secretary Rimsky YUEN request the CFA to seek an interpretation from the NPC?

Further, Lord MACKAY pointed out that "We must, therefore, I believe, be very cautious in opening the door to the reception of material not readily or ordinarily accessible to the citizen whose rights and duties are to be affected by the words in which the legislature has elected to express its will." The Government's request to the CFA for the latter to seek an interpretation from the NPC before claiming to find out the legislative intent is unfair to the litigants, who are those Filipino domestic helpers in the relevant case, because actually these domestic helpers do not *(The buzzer sounded) ......* I so submit. Thank you, Deputy President.
DEPUTY PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR ABRAHAM SHEK: Deputy President, a new spate of wrangling about Hong Kong's judicial independence is looming following the statement released by the Secretary for Justice on 13 December 2012 that the Secretary has made a request to the Court of Final Appeal (CFA) under Article 158(3) of the Basic Law of the Hong Kong Special Administrative Region in the Foreign Domestic Helpers Final Appeals for seeking an interpretation from the Standing Committee of the National People's Congress (NPCSC) to clarify certain issues concerning the binding effect of the NPCSC's 1999 interpretation of Articles 22(4) and 24(3) of the Basic Law, as well as the proper interpretation of the right of abode for all categories of persons under Article 24(2), including foreign domestic helpers.

Obviously, the Secretary's bold attempt to finally resolve the thorny issue of the right of abode has touched the sensitive nerve of those who treasure the rule of law and judicial independence. Our Basic Law has bestowed upon us the very new concept of "one country, two systems" and the rule of law with the separation of powers with defined checks and balances. Despite the masterly stroke of our founding fathers in formulating and drafting the Basic Law, the success of this Basic Law for the present and the future rests with our faithful compliance with the words of the written law. It is not for those who are in authority to break this particular law and use the law for their own benefit. This is very important as a pillar of the rule of law.

Every one of us in Hong Kong is free to express his support for or disapproval of the Secretary's request to seek an interpretation from the NPCSC or through the CFA, as freedom of speech and freedom of expression are protected by Article 27 of the Basic Law and the Hong Kong Bill of Rights Ordinance. Nevertheless, freedom of expression is neither without its limitations, nor is it an absolute concept. Honourable colleagues have spoken eloquently for and against the Secretary's request both inside and outside this Chamber, and the Mr Gary FAN has even proposed an amendment urging the Government not to seek an interpretation of the Basic Law. Many fear that all these statements amount to putting pressure on the CFA in its pending judgment of the case, and thus undermining judicial independence. In this respect, I take a different view to the extent that for the last 15 years, our Judiciary and our Courts have weathered political tsunamis and storms and had stood tall. Their record made us proud.
In this respect, I call on Honourable colleagues to read the statement of the Hong Kong Bar Association released on 18 December 2012. While the Bar Association affirmed in the statement that freedom of expression is a cherished value of Hong Kong, it also stated that freedom of expression is not to be valued above everything. The statement says, "When a matter is sub judice, high-profiled commentary and conjecture might be perceived to add unnecessary pressure to those concerned, and are best avoided."

As explained by the Bar Association, the legitimacy of the Secretary's request is beyond question: "The Secretary for Justice has a professional and constitutional responsibility to advance on behalf of the Government all arguments that he, his Department and external Counsel consider to be reasonably arguable, just as the Counsel for every other party is obliged and expected to do." In other words, it appears that it is neither fair nor reasonable to claim that the Secretary for Justice has sabotaged judicial independence by making such a request. The Secretary has to answer the following questions: Do you need to do that? Why should you do that? What is your motive for doing that? Are you putting yourself in a position that you are above the law, or are you interpreting the law in a different way?

Deputy President, the "one country, two systems" principle is not to be taken as two separate concepts; it should be treated as an indivisible whole. It would be unrealistic to set up a dichotomy to disintegrate this concept. Admittedly, differences exist in the legal system, among others, between the Mainland and Hong Kong. Under the principle of "one country, two systems", the legal framework of Hong Kong is based on the English common law, supplemented by local legislation; in contrast, the legal system of the People's Republic of China is akin to systems in Continental Europe. In order to make two legal systems work in concert, Article 158 of the Basic Law is the key to bridging the gap. The question, again, lies in how and when it should be used and should not be used blatantly.

Nevertheless, there is a fear that this very key could unlock a Pandora's box of excessive interference with court decisions and hence sabotage Hong Kong's judicial independence. This fear is based on our premise that the authorities will exercise such power willy-nilly for political expediency or whatever it sees fit. What is politically good might not be right in terms of judicial independence. Think before you act. Thank you.
DEPUTY PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, I think the whole issue is fairly simple; it is nothing but "hitting below the belt", just like playing fouls in soccer games. It is "foul play".

First of all, as the Secretary, you are a part of the Government. You are both a Counsel and a part of the Government. Acting on behalf of the Administration, you seek other people's interpretation during a lawsuit. You will do that given the chance, am I right? According to Article 158 of the Basic Law, you can seek an interpretation of the Basic Law by the NPCSC. If you are not thinking clearly, let me give you a reminder. Before the CFA has made any decision, you seek NPCSC's interpretation on areas of uncertainty. At the same time, you attach as a package some unrelated issues like the Filipino maids' case on permanent residency wherein interpretation of the whole ordinance is unnecessary, am I right? You said why not seeking an interpretation altogether since the NPCSC's interpretation was needed?

Secondly, why do I say that they are "hitting below the belt"? We have already sought interpretations many times. The first time happened during TUNG Chee-hwa's Administration. We also reminded the State Council in writing to urge the NPCSC to make an interpretation of the Basic Law. Anyway, let us put all these aside. The suggestion made by the Secretary for Justice now warrants more attention for it is even more sensitive. You are a Counsel representing the Government. You are a Counsel as well as a very high-ranking executive official. Your conduct in this respect naturally makes people enormous puzzled. Before the CFA has made any decision, you seek the NPCSC's interpretation on issues relevant to the case. There is no reason whatsoever to seek an interpretation altogether on other unrelated issues because those issues are not being heard by the Court. Since it is only hearsay, I am not sure about its validity. In my opinion, if you want to seek an interpretation regarding the right of abode of the Filipino maids, you really do not need too detailed an interpretation because it is unnecessary to interpret the entire Article 24 of the Basic Law. Since seeking an interpretation is needed and subsequent condemnation by "Long Hair" is inevitable anyway, it is logical for the Government to do it in one go because it will save time. This I can understand.
Thirdly, if the goal you wish to achieve is to resolve the problem of "doubly non-permanent resident children", you should not do this either. Why do I say that you are "hitting below the belt"? Put simply, you have no reason to suddenly change the rules of the soccer game I am in. We are doomed to lose if you suddenly change to apply handball rules to a football match. Your approach is, therefore, undesirable. If the rules in my soccer game are suddenly changed to rules that apply to a handball game, I definitely will lose it. So, I do not think your approach is desirable. As for amendment of the Basic Law, Articles 158 and 159 relate clearly to the power of interpretation and amendment of the Basic Law. The provisions clearly stipulate how the Basic Law can be interpreted and amended. Everybody in Hong Kong knows it. This Council also has a role to play and so has Mr Martin LIAO because the consent of two thirds of all Members is required. We need approval by a two-thirds majority everywhere. The procedures are meticulously prescribed.

There is still a problem. When you amend an ordinance, it does not have any retrospective effect, right? Since it is a matter of legislative amendment, who knows when you the Great Panjandrums will make amendments? Interpretation of the Basic Law is, however, completely different. It creates a very big question mark. If you interpret the Basic Law, will it have any retrospective effect? I think it will. According to your approach, an interpretation can now rectify any wrongful rulings by the Judges. If this is the case, you may have to inform those being affected by your "foul play". You have to remember whom you have fouled in the penalty area. Our legal system implies morality, righteousness and justice under which the people enjoy their legal rights. If the "doubly non-permanent residents" are affected, you should remind them that you are going to seek an interpretation of the Basic Law. Since they will be affected, do they have to make representations to the Court? I understand that legislative amendment and interpretation of the Basic Law are two different channels bearing two kinds of political connotations and varied consequences. In fact, you should explain this to this Council. Being a representative of the Government, you took the initiative to request the CFA to seek an interpretation of the Basic Law. And given the interpretation of Article 24 of the Basic Law, you have the responsibility to inform those who will be affected and tell them that they can seek relief. As the Chinese saying goes, "Opportunity only knocks once". What if they miss the opportunity?

When I was at the wedding banquet of Mr Ronny TONG's son, I almost wanted to reprove you face to face. Of course, I could hardly scold you in the
midst of a jubilant occasion. If I cannot even scold you here today, I feel that it is not convincing. Regarding those who are in charge of the legal field in the Mainland with whom you have frequent communication, I hope you can tell them that it will not work. As amendment of the Basic Law is no doubt a matter of enormous import and has far-reaching implications, Members of the pro-establishment camp opine that it should not be done too often. It is right because it serves as a check and balance on you so that you can hardly muddle through with your work. But you cannot resort to seeking an interpretation of the Basic Law on the pretext that amending the Basic Law is a matter of enormous import and has far-reaching implications. You have even forced the Court to act accordingly. Frankly speaking, I wonder if those Great Panjandrums would ever heed you because you are actually challenging them. You may follow TUNG Chee-hwa's footstep, which is perhaps the most extreme approach, by asking Mr LEUNG Kwok-hung to write a letter and let anyone else seek an interpretation of Article 158 of the Basic Law. It is also feasible for only LEUNG Kwok-hung, a Hong Kong citizen who can hardly put up with it, to seek an interpretation of the Basic Law from the NPCSC. The only difference is that it constrains you during the trial period or court proceedings. Why bother to do all these? Why not simply ask Mr LEUNG Kwok-hung, Mr Alan LEONG, Ms Claudia MO or the President to write a letter to seek an interpretation of the Basic Law? I call on you not to stir up so much fuss. I was very angry the other night and really wanted to reprove you. But I gave up the idea because scolding is not a pleasant thing to do. I am not going to scold you today. Anyhow, I hope that you do not do that. I sincerely hope that you do not do that. (The buzzer sounded) ……

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, your speaking time is up.

MS CYD HO (in Cantonese): What are the differences between Hong Kong and other cities in China? What are the reasons for us not becoming another Chinese city? It is true that there is equally no democracy in Hong Kong and the Mainland. As only half of the Legislative Council Members in Hong Kong are elected by the people, they cannot represent all the citizens. Therefore, the Legislative Council cannot be called a democratic legislature. However, with the common law traditions in Hong Kong, our freedom and rights are protected by the legal system. Hence, Hong Kong people can enjoy greater protection than people on the Mainland. We need not fear being put behind bars and tortured like LI Wangyang. Our newspapers need not be afraid that they would
get the same experience as that of the *Beijing News*. One day, a senior official for no reason barged into the *Beijing News*, telling them that their newspaper would not be allowed to go to press if the *Global Times* editorial criticism on *Southern Weekend* was not carried. Newspapers in Hong Kong need not have such a worry because Hong Kong officials do not have such power since they are not empowered to do so under the law. Moreover, no one dares to break the law by barging into a newspaper, saying that the newspaper is not allowed to go to press. Even during the Independent Commission Against Corruption's investigation of a newspaper, only computers were taken away and the newspaper was not prohibited from going to press. This is the invaluable element of the rule of law in Hong Kong.

Justice Kemal BOKHARY made some remarks upon retirement. I have noticed a line that other Honourable colleagues did not mention, and I must repeat it for the record. By those words he broadly meant that the press and freedom are inseparable. We cannot speak of the press without mentioning freedom because there is no real news without freedom and there is no truth without real news. Some Mainland netizens remarked that without freedom of the press, there is no truth, and without the truth, there is no justice. Justice Kemal BOKHARY also said that independence and the Judiciary are inseparable because the judicial system will become meaningless without independence.

Therefore, I thank Mr Dennis KWOK for proposing this motion debate. However, I am a bit dissatisfied since the "one country, two systems" principle has to do not only with the judicial system, but also a lot of things. Nevertheless, an independent Judiciary does maintain our system of law, protect our rights and freedoms, and at least up to this moment, leave Hong Kong with major differences from Mainland cities. Also because we have a fully-fledged judicial system, we can become a financial centre. A lot of investors in the Mainland, and even high-ranking officials or Mainland-born economic analysts working for investment banks also said that it will take a long time for Shanghai to catch up with us, unless the judicial system in the Mainland can undergo changes. In that event, Hong Kong's status as a financial centre will become precarious, easily overtaken by Shanghai. However, without an independent judicial system in the Mainland, investors will never be confident to resolve any disputes arising there.
The judicial independence means not only the independence of the Courts. The rule of law also hinges on whether senior government officials will exercise self-restraint or whether they will take the lead in damaging the rule of law. As we discussed in our lengthy debate yesterday, LEUNG Chun-ying, as the Chief Executive, has violated the rules. But to our surprise, he expended public money on demanding the Chief Executive-Elect's Office to disseminate some incomplete and inaccurate information for him. When a senior government official takes the lead in undermining the legal system and putting himself above the law, and the Buildings Department dares not serve him a summons because no one dares to sue the Chief Executive, then nothing can be done because the Courts can only deal with cases that have been filed even though our judicial system and the Courts are independent. Although there is a lot of injustice in society, the Courts, due to their limited power, cannot take the initiative to conduct investigations, hearings and sentencing like "Justice PAO" did in the ancient times. Hong Kong's judicial system is not like that. Therefore, the rule of law comprises not only independent courts but also law-abiding senior officials who take the initiative to do so. When bills are scrutinized by our legislature, laws must be passed on the basis of natural justice. Not everything submitted by the executive will be passed because when it has been enacted into law and become provisions in the statute books, it is difficult for Judges to decide cases without following the laws.

Most importantly, the last bastion of the rule of law is our society, every person in Hong Kong and our civil society. The reason is that, in terms of the operation of the legal system, we cannot expect that the police will be monitoring every citizen all the time to ensure compliance with the law. More importantly, no one will break the law on the sly. For example, if the nouveau riche of the Central Policy Unit, Ms Sophia KAO, crossed double white lines when driving, she would certainly say that she broke the law unintentionally. But without being reported by the media, she would not take the initiative to give herself up. The maintenance of the rule of law is dependent on a civil society in which everyone is law-abiding. Apart from that, senior officials will also be constantly monitored so that even minor infractions such as crossing double white lines will be reported. As a result, these moguls will not think they are above the law. Thank you, President.
PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Members indicated a wish to speak)

PRESIDENT (in Cantonese): If not, Mr Dennis KWOK, you may now ……

(Dr Priscilla LEUNG raised her hand to indicate her wish to speak)

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, please. Members who wish to speak please press the "Request to speak" button.

DR PRISCILLA LEUNG (in Cantonese): President, I believe no one would oppose Mr Dennis KWOK's motion today. In fact, we are focusing on how to improve its presentation. Speaking of Hong Kong's legal system and the principle of "one country, two systems", we must start from the common law and the Basic Law. Hence, I think it is a minor deficiency of the original motion in its lone reference to "one country, two systems" without mentioning the Basic Law, since the Basic Law per se is the embodiment of "one country, two systems".

In brief, the Basic Law was the product of negotiation and compromise between China and the United Kingdom. The Basic Law is a half-breed, with her eyebrows look like her father and eyes look like her mother. The Basic Law is a hybrid of the two legal systems, thus bearing the genes of two legal traditions. It has also led to controversies surrounding the Basic Law which have never ceased during the past 25 years. If we look at today's debate, including the respective remarks made by Justice Kemal BOKHARY and Ms Elsie LEUNG about some decided cases, and the debate between the Hong Kong and Mainland members of the Drafting Committee during the drafting of the Basic Law between 1985 and 1990, the controversies are exactly the same. In the past 25 years, political issues have been addressed through the Courts while legal issues are politicized. This precisely stems from the dual characteristics of the Basic Law in its passage, formulation and nature.

Given the recent or past political disputes, the Government or the people would always find that society has been "torn apart". But I am not inclined to
taking this view. The clash between the two different systems is not tantamount to "tearing something apart". We should not take a dim view of this issue. Moreover, we should not describe the situation as a storm because of the divergence of views between the two sides. In fact, similar discussions have been held in the academia of the United States. Since the adoption of the Constitution of the United States, the Congress and the Courts have been bickering for 50 years. Coincidentally, the system of "one country, two systems" is pledged to be unchanged for 50 years.

During the drafting of the Basic Law, the Mainland and Hong Kong members of the Drafting Committee held different views on three major principles. We can see that all the provisions of the Basic Law are compromises of the principles of sovereignty, "high degree of autonomy" and maintaining the status quo of Hong Kong. An Honourable colleague pointed out just now that the Basic Law is a national law since it was passed not by the Hong Kong Legislative Council but by the NPCSC. However, the Basic Law is not an ordinary national law. China was clearly aware of this when formulating the Basic Law and felt the need to protect the "two systems". Thus, the Basic Law is a special law amongst the national laws. In other words, other Chinese national laws do not apply to Hong Kong in the same way as the Basic Law does, with the exception of those set out in Annex III of the Basic Law.

The Basic Law is a set of important rules of the game insofar as the laws are concerned under "one country, two systems". The Basic Law of Hong Kong is also supreme in the legal hierarchy. Article 8 of the Basic Law clearly stipulates that laws previously in force in Hong Kong shall be maintained, including the common law that we very much treasured, rules of equity, customary law, except for any that contravenes the Basic Law. Therefore, the Basic Law is regarded as the mini-constitution of Hong Kong.

However, from a historical point of view, since Hong Kong was a British colony for 155 years, we have been preserving the common law traditions, which are very much loved by the people of Hong Kong. Because of this, in the process of formulating the Basic Law, a consensus was reached eventually on many provisions, including Article 8 that I just mentioned, and Articles 80 to 85, and the controversial Article 82 of late, among the Mainland members and Hong Kong members of the Drafting Committee on allowing judges from other common law jurisdictions — special emphasis was placed on common law — to participate in trials. I think this must be unique in the world.
President, in the Basic Law, some provisions clearly follow the tradition of common law. But some other provisions, including Articles 17, 18, 158 and Article 159 which Mr LEUNG Kwok-hung said he found it very good — he should take a closer look at it — it is not part of Hong Kong's common law tradition — really bear dual characteristics. Clearly, they are formulated by following the manner in which Chinese laws are enacted.

I would like to say a few words about Article 159 of the Basic Law. It is because everyone thinks that by virtue of Article 159, the Basic Law can be amended and it is a panacea. However, please be careful when reading it. In fact, Article 159 states that the power of amending the Basic Law shall be vested in the NPC. The power to propose amendments belongs to these three categories: first, the NPCSC; second, the State Council; and third, the Hong Kong Special Administrative Region. Only when the Hong Kong SAR proposes amendment bills, it will require what Mr LEUNG Kwok-hung has just said — the consent of two-thirds of all the Members of the Legislative Council, two-thirds of the deputies of the Region to the NPC, and the Chief Executive. Do we think that Article 159 is the solution to all problems? It is not necessarily so in my opinion.

In retrospect, 25 years down the line, insofar as Article 82 of the Basic Law that I mentioned just now is concerned, maybe many Mainland experts on law would criticize the decision that foreign judges be permitted to sit on trials in Hong Kong. On the contrary, many legal experts in Hong Kong would ask why the power of interpretation under Article 158 was passed. In fact, why was it agreed to? It is very simple. China and the United Kingdom had to come to a compromise, or else the Basic Law could not come into being and "one country, two systems" would hardly be implemented.

Therefore, I think the Basic Law is akin to a half-breed. If both parents maintain that the counterpart's opinions are bad, the child would have a miserable time growing up. However, if we give way to seek common grounds while reserving differences, understand the differences pertaining to each other and put ourselves in other's shoes with a view to looking at this system which is considered imperfect in each other's eyes — because we hold different views — this is a system essential to maintaining two different traditions. At the same
time, we should express a willingness to show goodwill and understand the merits of this system. I think we should respect the decision of a party to a litigation, including the Government, to use the constitutional right to seek an interpretation where necessary. In the past, a number of precedents, including the Chong Fung-yuen case and Ng Ka-ling case, were decided under the common law tradition.

President, I so submit.

PRESIDENT (in Cantonese): Time is up.

MR PAUL TSE (in Cantonese): President, there is a common saying among Chinese people that, "Every family has its own difficulties". In recent years, Hong Kong has been troubled by problems arising from babies born to "doubly non-permanent pregnant women" and the right of abode in Hong Kong of foreign domestic helpers. How should these issues be handled in the legal context, so that it is consistent with the rule of law and in the long-term interest of Hong Kong in terms of politics and governance?

However, the former sovereign state of Hong Kong, which can also be called the "Mother of common law", the United Kingdom, is also facing a problem of similar severity, if not greater, and that is the right to vote of prisoners. Hong Kong is now troubled by a legal provision. The Legislative Council cannot amend that provision, for the provision can only be amended after clearing various hurdles including the participation and consent of the NPCSC. Which one is more desirable, interpretation or amendment of the Basic Law? Similarly, the British Parliament which has supreme power to amend laws at anytime is caught in the dilemma of whether or not the law should be amended to give prisoners the right to vote.

Since the Forfeiture Act 1870 came into effect, certain civil rights of prisoners, including the right to vote, have been forfeited in the United Kingdom. However, in March 2004, the European Court of Human Rights pointed out clearly in its ruling of the case Hirst v the United Kingdom (No. 2) that the relevant legislation of the United Kingdom infringed human rights and was contrary to the European Convention on Human Rights (the Convention). The
United Kingdom should comply with the Convention, and the jurisdiction of its courts in this respect has been delegated to the European Court of Human Rights. In the case of Hong Kong, the consideration is about amendment or interpretation of the Basic Law. Yet, for the British Parliament, its decision was to brazenly oppose the legislative amendment meant to comply with the ruling. The Parliament has made it clear that it defies the ruling of the European Court of Human Rights and that the United Kingdom will continue to implement the Act.

In the latest development, the House of Commons of the British Parliament passed that the original ban on prisoners' right to vote should be upheld. At that time, the voting result was extremely surprising, it was 234 to 22, which means an overwhelming majority of the Members, Members across various political parties, disallowed granting the right to vote to prisoners at all cost. In this circumstance, what is the "rule of law"?

President, for individual cases and individual rights not involving controversies over significant social principles, such as the prosecution of a certain person in a criminal case or the disputes between two parties involved in civil proceedings, the discussion is relatively easier. However, when it comes to controversies over significant principles of a higher level, including abortion, discrimination or euthanasia, more often than not, it will involve not only legal concerns but also political issues. Sometimes, it is possible that politics will come before the law. In such cases, I am afraid it is quite naïve to perceive the rule of law from a fundamentalist view. Throughout history and around the world, the rule of law has never been taken viewed completely from the fundamentalist perspective.

I think Mr Martin LIAO's speech is better than mine. He pointed out in his earlier speech that fundamentalist academics, lawyers, barristers and even judges might not be able to comprehend fully the legal system in Hong Kong. As Dr Priscilla LEUNG said, the legal system of Hong Kong is a hybrid of continental law and common law. Hence, it is only natural that problems will arise in certain aspects, particularly in aspects involving the laws of Hong Kong and those of the Mainland.

Members should bear in mind the principle of continental law that court precedents and enactments are not the only reference. In the course of interpretation of laws, the legislative intent and the impact and consequence of such interpretation will also be taken into account. In respect of the reference to
the legislative intent, the authorities will not only refer to literature or discussion papers of the Legislative Council prior to the enactment of the legislation, but also consider incidents taken place and the social phenomenon after the enactment in actuality. As such, I am afraid we cannot impose our general understanding on the "spirit of the rule of law" in the manner of a neat freak in discussing issues concerning Hong Kong, otherwise, it will backfire, as a Cantonese slang says, we will be "捉蟲" (catching bugs), or inviting troubles. Pardon me for using this phrase. I am not sure if this Council considers the phrase acceptable, yet I hope Members will understand what I mean.

President, I think Mr LEUNG Kwok-hung is a Member who has been involved in proceedings for a relatively large number of times. In terms of quantity, I may not be comparable to him. Yet in terms of quality, I am not second to him. I have mentioned a number of times that I had been involved in 2.5 cases before the CFA. I regard one of the cases as a "half case" for approval for instituting proceedings was not granted on the ground that the case failed to meet the threshold requirement of the CFA.

In Hong Kong, due to the rulings handed down by the Court in the past in certain proceedings, the original understanding of certain principles of law has been amended. Yet this so-called "amendment" is not in the form of legislative amendment, but the decision of a Judge, or three or five Judges in the Court of Appeal. When a so-called "landmark decision" is made by the Court, the need for amending the legislation arises. Under such circumstance, if anyone says that all persons affected should be given the opportunity to come before the Court to express their views, I think he does not understand the operation of laws in Hong Kong.

Before the *Donoghue v Stevenson* case, which manufacturer would be concerned about the so-called "duty of care" under tort law? Once the landmark decision is made, the interest of a large group of people will be affected. If all potentially affected persons are to be summoned to the Court for explanation before a ruling is made, it is primarily ridiculous, which only exposes the lack of understanding of the operation of the legal system.

President, certainly, I still have to understand the case at issue. However, if the Department of Justice (DoJ), which is a litigant to the proceedings, considers it necessary to remind the CFA of the option of using such channel in
the course of giving its statement, I think it is definitely sensible, reasonable and lawful. The public should not be misled to think that the DoJ has put forth a specific request for interpretation of the Basic Law.

Thank you, President.

MR ALAN LEONG (in Cantonese): President, if I am asked to define the "rule of law", I will make it simple and straightforward that it involves the use of law to accord people-based respect to the freedom and rights of individuals, and to implement and protect the democratic system.

Certainly, if the rule of law is so defined, I can understand why many people have been keeping a close watch on the rule of law of Hong Kong since the reunification. President, it is because many people think that when the rule of law is defined as I mentioned earlier, the efficiency of administration will be impeded by the law. According to the Marxism-Leninism-Maoism adopted by our Motherland, the law is used as a means of rule by the party. It is an indisputable point, for there is clear account on this in the literature on the ideology of Marxism-Leninism-Maoism.

Hence, the motion debate proposed by Mr Dennis Kwok today is most appropriate, for since the reunification …… We will only talk about the major incidents, for those minor incidents are too many to be listed. For major incidents I mean those like legislating on Article 23 of the Basic Law and the listing of The Link REIT. I believe the President will also remember that when The Link REIT was listed, the then incumbent Chief Executive, TUNG Chee-hwa, and the then incumbent Financial Secretary, Henry TANG, came forward to urge the CFA to "settle" LO Siu-lan as soon as possible so that the listing of The Link REIT could be carried out as scheduled. Luckily, Andrew LI is a person with "spine" and "shoulders" and he rejected the request. He said that he could not force LO Siu-lan to do so, and he must give her an appropriate amount of time to prepare for the appeal.

Recently, on 6 October, Elsie LEUNG made a speech, in which she used terms like "de-mainlandization" and the "independence of Hong Kong". These terms do not seem to come off her usual lips. However, once it starts, it may be the start of a storm mentioned by Justice Kemal BOKHARY. Then, Prof
CHENG Jie said that only Chinese nationals could be judges. After that, ZHANG Xiaoming, the incumbent Director of the Liaison Office of the Central People's Government in Hong Kong, said that the National People's Congress would consider enhancing and exercising its power of overseeing the legislative work in Hong Kong.

President, if he has no intention of challenging all the laws, the spirit of the system and the autonomy and independence of the Judiciary of Hong Kong protected under the Basic Law, it is more than desirable. However, we should always be on guard. Are these the heralds of such challenges? President, it is not unreasonable to have that thought. Earlier on, certain Members said that we opposed interpretation of the Basic Law for we were all fundamentalists of law. President, I have to make it clear here that I know how to read the Basic Law. Mr Martin LIAO was talking about a political issue, and his political judgment is different from mine. Yet, I respect him, for this is actually a political judgment. However, in the context of the law and the constitution, I accept that the NPCSC has the power to interpret the Basic Law. Have I failed to make it clear previously, I make it clear today for the record. At issue is that when the NPCSC with this supreme power makes frequent interpretations of the Basic Law at the initial implementation of the new constitutional order of "one country, two systems", and when interpretation of the Basic Law is made constantly to serve political needs and expediency, the order of "one country, two systems" can hardly be established, can it? This is a political judgment. I think it is on basis of this political judgment that we should not seek any interpretation of the Basic Law.

President, indeed, it is not simply a political judgment. Mr LEUNG Kwok-hung said that it was "foul play", and I very much agree with him. Back then, Geoffrey Ma, QC, of the NG Ka-ling case and Joseph FOK, SC, of the CHONG Fung-yuen case were representing the position of the Government in the trials of the two cases. I believe Secretary Rimsky YUEN should know this point. In the CHONG Fung-yuen case, Justice Andrew LI asked Joseph FOK, SC, of the Government's stance about whether any previous interpretation of the Basic Law of the NPC would have a binding effect on the case being heard by the Court. President, the Counsel representing the Government at the time answered in the negative, and Justice Andrew LI then said that he would process the case according to the principles under common law. President, do you remember the ruling? When the ruling of the case was handed down, Secretary
General QIAO Xiaoyang issued a statement stating that he noticed the ruling of the CFA on the CHONG Fung-yuen case was not completely consistent with the interpretation of the Basic Law made by the NPCSC. What did the then incumbent Secretary for Security, Mrs Regina IP, say? She came forward for an interview and said that the Government did not intend to take further action on the CHONG Fung-yuen case.

President, should these incidents that occurred 12 years ago be treated as if they had never happened? The present call for self-correction is indeed a call for the CFA to give itself a slap in the face. Such practice will definitely undermine the authority of the CFA in judicial autonomy. President, some colleagues said earlier that if we say we respect judicial independence, we should not say so much. Ridiculous! The Secretary for Justice is not a general party to litigations, but the guardian of the rule of law, judicial autonomy and judicial independence in Hong Kong. Against the background mentioned earlier, he has abruptly put forth such a proposal, and we are only asking him to withdraw the proposal. Certainly, the Civic Party and I are fully confident that the CFA and all Judges are capable of withstanding the pressure from the executive. Yet, I have to point out now that he should not have done so.

President, I hope that the motion proposed by Mr Dennis KWOK today will be supported by the whole Legislative Council. Otherwise, it will convey a disastrous message. I so submit.

MR CHAN CHI-CHUEN (in Cantonese): President, I have pondered for a long time whether I need to speak today. For I think the motion proposed by Mr Dennis KWOK, which "urges the Government to uphold 'one country, two systems', and safeguard the rule of law, the legal system and judicial independence in Hong Kong", is stating the obvious. To put it coarsely, the motion is comparable to saying, "my mother is a woman". It is like asking Hong Kong people to debate whether we should be health conscious. Regrettably, on this day in 2013, we still need to put forth a motion teaching the Government these simple senses comparable to being health conscious, that is, upholding "one country, two systems" and safeguarding the rule of law.

Mr NAN Huai-Chin had drawn an analogy. The more Confucius reminded people of kindness and filial duties, and the more Jesus taught about
universal love, the more it reflected that mankind was but animals with unkindness, filial inadequacy and lacking universal love. It was out of fear that people might not understand and practise such teachings that the teachings were mentioned every day.

Mr Dennis KWOK's motion today shares the same rationale. In other words, the motion is proposed for fear that the Government knows not how to uphold "one country, two systems", and that it gives no regard to the rule of law, which will lead to division in society and public grievances. Hong Kong people no longer feel the same in their daily life. In the past, TUNG Chee-hwa might lay the blame on the financial crisis and Donald TSANG might lay the blame on the financial tsunami. But now, after all it has done, the Government under LEUNG Chun-ying cannot evade the blame. LEUNG Chun-ying's team should face the reality squarely. They should ask themselves whether they know the needs of Hong Kong society, and why they have flagrantly imposed the practices of the Communist Party of China (CPC) on Hong Kong.

Before we come to how LEUNG Chun-ying has ruined "one country, two systems", we should first have a clear understanding of the definition of "one country, two systems". Actually, many members in the pro-establishment camp and many pro-China persons are supporting China merely for the sake of giving support. When others say that "one country" should override "two systems" and come before "two systems", and that "one country" and "two systems" should not be in an adversarial relation, they simply toe the line and echo that "one country" is greater than "two systems". These people fail to understand that when DENG Xiaoping espoused "one country, two systems" back then, he at the same time included the footnote that "river water should not intrude into well water". The definition of "one country, two systems" emphasized by DENG Xiaoping at the time excluded the possibility of adversary between "one country" and the existing systems in Hong Kong. For the original intent of "one country, two systems" is that the People's Republic of China as an independent country and Hong Kong as a city with its existing systems will remain relatively unchanged after reunification due to the special historical background.

The former refers to the completely independent establishment of a country and the latter refers to the self-rule system of a city. Only when Hong Kong becomes completely independent in regime, economy, society, military and foreign affairs, and intends to establish itself as "another country", will Hong
Kong system becomes a country-based system. It is not until then will the so-called adversarial relation come into view. There is no question of which come before which or any adversarial relation within the context of "one country, two systems". It is only a major principle meant to ensure that the two sets of operations and related values will remain unchanged.

As early as 1982, DENG Xiaoping already explained the concept of "one country, two systems". He stated that, "with the implementation of the concept of 'one country, two systems', Hong Kong will remain unchanged in certain areas: its system will remain unchanged; its legal system will basically remain unchanged; its way of life and its status as an international financial centre and a free port will remain unchanged; and apart from stationing troops there, China will not send officials to the SAR Government; and troops are stationed to safeguard our national security but not to interfere in Hong Kong's internal affairs; we will keep our word and we will not use subterfuge."

When LEUNG Chun-ying went to Beijing to report his work last year, XI Jinping, HU Jintao and WEN Jiabao reiterated in full the perseverance in "one country, two systems; Hong Kong people ruling Hong Kong and a high degree of autonomy". LEUNG Chun-ying should feel ashamed for the little subterfuges he has been using in Hong Kong. He once said that DENG Xiaoping should be granted the Nobel Peace Prize. It is then unimaginable that he does not respect DENG Xiaoping's remarks at all.

LEUNG Chun-ying started using his little subterfuges right after he had assumed office. He first made a gratitude visit to the Liaison Office of the Central People's Government (LOCPG) in Hong Kong. On the one hand, he pretends that he is independent and capable of ruling Hong Kong, yet on the other, he tacitly submits to the LOCPG and switch to the approach of Western District ruling Hong Kong. However, the LOCPG is not the "one country" under "one country, two systems", and it should not intervene in the affairs of Hong Kong. Right after his assumption of office, Secretary Eddie NG was required to undertake the political task of implementing national education. He should be reminded that political education is not civic education of universal values. The implementation of political education of Chinese style is breaking the promise that the way of life will remain unchanged. It merely aims at producing more pro-China young people who love the CPC and stifling the freedom of thought. Later, LEUNG changed the nature of the Central Policy Unit. He intervened in the appointment of civil servants via Sophia KAO, so
that more people of red background, or so-called "LEUNG's fans", will be included in the long term. They will boost the esteem of LEUNG's team, and they will become "alternative Mainland cadres" ruining the internal procedures and affairs of Hong Kong.

It is palpable that the LEUNG Chun-ying Administration is sabotaging the rule of law. I think Members would not have forgotten the warning sounded by Justice Kemal BOKHARY, the former permanent judge of the CFA, not long ago that a storm of unprecedented ferocity is brewing over the rule of law in Hong Kong — a number of colleagues have mentioned this today. LEUNG Chun-ying may be too eager to make Kemal BOKHARY's prophecy come true.

The Secretary for Justice has submitted a written proposal on the appeal case of the right of abode of foreign domestic helpers to the CFA, suggesting that the right of abode cases of children of doubly non-permanent parents be handled as well through an interpretation of the Basic Law. This practice is obviously an act ruining the rule of law. Similar to the explanation given by LEUNG Chun-ying on his illegal structures, it seems that by making the remark "it does not exist" the rule of law has not been subject to any damage.

The New Year march of this year was a peaceful, rational and non-violent demonstration, yet the police had eventually carried out extensive arrests by calling the white black. It is obvious that the road was blocked by the police, but it was interpreted as protesters deliberately obstructing the road. Free walk was distorted as unlawful assembly. I think Mr LEUNG Kwok-hung, who assembled on his own, knows clearly that it was the darkest day in a society of rule of law. There were selective arrests and even political prosecutions.

In the 1 July march in 2011, 138 members of the People Power were arrested, 10 of them were subsequently prosecuted and four of them still have to stand trial. It has been dragged on from 2011 till 2013. I am one of them and I have to stand before the Court tomorrow. Today, when we are debating the motion comparable to "my mother is a woman", the SAR Government is ruining "one country, two systems", in total disregard of the spirit of the rule of law. When the legal system becomes unreliable and untrustworthy, what can Hong Kong people do ultimately? I think Members know the answer at heart. I hope all Members will support this motion comparable to stating "my mother is a
woman" and "everyone should be health conscious". Having said that, it does not mean the rule of law in Hong Kong and "one country, two systems" will be upheld with the passage of this motion.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr Dennis KWOK, you may now speak on the amendments. The speaking time limit is five minutes.

MR DENNIS KWOK (in Cantonese): President, earlier on, Ir Dr LO Wai-kwok and Mr Jeffrey LAM have pointed out respectively that "one country, two systems" is founded on the delegation of the power by the Central Authorities to Hong Kong for purpose of practicing autonomy. However, I consider that the key to "one country, two systems" is not the delegation of power but the agreement between the Central Government and the people of Hong Kong, which is a constitutional agreement. To ensure that the agreement will operate effectively with continuity, the Central Authorities must exercise self-regulation and self-control. If the Central Authorities continue to expand infinitely its exercise of sovereignty, the agreement will break.

The same applies to the interpretation of the Basic Law. Ir Dr LO Wai-kwok pointed out earlier that all the four interpretations of the Basic Law made in the past are necessary, sensible, reasonable and correct. I think the Rimsky YUEN, the Secretary for Justice in this Chamber, and the Rimsky YUEN I know will not agree with this remark.

Mr IP Kwok-him mentioned twice earlier the concept of "strict compliance with the law", which he said was an extremely important concept of the rule of law. But unfortunately, his remark is only half of the truth, for the concept of "compliance with law" is only a low-grade and elementary concept of the rule of law. Actually, the current curriculum of the subject of Liberal Studies for primary and secondary schools explains that the rule of law is divided into four stages, where the "existence of law" and the "compliance with law" are
elementary concepts. As for the concepts of rule of law we are now discussing, we are referring to concepts of relatively advanced levels, the "regulation by law" and the "justice through law", which constitute the essence of the rule of law.

Mr IP Kwok-him has only mentioned the "compliance with law" earlier but not the other two meanings of the rule of law, which are of the utmost importance. If he wants to know more about the genuine meaning of the rule of law, he may start with the teaching materials for primary school students, and if he has any question about this, I am more than willing to give him answers.

President, as for the motion, many colleagues have mentioned the issue of the interpretation of the Basic Law. Earlier on ……

PRESIDENT (in Cantonese): You are given these five minutes to speak on the four amendments.

MR DENNIS KWOK (in Cantonese): President, since the wordings of the amendments are short, I intend to give a brief response on all the amendments in the end.

PRESIDENT (in Cantonese): You still have time to give a final reply later.

MR DENNIS KWOK (in Cantonese): President, regarding the amendments of Mr IP Kwok-him and other Members, we consider that the wording "continue to" and the wording of Mr TAM Yiu-chung's amendment to Ir Dr LO Wai-kwok's amendment are all unnecessary, for it is pointed out in a straightforward and precise manner in the original motion that the focus of today's discussion is on the legal system and judicial independence.

Mr Martin LIAO and Dr Priscilla LEUNG have both mentioned the interpretation of the Basic Law. However, they must accept one important point; that is, the major difference between the existing legal systems in Hong Kong and the Mainland lies not in the difference between common law and continental law, but that the legal system in Hong Kong is more comprehensive
and better than that on the Mainland. We should be proud of this and accept this as the fact. The main concern about the interpretation of the Basic Law by the Mainland is that it is a political procedure rather than a legal procedure. This is the crux of the problem. If it is insisted that procedures for interpretation of law are found in other places adopting continental law, it has completely neglected the difference in the existing legal systems between Hong Kong and China, and the difference in the most important core values. It involves not only the difference in systems but also the difference in values.

President, today, I have put forth the original motion on judicial affairs for I hope that with the credibility of this Council, we can tell Hong Kong people that we respect the rule of law and judicial independence, and we will continue to safeguard "one country, two systems" and the existing legal system. Thank you, President.

SECRETARY FOR JUSTICE (in Cantonese): President, I thank Members for their views. With regard to views that are not directly related to the issue under discussion, I am not going to respond to them here.

I wish to focus on several aspects. In my opening remarks, I already explained how the institutions under the Basic Law provided safeguards for our judicial system, judicial independence and laws. I also said that the establishment of the Office of the Hague Conference on Private International Law in Hong Kong constituted a vote of confidence in the legal and judicial systems as well as "one country, two systems" in Hong Kong.

Earlier on, some Members queried the achievements made by Hong Kong in respect of the rule of law and cautioned against possible crises in future. I would like to mention here a piece of news Members may have known already. The Heritage Foundation and The Wall Street Journal of the United States have jointly published the global Index of Economic Freedom today. Hong Kong is still ranked the world's freest city and we have maintained a score of over 90 in respect of our laws and the rule of law. This goes to prove that our developments in various aspects related to law, such as the legal system and judicial independence, in Hong Kong have commanded support in the international community.
Some Members questioned why an interpretation of the Basic Law is necessary in this case, and some Members considered that we have a political purpose to serve. Mr TONG opined that while an interpretation itself may not damage the rule of law, it should still be avoided if there is a political purpose. Mr LEUNG Kwok-hung considered that what we have done is "foul play". Mr SHEK said that even though the legal procedures allow us to do so, the question remains why we have to do it.

I think I can give Members an overall explanation focusing on these several questions. The answer is simple. With regard to the issue involved, whether in the case of foreign domestic helpers or other right of abode cases, even though Members can say after all that it involves the policy on population and it can also involve the economic development of Hong Kong, in the final analysis, we cannot deny the fact that this is an out-and-out legal issue. It is impossible to fully resolve a legal issue by administrative means. We can also learn from newspapers or other channels that if we solely adopt administrative means to address a legal issue, we would run the risk of handling the issue ineffectively and improperly. It is precisely because this is a legal issue that to a responsible government, the only appropriate course of action is to resolve this legal issue in accordance with the sound legal system of Hong Kong. As I have said in my opening speech, Article 158(3) of the Basic Law is part of the constitutional system of Hong Kong, and the case pending before the Court of Final Appeal (CFA) is a case in the judicial system of Hong Kong. Under such circumstances, when we seek to resolve this important legal issue through the judicial system and the court system in Hong Kong pursuant to Article 158(3) of the Basic Law, we do not think that there is any problem at all and we see it as something that a responsible government should do.

As to the question of whether there is a political purpose and whether this is "foul play", I can explain these questions with the following facts. The case of foreign domestic helpers has reached the CFA, but let us not forget that when this case was heard in the Court of First Instance by Justice Johnson LAM, the then Government and the then Department of Justice already stated clearly to the Court that the Government reserved the right to handle this issue. This point is also written in express terms in the Judgment made by Justice Johnson LAM. When the appeal of this same case of foreign domestic helpers was heard in the Court of Appeal, and as it is the Court of Appeal, not the CFA, the then
Government and the then Department of Justice also explicitly reserved the right to handle this issue. So, this is a legal issue, and there is a reserved right for it to be handled in court. Let me mention incidentally that in the Court of Appeal, Justice Andrew CHEUNG said clearly in the Judgment that on the question of whether the Interpretation of 1999 is binding on the Courts of Hong Kong, the attitude of the Court is that since the Court has not heard the arguments of both sides, the Court is of the view that this should remain as an open issue. Under such circumstances, we consider it entirely sensible and reasonable to deal with this legal issue through the Courts in Hong Kong.

Members emphasize the rule of law. I would like to ask Members a question. When it comes to the rule of law, one of the concepts and principles is that the Government should be bound by the law. But I would ask Members to think a bit further. Should the Government also enjoy legal rights in legal proceedings? As pointed out in the statement of the Bar Association read out by Mr SHEK earlier, the Hong Kong Government, being a party to the proceedings, has the right and also the professional and constitutional responsibility to raise this issue.

Lastly, regarding this request made by us, on the question of whether our arguments are correct or wrong, it is not determined by what I say in my capacity as the Secretary for Justice; nor is it determined by any Member or all Members of this Council in a vote. A decision can be made only within the sound legal system of Hong Kong after the Judges of the CFA have heard the submissions from counsels representing both sides, and only a decision taken in such a way will count. Therefore, there is no question of there being a political purpose to serve. This is purely a legal issue. In response to what Mr LEUNG has said, it is not our wish to politicize a legal issue and what is more, there is no question of "foul play" as alleged by Mr LEUNG. This is done entirely and purely in accordance with the legal procedures in Hong Kong.

A number of Members mentioned in their speeches the remarks made by Ms Elsie LEUNG. I do not wish to make any further comments here because I have made remarks in this connection in a panel of the Legislative Council before. Therefore, I think I should not deal with this issue any further here.
All in all, with regard to this request for an interpretation of the Basic Law or other actions taken by the Government, we entirely have no intention to damage the rule of law; nor is there a need for us to do so. We will give an undertaking to Hong Kong citizens that the Government of the current term will continue to make the utmost effort to safeguard the rule of law and implement "one country, two systems" and the provisions of the Basic Law in Hong Kong.

With regard to the motion proposed by Mr KWOK and the amendments proposed by a number of Members, our position is: We hope that Members will support the amendments of Ir Dr LO Wai-kwok, Mr TAM Yiu-chung and Mr IP Kwok-him, and we also hope that Members will oppose the amendment proposed by Mr Gary FAN.

President, I so submit.

PRESIDENT (in Cantonese): Ir Dr LO Wai-kwok, you may now move your amendment to the motion.

IR DR LO WAI-KWOK (in Cantonese): President, I move that Mr Dennis KWOK's motion be amended.

Ir Dr LO Wai-kwok moved the following amendment: (Translation)

"To delete 'to uphold' after 'the Government' and substitute with ', in accordance with the principle of'; and to delete ', and safeguard' after "'one country, two systems'" and substitute with 'and the provisions of the Basic Law, to uphold'."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Ir Dr LO Wai-kwok to Mr Dennis KWOK's motion, be passed.
PRESIDENT (in Cantonese): I now call upon Mr TAM Yiu-chung to move the amendment to Ir Dr LO Wai-kwok's amendment.

MR TAM YIU-CHUNG (in Cantonese): President, I move that Ir Dr LO Wai-kwok's amendment be amended.

Mr TAM Yiu-chung moved the following amendment to Ir Dr LO Wai-kwok's amendment: (Translation)

"To add 'to continue' before 'to uphold'."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr TAM Yiu-chung to Ir Dr LO Wai-kwok's amendment, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr WONG Yuk-man rose to claim a division.

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

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

Functional Constituencies:

Mr Abraham SHEK, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Ms Starry LEE, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok and Mr CHUNG Kwok-pan voted for the amendment.

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Mr CHEUNG Kwok-che, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK and Mr IP Kin-yuen voted against the amendment.

Geographical Constituencies:

Mr TAM Yiu-chung, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Michael TIEN, Miss Alice MAK, Dr Elizabeth QUAT and Dr CHIANG Lai-wan voted for the amendment.

Mr LEE Cheuk-yan, Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG 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, 28 were present, 20 were in favour of the amendment and eight
against it; while among the Members returned by geographical constituencies through direct elections, 26 were present, nine were in favour of the amendment and 16 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.

MR ANDREW LEUNG (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Safeguarding the rule of law and judicial independence" 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 Mr Andrew LEUNG 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 "Safeguarding the rule of law and judicial independence" 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 put the question to you and that is: That the amendment, moved by Ir Dr LO Wai-kwok to Mr Dennis KWOK's motion, 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.

(Members raised their hands)

Mr James TO rose to claim a division.

PRESIDENT (in Cantonese): Mr James TO 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:

Mr Abraham SHEK, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Ms Starry LEE, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr
Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok and Mr CHUNG Kwok-pan voted for the amendment.

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Mr CHEUNG Kwok-che, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK and Mr IP Kin-yuen voted against the amendment.

Geographical Constituencies:

Mr TAM Yiu-chung, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Michael TIEN, Miss Alice MAK, Dr Elizabeth QUAT and Dr CHIANG Lai-wan voted for the amendment.

Mr LEE Cheuk-yan, Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG 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, 28 were present, 20 were in favour of the amendment and eight against it; while among the Members returned by geographical constituencies through direct elections, 26 were present, nine were in favour of the amendment and 16 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 IP Kwok-him, you may move your amendment.

MR IP KWOK-HIM (in Cantonese): President, I move that Mr Dennis KWOK's motion be amended.

Mr IP Kwok-him moved the following amendment: (Translation)

"To add "continue to" after "the Government to"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr IP Kwok-him to Mr Dennis KWOK'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)

Ms Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Ms Emily LAU 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:

Mr Abraham SHEK, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Ms Starry LEE, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok and Mr CHUNG Kwok-pan voted for the amendment.

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Mr CHEUNG Kwok-che, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK and Mr IP Kin-yuen voted against the amendment.

Geographical Constituencies:

Mr TAM Yiu-chung, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Michael TIEN, Miss Alice MAK, Dr Elizabeth QUAT and Dr CHIANG Lai-wan voted for the amendment.

Mr LEE Cheuk-yan, Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG 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, 28 were present, 20 were in favour of the amendment and eight
against it; while among the Members returned by geographical constituencies through direct elections, 26 were present, nine were in favour of the amendment and 16 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 Gary FAN, you may move your amendment.

MR GARY FAN (in Cantonese): President, I move that Mr Dennis KWOK's motion be amended.

Mr Gary FAN moved the following amendment: (Translation)

"To add "; therefore, the Government should not seek an interpretation of the Basic Law, but should seek an amendment to the Basic Law to resolve the problem of babies born in Hong Kong to 'doubly non-permanent resident pregnant women' having the right of abode in Hong Kong" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Gary FAN to Mr Dennis KWOK'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 IP Kwok-him rose to claim a division.

PRESIDENT (in Cantonese): Mr IP Kwok-him 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:

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK and Mr IP Kin-yuen voted for the amendment.

Mr Abraham SHEK, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Ms Starry LEE, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok and Mr CHUNG Kwok-pan voted against the amendment.

Mr CHEUNG Kwok-che abstained.

Geographical Constituencies:

Ms Emily LAU, Mr Ronny TONG, Mr Alan LEONG, Mr LEUNG Kwok-hung, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Dr Kenneth CHAN, Dr KWOK Ka-ki, Mr SIN Chung-kai and Dr Helena WONG voted for the amendment.
Mr TAM Yiu-chung, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Michael TIEN, Miss Alice MAK, Dr Elizabeth QUAT and Dr CHIANG Lai-wan voted against the amendment.

Mr LEE Cheuk-yan, Ms Cyd HO, Mr Albert CHAN, Mr WONG Yuk-man, Mr CHAN Chi-chuen and Dr Fernando CHEUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, seven were in favour of the amendment, 20 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, 11 were in favour of the amendment, nine 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.

PRESIDENT (in Cantonese): Mr Dennis KWOK, you may now reply and you have four minutes six seconds.

MR DENNIS KWOK (in Cantonese): President, the Secretary mentioned in his response just now that Hong Kong ranks first in the world for its independent Judiciary and social openness on the list of the Heritage Foundation this year. Hong Kong's success keeps it atop the rankings.

But how about the ranking of China this year? I have found some information on the Internet. Our country is ranked 136th. According to the report of the Heritage Foundation, (I quoted) "The legal and regulatory system in China is vulnerable to political influence and Communist Party directives. The party's ultimate authority throughout the economic system undermines the rule of law and respect for contracts." (End of quote) President, in fact, our ranking on the Heritage Foundation's list is the most crucial point of today's debate. Currently, Hong Kong ranks first in the abovementioned elements. Let me explain our situation by an analogy. When a case is being heard by the CFA, we
propose that the case be heard by the political legislature, not the Court, of a country which ranks 136th on behalf of the CFA. We also propose to seek an interpretation of the law by this organ. In doing so, we can imagine to what extent our rule of law will be damaged. Hong Kong, which ranks first for its rule of law, requests an interpretation of the law by a political organ which ranks almost last. This is precisely one of the most important factors that undermine Hong Kong's judicial system. This is also why Hong Kong people cast doubts on the system that the Basic Law can be interpreted by the NPC. Even though some Members have elaborated that such interpretation procedures also exist in other continental law jurisdictions, the problem lies in the fact that the legal concept or the rule of law concept in the Mainland, particularly the NPC, is still shaky. So, to request an interpretation of the Basic Law by this organ will undermine Hong Kong's judicial system.

Secretary Kimsky YUEN said just now that the request to the CFA was made in accordance with the law; and he has the right to make this request when the case is being heard by the Court. He may be right that he has the right to make such a request and raise such a point. But when the Government raises this point, its position and status are different from that of a private individual or ordinary citizen involved in a lawsuit. It is because the point raised by the Government in such an important constitutional case will give rise to a major social and constitutional issue, thereby resulting in a storm.

Therefore, I hope that the authorities, when raising these points, will ponder one thing. This is not merely a matter concerning whether the Government will win a lawsuit or not. Rather, it is a matter concerning whether the community as a whole and the rule of law in Hong Kong will win or not.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Dennis KWOK 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)

Mr IP Kwok-him rose to claim a division.

PRESIDENT (in Cantonese): Mr IP Kwok-him 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:

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK, Mr IP Kin-yuen, Mr Martin LIAO and Mr POON Siu-ping voted for the motion.

Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Ms Starry LEE, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Mr TANG Ka-piu, Ir Dr LO Wai-kwok and Mr CHUNG Kwok-pan abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr Michael TIEN, Mr WU Chi-wai, Mr Gary FAN,
Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the motion.

Mr TAM Yiu-chung, Mr CHAN Hak-kan, Mr WONG Kwok-kin, Miss Alice MAK, Dr Elizabeth QUAT and Dr CHIANG Lai-wan abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 27 were present, 11 were in favour of the motion and 16 abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 19 were in favour of the motion 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 motion was negatived.

NEXT MEETING


Adjourned accordingly at twenty-six minutes to Seven o'clock.