OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 30 November 2016

The Council met at Eleven o'clock

MEMBERS PRESENT:

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE LEUNG YIU-CHUNG

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

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

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

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

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

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

THE HONOURABLE CHAN HAK-KAN, B.B.S., J.P.

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

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

THE HONOURABLE WONG KWOK-KIN, S.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 LEUNG KWOK-HUNG#

THE HONOURABLE CLAUDIA MO

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

THE HONOURABLE STEVEN HO CHUN-YIN, B.B.S.

THE HONOURABLE FRANKIE YICK CHI-MING, J.P.

THE HONOURABLE WU CHI-WAI, M.H.

THE HONOURABLE YIU SI-WING, B.B.S.

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

THE HONOURABLE CHARLES PETER MOK, J.P.

THE HONOURABLE CHAN CHI-CHUEN

THE HONOURABLE CHAN HAN-PAN, J.P.

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

THE HONOURABLE KENNETH LEUNG

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

DR THE HONOURABLE KWOK KA-KI

According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.

THE HONOURABLE KWOK WAI-KEUNG

THE HONOURABLE DENNIS KWOK WING-HANG

THE HONOURABLE CHRISTOPHER CHEUNG WAH-FUNG, S.B.S., J.P.

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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, S.B.S., J.P.

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

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

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

THE HONOURABLE CHUNG KWOK-PAN

THE HONOURABLE ALVIN YEUNG

THE HONOURABLE ANDREW WAN SIU-KIN

THE HONOURABLE CHU HOI-DICK

THE HONOURABLE JIMMY NG WING-KA, J.P.

DR THE HONOURABLE JUNIUS HO KWAN-YIU, J.P.

THE HONOURABLE HO KAI-MING

THE HONOURABLE LAM CHEUK-TING

THE HONOURABLE HOLDEN CHOW HO-DING

THE HONOURABLE SHIU KA-FAI

THE HONOURABLE SHIU KA-CHUN

THE HONOURABLE WILSON OR CHONG-SHING, M.H.

THE HONOURABLE YUNG HOI-YAN

DR THE HONOURABLE PIERRE CHAN

THE HONOURABLE CHAN CHUN-YING

THE HONOURABLE TANYA CHAN

THE HONOURABLE CHEUNG KWOK-KWAN, J.P.

THE HONOURABLE HUI CHI-FUNG

THE HONOURABLE LUK CHUNG-HUNG

THE HONOURABLE LAU KWOK-FAN, M.H.

THE HONOURABLE KENNETH LAU IP-KEUNG, M.H., J.P.

DR THE HONOURABLE CHENG CHUNG-TAI

THE HONOURABLE KWONG CHUN-YU

THE HONOURABLE JEREMY TAM MAN-HO

THE HONOURABLE NATHAN LAW KWUN-CHUNG[#]

DR THE HONOURABLE YIU CHUNG-YIM[#]

DR THE HONOURABLE LAU SIU-LAI[#]

According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG. Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.

PUBLIC OFFICERS ATTENDING:

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

MR JAMES HENRY LAU JR., J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

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

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

MR JOHN LEE KA-CHIU, P.D.S.M., P.M.S.M., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE PAUL CHAN MO-PO, G.B.S., M.H., J.P.
SECRETARY FOR DEVELOPMENT

CLERKS IN ATTENDANCE:

MR KENNETH CHEN WEI-ON, S.B.S., SECRETARY GENERAL

MS ANITA SIT, ASSISTANT SECRETARY GENERAL

MS DORA WAI, ASSISTANT SECRETARY GENERAL

MR MATTHEW LOO, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	*L.N. No.*
Pharmacy and Poisons (Amendment) (No. 5) Regulation 2016	172/2016
Solicitors (Professional Indemnity) (Amendment) Rules 2016	173/2016
Solicitors' Practice (Amendment) Rules 2016	174/2016
Dutiable Commodities (Amendment) Regulation 2014 (Commencement) Notice	175/2016
Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 (Commencement) Notice	176/2016

Other Papers

No. 30 — Fire Services Department Welfare Fund
Report on the Administration of the Fund, Financial statements and Report of the Director of Audit for the year ended 31 March 2016

No. 31 — Occupational Safety and Health Council
Annual Report 2015-2016

No. 32 — Estate Agents Authority
Annual Report 2015/16

No. 33 — Customs and Excise Service Children's Education Trust Fund
Report by the Trustee, Financial statements and Report of the Director of Audit for the year 1 April 2015 to 31 March 2016

No. 34 — Customs and Excise Service Welfare Fund
Financial statements for the year ended 31 March 2016 and its summary, together with the Report of the Director of Audit

No. 35 — Insurance Authority
Annual Report 2015-16

No. 36 — Report of changes made to the approved Estimates of Expenditure during the second quarter of 2016-17
Public Finance Ordinance : Section 8

No. 37 — The Commissioner on Interception of Communications and Surveillance
Annual Report 2015 to the Chief Executive (together with a statement under section 49(4) of the Interception of Communications and Surveillance Ordinance)

Report No. 5/16-17 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Guarding against injuries or sudden deaths of employees due to overexertion at work

1. **MR HO KAI-MING** (in Cantonese): *Some working persons have pointed out that in recent years, cases of employees suffering from overexertion at work and even cases of sudden deaths suspected to be caused by overexertion are not uncommon. Nevertheless, the existing labour laws offer grossly inadequate protection for such employees and neglect the physical and psychological impacts of long working hours and exceedingly heavy workload on employees. In this connection, will the Government inform this Council:*

(1) whether it knows the respective criteria currently adopted by public hospital doctors for diagnosing whether or not a patient has suffered from overexertion and died of this; of the respective numbers of

cases in the past three years in which employees were hospitalized for treatment due to overexertion and cases in which employees died suddenly at work or on their way to and from work due to overexertion; among those employees who were hospitalized, the respective numbers of those who were discharged after recovery and those who could not be cured and died;

(2) whether it has plans to formulate new and targeted measures, including expeditiously legislating on standard working hours, so as to guard against injuries or deaths of employees due to overexertion; if it does, of the details; if not, the reasons for that; and

(3) whether it knows the countries and regions where employees' overexertion and sudden deaths caused by overexertion are currently regarded as occupational injuries and deaths in respect of which employees' compensation may be claimed; whether the authorities will follow such practices and amend existing legislation so as to enhance protection for employees; if they will, of the details; if not, the reasons for that?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, the Government has always been greatly concerned about the work pressure faced by working persons and its possible impact on their physical and mental health. The Labour Department ("LD") and the Occupational Safety and Health Council ("OSHC") have done much to enhance employees' alertness and awareness about work pressure, and to help them ease such pressure through policy formulation and public education.

My reply to the three parts raised by Mr HO Kai-ming is as follows:

(1) The Hospital Authority has not set out any criteria for diagnosing whether a patient has suffered from overexertion or died of overexertion, nor does it keep information on employees hospitalized for treatment of overexertion and the number of cases in which employees died suddenly at work or on their way to and from work. LD also does not keep statistics on such deaths or related information.

(2) LD alleviates employees' work pressure and helps them ease such pressure through different policies. To provide employees with necessary rest, the Employment Ordinance requires that eligible employees shall be granted one rest day in every period of seven days. Employees are also entitled to statutory holidays and paid annual leave.

Besides, in order to promote proper understanding of and measures for managing work pressure among employers and employees, LD and OSHC have published a variety of promotional publications and information and organized various forms of publicity activities. LD has published a booklet titled "Work and Stress", while OSHC has published a "Work Stress Management" Do-it-Yourself kit and online work stress assessment. Such information provides practical measures for preventing and managing work pressure at personal and organizational levels.

LD and OSHC also organize public talks and workshops from time to time to strengthen employers' and employees' understanding of work pressure management. As at the end of October, LD had organized a total of 105 talks and workshops this year.

The Department of Health and OSHC launched the "Joyful@Healthy Workplace" programme in August 2016. Through a series of activities, including a dedicated web page, workshops and distribution of educational materials, the programme has helped employers and employees jointly create a healthy and happy working environment. The programme covers such action areas as mental health. Organizations are encouraged to sign the "Joyful@Healthy Workplace" programme charter as a commitment to promoting physical and mental health at workplaces. Over 390 organizations have participated in the programme since its launch in August this year. OSHC will continue to encourage organizations to actively participate in the programme.

Appropriate rest breaks are crucial to the prevention of occupational health problems arising from long working hours. Under the Occupational Safety and Health Ordinance, employers must, so far as reasonably practicable, ensure the safety and health at work of

employees, which includes ensuring that employees are given appropriate rest breaks. In this connection, LD has issued the Guide on Rest Breaks, which sets out that employers should make rest break arrangements for workers, including arranging appropriate rest breaks for employees after a long period of continuous work. Take the construction industry as an example, as the hot and humid weather in summer may pose health risks to construction workers working outdoors for long hours, the construction sector has since 2013 provided an extra 15-minute rest break every morning for construction site workers during the hot summer months between May and September in accordance with the relevant guidelines issued by the Construction Industry Council.

The Government in April 2013 established the Standard Working Hours Committee ("SWHC") to follow up on the Government's study on working hours policy and advise on the working hours situation in Hong Kong. SWHC will submit a report to the Government by the end of January next year.

(3) According to the information available to LD, the International Labour Organization has not drawn up any definitions or guidelines on sudden deaths caused by overexertion at work, nor are there internationally recognized criteria in this regard. Most countries or places do not have such definitions made in the context of employees' compensation. As a matter of fact, the social culture, structure and composition of the labour force and general working environment of different countries or regions are not all the same.

The existing Employees' Compensation Ordinance ("ECO") of Hong Kong stipulates that if an employee sustains an injury or dies as a result of an accident arising out of and in the course of the employment, including sudden death which happens in the workplace and is caused by accident arising from work, his or her employer is liable to pay compensation in accordance with ECO. The causes of sudden death other than by work accident in the course of the employment are complex and may involve a multitude of factors, including personal health condition, heredity, eating or living habits, work nature and environment, etc. It is a very difficult and complicated issue to determine whether workload or

work pressure has contributed to the sudden death of an employee in the course of the employment, and to conclude whether his employer shall be liable to pay compensation.

The Government will continue to accord importance to employees' occupational safety and health, strengthen employees' awareness of work pressure and help them alleviate such pressure.

MR HO KAI-MING (in Cantonese): *The Secretary's reply disappoints me. In fact, in the Table entitled "Number of In-patient Discharges and Deaths in Hospitals and Registered Deaths in Hong Kong by External Cause of Morbidity and Mortality" set out in the Statistical Reports compiled by the Hospital Authority ("HA"), there is an item of "Overexertion, travel and privation". We believe that the scope covered by this item is too extensive, putting fatal travel injuries and deaths resulting from overexertion under the same category. Therefore, I would like to ask the Secretary: Do the authorities have some relatively detailed figures about the number of deaths resulting from overexertion. If such figures are available, they will prove that a system has been put in place in hospitals to collect relevant data for determining whether a patient has died of overexertion. However, the Secretary has told us that the authorities do not have such figures. I feel disappointed about this. I hope the Secretary can delve into greater details regarding the communication between the authorities and HA at present. Has HA put in place any mechanism to capture data on the number of deaths caused by overexertion?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, as mentioned in the main reply, we care about the issue too. First, the International Labour Organization has definitely not drawn up any definitions in this respect. Moreover, with regard to workplace conditions in Hong Kong and many other places, we all know that deaths at work may be caused by a multitude of factors, such as the employees' personal health conditions, heredity or working environment, etc. This is a very complex issue. It is difficult for the Government to draw up a definition for overexertion at this moment, if so requested by Members.

That said, we have analysed certain data. We also understand that the statistics from HA may not be useful for us. It is because, as rightly pointed out

by the Member, such statistics cover a multitude of factors, including deaths caused by travel injuries or overexertion at home when doing housework. However, employers are required to notify LD in case of sudden deaths at workplace. Though employees will not be compensated because of such reports, employers are still required to file such reports to LD. Our analysis of cases of occupational fatalities among the reported figures reveals that cardiac diseases and cerebral diseases rank top among causes of sudden deaths other than by work accident in the course of employment, and sudden deaths are generally related to vascular problems, such as cardiovascular or cerebrovascular diseases. We have looked at the relevant figures. For example, in 2015, there were 98 fatal cases that were caused by factors other than work accident, that is, the deaths were caused by various non-occupational diseases. We infer that, among those 98 cases last year, 58 cases were caused by heart disease, 18 by brain disease, while almost 70% were associated with vascular problems.

During my discussions with LD's consultant doctors, we had considered whether it was necessary to collect more information on this issue, as all of us were concerned about the problem. In the past, we would not ask employers about other issues. However, from now on, when employers report such cases to us, we will proactively gather more information about the employees, such as their living habits, working environment and work patterns, etc. We will then review the information comprehensively. If we can reach any conclusion after analysing such information for a period of time, we will offer specific solutions to assist the employees.

We can only start working on this after we have gathered sufficient data. We and Members share the same concern indeed. After deliberating with LD's consultant doctors, I have decided that we will start collecting relevant data for analysis purpose. Thank you, Members.

PROF JOSEPH LEE (in Cantonese): *President, according to the reply given by the Secretary just now, it seems that the authorities have nothing in hand, and keep no statistics whatsoever. That said, the Secretary has mentioned in part (3) of the main reply that even the International Labour Organization has provided no definition on sudden death. Also, the Secretary has mentioned some high-risk diseases, such as cardiac diseases, cerebrovascular diseases, etc. I want to ask the Secretary: Are there statistics showing that some employees*

concerned died of these two kinds of diseases not within 24 hours after work? If there were such cases, how are the authorities going to protect the health of employees engaging in these high-risk work types? For example, encouraging employers to issue guidelines for employees to have body check-ups.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I thank Prof LEE for his supplementary question. First, we have to get the right focus. Having done no analysis before, now we have to start collecting the data for analysis and study. As regards cases in which employees died one day after work, we really need some time … as such incidents are not work-related, employers are not required to file any reports. On the other hand, according to existing requirement, employers are required to report work injuries at workplace, regardless of whether the cases are related to occupational diseases, not to mention fatal cases which are mandatorily required to be reported to LD.

Therefore, as we can see, Members always ask at meetings of Panels/committees about the reasons why there are so many cases of natural deaths among work injury cases. It is because employers have to report these cases. These are the cases which we will follow up on. However, it is rather difficult for us to follow up on incidents that unfold at home. However, in this process, we will try to see if the employer concerned can offer any information if the time gap between the two incidents is rather short. We will examine the design of our procedures by taking into account the issues raised by Members, so as to determine the scope that should be covered by our studies.

MR POON SIU-PING (in Cantonese): *President, legislating on standard working hours will certainly help alleviate the number of cases involving deaths caused by overexertion. As the Secretary has stated that the relevant report will not be available until the end of January next year, it is not sure at this moment if legislation will be enacted.*

The Secretary has mentioned that HA and LD do not keep statistics or information on deaths caused by overexertion. Also, the Secretary has just said that the occupational injury figures provided by LD include the number of fatal cases. According to the information recently provided to the Panel on Manpower, the number of such cases has registered a substantial increase from 82 last year to 103 this year.

Although the Secretary does not have any related information at the moment, I would like to know whether the authorities will start studying and compiling these statistics? It is because Japan has been examining similar statistics for several consecutive years and the results substantiate the allegation that the problem of deaths caused by overexertion has worsened. The Prime Minister of Japan has accordingly called for legislation in this respect. I would like to ask the Secretary: Will the authorities start working on this issue now?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thank you, Mr POON. In my response to Mr HO's question just now, I have clearly replied that we will do so. I thank Member for his suggestion, and we will certain do this. We totally share Members' concern. Our colleagues will gather data and look for solutions on the basis of such data to further protect employees' health. We will do this. Bearing in mind the suggestions made by Members, as well as the scope and contents of our internal deliberations, we will definitely start working on this issue.

MR LEUNG KWOK-HUNG (in Cantonese): *President, it seems that the Secretary does not understand the definition of death caused by overexertion. Death at work is not equivalent to death caused by overexertion. So, what does "death caused by overexertion" mean? It means that, if a person has been toiling for long hours and his employer allows that prolonged toil to persist, then the employee may pass away due to cumulative fatigue at work. Under such circumstances, compensation should be paid for the employees' death that is caused by overexertion, regardless of the time of his death. Therefore, if the authorities do not keep such information and do not have such a concept in mind, how can employees claim compensation?*

Doctors are kind-hearted, while draconian policies have no mercy. The President should also have noticed that HA, from the perspective of doctors, does have this item in the Tables compiled by them. However, such efforts are of little avail as we do not have the legal concept.

Therefore, this is simple. It is already too high a demand for the Secretary to understand "death caused by overexertion", as this is too advanced a

concept for him. We do not even have legislation on standard working hours; how can we determine the scope without a proper definition? President, I would like to ask the Secretary through you: As LEUNG Chun-ying the liar Chief Executive, who fails to legislate on standard working hours, has broken his promise and so many people have died of overexertion, when will the Secretary apologize for this? Can he apologize now? Can he apologize immediately?

PRESIDENT (in Cantonese): Mr LEUNG, please sit down.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, regarding standard working hours, we have given an account of the issue at meetings of the relevant Panels/committees, and SWHC will submit a report to the Government by the end of January next year. We will have a clear way forward by then.

MR LUK CHUNG-HUNG (in Cantonese): *President, I am disappointed with the Secretary's response. He has not responded to the question raised by Mr HO Kai-ming, a Member from The Hong Kong Federation of Trade Unions, in which he has requested the enactment of legislation on standard working hours as employees are truly exhausted. SWHC is expected to issue a report in December. As you all know, we the labour sector have withdrawn from SWHC. If a consensus cannot be reached by that time, is the Government willing to boldly put forward its own proposal for standard working hours by enacting legislation that formally regulates working hours, so as to minimize employees' risk of death from overwork?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, in respect of standard working hours, the Government's standpoint is that our response is subject to the views of SWHC to be presented in its report. Please allow us more time to give appropriate responses as SWHC's report will be available by the end of January next year. However, after all, Members have to understand that complex factors are involved in deaths caused by overexertion or sudden deaths at work. As I have pointed out in the main reply, these may be caused by employees' personal health conditions, heredity or various objective factors unknown to us. That said, we understand that we cannot simply do nothing because of this, so we believe that we should start collecting data for

analysis and examination to formulate a basis for studies on further protecting the health, rights and benefits of employees.

DR CHIANG LAI-WAN (in Cantonese): *President, actually, I agree with the Secretary that some cases of sudden death at work may be caused by hidden illnesses unknown to the employees concerned. The point is that many health insurance plans do not include body check-ups, not to mention labour insurance. Therefore, I would like to ask the Secretary: Will the Secretary consider providing subsidized one-off body check-ups for persons aged 50 for free? I believe this can help the middle-aged who will then know more about their health conditions.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I thank Dr CHIANG Lai-wan for her views. The costs concerned will be exorbitant if everyone at the age of 50 in Hong Kong is involved. I believe this cannot possibly be done in one go. However, regarding the construction sector, the Pneumoconiosis Compensation Fund Board has put in place the medical surveillance programme to encourage construction workers, the high-risk groups in particular, to have health examinations and chest X-rays, so as to protect their health. As this specific programme has been launched for some time, workers in the construction industry are encouraged to have free body examinations on a regular basis. This programme has been and will continue to be launched for the relatively high-risk work types.

MR KWOK WAI-KEUNG (in Cantonese): *President, what is the price of labour force? Apart from its market value, the price is also subject to the extent to which employers and the Government cherish the labour force. Simply take a look at SWHC's discussion process, one can see that the Government has only striven to gather economic data, while turning a blind eye to information affecting employees, such as employees' health conditions, family relationship, the upbringing of their children and medical expenses, and so on. This shows that the Government simply does not care about the health of the working population.*

Regarding the Secretary's reply, the Secretary has reiterated time and again that employees' deaths at work may involve many possible factors,

including personal health condition, heredity, eating or living habits, etc. Problems arise because of the factors involved are too complicated. However, the problem lies in whether the Government has wrongly assessed the prevailing situation in Hong Kong. Employees in Hong Kong are obviously working long hours under immense pressure. In places like Japan which are also haunted by long working hours and heavy pressure in the workplace, legislations on karoshi (deaths caused by overexertion) or sudden deaths have been enacted. Why does the Government in Hong Kong still consider that we do not have work pressure, or that our working hours are not long enough? Secretary, regarding deaths caused by overexertion or sudden deaths …

PRESIDENT (in Cantonese): Mr KWOK Wai-keung, please raise your supplementary question.

MR KWOK WAI-KEUNG (in Cantonese): *… President, I am going to raise my question. Regarding deaths caused by overexertion or sudden deaths, when will the authorities conduct analysis and draw a conclusion, so as to protect the health and lives of employees?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I am saying this for the third time. I thank Mr KWOK for his concern, and we are on the same front, both hoping to protect employees' rights and benefits, as well as their health and safety. In fact, after my discussion with LD's consultant doctors, we will establish a team to commence our study, specifically targeting the so-called natural death cases at workplaces reported by employers. In-depth analysis will be conducted on each case, covering the work environment, work patterns and working hours. Moreover, we will gather information about living habits, personal and family medical history, and so on. As soon as we have sufficient data, we will come up with a direction to see how we can offer further protection for employees.

PRESIDENT (in Cantonese): Second question.

(Mr KWOK Wai-keung stood up)

PRESIDENT (in Cantonese): Mr KWOK Wai-keung, has your supplementary question not been answered?

MR KWOK WAI-KEUNG (in Cantonese): *President, my question is clear, that is, the commencement time and the expected completion time. Will the Secretary please provide a timetable.*

PRESIDENT (in Cantonese): Mr KWOK, you have raised your question. Secretary, do you have anything to add?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, we will commence work as soon as possible, and hopefully get it done as soon as possible, too. In respect of collection of information for cases that occurred in the past three years, we have to recollect some new information relating to the then health conditions of the employees concerned but such information may not be readily provided by their family members. So, we start gathering information on new cases. For the newly reported cases, we can ask for such information instantly. It takes at least one to two years to gather sufficient information for determining the way forward.

PRESIDENT (in Cantonese): Second question. Mr Kenneth LEUNG.

(Mr KWOK Wai-keung stood up)

MR KWOK WAI-KEUNG (in Cantonese): *President … without a timeline, actually he shows no commitment at all, President.*

PRESIDENT (in Cantonese): The Secretary has already answered your question. If Members are not satisfied with the Secretary's reply, please follow up through other channels. Second question.

Misconduct of some listed companies which jeopardizes the rights and interests of investors

2. **MR KENNETH LEUNG** (in Cantonese): *In September this year, the Shenzhen Stock Exchange released eight sets of rules governing the Shenzhen-Hong Kong Stock Connect, including the Mandatory Provisions for the Risk Disclosure Statement for Hong Kong Connect Trading. It is mentioned in the Provisions that some poor-performing and low-priced companies with small market capitalization listed on the Stock Exchange of Hong Kong ("SEHK") have engaged in frequent share splits and consolidations and deeply discounted rights issues or placements, which may substantially dilute investors' rights and interests. Investors should pay attention to the risks that may arise. This kind of stocks is commonly referred to as "cheating shares" by local and mainland media. Besides, in an article published in September this year, the Chief Executive of SEHK said that acts involving fraudulent financial reports, insider trading, market manipulation, etc. are stringently combated by various major stock market regulators worldwide. In Hong Kong, the regulatory authorities adopt a practice which "assumes that the majority of people have good intentions and will follow the rules of market". In other words, "the regulator does not intervene in the free market as far as possible" and it focuses on "imposing mandatory disclosure requirements, ensuring shareholders' participation in the vetting and approval process as well as stepping up prosecutions after contraventions, thereby combating contraventions by way of penalties". In this connection, will the Government inform this Council:*

(1) of the number of announcements made in the past five years by companies listed on SEHK in respect of "unusual share price and trading volume movements" and the number of listed companies involved;

(2) whether the authorities have assessed if the existing mechanisms for regulating the market, vetting and approving listings, as well as investigating misconduct can effectively curb those acts of listed companies which jeopardize the interests of shareholders; if they have assessed, of the details and outcome; if not, the reasons for that; and

(3) whether the authorities have conducted investigations into or studies on the characteristics of cheating shares and the listed companies involved; if they have, of the outcome; if not, the reasons for that; whether they have assessed the impacts of the existence of cheating shares on the reputation of Hong Kong as a major financial centre and on the rights and interests of investors; if they have, of the details and outcome; if not, the reasons for that?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, my reply to the three parts of the question is as follows:

(1) The number of announcements issued by issuers in the last five years concerning unusual share price or trading volume movements and the number of issuers involved are set out at Annex.

These announcements are generally made at the request of the Stock Exchange of Hong Kong ("SEHK") following unusual movements in the issuers' share price or trading volume. Under the Listing Rules, SEHK may make enquiries and require publication of announcements to avoid the possible development of a false market (for example, arising from possible leakage of material information).

(2) and (3)

As the frontline regulator of listing-related matters and issuers listed on its markets, SEHK has published and enforced the Listing Rules in order to ensure, as far as reasonably practicable, an orderly, informed and fair market for the trading of securities listed on SEHK. The Listing Rules set out the eligibility requirements for listing as well as the continuous listing obligations.

As the statutory regulator of the securities and futures markets, the Securities and Futures Commission ("SFC") regulates the listing market through supervision of exchanges and clearing houses, as well as the dual filing regime; and its statutory investigation and enforcement powers over matters such as disclosure and other misconduct.

While the existing regulatory mechanism has worked well, regulators have recently noted some concerning phenomena in the listing market as follows:

(a) recent cases of stocks with rapidly rising but unexplained market capitalization in some cases affecting major stock indices, market sizes in some of these cases raising potential concerns;

(b) the unusual speed and scale of share price hikes of certain stocks, especially where they were closely held; and a lack of transparency of the assets, businesses and controllers of those companies; and

(c) extreme price volatility of some newly listed Growth Enterprise Market ("GEM") stocks, as well as high shareholding concentration and low liquidity of certain GEM stocks.

Although the types of problems outlined above only affect a small number of listed companies in Hong Kong, SFC has in recent years stepped up its enforcement efforts directed at listed companies-related issues, such as corporate fraud and misfeasance, market manipulation and related intermediary misconduct. The number of SFC inquiries into corporate governance or disclosure issues, insider dealing and market manipulation has more than doubled in the past five years, while the number of formal proceedings commenced has increased by more than 50%. Different divisions of SFC have been working together to identify key areas of concern and the optimal regulatory approach.

In addition, a close collaborative relationship with the Mainland regulators—notably the China Securities Regulatory Commission—is increasingly critical, given the large percentage of Hong Kong-listed companies having business operations on the Mainland. SFC has been actively building on its long-term relationship with Mainland regulators to increase the effectiveness of its enforcement work.

Reliance on enforcement alone is of course not sufficient as it normally comes into play only after real harm has been done to investors. Hence, apart from enforcement action, effective gatekeeping and regular review of rules for the governance of listed companies and the regulation of intermediaries who interact with them are equally important. SEHK has tightened its listing regulation and issued a number of guidance letters, including guidance on reverse takeover transactions; cash companies; bonus issues of shares; and suitability of listing related to companies exhibiting shell characteristics. Furthermore, SFC and SEHK are working on an overall review of a range of listing policies, including a holistic review of GEM, backdoor listings, shells and prolonged suspensions.

As the market becomes more complex and diverse, SFC and SEHK strive to ensure that our listing regulation can respond to rapid developments in the market, and thus enable them to tackle various market issues in a more efficient and effective manner.

Annex

Unusual Share Price or Trading Volume Movements

Number of Announcements Issued by Issuers and Number of Issuers Involved

	2011	*2012*	*2013*	*2014*	*2015*
Number of announcements	360	348	390	494	624
Number of issuers involved	245	262	293	340	433

Source of information: SEHK

MR KENNETH LEUNG (in Cantonese): *President, I am very disappointed at the reply given by the Secretary, especially when he said in the third last paragraph of parts (2) and (3) of the main reply that "SFC has been actively building on its long-term relationship with Mainland regulators to increase the effectiveness of its enforcement work". I hope the Secretary would give me a reply for the example cited as follows: With regard to the requests put forward by*

auditors of companies under investigation on the Mainland for the provision of audit working papers, what arrangements have been put in place by SFC and how such arrangements are implemented?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, a consensus has already been reached between SFC and its Mainland counterparts for auditors requesting for the provision of audit information or working papers kept by Mainland companies to have access to such materials in accordance with the established mechanism. Questions have been raised before on whether the information or working papers of certain companies could be brought to Hong Kong. In this connection, we have maintained communication and exchanges with Mainland regulators, and made appropriate arrangements for auditors to have access to the information and working papers of business operations of listed companies on the Mainland. Efforts have also been made to facilitate cooperation between Hong Kong auditors and their Mainland counterparts, so that an appropriate channel is available for them to have access to the requested information.

MR KENNETH LEUNG (in Cantonese): *I think the Secretary has not answered my question because I am asking about the implementation of such arrangements. Can the Secretary provide us with some supplementary information in writing?*

PRESIDENT (in Cantonese): Secretary, can you provide supplementary information?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): We can provide supplementary information after the meeting. (Appendix I)

MR WONG TING-KWONG (in Cantonese): *President, as seen from the reply given by the Bureau, prevention is indeed better than cure. However, the recommendations contained in the joint consultation paper issued by SFC and the Hong Kong Exchanges and Clearing Limited ("HKEx") on enhancement to the listing regulatory structure have failed to address some prevailing problems*

found in the market. Such problems include extreme price volatility or high shareholding concentration, frequently and deeply discounted rights issues or placements, and frequent share splits and consolidations of "cheating shares", "rubbish shares", and so on.

I would like to ask the Government and SFC: Will further actions be taken to tackle the issues? What is your attitude towards such problems?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, in order to tackle the issues, SFC has all along maintained communication and exchanges with the China Securities Regulatory Commission. With regard to the problems mentioned just now, continued efforts have been made within the institutional framework of Hong Kong to step up enforcement actions against such irregularities as price volatility or high shareholding concentration. Hence, as I mentioned earlier, the number of formal inquiries has more than doubled, and we will continue to step up our enforcement efforts in this regard. In addition, SFC has also announced recently the establishment of some dedicated teams to follow up the measures required on various fronts.

On the other hand, as the Member has pointed out very correctly, we will maintain a close collaborative relationship with the China Securities Regulatory Commission because agreements on issues relating to enforcement have already been reached between both sides, and appropriate communication can be maintained on the information needed for effective enforcement, with a view to stepping up our enforcement efforts.

Besides, with regard to gatekeeping as referred to by the Member, we have already stated clearly in the joint consultation paper that appropriate measures will be taken in various aspects, with a view to better responding to rapid developments in the market as far as listing regulatory structure and workflow are concerned; and introducing one-stop processing in order to provide a more focused platform for SFC and SEHK to concentrate on policies that are significant to the quality, competitiveness and development of the market as early as possible, and take the appropriate measures.

MR CHAN CHUN-YING (in Cantonese): *President, as far as the stepping up of enforcement efforts is concerned, the Bureau has mentioned in the main reply that the number of SFC inquiries into acts of misconduct such as corporate governance or disclosure issues, insider dealing and market manipulation has doubled in the past five years, while the number of formal proceedings commenced has increased by 50%. However, can the Bureau tell us how many cases for which action has been taken by SFC, and how does the number compare with figures of the past? Information should include the actual number of such cases and the corresponding percentage increase, so that we can make an assessment of the practical effectiveness of such inquiries and proceedings.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the Bureau has already provided some statistics on 9 November when a reply was given to a question raised by a Member. As mentioned by Mr CHAN, in general, the number of investigations commenced has doubled from 127 in 2011 to 311 in 2015. Among them, the number of cases in relation to corporate governance deficiencies and disclosure issues has increased from 36 to 177; the number of those in relation to insider dealing has increased from 37 to 53; and the number of those involving market manipulation has increased from 54 to 81.

As for the number of criminal proceedings, civil proceedings and Market Misconduct Tribunal ("MMT") proceedings on foot, I can also briefly present the relevant statistics here again. The number of criminal proceedings has decreased from 15 in 2011 to 7 in 2015; the number of civil proceedings has increased from 47 in 2011 to 79 in 2015; and the number of MMT proceedings has also increased from 10 in 2011 to 26 in 2015. As stated by the Member just now, the total number of cases has increased by about 50% from 72 to 112. I have already pointed out just now that SFC will step up its enforcement efforts in the several areas mentioned above, with a view to enhancing the regulatory structure of Hong Kong as far as the institutional framework and gatekeeping are concerned, so that enforcement actions may be taken to address such irregularities within our institutional framework.

MR DENNIS KWOK: *President, I notice that in the last paragraph of parts (2) and (3) of the main reply, it is stated that the SFC and the SEHK strive to ensure that our listing regulations can respond to rapid developments in the market.*

While it is important to ensure our proper regulations in the market, it is also important to ensure that there are proper policy developments to ensure that our market stays open to all the developments around the world, especially regarding the pre-revenue IPO of companies that are not yet in profit but has potential, and that is certainly a trend. So, what is being done by the Administration to update our listing regulations in order to ensure that we could attract these companies to come and list in Hong Kong?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the supplementary question is about the ways to attract companies to come and list in Hong Kong, and how our listing regulation and institutional framework can be improved. These are in fact the subjects under consideration in the joint consultation conducted by SFC and HKEx recently.

With regard to the listing of companies and suitability of listing, and the views about the appropriateness of applying the existing Listing Rules of Hong Kong to emerging industries, etc., in the consultation conducted in June this year, we have already invited views from trade members and members of the public on listing regulation and the relevant regulatory structure, with a view to enhancing the market quality of Hong Kong. In this connection, we have received a lot of views, and an assessment and analysis of such views is being conducted by SFC and HKEx. It is estimated that the work could be completed by the end of the first quarter of next year, and a report on the work progress would be made to the relevant Panels of the Council by then.

As pointed out by the Member, our emphasis is on whether the recommendations put forward can enable Hong Kong to respond more effectively to the prevailing market situation and develop further in the future. Our aim is to better prepare Hong Kong for further market development, so as to attract more Mainland and overseas companies to come and list in Hong Kong. As for the recommendations on regulatory structure, many different views have been received on a number of issues, and there are a lot of different opinions on the proposed Listing Regulatory Committee and Listing Policy Committee. We are now examining and analysing such views, and it is our plan to make a report to the Council and seek Members' views after SFC and HKEx have finished their analyses.

MR CHRISTOPHER CHEUNG (in Cantonese): *President, I have raised the issue of "cheating shares" in this Council last year, but it seems that the situation has not changed a bit as of today. I would like to ask the Government: Will it tighten, as soon as possible, the existing threshold for listing on GEM by way of placement of shares, so that the issuers will be made to pay a higher cost with the increase in the number of shareholders from 100 to 200 and even 300? Will it consider stipulating that part of the funds to be raised by way of placements should come from public offering, so as to prevent an excessive concentration of shareholding?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, thanks to the Member for the question. With regard to the situation of certain companies mentioned just now and especially that of the GEM market, SEHK has all along been paying close attention to market development and reviewing regularly the Listing Rules. I hope Members and the public would understand that we need to review the Listing Rules in order to ensure that they can reflect the currently accepted criteria and maintain investors' confidence in the market. SFC and SEHK have in fact been keeping a close watch on the problems raised by Mr CHEUNG just now.

Hence, it has already been pointed out in the Listing Committee Report 2015 that a more urgent review is considered necessary in respect of the following issues: companies delisted for a prolonged period, an effective delisting policy, issues relating to the placement and public offering of shares, backdoor listings on GEM, shells, etc. They are conducting a holistic review and will publicize the results later once they are available.

MR KENNETH LAU (in Cantonese): *President, from a regulatory point of view, there is no specific and objective definition of "cheating shares". Listing companies with different performances, share prices and market capitalizations can be found in different countries such as the United States, Canada, Australia, and so on. When assessing the effectiveness of the existing market regulatory regime in Hong Kong, has the Government conducted a full study of and made reference to the relevant regimes in such other countries, and made an analysis of their pros and cons? If it has, what are the details? If it has not, what are the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, our regulators and HKEx have all along been keeping a close watch on market development and the relevant situation in Hong Kong. For example, with regard to shares issued by shell companies, guidelines on handling companies with certain characteristics have already been issued by SEHK in June 2016 (that is, the current year). Such characteristics include small market capitalization, marginally meet the listing eligibility requirements, involve fund raising disproportionate to listing expenses, involve a pure trading business with a high concentration of customers, a majority of the assets are liquid and/or current assets, involve a superficial delineation of business from the parent, have little or no external funding at the pre-listing stage, and so on. SEHK will require the applicant and sponsors of companies with such characteristics to provide a robust analysis to substantiate that the applicant is suitable for listing. The information required shall cover such areas as use of proceeds, future objectives and strategies, profit and revenue growth, and potential sunset industries.

Hence, as seen from the guidance letter issued by SEHK, efforts have already been made on various fronts to enhance the regulatory guidelines and supervision of listing companies with potential problems, and to ask for information to analyse their suitability for listing. We will of course keep ourselves informed of the development of major overseas markets in this regard.

PRESIDENT (in Cantonese): Third question.

Regulation of unscrupulous sales practices

3. **DR PRISCILLA LEUNG** (in Cantonese): *President, earlier on, a chain fitness centre closed down its business after a winding-up petition had been filed with the court against it, causing substantial financial losses to its members who could not find ways to seek compensation. Prior to this, quite a number of members of the public had complained to me that the fitness centre adopted various high-pressure and unscrupulous tactics to promote memberships and fitness courses. In addition, the provisional liquidator of the fitness centre has recently sent short messages to members of the centre to enquire whether they agree to sell their personal data to potential buyers for use in direct marketing. On the other hand, the Consumer Council received more than 1 500 complaints*

against fitness centres between January and September this year. At present, the Consumer Council normally handles various types of disputes by way of mediation, which has no legal effect. Although the Consumer Council has set up the Consumer Legal Action Fund ("the Fund") to give consumers access to legal remedies by providing financial support and legal assistance, there are comments that the Fund's vetting and approval procedures are cumbersome and litigation proceedings are time-consuming. In this connection, will the Government inform this Council:

(1) whether it knows if the Office of the Privacy Commissioner for Personal Data ("OPCPD") has received any complaint regarding the provisional liquidator's attempt to sell personal data of members of the fitness centre for use in direct marketing; if OPCPD has, of the details; whether the Government has taken any timely measures to curb such an act, and whether it has considered stepping up law enforcement actions to curb the unscrupulous sales practices of fitness centres; if it has, of the details; if not, the reasons for that;

(2) whether it will adopt the Consumer Council's earlier recommendation to establish a Consumer Dispute Resolution Centre to provide free service of "Mediation First, Arbitration Next" for consumers and businesses so as to speed up the handling of consumer disputes, and whether it will empower the Consumer Council to step up efforts to combat unscrupulous sales practices in order to protect the rights and interests of consumers; if it will, of the details; if not, the reasons for that; and

(3) whether it will make reference to the practices of other jurisdictions, such as the United States and Australia, and review the existing legislation to see if the regulation of pre-payment mode of consumption transactions is adequate, and to ascertain if the relevant regulation can effectively combat various unscrupulous sales practices; if it will, of the details; if not, the reasons for that?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, having consulted the Constitutional and Mainland Affairs Bureau and the Department of Justice, my consolidated reply to the three parts of the question is as follows:

(1) In July this year, the closure of a chain of fitness centres aroused concerns among consumers.

According to the Personal Data (Privacy) Ordinance ("PDPO"), if a merchant has not provided the data subjects with the prescribed information in writing and obtained their written consent (which includes situations where the data subjects have not responded), no personal data may be provided to a third party for use in direct marketing. If a data user acts in breach of this requirement and where the provision of the personal data is for gain (such as in return for money), he is liable on conviction to a fine of $1,000,000 and imprisonment for five years.

The question refers to the provisional liquidator of a fitness centre proposing to sell the personal data of its members. In this regard, the Office of the Privacy Commissioner for Personal Data ("PCPD") has hitherto received six complaints. The six complaints were not substantiated, because there was no evidence of the fitness centre's provisional liquidator contravening the above mentioned requirements, or because it received no response from the complainant to its enquiry. If PCPD receives complaints in the future about data users selling personal data without prior consent from the data subjects, or if it has reasonable grounds to believe there is a breach of the requirements under PDPO, PCPD will handle the complaints, and may conduct compliance checks or investigations.

The Customs and Excise Department ("C&ED") has been exerting earnest efforts towards combating unfair trade practices deployed by the fitness industry. Following the closure of a chain of fitness centres in July this year, C&ED has suitably deployed staff to expedite the handling of complaints. As at October this year, the C&ED had received 1 670 complaints regarding the fitness centre chain "wrongly accepting payment" and "applying false trade descriptions". C&ED has contacted all complainants for case details and is currently conducting investigation. Arrests have been made accordingly. C&ED will continue to take vigorous enforcement actions against unscrupulous trade practices.

In promoting compliance among the fitness industry, C&ED conducted large-scale seminars in 2013, 2015 and July this year, with a view to strengthening understanding of the Trade Descriptions Ordinance by the management and frontline staff of the industry. Over 600 industry participants attended the seminars. C&ED also convened a number of meetings with the management of several large-scale fitness centres in May and October this year. At the meetings, C&ED reminded traders of their supervisory responsibilities, and encouraged them to train their staff and formulate staff codes of practices and guidelines, so as to prevent frontline staff from deploying unfair trade practices.

On public education, C&ED held a seminar for the members of all 18 District Councils and their staff in May this year to improve their understanding of the protection conferred by the law, as well as the points to note when reporting unscrupulous traders so that complaint referrals can be made more efficiently. Moreover, taking into account the allegations in some complaints, C&ED held six seminars at rehabilitation centres for persons with mild mental handicap from February to June this year, to help them and their family members understand common unfair trade practices.

(2) Law enforcement agencies and the Consumer Council ("CC") perform their respective duties. The law enforcement agencies are mandated to conduct criminal investigation on unfair trade practices. On the other hand, CC exercises its functions in accordance with section 4 of the Consumer Council Ordinance, which includes collecting, receiving and disseminating information concerning goods, services and immovable property; receiving complaints by consumers; and encouraging business and professional associations to establish codes of practice to regulate the activities of their members, etc. In exercising such functions, CC can use the information collected to name unscrupulous traders who are not amenable to repeated advice and thereby alerting consumers. This has a significant deterrent effect on unscrupulous traders. CC also makes every effort in acting as a conciliator to resolve disputes between traders and complainants. In fact, the majority of complaints received by the Council can be resolved through conciliation.

According to the study report published by CC in August this year on consumer arbitration, its recommendations on establishing a Consumer Dispute Resolution Centre seeks to promote to the community the notion of settling disputes outside the judicial system. The Government has all along been promoting and encouraging the resolution of disputes through mediation and arbitration. A number of non-governmental organizations and the private sector offer mediation and arbitration services, allowing disputes to be resolved outside the courts. We will continue to explore with CC and the Department of Justice on promoting the resolution of consumer disputes by non-judicial means.

(3) Consumer contracts involving pre-payment are commonplace in many industries. The regulation of all such contracts would have significant implications on many trades and industries. Considerations on relevant policy should be premised on respecting contracts for sale and purchase freely entered into between traders and consumers. The Government must have sufficient and reasonable grounds before intervening in a contract entered into between two parties.

We understand that in the United States, the regulations in individual states stipulate that fitness service contracts shall not exceed three years in duration, or that contract fees shall not exceed a prescribed amount. Previously in New South Wales, Australia, the regulations used to stipulate that fitness service contracts should not exceed one year in length, or the unexpired period of the lease of the fitness centre premises. However, such regulations of New South Wales were repealed last year to achieve red-tape reduction. In our view, the suggestion of imposing ceilings on contract length or value of pre-payment in consumer contracts amounts to a direct intervention into the business plans of traders and must be considered carefully.

DR PRISCILLA LEUNG (in Cantonese): *President, I do hope the Secretary might show a little compassion for those consumers or victims who suffer severe losses. Just like the case mentioned in the main question, innocent consumers sustained great financial losses ranging from hundreds of thousands to more than*

a million dollars. To begin with, CC is now seen as a toothless tiger. Of course I am pleased to learn that CC, taking on board our advice, has suggested that the Government should set up an arbitration and mediation centre. But what is more important, which has been raised in my question, is: in the event that a service provider goes bankrupt, the claims priority of consumers will be placed after other creditors, and thus they stand no chance of getting any compensation. Hence, we have repeatedly urged the Government to consider offering better legislative protection for consumers, in view of the special circumstances where they are involved in cases of unscrupulous sales practices.

Secretary, many members of California Fitness Centre and other consumers who have similar experiences are now listening to your reply. Please do not turn down the suggestion categorically or respond lackadaisically, for this is what we cannot accept. Secretary, would you please advise us once again whether we can offer legislative protection for consumers in case of the service providers going bankrupt?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, as I have said in the main reply, the Government attaches great importance to protecting the rights and interests of consumers. For instance, after listening to the suggestions made by Members, we have strengthened the relevant consumer protection in the Trade Descriptions Ordinance. We will continue listening to the comments made by Members.

Dr LEUNG suggested giving special treatment to pre-paid consumers in the event that the service providers go bankrupt. On this, I would like to point out that the international norm is to uphold the corporate insolvency law principle of pari passu. To comply with this principle, the existing regulation on winding-up stipulates that except for cases of employees' wages in arrears and government statutory debts, all other unsecured creditors must be treated on an equal footing, with the company assets distributed to each such creditor subject to the proportion of the claim amount of each of them in the total claim amounts. If we make further distinction among these unsecured creditors by according a higher repayment priority to pre-paid consumers as suggested in the question for instance, the interests of the other unsecured creditors will be affected. Additionally, the suggestion will complicate the whole system and delay payment to creditors …

DR PRISCILLA LEUNG (in Cantonese): *President, the Secretary has not answered my supplementary question. I hope the Secretary can review the legislation. The Secretary has proactively considered conducting a legislative review after the Lehman Brothers' Minibonds Incident …*

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, this is not what you have raised in your supplementary question just now. Secretary, do you have anything to add?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I would like to add that we must have very sufficient legal grounds if we were to consider amending legislations that involve basic legal principles. As I have said a moment ago, we have to take into consideration established international norms.

MR HOLDEN CHOW (in Cantonese): *With regard to the incident in which the fitness centre closed down, I have put forth a written question to the authorities earlier, asking them to advise us if it is possible to implement a "cooling-off period" for pre-payment mode of consumption. I understand that a "cooling-off period" for pre-payment mode of consumption is now implemented in communication, retail banking and insurance industries. I hope the Bureau can further comment on the possibility of implementing "cooling-off period" for pre-payment mode of consumption in fitness centre membership or let us know when the relevant study will be completed.*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I thank Mr CHOW for his supplementary question. In the last couple of years, I have listened to many comments on whether the imposition of "cooling-off period" can better protect the rights of consumers. Of course, we will also draw reference from overseas practices. Imposing a mandatory "cooling-off period" will change the course of transactions and bring about significant implications on consumers and traders. Therefore, we have to prudently listen to views from various sides. The Government has provided

resources to CC which is conducting a research on pre-payment mode of consumption and "cooling-off period", covering areas such as overseas experiences and the feasibility of implementing "cooling-off period" in Hong Kong. The Government will, after studying the relevant research report, listen to the views from industries and consumers before implementing or conducting further studies on the recommendations put forth by the research report.

DR YIU CHUNG-YIM (in Cantonese): *I have conducted, for the Government, a consultancy study on the effectiveness of mediation. I hope the Secretary can elaborate his reply in part (2) of the question, because he has not directly answered the question raised by Dr Priscilla LEUNG as to whether the Government will adopt the recommendation made by CC earlier to establish a Consumer Dispute Resolution Centre for the provision of "Mediation First, Arbitration Next" service. Of course, this is only the first part of the question as it deals only with disputes …*

PRESIDENT (in Cantonese): Dr YIU Chung-yim, under the relevant rules, you can only ask one supplementary question. Please sit down as you have already asked the supplementary question.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I thank Dr YIU for his supplementary question. The recommendation made by CC is rather preliminary and we will give them some thought. The mediation centre as mentioned in this recommendation dovetails with the Government's general policy direction as we also hope to explore means to resolve disputes other than settling such disputes through judicial means.

After the recommendation was made, we have received different comments from the industry and from the community. Among them, some have expressed reservations over the recommendation. Therefore, we have to carefully consider the views from various sides but the use of mediation and arbitration remains our general direction. This direction is also welcome by the Department of Justice. What are the reservations? For instance, some small and medium enterprises have indicated that while the scheme suggests subsidizing consumers with public

money, the business sector, and small and medium enterprises in particular, are not going to be subsidized. Is this going to create inequity? Moreover, the scheme encourages active participation by the industry but unscrupulous traders may not have the incentive to participate. In view of this, should we think thoroughly in order to come up with ways to perfect the scheme? Furthermore, the consumers concerned may come from a very wide spectrum. Is it necessary to bring in experts from various fields during mediation? Would there be any difficulties in the process? We need to address these questions and will continue exploring a feasible solution with the Department of Justice and CC.

MR CHUNG KWOK-PAN (in Cantonese): *President, nowadays when an enterprise runs into debt or an operational problem, it may go bankrupt right away. The Secretary talked about international norms just now. At present, the mechanism of issuing bankruptcy protection orders is in place in many developed countries, such as Chapter 11 in the United States. With the mechanism of issuing bankruptcy protection orders in place, at least the consumers will not lose all their interests immediately and what is more, some suppliers may also be protected. Will the SAR Government consider enacting legislation similar to bankruptcy protection order?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, when replying to the supplementary question put forward by Dr Priscilla LEUNG a moment ago, I said that there were certain international norms with regard to bankruptcy or winding-up legislation. As an international business and trade centre, Hong Kong has to draw reference from overseas practices and the pari passu legal principle that I mentioned earlier.

(Mr CHUNG Kwok-pan stood up)

MR CHUNG KWOK-PAN (in Cantonese): *The Secretary has not answered the part on bankruptcy protection orders.*

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

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I have noted the Member's supplementary question and will relay the relevant views to the Financial Services and the Treasury Bureau for consideration.

MR CHAN CHI-CHUEN (in Cantonese): *President, I would like to declare that I am also a member of this large-scale chain fitness centre which closed down all at a sudden in July.*

The essence of the Secretary's reply was that: "Fend for yourselves as the Government can do nothing at all." We have lost our money and are under the risk of having our personal data sold. However, the Secretary said the data had yet to be sold and complaints should only be made after it was actually sold.

President, I would like to talk about part (3) of the main question which concerns the regulation of consumer contracts involving pre-payment. Fitness centres nowadays very often ask consumers to purchase hundreds of hours of personal training service which must be used up in half a year. So consumers can hardly exhaust the service before the expiry date even if they work out on a full-time basis. In his main reply, the Secretary talked about "respecting contracts for sale and purchase freely entered into between traders and consumers" and that the suggestion "amount[ed] to a direct intervention into the business plans of traders and must be considered carefully". Does it mean that after entering into agreement, the two sides are deemed to have done so entirely voluntarily? And even if a deception is involved, it will be taken as within their consents and hence not to be intervened by the Government? Does it mean that researches on the regulation of consumer contracts involving pre-payment will be given up altogether? The Secretary quoted an example in which certain states in the United States which used to regulate consumer contracts involving pre-payment had those regulations repealed. Does the Secretary mean that we should not bother to study this topic anymore?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, what I said just now was that the relevant regulations which used to be in place in New South Wales, Australia were repealed in August last year. But I do not mean we will not study the topic. When replying to the supplementary question raised by Mr CHOW, I said resources had been provided to allow CC to research on pre-payment mode of consumption and "cooling-off period". The Government will also explore a feasible solution with reference to the research findings.

PRESIDENT (in Cantonese): Fourth question.

Interpretation of Article 104 of the Basic Law

4. **MS CLAUDIA MO** (in Cantonese): *President, Mr WU Chi-wai of the Democratic Party originally intended to ask this urgent question but you did not approve. I am now asking on his behalf.*

PRESIDENT (in Cantonese): Please stick to the wording as printed on the Agenda and ask the main question.

MS CLAUDIA MO (in Cantonese): *At its Twenty-fourth Session on the 7th of this month, the Standing Committee of the Twelfth National People's Congress made an interpretation of Article 104 of the Basic Law ("BL") ("the NPCSC Interpretation"). In this connection, will the Government inform this Council:*

(1) as Article 104 stipulates that when assuming office, the public officers specified in the Article (namely the Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of the courts at all levels and other members of the judiciary) must, in accordance with law, swear allegiance to the "Hong Kong Special Administrative Region of the People's Republic of China" ("SAR") (i.e. the only party to whom they swear allegiance is SAR), but the NPCSC Interpretation states that "[t]he taking of the oath stipulated by Article 104 … is a legal

pledge made by the public officers specified in the Article to the People's Republic of China and its Hong Kong Special Administrative Region" (i.e. there are two parties to whom they make the legal pledge, namely the People's Republic of China ("China") and SAR), whether China, apart from SAR, is also a party to whom the aforesaid public officers swear allegiance when they take the oath upon assumption of office; if so, whether the authorities have assessed if Members' expression of support for "vindicating the 4 June incident" or "putting an end to the one-party dictatorship of the Communist Party" when they address this Council at its meetings will fall within the meaning of "engag[ing] in conduct in breach of the oath" in the NPCSC Interpretation and they therefore must "bear legal responsibility in accordance with law"; if they have assessed, of the details; if not, the reasons for that; and

(2) given that Article 67 of BL stipulates that permanent residents of SAR who are not of Chinese nationality may also be elected members of the Legislative Council and Article 92 of BL stipulates that judges and other members of the judiciary may be recruited from other common law jurisdictions, whether the authorities have assessed if the public officers who are not of Chinese nationality must also swear allegiance to China when they take the oath pursuant to Article 104 upon assumption of office; if they have assessed and the outcome is in the affirmative, of the justifications; if not, the reasons for that?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, Article 104 of the Basic Law provides that "[w]hen assuming office, the Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of the courts at all levels and other members of the judiciary in the Hong Kong Special Administrative Region ("HKSAR") must, in accordance with law, swear to uphold the Basic Law of HKSAR of the People's Republic of China ("PRC") and swear allegiance to HKSAR of PRC."

On 7th November, the Standing Committee of the National People's Congress ("NPCSC") adopted the interpretation of Article 104 of the Basic Law ("the Interpretation"). Article 1 of the Interpretation points out that "[t]o uphold

the Basic Law of HKSAR of PRC" and to bear "allegiance to HKSAR of PRC" as stipulated in Article 104 of the Basic Law are the legal content which must be included in the oath concerned; while Article 3 of the Interpretation explains that the taking of the oath stipulated by Article 104 of the Basic Law "is a legal pledge made by the public officers specified in the Article to PRC and its HKSAR, and is legally binding."

Having consulted the Department of Justice, our reply to each part of the question is as follows:

(1) The Interpretation aims to reiterate and explain clearly the meaning of Article 104 of the Basic Law. No change has been made to the content (including the oath content stipulated in the Article) or the legislative intent of the Article.

The Basic Law is enacted in accordance with Article 31 of the Constitution of PRC. The aims of which are to provide a legal basis for the establishment of HKSAR and implementation of the basic policy of "one country, two systems" in HKSAR. The Basic Law is not only a national law but also a piece of constitutional legal document devised for the implementation of "one country, two systems" in HKSAR. It is plainly obvious that the basic policy of "one country, two systems" and its implementation involve not only HKSAR but also PRC at the same time.

The Basic Law contains not only provisions related to HKSAR, but also provisions regarding the affairs within the responsibility of the Central Authorities and regarding the relationship between the Central Authorities and HKSAR. Moreover, Article 2 of the Basic Law provides that the executive, legislative and independent judicial powers, including that of final adjudication, enjoyed by HKSAR are all authorized by the National People's Congress; and the powers exercised by public officers specified in Article 104 of the Basic Law after assuming office are exactly the powers authorized by the National People's Congress stipulated in Article 2 of the Basic Law. Therefore, it is impossible that upholding the Basic Law refers to only upholding those parts related to HKSAR.

In view of the analysis above, it is impossible that the party to whom the oath is made under the legal pledge stipulated in Article 104 of the Basic Law on upholding the Basic Law is only limited to HKSAR. Article 3 of the Interpretation only explains clearly that relevant public officers, in swearing to uphold the Basic Law and to bear allegiance to HKSAR of PRC, are making a legal pledge to both PRC and its HKSAR. The Interpretation (including Article 3 of the Interpretation) does not change the oath content stipulated in Article 104 of the Basic Law. Hence, there is no question of "whether the party to whom the public officers swear allegiance is expanded", and there is no change to the legal rights and responsibilities of the relevant public officers arising from Article 3 of the Interpretation before or after NPCSC adopted the Interpretation.

(2) In future, oath taking by public officers specified in Article 104 of the Basic Law (including those not of Chinese nationality) when assuming office will continue to be conducted in accordance with Article 104 of the Basic Law and the provisions of the Oaths and Declarations Ordinance.

MS CLAUDIA MO (in Cantonese): *The Secretary said in the main reply that if relevant public officers hold foreign passports, there is no problem for them to swear allegiance to Beijing, that is, double allegiance, and there is no change to their legal rights and responsibilities before and after the Interpretation. In other words, it should not be a problem if we mention "vindicating the 4 June incident", "putting an end to the one-party dictatorship" in the Legislative Council in future. My supplementary question is: Should it also pose no problem if we talk about "Hong Kong independence" and "self-determination" in the Council in future? Would the Secretary please answer "yes" or "no"?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, if Members have completed the statutory procedure under Article 104 of the Basic Law ("BL"), the speech they make at each Legislative Council meeting and the arguments they present during debates will, as matter of course, continue to be governed by BL and the relevant local legislation, in

particular the Legislative Council (Powers and Privileges) Ordinance and the Rules of Procedure. As I said in the main reply, whether it is before or after the Interpretation, their legal rights and responsibilities have not changed.

MS CLAUDIA MO (in Cantonese): *The Secretary has not answered my supplementary question. My earlier question is: Will it pose a problem if we discuss "Hong Kong independence" and "self-determination" in this Council?*

PRESIDENT (in Cantonese): Ms MO, you have asked your follow-up question. Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): I believe I have replied just now.

MS STARRY LEE (in Cantonese): *President, the former Legislative Council President Jasper TSANG wrote an article in November entitled "Much Ado About Nothing"(庸人自擾). He pointed out clearly that those who forge the notion of "double allegiance" have gone after the wrong target and mixed up their concept. In my opinion, some people have long in the past tried to challenge "one country" with "two systems". Since it is "one country, two systems", "one country" should of course come before "two systems". "One country" is no doubt the People's Republic of China ("PRC"), and SAR comes from PRC. So, swearing allegiance to SAR definitely implies swearing allegiance to PRC. Therefore, those people are really making much ado about nothing. It seems that some Members of the Legislative Council also do not have a clear concept in this regard. Secretary, do you think that this is because the Government has in the past failed to make efforts to promote and explain BL?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the policy of "one country, two systems" of course comprises the elements of "one country" and "two systems", and we definitely have to uphold this principle through BL.

Ms Starry LEE's supplementary question is about the promotion of BL. In the early days of the handover, given the history and the conditions in society at that time, it is true that the Government laid more emphasis on "two systems" when promoting BL to explain to Hong Kong people the system adopted in Hong Kong. However, having regard to the latest situation in society and the implementation of BL, we have put more emphasis on the entire concept of "one country, two systems" in our promotion in recent years. If Members consider that improvements can be made to our future promotion, we are very willing to listen to their specific suggestions put forward at meetings of the Panels concerned.

MR CHAN HAK-KAN (in Cantonese): *President, I seldom agree with Ms Claudia MO's comments but I also think that the Secretary has not answered properly. I would like to follow up on her question. The Government filed a judicial review against the oaths taken by the two former Legislative Council Members Mr Sixtus LEUNG and Miss YAU Wai-ching, and the Court of Appeal today has dismissed the duo's appeal. I would like to ask the Secretary: If some Members who have successfully taken their oaths advocate "Hong Kong independence" or "self-determination" in this Council in future, would the Government initiate a judicial review to disqualify them because their behaviour is in breach of the oath?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, first, regarding the case mentioned by Mr CHAN Hak-kan, the Court of Appeal has handed down a judgment today. Tomorrow, the Court will hear the application for leave to take the appeal to the Final Court of Appeal. It is our normal stance that we will not comment further on the case before the judicial proceedings are over.

Second, Mr CHAN Hak-kan has raised a hypothetical question. As I have said, the speech made by Members at Legislative Council meetings and the arguments presented during debates are governed by the instruments I mentioned earlier. I cannot, right now, respond to the hypothetical situation suggested by Mr CHAN Hak-kan as we have to consider what the Members have said and what legislation is involved. The law enforcement agencies will see if action should be taken.

MR NATHAN LAW (in Cantonese): *The Secretary said in the main reply that the policy of "one country, two systems" definitely comprises the element of "one country", so it follows that the country is included when one swears allegiance. Actually, on the day of the Interpretation, Mr LI Fei stressed that Article 104 of BL was basically about political allegiance, and that asking public officers to pledge allegiance was perfectly justified. We all know that if we have to pledge political allegiance to PRC, the Communist Party will surely be in the picture.*

I would like to ask the Secretary: Have the authorities studied whether the NPCSC Interpretation is in line with the requirement of the International Covenant on Civil and Political Rights ("ICCPR") that any citizen shall have the right to be elected at elections without distinction of political opinion?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, first, I was very careful when I made the main reply. I wish Mr LAW would also pay attention. I said that Article 3 of the Interpretation explains that relevant public officers are making a legal pledge to PRC and its HKSAR, and that refers to the oath made under Article 104 of BL. The oath content mainly involves two aspects, one of which is to uphold BL and the other is to swear allegiance to HKSAR of PRC. I also pointed out in the main reply that the oath content has not changed as a result of the Interpretation.

Second, Mr LAW earlier referred to Article 2 of ICCPR. Both Article 26 of BL and local election-related legislations are in line with the requirements concerned. We have repeatedly stated in the reports to the United Nations Human Rights Council that our entire election framework meets the ICCPR's requirement. We maintain this view.

MR ANDREW WAN (in Cantonese): *President, the Secretary has not answered part (2) of Ms Claudia MO's main question. He only said that in future, oath taking by public officers when assuming office will continue to be conducted in accordance with Article 104 of BL and the provisions of the Oaths and Declarations Ordinance. Ms Claudia MO's core question is that under the existing framework, how can the past practice of allowing Hong Kong civil servants with foreign nationalities to take oath be rationalized? The Constitution of PRC does not recognize dual nationalities. Even if a person voluntarily gives up his nationality, he will not automatically obtain Chinese*

nationality. He has to apply to the department concerned in China (including the Public Security Bureau). President, have you applied to be a Chinese national? I wish the Secretary can give a specific answer to part (2).

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, part (2) of my main reply is a response to Ms Claudia MO's question on the party to whom allegiance is sworn. I have particularly emphasized in parts (1) and (2) of the main reply that Article 3 of the Interpretation has not changed the oath content under Article 104 of BL. Meanwhile, I said in part (2) of the main reply that in future, public officers specified in Article 104 of BL will continue to take oaths in accordance with the content stipulated in the existing Oaths and Declarations Ordinance. Nothing has changed whatsoever.

MR ANDREW WAN (in Cantonese): *President, the Secretary has not answered my question.*

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

MR ANDREW WAN (in Cantonese): *May I read out the relevant part as the Secretary may …*

PRESIDENT (in Cantonese): You do not have to read that out. You have pointed out the part which the Secretary has not answered. Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I am still standing, so I have not finished replying.

Regarding Mr WAN's enquiry on the President's nationality, of course we will not comment on individual situation during the question and answer session. Yet, I would like to tell Mr WAN that according to the Nationality Law of PRC, the British Citizenship acquired by Chinese nationals in Hong Kong through

the "British Nationality Selection Scheme" launched by the British Government will not be recognized. They are still Chinese nationals. This was adopted at the Nineteenth Session of the Standing Committee of the Eighth National People's Congress on 15th May 1996.

MR WU CHI-WAI (in Cantonese): *President, the Secretary said repeatedly earlier that the Interpretation has not expanded the party to whom allegiance is sworn, but as we all know, the Interpretation is binding on courts. According to the Secretary, Article 3 of the Interpretation explains that relevant public officers are making a legal pledge to PRC and its HKSAR. In this connection, I would like to ask the Secretary: Have you consulted NPCSC to confirm if the party to whom allegiance is sworn is still HKSAR?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I have to emphasize that upon consulting the Department of Justice ("DoJ"), we hold that Article 3 of the Interpretation has not changed the oath content stipulated under Article 104 of BL. Article 3 of the Interpretation explains that relevant public officers are making a legal pledge to PRC and its HKSAR. I mentioned in part (1) of the main reply that the first part of the oath content concerns upholding BL. Since BL involves affairs within the responsibility of the Central Authorities and the relationship between the Central Authorities and SAR, as well as the Central Authorities' constitutional power, it is impossible that the party is confined to HKSAR. When the relevant officers swear that they will uphold BL, they cannot uphold only those matters that fall within the remit of HKSAR under BL. Thus, we have, in the main reply, set out our views on Article 3 of the Interpretation. Let me stress again that the oath content per se under Article 104 of BL has not changed. The oath content encompasses upholding BL and swearing allegiance to HKSAR of PRC.

MR WU CHI-WAI (in Cantonese): *President, my question to the Secretary is: Has he consulted NPCSC to confirm whether his explanation is in line with the Interpretation?*

PRESIDENT (in Cantonese): You have pointed out the part which has not been answered, please sit down. Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I believe it is beyond doubt that NPCSC has already promulgated the Interpretation, and the contents of which are crystal clear. We have consulted DoJ regarding the views set out in my earlier reply to Members. This is our usual practice.

MR CHEUNG KWOK-KWAN (in Cantonese): *President, the Interpretation and the Court of Appeal's judgment delivered today on the appeal by Mr Sixtus LEUNG and Miss YAU Wai-ching have surely enhanced the community's understanding of the requirement of oath taking and the consequences of not swearing in accordance with law. Moreover, we also have a clearer understanding of the legal status of the NPCSC Interpretation and BL under "one country, two systems". In this connection, I would like to ask the Secretary: Are there any plans to clarify this important legal principle to more people, especially those who have earlier been misled by improper rhetoric, so that they can better understand the legal status of BL and NPCSC's interpretations in Hong Kong?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, once the judicial proceedings are over, we will, through various means, explain to the public the contents of the BL provisions involved in the Interpretation, as well as the courts' rulings and some legal principles. I believe this can help the public further understand BL in future. I think Mr CHEUNG has just made a very good suggestion. We will consider how to follow up effectively.

PRESIDENT (in Cantonese): Fifth question.

Vetting and approval of applications from Mainland residents for settling in Hong Kong

5. **DR CHENG CHUNG-TAI** (in Cantonese): *Article 22 of the Basic Law provides that "[f]or entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People's Government after consulting the government of the Region." Mainland residents who wish to*

settle in Hong Kong must apply for Permits for Proceeding to Hong Kong and Macao (commonly known as One-way Permits ("OWPs")) from the Exit and Entry Administration Offices of the Public Security Bureau of the Mainland at the places of their household registration. At present, the daily quota for OWPs is 150, and the application, vetting, approval and issuance of OWPs fall within the remit of the Mainland authorities. Since 1 July 1997, a total of 830 000 Mainland residents have come to settle in Hong Kong on OWPs. It is estimated that 1.93 million new immigrants will settle in Hong Kong in the next five decades, with most of them coming from the Mainland. In this connection, will the Government inform this Council:

(1) of the present role of the Immigration Department in the vetting and approval process for OWPs, and whether it has requested the Mainland authorities, when vetting and approving OWP applications, to consider the applicants' qualifications such as their ages, academic qualifications and language proficiency;

(2) whether it has assessed, given the situation that the Government has no control over the quota and eligibility for OWPs, how it can formulate housing, healthcare, education and social welfare policies that dovetail with the demographic characteristics of Hong Kong; and

(3) whether it will propose to the Central Authorities that Article 22 of the Basic Law be amended to stipulate that the Government of the Hong Kong Special Administrative Region is responsible for vetting and approving Mainland residents' applications for settlement in Hong Kong?

SECRETARY FOR SECURITY (in Cantonese): President, in consultation with relevant Policy Bureaux and departments, the reply to Dr CHENG's question is as follows:

(1) It is stipulated in Article 22 of the Basic Law that "For entry into the Hong Kong Special Administrative Region ("HKSAR"), people from other parts of China must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People's Government after consulting the government of the

Region." The provisions of this Article, in accordance with the interpretation by the Standing Committee of the National People's Congress in 1999, mean that Mainland residents who wish to enter Hong Kong for whatever reason, must apply to the relevant authorities of their residential districts for approval in accordance with the relevant national laws and administrative regulations, and must hold valid documents issued by the relevant authorities. Accordingly, Mainland residents who wish to settle in Hong Kong for family reunion must apply for Permits for Proceeding to Hong Kong and Macao, commonly known as One-way Permits ("OWPs"), from the exit and entry administration offices of the public security authority at the places of their household registration in the Mainland.

OWPs are documents issued by relevant authorities in the Mainland. The application, approval and issuance of OWPs fall within the remit of the Mainland authorities. The OWP scheme allows Mainland residents to come to Hong Kong for family reunion in an orderly manner through approval by the Mainland authorities in accordance with the laws and regulations of the Mainland. Under this framework, the Mainland authorities have since May 1997 implemented a point-based system with the eligibility points announced through the Internet, setting out open and transparent criteria for the OWP scheme to objectively assess the eligibility and priority of applicants. The public security authorities of some provinces and cities publish the names of OWP applicants under certain categories whose approval procedures are completed, and allow applicants to check the status of their applications online. Mainland residents who meet the eligibility criteria laid down by the Mainland authorities may apply to come to settle in Hong Kong. Since Hong Kong's return to China, about half of those who settled in Hong Kong under the OWP scheme reunited with their spouses and half reunited with their parents.

The HKSAR Government facilitates at case level in the processing of applications, including issuing the Certificates of Entitlement and rendering assistance to the Mainland authorities in authenticating the particulars of Hong Kong residents and the relationship (e.g. husband and wife, parent and child, etc.) claimed by the applicants.

Upon detection of suspicious cases, the Immigration Department ("ImmD") will follow up and investigate to prevent offenders from coming to Hong Kong by obtaining OWPs through fraudulent means.

As regards the question about whether ImmD requires the Mainland authorities to assist in the vetting of applicants' ages, academic qualifications and language background, I have to point out that the OWP scheme is not an immigration policy for admission of talents. Rather, as mentioned above, it is to allow Mainland residents to come to Hong Kong for family reunion in an orderly manner. Mainland residents who meet the eligibility criteria laid down by the Mainland authorities may apply to come to settle in Hong Kong.

The various existing talent admission schemes serve different policy objectives. For instance, the Admission Scheme for Mainland Talents and Professionals ("ASMTP") aims at attracting talents with special skills, knowledge or experience of value to and not readily available in Hong Kong to work here in meeting the needs of the Hong Kong economy. As for the Quality Migrant Admission Scheme ("QMAS"), it seeks to attract highly skilled or talented persons to settle in Hong Kong in order to enhance our human capital and maintain our competitiveness. Therefore, these talent admission schemes and the OWP scheme have different considerations about the required qualifications of their respective applicants. The prerequisites which ASMTP applicants are required to fulfil include having secured a job relevant to his/her academic qualifications or work experience that cannot be readily taken up by the local workforce, receiving a remuneration package which commensurate with the prevailing market rate, etc. The prerequisites which QMAS applicants are required to fulfil include age, financial requirement, language proficiency, basic educational qualifications, etc. They can then accumulate points under "points test" and compete for quota allocation.

Underpinned by different legal frameworks, the OWP scheme and various talent admission schemes have different target applicants and objectives. It is not meaningful to compare them.

(2) For a long time, the Census and Statistics Department has been updating population projections statistics every two to three years taking into account the latest developments of the population, so as to provide a common basis for reference by the Government for formulating policies in housing, health care, education, social welfare, etc., as well as in planning public services and facilities.

In addition, a data collection mechanism has been set up by ImmD to collect data on the demographic and social characteristics of OWP holders when they enter Hong Kong via the Lo Wu control point. Moreover, the Home Affairs Department conducts surveys on new arrivals from the Mainland who are aged 11 or above and have arrived in Hong Kong for less than one year when they apply for their Hong Kong Identity Cards at ImmD's Registration of Persons-Kowloon Office in order to identify their profile and service needs. After analysing and consolidating the data collected from the two surveys on age, marital status, educational attainment, economic activity, etc., the survey results are distributed to relevant government departments and non-governmental organizations in the form of quarterly reports on the Internet, so as to provide them with more useful information in planning their services for new arrivals. The HKSAR Government provides support services for new arrivals (e.g. Cantonese courses for new arrivals offered by the Employees Retraining Board, comprehensive and free employment services provided by the Labour Department) to facilitate their adaptation to and early integration into the community.

(3) It is stipulated under the Basic Law that the application, approval and issue of OWPs fall within the remit of the Mainland authorities. The Mainland authorities have set out open and transparent eligibility criteria. The HKSAR Government has all along been exchanging views with the Mainland authorities on the views of various sectors of the community concerning Mainland residents settling in Hong Kong for family reunion. In fact, having considered the views raised by the HKSAR Government and various sectors of the community, the Mainland authorities have adjusted and refined the OWP scheme. For instance, since 2001, unused places under the quota for long-separated spouses have been allocated to spouses separated for a shorter period and their

accompanying children. Moreover, in recent years, eligible Mainland "overage children" of Hong Kong residents are allowed to apply for OWPs in an orderly manner for reunion with their parents in Hong Kong.

The HKSAR Government does not see any justification for raising a proposal to amend Article 22 of the Basic Law. Nor does the HKSAR Government consider that there is any need or justification to request the Mainland authorities to consider changing the existing OWP scheme or approval arrangements.

The HKSAR Government will take account of the views of various sectors and the overall interest of the community, and continue to exchange views on matters relating to the overall OWP scheme with the Mainland authorities. The HKSAR Government will also facilitate at case level in the processing of applications, including issuing Certificates of Entitlement to children of Hong Kong permanent residents born in the Mainland, and rendering assistance in authenticating the particulars of Hong Kong residents in individual cases.

DR CHENG CHUNG-TAI (in Cantonese): *President, in regard to part (1) of my main question concerning the role of the SAR Government in the vetting and approval process for OWPs, the Secretary stressed that the SAR Government only facilitates at case level in the processing of applications.*

I would like to ask the Secretary: How does he explain the frequent occurrence of vote rigging cases in Hong Kong involving OWP holders or new arrivals? For instance, in the case covered by the news on 7th September 2016, a Mainland woman and her niece falsified voter registration forms in the hope that their OWP applications could be processed quickly. In the court, the persons concerned in this case … I only want to add one more sentence, just one more sentence …

PRESIDENT (in Cantonese): Dr CHENG Chung-tai, please sit down. We should not discuss individual cases. Secretary, are you going to answer?

SECRETARY FOR SECURITY (in Cantonese): Dr CHENG's question is not very clear. I hope that he can raise his question in a simple way.

PRESIDENT (in Cantonese): Dr CHENG Chung-tai, can you clearly raise your supplementary question?

DR CHENG CHUNG-TAI (in Cantonese): *President, I thought the Secretary has clearly heard my supplementary question. My question is: Concerning the role of the Hong Kong Government in the vetting and approval process for OWPs, if it only facilitates at case level in the processing of applications, how can it respond to the frequent occurrence of suspected vote rigging cases in Hong Kong involving OWP holders or new arrivals?*

SECRETARY FOR SECURITY (in Cantonese): President, I think there are actually two parts in the supplementary question raised by Dr CHENG. The first part is related to OWPs, regarding how the HKSAR Government facilitates the processing of OWP applications, which I think is related to the main question today. The second part involves vote rigging. As I believe, no matter where the arrivals come from, anyone in Hong Kong shall abide by the laws of Hong Kong. This part is thus not directly related to the basis for processing OWP applications as raised in today's main question.

As regards how the HKSAR Government facilitates the processing of OWP applications, it will surely facilitates at the case level, including, first of all, authenticating certain Hong Kong-related particulars of the applicants so as to check whether there is any false information. If we are required to authenticate the parent and child relationship, apart from checking the records, we can also authenticate the relationship through DNA tests when necessary. For authentication of husband and wife relationship, if the marriage was registered in Hong Kong, we can check the records in Hong Kong. Colleagues from ImmD will also check other information to verify the marital status of the applicants. Every year, there is an average of 10 000 cases asking ImmD to verify the marital status concerned. Therefore, there is an established mechanism between the HKSAR Government and the Mainland authorities in terms of facilitating the processing of OWP applications.

Besides, concerning Dr CHENG's question, apart from the mechanism, we will also exchange views with the Mainland authorities, such as the public opinions, or the difficulties and needs of applicants for family reunion. Sometimes, the Legislative Council will also provide views to us, and we will reflect them to the Mainland authorities when necessary. Under different circumstances, the Mainland authorities will improve their processing procedures after considering the views reflected by us.

MR ALVIN YEUNG (in Cantonese): *President, when responding to the supplementary question just now, the Secretary revealed that the Bureau always has exchanges with the Mainland authorities concerned. Given the profound impact of OWPs on Hong Kong, has the Bureau considered turning the exchanges into a system which allows Hong Kong's involvement or participation, in order to exert influence on or participate in the entire processing of OWP applications, instead of plainly making passive responses?*

SECRETARY FOR SECURITY (in Cantonese): President, first of all, we have more than once mentioned the exchanges, communication and case collaboration in this aspect among us, ImmD and the Mainland authorities concerned, and thus they are not secretly done. We have also elaborated on this mechanism openly for many times. In fact, in the report of the Subcommittee to Study Issues Relating to Mainland-HKSAR Families published during the last Legislative Council term, it was also mentioned that family union should be the first priority in consideration. Both the views from that Subcommittee and the views raised on other occasions will be reflected to the Mainland authorities. We have also stated that there is such a mechanism for exchange of views, for example when processing the cases or during contacts. In our opinion, the existing practice is effective and thus we will continue to maintain this practice. When it is necessary to provide the public with any information concerning the processing of OWP applications, we will do so in due course.

MS STARRY LEE (in Cantonese): *President, some members of the public are indeed worried that people will abuse the mechanism to come to Hong Kong through, for example, bogus marriages or other strange means. Under the existing OWP scheme, there is a point-based system under which eligibility points are given, and all these are managed by the Mainland authorities. Under the*

existing arrangement, is it the case that the SAR Government has no say at all? Regarding the OWP applications that meet the threshold, is it mandatory for the SAR Government to accept all the applicants? What are the factors that will usually be taken into account by the SAR Government when considering the admission of such persons? Were there any rejection cases in the past? Are there relevant statistics for Members' reference?

SECRETARY FOR SECURITY (in Cantonese): President, I thank Ms LEE for her supplementary question. During the entire vetting and approval process for OWP applications, as I mentioned earlier, ImmD of the HKSAR Government will assist and facilitate the Mainland authorities in authenticating the particulars. In other words, in the course of data authentication, ImmD has actually participated in the process of authenticating the particulars or other reference materials of the applicants, and providing the information to the Mainland authorities afterwards. If fraud cases are found, we will provide the authorities with the results and the authorities, under the circumstances, will also deal with these fraud cases seriously.

In case such fraud cases are uncovered prior to approving the applications, it is very likely that the applications will not be approved at all. After receiving our information, the Mainland authorities will seriously investigate and then make the decision of rejecting the applications. Even if such fraud cases are uncovered after the approval, there is a mechanism for invalidating the OWPs concerned. In these cases, those persons whose OWPs have been invalidated have to be repatriated.

During the past three years, we handled more than 60 such fraud cases in which the applicants have either resorted to deceptive means or provided incorrect information. In some of such cases, the relevant information was provided by the Mainland authorities. Under this mechanism, we can ensure that there is no room for deceptive means to be adopted in applying for OWPs. The procedures, in full compliance with the laws and regulations of the Mainland, are also practicable and feasible in Hong Kong policy-wise.

MR LAU KWOK-FAN (in Cantonese): *President, I am very concerned about the population policy. As a matter of fact, regarding the processing of OWP applications for family reunion purpose, the Government should, together with*

the Mainland authorities, play a more proactive role in performing its gate-keeping function. .

Nevertheless, I mainly want to ask a question. At district level, I often meet some new arrivals who find it hard to adapt to the Hong Kong lifestyle, or whose livelihood has become difficult due to sudden family changes. Therefore, we suggest introducing a return mechanism so that they can reinstate their household registration and go back to the Mainland.

In fact, I know that in 2015, the Bureau mentioned that it would examine, together with the Mainland authorities, the introduction of a return mechanism, so that those new arrivals who cannot adapt to the Hong Kong lifestyle can surrender their Hong Kong residency and reinstate their household registration. It has been nearly two years since then but it seems that no progress has been made. I would like to ask the Bureau about the progress of the return mechanism and whether it can give us an account.

SECRETARY FOR SECURITY (in Cantonese): President, the SAR Government is aware of the proposal for OWP holders in Hong Kong to return to the Mainland, and we are discussing with the Mainland authorities about the possibility of setting up a return mechanism so that an OWP holder who has settled in Hong Kong can return to the Mainland in the light of his own situation. Since it involves complicated legal and social issues concerning the household registration system of the Mainland, it requires careful studies. If the above mentioned people have such a need, at present, they can enter the Mainland with Home Visit Permits, while returning to Hong Kong with their Hong Kong Identity Cards.

The return mechanism is part of the household registration policy of the Mainland, and the SAR Government has been communicating and exchanging views with the Mainland authorities in this respect. In the course of their studies, we will keep on providing assistance until they have a decision. After we are informed of the decision, we will announce to the public in due course.

PRESIDENT (in Cantonese): Last oral question.

Definition of "industrial use"

6. **MR JIMMY NG** (in Cantonese): *Some members of the innovation and technology ("I&T") industry have relayed to me that since the Lands Department ("LandsD") interprets the definition of "industrial use" in the land leases of industrial buildings too narrowly, owners of industrial building units have refused to lease the units to them, lest the land leases may be breached. The definition of "industrial use" adopted by LandsD follows the definition of "factory" under the Factories and Industrial Undertakings Ordinance enacted in the sixties of the last century, which refers to any premises or place, in which articles are manufactured, altered, cleansed, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed. Notwithstanding that the definition of "industrial use", among the planning terms used by the Town Planning Board ("TPB") in interpreting statutory plans, is broadly in line with that adopted by LandsD, TPB has amended the definition for many times to cover processes such as research, design and development. Moreover, TPB has widened the scope of uses that are permitted under the "industrial" zone so that uses falling outside the definition of "industrial uses" (e.g. uses for information and technology as well as telecommunications industries) are allowed in buildings in the industrial zone. In this connection, will the Government inform this Council:*

(1) of the number of cases in the past five years in which LandsD took enforcement actions against lease breaches involving industrial buildings; among such cases, the number of those involving breaching of the lease for I&T industry use; whether LandsD will consider amending the guidelines on enforcement actions to deem those permitted uses in the land leases of new industrial buildings applicable to the land leases of old industrial buildings; if LandsD will, of the details; if not, the reasons for that;

(2) given that owners of industrial building units may apply to LandsD for a temporary waiver concerning changes in the use of such units, of the reasons why LandsD has not regularly compiled statistics on the relevant information of such cases; regarding the owners whose ownership of their industrial building units had been re-entered by LandsD on grounds of lease breaches, of the number of cases in the past five years in which such owners petitioned, under section 8 of the Government Rights (Re-Entry and Vesting Remedies) Ordinance, the Chief Executive to grant them relief against the re-entry and,

among such cases, the number of those in which relief was granted, with a breakdown by lease-breaching use; and

(3) of the reasons why LandsD has not followed TPB's practice in amending the definition of the term "industrial use" over the years; whether the authorities will align the definitions adopted by TPB and LandsD for the term; if they will, of the details; if not, the reasons for that?

SECRETARY FOR DEVELOPMENT (in Cantonese): Good afternoon, President and Members. The crux of this question raised by Mr NG appears to be that the Lands Department ("LandsD")'s interpretation of the term "industrial purposes" stipulated in land leases is outdated, and its interpretation does not tally with the definition of "industrial use" in the context of town planning. Before responding to his question part by part, I wish to first point out that the statutory town planning and land lease administration are two different systems. Let me explain the differences between them.

The Town Planning Board ("TPB") prepares statutory plans in accordance with the statutory procedures under the Town Planning Ordinance to set out the planning intention of various land use zonings taking into account the latest circumstances, and to list out the uses which are always permitted and those which require planning permission from TPB under respective zones. Statutory plans enable the general public and stakeholders to understand the planning intention of particular land use zonings and whether application for planning permission is required for certain development or non-development projects. The uses and requirements stated in the statutory plans reflect the latest planning intention of the plans and the statutory planning control in broader areas, and would be subject to changes in accordance with the amendment of statutory plans or planning definitions.

On the other hand, land lease is the private contract executed between the Government (with LandsD acting as the land agent) and owners of private lot. Lease conditions, as stipulated in the light of individual private lots, also reflect the situation at the time when the leases are finalized. When putting up land for sale, the Government will work out the uses of the lots to be specified in the leases by reference to the applicable outline zoning plans. If the land has been included in the statutory plan applicable at the time when the land lease is entered into, the user clauses in the lease need not and do not necessarily cover all the uses permitted in the land use zone of the lot under the relevant statutory plan.

But the basic principle is that the user clauses stipulated in the lease cannot contravene the statutory plan. Once the lease is executed by both parties, the user clauses therein will not automatically change with the amendments to the statutory plan; and they must be construed according to established legal principles governing the applied contracts. As a result, the relevant clauses in the lease will not and cannot automatically change with the amendments to the definition of terms in the Town Planning Ordinance once the lease is executed. When putting up land for sale, however, LandsD will consider whether the uses of the lots have to be adjusted in response to the changing social circumstances. For example, the two industrial sites in Kwai Chung sold in recent years, the lease conditions of which not only permit industrial and godown uses, but also incorporate other permitted uses such as office in direct support of an industrial operation; information technology and telecommunications industries; research, design and development centres; and laboratory, inspection and testing centres, etc.

Should there be any amendments to the land use zoning of a private lot under the statutory plan, the owner of the private lot may apply to LandsD for lease modifications or a temporary waiver so as to change the permitted uses of the lease governing the lot. However, the land uses of the lease proposed to be changed must comply with the always permitted uses specified in the respective land use zones or uses for which planning permission has been obtained. In processing the applications, District Lands Offices ("DLOs") will consult the relevant departments including the Planning Department and the Fire Services Department, and conduct local consultation through the District Offices when necessary. DLOs will, depending on the comments received from the relevant government departments, consider in the capacity of the landlord. If the application is approved, the applicant will have to pay a waiver fee/land premium and an administrative fee, and accept other terms and conditions stipulated.

Based on policy considerations, the Government may introduce a fee exemption/concessionary scheme in respect of an individual trade or a specified use, so as to facilitate the conversion of an industrial lot or an existing industrial building to specified uses. Recent examples include policy measures introduced by the relevant bureau effective from June 2012 and February 2016 that encourage the operation of data centres and testing and calibration laboratories in industrial buildings. For cases meeting the policy requirements, the Government may grant a waiver to allow the operation of data centres and testing laboratories in industrial buildings and exempt the payment of a waiver fee that would normally be chargeable.

Taking industrial use mentioned in the question as an example, TPB has amended several times, through statutory procedures, the land use zonings on the statutory plans of traditional industrial areas and the definition of "Industrial Use" under the planning regime in accordance with the results of the Area Assessment of Industrial Land. For instance, certain "Industrial" zones have been rezoned to "Other Specified Uses" annotated "Business" zones, and uses such as radar, telecommunications electronic microwave repeater as well as canteens, cooked food centres related to industrial uses are allowed in the "Industrial" zone. As mentioned above, such amendments relating to land use planning would not replace the land use clauses already stipulated in the leases for the respective land lots. Meanwhile, for the term "industrial purposes" used in Government leases, there is Hong Kong case law on what it means. LandsD as a party to the lease cannot and will not unilaterally modify the lease that has been entered into or interpret the user in the lease in a way different from the context under which the lease is entered into and the common law cases. Should the owners wish to amend the land use of the lease or apply for a waiver in response to the changes in planning, they may submit an application to LandsD.

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

(1) and (3)

Regarding the statistics on lease enforcement actions against lease breaches in industrial buildings over the past five years, LandsD has only kept the figures since 2012. There were 157 cases in 2012, 208 cases in 2013, 209 cases in 2014 and 172 cases in 2015.

There is no breakdown of the statistics by industry since LandsD does not target any industry when it takes lease enforcement actions. In addition, the term "innovation and technology industry", as specified by Mr NG, covers a wide range of operations, and does not have a concrete definition. For these reasons, it would be difficult for LandsD to compile any statistical data readily. From the experience of LandsD, irregularities found in industrial buildings in the cases mentioned above generally involve offices, shops, learning centres, places of entertainment/recreation, restaurants, religious gathering places, and the like.

(2) In the past five years (i.e. from 2011 to 2015), a total of four industrial building units with lease breaches involving the change of uses were re-entered and vested in the Government by LandsD under the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126). Among them, three units were used as retail shops, while one was used for children's interest class purpose, all breaching the relevant lease conditions.

The former owners in these four cases all petitioned the Chief Executive for relief against the vesting of property under section 8 of the above mentioned ordinance. Of these four petition cases, three were granted relief and the former owners got back the properties vested in the Government as they had purged the breaches and paid all relevant fees, expenses, fines and/or complied with additional terms in other aspects, while the remaining case is being handled by LandsD.

LandsD conducted a one-off survey on the number of temporary waivers in February 2015. It was found that there were approximately 1 000 valid temporary waivers applicable to industrial building units. LandsD does not have readily available information on the breakdown of these temporary waivers as requested.

MR JIMMY NG (in Cantonese): *The Secretary is fond of saying "following the policy of established procedures" or "a certain policy has been implemented effectively". In other words, he does not want to make any changes. Maybe the Secretary is rather conservative and rigid in his attitude, such that he did not answer directly to part (3) of my main question. I asked him to inform this Council "of the reasons why LandsD has not followed TPB's practice in amending the definition of the term 'industrial use' over the years; whether the authorities will align the definitions adopted by TPB and LandsD for the term". Actually, instead of providing minor remedies like introducing the fee exemption/concessionary scheme to rectify the situation, the Government should comprehensively review the definition of the term "industrial use". This is the fundamental solution to the problem.*

My supplementary question is: Will the Government establish a high-level interdepartmental working group to comprehensively coordinate the work of redefining the term "industrial use" and its related matters, so that in future the

authorities will have clear legislation to follow when they process applications for land use modifications or take enforcement actions against industrial buildings? If it will, what are the details? If it will not, what are the reasons?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr Jimmy NG for his supplementary question. President, I already pointed out in my main reply that statutory town planning and land lease administration are two different systems which should not be mentioned in the same breath. I also mentioned in the main reply the reason why we cannot automatically align the terms used in land leases with those in the Town Planning Ordinance under a "broad-brush approach". It is because it is not feasible to automatically align the amendments made to the terms used in the Town Planning Ordinance with the terms used in land leases. I will not repeat the details as I have already stated them in the main reply.

Regarding Mr NG's enquiry on whether we will establish a high-level interdepartmental working group to follow up the work on the definition of the term "industrial use", I am afraid my simple answer is in the negative because there is genuinely not such a need.

MR JEREMY TAM (in Cantonese): *I am very concerned about the issue Mr Jimmy NG has raised and I thank him for bringing this up for discussion. The question highlights the fact that many problems will arise if the Government adopts a bureaucratic attitude. For instance, even if someone rents an industrial building unit to operate a creative enterprise, the owner of the unit simply will not make a special effort to apply to LandsD for a waiver for the changed use of his 2 000-sq ft unit. But the case would be different if the entire industrial building is owned by a big business corporation or a large enterprise which will certainly apply for a waiver. How are these lessees going to develop creative industry then? The Government should, right from the start, provide them with a waiver once and for all. When a lessee uses the land for a new industrial use, LandsD should correspondingly …*

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

MR JEREMY TAM (in Cantonese): *… update the clauses in the lease. Actually, the Secretary should get this properly dealt with; otherwise, the development of many creative operations will be strangled …*

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

MR JEREMY TAM (in Cantonese): *My supplementary question is: Does the Secretary agree that the Bureau should redefine the meaning of "industrial use" so that the term can keep abreast of the times, rather than relying on the lessees to apply for a waiver?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr Jeremy TAM for his supplementary question. President, the objective fact is that each and every land lease is a contract entered into by the Government and the lessee. There are hundreds of thousands of such leases in Hong Kong. As I have already explained in the main reply why we cannot automatically align the definitions of the terms in land leases with the amendments made to the Town Planning Ordinance, I will not repeat myself here.

Members hold that the Government should provide policy support for certain land uses which are not included in the land lease concerned but are permitted uses in terms of town planning, and that the Government should streamline the application procedures or exempt the application fees when they intend to apply for temporary waivers. I would like to point out that the above is feasible. I have also mentioned some such examples in the main reply, such as the data centres, testing centres, etc.

So, I hope Members can understand that under the present system, it is not that we do not want to but we are unable to make automatic adjustments. If Members hope that special policy support can be provided to the innovation and technology or creative industries, Members can discuss it in detail with the relevant bureaux; and if the relevant bureaux are of the view that it is appropriate to have corresponding policies, we will certainly cope with the request.

MR LEUNG YIU-CHUNG (in Cantonese): *President, the Secretary's reply just now seems to suggest that he will do nothing but to let the situation deteriorate and that he cannot help the development of new industries. At present, how many industrial buildings are genuinely used for industrial purposes? I think I can finish counting them with my 10 fingers. Most of the industrial buildings have been turned into godowns. How will the Bureau deal with this problem?*

President, the Secretary is not unaware of the present situation in industrial buildings. I would like to ask the Secretary: How will the authorities improve the situation so that the uses in industrial buildings can genuinely and effectively benefit the development of creative industries? Secretary, please do not shirk the responsibility to other departments. This cannot solve the problem. As the Secretary for Development, how will he deal with this problem?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr LEUNG Yiu-chung for his supplementary question. President, the Development Bureau has never devolved any responsibilities or any work to other departments. Mr LEUNG can rest assured that as long as such responsibilities or tasks fall within the remit of the Development Bureau, we will certainly take them up.

The Member mentioned just now that many industrial buildings are used as godowns. As a matter of fact, it is generally permitted to use industrial buildings as godowns unless it is stipulated in the land lease that the building can only be used for industrial purposes.

Regarding Mr LEUNG's view that many industrial buildings are currently used for neither industrial nor godown purposes, I think it is an objective fact. Members may also be aware that in the past few years, the shortage of land supply and floor area is not confined to residential or commercial premises, industrial premises have also been in short supply. As a result, many small and medium enterprises, as well as cultural and creative industries, have moved into industrial buildings to operate. As far as I can recall, I have answered Members' questions at Legislative Council meetings more than once regarding the cultural and creative industries or the subject of this question today. From the Government's point of view, the definitions for planned land uses have been constantly expanding, which are updated through amendments to outline zoning plans, so as to include new uses such as cultural and creative industry uses. But there are established procedures and steps to follow, and I am afraid there is no

"across-the-board" means to grant a comprehensive waiver or exemption because we also have to consider other factors such as safety hazards and fire service equipment in individual industrial buildings.

MR HO KAI-MING (in Cantonese): *President, the Government has repeatedly mentioned the term "re-industrialization", in the hope that industries can return to Hong Kong to develop high-tier industries so that the industry in Hong Kong can be revitalized. But there has been all thunder but no rain. The Government has not adjusted its land policy. It has taken no actions against the many industrial building units which were altered into office units or hotels; and it has even strangled the viability of many young industry players in the name of its policy on industrial building revitalization. Will the authorities review the impact of industrial building revitalization, so as to formulate measures that encourage the establishment of business startups, the development of cultural and creative industries and the return of industries to Hong Kong, as well as to tie in with the implementation of the "Hong Kong 2030+:Towards a Planning Vision and Strategy Transcending 2030"?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr HO Kai-ming for his supplementary question. President, the policy of industrial building revitalization has come to an end in March this year. There has been a lot of discussion in the community on the pros and cons of the policy. But in gist, the Government very much supports the cultural and creative industries and has in the past launched different supportive policies. The Home Affairs Bureau has, through the introduction of new clauses in the Conditions of Sale for land lots, provided support for cultural, creative and arts workers. For instance, we have reserved over 10 000 sq ft floor space for this purpose in an industrial building in Wong Chuk Hang; and similar facilities are provided at the Jockey Club Creative Arts Centre in Shek Kip Mei. On the front of revitalizing historic buildings, we have revitalized the former Police Married Quarters on Hollywood Road, and the Central Police Station Compound revitalization project will be completed in Central. All these efforts are meant to provide more room for cultural, creative and arts workers to develop their career. If Mr HO has any specific suggestions in this regard, he is welcomed to share his ideas with us and we will actively consider them.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Mechanism for handling medical complaints and medical incidents

7. **PROF JOSEPH LEE** (in Chinese): *President, there are views that the mechanism of the Hospital Authority ("HA") for handling complaints lodged by members of the public about the medical services of and the medical incidents in public hospitals and HA's criteria for determining the punishments to be imposed on the healthcare personnel proved to have made mistakes lack transparency. In this connection, will the Government inform this Council if it knows:*

(1) the number of complaints, received by each public hospital in each of the past three years, about its medical services and medical incidents, and the respective average and longest time taken to handle such complaints;

(2) whether HA has currently classified or graded the complaints according to their severity; if HA has, of the details; if not, the reasons for that;

(3) whether HA has currently provided legal assistance for the healthcare personnel under complaint; if HA has, of the details; whether HA has assessed the adequacy of the assistance provided to its healthcare personnel; if HA has not assessed, of the reasons for that; and

(4) the criteria adopted by HA for determining the punishments to be imposed on the healthcare personnel proved to have made mistakes; whether the various public hospitals, upon completion of the handling of the complaints, will inform the complainants of the punishments to be imposed on the healthcare personnel proved to have made mistakes and the improvement measures to be implemented by the hospitals in the light of the outcome of the complaints; whether HA will conduct a review on ways to ensure that (i) such criteria and (ii) its complaint handling mechanism are fair?

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, my reply to the questions raised by Prof Joseph LEE on the complaint handling mechanism of the Hospital Authority ("HA") is as follows:

(1) and (2)

The HA has a two-tier system in place to handle complaints from patients and the public. The first tier is at the hospital level which handles all complaints lodged for the first time. If complainants are not satisfied with the outcome of the complaints, they may appeal to the second tier, that is the Public Complaints Committee ("PCC") of the HA. Established under the HA Board, the PCC will independently consider and decide on all appeal cases, and put forward recommendations to the HA for service improvement. None of the members of the PCC are employees of the HA. By virtue of their independent status, the PCC will handle all complaints fairly and impartially.

Upon receipt of the complaints, the hospital concerned and the PCC will carry out in-depth investigations as soon as possible. In the course of complaint handling, if there are areas for improvement identified in the service delivery or health care system, the HA will take appropriate follow-up actions to ensure service quality.

The HA classifies complaints into five categories by nature, namely medical services, staff attitude, administrative matters, overall performance and others. The following table sets out the number of complaints related to medical services received by the respective hospital clusters over the past three years:

Year	*Hong Kong East Cluster*	*Hong Kong West Cluster*	*Kowloon Central Cluster*	*Kowloon East Cluster*	*Kowloon West Cluster*	*New Territories East Cluster*	*New Territories West Cluster*	*Total*
2013-2014	60	74	166	278	554	173	214	1 519
2014-2015	36	112	200	248	486	183	146	1 411
2015-2016	49	102	239	247	483	281	160	1 561

The HA does not maintain statistics on the average or longest time taken by hospitals in responding to patients' complaints, nor does it

have statistics of complaints about medical incidents, or classification of complaint cases by their severity.

(3) The HA endeavours to provide the necessary support for its staff. Lawyers are appointed by HA to handle civil claims against medical incidents involving the HA and its staff. Psychological counselling and crisis intervention services are provided through Oasis, the Centre for Personal Growth and Crisis Intervention of the HA.

(4) The HA has put in place an established mechanism to handle disciplinary matters of its staff. HA will take appropriate disciplinary actions, for example verbal warning, written warning, stoppage of increment, deferment of increment and dismissal, having regard to the circumstances of individual complaints. Relevant disciplinary procedures are laid down in the Human Resources Policies Manual of the HA to enable clusters to adopt a consistent approach in handling disciplinary matters.

One of the main objectives of the HA's complaint mechanism is to, during the course of complaint handling, help resolve problems for the complainants and improve service delivery. Upon receipt of complaints, the HA will handle the cases fairly and impartially in accordance with its well-established two-tier complaint handling system. The HA and all hospitals have to handle disciplinary matters according to the prevailing human resources policies. To respect and protect the privacy of its staff, the HA will not disclose to the complainant the disciplinary action taken against the staff concerned. Upon completion of the case, the hospital will inform the complainant of the outcome and corresponding follow-up actions or improvement measures to be taken as appropriate.

Placement of students with emotional and behavioural difficulties

8. **MRS REGINA IP** (in Chinese): *President, under the Central Co-ordinating Referral Mechanism jointly managed by the Education Bureau ("EDB") and the Social Welfare Department, ordinary schools may, upon obtaining the consent of the parents of students with emotional and behavioural*

difficulties, apply to the Vetting Committee under the Mechanism for referring the students to study in schools for social development ("SSDs") (mostly with residential homes). Currently, there are five SSDs for boys of Primary 2 or above and two for girls of Primary 6 or above. On the other hand, some teachers of a primary school have relayed to me that due to the recent admission of a Primary 4 girl with emotional and behavioural difficulties to their school, the teachers have put a lot of efforts on that girl, thus affecting the progress of teaching and learning of all students in the class. However, as SSDs do not provide Primary 1 to 5 places for girls, the Vetting Committee is unable to make a referral. In this connection, will the Government inform this Council:

(1) of the respective numbers of teachers, staff members, social workers and students in each SSD in each of the school years from 2013-2014 to 2015-2016;

(2) of the respective numbers of applications for referral received and approved by the Vetting Committee in each of the school years from 2013-2014 to 2015-2016;

(3) of the number of students with emotional and behavioural difficulties, in each of the school years from 2013-2014 to 2015-2016, who needed to continue to study in ordinary schools owing to the unavailability of SSDs suitable for admitting them; the assistance provided by EDB for such ordinary schools so as to ensure that the learning progress of other students will not be affected by their handling of students with emotional and behavioral difficulties; and

(4) whether EDB has plans to provide additional SSD places for Primary 1 boys and Primary 1 to 5 girls; if EDB does, of the details; if not, the reasons for that, and whether EDB will conduct a review in this regard?

SECRETARY FOR EDUCATION (in Chinese): President, schools for social development ("SSDs") provide intensive support for students with moderate to severe emotional and behavioural difficulties to help them tide over their transient adaptation problems in the course of development, and to enhance their learning

motivation and life skills so that they can resume schooling in ordinary schools as soon as possible. All along, SSDs have been effective in supporting students with moderate to severe emotional and behavioural difficulties. Regarding the question raised by Mrs Regina IP, our reply is as follows:

(1) For the number of teachers, non-teaching staff and social workers on regular establishment provided by the Education Bureau, and the number of students in each of the seven SSDs from the 2013-2014 to 2015-2016 school years, please refer to Annex. Apart from the manpower provision on regular establishment, schools may deploy flexibly various cash grants and other school resources to render appropriate support services to students, such as employing additional staff, procuring outside services or hiring specialist staff.

Similar to other residential care services, the residential sections of SSDs provide 24-hour residential care and on-site case support for residents. In general, residential sections are staffed by superintendents, social workers, house parents/instructors, clinical psychologists, cooks and other supporting staff. Social workers are normally responsible for coordinating individual developmental support/welfare plans and rendering counselling service for residents. Duty instructors provide daily care and arrange after-school activities for residents under their charge. The supporting staff assist in taking care of residents and maintaining hygiene and safety of the residential sections. Currently, the Social Welfare Department ("SWD") provides recurrent funding for the residential sections of SSDs under the Lump Sum Grant Subvention System. The system allows non-governmental organizations to flexibly deploy subventions among different service units for staffing necessary to maintain service quality and meet service needs, including social workers, qualified professionals and supporting staff.

(2) The number of cases received and referred by the Central Co-ordinating Referral Mechanism ("CCRM") in each of the school years from 2013-2014 to 2015-2016 are as follows:

Category	*2013-2014 school year*	*2014-2015 school year*	*2015-2016 school year*
Cases received	695	596	561
Cases referred	562	472	426

As some cases have been withdrawn before vetting or placement, or rejected on various grounds, the number of cases referred is smaller than the number of cases received.

(3) All applications for placement in SSDs must be vetted by the Vetting Committee of CCRM. The Committee does not accept applications that involve students with mild emotional and behavioural difficulties, students who would benefit from other services or students who are receiving other services/treatment. Very few applications have been rejected due to unavailability of suitable class level. There were only two such cases in the three school years from 2013-2014 to 2015-2016.

In public sector primary and secondary schools, school professionals, including guidance teachers, school social workers and educational psychologists, provide support and guidance services to students with learning or adjustment difficulties, including students with emotional and behavioural difficulties. Specifically, if teachers suspect their students to have emotional and behavioural difficulties, they can refer them to student guidance teachers/personnel or school social workers for follow-ups and remedial services. If the problems of individual students persist, teachers may refer them to school-based educational psychologists, clinical psychologists or psychiatrists for in-depth assessment, diagnosis and treatment. To support students with persistent emotional and behavioural difficulties, schools can conduct multi-disciplinary case conferences as appropriate for psychiatrists, case social workers, educational psychologists and school personnel to jointly work out support strategies regarding the students' emotional, social integration and learning problems, such as cultivating a caring learning environment, adaptation in learning and teaching, and provision of counselling and peer support, etc., with a

view to facilitating their integration into the classroom environment to learn with their peers.

As for schools with particularly difficult cases, we provide them with an additional grant where appropriate for employing teaching assistants to help the students concerned establish classroom routines. If the students have not shown a marked improvement despite the school-based remedial support, schools may refer them to our adjustment programme for pull-out remedial support.

(4) Referral for placement in SSDs is an important decision to students concerned. To protect the interest of the students, their progress after receiving the support services rendered by schools as mentioned in part (3) of this reply must be taken into consideration in assessing the applications. Only those students who show no improvement after receiving the support will be placed in SSDs.

The level of classes which SSDs should operate is based on professional considerations. We note that there is gender difference in the extent of students' emotional and behavioural difficulties, which is line with findings of other countries. Generally speaking, pre-adolescence boys display more externalizing problems, such as inattention, hyperactivity/impulsivity, rule breaking, conduct problems and aggressive behaviour, than pre-adolescence girls. From a professional perspective, Primary 1 students should be given more support and time for observation of their adaptation to help them adjust to learning in primary school progressively. Since fewer pre-adolescence girls display the above mentioned externalizing problems, the current arrangement of having Primary 2 and above classes in SSDs for boys but only Primary 6 and above classes in SSDs for girls is basically aligned with service demand. Should we observe an upsurge in the number of Primary 1 boys or Primary 1 to Primary 5 girls with moderate to severe emotional and behavioural difficulties, we will review the class structures of SSDs, and examine, together with the SWD, these students' need for residential care services with a view to providing them with appropriate services.

Annex

Number of Staff on Approved Establishment and
Number of Students in Seven Schools for Social Development
from the 2013-2014 to 2015-2016 School Years
(As at September of each school year)

SSD	*2013-2014 school year*				*2014-2015 school year*				*2015-2016 school year*			
	Number of teachers[#]	*Number of non-teaching staff*	*Number of social workers*	*Number of students*	*Number of teachers*[#]	*Number of non-teaching staff*	*Number of social workers*	*Number of students*	*Number of teachers*[#]	*Number of non-teaching staff*	*Number of social workers*	*Number of students*
School A	9.5	5	1.0	56	9.5	5	1.0	56	13.2	5	1.0	53
School B	41.6	18	4.5	191	41.6	18	4.5	146	41.6	18	4.0	175
School C	26.0	14	2.5	85	26.0	14	2.5	73	26.0	14	2.5	62
School D	19.9	11	2.0	98	21.6	11	2.0	91	21.6	11	2.0	87
School E	23.6	13	2.0	113	22.6	13	2.0	101	22.6	12	2.0	84
School F	19.9	10	2.0	104	19.9	10	2.0	72	19.9	10	1.5	75
School G	19.9	11	2.0	97	21.6	12	2.0	93	21.6	12	2.0	64

Note:

including school heads

Follow-up actions on incidents of excess lead in drinking water

9. **DR HELENA WONG** (in Chinese): *President, last year, the Housing Department and the Water Supplies Department ("WSD") conducted water sampling tests for the public rental housing ("PRH") developments completed in or after 2015, and found that the samples of drinking water taken from 11 PRH developments ("affected PRH developments") had a lead content exceeding the provisional guideline value set out in the World Health*

Organization's "Guidelines for Drinking-Water Quality" ("excess lead in water"). To minimize the inconvenience to the affected tenants in gaining access to safe drinking water, the authorities took a series of measures, including the installation of water filters by the contractors concerned for the tenants free of charge. In order to fully rectify the problem of excess lead in water, the contractors concerned are replacing the water pipes in the common areas and those inside tenants' flats of the affected PRH developments. On the other hand, the Commission of Inquiry into Excess Lead Found in Drinking Water ("the Commission") has recommended the Government to arrange testing of the drinking water of all PRH estates again using an appropriate sampling protocol (including the testing of stagnant water samples). In response to this recommendation, the Development Bureau set up an international expert panel on drinking water safety ("the expert panel") in June this year to provide advice on, inter alia, the establishment of a water sampling protocol suitable for Hong Kong. In this connection, will the Government inform this Council:

(1) of (i) the latest progress of the works to replace the water pipes in the common areas, and (ii) the expected works completion date, in respect of each affected PRH development;

(2) of (i) the timetable for works commencement on replacement of water pipes inside tenants' flats, and (ii) the expected works completion date, in respect of each affected PRH development;

(3) whether it knows the latest date on which the contractor concerned cleaned and replaced the filter cartridges for tenants in each affected PRH development;

(4) whether it knows the details and the latest progress of the work of the expert panel;

(5) of the time that it has planned to conduct testing of the drinking water of all PRH estates again, including conducting sampling tests on stagnant water, in accordance with the Commission's recommendation; and

(6) as the Task Force on Investigation of Excessive Lead Content in Drinking Water led by WSD has found out that the brands and models of some valves and taps dismantled from the three water

supply chains in Kai Ching Estate and Kwai Luen Estate Phase 2 did not tally with the information submitted to the Water Authority before works commencement, of the follow-up actions taken by the authorities, and whether they will institute prosecutions against the contractors concerned; if they will not, of the reasons for that ?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, after consulting the Development Bureau, my reply to Dr Helena WONG's question is as follows:

(1) The contractors have started replacing the non-compliant water pipes in the common areas of the 11 affected public rental housing ("PRH") estates[(1)] since March 2016, and progress so far is generally satisfactory. On the whole, the contractors have completed more than half of the works in the common areas. As reported to the Legislative Council previously, the time required for replacing the non-compliant water pipes in the common areas in each estate varies, depending on the number and design of the blocks involved. The actual time required for the works would be subject to weather conditions, allocation of manpower and other resources, etc. The contractors would also need to make arrangements for work from the works perspective of each estate. The Hong Kong Housing Authority ("HA") has posted notices in the lobbies of the affected estates to inform tenants of the estimated time required for replacement of water pipes in the common areas of each block, and has updated tenants on the progress of works through the Estate Management Advisory Committees.

(2) As the furnishings and pipe routings inside tenants' flats vary from one to another, we consider that there are merits in conducting a trial for works inside flats to test contractors' method and the arrangements on a small scale first. As works in the common areas of Kwai Yuet House at Lower Ngau Tau Kok Estate Phase 1 had

(1) The 11 affected PRH estates are Kai Ching Estate, Kwai Luen Estate Phase 2, Wing Cheong Estate, Lower Ngau Tau Kok Estate Phase 1, Shek Kip Mei Estate Phase 2, Tung Wui Estate, Hung Hom Estate Phase 2, Yan On Estate, Choi Fook Estate, Un Chau Estate Phase 2 and 4, and Ching Ho Estate Phase 1.

been substantially completed, a trial for works inside flats started there on 17 October 2016. In light of the experience from the trial, the contractors will work out a more detailed work plan and timetable for works inside flats for the remaining affected PRH developments. HA will, in consultation with the contractors, inform the tenants of the details.

(3) The contractors have been replacing or cleaning filter cartridges for households regularly in accordance with the manufacturer's instructions for the brand(2). For filters installed in Wing Cheong Estate and Tung Wui Estate, the contractor cleans the filter cartridges about once every three months, and replaces the filter cartridges once every 12 months. Since the installation of filters, the contractor has cleaned the filter cartridges for these households three times already, and it has started replacing the filter cartridges for these households since mid-September 2016. As for the remaining nine affected PRH developments, the contractors replace the filter cartridges for the households about once every six months. Since filters were installed in the affected PRH developments at different times, the timing for replacement of the filter cartridges varies from one estate to another. The latest round of filter cartridge replacement has started since mid-August 2016.

(4) The International Expert Panel on Drinking Water Safety ("the IEP") established by Development Bureau has convened three meetings so far for in-depth discussions on various issues related to drinking water safety in connection with excess lead found in drinking water, including the feasible options for improving the drinking water safety regime in Hong Kong, establishment of Hong Kong drinking water quality standards, and development of a comprehensive drinking water quality monitoring programme and the associated

(2) For the brand of filters installed in Wing Cheong Estate and Tung Wui Estate by Paul Y. General Contractors Limited, the filter cartridges need to be cleaned about once every three months, and replaced once every 12 months. For the brands of filters installed by the remaining three contractors (i.e. Yau Lee Construction Company Limited, China State Construction Engineering (Hong Kong) Limited and Shui On Building Contractors Limited) in the affected PRH developments under their purview, the filter cartridges need to be replaced about once every six months.

sampling protocol and follow-up plan if excess lead content is found in water samples. These measures aim to ensure the quality of drinking water and to guard against excess lead in drinking water in buildings. Besides, the IEP has provided valuable advice on the enhancement of the Water Safety Plan for the Water Supplies Department ("WSD") and development of the templates for Water Safety Plan for buildings, etc.

The Development Bureau, the WSD, the IEP and the relevant expert consultants continue to deliberate on the aforesaid issues. The WSD aims to complete the studies on the establishment of drinking water standards, the sampling protocol and the Water Safety Plan and put forward a proposal by the end of March 2017.

(5) As regards the Commission of Inquiry into Excess Lead Found in Drinking Water's recommendation that the Government should undertake to test the drinking water of all PRH estates again, WSD has engaged an expert consultant, the Water Research Centre, from the United Kingdom to review the drinking water standards and water sampling protocols of the World Health Organization, the European Union, Australia, Singapore, the United Kingdom, Canada, the United States and other developed countries. The expert consultant will also advise on the subject based on the situation in Hong Kong.

The Development Bureau, the WSD, the IEP and the United Kingdom expert consultant continue to deliberate on the relevant issues, including the considerations taken by various countries in establishing a guideline value of lead content in drinking water, the purposes and limitations of their sampling protocols, and their applicability in Hong Kong's situation. Whether these protocols can be applied in the investigation of lead contamination in the inside service of PRH estates in Hong Kong will also be covered.

The WSD aims to complete the studies on development of the relevant sampling protocol and put forward a proposal by the end of March 2017.

(6) In accordance with Waterworks Ordinance, all fire services and inside services shall be constructed and installed by a licensed plumber. The licensed plumber shall construct and install the pipes and fittings of fire services and inside services according to the ones reported to and approved by the Water Authority. The valves and taps installed by the concerned licensed plumber in Kai Ching Estate and Kwai Luen Estate Phase 2 were different from those reported to and approved by the Water Authority before commencement of works. Subsequently, relevant parties had reported to the WSD the fittings actually installed and they were checked to be fittings generally accepted by the WSD. As the concerned licensed plumber has contravened the Waterworks Ordinance by installing fittings different from those reported and using soldering material with excess lead content in connecting copper pipes, his plumber licence has been cancelled by the Licensing Authority.

Relief measures for newspapers hawkers

10. **MR SHIU KA-FAI** (in Chinese): *President, recently, a group of newspaper hawkers have relayed to me that their business environment has become increasingly difficult, and pointed out that the number of newspaper stalls in Hong Kong has dropped persistently from over 2 000 in the 1990s to the present level of about 380. In this connection, will the Government inform this Council:*

(1) of the current number of licensed newspaper hawkers; whether new hawker licences (newspapers) were issued in the past five years; if so, of the number issued each year; if not, the reasons for that;

(2) given that, as mentioned in the report of the Subcommittee on Hawker Policy formed under the Panel on Food Safety and Environmental Hygiene of the previous term of Legislative Council, a member made the following suggestions for consideration by the Government: (i) relaxing the requirement for elderly licence holders to operate the hawker stalls in person, and (ii) allowing newspaper hawkers to sell more varieties of goods, whether the authorities will implement such suggestions; if they will, of the details; if not, the reasons for that;

(3) whether it will consider providing ex-gratia compensation for licensed newspaper hawkers who opt to surrender the licence; if it will, of the details; if not, the reasons for that; and

(4) whether it will draw reference from overseas experience and study the introduction of a revitalization scheme for newspaper stalls to improve their business environment, so as to preserve such kind of hawking activities with characteristics of local culture and heritage, and to help newspaper hawkers maintain their livelihood?

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, licensed hawkers were originally allowed to sell newspapers, magazines, periodicals and books only. In 1990, the former Municipal Council decided to relax the policy on the commodities permitted for sale by newspaper hawkers and allowed them to also sell commodities of small size to provide convenience to the public. Under that policy, newspaper hawkers were allowed to also sell eight commodities of small size: tissues, cigarettes, cigarette lighters, sweets, chewing gums, preserved fruits, battery cells and pens. While the permitted size of newspaper stalls remained the same, the area used for the sale of additional commodities should not exceed more than 25% of the stall area.

In 2009, in response to the licensed newspaper hawkers' concern over the increase in tobacco duty that may result in income loss, as well as their urge for the Government to help them improve their business environment, the Food and Environmental Hygiene Department ("FEHD"), having consulted the trade, relaxed the relevant restrictions by expanding the list of additional commodities permitted for sale from 8 to 12 items, i.e. on top of the commodities already approved (i.e. tissues, cigarettes, cigarette lighters, sweets, chewing gums, preserved fruits, battery cells and pens), more types of items, namely bottled distilled water, trinkets, lai-see packets and cell phone stored value cards, have been added to the commodity list. The restriction on area used for the sale of additional commodities has also been relaxed by expanding the space limit from not more than 25% to not more than 50% of the total stall area. In addition, licensed newspaper hawkers are allowed to display within the confines of their stalls lawful advertisements related to commodities permitted for sale without making further application.

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

(1) Currently, there are around 420 newspaper stalls in Hong Kong. The FEHD has not issued such type of licences under normal circumstances since its establishment in 2000 and has no plan to issue new licences as such. This is due to the fact that changes in the circumstances of society, the increase in the number of sales outlets (such as convenience stores) of newspapers and magazines, the distribution of free newspapers and fierce competition from other forms of media (in particular electronic media) have contributed to lowering the general public's demand for the provision of newspapers and magazines by on-street newspaper hawkers. In addition, there have been diverse views of different parties in society on the environmental hygiene problems posed by on-street hawking activities.

(2) According to section 38 of the Hawker Regulation ("the Regulation") (Cap. 132AI), when the business of a licensee to whom a fixed pitch has been allocated is being carried on, that licensee shall, unless absent for some reasonable cause, be personally present at the pitch and conduct or superintend business there. A licensee may also, according to section 12(1) of the Regulation, employ such number of assistants as he/she thinks necessary for the purpose of enabling him/her to carry on his/her business, but no such assistant shall engage in hawking during the absence (other than absence for reasonable cause) of the licensee from his/her pitch. In addition, where a licensee, under conditions such as being incapacitated by illness, leaves his/her business for a period of more than eight days, he/she may appoint any person eligible to hold a hawker licence to be his/her deputy during the incapacity according to section 11 of the Regulation. Hawker stalls take up public space and incur public resources. The above regulations help prevent licensees from not operating their businesses in person or sub-letting their hawker stalls to others illegally.

On the suggestion of relaxing the number of additional commodities allowed to be sold by licensed newspaper hawkers, FEHD is willing to maintain communications with the trade. We consider that the prerequisite factors for consideration of adjustment include that newspaper stalls must maintain at the currently specified size, street

obstruction and environmental nuisances problems should be prevented, the additional commodities permitted for sale should not affect public health and food safety, as well as that the space occupied for such sale should be in proper proportion.

(3) In the past, the Government implemented schemes for voluntary surrender of hawker licences in return for ex-gratia payment with a view to solving problems of passage obstruction and environmental nuisances caused by on-street hawking, and minimizing the fire risks posed to residents nearby. Those schemes did not aim at providing any form of retirement security for the licensed hawkers. The Government currently has no plan to provide ex-gratia payment for licensed newspaper hawkers to surrender their licences.

We respect the wish of newspaper hawkers to continue operating their newspaper stalls. At the same time, with respect to the sustained low levels of unemployment rates in recent years and changes in the newspaper, magazine and physical print-media markets, to nourish licensed newspaper hawkers' considerations of their prospect, we are willing to liaise with relevant government departments for providing information and assistance on employment and job retraining to those who are interested in changing jobs.

(4) The Government has been maintaining communications with the licensed newspaper hawkers to listen to their views, with a view to assisting in revitalizing newspaper stalls, and improving their business environment. Apart from the relaxation on the number of commodities permitted for sale in response to the trade's request in 2009, in mid-2013, the trade proposed installing LED monitors for publicizing the commodities sold at the stalls, as well as installing Wi-Fi facilities for providing free Internet to the public. The Government accepted the suggestion in early 2014. Participant stalls must comply with the relevant licensing requirements and conditions, ensure electricity safety of the installations, and at the same time avoid causing obstruction and nuisances to the surroundings (including pedestrian and road users). FEHD will continue to listen to the views of the trade on their business arrangements and consider their views as appropriate.

On one hand, the Government will continue to provide a convenient business environment for the hawking activities of licensed newspaper hawkers. On the other hand, it also has the responsibility of regulating on-street hawking activities, maintaining good order, minimizing nuisances to the environment, as well as lowering the impact on residents nearby. The Government will continue to strike a balance between the two. Hong Kong is a highly populated and densely developed city, and its municipal management is different from overseas cities. We will keep in view whether there is relevant overseas experience for reference.

Low-income Working Family Allowance Scheme

11. **MR LEUNG YIU-CHUNG** (in Chinese): *President, in May this year, the Government rolled out the Low-income Working Family Allowance Scheme ("LIFA Scheme") with an aim to relieve the financial burden of working-poor families. Some members of the public have relayed to me that the application threshold for LIFA Scheme is too high, resulting in quite a number of low-income families not submitting applications as they are ineligible, or their applications being rejected. In this connection, will the Government inform this Council of the following since the launch of LIFA Scheme:*

(1) the number of applications rejected by the authorities, and set out in the table below a breakdown by reason for rejection;

Reasons for rejection	*Number of applications*
Family members' days of absence from Hong Kong have exceeded the limit	
The applicant has worked less than the required hours per month	
The applicant has failed to provide the necessary information (e.g. income proof)	
The family income has exceeded the limit	
Other reasons	
Total	

(2) the number of applications received by the authorities from non-single-parent families, as well as the respective numbers of such applications for which (i) full-rate Higher Allowance and (ii) full-rate Basic Allowance have been granted;

(3) the number of applications received by the authorities from single-parent families, as well as the respective numbers of such applications for which (i) half-rate Higher Allowance and (ii) half-rate Basic Allowance have been granted;

(4) the number of applications received by the authorities from ethnic minority families, as well as the respective numbers of such applications for which (i) full-rate Higher Allowance and (ii) half-rate Basic Allowance have been granted;

(5) the number of applications received by the authorities from self-employed persons, as well as the number of such applications for which allowance has been granted; the reasons for some of the applications being rejected; and

(6) the number of applications approved by the authorities, together with a tabulated breakdown by (i) District Council district in which the applicant resides, and (ii) whether the applicant has any family member aged below 15 or aged between 15 and 21 receiving full-time education?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to the question raised by Mr LEUNG Yiu-chung is as follows:

(1) Since the implementation of the Low-income Working Family Allowance Scheme on 3 May 2016 up to mid-November 2016, the Working Family Allowance Office of the Working Family and Student Financial Assistance Agency received over 37 000 applications. Up to 18 November 2016, a total of 27 957 applications were approved the allowance while 2 945 applications were not approved the allowance, 1 722 applications were withdrawn and over 5 000 applications are being processed. The breakdown by reasons for not approving the allowance is as follows:

Reason for not approving the allowance	*Number of cases*
Breaching the Absence Rule	257
Failing to meet Working Hour Requirement	269
Exceeding the Income Limit	423
Exceeding the Asset Limit	61
Other reasons (mainly applications not further processed due to insufficient information)	1 935
Total	2 945

(2) and (3)

As of mid-November 2016, around 32 000 applications were from non-single-parent families and around 5 000 applications were from single-parent families.

Of the 27 957 applications approved, a breakdown of the applications by family status and the type of allowances approved is as follows:

Type	*Non-single-parent families*			*Single-parent families*			*Total*
	Full-Rate	*Half-rate*	*Sub-total*	*Full-rate*	*Half-rate*	*Sub-total*	
Basic Allowance	2 177	492	2 669	137	9	146	2 815
Higher Allowance	16 963	4 978	21 941	2 439	762	3 201	25 142
Total	19 140	5 470	24 610	2 576	771	3 347	27 957

(4) As of mid-November 2016, based on preliminary vetting, there were over 900 applications from families of ethnic minorities. Among them, 717 applications were approved the allowance while 122 applications were not approved the allowance, 47 applications were withdrawn and over 40 applications are being processed. The breakdown of the approved applications by the type of allowances approved is as follows:

Type	*Full-rate*	*Half-rate*	*Total*
Basic Allowance	59	19	78
Higher Allowance	468	171	639
Total	527	190	717

(5) As of mid-November 2016, there were around 2 300 applications from self-employed persons, of which 1 845 applications were approved the allowance while 133 applications were not approved the allowance, 23 applications were withdrawn and over 300 applications are being processed. A breakdown by reasons for not approving the allowance is as follows:

Reason for not approving the allowance	*Number of applications*
Breaching the Absence Rule	13
Failing to meet Working Hour Requirement	11
Exceeding the Income Limit	14
Exceeding the Asset Limit	8
Other reasons	87
Total	133

(6) As at 18 November 2016, the breakdown of the 27 957 approved applications by residential districts is as follows:

Districts	*Number of approved applications*
Kwun Tong	3 617
Yuen Long	3 047
Kwai Tsing	2 793
Sham Shui Po	2 313
Tuen Mun	2 110
Sha Tin	1 976
Wong Tai Sin	1 895
Kowloon City	1 727
North	1 534
Eastern	1 288
Sai Kung	1 103
Tsuen Wan	1 011
Yau Tsim Mong	941
Tai Po	827
Southern	622
Islands	604
Central and Western	383
Wan Chai	166
Total	27 957

(7) As at 18 November 2016, of the 27 957 approved applications, a breakdown by the families with the Child Allowance granted and without the Child Allowance granted is as follows:

Type	*Number of approved applications*
Number of families with eligible child(ren) and are granted the Child Allowance	26 231
Number of families not granted the Child Allowance	1 726
Total	27 957

Assistance for persons affected by the trawling ban

12. **MR STEVEN HO** (in Chinese): *President, the legislation banning trawling activities in Hong Kong waters ("the trawling ban") came into operation on 31 December 2012. In this connection, the Government has introduced a one-off assistance scheme for the affected fishermen, including granting them ex-gratia payments. Between the commencement of the scheme and October 2015, there were 858 appeals lodged by owners of trawler vessels against the amount of ex-gratia payments granted to them. As at August 2016, the Fishermen Claims Appeal Board ("FCAB") made decisions on and completed hearings for only 40 and 47 cases respectively, and there is no timetable for completion of the processing of all other cases. Besides, some fishermen have pointed out that there are quite a number of fisheries-related industries that have also been affected by the trawling ban, such as ice-making industry, fresh water supply vessels, fishing gears industry and wholesale fish markets. All such industries have not received any compensation from the Government. The Aquatic Products and Crustacean Merchants' Association, which has been providing sales and loans platforms for the fisheries industry for some 70 years, has indicated that the aggregate value of sales of seafood, as affected by the trawling ban, has dropped by more than 10% in the past two years as compared with those of several years ago. Nevertheless, the Government has not provided any assistance to the affected persons concerned. In this connection, will the Government inform this Council:*

(1) whether it knows the employment or operating conditions in the past three years of the fishermen who have been affected by the trawling ban, including the respective numbers of those who have switched to work in (i) other capture fishery industries, (ii) marine fish culture industry, (iii) fisheries industries other than (i) and (ii), and (iv) fisheries-related industries;

(2) when FCAB is expected to complete the processing of all of the aforesaid appeal cases; the measures in place to improve FCAB's arrangement for and progress in processing the appeals, so as to avoid fishermen waiting for an indefinite period of time; of a breakdown, by type of fishing vessels, of (i) the Decisions made and (ii) the number, of such cases; whether it will consider improving the existing way of displaying information on FCAB's website, including setting out the relevant information according to the aforesaid categorization;

(3) of the justifications for the Government to claim, at the time when the assistance scheme for the trawling ban was introduced, that the ban would not have significant impacts on other fisheries-related industries; whether it has assessed (i) the impacts of the trawling ban on fishermen and fisheries-related industries so far, and (ii) the operating conditions in recent years of the affected persons who engaged in fisheries-related industries; if it has, of the details; if not, when it will conduct such an assessment; and

(4) whether the Government has plans to provide assistance to those fisheries-related industries that, albeit confirmed to have been affected by the trawling ban, have not received any compensation, so as to reduce the losses suffered by them; if it does, of the details; if not, the reasons for that?

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, in order to restore the seabed and depleted marine resources, the Government has been implementing a series of fisheries management measures in the past few years, including the implementation of the trawl ban in Hong Kong waters since 31 December 2012. To assist fishermen affected by the trawl ban, the Government has introduced a one-off assistance package which includes making ex-gratia allowance ("EGA") payment to affected trawler owners, buying out

inshore trawlers from affected owners who voluntarily surrender their vessels, and providing one-off assistance to local deckhands and inshore fish collector owners. A total of $953 million has been disbursed. Moreover, the Agriculture, Fisheries and Conservation Department ("AFCD") has introduced a special training programme and loan arrangements to assist affected fishermen in switching to other sustainable modes of fishing operation. The Government has also established a $500 million Sustainable Fisheries Development Fund in 2014 to provide the industry with financial assistance in developing sustainable modes of operation.

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

(1) The owners of the 269 inshore trawlers operating in Hong Kong waters were most affected by the trawl ban. According to AFCD's records of various schemes and its survey on the trade, about half of the inshore trawler owners have switched to operate in the Mainland waters after receiving EGA, while some 40 inshore trawler owners have switched to other forms of capture fishery or fish culture industry. The remaining trawler owners after receiving EGA have either withdrawn from the industry or yet to decide whether to stay in the fishing industry.

In addition, there are around 700 larger trawlers (which also received EGA) not normally operate in Hong Kong waters. The trawl ban does not have a significantly impact on their mode of operation.

(2) The Fishermen Claims Appeal Board (Trawl Ban) ("FCAB") received a total of 858 appeal applications, of which 82 cases were subsequently withdrawn by the appellants.

As at mid-November this year, a total of 127 hearings have been held by FCAB. FCAB has issued decisions on 51 appeal cases, of which 3 were allowed. The hearings for another 60 cases have been completed, pending drafting of judgments by legal advisers. FCAB has been stepping up its efforts to process the remaining 665 cases, including through increasing the number of its members and frequency of hearings since last year.

To ensure that all appeal cases are handled in a fair and just manner, FCAB would carefully examine and consider the information of each

case, including statements submitted and arguments put forth by both parties. The workload involved in processing the appeals is exceptionally heavy, and it may require more than one hearing in order to conclude a complicated case. Besides, processing of certain cases is prolonged as the fishermen concerned need to carry out fishing operations outside Hong Kong and are thus unable to submit the information requested by FCAB or attend the hearings. Given that the appeals are considered by FCAB on a case-by-case basis, it is difficult to predict the time needed to conclude all cases.

To enhance transparency, FCAB has started uploading the decisions of appeal cases for public information by year of the decisions made onto its website since this February. In addition, FCAB also informs appellants in writing of its work progress regularly. FCAB will further consider the proposal of improving the presentation of information on its website.

(3) and (4)

In formulating the assistance package, the Government had already given due consideration to the possible impacts of trawl ban on related trades. This was also thoroughly deliberated by the Legislative Council Finance Committee when it examined the assistance package. At that time, we were of the view that impact of the trawl ban on related trades (including ice manufacturing and fishing gear supplies) should not be significant.

Since the implementation of the trawl ban, we have been monitoring the situation of the relevant trades. Having regard to the impact on inshore fish collectors which mainly served trawlers and were facing genuine difficulties, the Government decided in 2014 to provide assistance to them. We have completed the vetting of all such cases in mid-2016, and are arranging disbursement of EGA of $90,000 for each eligible fish collector owner and relevant loan interest subsidies. The total outlay was about $2.5 million. In addition, to help sustain the development of fish collectors, their owners may apply for various fisheries loan funds from AFCD, including the Fish Marketing Organization Loan Fund and Fisheries Development Loan Fund.

AFCD has also maintained close liaison with stakeholders of other related trades. According to our understanding, after the implementation of the trawl ban, some inshore trawlers have switched to other modes of operations while the remaining fishing vessels (including those operating outside Hong Kong waters and the local non-trawlers) have continued their original mode of operation. They continue to demand for services offered by the related trades.

Fish traders operating in the wholesale fish markets of the Fish Marketing Organization ("FMO") once indicated that they were affected by the trawl ban. Yet, records of FMO show that after the implementation of the trawl ban, the total volume of fresh marine fishes marketed through FMO has remained largely stable in the past three years, ranging from 35 400 tonnes to 36 100 tonnes each year. The total value of sale during the same period has increased from $1.76 billion to $2.12 billion.

Chinese language education for non-Chinese speaking students

13. **MR HOLDEN CHOW** (in Chinese): *President, it is learnt that a number of non-Chinese speaking ("NCS") students are unable to master the Chinese language for various reasons, and hence their opportunities for further studies, employment as well as upward mobility are limited. Also, this situation has posed difficulties for them to integrate into the community and is a cause of inter-generational poverty. On the other hand, the Education Bureau has, since the 2014-2015 school year, implemented the "Chinese Language Curriculum Second Language Learning Framework" to step up the support for NCS students in learning the Chinese language. However, some members of the education sector have pointed out that most of the schools which admit a small number of NCS students neither operate separate Chinese language learning classes (commonly known as "pull-out Chinese language classes") nor provide adapted Chinese language textbooks and teaching materials for NCS students, resulting in such students being unable to master the Chinese language. Moreover, it is learnt that most Chinese language teachers have not studied in-service training programmes on teaching Chinese language to NCS students. In this connection, will the Government inform this Council:*

(1) of the respective numbers of secondary and primary schools operating pull-out Chinese language classes for NCS students in the 2016-2017 school year, and the percentage of the number of NCS students participating in such pull-out Chinese language classes in the NCS student population across the territory; the authorities' specific policies and measures to assist schools in operating pull-out Chinese language classes;

(2) whether it will allocate resources for the establishment of an education subsidy scheme to encourage Chinese language teachers to study in-service training programmes on teaching Chinese language to NCS students; and

(3) of the present situation of NCS students acquiring Chinese language qualifications; given that the Chinese Language curriculum of the Hong Kong Diploma of Secondary Education Examination is too difficult for a number of NCS students, whether the authorities will consider setting up a separate mechanism for assessment of the Chinese language qualifications of those students in order to provide them with more pathways to further studies and employment?

SECRETARY FOR EDUCATION (in Chinese): President, the Government is committed to encouraging and supporting the earliest possible integration of non-Chinese speaking ("NCS") students(1) (notably ethnic minority ("EM") students) into the community, including facilitating their adaptation to the local education system and mastery of the Chinese language. In the 2014 Policy Address, a series of measures were announced to step up the support for EM students, including the implementation of the "Chinese Language Curriculum Second Language Learning Framework" (hereafter referred to as "Learning Framework"), which aims to help NCS students overcome the difficulties of learning Chinese as a second language with a view to enabling them to bridge over to mainstream Chinese Language classes and master the Chinese language. To facilitate schools' implementation of the "Learning Framework" and the creation of an inclusive learning environment in schools, starting from the 2014-2015 school year, all schools admitting 10 or more NCS students have been provided with an additional funding ranging from $800,000 to $1,500,000 per

(1) For the planning of educational support measures, students whose spoken language at home is not Chinese are broadly categorized as NCS students.

year depending on the number of NCS students admitted.(2) The additional funding allows schools to adopt appropriate diversified intensive learning and teaching strategies/modes such as pull-out teaching, split-class/small-group learning and after-school consolidation, with a view to bridging NCS students to mainstream Chinese Language classes as early as possible. As regards schools admitting fewer (i.e. one to nine) NCS students, their NCS students can benefit from the immersed Chinese language environment of the school as well as the "Learning Framework". From the 2014-2015 school year, these schools may have an additional funding of $50,000 on a need basis to offer after-school Chinese language support programmes to consolidate NCS students' learning in the regular Chinese Language lessons.

My reply to Mr Holden CHOW is as follows:

(1) Developed from the perspective of second language learners, the "Learning Framework" describes clearly the expected learning outcomes of NCS students at different learning stages. According to the varied needs and situations of NCS students, teachers can make reference to the "Learning Framework" to set progressive learning targets, learning progress and expected learning outcomes, adjust the school-based curriculum and teaching strategies, and enhance the learning effectiveness through a "small-step" learning approach with a view to enabling NCS students to bridge over to mainstream classes. In other words, the adoption of pull-out learning during Chinese Language lessons (the so-called "pull-out Chinese Language classes") is not the only effective teaching strategy/mode. Even if schools decide to adopt this teaching strategy/mode, they need to supplement it with other strategies/modes to help create a Chinese language environment conducive to NCS students' learning of Chinese. For instance, among those schools receiving additional funding for the implementation of the "Learning Framework", while 121 of them

(2) The funding model is as follows:

Number of NCS students	*Additional funding ($ million)*
10 to 25	0.80
26 to 50	0.95
51 to 75	1.10
76 to 90	1.25
91 or more	1.50

reported in their annual school plans for the 2015-2016 school year[3] that they adopted the pull-out learning strategy/mode, most of the schools concerned (about 90%) adopted two or more intensive learning and teaching strategies/modes.[4] A relatively large number of the schools concerned arranged two or more teachers/teaching assistants for co-teaching (an increase from about 20% in the 2014-2015 school year to about 40% in the 2015-2016 school year) to cater for the diverse learning progress and needs of their NCS students.

(2) Education Bureau launched the "Professional Enhancement Grant Scheme for Chinese Teachers (Teaching Chinese as a Second Language)" under the Language Fund in 2014 to encourage serving Chinese Language teachers, through providing subsidies, to enrol on relevant programmes to enhance their professional capability in teaching Chinese to NCS students. Besides, Education Bureau has been organizing diversified and advanced professional development programmes for teachers to ensure that all teachers are provided with adequate training opportunities to enhance their professional capability in teaching Chinese as a second language. Teachers can apply knowledge and teaching strategies learnt in the professional development programmes to any lesson mode.

(3) The schools concerned are required to submit the annual school reports for the 2015-2016 school year by the end of November 2016. As for the 2016-2017 school year, the annual school plans submitted by schools are being compiled.

(4) The major intensive learning and teaching strategies/modes adopted by schools in the 2015-2016 school year are summarized as follows:

Intensive learning and teaching strategies/modes adopted	*Number of primary schools*	*Number of secondary schools*	*Total number of schools*
Pull-out learning	67	54	121
Split-class/group learning	36	35	71
After-school consolidation	107	67	174
Increasing Chinese Language lesson time	30	18	48
Learning Chinese across the curriculum	15	8	23
Co-teaching with two or more teachers/teaching assistants to provide in-class support	51	19	70

As for learning and teaching materials, before the start of the 2014-2015 school year, Education Bureau has provided, by phases, practical tools and steps to help schools master the use of the "Learning Framework". Second language learning and teaching reference materials, including a series of "Chinese as a Second Language Learning Packages" covering the primary and secondary curricula, have also been delivered to schools and students in the form of textbooks. Other complementary resources such as the "Chinese Language Assessment Tools" and teaching reference materials have been uploaded onto the Education Bureau web page and will be updated continually.

Besides, Education Bureau has been providing diversified school-based professional support services to schools admitting NCS students. These include on-site support provided by Education Bureau's professional support teams, as well as the University-School Support Programmes, the Professional Development Schools Scheme and the School Support Partners (Seconded Teacher) Scheme financed by the Education Development Fund. The support services aim to cater for the actual needs of the applicant schools, enhance teachers' professional capacity and the effectiveness of NCS students' learning of the Chinese language, and to facilitate their smooth transition between different Key Stages of learning.

(3) NCS students have different needs and personal expectations on Chinese learning. With reference to the "Learning Framework", schools can make evidence-based recommendations on whether individual NCS students can be bridged to the mainstream Chinese Language classes and help them make informed choices on whether to take the mainstream Hong Kong Diploma of Secondary Education ("HKDSE") Examination for Chinese Language or to take the Applied Learning Chinese (for NCS students) ("ApL(C)") and/or attain other internationally recognized Chinese Language qualifications. NCS students could be articulated to multiple pathways and apply for programmes offered by local or overseas tertiary institutions or apply for jobs with these recognized Chinese Language qualifications.

Starting from the 2014-2015 school year, NCS students can take ApL(C) at the senior secondary level to obtain an alternative Chinese Language qualification to prepare them for further studies and work. In addition to the HKDSE qualification, ApL(C) is also pegged to the Qualifications Framework Levels 1 to 3. For further studies, University Grants Committee ("UGC")-funded institutions and most post-secondary institutions accept ApL(C) as an alternative qualification in Chinese Language for the admission of NCS students with "Attained" as the minimum grade required. For work, Civil Service Bureau accepts "Attained" and "Attained with Distinction" in ApL(C) as meeting the Chinese language proficiency requirements of relevant civil service ranks.

Meanwhile, eligible NCS students(5) will continue to be provided with examination subsidy for obtaining internationally recognized Chinese Language qualifications(6) for applying for programmes offered by UGC-funded institutions and post-secondary institutions (including Vocational Training Council). Moreover, for NCS students failing to attain Level 3 or above in the HKDSE Examination for Chinese Language, the UGC-funded institutions may consider their applications case by case and handle the Chinese Language requirement flexibly. Arrangement details have been uploaded onto the web page of "FAQs on University Entrance Requirements".

(5) Specifically, these NCS students are those who have learnt Chinese Language for either:

(a) less than six years while receiving primary and secondary education; or

(b) six years or more in schools, but have been taught an adapted and simpler curriculum not normally applicable to the majority of students in local schools.

(6) Education Bureau will continue to provide examination subsidy to eligible NCS students to obtain internationally recognized Chinese Language qualifications, including the General Certificate of Secondary Education ("GCSE") (Chinese) Examination, the Chinese Language examination of the International General Certificate of Secondary Education ("IGCSE"), and General Certificate of Education ("GCE") AS-Level or GCE A-Level. The "subsidized examination fee" is on par with HKDSE Examination (Chinese). The needy NCS students will be granted full or half fee remission of the "subsidized examination fee" for taking these examinations.

Hong Kong elderly people residing on the Mainland

14. **MR LEUNG CHE-CHEUNG** (in Chinese): *President, regarding Hong Kong elderly people (i.e. persons aged 65 or above) residing on the Mainland, will the Government inform this Council:*

(1) whether it knows the number of Hong Kong elderly people residing on the Mainland in each of the past three years and its percentage in the elderly population in the respective year;

(2) of the respective numbers of Hong Kong elderly people residing on the Mainland who received (i) Old Age Allowance under the Guangdong Scheme and (ii) Comprehensive Social Security Assistance payments under the Portable Comprehensive Social Security Assistance Scheme, in each of the past three years, and the respective total amounts of money involved;

(3) whether it knows the social service agencies that are providing social services on the Mainland for Hong Kong elderly people residing on the Mainland; if it knows, of the names of the agencies concerned and the details of the services provided by them; and

(4) whether it has assessed and analysed the reasons for and the trend of elderly people opting to reside on the Mainland; if it has, of the details; whether it has any plan to implement a comprehensive cross-boundary welfare policy for Hong Kong elderly people residing on the Mainland; if it does, of the contents of the relevant policy?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Mr LEUNG Che-cheung's question is set out below:

(1) The latest household survey by the Census and Statistics Department on the characteristics of Hong Kong elderly persons residing on the Mainland was conducted between February and March 2011. According to the above survey, there were 78 200 Hong Kong residents aged 65 or above who had stayed on the Mainland for a period of at least one month in the past six months before the time of

enumeration. On the other hand, as at mid-2011, there were around 941 000 elderly persons aged 65 or above in Hong Kong.

(2) The Social Welfare Department ("SWD") administers the Portable Comprehensive Social Security Assistance ("CSSA") Scheme under the CSSA Scheme whereby eligible Hong Kong elderly persons who have received CSSA continuously for at least one year and choose to retire in Guangdong or Fujian may continue to receive financial assistance, including the monthly standard rates and annual long-term supplement. SWD also administers the Guangdong Scheme to enable eligible Hong Kong elderly persons who choose to reside in Guangdong to receive the Old Age Allowance without having to return to Hong Kong every year. From 2014-2015 to 2016-2017, the number of recipients of and total expenditure on the Portable CSSA Scheme and the Guangdong Scheme are set out in the table below:

	Portable CSSA Scheme		*Guangdong Scheme*
	Guangdong	*Fujian*	
Number of recipients in 2014-2015	1 748	169	17 145
Total expenditure involved (million)	88^		275^
Number of recipients in 2015-2016	1 579	154	15 885
Total expenditure involved (million)	89#		282#
Number of recipients in 2016-2017 (as at end October)	1 409	139	15 153
Total expenditure involved (million)	87^ (estimated)		290^ (estimated)

Notes:

^ Including expenditure on one-month additional payment

Including expenditure on two-month additional payment

(3) In respect of the Portable CSSA Scheme and Guangdong Scheme mentioned above, SWD has appointed the International Social

Service Hong Kong Branch as the agent to assist in the implementation of the Schemes. The responsibilities of the agent include conducting home visits to follow up on the recipients' conditions and to ensure their continued eligibility to receive the assistance, handling enquiries from recipients and other persons/organizations in Guangdong and Fujian, etc.

SWD has, since June 2014, implemented the Pilot Residential Care Services Scheme in Guangdong to provide another option for eligible Hong Kong elderly persons on the Central Waiting List for subsidized care-and-attention places to choose to live in the two residential care homes for the elderly ("RCHEs") in Guangdong operated by Hong Kong non-governmental organizations (Hong Kong Jockey Club Shenzhen Society for Rehabilitation Yee Hong Heights and the Hong Kong Jockey Club Helping Hand Zhaoqing Home for the Elderly). As at end October 2016, a total of 132 elderly persons had participated or were participating in the Scheme and resided in the two RCHEs.

Besides, the pilot scheme for the use of the Elderly Health Care Voucher ("EHV") at The University of Hong Kong-Shenzhen Hospital ("HKU-SZ Hospital") was launched on 6 October 2015 to allow eligible Hong Kong elderly persons to use EHV to pay for designated outpatient services at the Hospital. The pilot scheme aims to provide one more service point for Hong Kong elderly persons to use EHV and facilitate those who reside on the Mainland or places near Shenzhen (e.g. the North District in the New Territories) to seek necessary medical services. As at end October 2016, 1 060 elderly persons had used EHV at the HKU-SZ Hospital.

(4) We appreciate that Hong Kong elderly persons, especially those who came to Hong Kong from the Mainland at a younger age, may choose to reside on the Mainland. The Government respects the wish of Hong Kong elderly persons who choose to reside on the Mainland and seeks to facilitate those elderly persons who make such a choice through various schemes mentioned above. We will continue to keep in view the situation of elderly persons residing on the Mainland and review the measures mentioned above at suitable intervals.

Supply of piped liquefied petroleum gas for public housing estates

15. **MR LUK CHUNG-HUNG** (in Chinese): *President, at present, 15 public housing estates under the Hong Kong Housing Authority ("HKHA") are installed with centralized liquefied petroleum gas ("LPG") (i.e. piped LPG) supply system. The Competition Commission ("the Commission") pointed out in its advisory bulletin released in September this year that the arrangements for renewal of piped LPG supply contracts for those estates lacked competition, resulting in the residents being unable to enjoy better terms and services that competition might bring. The authorities responded that they would study and consider the Commission's recommendations and other relevant information in detail, and would review the current policies and arrangements. In this connection, will the Government inform this Council:*

(1) whether the authorities have completed the study on the various recommendations made by the Commission; if so, whether they will revise the relevant policies to introduce competition with a view to obtaining better terms and services for the residents; if they will, of the details, and when the relevant work is expected to be completed; if they will not, the reasons for that;

(2) given that as indicated in a paper submitted to this Council by the authorities in July this year, the piped LPG supply contracts for three public housing estates would expire within this year, whether any of these contracts have already been renewed prior to the completion of the aforesaid policy review by the authorities; if so, of the details and the reasons for that; and

(3) given that the Commission has recommended that "HKHA should consider forgoing the practice of treating premium [paid by LPG suppliers] as the key criterion for awarding subsequent contracts and in its place, use LPG prices to be charged to residents to determine the award", whether the authorities will adopt such recommendation with a view to lowering LPG prices, thereby alleviating the burden on the residents; if so, of the details; if not, the reasons for that?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, my consolidated reply to various parts of the question raised by Mr LUK Chung-hung is as below:

According to the prevailing policy of the Hong Kong Housing Authority ("HA"), which has been in place for years, if the performance of an existing supplier of centralized Liquefied Petroleum Gas ("LPG") in public rental housing ("PRH") estate is satisfactory during the contract period, HA will renew the contract with the supplier upon the expiry of the existing contract. This is to ensure safe and stable supply of centralized LPG for the residents. In the past few months, there have been different views in the society about this policy. In this regard, the Housing Department ("HD") has explained HA's position at the meeting of the Legislative Council Panel on Economic Development on 27 June 2016 and informed the Panel that HD was studying the latest market situation and the experience in private housing developments, with a view to considering whether there was a need to amend the relevant policy. The meeting also touched upon the Competition Ordinance (Cap. 619). HD indicated that it would take into account the advice of the Competition Commission ("the Commission") when conducting the study. To facilitate the policy review, HD will also continue to liaise with LPG suppliers and relevant government departments to collate relevant information, such as the specific impacts on residents arising from a change in the supplier.

Fully effective since December 2015, the Competition Ordinance provides a legal framework to prohibit and deter anti-competitive conducts in undertakings of all sectors in Hong Kong which would prevent, restrict or distort competition. Although HA is one of the exempted statutory bodies under the Ordinance and is not subject to the regulation of the Ordinance, HA has taken the initiative to follow the rules on competition as stipulated in the Ordinance. On 7 September 2016, the Commission wrote to HD providing its advice on the subject matter. One of the recommendations of the Commission is that HA should consider adopting a competitive process when awarding contracts in the future. This is also in line with the follow-up actions mentioned by HD at the meeting of the Legislative Council Panel on Economic Development in June 2016. Regarding the Commission's other recommendations relating to the specific arrangement of the tendering process, HA will consider them together with other factors when formulating the new policy.

At present, 15 PRH estates under HA are installed with centralized LPG supply systems. The contracts of three of these suppliers are due to expire this year, among which one contract has already been agreed earlier (in April 2016) in accordance with the prevailing policy.

We will continue to follow up the discussion at the Legislative Council Panel on Economic Development meeting held in June 2016 and, based on the recommendations of the Commission in September 2016, further liaise with the LPG suppliers and relevant departments to come up with feasible proposals. We will consider various policies, arrangements and implications (including substantial impacts on households) comprehensively and submit the analysis and findings of the study to the relevant committee of HA for discussion. We expect the process will take a few months.

Regulation of charges by telecommunications service providers

16. **MR CHAN CHI-CHUEN** (in Chinese): *President, I have recently received complaints from a number of members of the public that some telecommunications service operators ("TSOs") overcharged them, and even charged them for telecommunications services that they did not subscribe for, causing them to suffer financial losses. In this connection, will the Government inform this Council:*

(1) whether it knows the respective numbers of complaints, received in the past 12 months by the Office of the Communications Authority and the Consumer Council, about overcharging by TSOs; if so, of a breakdown by type of telecommunications services (e.g. fixed-line phones, mobile phones, external telecommunications and broadband Internet access) involved in the complaints;

(2) whether it knows, among the cases in (1), the number of those in which the complainants were offered a reduction in the relevant fees by the TSOs concerned, and whether there were any TSOs prosecuted for overcharging; if there were, of the number of such cases; and

(3) apart from continuing to implement the Code of Practice in Relation to Billing Information and Payment Collection for Telecommunications Services and the Industry Code of Practice for

Telecommunications Service Contracts, whether the authorities will adopt new regulatory measures to enhance the protection for consumers' rights and interests; if they will, of the details; if not, the reasons for that?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, in general, upon receiving complaints in relation to the billing of telecommunications services, the Office of the Communications Authority ("OFCA") will, with the consent of the complainants, refer such complaints to the operators concerned for follow-up with the complainants direct. Where there is evidence indicating that an operator may have breached the ordinances applicable to telecommunications services (such as the Telecommunications Ordinance ("TO") and the Trade Descriptions Ordinance ("TDO")) or relevant licence conditions, the Communications Authority ("CA") will conduct an investigation in accordance with the statutory power conferred by the relevant ordinances. For cases with sufficient evidence to substantiate contravention with the relevant ordinances or licence conditions, the CA will penalize or prosecute operators accordingly.

My replies to the questions raised by Mr CHAN Chi-chuen are as follows:

(1) The table below sets out the distribution of the complaint figures on billing disputes in relation to telecommunications services(1) received by the OFCA in 2016. It also sets out the distribution of figures of the previous two years for reference:

	2014	*2015*	*2016 (up to end October)*
Fixed Services	50	52	27
Mobile Services	933	447	219
Internet Services	55	36	24

(1) The number of complaints on billing disputes covers all complaints in relation to billing issues, including overcharging and other billing disputes such as customers not clear about the details of their tariff plans, or customers' inadvertent use of services with additional charges (such as data roaming services), etc. The figures in the above reply are not limited to complaints about overcharging. Both the OFCA and the CC have not further categorised complaints on billing disputes by the content of the disputes.

	2014	*2015*	*2016 (up to end October)*
Others (e.g. external communications services)	11	13	10
Total	1 049	548	280

The table below sets out the distribution of the complaint figures on billing disputes in relation to telecommunications services[(1)] received by the Consumer Council ("CC") over the same period:

	2014	*2015*	*2016 (up to end October)*
Fixed Services	279	165	139
Mobile Telephone Services	1 368	700	661
Mobile Data Services	467	318	458
Internet Services	1 038	510	260
Others (e.g. external communications services)	414	260	214
Total	3 566	1 953	1 732

(2) Out of the 280 complaint cases received by the OFCA in 2016 (up to 31 October), there were 240 cases referred, with the consent of the complainants, by the OFCA to the operators for assistance in mediating, among which 161 cases (67%) have been settled. Over the same period, the CC referred 1 464 cases to the operators for assistance in mediating, among which 1 279 cases (87%) have been settled. The OFCA and the CC have requested the operators to properly handle the remaining unsettled cases that have been referred to them. Among the complaint cases involved, the OFCA and the CC have not kept record on the number of cases in which the complainants have been offered a reduction in fees by the operators.

In handling the above complaint cases, the OFCA has not found any substantiated cases of breaches of the existing legislation or licensing conditions by the operators which justify the imposition of penalties or institution of prosecution.

(3) The CA has been closely monitoring the operation of the market and is committed to ensuring that the interests of consumers in using telecommunications services are reasonably protected. It also regulates telecommunications service operators in accordance with the powers conferred by the relevant ordinances.

The licences issued by the CA to the operators require licensees to ensure the accuracy and reliability of their metering equipment and billing system related to service usage. In response to consumer complaints over the billing of telecommunications services and various consumer issues, the OFCA has implemented various measures to further enhance the protection of the interests of consumers. Apart from the Code of Practice in Relation to Billing Information and Payment Collection for Telecommunications Services and the Industry Code of Practice for Telecommunications Service Contracts mentioned in the question, the relevant measures also include:

Implementation of the Customer Complaint Settlement Scheme

To help resolve billing disputes in deadlock between consumers and their telecommunications operators, the telecommunications industry has, with the facilitation of the OFCA, set up a voluntary Customer Complaint Settlement Scheme ("CCSS"). The CCSS helps resolve, by means of mediation, billing disputes between the concerned parties without the involvement of formal legal procedures.

Since the commencement of the CCSS on 1 November 2012, a total of 637 eligible applications were received up to 31 October 2016. Among these cases, 294 cases were settled through further negotiation between the consumers and their telecommunications operators before referral by the OFCA to the mediation service centre ("CCSS Centre"); 335 cases were successfully settled after referral by the OFCA to the CCSS Centre for processing. Overall speaking, the number of settled cases amounted to 99% of the total eligible applications. The result was satisfactory.

Implementation of "Mobile Bill Shock" Preventive Measures

The growing popularity of smartphones and advanced mobile devices has driven the growth of and demand for mobile data services. However, at the same time, it has also led to the rise in the number of consumer complaints relating to billing disputes of mobile broadband services. Many of these complaints involve "mobile bill shock", which refers to the shock consumers experience upon receiving unexpectedly high mobile bill charges. "Mobile bill shock" is mainly caused by consumers' unintentional or inadvertent usage of mobile data services, locally or while roaming overseas.

To address this problem, the OFCA has promulgated the measures implemented by individual operators to prevent "mobile bill shock" since August 2010, including allowing users to opt out individual services, setting a charge ceiling, setting a usage cap for all kinds of usage-based mobile services, and alerting users through short messages when their pre-determined usage threshold is reached, or when their roaming data usage is triggered. The OFCA would also update the relevant information regularly.

The OFCA is also committed to enhancing public understanding on the way to prevent "mobile bill shock" through conducting various public education activities, including organizing public and community talks, roving exhibitions, roving drama in schools, showing relevant publicity videos on some public transport, and publishing comic strips and advertorials on newspapers and magazines, etc. Recently, the OFCA has set up a consumer education web page on social media to further promote relevant and other consumer education messages, so as to facilitate members of the public to choose and use communications services wisely.

Combat against Unfair Trade Practices According to the TDO

Since 19 July 2013, the TDO prohibits traders from deploying specified unfair trade practices against consumers, including false trade descriptions of services, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly

accepting payment. Concurrent jurisdiction is conferred on the CA to enforce the relevant provisions of the TDO in relation to the commercial practices of licensees under the TO and the Broadcasting Ordinance that are directly connected with the provision of telecommunications and broadcasting services under the latter two ordinances.

If the CA receives complaints against operators concerning unfair trade practices, it will examine the information provided by complainants with a view to assessing whether it should undertake further actions, which include conducting investigations, collecting relevant evidence and taking appropriate enforcement actions. The maximum penalty of the relevant offence is a fine of $500,000 and an imprisonment of five years, which should have significant deterrent effect on all telecommunications service licensees.

The OFCA will continue to closely monitor the implementation and effectiveness of the above measures, and will improve the above measures to further protect the rights and interests of consumers as necessary having regard to the operators' experience and consumers' views. The CC will continue to promote consumer education to assist consumers in making informed consumer choices. The CC will also work with operators and regulators and propose suggestions for improvement from time to time.

Regulation of online retailers

17. **MS ALICE MAK** (in Chinese): *President, in its Report on Online Retail—A Study on Hong Kong Consumer Attitudes, Business Practices and Legal Protection ("the Report") published in November this year, the Consumer Council indicated that it had received 3 000 to 5 000-odd complaints about online shopping in each of the past three years. The Report also pointed out that the online shopping marketplace had evolved rapidly in recent years, and an effective legal framework would be conducive to the protection of consumers' rights and interests. In this connection, will the Government inform this Council:*

(1) whether the Customs and Excise Department conducted investigations into complaints about the unfair trade practices of online retailers and instituted prosecutions against the relevant retailers, in the past three years pursuant to the Trade Descriptions Ordinance (Cap. 362); if so, of the respective numbers of such cases;

(2) whether it has considered amending the legislation to make it mandatory for online retailers to, in the course of selling goods or services, fully disclose to customers specified information (e.g. (i) the total price of the goods or services inclusive of delivery charges and taxes, (ii) details about the arrangements for cancelling transactions, and (iii) the policy on handling customers' complaints); if so, of the details; if not, the reasons for that;

(3) as the Report has recommended that the Government conduct studies on the merits and demerits of imposing mandatory cooling-off periods for different types of consumer contracts, whether the authorities will consider making reference to the experience of other jurisdictions, and launching a public consultation exercise on legislating for mandatory implementation of cooling-off periods (particularly targeting pre-payment mode of consumption); if so, of the details; if not, the reasons for that; and

(4) whether it knows if the Office of the Privacy Commissioner for Personal Data ("OPCPD"), adopted measures (including following up complaints and conducting regular inspections) in the past three years to monitor whether online retailers had fully acted in accordance with the law in collecting, retaining and using the personal data of customers; if OPCPD did, of the details; if not, the reasons for that?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, on 7 November, the Consumer Council ("CC") issued a study report on online retail. In the report, the CC reminded consumers to be aware of some common problems in relation to online shopping, as it becomes increasingly popular. The report gave a number of recommendations to traders,

encouraging them to strictly comply with the law, adopt good practices and enhance customer services.

We also noted from the report that while the number of online shoppers in Hong Kong and their expenditures were relatively small, their satisfaction levels were very high. Those who chose not to shop online were mainly concerned about the leakage of personal data, lacked confidence in the quality of the goods purchased online, or worried about the discrepancy between the actual goods and their descriptions.

The rights of online shoppers in Hong Kong are currently protected by various pieces of legislation, one of which is the Trade Descriptions Ordinance (Cap. 362) ("the Ordinance") enforced by the Customs and Excise Department ("C&ED"). With effect from 19 July 2013, the Ordinance prohibits some commonly seen unfair trade practices, including false trade descriptions and misleading omissions. The Ordinance is equally applicable to traders online and physical stores.

The Government will continue to keep a close watch on the development of online platforms and review the relevant laws as necessary for the protection of consumer rights.

Having consulted the Constitutional and Mainland Affairs Bureau, my reply to the three parts of the question is as follows:

(1) Statistics on the number of cases handled by the C&ED in the past three years on suspected contravention of the Ordinance by online traders are as follows:

	2014	*2015*	*January to October 2016*
Number of complaints on online retailers received by the C&ED	487	296	451
The aforementioned complaints and cases proactively developed by the C&ED, consolidated into detailed investigation cases	65	4	13

	2014	*2015*	*January to October 2016*
Breakdown of detailed investigation cases:			
being followed up	-	-	2
no proof of contravention of the Ordinance after follow-up	51	2	4
warnings or advisory letters issued	10	-	-
goods forfeited without prosecution	-	-	-
initiated prosecutions	1	2	7
accepted written undertakings	3	-	-

(2) According to the Ordinance, a trader who applies a false trade description or omits material information may commit the offence of false trade descriptions or misleading omissions under the Ordinance.

The definition of a trade description includes "price, how price is calculated or the existence of any price advantage or discount", and the definition of a trade description in relation to a service includes "the method and procedure by which, manner in which, and location at which, the service is supplied or to be supplied".

In addition, for products in relation to which there is a right of withdrawal or cancellation for consumer, the existence of that right is also material information that may influence the purchasing decision of the consumer.

(3) We notice that different jurisdictions adopt different approaches with regard to whether to provide cooling-off periods for online shoppers by legislation. According to the report published by the CC, the authorities in the United Kingdom, the Mainland and Taiwan have legislation in place mandating traders to provide cooling-off periods to online shoppers. On the other hand, the report pointed out that in

other countries or territories where e-commerce was booming, such as the United States, Australia and Singapore, there was no legislation compelling traders to provide cooling-off periods for online shoppers. The report also notes that as online shopping often spanned different jurisdictions, there are practical difficulties in seeking redress and law enforcement.

Issues that should be considered in relation to the imposition of mandatory cooling-off periods are controversial. We will continue to listen to the community's views and take into account the CC's ongoing research on cooling-off periods.

(4) The Office of the Privacy Commissioner for Personal Data ("PCPD") handled 11 complaints and conducted 29 compliance checks from January 2014 to October 2016 in respect of the collection, retention and use of personal data by online traders. In addition, PCPD revised the "Guidance for Data Users on the Collection and Use of Personal Data through the Internet" in 2014; and has been making continued efforts to enhance the education of data users through different channels including talks, workshops, themed websites, etc., so as to promote understanding of the requirements they must comply with in the online collection and use of personal data.

Safety of smart products

18. **MR CHARLES PETER MOK** (in Chinese): *President, recently, following a spate of incidents in which smart phones of a newly launched model burst into flames or exploded allegedly caused by overheating of the lithium batteries inside, the manufacturer concerned decided to globally recall the phones of that model and stop selling them. Given that electronic products such as notebook computers, smartphones, tablets, unmanned aircraft systems and power banks (collectively known as "smart products") invariably use lithium batteries, the aforesaid incidents have aroused public concern about the safety of such kind of products. While the Electrical Products (Safety) Regulation (Cap. 406 sub. leg. G) provides that electrical products for household purposes must have a certificate of safety compliance and comply with the applicable safety requirements for them to be supplied in Hong Kong, the Regulation is not*

applicable to smart products. The Consumer Goods Safety Ordinance (Cap. 456) provides that the authorities may order the persons concerned to (i) publish a warning regarding the safety use of consumer goods, (ii) suspend the supply of consumer goods, and (iii) recall consumer goods with a significant risk. In this connection, will the Government inform this Council:

(1) *of the number of complaints about the safety of smart products received by the Customs and Excise Department ("C&E") in each of the past three years, together with the respective numbers of cases in which C&E conducted on its own initiative sampling tests of the products or investigations in response to (i) complaints received, (ii) media reports and (iii) referrals from the Consumer Council (with a breakdown by product type);*

(2) *given that the Compliance Test Specification—Safety and Electrical Protection Requirements for Subscriber Telecommunications Equipment issued by the Communications Authority ("CA") only stipulates the compliance specification for lithium batteries in regard to electrical protection, how CA ensures that smart products on the List of Mobile Communications Devices which Comply with the Electrical and Radiation Safety Requirements Prescribed by the Communications Authority are safe to use;*

(3) *whether the authorities will regularly conduct sampling tests on the safety of such kind of products pursuant to the Consumer Goods Safety Ordinance; if they will, of the details; if not, the reasons for that;*

(4) *given that the Electrical and Mechanical Services Department has implemented a voluntary scheme for registration of certificates of safety compliance in respect of electrical products, whether the authorities will include smart products in the Electrical Products (Safety) Regulation so that such products may participate in the registration scheme; and*

(5) *whether it will review the existing legislation with a view to strengthening regulation of the safety of smart products, such as empowering the authorities to order the persons concerned to (i) publish a warning regarding the safety use of such kind of*

products and (ii) recall such kind of products; if it will, of the details; if not, the reasons for that?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, there are numerous kinds of electric and electronic products for sale in the market, and some of them are referred to as smart products. The safety of such products, depending on their nature, is regulated by different ordinances and departments. The following is a consolidated reply to the five parts of the question in consultation with the Transport and Housing Bureau and Environment Bureau:

Regulation under the Telecommunications Ordinance

According to the Telecommunications Ordinance (Cap. 106), the Communications Authority ("CA") may prescribe technical standards and specifications to be met by subscriber telecommunications equipment to ensure that such equipment can be connected to the local networks and operated properly. Take mobile phones as an example, CA has set the following specifications:

HKCA 1033	Performance Specification of the Mobile Stations and Portable Equipment for Use in Global System for Mobile Communications ("GSM") in the 900 MHz and 1 800 MHz Bands
HKCA 1048	Performance Specification for User Equipment for Use in the Third Generation ("3G") Mobile Communications Services Employing CDMA Direct Spread ("UTRA FDD")
HKCA 1057	Performance Specification for User Equipment for Use in Public Mobile Communications Services based on Evolved Universal Terrestrial Radio Access ("E-UTRA") Frequency Division Duplex ("FDD")
HKCA 1035	Performance specification for Radio Equipment Exempted from Licensing
HKCA 1039	Performance Specification for Radiocommunications Apparatus Operating in the 2.4 GHz or 5 GHz Band and Employing Frequency Hopping or Digital Modulation
HKCA 2001	Compliance Test Specification—Safety And Electrical Protection Requirements For Subscriber Telecommunications Equipment

The above specifications are developed according to internationally recognized standards, covering radio performance, electrical safety requirements and radiation safety standards of mobile phones. A mobile phone would only be incorporated into the "List of Mobile Communications Devices which Comply with the Electrical and Radiation Safety Requirements Prescribed by the Communications Authority" if it is issued with a certificate by a body recognized by CA proving that it complies with the relevant specifications. The Telecommunications Ordinance also stipulates that CA may by order prescribe that equipment or an installation shall not be offered for sale unless the equipment or installation complies with the prescribed specifications or bears the prescribed label.

Other than regulation of the electrical safety, other areas of safety of mobile phones, such as material safety, risk of screen breakage or glare, differences in production batches and quality control, are not covered by the Telecommunications Ordinance.

Under the Telecommunications Ordinance, CA has no statutory power to require manufacturers to recall, replace, or require retailers to cease the sale of mobile phones which are considered to be unsafe.

In the past three years, the Office of the Communications Authority ("OFCA") has received a total of 21 complaints in relation to the electrical safety of mobile phones (please see Annex for the figures by year), including six cases referred by the Customs and Excise Department ("C&ED") and one case referred by the Consumer Council. The above complaints mainly involved problems with the batteries of mobile phones, for example, batteries that were damaged, worn out, hit by external force or got wet. All the problems were solved after the maintenance agents explained the situation to the complainants or adjusted/replaced the relevant batteries for the complainants. OFCA has not identified any substantiated case of mobile phone batteries not conforming with the safety requirements.

Regulation under the Electricity Ordinance

The safety of battery chargers for mobile phones are regulated by the Electrical Products (Safety) Regulation (Cap. 406G) ("EPSR") under the Electricity Ordinance (Cap. 406). EPSR, which is enforced by the Electrical and Mechanical Services Department ("EMSD"), stipulates that any household electrical products operating at a voltage exceeding 50 volts alternating current or

120 volts direct current must comply with the applicable safety requirements. In the past three years, EMSD investigated a total of four cases about battery chargers for mobile phones regulated by EPSR (please see Annex for the figures by year). In the above cases, no unsafe situation was found.

The voluntary scheme for registration of household electrical products launched by EMSD aims to facilitate the public to select household electrical products which have been issued with a certificate of safety compliance in accordance with EPSR. EMSD also posts the information of the products under the scheme onto its website. Since products with lithium batteries in general operate at a voltage not exceeding 50 volts alternating current or 120 volts direct current, they are not classified as the electrical products regulated by EPSR. Therefore, they will not be included in the registration scheme.

Regulation under the Civil Aviation Ordinance

Unmanned Aircraft Systems ("UASs") are one kind of aircraft, the flight safety of which is regulated by the civil aviation legislation and is under the purview of the Civil Aviation Department. The Civil Aviation Department has not received any complaints about the product safety of UASs.

Regulation under the Consumer Goods Safety Ordinance

The safety of consumer goods which are ordinarily supplied for local consumption and not covered by specific legislation in Hong Kong, is subject to the regulation of the Consumer Goods Safety Ordinance ("CGSO") and its subsidiary legislation, Consumer Goods Safety Regulation, which is enforced by C&ED. Under CGSO, consumer goods must meet the "general safety requirements". The requirement imposes a duty on manufacturers, importers and suppliers of consumer goods to ensure that the consumer goods are reasonably safe, having regard to all the circumstances.

The legislative intent of CGSO was to provide safety protection for goods which are not covered by specific legislation. As such, the scope of CGSO is not applicable to any other goods the safety of which is controlled by specific legislation, such as food, aircraft, motor vehicle, electrical products, mobile phones with original batteries as parts integral to the mobile phones, etc. C&ED has no power to take enforcement action against goods not covered by CGSO.

In the past three years, C&ED investigated a total of 33 cases on the safety of electronic products covered by CGSO, including 21 cases that originated from

complaints, four cases referred by the Consumer Council and eight cases proactively developed by C&ED. The products involved included tablet computers and external chargers, etc. In the above cases, C&ED successfully purchased eight of the above products as samples for conducting safety tests. The number of the investigation cases on the safety of electronic products covered by CGSO in the past three years is at Annex.

The relevant Bureaux and Departments responsible for enforcing the law will continue to keep a close watch on the latest development of the relevant goods and review the relevant laws when necessary to ensure the safety of consumers and the public.

Annex

The numbers of complaints in relation to the electrical safety of mobile phones received by OFCA by year

Product	*Number of cases*		
	2014	*2015*	*January to October 2016*
Mobile phone	6	7	8

The number of cases in relation to safety of battery chargers for mobile phones investigated by EMSD by year

Product	*Number of cases*		
	2014	*2015*	*January to October 2016*
Charger for mobile phone battery	3	1	0

The number of cases in relation to safety of electronic products covered by the CGSO investigated by C&ED by year

Product	*Number of cases*		
	2014	*2015*	*January to October 2016*
Tablet computer	2	-	1
External charger	4	4	6
Others	6	8	2

Leasing out vacant government lands for sports purpose

19. **MR NATHAN LAW** (in Chinese): *President, with the policy support of the Home Affairs Bureau ("HAB"), the support of the Sha Tin District Council and the sponsorship from the Hong Kong Jockey Club Charities Trust, the Kitchee Foundation Limited ("Kitchee") was granted a piece of 15 000-square-metre vacant government land in Shek Mun, Sha Tin under a short term tenancy ("STT") of four years by the Lands Department ("LandsD") in 2013. Kitchee spent $84 million for construction of the Jockey Club Kitchee Centre ("JCKC") on that site for use as a football training venue. It has been reported that earlier on, the Housing Department proposed not to continue to lease out that site upon expiry of the existing lease, so as to make use of that site for the Subsidized Sale Flats Development at On Sum Street. The Chief Executive has subsequently indicated that the site will continue to be leased out on STT until Kitchee has found a new site for reprovisioning JCKC. In this connection, will the Government inform this Council:*

(1) of the number of public housing development projects currently under planning that involve government lands which have been leased out on STT, and set out in a table the name of the current lessee and the land use in respect of each site;

(2) given that the Guidelines for Application for Use of Vacant Government Land that is available for Community, Institutional or Non-Profit Making Purposes on Short Term Basis stipulates that "the application for STT must have the support of the relevant policy bureau", whether the authorities, before deciding whether or not to continue to lease out a site to the lessee on STT, will consult the lessee, LandsD and the policy bureau which gave support for the granting of the existing lease; if they will, of the details; if not, the reasons for that;

(3) as Kitchee has put in an enormous amount of resources for JCKC and opens the centre to the public during certain time periods to alleviate the shortage of football venues both in Sha Tin District and across the territory, whether the authorities will consider continuing to lease out that site to Kitchee on a tenancy of a longer term so as to promote football development in Hong Kong;

(4) as some members of the public have pointed out that the importance of retaining JCKC at the existing site is shown by the facts that Kitchee has made it clear that it does not have sufficient capital to reprovision at another site a football training centre of the same grade as that of JCKC, and Kitchee is currently implementing a number of programmes to promote football in Sha Tin District (e.g. the Professional Footballer Preparatory Program co-implemented with Yan Chai Hospital Tung Chi Ying Memorial Secondary School and the Sports Science Clinic co-established with The Chinese University of Hong Kong), whether the authorities will consider abolishing their plan of resuming that site for the construction of subsidized sale flats; and

(5) as HAB set up last year the Working Group on Sports Facilities under the Sports Commission to review the levels of demand for various types of sports facilities, of the current work progress of the Working Group; whether the Government will take into account the supply of and demand for sports facilities in the relevant districts when planning for public housing development projects?

SECRETARY FOR DEVELOPMENT (in Chinese): President, having consulted Home Affairs Bureau, Planning Department ("PlanD"), Housing Department and Lands Department ("LandsD"), I reply to each part of the question as follows:

(1) Developable land not yet leased or allocated for long-term development and other Government land not yet planned for long-term development are in general under the management of LandsD. To optimize the utilization of land resources, LandsD will, where practicable and appropriate, allocate such sites, to individual bureaux or departments for temporary use, lease them for various commercial purposes (e.g. fee-paying public carpark) through tender, or lease them directly to particular organizations or bodies (which have obtained policy support from relevant bureaux) for temporary use that support specific policy objectives. The above arrangements aim at making optimal use of developable land before long-term development is implemented.

In general, if land held under a short term tenancy is required to make available for long-term development, LandsD will terminate the tenancy in accordance with the tenancy conditions at an appropriate time to facilitate the programme of the long-term development.

As land tenure is subject to frequent changes in view of different situations (e.g. planning and construction progress of sites or expiry date of short term tenancy), we have not compiled statistics on public housing development projects that involve short term tenancy.

(2) For sites leased directly to bodies or organizations for temporary use, when handling tenancy renewal, LandsD will consult relevant bureaux and departments with a site inspection report on whether they would support renewal of the tenancy if such sites will not be required to make available for long-term development in a short period. If the relevant bureaux or departments give their policy support, the tenancy will be renewed. If the subject site is required to make available for long-term development, the Government will inform the relevant bureaux and departments, and in accordance with the tenancy conditions, inform the tenant at an appropriate time. If necessary and with the support of relevant bureaux or departments, the Government will search for a suitable site to facilitate the tenant's reprovisioning of its facilities.

(3) and (4)

Committed to Hong Kong's sports development, the Government has been planning and implementing various sports facilities, and taking forward various policies to support sports development (including soccer). On the other hand, housing is one of the most important livelihood concerns of the community. The Government must strive to increase land supply to meet the keen demand for housing, particularly public housing. In view of the current tight situation of demand for and supply of land, the Government has to continue to adopt a multi-pronged approach to increase land supply. In addition to expanding land resources through large-scale new development areas, the Government must continue land use review of different types of land (including Government land currently vacant or under short term tenancy) to optimize land utilization.

Based on the above principle, open space and sports facilities may be provided at sites not suitable for high density development. For example, some parks and sports facilities can be located at planned ventilation corridors or visual corridors, restored landfills and other sites with restriction on land use (e.g. the rooftop of service reservoirs, sites atop tunnels of railways or roads, etc.). Where feasible and appropriate, the existing open space or sports facilities on vacant government sites or sites held under short term tenancy suitable for high density development may be relocated to those sites not suitable for high density development. This can increase developable land without reducing open space and sports facilities at the same time. This is one of the key measures to optimize the utilization of scarce land resources.

The current proposal is to rezone the site (not including the Jockey Club Kitchee Centre ("the Centre")) on On Muk Street from open space to "Residential (A) 6" for phase 1 public housing development. At present, there is no programme to rezone the Centre for phase 2 public housing development. The Government will search for a site for longer-term use by the Centre. The Centre can continue to use the existing site under short term tenancy before reprovisioning arrangements are made.

(5) The Sports Commission of Home Affairs Bureau has set up the Working Group on Sports Facilities ("the Working Group") to review the demand for various types of sports facilities and make recommendations. The Working Group has decided to conduct a consultancy study to examine the demand for and supply of various types of sports facilities in Hong Kong. The Working Group will also make reference to overseas planning standards and relevant study reports, as well as engage stakeholders. It will also consider revising the planning standards of sports facilities as set out in the "Hong Kong Planning Standards and Guidelines" so that the planning of sports facilities could better meet the sports and training demand of the general public and the "national sports associations". Home Affairs Bureau aims to commence the consultancy study in early 2017, which is estimated to take around 15 months. It is envisaged that the Working Group would come up with preliminary recommendations on the demand for and supply of sports facilities in 2018.

In examining the suitability of a site for residential purpose, the Government will consider relevant factors, e.g. whether the site is no longer needed for the originally planned use, whether there is no concrete development plan for the originally planned use, or whether better alternative sites are available, etc. If a site is suitable for residential development, relevant government departments will, where appropriate, search for suitable site(s) for reprovisioning of the existing facilities (if any) or consider integrating the affected facilities into the proposed development. As usual, PlanD and relevant departments will closely monitor the demand for various public facilities (including sports facilities) in the district and ensure that the provision of such facilities can meet local demands in accordance with the Hong Kong Planning Standards and Guidelines.

Measures to prevent an outbreak of the Zika epidemic

20. **MR KENNETH LAU** (in Chinese): *President, the second ever imported case of Zika Virus Infection in Hong Kong was confirmed on the 15th of this month. The patient went back to his residence in San Tin, Yuen Long after returning to Hong Kong from overseas on the 10th of this month, and was not admitted for isolation and management until the 12th. It is learnt that the patient started to have persistent fever when he was staying overseas, but the Temperature Check Points at the airport failed to detect his abnormal body temperature when he entered Hong Kong. In addition, it has been reported that although the ovitrap indices for Aedes albopictus in various districts were not on the high side in the last winter season, serious mosquito infestation was observed in quite a number of districts (particularly in rural areas). Quite a number of residents of villages are worried that the imported Zika Virus would spread in the community. In this connection, will the Government inform this Council:*

(1) whether it has assessed if the aforesaid case has revealed that there are inadequacies in the temperature checks conducted by the authorities at the boundary control points; if it has assessed, of the outcome;

(2) whether territory-wide mosquito control operations are continuously carried out at present with the aim of reducing the risk of Zika Virus spreading across Hong Kong;

(3) given that oviposition traps are mainly placed in urban areas or new towns at present, whether the Government has considered placing oviposition traps in rural areas; whether it will review the effectiveness of the current practice of adopting the ovitrap indices as an indicator of the seriousness of mosquito infestation; and

(4) of the details of the mosquito prevention and control strategies currently adopted for rural areas; whether the authorities will adjust such strategies in the light of the emergence of imported cases of Zika Virus Infection in Hong Kong; if they will, of the details; if not, the reasons for that?

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, Zika virus is transmitted to humans mainly through bite of infected Aedes mosquitoes. Though Aedes aegypti, which is considered as the most important vector for transmitting Zika virus to humans, is currently not found in Hong Kong, other Aedes mosquito species such as Aedes albopictus widely present locally are also considered as potential vectors. Moreover, transmission of Zika virus by sexual contact has been confirmed, and other modes of transmission such as blood transfusion and perinatal transmission are also possible. As long as there is extensive international travel, there always remains the risk of introducing Zika virus or Aedes aegypti into Hong Kong. Once an overseas Zika-infected person enters Hong Kong, person-to-person transmission of the virus is possible. Besides, if the infected person is subsequently bitten by an Aedes albopictus in Hong Kong, the infected Aedes albopictus may carry the virus and lead to a secondary spread in Hong Kong. It is very common that persons infected by Zika virus will not have any symptoms and there is no medication or vaccine against Zika virus at present. For newly affected areas, their population does not generally have any immunity against Zika virus. The public should therefore stay vigilant about the potential risks of mosquito-borne diseases, while the community and various government departments should make concerted efforts and actively participate in mosquito prevention and control.

At an emergency meeting held on 1 February 2016, the World Health Organization ("WHO") declared that the recent cluster of microcephaly and other neurological disorders and their possible association with Zika virus constituted a Public Health Emergency of International Concern. The Government published in the Gazette the Prevention and Control of Disease Ordinance (Amendment of

Schedule 1) Notice 2016 on 5 February 2016 to make Zika virus infection a statutorily notifiable infectious disease under the Prevention and Control of Disease Ordinance (Cap. 599) with immediate effect on the same day. It also announced the Preparedness and Response Plan on Zika Virus Infection on 11 March 2016 and the Alert Response Level has been activated till now(1). According to the WHO's latest figure, 75 countries/areas have documented mosquito-borne transmission of the virus to date since 2007 while 12 countries/areas have documented person-to-person transmission, probably by sexual contact, since 2016.

The WHO issued a statement on 18 November 2016, indicating that Zika virus and associated consequences remain a significant enduring public health challenge requiring intense action although they no longer represent a Public Health Emergency of International Concern. Nevertheless, the Government made it clear on 19 November 2016 that Zika virus remained a challenge to public health, and Hong Kong would stay vigilant by continuing the current prevention and control strategy and maintaining the Alert Response Level. The Government will maintain its close liaison with public and private hospitals, medical professions and the community. Relevant government bureaux/departments and organizations will continue to undertake prevention and control measures in line with the preparedness plan to ensure that measures on

(1) In response to the activation of the Alert Response Level under the Preparedness and Response Plan on Zika Virus Infection, the departments concerned have stepped up the cleansing work and mosquito prevention and control measures. The following are some examples:

(a) The district environmental hygiene offices of the Food and Environmental Hygiene Department convene monthly anti-mosquito task force meetings with relevant departments to review the mosquito prevention and control work;

(b) The Lands Department adopts and maintains the reinforced mosquito prevention and control measures as planned. These measures include enhancing the inspection frequency (at least weekly) of government land sites under their control, promptly conducting necessary cleaning and grass-cutting work on government land sites and enhancing supervision of their site contractors to step up frequency (at least weekly) and intensity of anti-mosquito work; and

(c) The Leisure and Cultural Services Department conducts daily cleaning and inspection at all its venues to reinforce the efforts in clearing stagnant water and debris and ensure that all water containers are covered tightly; conducts weekly specific mosquito control and cleaning operations at the venues; and promotes the message of mosquito prevention and control by displaying posters and banners at its venues, conducting roving exhibitions, broadcasting announcements in the public interest and distributing leaflets.

effective disease surveillance, vector control, examination and diagnosis, emergency preparedness, health advice, public education and risk communication are in place. The enhanced efforts on mosquito control and elimination as well as publicity and community engagement activities will also be sustained.

To date, the Centre for Health Protection ("CHP") recorded two imported cases of Zika virus infection(2). Upon receiving the notification, the CHP immediately carried out epidemiological investigation and issued isolation orders to the two patients concerned. The patients were given the necessary health education information and relevant promotional leaflets before discharge. They should apply insect repellent (for at least 21 days upon arrival from the affected areas) to avoid mosquito bites and were reminded of the need to observe safe sex after discharge. The CHP held briefings on the days of receiving the notification to report the investigation and follow-up work undertaken and issued press releases. Letters were also issued to doctors and hospitals to alert them to patients with compatible symptoms and travel history. In addition, the CHP has reported the cases to the WHO, the National Health and Family Planning Commission, and Guangdong and Macao health authorities, and maintain close liaison for the latest development. Also, a new television announcement of public interest on Zika virus started to be broadcast from 3 November 2016 onwards.

The Food and Environmental Hygiene Department ("FEHD"), within 24 hours after receiving the notification, conducted inspections on mosquito problem and implemented mosquito prevention and control measures in the areas within a radius of 500 m from the residences and workplaces of the two patients and the places they visited during the infectious period (including the hospitals where they received isolation treatment). The FEHD also liaised with relevant departments and organizations (including convening district task force meetings) to enhance the anti-mosquito work under their purview. Besides, the Aedes albopictus samples collected by the FEHD were tested for Zika virus under the following circumstances:

(a) All samples collected from dengue vector surveillance program at port areas and from areas with an Area Ovitrap Index reaching 10% or above in the community during the surveys conducted from August to October 2016; and

(2) The two cases were reported on 25 August and 15 November 2016 respectively.

(b) As a response to the two imported cases, all samples collected from the dengue vector surveillance areas that fall within a radius of 500 m from the residences and workplaces of the two patients, and the places they visited during the infectious period[(3)].

The testing results of 148 samples collected so far are negative.

On strengthening the anti-mosquito work in the port areas[(4)], in September 2016, in addition to the meetings between the Food and Health Bureau and the Airport Authority, the Tourism Commission also took the lead in meeting two cruise terminal operators, the cruise industry and representatives from major tourist attractions (including the Ocean Park, Hong Kong Disneyland Resort, Noah's Ark, Ngong Ping 360 and Peak Tram), so as to strengthen the mosquito prevention and control of the facilities in these major tourist attractions and in their vicinity, and enhance publicity and education for stakeholders.

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

(1) The Department of Health ("DH") currently conducts routine health surveillance at all boundary control points ("BCPs") by checking the body temperature of the inbound travellers. Border staff will carry out health assessment on travellers with fever and refer them to health care institutions for follow-up. Health promotion has also been enhanced at BCPs through pamphlet distribution and poster display to remind travellers of the preventive measures against Zika virus. As for the latest imported Zika case, the patient concerned had developed symptoms before returning to Hong Kong. As he had taken paracetamol, the symptoms were slightly relieved and there was no sign of fever during his return flight to Hong Kong and upon entering the territory. As a result, the DH had no fever record of this Zika-infected inbound traveller. Nonetheless, the patient was referred to North District Hospital at once for isolation treatment

(3) The surveillance area with ovitraps for Aedes albopictus involved in the second confirmed case is Sheung Shui. As the index of that location for November was zero, no sample was available for testing.

(4) The FEHD will continue to work closely with the Airport Authority, the MTR Corporation and freight forwarding companies etc. with a view to strengthening the anti-mosquito work in the port areas.

after attending Sha Tau Kok General Out-patient Clinic. Upon laboratory confirmation, the DH immediately commenced epidemiological investigations, and requested the FEHD to carry out vector investigations and mosquito control. The management of the locations concerned was also informed of the need to intensify the necessary anti-mosquito and environmental hygiene work.

(2) The Government conducts anti-mosquito work across the territory on an ongoing basis. Details are as follows:

The Anti-Mosquito Steering Committee ("AMSC")[(5)] convenes meetings before the rainy season each year to review the dengue vector surveillance and effectiveness of the anti-mosquito measures undertaken by various departments. The meetings also discuss ways to strengthen cooperation and intensify mosquito prevention efforts, such as the territory-wide intensive anti-mosquito operations jointly conducted by the FEHD and various stakeholders to kill adult mosquitoes and clear their potential breeding grounds so as to eradicate a whole generation of mosquitoes.

Each year before the rainy season or when necessary, the district environmental hygiene offices ("DEHOs") of the FEHD will convene special anti-mosquito task force meetings with relevant departments to give them professional advice on intensifying mosquito prevention and control in places under their management. The FEHD's professional staff will also provide technical support/assistance for various departments, organizations and persons in charge of private places to facilitate effective implementation of anti-mosquito measures within their respective purview. The FEHD, in collaboration with the above parties, will continue to intensify the relevant anti-mosquito work and strengthen publicity and education campaigns with a view to sustaining the effectiveness.

In addition to about 700 departmental staff responsible for pest control (including mosquito control), the FEHD also engages private

(5) The AMSC is chaired by the Permanent Secretary for Food and Health (Food) and comprises senior officers from various government bureaux and departments.

contractors to provide pest control services across the territory through roving teams. During the winter season from November 2016 to March 2017, the FEHD will increase the number of roving teams by 56 in order to maintain the same number of teams as in summer. Together with the additional roving teams under the District-led Actions Scheme ("DAS"), the number of roving teams this winter will be largely maintained at about 280 (with a workforce of about 1 680) to strengthen mosquito control in the season.

The FEHD launches territory-wide anti-mosquito campaigns in collaboration with other government departments annually to encourage community participation in anti-mosquito work. Moreover, the FEHD will, immediately after each phase of the campaign, conduct thematic mosquito prevention and control special operations to keep up its anti-mosquito efforts:

(a) The Anti-mosquito Campaign 2016 is implemented in three phases. The third phase has just been carried out from 15 August to 21 October 2016, followed by the third phase of the territory-wide thematic mosquito prevention and control special operation, running from 31 October to 30 December 2016. The publicity on mosquito control in winter has commenced in November 2016 as well; and

(b) Closely following the thematic operation will be the year-end clean-up operation, which will commence on 3 January 2017, during which mosquito prevention and control work will be enhanced. The DEHOs of the FEHD will continue to target areas which have drawn particular concerns(6) within their districts and intensify mosquito prevention and control at these places in winter.

District Offices and District Councils carry out regular anti-mosquito work and mosquito preventive work, grass-cutting and cleansing of hygiene blackspots. With the full implementation of DAS in 18

(6) Examples include areas concerned with previously reported local dengue fever cases, single-block buildings, rural village houses, areas in close proximity to residential buildings, typhoon shelters, schools, construction sites, illegal cultivation sites, hospitals, container terminals and cargo working areas in port areas, cross-boundary check points and cross-boundary ferry terminals.

districts in 2016, District Offices have, based on their district circumstances, worked closely together with District Councils and relevant government departments in launching various initiatives that improve environmental hygiene. Making use of the DAS funding provided in 2016-2017, plus the administrative support given by the Home Affairs Department ("HAD"), District Offices will implement a total of 40 projects relating to environmental hygiene improvement and public area management, including grass-cutting and mosquito control.

As work sites (including sites for renovation and repair) are areas with a high risk of mosquito breeding, the HAD will continue the efforts in drawing the attention of owners' corporations of those housing estates/buildings that are undergoing or will shortly undergo repair/maintenance/renovation to the importance of implementing anti-mosquito measures for prevention and control purposes. In addition, the Development Bureau will continue to encourage, through contractors' associations, contractors of private projects to actively participate in anti-mosquito work, liaise with the FEHD to ensure effective anti-mosquito measures are undertaken by contractors of public works projects, and closely monitor the situation of the sites of such projects through the high-level Interdepartmental Working Group on Mosquito Prevention at Works Sites. The Development Bureau will also consider strengthening the relevant penalty level under the existing regulatory mechanism(7). Besides, the FEHD was invited by the Hong Kong Construction Industry Employees General Union and the Occupational Safety and Health Council to conduct briefings on strengthening mosquito prevention and control.

In 2016 (up to 15 November), the FEHD instigated 43 prosecutions against mosquito breeding on the premises concerned under the Public Health and Municipal Services Ordinance (Cap. 132), among which 30 involved construction sites and 13 involved other premises.

(7) According to the existing regulatory mechanism, the qualification of the contractors on the List of Approved Contractors for Public Works to bid public works will be affected if they repeatedly breach legislation related to mosquito control.

(3) and (4)

During routine anti-mosquito operation in rural areas, the FEHD staff will regularly inspect potential breeding grounds in public areas. Whenever breeding of mosquitoes or potential breeding grounds are found, immediate actions will be taken to eliminate the source or larvicides will be applied to contain the problem. Fogging will also be carried out to kill the adult mosquitoes where necessary. Moreover, the FEHD will provide technical assistance for relevant departments, organizations and the persons in charge of private places to deal with mosquito problem. In response to mosquito complaints, the FEHD will conduct investigations and enhance the relevant anti-mosquito work. The FEHD stands ready, upon invitation, to brief Heung Yee Kuk on the anti-mosquito work in rural areas.

The FEHD has put in place an enhanced dengue vector surveillance programme for monitoring the distribution of Aedes albopictus in selected areas and for evaluating the effectiveness of mosquito prevention and control work carried out by various parties. The data collected also provide an informed basis for timely adjustment to our mosquito control strategies and measures. Following the WHO's recommendations, the FEHD's dengue vector surveillance programme closely monitors places with higher risk of spreading dengue fever. Places where local dengue fever cases occurred and densely populated areas, such as housing estates, schools and hospitals, will be targeted to ensure effective monitoring and control of vector mosquitoes in these areas. In other words, the setting of ovitraps for Aedes albopictus is determined by factors such as population density and the risk of spreading dengue fever and related diseases, but is not determined on the basis of delineation of urban areas/new towns or rural areas.

The FEHD will carry out its daily anti-mosquito work with reference to the results of dengue vector surveillance, and take targeted action in the light of each district's circumstances. To tackle the mosquito problems in rural areas, the FEHD will sustain its efforts in paying special attention to mosquito control in village houses. Moreover,

the FEHD has been installing mosquito screens at the vent pipes of septic tanks of private village houses since March 2016 as a proactive measure to prevent mosquito breeding in septic tanks. It plans to assess the situation before the rainy season in 2017 for any further actions. The FEHD will also stay alert of those areas which are prone to mosquito breeding, such as land filling sites in rural areas, and carry out inspections and take appropriate measures to prevent mosquito breeding.

The Drainage Services Department ("DSD") will regularly inspect river channels and drainage facilities under its management in rural areas to examine the need for any necessary anti-mosquito measures and the effectiveness of those implemented. If any hygiene problems (e.g. the presence of stagnant water) are spotted, the contractor concerned will be asked to take immediate action by applying appropriate larvicides. In response to the most recent Zika virus case, the DSD has increased the frequency of inspecting the polder area and the inlets and outlets of river channels in San Tin to once a week, and will clean up the litter and apply appropriate larvicides in these areas on a weekly basis. Moreover, the number of larvivorous fishes reared in the polder area in San Tin will be increased to further contain the problem.

Members of public living in rural areas may install mosquito screens on windows and doors if necessary. Those staying in the natural environment should take appropriate personal protective measures against mosquitoes, such as avoiding staying in the vicinity of shrubby areas for a long time, wearing light-coloured long-sleeved clothes and long trousers and applying insect repellent containing N, N-diethylmetatoluamide. Members of the public may report any mosquito problems found to the Government via 1823.

Vetting and approval of donation applications by the Board of Management of the Chinese Permanent Cemeteries

21. **MS TANYA CHAN** (in Chinese): *President, it has been reported that the Hong Kong Army Cadets Association ("HKACA"), established in January last year, was granted, prevailing over two uniformed groups with long histories in*

the relevant application process, a vacant school premises on 21 June this year by the Government for use as a training venue after renovation. The renovation cost needed stands at $66 million, with $30 million of it to be met by a donation from the Board of Management of the Chinese Permanent Cemeteries ("BMCPC"). HKACA submitted its application for donation to BMCPC immediately on the same day after it was granted the school premises, and BMCPC approved the application in the form of a special approval at its meeting held on the 27th of the same month. Some members of the public have queried that the approval of an application for donation not within the category of "annual charity donation" by BMCPC within such a short time has aroused concerns over the role of the Secretary for Home Affairs ("SHA") in this matter, given that he is both an Honorary Advisor to HKACA and the Chairman of BMCPC. In this connection, will the Government inform this Council:

(1) of the total amount of donations to charities approved, the number of projects subsidized and the average time taken to vet and approve an application, by BMCPC in each of the past three years;

(2) of the number of cases in which a donation not within the category of annual charity donation was approved by BMCPC in the form of a special approval in the past 10 years, as well as the details (including the nature of the project subsidized, the date of receipt of the application, the date of approval of the donation, and the amount of the donation approved) of each case; and

(3) whether SHA, in view of his role as an Honorary Advisor to HKACA, withdrew from the meeting at which the application for donation from HKACA was considered by BMCPC so as to avoid any conflict of roles; if he did not, of the reasons for that?

SECRETARY FOR HOME AFFAIRS (in Chinese): President, our reply to Ms CHAN's question is set out below.

The Board of Management of the Chinese Permanent Cemeteries ("BMCPC"), established under the Chinese Permanent Cemeteries Ordinance (Cap. 1112) ("the Ordinance") and operating on a non-profit-making basis,

provides burial lots, niches and ash scattering services for Chinese people in Hong Kong.

All along operating on a self-financing basis, BMCPC does not receive any government subsidy. According to the Ordinance, BMCPC may donate to any charity operating for the benefit of the community of Hong Kong or any sector of that community any moneys vested in it which are or may become surplus. Upholding the principle of promoting public good, BMCPC has been donating to local non-profit-making organizations for implementation of meaningful initiatives to benefit the community.

Apart from subsidizing non-profit-making organizations to carry out improvement works and procure equipment via the Annual Donation Scheme and to launch activities under the theme of "community building" or "life education" through the Annual Thematic Donation Scheme every year, BMCPC also gives considerations to individual donation applications submitted by non-profit-making organizations outside the two annual exercises. In general, BMCPC would take into consideration such factors as feasibility and benefits of the project, as well as the applicant's competence in implementing the proposed project in deciding whether the annual or special donation application should be supported.

Our response to the three parts of the questions raised by the Member is as follows:

(1) Generally, BMCPC accepts applications under the Annual Donation Scheme and the Annual Thematic Donation Scheme in around March or April every year. In the past three years, over 200 applications were received annually. After considering each and every application, BMCPC would usually notify the applicants of the results of the two schemes in the third quarter of the same year. In the previous three years, about $54 million were granted to non-profit-making organizations under the Annual Donation Scheme and the Annual Thematic Donation Scheme to subsidize 205 projects.

(2) As mentioned above, BMCPC gives considerations to individual donation applications from non-profit-making organizations submitted outside the two annual Schemes. Donations made to individual organizations outside the two annual exercises in the past are set out in the table below:

Year	*Recipient Organizations*	*Project*	*Approved Donation ($'000)*
1996	Hong Kong Girl Guides Association	Redevelopment of camp site	1,000
1997	Home Affairs Bureau	Development of Youth Square	200,000
1999	Hong Kong Federation of Youth Groups	Hong Kong Leadership Institute	10,000
2002	Kwong Wah Hospital, Tung Wah Group of Hospitals ("TWGHs")	Setting up of dental clinic	2,660
	Ruttonjee Hospital	Setting up of hospice centre	32,500
2003	Our Lady of Maryknoll Hospital	Setting up of hospice centre	6,200
	Haven of Hope Holistic Care Centre	Setting up of hospice centre	30,000
	TWGHs Wong Tai Sin Hospital	Setting up of hospice centre	30,000
2006	The University of Hong Kong	Design on Cemetery and Memorial Park	100
	Summer Youth Programme Committee	Summer Youth Exchange Programme	2,000
	Ruttonjee & Tang Shiu Kin Hospitals	Setting up of Hospice Centre	4,430
	Celebration Fund for the 10th Anniversary of Establishment of the Hong Kong Special Administrative Region	Celebrating activities for the 10th Anniversary of the establishment of the Hong Kong Special Administrative Region	20,000

Year	*Recipient Organizations*	*Project*	*Approved Donation ($'000)*
2009	Society for the Promotion of Hospice Care	Special life and death education programme	1,570
	Hong Kong Association of Youth Development	Youth Training Centre	8,200
	2009 East Asian Games (Hong Kong) Limited	East Asian Games related activities	10,000
2010	Society for the Promotion of Hospice Care	Special life and death education programme	1,780
2011	Society for the Promotion of Hospice Care	Publications on life and death education	230
2012	Asian Youth Orchestra	Concert to celebrate the 15th Anniversary of the establishment of the Hong Kong Special Administrative Region	350
	Hong Kong United Youth Association	Parade and singing contest to celebrate the 15th Anniversary of the establishment of the Hong Kong Special Administrative Region	1,700
2013	St. James' Settlement	Special life and death education programme	2,450
	Po Leung Kuk	Elderly support centre	4,760
2015	Society for the Promotion of Hospice Care	Special life and death education programme	800
	Hong Kong Sheng Kung Hui Welfare Council	Special life and death education programme	1,100
	Po Leung Kuk	Special life and death education programme	1,610

Year	*Recipient Organizations*	*Project*	*Approved Donation ($'000)*
2016	Po Leung Kuk	Special life education programme	1,060
	Hong Kong Sheng Kung Hui Welfare Council	Special life education programme	1,550
	Hong Kong Army Cadets Association ("HKACA")	Youth training and activity centres	30,000

Notes:

(1) The projects set out in the table were applications directly made to BMCPC by the recipient organizations. They do not include projects that were sponsored by BMCPC, but directly handled and approved by government departments or advisory bodies.

(2) The donation projects before 2006 are major development projects according to available records.

(3) The Secretary for Home Affairs ("SHA") is the Chairman of BMCPC. He chairs meetings of BMCPC to deliberate on various proposals (including the donation application submitted by HKACA) put up by the Board's secretariat for members' consideration. Despite SHA's capacity as the Honorary Advisor to HKACA, the title is honorary in nature without any concrete function and SHA has never participated in any actual operation of HKACA. Hence there was no conflict of interests in BMCPC's consideration of the donation application from HKACA and would not warrant SHA's withdrawal from the meeting. In fact, to support youth initiatives and encourage the development of uniformed groups, SHA has been, upon invitation by various uniformed groups, assuming honorary titles, including the Honorary President of the Hong Kong Road Safety Association, the Honorary Vice President of the Hong Kong Girl Guides Association and a Member of the Advisory Board of the Hong Kong Red Cross.

Sickness allowance

22. **MR ANDREW WAN** (in Chinese): *President, under the Employment Ordinance (Cap. 57) ("EO"), the employer of an employee employed under a continuous contract must pay sickness allowance to the employee who has met the following three conditions: (1) has taken the sick leave for not less than four consecutive days, (2) can tender an appropriate medical certificate, and (3) has accumulated sufficient number of paid sickness days. The daily rate of sickness allowance is a sum equivalent to four-fifths of the average daily wages ("daily wages") earned by the employee during the 12-month period preceding the sickness day or the first sickness day. In this connection, will the Government inform this Council:*

(1) in respect of civil service agreement officers and non-civil service contract staff currently employed by the Government, of the respective percentages of such employees whose contracts have provided that where the employee has taken less than four consecutive days of sick leave but satisfied the other two conditions, the employee is (i) not entitled to sickness allowance, (ii) entitled to sickness allowance equivalent to a certain percentage of his/her daily wages, and (iii) entitled to sickness allowance paid at full rate; if such information is not available, of the reasons for that;

(2) whether the Government, being the largest employer in Hong Kong, will consider taking the lead in offering conditions of service that are more favourable than those provided under the law to civil service agreement officers and non-civil service contract staff, namely to grant sickness allowance at full rate to such employees who have taken less than four consecutive days of sick leave but satisfied the other two conditions; if it will, of the details; if not, the reasons for that; and

(3) whether the Government will consider amending EO to improve employees' benefits relating to sickness allowance; if it will, of the details, including whether it will conduct public consultation on this issue in the current legislative session; if it will not consider, the reasons for that?

SECRETARY FOR THE CIVIL SERVICE (in Chinese): President, the Government's response to Mr Andrew WAN's question is as follows:

(1) and (2)

In accordance with the Civil Service Regulations, civil servants could apply for full-pay sick leave for two consecutive working days without the production of a medical certificate. Longer periods of sick leave may only be taken with the support of medical certificates.

Heads of Departments ("HoDs") have full discretion to determine the sickness days arrangements for their non-civil service contract ("NCSC") staff. Overall speaking, their employment terms must be no less favourable than those provided for under the Employment Ordinance ("EO"), and no more favourable than those applicable to civil servants in comparable civil service ranks or ranks of comparable levels of responsibilities. Under these principles, HoDs may grant NCSC staff full pay sickness allowance for sickness days that are less than four consecutive days upon presentation of a medical certificate. We have not collected information on this front.

(3) As an employee's absence from work because of sickness or injury may not be employment-related, there is a need to maintain an appropriate balance between the interests of employers and employees in apportioning the loss of earning arising from an employee's illness. Under the EO, sickness allowance is payable to an employee who has taken sick leave for four consecutive days or more and has accumulated sufficient paid sickness days. Such stipulations have accorded a certain level of protection to employees.

The Government always encourages employers, having regard to their own business operations and affordability, to offer employment benefits above the statutory standards to their employees. At this stage, the Labour Department has no plan to make amendments to the relevant provisions.

GOVERNMENT BILLS

First Reading of Government Bill

PRESIDENT (in Cantonese): Government Bill: First Reading.

FIRE SERVICES (AMENDMENT) BILL 2016

CLERK (in Cantonese): Fire Services (Amendment) Bill 2016.

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

Second Reading of Government Bills

PRESIDENT (in Cantonese): Government Bill: Second Reading.

FIRE SERVICES (AMENDMENT) BILL 2016

SECRETARY FOR SECURITY (in Cantonese): President, I move the Second Reading of the Fire Services (Amendment) Bill 2016.

Currently, the Fire Services Department provides fire safety risk assessment and certification services to persons who intend to run various types of licensed premises, but such work can only be undertaken by officers of the Fire Services Department for the time being. In order to facilitate business operation and make better use of professional human resources in the market, we propose to implement the Registered Fire Engineer ("RFE") Scheme to offer license applicants an additional option of completing the fire safety risk assessment and certification procedures.

Under the Scheme, qualified personnel may register with Fire Services Department as RFEs. The RFEs will be categorized into three classes, respectively responsible for carrying out risk assessment, compliance inspection for FSI and compliance inspection for ventilating systems.

Opting for the services provided by RFEs will allow greater flexibility, and possibly a shorter turnaround time for completing the required risk assessment and certification services. Besides, RFEs will be able to provide services with greater flexibility, such as conducting on-site risk assessment at more flexible hours. This will be particularly appealing to those applicants who can afford higher operating expenses.

The Scheme facilitates business operations, makes better use of professional human resources and supports the development of the fire engineering profession. Upon implementation of the Scheme, Fire Services Department will maintain its existing risk assessment and certification services as an option for license applicants.

The existing Fire Services Ordinance ("FSO") and its subsidiary legislation do not provide for any third party other than the Fire Services Department to perform fire safety risk assessment and certification. It is therefore necessary for the Government to amend FSO to create enabling provisions to empower the Chief Executive in Council to make regulations for the RFE Scheme and other related matters as well as introduce other relevant amendments.

The Fire Services (Amendment) Bill 2015 was introduced into the Legislative Council last year. The Bills Committee held five meetings respectively to deliberate the Bill in detail. At last, the Bills Committee supported the resumption of the Second Reading debate. Nevertheless, since the Second Reading debate of the Bill could not be resumed before prorogation of the previous term of Legislative Council, the Bill lapsed automatically.

(THE PRESIDENT'S DEPUTY, MS STARRY LEE, took the Chair)

The Fire Services (Amendment) Bill 2016, which I now move, is by and large a replica of the Fire Services (Amendment) Bill 2015 but with the incorporation of the Committee stage amendments then agreed by both the Government and the Bills Committee. The amendment requires that the new regulations relating to the RFE Scheme, except those concerning fees to be charged in relation to the registration and de-registration of RFEs, are to be made subject to the positive vetting procedures instead of the negative vetting procedures.

Deputy President, the Legislative Council as well as our community are generally in support of the RFE Scheme, but for some special reason, the Third Reading of the Fire Services (Amendment) Bill 2015 could not be completed before prorogation of the previous term of Legislative Council and the Bill thus lapsed automatically. And so we just mean to carry on with the legislation this time to introduce the Fire Services (Amendment) Bill 2016 with the incorporation of the Committee stage amendments then agreed by both the Government and the Bills Committee.

Therefore, I hope Members will support the Fire Services (Amendment) Bill 2016 to enable expeditious passage of the Bill. After the passage of the Bill, we will work towards introducing subsidiary legislations to provide for the implementation details of the RFE Scheme as early as practicable so that the Scheme could be implemented.

I so submit, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Fire Services (Amendment) Bill 2016 be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill is referred to the House Committee.

Resumption of Second Reading Debate on Government Bill

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Supplementary Appropriation (2015-2016) Bill.

SUPPLEMENTARY APPROPRIATION (2015-2016) BILL

Resumption of debate on Second Reading which was moved on 9 November 2016

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Supplementary Appropriation (2015-2016) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Supplementary Appropriation (2015-2016) Bill.

Council went into committee.

Committee Stage

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

SUPPLEMENTARY APPROPRIATION (2015-2016) BILL

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Supplementary Appropriation (2015-2016) Bill.

CLERK (in Cantonese): Clauses 1 and 2.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Government Bill

DEPUTY PRESIDENT (in Cantonese): Government Bill: Third Reading.

SUPPLEMENTARY APPROPRIATION (2015-2016) BILL

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

Supplementary Appropriation (2015-2016) Bill

has passed through the Committee stage without amendment. I move that this Bill be read the Third time and do pass.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Supplementary Appropriation (2015-2016) Bill be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Supplementary Appropriation (2015-2016) Bill.

MEMBERS' MOTIONS

DEPUTY PRESIDENT (in Cantonese): Members' motions.

Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the Marine Parks (Designation) (Amendment) Order 2016, which was laid on the Table of this Council on 9 November 2016.

I now call upon Ms Tanya CHAN to speak and move the motion.

PROPOSED RESOLUTION UNDER SECTION 34(4) OF THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MS TANYA CHAN (in Cantonese): Deputy President, I move that the motion proposed under my name, as printed on the Agenda, be passed.

It was decided at the House Committee meeting on 11 November 2016 that a subcommittee be formed to study the Marine Parks (Designation) (Amendment) Order 2016. To allow ample time for the Subcommittee to study the subsidiary legislation and report its deliberations to the House Committee, I, in my capacity as Chairman of the Subcommittee, now moved that the scrutiny period for examining the subsidiary legislation be extended to 11 January 2017.

Deputy President, I urge Members to support this motion.

Ms Tanya CHAN moved the following motion:

"RESOLVED that in relation to the Marine Parks (Designation) (Amendment) Order 2016, published in the Gazette as Legal Notice No. 166 of 2016, and laid on the table of the Legislative Council on 9 November 2016, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 11 January 2017."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Tanya CHAN be passed.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Tanya CHAN be passed. Will those in favour please raise their hands?

(Member raised their hands)

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

(No hands raised)

DEPUTY 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.

DEPUTY PRESIDENT (in Cantonese): Debate on motion with no legislative effect.

The motion debate on "Formulating a comprehensive listing policy".

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

I now call upon Mr Christopher CHEUNG to speak and move the motion.

FORMULATING A COMPREHENSIVE LISTING POLICY

MR CHRISTOPHER CHEUNG (in Cantonese): Deputy President, I move that the motion, as printed on the Agenda, be passed.

In June this year, the Securities and Futures Commission ("SFC") and The Stock Exchange of Hong Kong Limited ("SEHK") issued a joint consultation paper on reforming the listing structure, thus triggering huge reverberations in the market. Many in the industry are worried that if the recommendations in the consultation paper are implemented, SFC will have total say in vetting and approving all listing applications and its approval criteria will be based on a regulator's mindset, thus thwarting the capital-raising function of the market.

I also note that the bulk of the entire consultation paper focuses solely on how the power to vet and approve listing applications is to be shared, instead of how to combat the various market malpractices by formulating a comprehensive reform of the listing policy. Nor does it touch on issues such as promoting the sustainable development of the local stock market with a view to attracting enterprises of the new economy to go public in Hong Kong. Therefore, I now propose this motion on formulating a comprehensive listing policy, hoping that rather than focusing solely on the power struggle between SFC and SEHK, people can also pay attention to the sustainable development of the whole market in the future and other long-term considerations.

First of all, I want to point out that to put it bluntly, this consultation paper is somewhat misleading. Its name says that it is a joint consultation conducted by SFC and SEHK, so there is supposed to be a consensus on their respective responsibilities and scopes of work. But this is not the case in reality; there are

many internal conflicts and these conflicts were exposed clearly during the consultation process. There was a secret tug-of-war between SFC and SEHK on the power to vet and approve listing applications, and not only this, some directors of SEHK even held a press conference to openly express a different stance. Moreover, some people also plan to stage a march, in a bid to totally gainsaying the consultation paper. It can be seen that the so-called "joint consultation" is a misnomer, and the reality is that the two are fighting each other. The respective roles of SFC and SEHK have been in conflict all along. Unable to resolve the conflict, they have sought to turn it into a kind of confrontation in the industry using the misnomer of "joint consultation". This is a very irresponsible approach indeed.

Back to stock market development, it cannot be denied that the stock market of Hong Kong has made good progress on various fronts since the publication of the Davison Report in the 1980s, and for years, it has been one of the top three places around the world in the total volume of equity funds raised through initial public offerings ("IPOs"). This is something we really take pride in. Since the reunification in 1997, state-owned enterprises have been coming to Hong Kong to go public, thus leading to the rapid development of our financial markets and in turn helping us to establish our status as an international financial centre. But this has at the same time created a wealth gap, in the sense that wealth is concentrated only in the hands of a few people, while small and medium securities dealers and investors in general are unable to enjoy the fruit of the prosperous financial markets in Hong Kong.

Let us first look at the turnovers of SEHK. Although the Shanghai-Hong Kong Stock Connect has been launched, the average daily turnover in the first three quarters of this year was still around $60 billion only, similar to the level recorded in the market doldrums following the financial tsunami. For quite a while, the turnover was even less than $50 billion. When the turnovers of derivatives markets are deducted, the turnover of conventional stock trading was less than $40 billion. Why do we keep mentioning Hong Kong as an international financial center and the top IPO market in the world so often? We are proud of ourselves as a result and use this as the justification for not changing the existing system. But as the daily turnover keeps declining, as securities dealers find it difficult to survive and as investors lose their confidence, why should people still insist that it is not necessary to conduct a review to identify the causes? Why do people insist that it is not necessary to perfect the policy now in operation?

Deputy President, why has the whole market ended up this way? Though the situation is not as worse as a collapse, the market is in complete stagnancy. This is due to the fact that both individual investors and investors in general have lost confidence in the market. Many investors opine that the Hong Kong stock market has been reduced to a big casino full of "cheating shares". Fundamental investment metrics long held by financial experts as golden rules, such as price-earnings ratio, earnings per share and the quality of corporate governance, are no longer useful. Market failure has led to drastic fluctuations of stock prices, and there are numerous cases where the market value of a company's share price plunges 90% in a day. In that case, how can investors not stay away from this stock market?

In recent years, for example, many newly listed companies list their shares on GEM (Growth Enterprise Market) mainly by way of placement. Major market makers behind the scene often use the loopholes in the listing rules on private placement, and so on, to corner the market. As a result, the share price of a company may see an increase of several dozen times and even over a hundred times on the first day of trading. After being pushed up by speculation, the share price will dive like a rollercoaster, luring individual investors to fall into the scam and buy the shares. With the trick of "downward price manipulation", comprising placement, right issues and even the so-called "financial techniques" of "1-for-10" split or even "1-for-100" split, market makers keep lowering the share price to exploit small investors over and over again. They will sell the shares to certain private investors through placement when the share price is at low levels, thus putting the assets of small shareholders totally under their control. As the masses of individual investors are "fleeced" in this way, how can anyone still dare to invest in the stock market?

Again, let us look at GEM as an example. There have been totally 35 new listings on GEM so far this year, but 15, or 40%, of these 35 new listings saw a plunge of 90% from their respective peak prices. If those new listings with a plunge of 50% or more from their peak prices are also counted, the number will be as large as 26, representing over 70% of the new listings on GEM so far this year. This can show that the market has been in a very unhealthy state.

The above phenomenon has something to do with the influx of Mainland capitals into Hong Kong's financial markets for the acquisition of listed companies this year. Basically, capitals from the Mainland are a good thing because they can increase capital inflow into our market, but this has also given

rise to "shell" stocks (issued by "shell companies"). The formation of "shell companies" has turned prevalent and "shell" stocks are now a strange phenomenon unique to Hong Kong. A company is listed not because there is any genuine need for business development, but because people want to sell its shares quickly after listing in order to make quick money. Why is it so? Simply because the price of a "shell" company is generally as much as $700 million on the Main Board but only $350 million on GEM. Besides, the entire application process takes only six to nine months to complete. The profit is thus very huge, so it is small wonder that many people are so devoted to "shell" stocks. As soon as a company is listed, and even before the release of its first annual report, its shares are already for sale. Why has a big international financial centre like ours ended up this way? Apart from a policy imbalance, I just wonder, are there any problems with the entire management and regulatory regime?

In fact, Hong Kong's notorious "cheating shares" have long since caught widespread attention in Mainland China. Let me now quote a few words from an article shared widely on WeChat earlier. The article is entitled "Always mind the traps of 'cheating shares' in Hong Kong stocks". Some words in this article read (and I quote): "Cheating shares are a 'local produce' of the Hong Kong stock market and they are not found in the A-shares market. They result from Hong Kong's uniquely loose systems of monitoring and share-issuance on the one hand and the speculative mentality of Hong Kong people on the other." (End of quote). The reason why we have put in so many efforts to promote the Shanghai-Hong Kong Stock Connect and the Shenzhen-Hong Kong Stock Connect due to be launched next Monday is that we want to attract inward investment from the Mainland. Therefore, should we still tell ourselves that all is fine and simply ignore such criticisms about Hong Kong from Mainland investors? I do not hope to see anyone continue to protect the defect of our listing mechanism and insist that it has been working well, requiring no changes. If it really has been working so well, why have so many companies changed so drastically immediately after listing? Why have their main assets "evaporated" so very rapidly?

Such scams have been eroding the confidence of outside and local investors in the Hong Kong market, causing a continuous shrinkage of capital entry and dealing a blow to the business of small and medium securities dealers. As a result, such dealers either have to close down or sell their businesses. These practices are clearly similar to frauds, but then the companies concerned

can still dodge SFC's enforcement actions after listing and even do whatever they want blatantly. Why has SFC adopted such an unreasonable regulatory attitude towards all the law-abiding small and medium securities dealers like us, striving at stringency at all costs even to the extent of victimizing the innocent? Why does it condemn small and medium securities dealers, impose fines on them and even threaten to revoke their licences so very lightly all the time, while doing nothing to stop all the swindlers from rampaging across the market? How come SFC is still incapable of combating the various misconducts that I have mentioned even after increasing its manpower and resources? Is it because small and medium securities dealers are obedient enough to be easily bullied, and the swindlers are too cunning to be dealt with? What SFC should do is to clamp down on the swindlers, rather than unreasonably finding fault with dealers like us, who are always working hard just to earn a living.

Therefore, regarding the consultation paper on the listing structure, I maintain that our system needs reform, but the reform must achieve several important objectives, including not obstructing the overall development of the market, allowing more operational transparency in the system, fully adopting a disclosure-based system of vetting and approval, and setting out clear guidelines on market adaptability in order to attract more new companies to list in Hong Kong. Most importantly, it should provide greater protection to investors at large. To achieve these objectives, SFC must listen to the voices of different stakeholders in the market. In the future, it must engage members of the industry when making any changes and abstain from forcing its decisions onto the industry.

Deputy President, stock exchanges around the globe all want to induce more enterprises of the new economy to turn to them for listing. Enterprises of the new economy have been developing rapidly, and in the case of Facebook, for example, it started all from scratch but has managed to raise US$100 billion through listing on Nasdaq over a short span of only eight years. Technology is advancing rapidly, and no one can tell whether another Facebook or Google will come into being two or three years later. If Hong Kong wants to attract such enterprises of the new economy with great potentials to list in Hong Kong, it should focus its attention on discussing a third listing board or reforming the existing GEM for the revitalization of the local stock market. It must not focus on power struggle and ignore the trend of market development, or it may fail to see the wood for the trees.

I hope that the Government can play an active part in the issue of formulating a comprehensive listing policy, with a view to fostering a healthy market and a business environment with orderly development and protecting investors. We hope that all can be of one mind and join hands to strengthen and elevate Hong Kong's status as an international financial centre and attract more funds to flow into Hong Kong's stock market, so that our stock market can develop on a sustainable basis. In any case, please do not "kill the goose that lays golden eggs".

With these remarks, Deputy President, I look forward to Members' strong support.

DEPUTY PRESIDENT (in Cantonese): Mr Christopher CHEUNG, have you moved your motion? Please move your motion.

MR CHRISTOPHER CHEUNG (in Cantonese): I move the motion as printed on the Agenda.

Mr Christopher CHEUNG moved the following motion: (Translation)

"That the Securities and Futures Commission and The Stock Exchange of Hong Kong Limited ('SEHK') are conducting a joint consultation on proposed enhancements to SEHK's decision-making and governance structure for listing regulation; proposals made in the consultation paper have aroused great controversies in the industry and there are views, among others, that the proposals, once implemented, will seriously disrupt the current listing process for companies and undermine the long-term development of the Hong Kong securities market; in this connection, this Council urges the Government to, after seriously listening to the views expressed by the industry on the consultation paper, prudently formulate a comprehensive listing policy and clarify the definition of suitability for listing, so as to ensure the healthy and orderly development of the Hong Kong securities market and, while protecting the interests of investors, actively promote financial innovation, in order to enhance Hong Kong's status as an international financial centre and attract the investment of more Mainland and overseas capital in the Hong Kong securities market."

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

Mr James TO will move an amendment to this motion. This Council will now proceed to a joint debate on the motion and the amendment.

I now call upon Mr James TO to speak and move an amendment to the motion.

MR JAMES TO (in Cantonese): Deputy President, I move that Mr Christopher CHEUNG's motion be amended.

Deputy President, the focus of the financial market this week is certainly on the Shenzhen-Hong Kong Stock Connect ("the Sz-HK Stock Connect") because the Sz-HK Stock Connect will formally commence next Monday. This is another major financial development in the internationalization of Mainland stocks following the launching of the Shanghai-Hong Kong Stock Connect ("the Sh-HK Stock Connect"), and will produce significant and far-reaching impact on the development of the capital markets in Hong Kong and the Mainland. While mutual capital market access between the two places may bring about large amounts of potential funds and facilitate the opening up of the Mainland's financial industry, market risk may also ensue. In particular, the speculative atmosphere resulting from the market integration between the two places and even the abnormal fluctuations of stock prices may lead to the Mainlandization of Hong Kong's market.

Members may still remember that the Mainland launched the circuit breaker mechanism on the Lunar New Year's Day this year. It was intended as a stabilization mechanism for avoiding drastic stock market fluctuations. But this policy achieved the opposite result, in the sense that the circuit breaker mechanism ended up as the very mechanism and culprit triggering market fluctuations. Eventually, the China Securities Regulatory Commission called a halt to the mechanism after less than one week of implementation, and the Hong Kong stock market was turned into an automatic teller machine. In particular, because the individual-based Mainland market is susceptible to a strong bandwagon effect, the impact will be even more obvious.

Deputy President, the markets of both places are getting increasingly close in ties, and the regulators and structure of the Mainland market differ greatly from those of the Hong Kong market. In recent years, the cooperation between the capital markets in the Mainland and Hong Kong has strengthened. The Sh-HK Stock Connect, the Sz-HK Stock Connect and also the mutual recognition of funds between the Mainland and Hong Kong have presented new regulatory challenges to us. If our regulation is not good enough, our market reputation will be sacrificed.

At present, Hong Kong implements a three-tier regulatory framework comprising the Hong Kong Exchanges and Clearing Limited ("HKEx"), the Government and the Securities and Futures Commission ("SFC"). The division of duty among them was clearly defined back then. HKEx was responsible for frontline regulation, the Government was charged with coordination and promotion, and SFC played the role as the ultimate regulator. However, as the market has turned its eyes northwards on the Mainland in recent years, our frontline regulator and coordinator are now increasingly concerned about marketing.

As a listed company, HKEx should strive for greatest profits for its shareholders. But at the same time, HKEx as the frontline regulator of issuers should safeguard public interest and maintain the good reputation and order of the market. Speaking of the function of vetting and approving new listing applications, HKEx honestly has potential conflicts of interest. And in recent years, the performance of many listed companies has declined right after listing, and some have even issued profit warnings less than two months after listing. This shows that the quality of newly listed stocks is on the decline, and has aroused public concern about any gatekeeping inadequacy in the existing process of vetting and approving listing applications. Furthermore, due to the prevalence of "shell companies" and problems associated with backdoor listing, people are concerned about whether our existing regulation is lagging behind the development needs of the market.

The consultation proposals put forth by The Stock Exchange of Hong Kong Limited ("SEHK") and SFC this time around aim to reform the mechanism for vetting and approving listing applications and also to enhance the efficiency and effectiveness of the listing process as well as listing policy formulation. The proposals include the setting up of a Listing Policy Committee ("LPC") and a Listing Regulatory Committee ("LRC") under SEHK respectively charged with

the listing policy and the vetting and approval of sensitive or highly controversial listing applications. And, SFC's representatives will account for 50% of the respective memberships of the two committees, and its roles of formulating listing policies and also vetting and approval are clearly defined. But after the introduction of the proposals, the industry has indeed put forth many dissenting views, including the concern about the possibility of over-concentration of power, excessive interference and "killing the goose that lays golden eggs" as asserted by Mr CHEUNG.

Actually, SEHK is not a statutory regulator. The proposals this time around can improve the governance structure for listing regulation. SFC will in effect be able to exercise its power under the Securities and Futures (Stock Market Listing) Rules to object to a listing through its participation on LRC. Those cases which do not involve suitability issues or have broader policy implications will continue to be vetted and approved by the Listing Committee.

Due to controversy in the industry, the consultation period of this reform was extended by two months. The industry has raised one point about the definitions of "suitability issues" and "broad policy implications", maintaining that the two expressions are ambiguous and unclear. At the same time, they have put forth various views on LRC's composition and representativeness and even criticized that SFC actually intends to seize power through this regime.

Actually, SEHK is empowered by the Securities and Futures Ordinance ("the Ordinance") to perform the listing function. But the Ordinance also stipulates that apart from regulating exchange companies, SFC shall formulate rules on stock market listing and the procedure for processing applications for stock market listing. The difference between the old and the new systems actually lies in the question of how far SFC exercises this power and also the approach it adopts.

Strengthening financial regulation is a general trend. And, under HKEx's strategy of actively integrating the markets in China and Hong Kong, the gatekeeping role of regulators is of much greater importance than before. As a means to address the industry's concern, SFC should explain more clearly how it will cooperate with the listing department of SEHK, so as to ensure that only those cases involving suitability issues and policy implications will be referred to LRC.

Meanwhile, I also hope that SFC can offer a clearer and more specific explanation on the definitions of "suitability issues" and "broad policy implications", and that the chairmanship of the new LRC—Sorry, it should be the Listing Regulatory (Review) Committee—can be taken up by an independent person or someone such as a retired judge, so as to review those listing applications rejected by LRC, enhance SFC's accountability, allay the worries of the industry and alleviate the industry's criticism that the reform will lead to a lack of checks and balances on SFC.

Even if the proposals this time around are implemented, a huge discrepancy actually still exists between the practice of Hong Kong and the international market trend. In major financial markets, such as those in Britain and the United States, the ultimate power to approve or reject a listing application rests with their market regulators, such as the U.S. Securities and Exchange Commission and the Financial Conduct Authority in Britain. Even in the case of Australia and Singapore, which practise a regulatory regime relatively similar to that of Hong Kong, their local exchange companies do not actually possess any vetting and approval power despite the fact that the local departments charged with the vetting and approval of listing applications are under such exchange companies.

In contrast, even if Hong Kong implements these reforms, HKEx's participation in the vetting and approval of listing applications will remain dominant, and normal applications will be vetted and approved by the Listing Committee all the same. The sole purpose of including SFC's representatives in LRC is actually to increase the clarity of SFC's veto power which it already possesses.

I propose an amendment today with the intention of urging the Government to facilitate the development of the capital markets in both places while also calling upon regulators to properly discharge their regulatory roles and review the ability of the existing legislation to cope with new regulatory challenges. The reason is that the proportion of our market participants from the Mainland, be they individual investors or listed companies, is gradually increasing. Most obviously, the number of Mainland companies listed in Hong Kong is ever increasing. In 2015, the funds raised by Mainland companies through initial public offering ("IPO") in Hong Kong accounted for 92% of the total funds raised in the market. This indicates a heavy reliance of Hong Kong's IPO market on the listing of Mainland companies in Hong Kong. And, the trading of China-related stocks accounted for over 50% of the total trading volume over the

past five years. Speaking of market capitalization, the market capitalization of China-related stocks on the main board accounted for over 40% of the total market capitalization. It can be seen from this that the connection between our stock market and the Mainland is increasing.

On the eve of launching the Sz-HK Stock Connect, I wish to take this opportunity to point out that the Hong Kong market is increasing both in size and complexity. In recent years, the problems of corporate governance deficiencies and disclosure have shown a serious trend. The number of SFC's investigations into cases in these areas surged in the past five years from 36 in 2011 to 177 in 2015.

Besides, the Sh-HK Stock Connect and the Sz-HK Stock Connect will undoubtedly speed up and enhance our connection with AH shares. And there are huge differences between the markets of both places in areas such as market environment, trading rules and legal system. Furthermore, the Mainland's disclosure system is not as comprehensive as the system in Hong Kong, in the sense that it is marked by a heavy rule-of-man aura, greater policy implications on the market, a lack of transparency and also a susceptible leakage of sensitive information. This may enable those with ulterior motives to manipulate the loopholes.

As cross-boundary illegal conduct may be involved, and the regulators in China and Hong Kong are unable to take enforcement action against any illegal conduct outside their respective territories, I hope the regulators of both places can enhance their law enforcement cooperation and plug the regulatory loopholes, so as to enhance investors' confidence in their markets. *(The buzzer sounded)*

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

Mr James TO moved the following amendment: (Translation)

"To add "('SFC')" after "Securities and Futures Commission"; to delete "and" after "listing policy" and substitute with ","; and to add "and ensure that SEHK has no conflict of roles between vetting and approving listings and marketing; the Government should also review the existing relevant regulatory legislation, strengthen co-operation with the Mainland

regulatory authorities to combat any cross-boundary illegal activities and market misconduct carried out through the flow of funds between the two places and in the international financial market, especially in respect of the regulation of insider dealings and disclosure of information, and enhance the transparency of SFC's regulatory work to pre-empt loopholes in regulation" after "suitability for listing"."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr James TO to Mr Christopher CHEUNG's motion, be passed.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I would like to thank Mr Christopher CHEUNG for moving the motion on "Formulating a comprehensive listing policy" and Mr James TO for moving the amendment just now with regard to listing policy, vetting and approval procedures for listings, and so on under international norms.

In relation to Hong Kong's situation, the SAR Government has been committed to raising Hong Kong's status as an international financial hub and attracting more Mainland and overseas capital to invest into the local securities market. Our consideration fully tallies with what Mr Christopher CHEUNG has said. In my opening remarks, I will make a preliminary response to the joint public consultation conducted by the Securities and Futures Commission ("SFC") and the Hong Kong Exchanges and Clearing Limited ("HKEx") on "Proposed Enhancements to the Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation". After listening to Members' speeches, I will provide an overall response to various issues.

First, let me talk about changes that have taken place in the Hong Kong securities market. The existing listing regulatory structure was formulated in the 2000's when the securities market was remarkably smaller in scale and far simpler in structure. In the last 10 years or so, our market has undergone impressive growth and become very complex. Specifically, in the last decade or so, the number of firms listed in Hong Kong has increased 64%, from 1 135 to 1 866 as of late last year. Their total market value has risen two times from $8.1 trillion to $24.6 trillion as of late last year. Previously, the market primarily served local firms and local businesses but now it has become the premiere capital

formation centre for Mainland and overseas companies. The Hong Kong market has always been open to international investors and our development in technology, governance and financial services helps overseas market participants directly involve in the Hong Kong market.

The Hong Kong securities market has gone through tremendous changes in terms of scale and complexity, necessitating the establishment of a set of updated procedures and model for vetting and approval to cater to the current market situation. As pointed out by the Financial Secretary in the 2016-2017 Budget, given the size and complexity of the securities market, we need to constantly review the relevant regulatory regime, streamline procedures, enhance market efficiency and quality so as to reinforce Hong Kong's status as the premiere capital formation centre.

SFC and HKEx conducted in June this year a joint consultation on "Proposed Enhancements to the Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation", with the aim of enabling the listing regulatory structure and procedures to better respond to rapid developments in the market. The Government welcomes SFC and HKEx's joint consultation on such an important issue.

The consultation paper proposes the addition of two committees to The Stock Exchange of Hong Kong Limited ("SEHK"), that is the Listing Policy Committee ("LPC") and the Listing Regulatory Committee ("LRC"). LPC will work on listing policy whereas LRC will deal with cases or applications that involve suitability issues or have broader policy implications. Meanwhile, the paper suggests the Listing Committee vet and approve the great majority of initial public listing applications, SFC cease to issue as a matter of routine a separate set of comments on the statutory filings made by new applicants, and the relevant vetting and approval work continue to rely primarily on market participants (that is, representatives on the Listing Committee).

The consultation paper aims at introducing further one-stop processing and providing a more focused platform for SFC and SEHK to tackle policies and decisions that are significant to the quality, competitiveness and development of the market at an earlier stage. The paper also aims at streamlining the process for initial listing applications, with a view to enhancing the efficiency of the vetting and approval process.

As mentioned in Mr Christopher CHEUNG's motion, some views are concerned that once the proposals are implemented, they may disrupt the current listing process for companies and undermine the long-term development of the Hong Kong securities market. The motion also suggests the Government seriously listen to the views expressed by the industry on the consultation paper, prudently formulate a comprehensive listing policy and clarify the definition of suitability for listing.

Regarding listing policy, the consultation paper suggests LPC discuss policy issues important to the quality, competitiveness and development of the market. The establishment of LPC provides SFC and SEHK a more focused platform to tackle important policies and decisions at an earlier stage. The proposal will bring about better coordination, higher efficiency, and thus is conducive to making timely and thoroughly considered decisions.

About the definition of suitability, provisions on suitability have long been introduced to the Listing Rules. The SEHK will only grant listing permission when, in its opinion, both the issuer and its business are suitable for listing. With reference to its previous rulings, the SEHK has issued guidelines on this issue. SFC and HKEx have noted, with regard to the consultation paper's proposal to let applications with suitability issue to be decided by LRC, market views which seek a clarification of the definition of suitability. SFC and HKEx will analyse and consider all the submissions collected in relation to the consultation paper, including the above comments on the definition of suitability.

As we said on the Council meeting held on the ninth this month, SFC and HKEx will keep an open mind and listen to market views. Since the launch of the consultation, we have observed stakeholders who are highly concerned about the consultation proposals put forth a large number of different views. The Government is pleased to see the overwhelming response of the industry. In fact, SFC and HKEx have pushed back the consultation feedback deadline for two months till the 18th of this month, extending the consultation period to five months so as to allow enough time and more opportunities for people from all sides to file their comments.

The consultation has recently come to a close. SFC and HKEx have indicated they will prudently consider and analyse all comments and suggestions gathered, and prepare a conclusion for the consultation to be released at appropriate time. SFC and HKEx will also carefully listen to and consider the views provided by Members today.

Deputy President, I will stop for now and let Members speak before giving an overall response. Thank you, Deputy President.

MR CHAN CHUN-YING (in Cantonese): Deputy President, in view of the current development trend of the securities market, I agree to Mr Christopher CHEUNG's motion and Mr James TO's amendment.

The joint consultation paper entitled "Proposed Enhancements to the Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation" issued by The Stock Exchange of Hong Kong Limited ("SEHK") and the Securities and Futures Commission ("SFC") this year has aroused heated discussion on the market. Despite the various views on the market, such views have one thing in common: the majority of stakeholders agree that the Hong Kong market is evolving, so a regular review of the regulatory mechanism can respond to the development needs of the market and ensure its effective operation on an ongoing basis.

I believe an overwhelming majority of stakeholders will agree to the objectives set out in the consultation paper, such as enhancing efficiency, raising transparency and strengthening coordination and accountability in the regulatory process. Supporters of the consultation paper think that the setting up of two new committees, the inclusion of SFC's representatives, and also the clarification of the vetting and approval duty of SEHK's Chief Executive can help to raise the regulatory standard. Besides, under the proposed new structure, SFC will also be able to directly participate in the early decision-making stage concerning listing regulation and also in the policy formulation process. This can enhance the overall efficiency, transparency and accountability.

As for opponents of the consultation paper, Mr Christopher CHEUNG and Mr James TO have already discussed thoroughly some of their viewpoints. I am not prepared to repeat them here. Their other viewpoints assert that since the existing three-tier regime (comprising the Government, SFC and SEHK) has been operating satisfactorily since 1989, and also because the duty of making listing decisions has been mainly entrusted to the existing 28-member Listing Committee, it is uncertain to say whether efficiency and representativeness can be enhanced by transferring this duty to a several-member-strong Listing Policy Committee ("LPC") and also a Listing Regulatory Committee ("LRC") charged with the regulation of listing matters. It is also proposed that their compositions

should include a representative of the Takeovers and Mergers Panel and SFC's senior executive officers. But it is difficult to prove that their professional knowledge, sense of judgment and experience are better than the existing Listing Committee members. For these reasons, I think that for the time being, the consultation proposals can hardly convince us that the listing decisions under the new structure can be fairer and more orderly with greater effectiveness, transparency and competitiveness when compared to those under the original structure.

Deputy President, the ultimate goal of reforming the decision-making and governance structure of listing regulation should be enhancing the quality and efficiency of vetting and approving listing applications. So, more different professionals should be involved in the decision-making process. And, SEHK should devise an appropriate mechanism to prevent conflicts in its dual role as a vetting and approval authority and also an operator.

The existing Listing Committee comprises more members with diversified backgrounds. The merit of this is that it is not susceptible to manipulation and will not form prejudice easily. This is critical to balancing the views of people with various interests. In contrast, due to the fixed and small memberships of the proposed LPC and LRC, their members will become the easy target of lobbying. While they will only target at certain listing cases with abnormalities, the design of this overall structure will not necessarily be better than the design of the original framework.

Besides, I want to bring up one point, which is also very important. Some legal academics have raised questions about the legal principles concerning this consultation. The relevant issue should warrant various sides' concern, so as to ensure that the reform this time around is founded on a solid legal basis. In reply to an oral question of Mr Kenneth LEUNG this morning, the Secretary for Financial Services and the Treasury said that law enforcement alone was not sufficient to combat market misconduct. But after all, in order to resolve market misconduct which jeopardizes the interests of the public and investors, such as the manipulation of share prices, corporate governance deficiencies and incomprehensive disclosure, the regulatory authorities must begin with enhancing their efforts of investigating lawbreakers and law enforcement, impose heavy penalties for any violation of the law and set specific precedents, so as to enable all enterprises preparing for listing, listed companies and the relevant stakeholders to understand that they must bear legal liabilities for non-compliance

with the relevant requirements. In any case, I believe strengthening investigations into lawbreakers and law enforcement can achieve a desirable deterrent effect.

Deputy President, a healthy and orderly securities market is very important to Hong Kong's status as an international financial centre. I hope that after heeding more different views, various sides can formulate reform proposals which are truly consistent with the realities of Hong Kong, so as to facilitate mutual connection between both places in securities investment and enable the sustainable and healthy development of Hong Kong's financial and securities industries while also protecting investors' rights and interests.

I so submit. Thank you, Deputy President.

DR KWOK KA-KI (in Cantonese): Deputy President, these days, the market value of The Stock Exchange of Hong Kong Limited ("SEHK") has exceeded $31 trillion, and its average daily turnover is more than $100 billion. On the surface, all these seem to concern Mr Christopher CHEUNG more, as he is in the securities trade. However, Hong Kong has already staked its retirement protection on the securities market. Of all the Hang Seng Index constituents, more than 26 or 27 are Chinese stocks. Some say that our securities market has gradually turned very Chinese and Mainlandized. Actually, there is no problem with this at all. As many have said, with the integration of capital markets all over the world these days, it is possible that when Beijing or London sneezes, stock markets in the whole world may sustain heavy shocks as a result of the butterfly effect.

Last week, China announced that the Shenzhen-Hong Kong Stock Connect would be kicked off in early December. Some people think that the capital-raising capacities of the two major stock markets, namely the Shenzhen and Shanghai stock markets, are by no means small, and their capital-raising volumes do not compare any less favourably with that of Hong Kong shares. In particular, the Growth Enterprise Markets of these two Mainland places are far more active than their counterpart in Hong Kong. But why is the number of Chinese companies lining up for capital-raising and listing in Hong Kong still so very large, so large that Hong Kong could once again outdo New York and Shanghai and top the world in capital-raising volume at the end of 2015? There are reasons for this, and I believe the major reason is that international investors trust the regulatory regime and standards of Hong Kong.

Just now, I heard Mr Christopher CHEUNG describing the stock market as a big casino. I agree with him very much. Many stock investors or the common masses in Hong Kong have already learnt a bitter lesson after experiencing the drastic fluctuations in various stock crashes. I believe Members can still remember all those elderly people who used their "funeral savings" to buy Stock Code Number 8 many years ago. All of us can easily see that if the stock market is not properly supervised, the victims will not be any tycoons, or Mr CHEUNG, or the industry he represents. Instead, the victims will be all Hong Kong people, especially elderly people and people looking forward to retirement protection.

This very point makes me realize why it is necessary to conduct consultation and further enhance the governance structure for listing regulation. Regarding the new change, which reduces the membership of the committee to six persons, some think that as a committee making such an important decision of whether a company can be listed in Hong Kong, the committee is really far too small in size. But I instead think that the most important problem is: market order in Hong Kong has all along been maintained by two major teams, one being SEHK and the other the Securities and Futures Commission ("SFC"). I believe we must note that the money of many investors has simply evaporated following various penny stock incidents, the sudden plunge of many newly listed stocks to the limit-down level, and the huge losses in the second or third year reported by some Chinese companies that made a big entrance, or even recorded a profit of over $10 billion, in the first year of listing. We should understand that SEHK has a serious conflict of interest, so if we allow it to have all the say, there will be big problems. Besides, since the Chief Executive of SEHK and many of its key officials have very close ties with the Chinese side, we consider that having a more powerful regulatory institution and regime is of particular importance.

In fact, whether a market is trusted by international investors is not determined solely by the regulatory regime. Much also depends on the macro environment, including our respect for the laws, institutions and judicial system of Hong Kong. Many incidents have recently happened in Hong Kong, such as the interpretation of the Basic Law by the Standing Committee of the National People's Congress. There have also been other happenings that cause the great concern of local and international observers, including Hong Kong's further dependency on Chinese capitals and Mainlandization, and the continuous decline of Hong Kong's governance standards to suit Mainland enterprises. All these are in fact our gravest concerns. When Hong Kong loses the rule of law and its

confidence in the rule of law; when the Court is used by people with power like the present Chief Executive, who is criticized for incessantly abusing the judicial review procedure under the judicial system at will; when more and more Chinese companies line for listing in the Hong Kong securities market, only to disappear right after listing; and when the money of stock investors has all evaporated, should we do some thinking, so as to find out how we can make sure that when people retire, their Mandatory Provident Fund contributions, which are already subject to numerous deductions, will not be all gone.

For that reason, stepping up the regulation of listed companies and the market, including the enhancement of the governance structure for listing regulation, is the path we must take. The crux of the problem lies in the attitude and methods adopted by the Government. I agree that the views of all stakeholders must be respected throughout the entire consultation process and before any decision is made in future. That said, if any stakeholders having intricate interests want to fish in troubled waters, fool the masses of small investors and maximize their gains and monetary benefits under this loose system at the time of listing, they will not have my approval. I hope the Government and SFC can perform their duties faithfully on this issue, rather than relinquishing this very important regulatory function merely due to the opposition of some.

I so submit.

MR DENNIS KWOK: Deputy President, looking at the general wording of the motion proposed by the Honourable Christopher CHEUNG and the amendment proposed by the Honourable James TO, we agree that the directions as proposed by them are correct and, indeed, necessary. The financial market, in particular the equity market, is an important part of the Hong Kong economy, and its listing process is, of course, the cornerstone of the entire equity market. In that, it is the gatekeeper, and also the listed issuer has to go through very vigorous scrutiny before it is allowed to be listed on The Stock Exchange of Hong Kong Limited ("SEHK"). Hence, any proposed reform to the market and also the listing process must be well considered and well thought through. Unfortunately, we feel that the joint consultation proposed by the Securities and Futures Commission ("SFC") and SEHK, at this juncture, seems to be rushed, and there are many stakeholders in the process who have expressed reservations, if not outright objection, to the proposals of SFC and SEHK.

When we are looking at the reforms to our stock market or the listing process, we are not, of course, only looking at the stock market itself, but the companies that are listed on the stock market, the regulatory safeguards, and also the safeguards for investors are equally if not more important than simply how well our stock market is doing. Overall, we are looking at special features in Hong Kong which will look to the interests of the investors, in particular, the retail investors, average people like you and me who may invest in shares or a substantial portion of their savings in the stock market. These are the people that we should look out for, first and foremost, in any reform that we have to review, and that any reforms proposed by SFC and SEHK must also take into account these important considerations.

We agree with the Honourable James TO's amendment to the original motion, in particular, there is a real need for SFC and SEHK to further clarify the definition of suitability for listing. As the Secretary would obviously know, one of the central features of this consultation is the proposal of a Listing Regulatory Committee ("LRC") to superimpose the structure on the Listing Committee ("LC"), without really defining when this LRC will step in and without really defining when LRC will approve or reject a certain listing application. The criteria that have been described as applicable to the LRC are far from clear. It is not clear when the LRC will act, when it would step in, and under what criteria it would determine the success or otherwise of a listing application.

Now, speaking from the point of view of the legal profession, our biggest concern is when our clients come to us and ask for our views or advice regarding the success or otherwise of their listing applications, and we are unable to tell our clients precisely whether their listing applications would be met with approval or rejection by LC or LRC, because LRC imposes a further threshold which the listing applicant must pass and that threshold, at the moment, is unclear from the consultation paper. The consultation exercise itself is unfortunate. As the Secretary knows, it originally started in June 2016 this year and it is supposed to end in September 2016, and during that time it was a recess in the Legislative Council and there was an election going on. Thus, I would rather suspect that the regulators were trying to stay away from the Legislative Council's scrutiny by proposing this consultation during the recess of the Legislative Council. If it is indeed their intention, it would be most unfortunate.

Now, under our suggestion, to their credit, SFC and SEHK have extended the period of the consultation towards the end of this month. However, as you can see, there are still many stakeholders and members of the public who have expressed reservations and, perhaps, criticism about the way in which SFC and SEHK had gone about proposing this consultation of reform, and also the reform proposal themselves, in particular, as I have mentioned, LRC, its remit, the criteria which LRC would use, and the role of the Listing Policy Committee which is also part of the consultation proposal.

At the moment, it is hard to see what are the strong justifications that are necessary for the reform. As you know, there is already a dual filing system that has been enforced since 2003, whereby SFC already has a very clear role in the consideration of the listing application process. Hence, that SFC already has an inroad into deciding whether a company is suitable for listing or not, so why it was considered necessary to superimpose the structure called the LRC onto the LC? It is something which the Administration, SFC and SEHK must answer. LRC is also a very small committee consisting of regulators and a few personnel proposed by SEHK, whereas LC has participants from a wide range of backgrounds and professional backgrounds. So, it is unclear why the remit of LC is now replaced by LRC, something which the Administration will address in its reply. *(The buzzer sounded)*

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

MR WONG TING-KWONG (in Cantonese): Deputy President, Hong Kong has been holding the leading position in market capitalization of initial public offerings ("IPO") in the globe. Since it became the market with the highest market capitalization in the whole world for three successive years from 2009 to 2011, Hong Kong came to the first in the world again in terms of market capitalization in 2014 and 2015. Last year, Hong Kong's IPO market capitalization reached US$33.5 billion in total, which was way above the US$19.69 billion in the New York Stock Exchange that ranked second.

Despite the brilliant performance of the Hong Kong IPO market, there are problems with IPOs in the recent years. Every year, among the IPOs listed on The Stock Exchange of Hong Kong Limited ("SEHK"), not a few are micro caps with high shareholding concentration and very low liquidity in the market.

Since these micro caps are characterized with high shareholding concentration and very low liquidity in the market, after they are formally listed on the market, within just a few trading days, their share prices will often multiply, and even drastically rise for a few dozen times, thus attracting not a few investors to purchase. However, after this rising wave, the share prices concerned will plunge remarkably. Due to such cases of extreme volatility in share prices, many retail investors sustain huge losses.

Worse still, after some micro caps have been listed on the market for a period of time, the companies concerned would often conduct rights issues or placements at a deeply discounted price, and there would be very frequent stock splits and share consolidations, such that minor investors holding these shares sustain great losses in their rights and interests. These shares are called "cheating shares". In here, I would like to share with you a serious case that I have read online. An investor used a total amount of $6 million to buy 15.5 million "cheating shares" of a certain company priced at $0.4 per share in 2008. During the eight years holding these "cheating shares", the share price dropped drastically many times until it had dropped for 90%. Afterwards, 10 shares were consolidated into 1 share, and then 4 for 1 rights issue was offered. After repeated splitting and consolidation of these "cheating shares", the share price was $0.35. But the 15.5 million shares that he held originally became 775 shares, with only a market value of $271. In brief, this investor has almost lost all his money.

Of course, these micro caps and "cheating shares" only take up a small minority among the 1 953 companies listed on the Main Board and the Growth Enterprise Market of the SEHK. However, the existence of these "cheating shares" and financial shenanigans of these companies will indeed seriously harm the rights and interests of minor investors, and will cause damage that cannot be ignored to the reputation and long-term healthy development of the Hong Kong stock market. Therefore, the Securities and Futures Commission ("SFC") and SEHK cannot ignore these ill-natured shares and activities, otherwise they will only condone a perverse trend in the market which is detrimental to the interests of minor investors.

In this regard, the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") agrees in principle with the package of proposals in the consultation paper jointly proposed by SFC and SEHK on the enhancements to decision-making and governance structure for listing regulation. Although the

package of proposals may not be able to put an end immediately and completely to the problems like price volatility due to high shareholding concentration of "cheating shares" and individual new shares after being listed, which result in causing damages to the interests of minor investors, the reform concerned is a step forward in strengthening supervision of listing of new shares for the protection of interests of minor investors. Deputy President, these proposals can also facilitate SFC and SEHK to formulate new listing policies flexibly to tie in with market changes so as to promote a long-term and healthy development of the stock market in Hong Kong.

Finally, I would like to talk about the stance of DAB towards the original motion moved by Mr Christopher CHEUNG and the amendment moved by Mr James TO. Although the wording of Mr Christopher CHEUNG's original motion seems to have reservations about the package of proposals to the governance structure for listing regulation in the consultation, the intention of the original motion is to clarify the definition of suitability for listing in order to ensure a healthy and orderly development of the stock market in Hong Kong while attending to and promoting the overall interest of financial innovation, which is in line with DAB's thinking and thus DAB will cast our vote of support. As regards Mr James TO's amendment, it emphasizes strengthening regulation of insider dealings and disclosure of information, and enhancing the transparency of SFC's regulatory work to pre-empt loopholes in regulation, which are even more in line with DAB's thinking. Concerning to "ensure that SEHK has no conflict of roles between vetting and approving listings and marketing", I hope that the Government and the regulators can conduct more studies in order to respond to the views of the market and to formulate timely and effective mechanism like firewalls. DAB will vote to support the amendment.

Deputy President, I so submit.

MR LAM CHEUK-TING (in Cantonese): Deputy President, I want to declare interest. As I am a shareholder of the Hong Kong Exchanges and Clearing Limited, I will not speak later on; nor will I cast my vote.

Thank you, Deputy President.

MR CHARLES PETER MOK (in Cantonese): Deputy President, the consultation concerning the reform of the governance structure for listing regulation jointly conducted by the Securities and Futures Commission ("SFC") and The Stock Exchange of Hong Kong Limited ("SEHK") some time ago has caused much controversies in the market. The motion moved by Mr Christopher CHEUNG today is indeed very important. The enhancement of the governance structure for listing regulation and its effectiveness depends on whether or not the regulatory regime of Hong Kong, an international financial hub, can curb certain illegal activities and at the same time retain the confidence of international investors.

The Government had once suggested in 2003 that the regulatory power of the Listing Division of SEHK be delegated to SFC, but later a joint regulatory framework was devised. SEHK would report frontline activities to SFC and SFC would retain its power of veto. However, SEHK is a profit-making body which does listing businesses and hence achieves results. There will be inevitable conflicts of interest and role if it is tasked with regulating the market. Therefore, SFC has to take charge of the investigation and prosecution work. Consequently, everyone can see that the current market regulatory regime has a problem in essence.

The Professional Commons considers that the major direction should comprise policies and market growth. Since the stock market oversight authorities in the United Kingdom and the United States are playing the role as the sole supervisory authorities, then half of the relevant power should not be vested in the profit-making SEHK, while SFC retains the final approval and investigative powers. This arrangement will inevitably give the public an impression that it is neither fish nor fowl. The fact that each body takes care of half of the work is due to a historical problem. The listing approval power of SEHK should be returned to SFC sooner or later, so regulatory work should be performed by a regulatory body and profit-making activities should be carried out by profit-making bodies.

Apparently, the present regulatory regime cannot deal with certain problems arising from the listing of mainland private enterprises in Hong Kong, which include the exploitation of the regulatory loopholes of listing in Hong Kong, such as the provision of one-stop service ranging from the arrangement of listed assets and application for listing, to the allocation of shell company to the

new owners. This has virtually created an emerging "backdoor listing industry". The original intent of the current regime is to allow these corporations to raise funds in the market in order to support the normal growth of their businesses, as well as to let shareholders to gain returns from the growth of these corporations. However, as to many of these new shares invented by way of backdoor listing, their businesses are nothing more than the making up of some false figures in order to trade for the listing eligibility and then they would engage in speculative activities. They simply do not want to engage in legitimate and proper business dealings. Some of these shell companies have their true faces revealed once they are listed. They heavily engaged in speculative activities due to a limited circulation of their shares in the market, resulting in a huge fluctuation in price. Investors are lured to buy the shares and many have suffered losses subsequently because of this.

The problem is that if these companies introduce new businesses or inject new assets, they will be deemed new listed companies. This will virtually allow them to avoid the exiting regulatory regime and therefore new loopholes have derived from that. Therefore, it is a common sight for bade debts or unexplainable wild fluctuations in stock prices are very frequent, and the public have questioned SEHK and SFC have been questioned more than once for being incompetent.

We are afraid to see the steady deterioration in the quality of newly listed shares. Many regulatory problems concerning the shares of shell companies after these companies are listed, such as the reverse takeover of shell companies, stock price manipulation and insider trading. All of these have blatantly undermined the interest of minority shareholders. If things go on this way, it will only undermine the confidence of investors in investing new shares. If retail investors fall into the trap of backdoor listing, they will lose every penny they have saved and they do not have a clue of what has caused the failure.

It is proposed in SFC's consultation that a new Listing Regulatory Committee ("LRC") to be established next to the Listing Policy Committee ("LPC"), which will streamline the processes for making important or difficult listing decisions. The new LPC will formulate listing policies and will conduct performance appraisals of staff of the Listing Division of SEHK. Since the number of representatives of LPC and LRC is the same, it is therefore proposed that the chairpersons of the two committees will have no casting vote.

There are views that the listing regulatory policies are skewed towards people having vested interests during the listing process. At present, in the composition of the listing committee, the number of listed issuers and advisers and so on is greater than the number of investor representatives. In contrast, in other financial centres such as London and New York, listed companies are all approved by their regulatory oversight authorities.

Mr James TO's amendment seeks to ensure that SEHK has no conflict of roles and that it will strengthen its cooperation with the Mainland regulatory authorities to combat any cross-boundary illegal activities and market misconduct, especially in respect of the regulation of insider dealings and disclosure of information, as well as the enhancement of the transparency of SFC's regulatory work. All of these proposals are targeting the core of the problem. For that reason, I support Mr James TO's amendment. The reform proposal of SFC and SEHK this time around can help enhancing the efficiency and transparency of listing process, thus the direction is correct. However, can we really achieve the enhancement of listing quality and transparency if we continue to allow SEHK to retain its say?

If the objective of establishing LRC is to strengthen the independence in the course of making important listing decisions, then more members of different backgrounds should be added. In the meantime, the Chief Executive of SEHK should avoid the potential role conflict. The membership must be adequately representative, otherwise it will give people an impression that "investigations are conducted by its own people". Furthermore, in case there are divided views among members and a decision will be made by way of the casting of ballots, how should that problem be resolved?

(THE PRESIDENT resumed the Chair)

Lastly, I wish to point out that people who know the financial service sector in Hong Kong well and people who have been in the trade for many years have criticized the Financial Secretary and the Financial Services and the Treasury Bureau for failing to launch innovative and major initiatives to promote financial reform over the past decade or more. Besides, initiatives concerning electronic trading for securities and so on launched after the financial tsunami have all died down now. Financial innovation is an important factor to

strengthen the status of Hong Kong as a financial hub. Such initiatives should not be delayed and the Government should not only say that they have been working well all along and leave it at that.

With these remarks, President, I support the amendment of Mr James TO.

DR YIU CHUNG-YIM (in Cantonese): President, I first express opposition to Mr Christopher CHEUNG's original motion.

As I have noticed, the original motion of Mr Christopher CHEUNG points out that the Government should "prudently formulate a comprehensive listing policy and clarify the definition of suitability for listing, so as to ensure the healthy and orderly development of the Hong Kong securities market and, while protecting the interests of investors, actively promote financial innovation, in order to enhance Hong Kong's status as an international financial centre". I must point out one thing here. Speaking of the global financial turmoil in 2008, many studies have actually found that one major cause was precisely the unceasing launching of financial innovative products (known as "alphabet soup" in the market), including CDS, by financial institutions in the United States over past prolonged periods. As a result, it was impossible to conduct assessment in the course of risk management, thus leading to market failure and eventually the global financial turmoil.

Having understood the cause of the global financial turmoil in 2008, we should realize that we should not innovate for the sake of innovation; nor should we seek to promote innovation as the means of enhancing Hong Kong's status as an international financial centre. Many economics studies have pointed out that trading cost reduction, sufficient market transparency, a satisfactory governance and regulatory regime and also the enhancement of risk management are more important to the preservation of Hong Kong's status as an international financial centre, rather than the sole reliance on financial innovation.

I support Mr James TO's amendment because he has clearly pointed out the importance of regulatory legislation. As mentioned in his amendment, "the Government should also review the existing relevant regulatory legislation, strengthen co-operation with the Mainland regulatory authorities to combat any cross-boundary illegal activities and market misconduct carried out through the flow of funds between the two places and in the international financial market,

especially in respect of the regulation of insider dealings and disclosure of information". Here, I wish to stress that as pointed out by many news reports over the past periods, the listing of companies in this international financial centre of Hong Kong very often involves off-shore companies. Such off-shore companies are marked by a high degree of secrecy, and it defies the kind of transparency emphasized in the amendment. The use of off-shore companies for assets control (such as controlling shares for the purpose of listing) will pose regulatory difficulties.

Here, let me quote from a news report. Members are familiar with the Panama Papers. According to the Panama Papers, Hong Kong's industries and business reputation have been dealt a great blow due to the lack of transparency in off-shore companies. As reported by *Time Magazine* on 7 April 2016 following the unveiling of the Panama Papers, Hong Kong has degenerated into a fund transfer base for intermediaries to transfer massive sums of money to overseas countries and conceal their ultimate sources by opening multiple accounts in Hong Kong. Companies which have been uncovered in the Panama Papers include Mossack Fonseca & Co. Over one third of this law firm's business came from China and Hong Kong. All such information has shown that Hong Kong is already perceived by the international community as a base for fund transfer through off-shore companies. This has adversely affected Hong Kong's status as an international financial centre.

While I support Mr James TO's amendment, I also hope that the Government can further enhance its regulatory and decision-making regime and give particular attention to the crackdown on money laundering and the use of off-shore companies to control the inward and outward flow of funds.

Finally, I wish to say that actually, the orderly and healthy growth of a securities market is not dependent on unceasing innovation or the launch of new products. More importantly, the Government should devise a desirable governance and regulatory regime to build up investors' confidence in the market, reduce trading fees, and undertake proper risk management, so as to enable Hong Kong's exchange company and securities market to command international trust in the long run and turn Hong Kong into an international financial centre.

Thank you, President.

MS STARRY LEE (in Cantonese): President, the consultation paper on "Proposed Enhancements to the Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation" released by the Securities and Futures Commission ("SFC") and The Stock Exchange of Hong Kong Limited ("SEHK") has aroused lots of opposing voices from the industry. There are views, among others, that the process of vetting and approving listing applications has been effective, the reform proposals are just meant to serve SFC's purpose of usurping power. There are also views that the proposed reform will mean an overhaul to the existing principles of vetting and approving listing applications, turning a disclosure-based system into a regulation-based one. Well, I think people have overstated the facts.

There are actually many factors behind the decision of rolling out this consultation on the proposed enhancements, among which are, firstly, since the Hong Kong stock market is at top of the world in terms of the volume of capital raised by new stocks, we have to maintain the vibrancy of our market and Hong Kong's advantageous position at all times; secondly, a new trend of market development has formed with capital inflows from Mainland and the implementation of the China Connect Programme, under which the Shenzhen-Hong Kong Connect is due to launch soon following the launch of the Shanghai-Hong Kong Connect. However, the trading risks associated with the "cheating shares" in the Hong Kong market has been highlighted in Mandatory Provisions for the Risk Disclosure Statement for Hong Kong Connect Trading released earlier by the Shenzhen Stock Exchange.

Actually, speculation in the shares listed on GEM is more or less the same as the prevalence of "shell companies". In recent years, prices of newly listed shares and "penny stocks" fluctuated drastically, while incidents involving unusual movements in stock prices are getting more serious and problems occurred more frequently, including instances of issuing profit warning only a few months after listing as well as false accounting that had led to delisting or revocation of licence pending inquiry. According to the report by Grant Thornton Hong Kong Limited on suspected cases of false booking of turnover by listed companies in the past 3 years, around 40 companies on average were involved each year. Share prices of those companies went up and down due to speculation, or that the companies had conducted large deep discounted rights issues, allotting of shares, frequent stock splits and stock consolidations, thus diluting substantially the benefits of shares held by the minority shareholders, and the hard-earned money of investors had since dissipated. All these did have seriously eroded both Hong Kong's reputation as a financial centre and the

interests of investors. Hence, regulatory bodies in Hong Kong, SFC in particular, must deal squarely with such an unhealthy trend and take actions to stop speculators from raiding our market and exploiting small investors, especially those individual investors.

Therefore, as Mr WONG Ting-kwong has said, the Democratic Alliance for the Betterment and Progress of Hong Kong supports in principle the direction of the consultation paper, but I must emphasize that the reform is only the beginning since the proposed enhancements have failed to get to the core of problems such as varied qualities of newly listed shares, the prevalence of cheating shares and trashy shares, etc. Only by targeting on minimizing market malpractices can Hong Kong's securities market maintain its attractiveness in order to safeguard Hong Kong's status as a financial centre.

I noticed that certain recommendations in the paper, in particular the one regarding the establishment of the Listing Policy Committee ("LPC"), has met with less opposition and people are mainly suggesting participation by more stakeholders. I think this suggestion is worthy of consideration and believe that upon the establishment of LPC, reference can be made to views of more stakeholders in the formulation of the listing policy.

President, the Alibaba incident took place in 2013, in which SFC eventually disapproved of Alibaba's coming to Hong Kong to go public because the company's demand of listing its shares in accordance with the regime of "dual-class share structure" was against Hong Kong's listing rule of "one share, one vote". As such, the establishment of the Listing Regulatory Committee ("LRC") is also recommended in the paper, but has become a relatively more controversial issue since LRC will comprise six members, with three representing SFC and another three representing the Hong Kong Exchanges and Clearing Limited ("HKEx"). People criticized that its membership is too small as compared to the 28 members of the Listing Committee. In light of the empowering of only six members to vet and approve new listing applications that involve listing suitability issues or have broader policy implications, the industry opines that LRC has indeed usurped certain substantive power of the existing Listing Committee. I also understand that LRC will indeed vet and approve new listing applications that involve suitability issues or have broader policy implications, and so will the authorities, or SFC, please clearly define which stocks will be put under the category of suitability or that of broader policy implications in a bid to allay market concerns.

President, the authorities have to keep communicating with all stakeholders before taking forward any policy. I appreciate the fact that stakeholders still have different comments and concerns. The authorities may also take into consideration the views received from people in the market. I noticed that the Financial Services Development Council has also voiced its views, suggesting that apart from LRC, two executive officers from SFC can be added to the current membership of the existing Listing Committee, but for LPC, it is not necessary for the Chief Executive Officer of SFC to be its ex-officio member.

Besides, I have also noted the views from the Hong Kong Institute of Certified Public Accountants which I find worthy of attention, including that people from diverse backgrounds should be included in the membership of LRC in order that without overlapping membership of the Listing Committee, instances of its members being judged themselves can be avoided.

Let me reiterate once again: We have to take into consideration the views of different stakeholders in formulating and implementing any policy. It is true that the authorities launched the consultation paper as driven by different reasons and factors, but it is equally important to pay heed to stakeholders' concerns. It is also necessary to carry out appropriate enhancements after listening to their views.

All in all, I regard this consultation paper as a beginning only. Since the contents of reform have neither targeted on the "cheating shares" as mentioned by various Members, including us, nor on the manipulation of financial techniques in bringing up and down the stock prices through speculation with the suspected intent of deceiving small investors, I am of the view that the contents of the consultation paper are somewhat out of focus. I hope that this marks only the first step and more specific proposals or more concrete actions will come in the future, including law enforcement actions to combat such unlawful or dishonest practices.

President, the consultation on proposed enhancements has yet to deal with the issue of conflict of interest involving HKEx as a listed company in vetting and approving listing applications, and it has not *(The buzzer sounded)* … I so submit, President.

MRS REGINA IP (in Cantonese): President, I speak in support of Mr Christopher CHEUNG's motion and Mr James TO's amendment. The policy objectives they put forth are worthy of support.

I would also like to take this opportunity to let the Government know that I have received a lot of complaints, listened to a lot of concerns and thus have a lot of issues to raise with them regarding the consultation proposal jointly put forth by the Securities and Futures Commission ("SFC") and The Stock Exchange of Hong Kong Limited ("SEHK") in June, on enhancing SEHK's decision-making and governance structure for listing regulation.

I have listened to the speeches made by a number of Members. Why do SFC and SEHK put forward this reform proposal on the governance structure for listing regulation? We all know that the market is now plagued with problems such as backdoor listings, cheating shares, demon stocks, zombie stocks, stock price manipulation, and perhaps also the role conflict arising from the commercial operation mode of SEHK as a listed company. These have been discussed by a lot of colleagues just now. But the question is: are the problems resolvable by the solution proposed in this joint consultation, that is the setting up Listing Regulatory Committee ("LRC") and Listing Policy Committee ("LPC") under SEHK?

I notice that apart from members of the industry, the Financial Services Development Council chaired by Mrs Laura CHA has also criticized the proposal for being structurally redundant. The most serious criticism, though, comes from an article I have read recently and perhaps Mr Dennis KWOK has read it, too. It is a 28-page paper published by the Asian Institute of International Financial Law of the University of Hong Kong in which a large number of serious problems have been raised. First, it says that the setting up of LRC and LPC under the SEHK may breach the law.

(THE PRESIDENT'S DEPUTY, MS STARRY LEE, took the Chair)

Have you read these 28 pages of legal views, Secretary LAU? The proposal may be acting ultra vires the Securities and Futures Ordinance. SFC is very powerful, it is vested with the power to decline listing applications and to revise listing rules. Under the administrative law principle, the power SFC

exercises must be subject to the regulation of the Securities and Futures Ordinance. Apart from this, SFC has to put in place a listing mechanism and make its operation transparent, so as to comply with the regulation of administrative law and meet the principles laid down by the International Organization of Securities Commissioners. If SFC is going to set up a six-member LRC of which three are SFC officials, the addition of LRC to the present 28-member Listing Committee brings an extra layer to the existing structure, and what is more, causes the goalkeeper to become a midfielder and even a forward.

Who is going to decide on suitability? Is the exercise of power transparent? Is there any role conflict? I think the colleagues present who are familiar with the Companies Ordinance and the Securities and Futures Ordinance know there is an important rule, the secrecy provision, in the latter. If an SFC officer who is concurrently an LRC member knows that a certain listing applicant is under investigation for alleged financial corruption, can he disclose such information? Is there any role conflict being the final regulator and the law enforcer? There will be major conflict and legal problem with the arrangement. These three professors say bluntly that this proposal is acting ultra vires the Securities and Futures Ordinance. I do hope the Government can respond to this, as the Bureau is the regulating body. Though SFC is a big mountain loaded with resources and lawyers, the Government as the regulating body should not be led by it.

Additionally, according to certain legal views, if an SFC person joins a committee under the SEHK, he may become a shadow director of SEHK. Then, is the power he exercises conferred by the Companies Ordinance? Or, is the power delegated from SFC? This may also give rise to major legal and role conflicts.

Also, as mentioned by our colleagues, there are 28 people with the Listing Committee now. Apart from the Chairman, committee members are market practitioners, professionals and investors. Mr Charles Peter MOK said just now that the structure might be problematic as SEHK was a listed company which focused on making profit. But we must not forget that the dual filing system under this structure has gone through several reviews. The first review report, I have already put it in storage. Deputy President, after the 1988 stock market crisis, Ian Hay DAVISON, an expert from the United Kingdom produced a

review report. The second report is more recent. After the penny stocks affair in 2002, a group of experts led by senior counsel Robert KOTEWALL produced another report. The existing dual filing system and the two-tier governance structure have undergone two in-depth reviews and hence, should not be altered with LRC or LPC.

Furthermore, people in the industry have told me that with the 28-member Listing Committee taking and reviewing listing applications as a frontline regulator, the procedure is closer to the market and thus more adaptable. Some colleagues mentioned about the listing failure of Alibaba just now. Indeed, the issue of "weighted voting right structures" has to be dealt with sooner or later. Facing the rapid development of the market and the emergence of so many technology companies, our operation should become more transparent and flexible. In order to strengthen Hong Kong's status as an international financial centre, we might need to set up a third exchange to accommodate the large number of technology companies from the Mainland or other parts of the world which seek to go public with a "weighted voting right structure". Conversely, if such a reform is to be implemented, it might be challenged legally, on top of stifling … Deputy President, please note that during the lunch break, I have listened to a comment from an owner of a small and medium enterprise that under the proposal, small and medium size listing service providers will lose all their businesses to big companies from Europe or the United States.

Therefore, I have strong reservations about the recommendations in the joint consultation documents of SEHK and SFC. I hope the Government can respond to the relevant legal issues. *(The buzzer sounded)*

DEPUTY PRESIDENT (in Cantonese): Mrs Regina IP, speaking time is up.

MR KENNETH LEUNG (in Cantonese): Deputy President, over the last decade or so, reforming mechanisms for vetting and approving listing applications and monitoring has become a general trend. The main reason is that many stock exchanges around the world have switched to corporatization from the membership system in the past. For example, the stock exchanges in London and Hong Kong have become listed companies. When the system changes, especially when stock exchanges become listed companies, profit-making will be

the primary objective. How can they strike a balance among vetting and approving listing applications, regulation, safeguarding investors' interests and diversifying product development?

Let us take a look at the example in London. In 2000, the London Stock Exchange transferred the authority to vet and approve listing applications to the UK Listing Authority, which was then under the Financial Services Authority. Since then, all stocks to be listed on the London Stock Exchange have to be vetted and approved by the regulator. Following the reform of the UK financial regulatory system, the function of the UK Listing Authority has also been taken over by the Financial Conduct Authority.

Many people have adopted the reform of London's vetting and approving procedure for listing applications as a case study. Using the plunge in the volume of capital raised after the reform, they justify their opposition to this reform by HKEx and the Securities and Futures Commission ("SFC"). Yet, the drop of 55% in the volume of capital raised by new stocks worldwide in 2001 was the result of global economic downturn. In 2001, the volume raised in London fell by 45% and Hong Kong also saw a nosedive of 80%. It is a departure from the truth if we use the London case to oppose the proposal now put forward by SFC and HKEx to improve the decision-making for listing regulation and governance framework.

As an international financial centre, Hong Kong should establish a satisfactory, independent and fair system so that enterprises all over the world will have confidence in raising funds in Hong Kong. Of course, they have to take note of the number of companies listed here and the growth in the volume raised, but these should not be the sole considerations. The most important thing is to ensure the regulation standard for Hong Kong stocks and the quality of listing regulation. Then, we can strengthen the confidence of investors from around the world.

Many Members say that the existing system has been in place for years and proven to be effective. However, is the system keeping abreast of the times? Currently, listing applications are vetted by the Listing Department ("LD") of HKEx, to be followed by a listing hearing by the Listing Committee under SEHK, a subsidiary of HKEx. What role does SFC play then? Under the dual filing system, apart from disclosing information and application documents for

listing, companies applying for listing also have to submit the relevant documents to SFC as statutory records. In case of circumstances involving false or misleading information, SFC can use such information for investigation and provide views on the drafts of listing documents and information to be disclosed. It can also ask the company applying for listing to provide further information.

In a recent consultation document on enhancing the listing regulatory framework, the Government proposes that SEHK establish the Listing Policy Committee ("LPC") to formulate a listing policy, and the Listing Regulatory Committee ("LRC") to approve listing applications which involve suitability and broader policy implications. Half of the members of these two Committees are senior personnel from SFC and the other half are HKEx personnel.

Many in the industry think that the new proposal will give too much power to SFC. Under the existing system, SFC has the final veto power on listing applications. Under the proposed new framework, the Listing Committee will continue to be responsible for approving most of the listing applications which do not involve suitability or broader policy implications. There are virtually no changes to LD's function and no expansion of SFC's final say. SFC will only participate in the vetting and approval procedure at an earlier time to boost efficiency and quality.

I agree in principle to the reform direction. I have heard that many people in the industry or even directors of listed companies are not happy with the proposal. However, from the perspective of protecting investors or from the professional angle, this reform is necessary. Yet, I think that while implementing the reform, the authorities must clarify a few points. First, since half of the members of the two Committees come from HKEx and the other half from SFC, in case of disputes, should a vote be taken? If so, how can a decision be reached given the equal number of members from HKEx and SFC?

Second, there is no problem with LPC, but when should LD submit the case to LRC? There is no mention of this in the consultation document. *(The buzzer sounded)*

Deputy President, I so submit. I support Mr Christopher CHEUNG's motion and Mr James TO's amendment.

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

MR JEFFREY LAM (in Cantonese): Deputy President, the consultation period of the joint consultation paper of the Securities and Futures Commission ("SFC") and The Stock Exchange of Hong Kong Limited ("SEHK") on enhancing the governance structure for listing regulation is already over. But many people from the commercial and finance sectors still express strong objection whenever the issue is raised. The Hong Kong General Chamber of Commerce ("HKGCC") that I represent has expressed clear opposition to the reform proposal and pointed out its concerns, including the worry that establishment of the new Listing Policy Committee ("LPC") and Listing Regulatory Committee ("LRC") will slow down the approval process of listing applications and create unnecessary hurdles for corporations which intend to get listed. At the same time, we also fear that the proposal will affect the reputation of Hong Kong as a free market and international financial hub, and marginalize the professionalism of the Listing Committee.

I maintain that the Government should think twice about the reform. It is because if the reform proposal is implemented, the number of companies applying for listing in Hong Kong may go down, and not only this, the long-term competitiveness of Hong Kong will also be weakened.

There has all along been a clear division of functions between the Hong Kong Exchanges and Clearing Limited ("HKEx") and SFC. HKEx is responsible for frontline regulatory work and its Listing Committee takes care of the approval of listing applications, while SFC enforces the laws on regulating the securities and futures market as the last line of defence.

Although it is pointed out in the consultation paper that the reform can help achieve closer cooperation between SFC and SEHK on listing policy formulation, in actual practice, the proposal will increase the power of SFC in vetting and approving listing applications, thus enabling it to play the role of a frontline regulator. Hence, some people think that SFC will thus be given much greater power and it may even be able to intervene with the vetting and approval of listing applications. That is against the long standing principle of the minimal market intervention.

I am also concerned that under the proposal, two new committees will be established. They will give people an impression that SFC is attempting to bypass the legislature and replacing the functions of the Listing Committee. It will cause far-reaching implications and undermine the competitiveness of our financial sector.

One of the concerns of the financial sector is that the establishment of LPC and LRC may enable SFC to increase its power endlessly, because SFC will have three seats out of the total eight seats on LPC. As to the total membership of six on LRC, they will be equally shared by SFC and HKEx. As pointed out in paragraph 130 of the consultation paper, LPC would have primary responsibility for appraising senior executives of the Listing Department in the performance of their regulatory responsibilities. HKEx's Remuneration Committee, which is responsible for determining the overall compensation of the Listing Department and its senior executives, would take into account the assessment of LPC when determining such compensation. That will give rise to a host of issues, including the question of whether the Listing Department will be inclined to listen to SFC's opinions when processing listing applications and lose its independence? Will senior executives, who are subject to the assessment of LPC, adopt a more conservative approach for the sake of self-protection when handing the listing applications to LRC?

On the other hand, HKGCC is also concerned that the new proposal will cause unnecessary hurdles in the listing process, thus preventing SMEs from raising funds and developing business. It should be noted that if the listing process is made complicated without any strong justifications, Hong Kong's reputation as an international commercial centre and financial hub will be affected and our free market economy will also come under impact.

In fact, those who know best about market operation are definitely people from the trade. They are more sensitive to the market, they are willing to undertake risks, to explore markets and to seize opportunities. Meanwhile, the Government should do its best to provide a favourable business environment and adhere to the policy of not intervening with the financial market as much as possible.

Last month, the Business and Professionals Alliance for Hong Kong held a seminar with trade representatives with the aim of reflecting concerns in the market. I said in the meeting that the relevant papers involved significant

adjustment of the listing approval regime, that they were definitely not fine-tuning but radical changes. I said that it was a move violating the laissez faire principle of the past.

Deputy President, the securities market in Hong Kong needs to be developed in a healthy and orderly manner. I hope the Government understands the concerns of the trade. We should give any reform proposal further thoughts and ensure adequate communication among all stakeholders before its implementation and execution.

In conclusion, HKGCC considers that it is not desirable for LRC to handle complicated listing applications. Besides, the consultation provides no solid evidence to prove that the existing regime has any shortcomings and needs a change. The existing listing regime has worked well in Hong Kong over the years. We urge SFC and HKEx to conduct regulatory impact assessment prior to the execution of any reform.

Deputy President, the attractiveness of Hong Kong's business environment lies in on the free market principle that we have been upholding all along. As long as the market is operating smoothly, the commercial sector and financial sector do not want to see the Government to extend its invisible hands of regulation to everywhere in the market. I hope the regulatory authorities can seriously listen to the voice of the trade. It cannot and should not take strong measures to promote the relevant reform if doubts of the trade cannot be dispelled.

I so submit, thank you Deputy President.

MR KWOK WAI-KEUNG (in Cantonese): Deputy President, I rise to speak in support of the two motions proposed by Mr Christopher CHEUNG and Mr James TO.

Deputy President, the financial industry is an economic pillar of Hong Kong. According to rough estimation, the financial industry employed as many as 246 000 people in 2015 (or 6.5% of Hong Kong's working population) and contributed 16.6% of Hong Kong's economic growth. More importantly, to Hong Kong people, financial shares have now become the most important tool for investment and assets growth. Both the Government's Exchange Fund at the top

and also employees' Mandatory Provident Fund Scheme at the bottom have relied on the financial market for their appreciation. According to the "Retail Investor Survey" report compiled by the Hong Kong Exchanges and Clearing Limited ("HKEx"), 36% of Hong Kong's adult population (or around 2.25 million people) are securities investors. Actually, if Members have the opportunity to watch television at home from Monday to Friday, they can see that all television programmes are about shares-related topics with professional analyses. From this, we can see that the operation of shares and securities is closely related to Hong Kong's economy, and they are an important part of Hong Kong people's living.

Deputy President, securities trading in the financial market is both an investment tool and something that brings risks and safety problems. When we look back at the financial turmoil or financial tsunami in recent years, we can see how the whole world suffered profound impact at the "bursting" of incessant high-risk transactions and investments resulting from regulatory problems in the local financial market. Hong Kong is one of the three major international financial centres in the world, and the market capitalization of its stock market already amounts to $24,000 billion. Therefore, we must regulate the financial market with prudence, but we should not hinder the industry's development. The Lehman incident some time ago has served as a profound lesson, and I am not prepared to go into the details. Nevertheless, if problems arise in the financial market due to regulatory or monitoring loopholes, the hard-earned money of our employees will evaporate any time at the crash of a giant wave, and Hong Kong as an externally-oriented economy will sustain very heavy impact.

Deputy President, HKEx is a major financing and capital-raising venue in the world. At present, there are 1 950 listed companies on HKEx. Speaking of capita-raising through initial public offerings ("IPOs"), the total IPO funds raised by HKEx amounted to $263 billion in 2015, ranking first in the world. IPO capital-raising now constitutes an important part of HKEx's business, and HKEx also serves as a venue offering financial opportunities to investors and enterprises alike. Nevertheless, capital-raising aside, the performance, quality and problems of the relevant enterprises after listing have aroused investors' concern and require the authorities to exercise regulation.

Deputy President, I am no investment expert. And, as a Legislative Council Member, I am already so occupied that I cannot spare any time for the stock market. But I have glanced through certain financial commentaries in

preparation for this motion debate and found that the "cheating shares" are actually "bluffers" that resort to the "falsification of figures". Regarding investors as "dupes", they want to "lure them into their pit". "Cheating shares" is not a new term. Two months ago, HKEx's Chief Executive Charles LI also discussed this issue in his blog. Therefore, the Securities and Futures Commission ("SFC") and HKEx play an important gatekeeping role.

However, with the increasing flow and amounts of funds following the mutual connection between the markets of Hong Kong and the Mainland and also their growing development, potential non-compliant transactions and dubious listed companies will naturally increase in number. For this reason, it is only reasonable for regulators to enhance their regulatory efforts, and they are duty-bound to do so. But I think the market (including various stakeholders) should consider and discuss the question of how to exercise effective regulation without hindering market operation.

Deputy President, SFC and HKEx proposed to review the regulatory regime and commenced public consultation half a year ago. One consultation proposal of greatest concern is the creation of a Listing Policy Committee and a Listing Regulatory Committee on top of the Listing Committee under HKEx. The two committees will deal with listing and capital-raising issues involving enterprises, and their members will be appointed by SFC. I welcome the intention of the regulatory authorities to regularly review our regime and protect investors' rights and interests. But at the same time, I share the same concern as other Members, the concern about the possibility that this arrangement may make the structure cumbersome and cause confusion and ambiguity to the functions and powers of SFC and HKEx. Actually, SFC is the highest statutory body responsible for regulating the local securities market. But HKEx is merely a listed limited company operating in the financial market. What will be the consequence of mixing them together? This is absolutely not negligible.

Deputy President, with the strengthening cooperation and mutual connection between Hong Kong and the country's securities market and also with the continued development of the local securities market, it is necessary to enhance the regulatory regime. But here, we must stress our wish that the authorities can take on board more views of our employees' union. The reason is that our employees' union comprises frontline practitioners rather than speculators or large investment firms. The question of whether this industry can continue to enjoy sustainable and prosperous development has the most direct and

profound impact on these people. So, I hope SFC and HKEx can pay more heed to their views. The dedicated Finance Professionals Committee under the Hong Kong Federation of Trade Unions paid a visit to Beijing and launched the China Finance and Banking Internship Program 2016 respectively in January and June this year as a means of fostering connection between professionals in both places, in the hope of contributing some training efforts.

I so submit. Thank you, Deputy President.

MR MARTIN LIAO (in Cantonese): Deputy President, in the face of the increasing expansion of the global financial market, the market operating conditions have become increasingly complicated. In addition, as emerging industries and innovative high-tech enterprises have a much greater demand for listing in recent years, there is a genuine need for Hong Kong to explore matters relating to the enhancement of our listing regulatory regime, so as to ensure that the decision-making and governance structure for listing regulation as well as the regulatory efficiency of the regime can respond to rapid developments in the market. Yet, regrettably, some major proposals in the consultation paper on proposed enhancements to the existing listing policy are not fully justified and are highly controversial.

The principle of free market and a moderate regulation are the cornerstones of our economic success. If these are altered lightly to cause undue hindrance to the operations of the listing system, fund raising by small and medium enterprises may become very difficult, and their development may be hampered. In the long term, Hong Kong's competitiveness and status as an international trade and financial centre will also be undermined.

It is proposed in the consultation paper that two new committees will be established under the existing listing regulatory structure, namely the Listing Policy Committee and Listing Regulatory Committee. The former will be responsible for making overall listing policy decisions while the latter will mainly be tasked with the vetting and approval of listing applications of a complicated nature. The Listing Department of the Hong Kong Exchanges and Clearing Limited ("HKEx") will, subject to the complexity and suitability of listing applications, decide whether a listing application should be referred to the Listing Regulatory Committee, or if it should be vetted and approved by the Listing Committee in accordance with the usual procedures.

However, I have reservations about the establishment of the two new committees and the corresponding demarcation of authorities and responsibilities, and my concerns can be summarized into four aspects. First of all, a detailed definition or specific meaning of "suitability" has not been provided in the consultation paper, and neither has a clarification been made under the new proposal of how the Securities and Futures Commission ("SFC") will work in collaboration with the Listing Department, so that only cases that have suitability concerns or broader policy implications will be referred to the Listing Regulatory Committee for decision. This will not only create ambiguities for the Listing Department in determining whether an application has suitability concerns and undermine the efficiency of vetting and approving listing applications, SFC will also incline to adopting a relatively conservative approach in vetting and approving such applications in order to reduce errors. Listing and financing applications which are apparently complicated or which seem to have suitability concerns will be rejected, and this will in turn affect the status of Hong Kong as a financing centre and stifle the long term development of the financial business.

Secondly, under the existing structure, all listing applications will be vetted and approved by the Listing Department of HKEx, and SFC only has the power to reject such applications. This monitoring mode of subjecting all applications to oversight by one regulator and then the other is relatively simple, since the division of duties between the two regulators is clear, and check and balance can be exercised on the overall arrangements for vetting and approving listing applications. However, the existing application process will be divided into two parts under the new proposal, thus making the process more complicated, undermining the efficiency of the arrangements, retarding the decision making procedures and giving people an impression of duplication and redundancy.

Thirdly, the proposed Listing Policy Committee and Listing Regulatory Committee will respectively comprise eight members and six members, and all of these members will come from SFC and HKEx. As compared with the existing Listing Committee which comprises 28 members, the 8-member Listing Regulatory Committee is apparently in lack of trade representativeness and comprehensive professional support. There is also an excessive concentration of regulatory power in the hands of a small group of members, who may not be able to balance the needs and interests of different trades and sectors in vetting and approving listing applications. Besides, as half of the members of the Listing Regulatory Committee will come from SFC, the proposal will turn SFC, which is originally an independent supervisory body responsible for the final gatekeeping,

into a frontline department responsible for decision making on vetting and approving listing applications, and enable SFC to gain complete control of matters concerning listing policy. Hong Kong will thus switch back to adopting a regulatory-based rather than a disclosure-based regime, and this actually runs contrary to international practice.

Finally, it is stated in paragraph 28 of the consultation paper that HKEx's Remuneration Committee will take into account the assessment of the Listing Policy Committee when determining the overall compensation of the Listing Department and its senior executives. In other words, the proposed Listing Policy Committee will be responsible for appraising the performance of senior executives of HKEx's Listing Department. If the Listing Department is required to seek prior consent from SFC in the future on payment of bonus and staff promotion matters, its decision-making functions may be subject to the control of SFC since it would not dare to displease SFC. SFC will then have the chance to interfere with the daily operations of HKEx, thus giving the public an impression that SFC is trying to impose pressure on senior executives of HKEx.

In conclusion, a convincing solution is not available in the consultation paper, and neither is an explanation given on the desirability of adopting the proposals put forward. If a reform of the governance structure for listing regulation is considered necessary, I urge the Government to first conduct a regulatory impact assessment, and analyse the cost-effectiveness of the measures involved as well as their impact on different stakeholders, such as the entire society, business sector and regulatory bodies. With regard to market concerns on such issues as shares issued by shell companies and "shadow accounts", I think it will be more effective to address the problems by exercising regulation through enactment of legislation targeting at the issues, instead of wasting time on introducing changes to the existing listing regulatory structure, which is actually an attempt that has missed the whole point. Top priority should also be accorded by the Government now to focus its attention on the development of financial market, financial technology in particular, so that an appropriate financing platform will be provided for innovative and technology enterprises, thereby attracting more of these enterprises to come and list in Hong Kong and injecting new impetus into the economy of Hong Kong.

Deputy President, I so submit.

MR ABRAHAM SHEK: Deputy President, I rise to speak in support of Mr Christopher CHEUNG's motion on "Formulating a comprehensive listing policy".

Deputy President, any initiative of reforms that can improve the working of Hong Kong as a financial centre must be supported. But in the case of any measures or any twisted reforms in the name of working efficiency to help the Hong Kong financial centre in a better working condition, those twisted measures or reforms must be rejected.

In this consultation between the Securities and Futures Commission ("SFC") and the Hong Kong Exchanges and Clearing Limited ("HKEx") … The Government normally takes a very open stand in any government consultation. But why, in this incident, the Secretary speaks in favour of and actively canvasses support for this consultation? It is not a consultation. This is a directive and this is an interference of the Government. Ask Prof K C CHAN to explain to us, stand here and explain to us why this is so. Because by having the Government in the position, they can direct a lot of participants in the industry to follow them. This is something that Hong Kong has never seen before and this is interference with the free market working of our financial centre. I hope the Government can come out and speak in defence of this.

Despite the Administration's supposedly good intentions, the joint consultation of SFC and HKEx, which ended on 18 November and proposes reforms of Hong Kong's listing policy purporting to enhance our regulatory regime, has triggered disputes, schism, division and heated arguments within the industry. This consultation is likened to a common saying: "This consultation is just like a wolf in sheep's skin".

As my colleague, Mr Christopher CHEUNG, has indicated, the so-called "joint consultation" is confusing, with SFC and HKEx each preaching and propagating their own viewpoints, creating great confusion. A conspiracy theory thus unfolds that the proposed reform would create a de facto power struggle between SFC and HKEx—this is no good for Hong Kong as a financial centre, as we have seen over the years, they have been on the verge of improvement to a greater position in the world—given that the reform package includes a proposal to empower SFC (which currently only has veto power to reject IPOs)—we did take four years from 2000 to draft the Securities and

Futures Ordinance, and I was a member of the Bills Committee—to approve individual listing applications, a power which currently resides in the 28-member Listing Committee under HKEx.

In brief, the reform, if implemented under a guided consultation, would constitute a radical change to the regulatory structure, from a relatively clearly delineated two-tier disclosure system to a rather grotesque system that would see SFC's long arm extended to every sphere concerning listing applications, from approving individual applications to making changes in listing policies and conducting performance appraisals of HKEx's Listing Department staff. This would take place through the creation of a Listing Policy Committee and a Listing Regulatory Committee, building walls and walls around it, with equal representation by SFC and HKEx. SFC can actually indirectly affect HKEx in its appointment.

As the 28-member Listing Committee is composed of lawyers, accountants, executives of listed companies, fund managers, and market representatives, who are more sensitive to the market and its changes, concerns have arisen about a possible over-concentration of power in SFC that would substantially wipe out the market elements by increasing the regulatory factor—SFC's regulatory-based mindset might not be conducive to the development of our listing market, which works best under market-oriented principles. Do not interfere! It is not the job of officials to interfere with any market, just like the stamp duties. This is sad. Look at the present situation in Hong Kong.

Perhaps the Administration is trying to get the best of both worlds. You can never get the best of both worlds. In the first place, you cannot even get the best of one world. How can you get the best of both worlds? Stop doing this!

By any standard, this joint consultation cannot be considered a success, as the divide between proponents and opponents of the proposed reform remains as wide as ever. Despite SFC Chief Executive Officer Ashley ALDER, with the support of Secretary Prof K C CHAN and international asset managers under his guidance, reiterating time and time again the benefits of the reform and the new structure, opponents of the reform including finance industry practitioners, local banks, The Chamber of Hong Kong Listed Companies, and many members of the Listing Committee of HKEx, remain unconvinced—I repeat, unconvinced.

Among other reasons, they just do not understand how SFC and the Administration can draw a summary conclusion that everything will be better if the reform proposals are to be implemented.

When there is nothing wrong, do not change it. You can fix it up. Good reforms are to be accepted, but the present reforms under the consultation paper cannot be accepted. And the Government should not put its hand into the basket when the basket is working very well.

Thank you.

MR CHAN CHI-CHUEN (in Cantonese): Deputy President, the Government ought to and is obliged to enhance the regulation of listed companies. While this is worth doing, there is also a need to give statutory bodies the full power to monitor listing applications, so that Hong Kong's reputation as an international financial centre can be safeguarded.

New shares listed in Hong Kong in recent years are riddled with problems. Many new enterprises listed in Hong Kong—most of them, I believe, are Mainland enterprises—share a common characteristic, and that is, while a projection is made in the financial statements of their prospectus for a rapid and double-digit growth in profits in the first three years, a drop in profits is, on the contrary, often recorded within one year after their listing and quite a number of them have even issued a profit warning soon after their listing. For example, 15% of the new shares listed in 2015 and 29% of those listed on the Growth Enterprise Market in the same year have issued a profit warning. In a more extreme case, a profit warning has been issued for a company named "NNK Group Limited" in less than two months after its listing at the beginning of 2016.

(THE PRESIDENT resumed the Chair)

Some new shares have been raided soon after their listing and have since then been suspended from trading, thus causing huge losses to investors. For example, Tianhe Chemicals Group Limited was listed in June 2014 and has successfully raised a fund of $6.3 billion in Hong Kong. However, less than three months after its listing, the profit forecasts of the company were rated as

overly exaggerated by a company specialized in short selling activities, and it was alleged that the target price should be $0. As a result, its shares have been suspended from trading since September of the same year, meaning that the suspension period is far longer than the listing period, and billions of dollars from small investors in the market have been disastrously frozen.

Members of the public cannot help but ask: How come the Securities and Futures Commission ("SFC") and the Hong Kong Exchanges and Clearing Limited ("HKEx") still fail to see that something has seemingly been done to gloss over the messy accounts of many of these quasi new companies from the Mainland? How come the irregularities in such accounts could not be timely identified by the wealthy and powerful sponsors, but could only be uncovered by companies specialized in short selling activities, which have only very limited financial and manpower resources? Should sponsors of new shares properly perform their gatekeeping role, and should HKEx and SFC properly monitor the performance of sponsors and impose stringent control on the quality of new shares? However, over the past few years, quite a number of sponsors, be they operate with Mainland, Hong Kong or foreign capital, have failed to dutifully ensure the quality of new shares. Apart from UBS AG and the Standard Chartered which are under investigation lately, other sponsors are still free to recommend to investors all sorts of new shares which are weird and bizarre, though the accounts of which are full of strange and inscrutable details. Over the years, only one listing application has been rejected by SFC, and this gives us an impression that the listing regulatory regime exists in name only.

Why do I say that the regulation of sponsors exists in name only as far as listing companies are concerned? One of the reasons lies in the fact that most of the regulation work is undertaken by HKEx, and there is a serious conflict of interests on the part of HKEx when listing matters are involved. Simply put, if more companies can come and list in Hong Kong, more revenue will be generated for HKEx, and it serves as an incentive for HKEx to turn a blind eye to listing applications that have suitability concerns. If the regulatory regime is enhanced, a large number of companies which are planning to submit a listing application, Mainland enterprises in particular, may not be able to come and list in Hong Kong and the listing fee income of HKEx will drop significantly. Similarly, if regulation in this regard is enhanced so that the number of successful listing applications is reduced, profits reaped by securities brokers in promoting subscription of new shares will also record a decline. This is something very easy for us to understand.

Since the regulatory regime exists in name only, sponsors may continue to recklessly underwrite and subscribe for new shares that have suitability concerns. Sponsors may even employ persons closely connected with Mainland enterprises as their senior staff so that more of these enterprises would commission them to deal with their listing matters. For example, in a recent case, in order to butter up the senior management of a listed company and have the chance to underwrite the company's shares to be listed in the market, the sponsor of that company has employed the daughter of the company's board chairman before its service was commissioned.

During the listing process, what sponsors of new shares have to do is to brag about the achievement of an oversubscription rate of a certain number of times in international placing, hire a few "financial actors" to promote subscription of the shares, and small investors will then be easily attracted to subscribe for the shares. Sponsors will not be responsible for the underperformance or even suspension of trading of new shares after they have been listed. Ultimately, small investors will suffer huge losses, but sponsors, HKEx and even securities brokers can still pocket exorbitant profits out of the listing of these new shares. There have been just too many of such stories around but small investors in Hong Kong are often forgetful. Although losses have been repeatedly incurred by investing into new shares, it seems that small investors are like gamblers, and their hope of winning a bet never dies. Hence, they just cannot resist the temptation and will continue to fall into traps set with the issuance of "promising" new shares, and the whole thing can almost be regarded as fraud.

It can thus be seen that if HKEx with serious conflict of interests is tasked with handling listing applications, it would be very difficult to protect the rights and interests of small investors effectively. I support regulating listing applications by statutory bodies in order to avoid any possible conflict of interests. I also suggest that more support should be provided to the statutory bodies responsible for regulating listing applications, so that they may initiate investigation in the Mainland on companies that have submitted a listing application but have suitability concerns. This can prevent enterprises which have messy accounts from coming to list in Hong Kong and sucking in the hard-earned money of the people of Hong Kong.

With regard to the original motion moved by Mr Christopher CHEUNG today, I think what Dr YIU Chung-yim has said in his speech just now makes very good sense, and he has talked about the need to make vigorous attempts to

promote financial innovation. A lot of people would of course be benefited from financial innovation and make a big fortune, while the economy would be revitalized, but would it be a bubble economy or real economic growth? Since even sellers of such innovative financial products do not know what they exactly are, the toiling masses in Hong Kong who are living from hand to mouth would be caused to suffer. Saving up hard for years and keeping our money in banks can only earn a meagre sum of money as interests, but spending our savings on such a kind of "investment" will cause us great losses.

I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, Mr Christopher CHEUNG really hopes that we will speak in support of his motion.

Actually it is very simple. At the time the Legislative Council was discussing Hong Kong's financial business, the six "major industries" as mentioned by Donald TSANG, I already commented that Hong Kong's economy, in a nutshell, was a casino-based economy. What exactly is a casino-based economy? This means the running of a gambling business, the zero-sum game, to be exact, and in the gambling business, the person who runs the business is always on the winning side. Now, the Hong Kong Exchanges and Clearing Limited ("HKEx") is the one who runs the gambling business. Members may visit the Lisboa in Macao—because I am unable to travel to Macao, I do not know how many casinos there are in Macao—as long as the business is booming like a market, it is okay, because they can have the "vigorish". HKEx got listed and its business performance is reflected in the turnover. Therefore, the incentive is to ignore everyone and to encourage everybody to gamble. People should only gamble lavishly, instantaneously and habitually. Speaking about foreign countries, Reuters is responsible for the reporting work. In the good old days of telex, Reuters enjoyed a prominent status in the provision of stock quotes, as it was the authority thus its quotes carried much weight. Nevertheless, it had been adhering to one principle over the years, that is, the company should never be listed, and it should not have a finger in the pie. I consider that fair and proper, right? Reuters is only responsible for reporting stock quotes, but the fact that whether or not we can win money depends on how many points are up on any given day. Besides, Reuters should ensure its reports to be accurate and unbiased.

Let us use this as the example. Now HKEx is running the gambling business by itself. It invents a lot of games for people to gamble. Now its share price has gone up substantially. At one time, a friend asked me what shares he should buy. I told him to buy the shares of MTRCL, HKEx, and the Link Real Estate Investment Trust. He would surely become rich because it was the iron triangle of shares. Of course, if HKEx were poorly managed and its share prices were falling, then my forecast would be completely shattered.

That is exactly the problem. When we see that the Government deliberately creates the incentive by allowing HKEx to list on the market, to allow HKEx to steal what is entrusted to its care, to run the gambling business and to ceaselessly promote gambling to the public, it is actually more or less like it is selling a derivative product. One of the reasons causing the 2008 financial tsunami was that banks had no business to do before 2008. What should they do? They had no alternative but to resort to every possible means to incorporate the stocks and securities businesses into their own. After they had given a new look to these products and sold them to consumers, they just defended that those were not investment but products. It would be the business of the customers after they had purchased the products.

President, previously we have participated in the scrutiny of the packaging problems of derivative instruments. We found that as long as the requirement of adequate disclosure was met, as long as what had been genuine at the moment of disclosure, then it would be okay. According to this logic, even if they became not what they been disclosed on the next day, they would have nothing to do with derivative products. I asked the official how had he been monitoring that, he said that those were products and the customers just happen to have bought them, therefore, such kind of transaction had nothing to do with investment and the stock market.

It is just like the problem we are facing today. The problem that we see today is that in order to allow Mainland capitals to be laundered in Hong Kong, then such a chance can be taken conveniently to make some more money and to shift the costs of doing money laundry and to make even more money in the course of engaging in money laundry. A lot of new innovative stocks are invented and these people try to make money by way of issuing new stocks. President, it is certain that you will not buy these stuffs unless someone gives you inside information and a stock number. How can we investigate a company which is said to be doing rare earth business on the Mainland? It is definitely a

scam. Yet this Securities and Futures Commission ("SFC") has no … it is useless, because the listing of companies is approved by HKEx, which is making big bucks because it will have more and more business to do. What kind of regime is that?

President, we in this legislature are at our wit's end when we are looking at this problem. We have let these gamblers down. Honestly speaking, I consider we need not take care of the interest of gamblers, because they should observe the principle of "you bet, you pay". Some people go to Happy Valley to bet on horses with long odds. Even if we persuade them not to bet on those horses as the odds of winning is 99:1. Even though it is darker than a dark horse, they still consider that it will stand a chance of winning. Nevertheless, the question is, if we wish to make a fortune in future by erecting more grade A and B office premises and hotels just as the Government suggests, we are simply pursuing mercantilism. But if we fail to regulate the market, it will be eventually disastrous to all of us.

Some people in Hong Kong keep saying that we have to compete with Singapore, but how can we compete? The Standing Committee of the National People's Congress ("NPCSC") can interpret the Basic Law at any time, which leaves no room for manoeuvring after the interpretation is handed down. NPCSC will teach our judges to do things at Mainland's whim. How can they adjudicate and judge, and how can they mediate? Of course I will not come and invest. Honestly speaking, even people want to gamble, they will not come and gamble in Hong Kong.

President, it is very simple. I can bet with my head that this Legislative Council will only serve Mainland's rich people. Who dares to touch HKEx? Charles LI can at best become an onlooker. Although he is an American, he must have the blood of the people … people's currency (Renminbi) running in his veins.

President, my argument is very simple, Mr Christopher CHEUNG, as you are one of the Members of the pro-establishment camp, you need to taste the bitter fruit and you should not moan, because nobody finds you pitiful. You have traded it off for today's seat, it will be futile even though I want to say a few fair words for you. Thank you, President.

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

(No Member indicated a wish to speak)

(Mr LEUNG Kwok-hung was standing up and speaking in his seat)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, if you wish to raise a point of order, please put on your microphone first.

MR LEUNG KWOK-HUNG (in Cantonese): President, I should have put my microphone on. This is also a point of order, Members not putting on the microphone should not be allowed to speak. Since Article 75 of the Basic Law stipulates that the quorum for the meeting of the Legislative Council shall be not less than one half of all its Members, I think the quorum for the time being is far less than half of the one half of all Members as required.

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?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr Christopher CHEUNG, you may now speak on Mr James TO's amendment. The speaking time limit is five minutes.

MR CHRISTOPHER CHEUNG (in Cantonese): President, Mr James TO's amendment has added three points to my motion: First, The Stock Exchange of Hong Kong Limited ("SEHK") should have no conflict of roles between vetting and approving listings and marketing; second, regulatory authorities in China and

Hong Kong should strengthen cooperation to combat market misconduct; and third, enhance the transparency of the regulatory work of the Securities and Futures Commission ("SFC") to pre-empt loopholes in regulation. Mr James TO's amendment basically shares the direction of my motion.

Let me first discuss the first point. In the past, the market criticized the Hong Kong Exchanges and Clearing Limited ("HKEx") for playing conflicting roles as it is responsible for market development and vetting and approving listing applications. HKEx's Chief Executive has come out in person to defend. He said that as listing fees accounted for a very small portion of HKEx's revenue, there was no reason for relaxing the listing criteria for individual companies. Moreover, the Listing Committee is also independent of HKEx. He has his point. However, as I said earlier, the market is flooded with "cheating shares". So, I think HKEx and SFC are obliged to come up with ways to rectify the situation.

As regards strengthening cooperation between China and Hong Kong to combat misconduct, I agree to that very much. The securities market in Hong Kong have close ties with the Mainland. The market value of listed Chinese enterprises accounts for over 60% of Hong Kong's stock market but these enterprises primarily operate on the Mainland. In case of misconduct, it will be very difficult for SFC to conduct any investigation. The China Securities Regulatory Commission ("CSRC") must be involved.

There were quite a number of similar incidents in the past. The problem remained unresolved even after the company's license had been suspended for a few years, leaving the small investors as victims. After the launching of the Shanghai-Hong Kong Stock Connect, we are now preparing to usher in the Shenzhen-Hong Kong Stock Connect. Listed companies, brokerages and investors in Hong Kong and on the Mainland will only be more closely connected. As I am aware, some people on the Mainland always quote some unconfirmed news on WeChat with the intention of inciting Mainland investors to enter the market to speculate on some "cheating shares". A fortnight ago, CSRC made public the first case of irregularity under the Shanghai-Hong Kong Stock Connect, and the person was allegedly involved in manipulating the prices of A-shares companies across the boundary. So, the strengthening of cooperation between the regulatory authorities in China and Hong Kong to increase the efficiency in combating misconduct can greatly enhance investor protection and can also ensure the orderly development of the market.

The last point in Mr James TO's amendment is the proposal to enhance the transparency of the regulatory work of SFC. This is what the industry and I have been asking for. When I was a Member of the last Legislative Council, I received many complaints against SFC. Some of them were from brokers and some from small investors. They complained to me that SFC was like a bottomless pit because investigations would take several years. SFC would interrogate and ask for information. Yet, if you enquire about the investigation progress and result, they will cite section 378 of the Securities and Futures Ordinance on the preservation of secrecy and refrain from responding.

I have received a complaint from a director of a listed company. He was investigated by SFC some years ago. At that time, SFC adopted a high profile and made a public announcement. However, three years has passed but the investigation still has not yielded any result. He does not know whether he will be prosecuted but his reputation is harmed and even his work is being affected. I think such a situation is highly unreasonable and unfair. Therefore, I hope SFC would conduct a review and follow the global trend of enhancing the transparency of regulatory work.

President, I support Mr James TO's amendment.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I would like to thank Members for their valuable views. We have listened to them attentively. The Securities and Futures Commission ("SFC") and the Hong Kong Exchanges and Clearing Limited ("HKEx") will also pay special attention to Members' views and consider them in detail. In my opening address, I have made an initial response to the joint consultation. Now, I will respond specifically to views expressed by Members earlier and their discussion.

First, Mr Kenneth LEUNG mentioned the issue of "shell shares" and "cheating shares" in his question this morning. In the discussion earlier, many Members have also expressed concern about market condition in this regard. They said that consideration should be given to law enforcement and gatekeeping, that is, the subsequent law enforcement should be handled better and there should be a better preventive framework, system and policy. The Government agrees with proposals in this regard.

Joint Consultation on Proposed Enhancements to Decision-making and Governance Structure for Listing Regulation

Some Members are also concerned about whether this consultation aims at expanding SFC's power. Mr James TO and Mr Kenneth LEUNG have both mentioned that under existing legislation, SFC already has the power to veto changes to listing policy and listing applications. This includes the power under section 24 of the Securities and Futures Ordinance to refuse to give its approval to the listing rules or amendment of the rules, and the power under section 6 of the Securities and Futures (Stock Market Listing) Rules. The proposed measures in the consultation document target the flow of decision-making. One of the objectives is to allow early engagement of SFC in the process, instead of expanding SFC's frontline regulatory power. Actually, under the existing dual filing system, SFC can in general give opinions to or raise questions on each listing application. In some cases, SFC has issued notices to express its intention to oppose the listing applications. Some listing applications have also been turned down finally by SFC. There have been cases in the past where after SFC had given its views and raised questions, the applicants actively cancelled or withdrew their listing applications, or the applications lapsed as they failed to secure the listing approval before the expiry of the application period. Thus, SFC is already exercising the relevant powers under existing legislations and arrangements. There is no case of conferring excessive power on SFC.

Furthermore, some Members are concerned about the opposition of individual HKEx directors to the proposal. I would like to add that the joint consultation document is released only after the leadership of SFC and HKEx has conducted an in-depth study. As far as I understand, the boards of directors of SFC and HKEx support the launching of a public consultation on the proposal. Moreover, as we mentioned earlier, both SFC and HKEx hold an open attitude on the public consultation and will come up with appropriate proposals after taking market views into account. Some Members are also concerned about whether the consultation period is too rush, and whether the market and Members have been given sufficient time to consider these proposals. Just as we have said, the consultation period has been extended to five months. This should be enough for the market to reflect its views.

Furthermore, Mr James TO's amendment points out that the listing policy should "ensure that SEHK has no conflict of roles between vetting and approving listings and marketing", to which Mr WONG Ting-kwong, Mr Charles Peter

MOK and Mr KWOK Wai-keung have expressed support. They think that with regard to policy and system, the Government should ensure that there will be no conflict of roles for HKEx.

According to the Securities and Futures Ordinance, while operating the exchange company, The Stock Exchange of Hong Kong Limited ("SEHK") shall also shoulder the responsibility of looking after public interest. This requirement is very clear. Section 21(2) of the Securities and Futures Ordinance stipulates that a recognized exchange company shall act in the interest of the public, having particular regard to the interest of the investing public; and ensure that the interest of the public prevails where it conflicts with the interest of HKEx. Moreover, SFC and SEHK signed the Memorandum of Understanding governing Listing Matters between SFC and SEHK ("MOU") in 2003, spelling out the respective roles and duties of SFC and SEHK on listing matters.

Some Members said repeatedly that HKEx plays both an operating and regulatory role. Despite the arrangement made in the aforesaid Ordinance and MOU, one of the proposals of the consultation document is that the Chief Executive of HKEx will no longer sit on the Listing Committee to further avoid giving the impression of a conflict of interest due to participation in individual process of vetting and approving. The consultation document also recommends that the Chief Executive of HKEx sits on the Listing Policy Committee ("LPC") to allow him to take part in the setting of listing and marketing policies. In addition, the consultation document recommends that the new LPC and Listing Regulatory Committee make public their decisions. This will enhance transparency and enable the public to monitor the decisions. We believe that to a certain extent, the above arrangements can lessen the impression of a conflict of roles under the existing system.

Furthermore, Mr Christopher CHEUNG's motion suggests that while protecting the interests of investors, financial innovation should also be actively promoted. I will come to this later. Mr James TO's amendment also suggests that the Government review the existing relevant regulatory legislation, as well as strengthen cooperation with the Mainland regulatory authorities to combat any cross-boundary illegal activities and market misconduct carried out through the flow of funds between the two places and in the international financial market. Some Members mentioned earlier the issue of market quality. Meanwhile, we note that there have been views on the market that so long as law enforcement is enhanced, the bulk of the issues related to market quality can be addressed.

Over the years, Hong Kong's financing platform through listing has made notable achievement in terms of the sum of money raised. However, for the market to have a healthy development, we cannot only focus on the sum of money raised or the number of listed companies. It is also very important to ensure market quality. In this connection, we are aware that the number of complaints on some inappropriate conduct of listed companies is on the rise. As I said earlier, over the past five years from 2011 to 2015, the SFC investigations on poor enterprise governance and disclosures, insider dealings and market manipulation have doubled, and there has also been a 50% increase in formally initiated proceedings. These figures show that the conduct of capital market for listing is a factor affecting our market quality. It warrants to be addressed.

I would like to emphasize that SFC has always cracked down on irregularities through various law enforcement actions. In 2015 alone, there were 311 investigations related to listed companies. This is double the figure of 2013 and also exceeds the aggregate of 2011 and 2012. Nonetheless, law enforcement action is only taken after irregularities have appeared and investors suffered losses. Thus, we have to dovetail with appropriate market regulations and gatekeeping in order to enhance Hong Kong's market quality in general, protect the investing public, boost the confidence of overseas and Hong Kong investors and safeguard Hong Kong's reputation as an international financial centre. SFC and HKEx will continue to monitor the various conditions affecting market quality and will spare no time to tackle all the issues from all directions. For instance, SEHK has tightened listing regulation and issued a series of guidance letters, including giving guidance on matters raised by Members such as acquisitions, cash companies, issuance of bonus shares and appropriateness for listing for companies bearing shell features. In addition, SFC is working with SEHK on a comprehensive review of all listing policies, including an overall inspection of "backdoor listings" on the Growth Enterprise Market ("GEM"), shell companies and extended suspension of trading.

Members have also talked about cross-border cooperation in law enforcement. HKSFC is one of the signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding ("MMOU"), and has established cooperation in law enforcement with the other 100-odd signatories of MMOU, including China Securities Regulatory Commission ("CSRC"). The cooperation mechanism in investigation among international securities regulators has been in operation for over a decade. Through the cooperation mechanism, satisfactory results have been achieved in many cases involving cross-border element.

Moreover, under the connection of Hong Kong and the Mainland's bourses, the memorandum on cooperation in law enforcement has further enhanced enforcement cooperation between HKSFC and CSRC. The memorandum requires information-sharing between HKSFC and CSRC, conducting joint investigations and taking complementary law enforcement action to offer better protection to Hong Kong and Mainland investors.

On cross-border regulatory assistance, amendments were made in 2015 to the Securities and Futures Ordinance to allow HKSFC to sign memoranda of understanding with regulators in other places for reciprocal regulatory assistance. Also, HKSFC can provide limited regulatory assistance on the request of regulators in other countries.

Apart from the above initiatives, we consider that enhancing financial education and investor education to help them make the suitable investment decisions and to provide effective solutions in case of disputes are important measures to protect investors. Through various education campaigns, the Investor Education Centre has raised the vast investors' understanding of the financial market and products, and better equipped them with skills and knowledge to make informed financial decisions and manage their money wisely. In addition, the Financial Dispute Resolution Centre has implemented the financial dispute resolution scheme which deals with cases of dispute by mediation and, failing which, arbitration. This is an independent, speedy and effective way for consumers and financial institutions to resolve money disputes between individual clients and financial institutions.

Mr James TO's amendment also proposes to enhance the transparency of SFC's regulatory work. In this regard, since its establishment in 1989, SFC has always played the role of an independent regulator for the securities market. While maintaining its independence, the Government and SFC have also striven to enhance its transparency and accountability. Therefore, on top of the checking and regulatory mechanisms which apply to public organizations in general, a number of checking mechanisms have been designed, including SFC's internal administrative procedures, as well as the Process Review Panel ("PRP") and the Securities and Futures Appeals Tribunal ("SFAT") established outside SFC.

Of the above, the independent PRP is responsible for reviewing if SFC's internal procedures and operation guideline are proper and giving opinions where appropriate. The Panel will issue annual reports to the public. The PRP's

opinions and recommendations will help SFC exercise its regulatory power in a fair, just and consistent manner, and will also enhance SFC's transparency and accountability.

Moreover, the party concerned may apply to SFAT for a review of individual regulatory decisions made by SFC. SFAT was established under the Securities and Futures Ordinance, independent of SFC. It is chaired by an incumbent or former judge, and the existing Chairman is a non-permanent judge of the Court of Final Appeal. He is assisted by two external members well-versed in market operation. Regulatory decisions against which an appeal can be lodged with SFAT include licensing, disciplinary actions, issuance of restriction notices, and so on. All rulings and reasons for the rulings for review cases are open.

Mr James TO also mentioned transparency of law enforcement. Without prejudice to its investigations and possible legal proceedings, and under the premise that statutory confidentiality provisions are met, SFC will try its best to maintain high transparency. All along, under the premise of fulfilling all the above, SFC will publish press releases on any law enforcement or disciplinary actions, if any, upon the completion of investigations for the public to understand the law enforcement action concerned.

Mr Christopher CHEUNG and Mr Charles Peter MOK have expressed concern about the healthy and orderly development of Hong Kong's securities market and the active promotion of financial innovation. In fact, over the years, Hong Kong has introduced many innovation measures to promote market development and consolidate Hong Kong's status as an international financial centre and a major financing platform.

Regarding financial cooperation, the Shanghai-Hong Kong Stock Connect launched in 2014 and the Shenzhen-Hong Kong Stock Connect to be launched next Monday (5 December) are major milestones for the opening up of the State's capital account. These two Connects for mutual access have linked the Mainland bourse with that of Hong Kong. They have not only provided investors with more investment alternatives, but also brought a lot of opportunities for the development of Hong Kong's financial intermediaries. In the process, Hong Kong's position as the leading off-shore Renminbi ("RMB") business centre is also consolidated.

The mutual recognition of funds arrangement between the Mainland and Hong Kong was implemented in 2015. It was the first of its kind between markets on the Mainland and outside of the Mainland, and is also a major breakthrough for financial market development. This arrangement helps investors make a choice among fund products in the two markets and brings new opportunities to the fund business on the Mainland and in Hong Kong. Also, the arrangement deepens mutual access between financial markets in Hong Kong and on the Mainland and strengthens Hong Kong's competitiveness as a major international asset management centre.

Furthermore, with the State advancing "Belt and Road" construction, we consider that Hong Kong can provide support in four aspects, including becoming the major financing centre for "Belt and Road"; further developing and enhancing Hong Kong's function and services as a major hub for offshore RMB; providing services for international assets, risk management and corporate treasury centres for multinational enterprises; and acting as a platform for Islamic bonds. These development will bring more opportunities to the development of Hong Kong's financial industry.

On system enhancement, in order to diversify Hong Kong's fund management platform, the Legislative Council has in June 2016 passed the relevant Bill to introduce a new open-ended fund company structure. This allows funds to be set up like a company in an open-ended manner, but can at the same time enjoy the flexibility denied of conventional companies. In other words, they can create or cancel shares so that investors can have a flexibility in subscribing to and redeeming the funds. These additional alternatives will attract more overseas funds to register in Hong Kong. In particular, Mainland funds will find it more attractive to register in Hong Kong than overseas.

Some Members earlier mentioned the positioning of GEM and the proposal for the establishment of a third board. SFC and HKEx are conducting a comprehensive review of GEM; HKEx is carrying out a study on the other listing systems and the feasibility of establishing a new board to attract high growth, high technology companies to list in Hong Kong. Both of them will conduct a public consultation on the recommendations concerned at the appropriate time.

On financial technology ("fintech"), the Financial Secretary has announced a series of related measures in this year's Budget to support the development of fintech. The Government, various financial regulators and stakeholders are

working closely with one another to implement these measures. For example, SFC and other regulators have respectively established exclusive fintech platforms to enhance communication between regulators and the industry. Hong Kong held the first Fintech Week only in early November. The focus of the activity was to explore the latest trend for fintech development and hold a series of product or service demonstrations, workshops and exchanges to showcase Hong Kong's unique advantage in connecting to global fintech development.

President, some Members earlier mentioned the views of three academics (Douglas ARNER of Asian Institute of International Financial Law and two other professors) on this reform. We have noted the documents published by them which included topics like legitimacy and shadow directors. When we take account of all the views, SFC and HKEx will make a holistic consideration and include those topics.

Finally, President, I would like to express my gratitude again to Members for their valuable views. Regarding the joint consultation on proposed enhancements to decision-making and governance structure for listing regulation, SFC and HKEx will analyse the views expressed in the written representations, and will continue to observe market situation and condition. At the present stage, they have no preconceived conclusion on the next step and the future direction and are maintaining an open attitude. Initial estimation is that they will complete their analysis and study at the end of the first quarter in the following year at the earliest, and will make intermediate reports to the relevant Panel of the Legislative Council. As regards other views put forward by Members, the SAR Government will continue to strive to facilitate market development and enhance financial regulation and enforcement to boost Hong Kong's status as an international financial centre and a hub for off-shore RMB to attract more overseas capital to invest in Hong Kong's securities market.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr James TO to Mr Christopher CHEUNG's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr Christopher CHEUNG, you still have 12 seconds to reply. The debate will come to a close after Mr Christopher CHEUNG has replied.

MR CHRISTOPHER CHEUNG (in Cantonese): President, I would like to thank the 17 Members who have spoken on the motion. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Christopher CHEUNG, as amended by Mr James TO, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Dennis KWOK rose to claim a division.

PRESIDENT (in Cantonese): Mr Dennis KWOK 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 James TO, Mr LEUNG Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Kin-por, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK, Mr Christopher CHEUNG, Mr IP Kin-yuen, Mr Martin LIAO, Mr POON Siu-ping, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan, Mr Jimmy NG, Mr HO Kai-ming, Mr Holden CHOW, Mr SHIU Ka-fai, Dr Pierre CHAN, Mr CHAN Chun-ying, Mr LUK Chung-hung, Mr LAU Kwok-fan and Mr KWONG Chun-yu voted for the motion as amended.

Dr YIU Chung-yim voted against the motion as amended.

THE PRESIDENT, Mr Andrew LEUNG, did not cast any vote.

Geographical Constituencies:

Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mrs Regina IP, Mr Paul TSE, Ms Claudia MO, Mr Michael TIEN, Mr WU Chi-wai, Mr CHAN Chi-chuen, Mr LEUNG Che-cheung, Ms Alice MAK, Dr KWOK Ka-ki, Mr KWOK Wai-keung, Dr Fernando CHEUNG, Dr Elizabeth QUAT, Mr Alvin YEUNG, Mr Andrew WAN, Mr Wilson OR, Ms YUNG Hoi-yan, Ms Tanya CHAN, Mr CHEUNG Kwok-kwan, Mr HUI Chi-fung and Mr Jeremy TAM voted for the motion as amended.

Mr LEUNG Kwok-hung voted against the motion as amended.

Mr CHU Hoi-dick and Dr LAU Siu-lai abstained.

THE PRESIDENT announced that among the Members returned by functional constituencies, 31 were present, 29 were in favour of the motion as amended, 1 against it; while among the Members returned by geographical constituencies through direct elections, 25 were present, 22 were in favour of the motion as amended, 1 against it and 2 abstained. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the motion as amended was passed.

PRESIDENT (in Cantonese): Debate on motion with no legislative effect.

The motion debate on "Combating 'bogus refugees'".

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

I now call upon Mr Holden CHOW to speak and move the motion.

COMBATING "BOGUS REFUGEES"

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

President, the problem of "bogus refugees" has been troubling Hong Kong for a very long time. "Bogus refugees" are people who intentionally exploit the existing system for lodging non-refoulement claims. They stay in Hong Kong, taking up illegal employment, or even committing crimes. Conniving at "bogus refugees" will not only fatten human traffickers but also result in unfair treatment to those claimants who are genuinely subject to persecution risk. This is also unfair to the law-abiding and innocent ethnic minorities in Hong Kong, as they are wrongfully labelled without reason because of these "bogus refugees". That a large number of "bogus refugees" have crowded the queue for non-refoulement protection means longer waiting time for claimants at genuine risk of persecution, including those tortured because of war, and they are also deprived of adequate support as a consequence.

President, my colleague, Dr Elizabeth QUAT, and I have visited some genuine torture claimants. We of course are sympathetic with their situation, yet they emphasize that they are seriously affected by the large number of people abusing the system. President, with regard to such genuine torture claimants, I believe we should give them a hand and provide proper support.

We have identified a few major problems in the existing mechanism for non-refoulement claims. First, many claimants do not lodge any non-refoulement claim even after they have stayed in Hong Kong for a long time, yet they will do so once they are arrested in the course of law enforcement operations against illegal employment or criminal activities. A case brought to the Court of Final Appeal in 2014 serves as a reminder to us. Though the judgment of the case at that time is not the subject of our current discussion, it demonstrates the effect on our present situation. The person concerned was sentenced many times for imprisonment for overstaying in Hong Kong. Upon his release after a five-month imprisonment, he suddenly lodged a claim, seeking to stay in Hong Kong. In fact, many fellow District Council members in numerous districts have noticed this kind of abuse cases.

Second, claimants should be as cooperative as possible during screening, so that they can receive asylum in other countries as soon as possible. However, many of them have exploited every means to prolong the screening procedures, such as cancelling meetings with lawyers for different reasons, including pretending to be ill, so that the Immigration Department cannot carry out any screening, rendering them able to go on staying in Hong Kong. The *Oriental Daily News* reports that there is a backlog of over 10 000 cases in Hong Kong pending processing, and the amount of public money spent on such claims has risen from several hundred million dollars each year in the past to over one billion dollars this year.

Third, many claimants have commit crimes during their stay in Hong Kong, such as stealing, illegal employment, drug manufacturing, drug related crimes, affray, or even rape and indecent assault. Figures from the Police indicate that the number of crimes involving these claimants doubled from 632 in 2011 to 1 152 in 2015 in five years; as many as 641 claimants were arrested for criminal offence in the early half of this year, representing an increase of 30% from the same period last year.

Fourth, the problem has disturbed the daily life of Hong Kong people and ethnic minorities residing in Hong Kong. All of us know that many ethnic minorities living in Hong Kong have become scapegoats because the public are not able to identify those non-ethnic Chinese people which have caused nuisance. They simply cannot distinguish between "bogus refugees" who abuse our system and law-abiding ethnic minorities. As a consequence, ethnic minorities living in Hong Kong are frequently misunderstood and wrongfully labelled in the community. This is grossly unfair to them.

The various problems above have caused great concern among the people. If our public resources are not deployed on helping those claimants who are really suffering from torture, but on supporting those "bogus refugees" who have disturbed law and order by engaging in illegal employment, making quick money or committing offences, how are we going to address this? So, President, we have also offered some recommendations to request a review on the existing unified screening mechanism. The Democratic Alliance for the Betterment and Progress of Hong Kong has long been arousing concerns and making requests to the Security Bureau against the abuses of the system by "bogus refugees". Certain groups have distorted our motives and accused that we are provoking Hong Kong people to discriminate against ethnic minorities. In fact, such remarks are totally groundless and unjustified.

The combat against "bogus refugees" abusing the system is done exactly with an aim to get justice for the innocent ethnic minorities in Hong Kong who are wrongfully labelled. We do it also for claimants genuinely put under persecution. Some even query that we handle this issue only to gain attention for our own credit, mocking us for always quoting media reports, and go on suggesting us to form a fans club for the Oriental Daily News, and so on. I want to respond that it is absolutely right for us to demand the Governments' attention and follow-up on a problem related to certain facts that we learn from the media. This also demonstrates how the media and the legislature should fulfil their monitoring duties.

President, some groups or individuals do not believe these media reports, and they consider that the rights of claimants do not receive proper care. Even though I make a compromise in this respect and accede to such remarks, but we simply cannot resolve the backlog of over 10 000 cases if we do not review the current system and plug the loopholes. As a result, the number of cases will

only go up incessantly, denying true protection to genuine claimants at risk of persecution. This will not offer any help to them, or to the people of Hong Kong.

In the course of our study of the "bogus refugees" problem, we notice a "three-nos" problem in the unified screening mechanism, namely, no time limit, no money limit and no restriction on the claimants' movements. These have brought forth the problems at present. President, by "no time limit" I mean that they can lodge a claim anytime. "Bogus refugees" simply are not qualified to lodge a claim, but if we require them to lodge their claims as early as possible and ask them to prove the alleged torture or inhuman treatment, then we can expose as early as possible the fact that they are not qualified at all.

To "bogus refugees", having "no time limit" is really a big incentive as they can dodge the law enforcement agencies with this and stay in Hong Kong as long as they please, so as to do whatever they want and earn as much as they wish. So, we believe that we must set a statutory time limit for lodging non-refoulement claims in order to close the loopholes. Another advantage for setting a statutory time limit is that claimants must provide evidence within a certain period, and will in effect facilitate the screening process. The United States, Canada, the United Kingdom and New Zealand all have their corresponding time limits. In the United States, claimants are even required to lodge a claim and produce evidence within a year of arrival. All these practices can serve as a useful point of reference for us.

"No money limit" refers to the attempts of "bogus refugees" to endlessly prolong the screening procedures as it costs them nothing to do so. In short, they do not want to go through screening. However, the expenses on publicly-funded legal assistance spent on them have been rising from $76 million in 2013-2014 to the estimated amount of $178 million in 2016-2017. To plug the loopholes, we consider that we should draw reference from overseas practices and cap a limit on publicly-funded legal assistance, while deploying reasonable public resources to help those claimants truly in need. President, the relevant cap on publicly-funded legal assistance in the United Kingdom is set at around HK$8,000. To ensure proper use of resources, we should speed up the screening procedures.

Finally, it is most disturbing to local communities that the claimants are not restricted on their movements. Many claimants can effectively do anything

holding a "going-out pass". They can even commit crimes as if there is no regulation in place. Therefore, we suggest the Government to consider setting up holding centres, so that no "bogus refugee" can work or commit any offence outside. This can also contribute to remove the economic incentives for them to come to Hong Kong. In my opinion, such an arrangement makes it less likely for "bogus refugees" to disturb our communities.

President, I understand that much work is needed before we can tighten the loopholes above. But "bogus refugees" have created such a big problem that I hope we can joint force to create a safe society for Hong Kong people, and reduce the room for abusing the system for lodging non-refoulement claims, so as to focus our resources on satisfying the aspirations of genuine claimants, as well as to give justice the law-abiding ethnic minorities in Hong Kong. Please support my motion.

President, to attach importance to both the Chinese and English languages, I will now speak in English.

MR HOLDEN CHOW: President, there are people who abuse the current non-refoulement protection system by lodging the torture claim without genuine risk of being tortured or prosecuted. These bogus claimants exploit the application system, and finally they will be entitled to stay in Hong Kong, and this is their ultimate motive. They may work as illegal workers and worse still, they may commit crimes as we may see in many cases already reported in the news. Such bogus claimants have tainted the reputation of the local non-Chinese groups. I have spoken to the ethnic minorities groups in Hong Kong, and they have great concern over the impact caused by such fake claimants, namely they are wrongfully labelled as criminals and that is so unfair to the innocent ethnic minorities in Hong Kong.

President, bogus claimants may have been deceived by human trafficking rings and come to Hong Kong. But the problem boils down to the incentive of human trafficking rings to engage in these sort of business. It is because they see the loophole in our system and they see the chance to force fake claimants to commit crimes to reap the money, and this is very unscrupulous conduct. But if we do not fix the loophole, this sort of unscrupulous business would continue to exist.

President, my colleague, Dr Elizabeth QUAT, and I paid a visit to the NGO which provides assistance to refugees who have a genuine claim and their status has been duly approved. For these genuine cases, we do need to provide them with adequate help. And they have also complained to us that right now there is a backlog of over 10 000 cases pending processing, but many of them are fake claims, and these fake claims have prolonged the entire course of processing, and that will finally ruin the interests of the people who are genuinely in need.

President, I suggest that a time limit be imposed for lodging a protection claim. I also suggest the imposition of a cap on the legal assistance provided to the claimants and the setting up of a holding centre to look after the claimants. And all these measures, in short, are done with only one single purpose, which is to eliminate the incentive for people to abuse our system. I notice that there are false allegations against us of being discriminatory towards ethnic minorities while dealing with the "bogus refugees" issue. President, this is completely untrue and nonsense. Please do not take things out of context.

On the contrary, we target those who abuse the non-refoulement claim system. If we can tackle them successfully, we would be able to ensure the interest of genuine claimants, and to remove all unfair prejudices against the local innocent ethnic minorities, and finally herald the very inclusive nature of Hong Kong. Thank you.

Mr Holden CHOW moved the following motion: (Translation)

"That the problem of 'bogus refugees' has become increasingly serious in recent years; after arriving in Hong Kong by various means, quite a number of people have abused the unified screening mechanism for non-refoulement claims ('unified screening mechanism') by lodging non-refoulement claims and employing every means to prolong the screening procedures; they stay in Hong Kong for the purpose of engaging in illegal employment and even serious criminal activities, etc., so as to make money; the abuse of the unified screening mechanism has aroused grave public concern, and exerted heavy pressure on Hong Kong's law and order, immigration control, judicial system, welfare, etc.; in this connection, this Council urges the Government to comprehensively review the unified screening mechanism, and actively consider adopting the approaches in overseas places to formulate measures to combat the arrival of 'bogus refugees' and prevent the abuse of the unified screening

mechanism, including stepping up cooperation with neighbouring regions to intercept illegal entrants, allocating additional resources to expedite the procedure for screening non-refoulement claims, setting a statutory time limit for lodging non-refoulement claims, imposing a cap on the publicly-funded legal assistance, and setting up holding centres to properly settle and manage non-refoulement claimants."

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

Seven Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the seven amendments.

I will call upon Members who move the amendments to speak in the following order: Mr HO Kai-ming, Ms Claudia MO, Ms YUNG Hoi-yan, Mr POON Siu-ping, Dr Priscilla LEUNG, Dr Fernando CHEUNG and Mr James TO; but they may not move the amendments at this stage.

MR HO KAI-MING (in Cantonese): President, there is only one aim in my speech today, that is, to tackle the abuse. Hong Kong has been a city of high stability, so people living in politically unstable countries, countries with lingering civil wars or lands beset by war all over the world will come to find a safe haven in Hong Kong, so that their families can lead a peaceful life here. Hong Kong is located in South East Asia, so comparatively, it is nearer to Southeast Asian countries and regions as well as East African countries. As a result, a lot of people from these places want to come and seek asylum in Hong Kong.

Hong Kong is a pluralistic and inclusive society. Hong Kong people are willing to help people who have difficulties—genuine difficulties. Besides, as far as the law is concerned, China is a contracting state to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment ("the Convention"), so the Convention is also applicable to Hong Kong, the Special Administrative Region of the People's Republic of China. For that reason, if a person lodges a non-refoulement claim with the Immigration Department ("ImmD"), the relevant authority will have to process it.

However, we can see that the Convention is apparently being abused as shown by the trend in recent years. There are reports that the majority of people making a non-refoulement claim have come to Hong Kong to seek asylum not just because of the outbreak of wars or political instability in their home countries. Many people are attracted by the one-stop services provided by certain syndicates. These syndicates will publish advertisement in these places and offer air tickets and will guarantee jobs opportunities, as well as the legal assistance if these people are arrested by the police. Actually they are not political asylum seekers, and they are just illegal entrants who want to make a living in Hong Kong. Since these people who make a non-refoulement claim have no genuine asylum need, we consider that we must verify their identities and repatriate them to their home countries as soon as possible.

It is widely known that the Convention has been abused. For that reason, we strongly oppose the complete deletion of the wording of the original motion in Ms Claudia MO's and Dr Fernando CHEUNG's amendments—especially the measures proposed in Ms Claudia MO's amendment. She is a Member returned in the Kowloon West geographical constituency, which includes Yau Ma Tei and Sham Shui Po, but I really do not know how many night visits she has paid to these two communities which have a relatively larger number of impoverished people. At night time, these two districts are frequented by non-local people who have caused a serious deterioration in the public order of these districts. Therefore, we consider that we should help those who are in genuine need of lodging non-refoulement claims. Nevertheless, we should curb those who are abusing the Convention. It is only in this way that applicants can be treated in a fair manner.

The Government has actually spent quite a lot of money on dealing with torture claims. According to government statistics, $640 million were spent in 2015-2016 to handle these torture claims, including Duty Lawyer Service, ImmD's expenses as well as the resources of the Torture Claims Appeal Board ("Appeal Board"). Comparing with the $430 million spent in the year before, the relevant expenses have increased by at least 50%. All these expenses are paid by taxpayers. We should exercise prudence in dealing with these issues and we should use the money appropriately.

I am a Member representing the labour sector. I have contacted certain ImmD staff in the course of seeking support from the sector. They keep on telling me that very often they cannot find these claimants, as these claimants

would try every means to delay the trials. It is a common occurrence. In particular, because of manpower shortage, applications for other services of ImmD are delayed. Therefore it is rather unfair to the rest of the public.

Another concern of us is that these claimants have become illegal workers. In particular, most claimants lodge their claims just because they want to make a living in Hong Kong. Some intermediary companies or agencies will arrange jobs for them. Last year, ImmD arrested 1 117 claimants who were engaging in illegal employments. In the first 10 months of this year, ImmD arrested 421 non-Chinese illegal workers and 254 local employers. All this shows that the problem of illegal workers is very rampant. The Hong Kong Federation of Trade Unions ("FTU") hopes that ImmD will step up its efforts to crack down on the problem in order to achieve a better deterrent effect. Nevertheless, we have asked the Under Secretary for information about the figures of unsuccessful prosecution of employers who employ these claimants in the last meeting of the Security Panel. We hope the authority will provide the figures as soon as practicable, so that the successful prosecution rate can be increased and a severe blow could be struck at the employers who employ these claimants, with a view to reducing the incentive for illegal entrants to come and seek employments in Hong Kong.

In addition, FTU considers that we should set up a holding centre for them, with a view to reduce the chance for them to engage in illegal employments. It is because the major purpose of many of the claimants is to come to find a job in Hong Kong and then send some money back to their home countries. If a holding centre is set up, then they will not be able to engage in illegal employments, thus reducing their desire for coming and looking for a job in Hong Kong. At the same time, it can also shorten the time for processing their claims. It is because that they are using various excuses such as feeling sick, taking body check and having problems to absent themselves from trials or delay the submission of papers. In this way, trials are delayed. If a holding centre is set up, we can avoid the above situations.

The abuse of non-refoulement claim is also unfair to ethnic African or South Asian people in Hong Kong who came to settle in Hong Kong through proper channels. The impression held by the public (especially ethnic Chinese residents) towards them will likely be affected. People who abuse the system have caused unnecessary discrimination against them. As to people suffering from genuine political persecutions, the lengthy trials—because of too many claimants—have been delayed for a long time, and have caused unfair treatment

to these residents in an indirect way. Therefore, we hope the Government will try every possible means to shorten the time in this respect and curb the abusive claimants.

In fact, as a small number of claimants are still verified, we therefore do not agree with the accusation that every case is being abused. This is something we do not agree with. With regards to verified cases, we consider that the authority should provide the appropriate help according to the relevant convention. However, if we fail to deal with the abuse, it will only cause persecution to those genuine and needy asylum seekers. It will also affect the life of local residents. We hope various sectors of the community can face the abuse of the Convention squarely and sensibly.

President, I so submit.

MS CLAUDIA MO: It's quite sad to listen to their logic—the logic on the part of the Beijing loyalists. Are they practising Pavlov's theory in Hong Kong or what? What they are practically saying is that ethnic minorities include "bogus refugees", and "bogus refugees" practically all, or almost all, are criminals or potential criminals. But, they say no racial discrimination please, and they are trying to help ethnic minorities in Hong Kong. So, what are you trying to say really? You are trying to link, you are, that ethnic minorities and this "bogus refugees" problem could be equated, and this is just not fair to say that Hong Kong has a huge problem of "bogus refugees" so-called. It's an overstatement. Bogus, how? Innocence until proven guilty.

They keep talking about bogus claimants. That's an oxymoron. A claimant can only be certified bogus when his application fails. When he is in the process of having his application done, you cannot call this person or his claim bogus. Where is our logic? And the number of such claimants in Hong Kong is hardly baked 10 000 plus against a population of 7 million plus. A lot of the claimants, I suspected probably half of them belong to a backlog of people who were trying to have their cases heard back in 2008 but failed. And then there were human right lawyers taking their cases to court saying that our screening mechanism is simply not of high fairness standard. That's what happened, and the cases had to be reheard, and so that explain the backlog.

This issue becomes all too conspicuous, thanks to political gestures on the part of the Government and I am sure there are some sort of diversion tactic here to distract Hong Kong people from other more acute miseries such as housing problems, political problems, what have you. And of course, I have had a complaint sent to me directly from some residents saying that there were apparent non-refoulement claimant type of people in their neighbourhood behaving rather unruly in the middle of the night and they caused nuisances, and so on and so forth.

But that doesn't mean that we have to look at them, or label them right from the beginning that they are bogus, fake, phony people, or they are here just to try to grab Hong Kong's economic prosperity. This is just not a fair comment from this Chamber. They are illegal immigrants, that's for sure for their illegal entrance. But what exactly are they? Shall we not give them a chance? One proper chance to look into their grievances?

And they ask for no racial slurs, saying that the ethnic minorities residents, the Hongkongers, are stopped by the Police here asking them for their "行街紙", what is called the "Recognizance Form"—I've never learnt this particular term. Our policemen have also being conditioned to think that if an ethnic minority person behaving not quite right in their eyes, they could assume that this person is some refugee type, some "bogus refugee" claimant type.

I was curious to hear earlier the original motion proposer saying that when they commit crimes, there is no way to check them out, or to supervise them. The original quote which came in Chinese is "犯罪都無從監管". I am completely taken aback. What are you talking about? All criminals in Hong Kong should be and must be dealt with by the Police and the law.

I am against some of the suggestions made by the Beijing loyalist camp about this issue, the so-called immediate repatriation or repatriation upon arrest. Repatriate them to where and how? A lot of them, a vast majority of them came from Mainland China via the Mainland into Hong Kong, so what are you going to do about the land of origin? What if their country of origin refuses to take them back? This just doesn't sound right. And their second suggestion is that we should set up new and closed refugee camps. Come on, this is 2016. Suggestion of the sort is simply against humanity and it is just not right.

And thirdly, they suggest Hong Kong might as well just withdraw from that UN convention against torture. I don't know if you can just do that. I really don't think you can just do that; having signed something, agreed to something and then say "because things don't work out like the way we want them to be, so sorry, I'm quitting, bye bye, I'm leaving". You cannot do that, right? So, this just doesn't sound right for Hongkongers in general who are not too familiar with this particular topic. The Government is trying very hard to make it so loud and so conspicuous an issue in Hong Kong.

You have to realize that back in 2008, we have human right lawyers in Hong Kong deciding that our screening process for refugees status claimants are simply not right. They took it to court, and they won, and the Hong Kong Government was actually ordered by the court to redo things. There was a time lapse as a result, a one year gap between 2008 and 2009. The screening process was shelved altogether for one year.

And then in 2013, only three years ago, the Court of Final Appeal told the Hong Kong Government that they should have a proper, unified screening mechanism. And we do now, thanks very much. But we need to learn to expedite the operation of that mechanism to make things work faster and we have to make sure we work things fairly and justly without discrimination too. Justice is not just done. Justice also needs to be seen to have been done. Thank you.

MS YUNG HOI-YAN (in Cantonese): President, before I speak, I would like to declare that I once dealt with non-refoulement claims when participating in the Duty Lawyer Scheme ("DLS") as a barrister.

President, according to the information provided by the Immigration Department of Hong Kong, the Department received 3 481 non-refoulement claims in the first 10 months of this year. And from the inauguration of the unified screening mechanism in March 2014 to late October this year, more than 10 600 claims were pending screening by the Department. Given the Department's new target of processing more than 5 000 claims annually and disregarding the average monthly addition of 400 odds new claims, it will take at least two years to fully handle the 10 000-plus outstanding claims. Some Hong Kong people are worried that the persistently large number of non-refoulement claims have produced many effects on Hong Kong, such as social, labour and,

discrimination problems. If the situation persists, Hong Kong will sustain deep and far-reaching impacts. Moreover, the annual government expenditure on assessment of claims, publicly-funded legal assistance and humanitarian assistance is enormous. It is estimated that $1.7 billion will be spent in this regard in the current financial year, thus posing a heavy burden on our public finances. We definitely do not want it to become another financial abyss.

Since the reunification in 1997, Hong Kong has continued to abide by the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The SAR Government cannot repatriate a foreigner who claims that if he is sent back to his original country of abode, he will be subjected to torture, inhuman treatment and persecution. Following the handing down of judgments by the Court of Final Appeal in the Ubamaka case in December 2012 and in the C & Ors case in March 2013, the Government started to implement the unified screening mechanism on 3 March 2014, whereby the Immigration Department will screen non-refoulement claims made on the three grounds of torture, inhuman treatment and persecution. Meanwhile, the Government has clearly stated that non-refoulement claims made on all applicable grounds will be processed in one go under the unified screening mechanism.

Two years into the implementation of the unified screening mechanism, many lawyers have found the meaning of applicable grounds considerably ambiguous. It is particularly confusing whether Article 2 of the Hong Kong Bill of Rights is an applicable ground under the unified screening mechanism. Therefore, many lawyers have made enquiries to the Immigration Department. The Department eventually issued a notice on 12 September this year, stating formally its stance on all applicable grounds, that is, under the unified screening mechanism, "the Department would assess whether a claimant, if removed from Hong Kong, would face a personal and substantial risk of his absolute and non-derogable rights under the HKBOR [Hong Kong Bill of Rights] being violated at another country (e.g. right to life under Article 2 and torture or CIDTP [cruel, inhuman or degrading treatment or punishment] under Article 3 of the HKBOR), in addition to the risk of being subjected to torture as defined under Part VIIC of the Immigration Ordinance." To put it simply, commencing 12 September this year, the applicable grounds for claims include the "right to life", apart from the three grounds of torture, inhuman treatment and persecution. The claim form was also revised on the same day.

President, the Immigration Department has formally established the "right to life" as an applicable ground for claims. Despite having formulated an one-off measure, are there loopholes with the existing unified screening mechanism? Will any additional applicable grounds emerge in the future and prompt the same claimant to re-apply for screening, thus adding to the already heavy workload of the Department and in turn endlessly postponing the clearance of outstanding cases?

With regard to non-refoulement claims and the potential problems they generate, I met with Secretary for Security Mr LAI Tung-kwok in April this year, together with Mrs Regina IP and Mr Michael TIEN of the New People's Party, as well as a number of District Council members and local Indian businessmen, to convey our comments and suggestions. The major objective of the amendment that I put forward today is to urge the Government to comprehensively review and enhance the unified screening mechanism, including exploring the imposition of a requirement that non-refoulement claimants must lodge claims within a specified time frame upon arriving in Hong Kong, increasing the number of lawyers and interpreters, and introducing information and communication technology such as live television link and call centres, so as to expedite the processing of the large numbers of outstanding claims at present. Meanwhile, it is also hoped that the Government will comprehensively review the publicly-funded legal assistance system, explore the setting up of holding centres to properly settle and manage non-refoulement claimants, and review the assistance mechanism provided to the claimants. Actually, the New People's Party has earlier advised the Security Bureau to consider setting up a closed camp in the remote area of the territory to accommodate incoming claimants under a reasonable time frame. This move can increase the deterrence effect and reduce the incentive to enter Hong Kong illegally.

There are indeed plenty of problems associated with non-refoulement claims and considerable room for improvement with regard to the existing screening process. I advise the Government to consider tightening the process, which includes implementing such measures as stipulating a specified period for claimants to lodge claims after arriving Hong Kong, so as to eliminate cases where incoming workers lodge non-refoulement claims only when their visas are about to expire, so as to extend their stay in Hong Kong. Providing a specified time frame for lodging claims can help shorten claimants' stay in Hong Kong and dampen their incentive to come and work as illegal workers in the territory.

President, in the meeting of the Panel on Security held on 11 November, the Security Bureau revealed that in order to expedite the screening of the large number of outstanding claims at hand, the Government was planning for a legal assistance pilot scheme on a supplementary roster of lawyers to complement the DLS. This pilot scheme will increase the supply of lawyers on the one hand but create queries and concerns on the other. It is questionable whether the training provided by The Law Society of Hong Kong and the Hong Kong Bar Association can dovetail with the scheme. When the supplementary roster is operated alongside the DLS, will unequal pay be given for equal work? If solicitors or barristers hired by the Government are not supported by experienced staff, in giving interviews to the persons concerned and in rendering administrative assistance, will these lawyers stand an even higher legal risk? Will more appeals be generated, thus prolonging the processing time for claims?

Indeed, many legal professionals apart from me have raised a lot of queries and pointed out various areas needing clarification with regard to the content and specific operation of this pilot scheme. Yet, before these queries are duly addressed, the Immigration Department jumped the gun in mid-November, writing to all lawyers on the DLS roster so as to brief them and invite them to join the pilot scheme. I hope the Government can properly consider the relevant problems and deal with them appropriately before launching the scheme, so as to avoid compromising its implementation and efficacy.

Furthermore, I advise the Government to consider improving and enhancing the existing interpretation service to further raise the efficiency of the screening process. On top of this, the use of information and communication technology, including the introduction of live television link and call centres, should be strengthened and capitalized on, so as to allow instant communication between claimants and case lawyers and interpreters, with a view to speeding up the processing of outstanding claims. There are actually laws regulating the presentation of evidence to the Court through live television under the existing judicial system. Given the effectiveness of the measure, it should be introduced to the screening process for non-refoulement claims.

President, many foreign countries have a wealth of experience for Hong Kong to draw on with regard to handling refugees and asylum seekers. One of the examples is the Australian Government's handling of refugee protection application. An immigration officer in Australia may talk to an applicant for refugee protection via video facilities or telephone if the latter cannot go to the immigration office in person to complete the relevant procedures, so as to reduce

transportation time and manpower cost. Additionally, the Australian Government Department of Immigration and Border Protection provides round-the-clock translation and interpretation service to people in need throughout the year, and renders instant telephone service in more than 160 languages. Hong Kong should draw reference from Australia in this regard.

President, non-refoulement claims and their resultant problems have brought about quite a number of repercussions to Hong Kong. We hope the Government can conduct a comprehensive review of the existing screening mechanism for early alleviation of the problem.

President, I so submit.

MR POON SIU-PING (in Cantonese): President, Hong Kong is an open and modern city. Under the tide of globalization, we have long since faced the problem of non-political "bogus refugees" coming to Hong Kong simply to pursue a better life and opportunities in spite of all the risks. The original intent of implementing the non-refoulement claim mechanism in Hong Kong is to spare victims of inhuman treatment overseas from repatriation. Basically, this is a humanitarian measure, but with the flow of people amidst globalization, the nature of the measure has somewhat changed. According to the information of the Immigration Department ("ImmD"), only 43 of the 5 000 or so completed cases are found to be substantiated. This is proof of the changed nature of the mechanism.

Since the implementation of the unified screening mechanism in 2014, the authorities have received over 1 000 cases of non-refoulement claims every quarter. But the assessment of just about 5 600 cases has been completed. This number lags far behind the number of claims. With the persistent accumulation of substantial non-refoulement claims, various social problems have ensued. Members from various political parties and groupings have put forth their views on the motion today and hit the crux of the problem. When the Security Bureau explained its comprehensive review of the strategy for handling non-refoulement claims to this Council's Panel on Security ("the Panel") in the middle of this month, they pointed out that in the first 10 months of 2016, ImmD launched 476 operations targeting on non-ethnic-Chinese illegal workers and arrested 421 such workers and 254 local employers. These figures registered an increase of 26% and 44% over the figures in the same period of 2015. These figures have aroused my grave concern.

Also according to the information provided by the Security Bureau, while the number of non-ethnic-Chinese illegal entrants in Hong Kong in the first three quarters of 2016 registered a drop of some 800 over the figure in the same period of 2015, illegal workers had kept increasing. At the Panel meeting, an Assistant Director of ImmD pointed out that illegal workers were often found to be employed at waste recovery sites, Chinese restaurants and factories. These are the places where grass-roots workers make a living. The employment of illegal workers will deal a direct blow to the working opportunities of grass-roots workers.

In 2009, the Government amended the Immigration Ordinance to criminalize the employment of illegal entrants. At present, employers of illegal workers shall be liable to a maximum penalty of three years' imprisonment and a fine of $350,000. However, as disclosed by the Government at the Panel meeting, the employers of illegal workers are merely sentenced to a prison term of two or three months on average. As cases involving the employment of illegal workers keep increasing in number, we have reasons to believe that the deterrent effect of the existing penalty on employers is insufficient.

As indicated by the Secretary for Security at the Panel meeting, it is believed that most illegal entrants are from the Mainland. This clearly shows that if the authorities want to combat illegal workers at source, they must step up cooperation with the relevant Mainland departments. Recently, it was reported that the Guangzhou Government intended to strengthen its efforts of combating illegal workers there. ImmD must step up communication and cooperation with the Guangzhou Government, or else the illegal workers there may attempt to come to Hong Kong through various channels. This will aggravate our problem of illegal workers.

President, I must confess that it is no easy task to tackle the "bogus refugee" problem and its associated social problems. Here, I have no intention to fan the xenophobic sentiments in community. But I must stress that we should not allow the "bogus refugee" problem to adversely affect the living of the grass roots and the underprivileged. I urge the Government to adopt effective measures and speed up their crackdown on illegal workers and their employers.

President, I so submit.

DR PRISCILLA LEUNG (in Cantonese): President, as the name implies, "bogus refugees" are not illegal entrants who were subjected to torture, but a group of people who abuse the legal aid and legal procedures of Hong Kong in order to take up illegal employment in Hong Kong. These people do not come to Hong Kong due to civil war or torture treatment in their home countries, and it is highly likely that they are attracted to come to Hong Kong. Upon arrival in Hong Kong, provided that they lodge a claim, they will be entitled to a living allowance of more than $3,000 per month. Besides, they will be provided with a package of services, including immediate provision of legal aid and arrangement to take up illegal employment. Some people even say that they are recruited by certain syndicates or groups to commit crimes in Hong Kong.

Some ethnic minorities have shown me the advertising leaflets that they brought from their home countries, which say that while it is very easy to find jobs in Hong Kong, they can be provided with a package of legal services and a living allowance of more than $3,000, and they may thus earn more than $10,000 a month. These advertising leaflets are given to me by my friends from ethnic minority groups and they are genuine.

President, I am a Legislative Council Member representing Kowloon West, and the hardest-hit areas of the "bogus refugees" problem are Tsim Sha Tsui, Hung Hom and To Kwa Wan. The first batch of requests for assistance came from Chungking Mansions, where a number of crimes occurred one after another, and the residents concerned hope that Legislative Council Members can follow up this problem. Of course, I have been observing the situation and trying to understand the issue with the people concerned, and among them, Ms LAM Wai-lung always urges me to put forward a proposal at the Legislative Council meeting and ask the Government to separate illegal entrants who abuse the torture claim procedure from legitimate residents as soon as possible.

In past two years, some ethnic minorities came to my office in the Legislative Council Complex and told me that they encountered robberies while going to work in Tsim Sha Tsui and Hung Hom districts, and the robbers were highly suspected to be illegal entrants or torture claim abusers. They have now reached the limit of their endurance, as they already requested assistance from the Government a long time ago and reported the cases to the Police, but no suspects were identified and the investigation turned out to be fruitless. According to them, they may consider withdrawing their investment because they find that the living environment of Hong Kong is already not as safe when compared with the

past, especially in the areas with more ethnic minorities. They therefore ask us to quickly propose that legitimate residents (they are legitimate Hong Kong residents) should live separately from those illegal entrants who abuse the torture claim system, and they hope that the safe living and working environments can be restored in Hong Kong. Therefore, this is not only a matter of resources.

Under pressure from various aspects, the Government has done some work, including combating the problem together with the countries of origin of refugees. As a matter of fact, some actions have also been taken in the community. The Indian Chamber of Commerce Hong Kong has taken the initiative to put up anti-propaganda, counteracting these advertisements in the home country. At the end of the last legislative session, an amendment proposed by the Government was passed against "snakeheads" to the effect that the maximum penalty is now imprisonment of 14 years. However, I want to tell the Secretary that when the incentives still exist, "bogus refugees" will continue to flood in, and the law and order of Hong Kong will still be jeopardized.

In respect of this issue, I have visited the consulates of the countries of origin of these "bogus refugees" in Hong Kong and the Office of the Commissioner of the Ministry of Foreign Affairs in Hong Kong in order to find a solution. Of course, we have also been to the Security Bureau many times. In March this year, through the information that we have searched, we even went to inspect the old site of refugee camp in Tai A Chau.

On 4 July this year, Mr Jeffrey LAM and I went to the Public Security Bureau of the Guangdong Province to give an account of the refugee problem in Hong Kong. The reply that we get is: Firstly, of course, China as the sovereign state of Hong Kong has signed the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 3 of the Convention mainly states that no State Party shall return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. These illegal entrants are precisely abusing this article. As soon as they set foot on Hong Kong, they lodge torture claims and then we have to provide them with legal assistance and living allowance.

Secondly, in regard to the "going-out passes" issued by Hong Kong—my amendment mainly asks to abolish the issuance of "going-out passes" (i.e. Recognizance Forms)—even the consuls of foreign countries said that if we abolish the issuance of "going-out passes", the number of illegal

entrants will be greatly reduced. How did the Public Security Bureau of the Guangdong Province respond to us? It said that each year, the authorities have to spend more than $50 million to repatriate these "bogus refugees" (i.e. spending a few thousand dollars on each refugee), and they want to deal with them in a quick and decisive way. It also said that under "one country, two systems", Macao, which is also under one country, does not have such a serious problem as in Hong Kong. The Public Security Bureau of the Guangdong Province told us to ask the Hong Kong Government why there are so many "bogus refugees" coming to Hong Kong. The Public Security Bureau thinks that it is also being affected by this problem, because these people risk their lives to come to Hong Kong via the Guangdong Province under the impression that they can have better food and accommodation in Hong Kong. Hence, the Public Security Bureau of the Guangdong Province is also blaming us. It asks us not to pass the buck to it, and says that if the policy of the Hong Kong Government is indulging them, it should review its own policy. This is a fact. The Public Security Bureau of the Guangdong Province really has very strong response as it also has its burden. The Bureau thinks that it is Hong Kong's policy which attracts these people to come here.

Therefore, the problem lies in the incentives. Who wants such a large number of refugees staying in Hong Kong? Of course, no one wants it to be like that. The situation today is different from the influx of Vietnamese refugees back then. As we have proposed many times, the Government should impose a concrete cut-off date and a decisive policy stating that the refugees who arrive after a certain date will not be granted "going-out passes", while to the refugees who arrived before a certain date, the Government will adopt some decisive measures such that they will not be stranded here for a few more years. Some refugees even have given birth to children in Hong Kong. The situation of these children is also quite miserable as they cannot receive normal education.

Therefore, I think that the Government should apply for some resources in order to quickly resolve the existing problem pertaining to the refugees stranded here, while in the future, we should no longer issue "going-out passes" and there will no longer be any refugees living in the Hong Kong community. The consulates of other countries also say that some of these refugees have criminal records in their home countries and they are not political offenders, but the Government just did not discuss the matters with the consulates concerned. Our Government only buries its own head in the sand and then tells us the situation

has already improved. This cannot convince the public. Besides, while Ms Claudia MO always makes comments on this problem, Mr Kevin YAM also often criticizes us for being as hypocritical as Pharisees. This is indeed too much an accusation. He even says that the number of refugees in Hong Kong cannot be regarded as large when compared with other places in the world. However, it is not a matter of quantity, but a matter of principle. The policy of Hong Kong on these people is downright indulgence.

Then what should be done after the cut-off date? In fact, detention is possible under the Hardial Singh principles in common law, which state that a person may be detained only for a period that is reasonable to effect removal. At present, 20% of places in the detention centres of Hong Kong are vacant. Even if there are no vacant places, they can still be sent to Tai A Chau or Green Island. The environment of Tai A Chau is rather beautiful. Their stay in these places is conducive to their personal safety.

I have a point to make. Why do the authorities sometimes say that they cannot find the criminals? It is because after committing crimes for some criminal syndicates, those criminals might have already disappeared in this world and thus the Hong Kong Police can never find them. These people were actually rather miserable, as they risked their lives to come to Hong Kong, thinking that they might enjoy better food and living, but were being made use of at the end. They mistakenly believed what was portrayed in the advertisements, and mistakenly believed that Hong Kong was really a heaven.

I thus think that we should face up to the issue squarely and state the fact that a cut-off date will be imposed soon in Hong Kong and all those who arrived before that date can receive a sum of money. I have a close friend working in the Torture Claim Assessment Division and his main duty is to prepare testimonies. According to him, the manpower of this Division is really tight and the staff need to work from morning till night. In fact, the Government can increase manpower, and an increase in the number of lawyers is also acceptable. As I know, the Government is now considering employing an extra 500 lawyers. I do not oppose that, but for the existing cases, they cannot be handled by just a few law firms, otherwise this will result in monopoly. Moreover, if there is a cut-off date, we will not need a few hundred lawyers to resolve the problem in the long run. At the end, we have to resolve the problem of incentives from the root.

I thus hope that the Secretary can hear my view so that I do not need to repeat it here. I would ask them not to take the problem lightly but face it squarely and resolve the problem of "bogus refugees" from the root. Upon abolition of "going-out passes", we should put in place some ancillary measures. Therefore, we should not allow the newly-arrived refugees to live in the community, especially when many ethnic minorities also think that their personal safety is being threatened. The problem can be resolved only when we implement this measure.

I hope that the Secretary can draw a lesson from the bitter experience and resolve the problem within this term. President, I so submit.

DR FERNANDO CHEUNG (in Cantonese): President, in 2014, a 17-year old girl by the name of Malala became the youngest ever Nobel Peace Laureate.

Malala was born and grew up in Pakistan. Since Malala's family ran a school, she was able to go to school. She is an advocate of education for women. However, local religion bans women from receiving education and some militants thus persecuted her and her family. On one occasion, the militants fired three shots at Malala. She was seriously injured and almost lost her life. Incidentally, some international media were at the spot when the incident happened and it aroused international concern. She later went to Britain to receive treatment but became a refugee upon recovery. Malala was persecuted because of a simple belief, that is, women should have equal chance of going to school. Fortunately, the incident came under the spotlight of international media.

What sin has this youngest Nobel Peace Laureate committed? If she came to Hong Kong now, what would have happened? A few years ago, an American called SNOWDEN came to Hong Kong and exposed something that rocked the whole world: United States intelligence agencies have launched a global surveillance programme. You may not believe, but this whistleblower ended up being a refugee.

President, we must first admit that refugees do exist in this world. Many people do not become refugees because of war at home. They are persecuted because of their status, belief, religion or what they did in the past. Their personal safety is under threat. Hong Kong is a cosmopolitan city. If these

people come to Hong Kong to seek asylum … Although Hong Kong has not signed refugee conventions, many court cases tell us that the SAR Government has an inevitable responsibility towards asylum seekers who have come here. The authorities have formulated a unified screening mechanism but how should we treat them?

Now, some Members of the Legislative Council are saying that they have created a big problem as their number is growing. To make matters worse, some of them are "bogus refugees". Their purpose of coming here is to work and they take up public resources. They are actually deceiving Hong Kong people. On what basis do we say so? Some Honourable Members said that in Hong Kong, the substantiation rate was below 1% which proved that over 99% were "bogus refugees". Last year, the Legislative Council Secretariat prepared a fact sheet on the "Handling of non-refoulement claims in selected places", comparing the situation in Hong Kong, Australia, the United Kingdom and Germany. Let us take a look at the substantiation rate. Hong Kong's substantiation rate was less than 1%. As for Australia, the substantiation rate for applicants who entered the country by air was 33%, and 68% for those who entered by boat. President, this fact sheet was prepared by the Secretariat. In 2014, the substantiation rate for the United Kingdom was 41% and 42% for Germany. Back then, the catastrophic refugee crisis has not yet appeared in Europe. I believe the substantiation rate will be higher now and may reach over 90%. President, why is it that the substantiation rate for other countries is 40% to 60% whereas ours is below 1%? Are all those who come to Hong Kong "bogus refugees"? What evidence do we have to prove that these people only deceive Hong Kong and not Australia, Germany and the United Kingdom? Has our system failed or do we only attract "bogus refugees"?

President, I really find it hard to comprehend. President, if someone enters Hong Kong through normal and legitimate means and makes a non-foulement claim as a tourist, what would Immigration Department ("ImmD") officers say? They would say that since his status is a legitimate tourist, there exists no condition of removal. He can only make a non-refoulement claim when he faces removal because he has overstayed and breached the Immigration Ordinance. In other words, if he wants to make a claim, he must first breach the Immigration Ordinance. He must be an overstayer or illegal entrant. Yet, we will call all of them criminals.

Mr Holden CHOW said that they are framing up. What I said earlier is framing up. If a person has not breached the law, he cannot make a claim. But we would say that he is a criminal if he breaks the law. Dr Priscilla LEUNG said that they are living a good life in Hong Kong. May I ask her to take a look at how the Government is treating the refugees: They are given rental allowance of $1,500, food coupons of $1,200 and some $200 to $300 to cover transport and miscellaneous expenses? The important principle is they should have no extra money in their pockets. We definitely will not allow the mechanism to be abused. However, are they living a good life in Hong Kong? Are they being treated humanely? May I ask Dr Priscilla LEUNG or other pro-establishment Members to try to live on a monthly rental of $1,500 and meal expenses of $1,200? This is absolutely impossible.

I know many asylum seekers who have come to Hong Kong for many years. The Government prohibits them from working. They have no income and have to live on the meagre monthly subsidies. Among the asylum seekers I know, one of them by the alias Roger was finally verified last year by ImmD that he would really be persecuted. He has been in Hong Kong for nine years and is waiting for the United Nations to confirm his refugee status. President, how did he spend these nine years? He waited from 29 years old to 38 years old and wasted the prime of his life in Hong Kong. He was a military officer in Pakistan. As his life was threatened, he borrowed money from relatives to flee to Hong Kong. He has spent 10 years here but his future remains unknown.

President, we have to handle the refugee problem *(The buzzer sounded)* … as a cosmopolitan city and in a humane manner.

PRESIDENT (in Cantonese): Dr Fernando CHEUNG, please stop.

MR JAMES TO (in Cantonese): President, I have prepared a scripted speech but in order to have a more lively debate, let me not follow the conventional pattern of delivering the speech, since the background and basis of the issue under discussion are well known to all.

There are a few points which I think are worth mentioning for our discussion here. I have joined this Council for more than 20 years and since the days of Vietnam refugees, the development of the whole issue has always been a

subject of concern to me. First of all, the problem is that as pointed out by Dr Fernando CHEUNG just now, the rate of claimants being screened in as refugees in overseas countries is higher, while that in Hong Kong is only about 1%. Is it caused by the inherent problems of local procedures or other structural reasons? It is indeed not easy to draw a conclusion.

I can only say that if we are generally confident of the system in place in Hong Kong (including the courts and lawyers), and there are now lawyers rendering assistance to claimants so that submissions would be advanced as best as possible for their case, I do not think we can attribute the low rate of claimants being screened in as refugees in Hong Kong to the failure of local lawyers to offer help, or the particularly draconian laws enacted here in Hong Kong as well as the excessively high threshold set by the local courts, under which a large number of genuine refugees could not be screened in and could only be regarded as "bogus refugees". If we consider a slightly lower rate of screened-in cases generally acceptable, the rate should be in the range of a few percentage points, and I do not believe that Hong Kong can emulate the high rate of screened-in cases in overseas countries and have tens of percentage points of claimants screened in as genuine refugees.

Under such circumstances, judging only from the rate of screened-in cases, it is true that a conclusion can easily be drawn by Hong Kong people to say that more than 90% of these claimants are not genuine refugees. Such being the case, should something be done to improve our system so that such claimants would not be easily attracted to come to Hong Kong? Should "bogus refugees" be expeditiously identified and repatriated, while genuine refugees be treated well on the other hand and a way out in life be sought for them? In order to achieve the aims, we should try to find out how these could be handled properly before the commencement of the screening process.

Hence, I have to point out that the first thing we should do is to tackle the problem at its source. Apart from the boundary crossing points adjoining the Mainland, Hong Kong has no other land border control point, and according to statistics, most of the claimants came to Hong Kong from the Mainland. Investigation and intelligence reveal that many of them have lived in the Mainland for a period of time, and some have even stayed there for several years. Therefore, I would first like to request for assistance from the Mainland authorities so that measures to combat entry of illegal entrants would be stepped up. This is very important in the sense that many of these claimants actually

come from the Mainland, although they are by no means Mainland residents. In this connection, I think the Government should seek assistance from the Mainland through high level coordination to address the problem. Mainland China is also a party to certain international conventions, but if such claimants did not file a claim until they have arrived in Hong Kong and some of them would finally be identified as "bogus refugees", this would really have a very great impact on Hong Kong. This is why assistance from the Mainland authorities plays an important part in combating "bogus refugees".

Secondly, Hong Kong is an international city, and there are many historical reasons behind. It is true that visa-free arrangements have been made by Hong Kong with many other places and countries when we were under British administration in the past as well as after our return to China, and some of these arrangements have been established on the basis of the historical friendship between China and certain Asian and African countries. In view of diplomatic considerations and the need to keep in line with national policy, it would not be possible for us to abolish such visa-free arrangements suddenly after reunification to reflect the change of sovereignty. As an international city, Hong Kong will inevitably sustain some impact because the immigration convenience measures in place will make it easier for more claimants to file their claim here under the system and the relevant international convention. This is a price Hong Kong, as an international city, has to pay for upholding the rule of law and insisting on adopting reasonable procedures and standards.

I would then like to talk about the issue of illegal employment. More rigorous actions should be taken against the taking up of illegal employment, but it is equally important to encourage reporting and gather intelligence. If we really suspect that there are many claimants engaging in illegal employment, we should also bear in mind that from the information available, it would be possible for us to figure out the claimants' residential address since many of them also receive assistance, home visit services, food coupons, and so on, from certain social service organizations. Therefore, if we have genuine suspicion that there is a large number of claimants leaving home to take up illegal employment, the Immigration Department should have a greater chance to trace their identity from the residential address declared, since that should be their only dwelling place in Hong Kong. As compared with other non-claimants, the Government should be in a better position to take enforcement actions against claimants engaging in illegal employment.

Moreover, some colleagues pointed out earlier that the problem has exerted heavy pressure on law and order. First of all, it is my understanding that crime statistics of claimants and other offenders have not been properly maintained, and the Government has never told us that the crime rate among claimants is particularly higher than that among other visitors, illegal entrants who are non-claimants or Hong Kong residents. If information in this regard is available, I hope the Secretary and other colleagues from the pro-establishment camp can provide us with the details.

A colleague has just now cited Kowloon West, the geographical constituency she belongs to, as an example to point out that law breakers could be seen everywhere on the street and this has exerted heavy pressure on law and order. The problem is that if a large community of ethnic minority people who are non-claimants really exists in Kowloon West, it will only be natural that the colleague will have a misconception of the whole situation since she is of the opinion that there are many claimants acting against the law, while ethnic minority people can be seen everywhere on the street and the number of ethnic minority claimants is actually on the high side. In other words, if the same argument is repeated time and again, the call of combating "bogus refugees" will definitely lead the general public into thinking that a lot of claimants are ethnic minority people, and many of these claimants will act against the law. Other ethnic minority people who are Hong Kong residents will thus be facing tremendous social pressure and discrimination.

Actually, quite a number of ethnic minority people, be they members of chambers of commerce or from other sectors, have opined that those who put forward the argument should make it clear that the people seen everywhere on the street are really claimants. As a matter of fact, illustrating with crime statistics should be the most accurate approach. If the relevant crime rate among claimants is not particularly high but the argument is repeated time and again, these people will probably be exposed to stronger discrimination, though the argument is not intended to be discriminatory.

President, if it is suggested that there is something very wrong with people hanging around on the street, I have to frankly say that most of the people who hang around in Kowloon West or on the ground floor of Chungking Mansions are actually local residents or even residents of Chungking Mansions. If an investigation is carried out by the Government (for example, an identity card check conducted by Tsim Sha Tsui Division), we will be able to find out if the

majority of those who hang around on the street are claimants or ethnic minority residents of Hong Kong. In this connection, I hope the Government would give it a try. This may of course give rise to another problem if the measure is implemented on a long term basis, but if this can be done to reveal the truth to the public within the shortest possible time, ethnic minority people can at least be protected from arbitrary discrimination. It would of course be equally important to increase the manpower of the Immigration Department so as to speed up the screening process.

Some colleagues have also alleged that the problem is mainly identified in only a few law firms, and I think the Government should address the issue squarely. It would really constitute a problem if there are collusions between the parties involved, or a particular law firm is paid by somebody else to handle such cases. However, if claimants are eager to seek assistance from that law firm simply because it is well known for its ample experience in handling such cases and its familiarity with the relevant law, I think this is also easily understandable. Hence, I consider it necessary to carry out a thorough investigation to ascertain if acts of collusion are involved. *(The buzzer sounded)*

PRESIDENT (in Cantonese): Mr James TO, please stop speaking.

SECRETARY FOR SECURITY (in Cantonese): President, I would like to thank Mr Holden CHOW for moving this motion today, and my thanks are also due to seven other Members, namely, Mr HO Kai-ming, Ms Claudia MO, Ms YUNG Hoi-yan, Mr POON Siu-ping, Dr Priscilla LEUNG, Dr Fernando CHEUNG and Mr James TO, for proposing their amendments to the original motion.

First of all, the Government has to point out clearly that the United Nations Convention relating to the Status of Refugees has never applied to Hong Kong. The SAR Government maintains a firm policy of not determining the refugee status of or granting asylum to anyone. As for illegal entrants or overstayers who, due to various reasons, do not want to be repatriated and have thus lodged a non-refoulement claim in Hong Kong, they will not be treated as refugees regardless of the result of their claim. They will not be granted the right of abode in Hong Kong even though their claim is substantiated, and should be repatriated to their place of origin as soon as practicable if their claim is rejected.

Hong Kong was facing a surging number of non-refoulement claims from foreigners in the past three years. A total of 4 634 claims were received since the implementation of the unified screening mechanism in March 2014 until the end of the same year, while claims received in the whole year of 2015 and the first 10 months of this year amounted to 5 053 and 3 481 respectively, making up a total of 13 168 claims. As compared with the number of claims received every year before the implementation of the unified screening mechanism, which was in the range of about 1 200 to 1 800, the number has apparently increased by several times. Obviously, it is an argument that does not tally with the facts when Dr Fernando CHEUNG states in his amendment that the number of non-refoulement claims has shown a downward trend starting from 2014. Besides, among the 13 168 claims mentioned above, 87% (that is, 11 498 claims) were lodged by claimants who have never made any torture claim before. In other words, the total number of claims received in the last three years almost equals to the number of torture claims (that is, 12 785 claims) made in Hong Kong in the 10 years before the implementation of the unified screening mechanism. Hence, it is also incorrect for Ms Claudia MO to argue that the backlog of claims is caused by the court judgments made in 2008 and 2013, after which the Government has to screen the claims received all over again.

As a matter of fact, a comprehensive review has already been conducted. As at end October this year, 10 700 claims were pending screening by the Immigration Department ("ImmD"). In addition, 4 000 appeals were pending determination. The Chief Executive stated in the 2016 Policy Address that a comprehensive review should be conducted of the strategy of handling non-refoulement claims. The review has already commenced and will focus on the following four areas:

First of all, to exercise pre-arrival control, including the stepping up of efforts targeting syndicates which smuggle illegal entrants into Hong Kong, and the introduction of an online pre-arrival registration requirement for visitors from some visa-free countries;

Secondly, to enhance the procedures on screening of claims with a view to expediting screening and eradicating the procrastination and abuse of the procedures; and

Thirdly, to consider ways to increase the capacity to detain illegal entrants and to better support the management of detention facilities.

Finally, to step up enforcement against illegal workers and their employers, and to ensure that rejected claimants would be removed as soon as practicable.

As far as pre-arrival control is concerned, our law enforcement agencies have worked with the relevant authorities in the Mainland since the beginning of this year to step up enforcement against illegal entrants and syndicates which make arrangements for their passage to Hong Kong. The Government has also amended the Immigration (Unauthorized Entrants) Order in May this year to introduce more stringent penalties against the smuggling of illegal entrants into Hong Kong. Initial results are beginning to show in recent months. In the first 10 months of this year, a visible drop was recorded in the number of illegal entrants, which was 33% lower than the same period last year.

Apart from entering illegally, nearly half of the claimants entered Hong Kong legally as visitors but have overstayed and lodged their claim. India is the major country of origin of these overstayers. In this connection, the Government is going to introduce an online pre-arrival registration system, so that a risk assessment can be conducted on Indian visitors with higher immigration risks with a view to preventing them from travelling to Hong Kong visa-free.

With regard to screening procedures, the Government has initiated the review of legislative provisions under the Immigration Ordinance (Cap. 115) governing procedures on screening of claims and related matters. We aim to draw up legislative proposals taking into account the operational experience of the unified screening mechanism and the relevant overseas law and practices, and to introduce a bill into the Legislative Council within the next session.

Meanwhile, ImmD has just completed an internal review on how to increase its screening capacity by 75% to 5 000 or more determinations per year through manpower increase and the implementation of administrative measures, so as to clear the backlog of claims as soon as practicable. However, in order to achieve the objective, corresponding support on publicly-funded legal assistance to claimants is required. As it is not realistic for the Duty Lawyer Service, which is now offering legal assistance for claimants, to increase its handling capacity also in the short run, the Government will operate a supplementary roster of the same pool of trained and experienced lawyers on a pilot basis so that legal assistance can be provided to more claimants. The goal is to work down the backlog of cases as soon as practicable, while ensuring that the same quality and standard of legal assistance is rendered to claimants.

As for detention, the Government will consider in the comprehensive review ways to increase the capacity to detain illegal entrants, including non-refoulement claimants, and those to better support the management of detention facilities.

As far as enforcement and removal are concerned, ImmD has also joined efforts with other law enforcement agencies to step up, on a continued basis, enforcement against illegal workers and their employers, and decrease the economic incentive for illegal entrants to come to Hong Kong. In the first 10 months of this year, ImmD launched 476 targeted operations against non-ethnic Chinese illegal workers, which represent a 71% increase over the same period of 2015. We will also enhance publicity to advise employers that they are liable to criminal convictions and immediate imprisonment for employing unemployable persons. Besides, ImmD is also reviewing its removal procedures, including negotiating with the relevant consulates general on possible measures to repatriate rejected claimants to their place of origin as soon as practicable.

President, I am sure a number of suggestions and views to be expressed by Members in the upcoming debate are worth our reference, and we will listen carefully. However, I would like to clarify certain points raised in some Members' amendments first, since it has come to my attention that they do not tally with the facts.

We absolutely disagree with Ms Claudia MO when she argues in her amendment that Hong Kong has an obligation to verify the refugee status of non-refoulement claimants. As I mentioned earlier, the United Nations Convention relating to the Status of Refugees has never applied to Hong Kong, and the SAR Government will not determine the refugee status of anyone. Under no circumstance will non-refoulement claimants be treated as refugees, and neither will they be granted the right of abode in Hong Kong. Actually, although the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as referred to by Ms MO is applicable to Hong Kong, the non-refoulement principle on grounds of torture contained therein has nothing to do with refugees or the determination of refugee status of anyone. The concept is completely different from the obligation of granting asylum to refugees under the Convention relating to the Status of Refugees, and the two should not be mixed up.

Dr Fernando CHEUNG points out in his amendment that the unified screening mechanism has set a high threshold for granting protection to non-refoulement claimants, and the substantiation rate is low. Procedures of the unified screening mechanism follow the statutory mechanism for torture claims which was formulated in accordance with previous court rulings in Hong Kong. Reference has been made to overseas practices, and liaison has been maintained with the legal profession and non-governmental organizations before the mechanism was endorsed by the Legislative Council in 2012 and then came into operation. Every claim will be considered independently by a case officer of ImmD and before the commencement of the screening procedures, ImmD will serve on each claimant a notice which summarizes the details of the procedures involved, and arrange briefing sessions for claimants to explain the information contained in the notice. Claimants will have all reasonable opportunities to submit all grounds along with supporting information and evidence to establish their claim, including filling out and handing in a non-refoulement claim form, attending screening interview, explaining all grounds for lodging the claim, and providing relevant facts and information to substantiate their claim. Publicly-funded legal assistance and translation and interpretation service from qualified persons will be provided to claimants throughout the screening process.

The threshold and criteria adopted by ImmD for screening non-refoulement claims was determined by legal precedents established by the Court of Final Appeal in the case of Ubamaka and in other judgments handed down by the local courts. ImmD will inform claimants in writing of the determination, together with its justifications, made in respect of their claim. Claimants aggrieved by ImmD's decision to reject their claim may lodge an appeal, which will be considered by an independent statutory body, that is, the Torture Claims Appeal Board ("TCAB"). TCAB's determinations are also subject to judicial review if claimants still feel aggrieved.

The aim of implementing the unified screening mechanism is to execute the relevant court judgments handed down by the local courts and most important of all, to ensure that the screening procedures meet the high standards of fairness required by law. The screening procedures of the unified screening mechanism can definitely serve the purpose. As a matter of fact, the screening procedures adopted in Hong Kong are more lenient than those implemented in other common law jurisdictions. For example, claimants are given as many as 49 days to complete their non-refoulement claim form. Claimants in Hong Kong are also provided with more assistance, including publicly-funded legal assistance which

is subject to no merits test and expenditure ceiling. As far as the low substantiation rate is concerned, it only serves to reflect that most of the illegal entrants do not have sufficient justifications to substantiate their claim, and it should have nothing to do with the fairness of the screening procedures.

As for other suggestions put forward in the original motion and its amendments as well as various views expressed by other Members, I will give a consolidated response in my reply later.

President, I so submit.

MR LAU KWOK-FAN (in Cantonese): President, the earlier speeches of many Members have reflected their possible misunderstanding about the "bogus refugee" problem. Perhaps, some Members think that anyone who proposes to combat "bogus refugees" is discriminatory against non-ethnic Chinese people. They are probably deceiving themselves and fail to realize the realities.

We have been in touch with many ethnic minorities. And actually, DAB has set up an ethnic minority centre providing services to ethnic minorities. We are often told by ethnic minorities that the "bogus refugee" problem is getting more and more serious in Hong Kong. With increasing crimes involving "bogus refugees" in Hong Kong and media coverage, they have been mistaken as "bogus refugees" in the course of seeking employment and also in their daily life. They hope that DAB or Members can cooperate with the Government, and request the Government to step up its efforts of combating "bogus refugees" and to distinguish "bogus refugees" from the non-ethnic Chinese people living in Hong Kong. They want to combat "bogus refugees" because they want to return justice to themselves.

Of course, I cannot preclude the possibility that many Members may be driven by Love or the mentality of better letting them walk free than doing injustice, so they think the Government should provide good conditions to both genuine refugees and "bogus refugees" after their arrival in Hong Kong, so that they may wait here for the Government's verification of their claims or refugee status. But their mentality of letting them walk free rather than doing injustice may precisely give rise to a loophole, one which aggravates the "bogus refugee" problem. Owing to this mentality of letting them walk free rather than doing injustice, "bogus refugees" have many incentives to come to Hong Kong.

After coming to Hong Kong, they may take up illegal employment. But due to this mentality of better letting them walk free than doing injustice, we let them stay in Hong Kong for prolonged periods. As reported by the media some time ago, some "bogus refugees" have stayed in Hong Kong for as long as eight or nine years. Their prolonged stay or "bogus refugee" status is only discovered after they have breached the law in Hong Kong. This situation is very serious.

Let me give an example. I remember a case. An ethnic African claimed that he had some sort of "potion", with which he could help to "clean up dirty money". The problem was brought to light later because he was found to engage in money laundering. Should Hong Kong continue to provide so many incentives, with the result that more and more refugees are induced to Hong Kong and take up illegal employment here by using the loopholes in the non-refoulement claim mechanism?

As mentioned by Mr Holden CHOW just now, the present situation is marked by "three nos"—no time restraint, no monetary restraint, and no movement restraint. This is one major problem, so "bogus refugees" are fond of coming to Hong Kong. DAB has proposed to set up a refugee holding centre or confinement camp. As they come to Hong Kong as refugees, our purpose is to provide accommodation to them and restrain their movements to some extent during their wait for status verification. There are several merits of so doing. First, it can prevent the abuse of the mechanism. Actually, they are not refugees as such, but they commit crimes after coming to Hong Kong. Second, as we said a moment ago, it can avoid discrimination against non-Chinese ethnic minorities living in Hong Kong in their daily living due to the "bogus refugee" problem. Besides, we also hope that the Government can increase resources for expediting the verification process and require them to stay in a holding centre or confinement camp for a certain period of time during their wait for status verification in Hong Kong. After balancing various factors, I think this is the best approach.

We likewise need to consider another matter. At present, refugees awaiting the authorities' verification of their non-refoulement claims will receive a rental allowance and a food allowance amounting to $1,500 and $1,200 respectively. The two allowances add up to some $3,000 a month. As I said just now, many people have probably stayed in Hong Kong for some eight or nine years. They are only given $3,000 a month, but they are able to live here for

some eight or nine years. Members can think about the possibility of this. Will they have the ulterior thought of taking up illegal employment at one point? This is conceivable.

Some North District residents have complained that many refugees live in illegal squatters or sub-divided units. So, I hope that the Government can take on board our views on the motion, especially the view on imposing time, monetary and movement restraints where appropriate. At the same time, I certainly hope that the Government can allocate additional resources for the purpose of speeding up the verification process and strike an appropriate balance in combating the "bogus refugee" problem.

President, I so submit. Thank you.

MR LEUNG YIU-CHUNG (in Cantonese): President, I must state clearly my stance on this motion. I have strong reservation about the term "bogus refugees". In fact, non-refoulement claimants are stranded in Hong Kong because their refugee status is still being verified and unconfirmed. We do not know whether they are genuine refugees or not. The indiscriminate use of "bogus refugees" by the media and political parties can easily result in a negative labelling effect. It will also leave a negative impact on refugees with a genuine need or even home-grown South Asians.

(THE PRESIDENT'S DEPUTY, MS STARRY LEE, took the Chair)

Many Members here in the Chamber are lawyers. They should know that no judgment should be passed before a trial. The non-refoulement claimants should not be referred to as "bogus refugees". Hong Kong society has attached importance to and advocated diversity and inclusion. Yet, society has now overblown the "bogus refugee" issue which has led to the discrimination of those refugees who are in need and the ethnic minorities. Social inclusion has also been undermined. We should reflect deeply on this.

Deputy President, the Secretary has just now provided us with the latest figures but what I have at hand are only figures from the Immigration Department ("ImmD") as of September. So, there is a discrepancy between them.

According to the information I have obtained, of the 10 172 claims which ImmD has verified, only 65 have been confirmed. This is a very low figure. This proves that there are a lot of loopholes and inadequacies in the existing mechanism for non-refoulement claim. It can be easily abused by people with ill intention, giving them the opportunity to engage in illegal activities in Hong Kong to make money. However, the problem cannot be resolved by blindly attacking the non-refoulement claimants. On the contrary, we should be positive in tackling the problem. For example, there should be more resources to improve the mechanism and plug the loopholes before abuses can be stopped. Meanwhile, we also have to focus resources on helping those who are really in need.

Nowadays, the media are widely covering news relating to the claimants. Most of the reports are negative, for example, robberies, street fights or illegal workers, portraying them as heinous villains. Regardless of whether the reports are facts or not, we have branded all the claimants as heinous and forgotten that there are some who really need our assistance.

In 2013, overseas media described Hong Kong as a hell for refugees. Claimants who are stranded in Hong Kong have to endure a long vetting and approval period during which they cannot work. They can only get a meagre monthly allowance, for example, monthly supermarket food coupons of $1,200, rental allowance of $1,500 and $300 for miscellaneous expenses. I believe everyone can imagine what a dire situation they are in.

So, I agree with Dr Fernando CHEUNG's amendment. Many claimants are mired in financial predicament and they end up having to engage in illegal activities or become illegal workers. We of course have to punish them if they breach the law. However, we have to get to the bottom and tackle the problem at root.

Society is against providing the claimants with endless support and extending sympathy to them when the mechanism is being abused. I of course agree with this but the problem is how are we to resolve the problem of the mechanism being abused? Can we improve the vetting and approval mechanism? We are aware that there is a lack of manpower. During the last Legislative Council, the Bureau has applied for funding to increase manpower. I think this is a positive move. There is a need to hire more interpreters.

Otherwise, it will be very difficult to solve the communication problem. Furthermore, those who are handling such cases must be professionally trained so that vetting and approval can be expedited and they do not have to be stranded in Hong Kong for a long time. This is very important.

Deputy President, China is a signatory of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention"), and Hong Kong also has to implement the Convention. Hong Kong claims to be a cosmopolitan city. We should assume the international responsibility of defending human rights. Society is already divided and laden with contradictions. We should not create more negative labels to tear society apart. We should target the inadequacies of the mechanism and make improvements to ensure that we will implement the Convention if resources are not abused. Society and the Government have to make concerted efforts to solve this problem. We should not blindly or indifferently refer to the claimants as "bogus refugees". I so submit.

MR WONG TING-KWONG (in Cantonese): Mr LEUNG Yiu-chung said earlier that the term "bogus refugees" is not appropriate. Let me then change it to "so-called refugees".

The large number of "so-called refugees" who have flocked to Hong Kong have caused great problems to the security of our society and the employment of the grass roots. This is an indisputable fact. The sole reason for the flocking of "so-called refugees" to Hong Kong is the seeking of economic benefit.

At the moment, out of the 10 000-odd non-refoulement claimants, over 95% are from regions or countries like India, Vietnam, Pakistan, Bangladesh, Indonesia or the Philippines, where there are no war or even social unrest. The income they make by taking up illegal employment in Hong Kong, or the various living subsidies they obtain from the SAR Government, well exceed what they can get in the countries they originally resided in. Moreover, two local solicitors firms have taken up almost 90% of the legal aid services provided to these "so-called refugees".

Therefore, apart from the economic incentive, another reason for the coming of "so-called refugees" to Hong Kong is that many people in the legal sector (perhaps due to certain ulterior motives) provide them with one-stop

services so that they can come to Hong Kong to "make quick money" without any worries. Thus, if we do not eliminate the economic incentive for these "so-called refugees" to come to Hong Kong, even if the SAR Government deploys more resources to process the non-refoulement claims, there is no way to address the nuisances caused to Hong Kong.

The most effective way to eliminate the economic incentive for these "so-called refugees" to come to Hong Kong is to establish a closed holding centre and expressly require the non-refoulement claimants to move into it. In case of non-compliance, they should be regarded as giving up their application. Once the period of lawful stay expires, they must leave Hong Kong. Since the holding centre provides them with livelihood needs such as basic accommodation, food and medical service, the SAR Government should not provide these people with any cash subsidies.

As non-refoulement claimants have to stay in the closed holding centre, they cannot go out to take up illegal employment or engage in criminal activities to obtain economic gains. This will not only make it impossible for any "so-called refugees" to come to Hong Kong to "make quick money", but will also reduce the chance of them committing crimes in society. Such a move can both improve law and order and spare the ethnic minorities residing in Hong Kong from being implicated by the "so-called refugees" who commit crimes in Hong Kong, thus affecting the image they leave in the minds of Hong Kong people.

Of course, some people with ulterior motives may dismiss the establishment of a closed holding centre as having no respect for human rights and as regarding refugees as criminals. Nonetheless, when they mount their criticism, have they considered the human rights of those who have been harmed by the "so-called refugees"? Even if the "so-called refugees" are brought to justice, the harm inflicted on the victims cannot be healed. So, why do we not minimize the hazard posed by the "so-called refugees" to society?

Let us look at the figures. Of the 5 648 cases processed, only 43 are successful, representing a success rate of below 1%. This proves that the majority of the non-refoulement claimants are actually trying their luck. They hope to come to Hong Kong to "make quick money". If we establish a closed holding centre, ban non-refoulement claimants from moving around freely in

Hong Kong and stop granting them cash subsidies, they will not be able to make any monetary gains when they come here. I believe those non-refoulement claimants who are now in Hong Kong, or those who plan to come to try their luck will consider carefully. This can help solve the problem of "so-called refugees" flocking to Hong Kong.

I cannot figure out why some people say that the establishment of a closed holding centre will split our society. Mainlanders come to visit Hong Kong and spend here. They make contributions to our economy. Yet, they are met with protests by localists and liberation activists and have their suitcases kicked. Those are actually the ones who split our society.

Deputy President, I so submit.

MR WILSON OR (in Cantonese): Deputy President, lodging torture claims is a means of seeking political asylum. The torture claimants, claiming that they were being subjected to political persecution or torture in their home countries, came to Hong Kong to seek political asylum. After assessment by the Immigration Department ("ImmD"), if they are qualified for lodging torture claims, the claimants can be exempt from being repatriated to their home countries. However, the existing mechanism has been abused and "bogus refugees" are flooding into Hong Kong. As at the end of March 2016, there was already a backlog of 11 201 cases on non-refoulement claims, bringing to Hong Kong serious public order problems and heavy financial burden. The Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB"), being in line with public sentiments, thus proposes this motion asking to combat "bogus refugees".

We have conducted a survey and voiced our opinions. DAB conducted a survey earlier on, thus learning people's concern. Nearly 79% of the respondents agreed that the backlog of over 10 000 cases on non-refoulement claims which involved an expenditure of $1.1 billion of public money—I want to emphasize that an expenditure of $1.1 billion of public money is involved—would add to the economic burden of Hong Kong society. Similarly, nearly 79% of the respondents agreed that the torture claimants would impose great impact on public order.

I have to thank Oriental Press Group for being the first to make in-depth reports on the "bogus refugees" issue. The "troop of bogus refugees", which mainly consists of South Asian people, has committed serious crimes like robbery, rape, murder and illegal disposal of corpse, and these refugees scatter in different areas. As I understand, Kowloon West is the hardest hit district. In Tsim Sha Tsui, Sham Shui Po, Yau Ma Tei and Hung Hom, they engage in various illegal activities like drug trafficking, cheating of tourists, street robberies, illegal occupation of public parking spaces for valet parking, illegal work and prostitution. Some of them even turn into triad members and participate in triad revengeful fighting from time to time. It is reported that in 2014, a total of 665 "bogus refugees" were arrested for committing crimes. In 2015, the figure rose to 1 113 people. In 2016 as at 15 November, 618 people were arrested. The ever-rising figures are appalling.

"Bogus refugees" even take torture claims as the channel and incentive for gold digging in Hong Kong, but the most important point is that they are fighting for employment opportunities with Hong Kong people. During the first four months this year, the number of "bogus refugees" arrested by ImmD for taking illegal work has risen 82% from the number in the same period of last year. Since these illegal workers are mainly engaged in elementary occupations with wages even lower than the minimum wage level, they impose direct impact on the employment opportunities of the grassroots, and they are precisely crowding out local workers with their low wage level.

I want to tell all people in Hong Kong and also to remind the Administration that a non-refoulement claimant can receive as much as $3,420 per month from his living, food, public facility and traffic allowances. While they receive so many allowances on one hand, they resell their food coupons to other people on the other. How can they do that? I really cannot figure it out. Of course, some people feel that many organizations or some Members in recent years have been playing wolf in a lamb's skin for winning reputation. By treating specious arguments as the truth, they continue to voice for the refugees. Apart from asking to increase their living allowance, enhance the quality of food packets, they also complain about their living environment and even lodge complaints to international organizations. However, in our brief calculation, the level of allowance received by torture claimants each month is even much higher than that of the Old Age Living Allowance in Hong Kong, while the amount of public money used for providing legal assistance has not been taken into account,

Deputy President. Every year, the Government spends public money on torture claims and this brings heavy economic burden to Hong Kong. How much money has been spent? In the 2015-2016 financial year, the expenditure concerned reached $745 million. In the 2016-2017 financial year, the estimated expenditure is $1.135 billion. And that has excluded the few tens of million dollars of charges waived by public hospitals and the additional expenditure on the law enforcement actions against refugees engaging in illegal employment and committing crimes.

Deputy President, I particularly urge the Administration to resolve the problem of "bogus refugees" as soon as possible. If it does not adjust the mechanism, more "bogus refugees" will be attracted to come to Hong Kong, which will then become a "port of refugees". If they are kept in Hong Kong, this will only give rise to more crimes and the law and order in Hong Kong will become more chaotic.

The *Oriental Daily News* has listed out in its report all the crimes committed by "bogus refugees" during the period from 2014 to October this year, showing to us the seriousness of the problem of "bogus refugees". I thus think that this problem warrants the Administration's attention.

Many torture claimants only filed their claims after they were arrested for overstaying illegally, doing illegal work or committing crime, and torture claims have become a shield for them. Therefore, we suggest that the application should be filed within a reasonable period of time and the evidence on their being subjected to torture should also be submitted. This can prevent accumulation of a large number of cases and can facilitate the handling of cases by ImmD. ImmD should not entertain claims by overstayers, and this can prevent some claimants from staying in Hong Kong illegally, unjustifiably and infinitely. It is necessary for the Administration to disclose the crime statistics concerning those claimants who work illegally in Hong Kong.

Deputy President, DAB also suggests the Government to set up detention camps for torture claimants in order to properly deal with those claimants who will risk their lives for earning quick money. Deputy President, I want to tell the Administration how the public feel. They feel that the "bogus refugees" have been enjoying a five-star journey in Hong Kong: When Hong Kong is such a nice place to them, why do they want to leave?

I put forward this proposal in the hope that the Government can deal with the work concerning "bogus refugees" properly and quickly resolve the problem of "bogus refugees". I also urge the Administration to take drastic and quick action to address the concerns of the people, consider my views seriously and make responses which are in line with the needs of Hong Kong people.

Deputy President, I so submit.

DR KWOK KA-KI (in Cantonese): Deputy President, the motion of our debate today is "Combating 'bogus refugees'", and I call it a bogus topic of discussion. What is the reason? We have to be discreet in the discussion of this topic, because our Motherland is a signatory and contracting party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In fact, even our great Motherland does not dare to comment too much on this issue. When we discuss so much on the issue, I am a bit worried that this will embarrass the Central Government. Why would I say that? It is because if we say that all refugees are engaged in illegal activities when only some refugees are engaged in illegal activities, or if we say that all refugees are engaged in unlawful employment when only some refugees are engaged in unlawful employment, following this logic, things will become interesting. As we all know, there are corrupt officials in the Mainland, and then we will say that all officials in the Mainland are corrupt. Some Communist Party members are very bad as they break the law and commit all sorts of crimes. We will then say that all Communist Party members break the law and commit crimes. If we keep on applying this logic, I am very worried that the overall quality of the Hong Kong people or the Council will be lowered.

In fact, the cumulative number of torture claims has exceeded 10 000, and it is very clear that we need to speedily process these claims with some means. However, the United Nations High Commissioner for Refugees and the Immigration Department, the two departments which used to share the work in these cases, had been in lack of coordination and minding their own business over the years, thus forming a backlog of cases. To date, the problem is still building up. In fact, the most important point is that in 2014, the Court of Final Appeal ("CFA") ruled that the Government has the obligation to verify the claims of refugees. After the Government has lost in the Ubamaka and C & Ors cases, and the CFA ordered that the Government had to rule independently whether the

claims concerned had reasonable grounds, a unified screening mechanism was then set up. If we put the blame of the Government's inability or its lack of efforts in this mechanism onto the refugees, will we be diverting the attention or be unfair to the refugees?

The term "refugees" is very interesting. Nowadays, since refugees mainly include South Asians or coloured people, we can see that the community is strongly criticizing the coloured people, including South Asians or Africans. If we learn from history, we know that in the 1950s and 1960s, our glorious Motherland belonged to the Non-Aligned Movement before joining the United Nations. At that time, our Motherland spared a lot of efforts in assisting the people in Asia, Africa and Latin America, and there was no discrimination against coloured people. To date, Africa is still the place which gets the most of our glorious Motherland's subsidies, businesses and investments. Our glorious Motherland strongly hopes that it can step up its influence in Africa so that it can stand as a great country in the international arena. Therefore, we really have to be discreet in continuously criticizing South Asians and coloured people, as this is not in tune with the view of our glorious Motherland, which may result in causing suffering to other innocent Hong Kong people.

What I want to say is that while there are "bogus refugees" in this world, there are also bogus patriots. Why would I say that? In the Legislative Council, a lot of people, including our President, also had foreign nationality before they took the office, but we are not concerned about this matter. Are they bogus patriots? Some people claim that they are patriotic while keeping foreign passports in their back pockets. Hence, the issue of "bogus refugees" is built on many bogus matters, including bogus democracy. As we all know, a certain political party advocated dual universal suffrage in 2007 and 2008, and its party title also bears the word "democratic", but this is only bogus democracy. When there are bogus patriots and bogus democracy, it is not surprising to have "bogus refugees", as there are some bogus authoritative people pretending to work for the public.

In fact, the backlog of over 10 000 cases has to be properly handled. In the Legislative Council, we repeatedly asked the Government to increase resources, streamline the procedures, and speed up processing of torture claims or verifying of refugee status. What was the response of the Government? It is unfortunate that the Government did not do anything until the last moment when the CFA handed down the judgment stating the Government's obligation. Who actually should be held responsible for causing the situation today?

Secondly, many people actually have such an experience as refugees. Hong Kong was a place of refugees. Back then, how many people had fled to Hong Kong in order to escape from the Cultural Revolution, the Great Famine or the various political struggles of the Communist Party? All these people were refugees. We have only made use of the positive power and turned these refugees to be the most important part in building up Hong Kong. Many of these people settled in Hong Kong and have become an important part of Hong Kong, enhancing our productivity and labour force. Hence, if we put the blame on all the refugees, we are going against our ancestors.

Thirdly, as we all know, before the Chinese Communist Party took power, most of the party members scattered in different places, including the many places covered by the Long March. In fact to a certain extent, they were also refugees. It was only due to the material assistance given to them by the peasants back then that they could build a new China today. Therefore, we cannot take it too far on anything, and we should not turn this into a question of populism. I so submit.

MR YIU SI-WING (in Cantonese): Deputy President, I thank Mr Holden CHOW for proposing this motion. It offers Members an opportunity to thoroughly discuss the series of problems associated with "bogus refugees".

It is evident to all that the increasingly serious problem of "bogus refugees" in Hong Kong has been perplexing Hong Kong people over recent years. Statistics show that as at October, the number of refugees with non-refoulement claims in Hong Kong was over 10 000, more than 99% of whom were "bogus refugees". However, one thing of even greater concern is the high proportion of crimes involving "bogus refugees" in our crime rate. In 2015, for example, the overall crime rate in Hong Kong was around 900 cases per 100 000 people (or about 0.9%). But during the same period, there were about 11 000 "bogus refugees", and they already constituted over 1 100 cases (the rate was about 10%). The reality shows that the crime rate involving "bogus refugees" far exceeded the overall crime rate of Hong Kong. In the first 10 months of this year, the number of various criminal cases involving "bogus refugees" already reached 1 200 and went beyond the total number last year. This shows that the situation is further worsening. It can be said that resolving the "bogus refugee" problem is an urgent task which brooks no delay.

Deputy President, crimes involving "bogus refugees" have taken place in various districts of Hong Kong, directly affecting people's daily life and causing panic. The sight of ethnic-South Asian people wandering on the streets is a cause of concern to people. For example, the instance where an ethnic-South Asian robber injured and robbed the "Sleeping Granny" of $10,000 in the broad street of Mong Kok has turned into the talk of the town. Such instances will cause unfairness to those home-groomed ethnic-South Asian people.

The "bogus refugee" problem has adverse impact not only on the law and order of Hong Kong but also on its external image. Over the past three months, "bogus refugees" have committed at least six cases in Chungking Mansions in Tsim Sha Tsui. Besides, in mid-August, the Police raided a drug trafficking syndicate in Lan Kwai Fong, Central, and arrested 20 people, all of whom were "bogus refugees" of an African ethnicity. Located in the popular tourist district of Tsim Sha Tsui in Hong Kong, Chungking Mansions sees a heavy people flow during daytime and night-time alike. Lan Kwai Fong is even a well-known tourist hotspot in Hong Kong. Many tourists are attracted to these two places after arriving in Hong Kong due to their fame, so as to experience the local East-meet-West feature. Unfortunately, these two tourist hotspots have become a police investigation target due to the "bogus refugee" problem. Such law-and-order problems have somehow produced adverse impact on Hong Kong's international image and the effectiveness of our tourism promotion.

Apart from causing law-and-order concerns, crimes involving "bogus refugees" also include illegal employment. While the situation is worsening, the number of districts involved is also on the rise. Therefore, I agree with an earlier remark of Secretary LEE, the remark that an urgent task at stake is to step up police patrol at crime black spots involving "bogus refugees", gather intelligence on related criminal syndicates, proactively undertake arrest operations and institute prosecution, so as to deter and restrain "bogus refugees" and related criminal syndicates.

Deputy President, the authorities are now preparing to adjust certain immigration policies as a means of resolving the "bogus refugee" problem, such as requiring Indian visitors planning a trip to Hong Kong to conduct pre-arrival registration through an online system before setting off. To my understanding, the authorities' intention is to ensure that Indian visitors are given confirmations before visiting Hong Kong, lest they may be denied entry upon arrival. This measure is obviously targeted at high-risk visitors. But in order to avoid the misunderstanding that Hong Kong does not welcome Indian visitors, I hope that before implementing the measure, the Security Bureau shall clearly explain its

rationale to the Indian Government, and also to Indian organizations in India and Hong Kong, lest misunderstanding may arise, and the desire of normal Indian tourists to visit Hong Kong may be affected. At the same time, the Immigration Department should provide an appeal channel and guidelines to those Indian visitors who are denied entry to Hong Kong, so that they may lodge an appeal under a proper procedure.

Deputy President, a Member's amendment proposes to re-establish a confinement camp. I agree with this proposal. According to government information, over half of the "bogus refugees" put forth non-refoulement claims only three months after their arrival in Hong Kong. Besides, they also advance various pretexts in an attempt to delay the matter, thus prolonging the entire vetting and approval process and leading to persistent increases in the Government's expenses. Under statutory requirements, a claimant should lodge his claim within one month after arrival. In order to prevent claimants from delaying the matter by putting forth various pretexts and affecting the processing time and procedure, the authorities should arrange for their immediate detention in a confinement camp until the completion of the claim process. This can also enable the vetting and approval process to commence immediately and smoothly. At the same time, I also agree that the Government should expeditiously allocate funding to increase resources for employing more lawyers and translators to assist claimants in proceeding with the application procedure in time and completing the vetting and approval process.

At present, refugees mainly from five countries have lodged the greatest number of claims, and they account for 80% of the total number of refugees. These five countries basically are not plagued by wars, and some of these countries have even recorded upward economic development. Based on my conjecture, their nationals have been misled by the rumours circulating in their countries. Therefore, I think the authorities can consider the idea of conducting publicity in these five countries where appropriate, so as to dispel the rumours and enable those intending to come to Hong Kong to know that they cannot possibly obtain the right of abode in Hong Kong or engage in paid employment after arrival. Committing publicity resources at source can reduce the pressure on Hong Kong resulting from inbound refugees. I think it is worthwhile to commit such expenses.

With these remarks, Deputy President, I support the original motion.

DR YIU CHUNG-YIM (in Cantonese): Deputy President, with regards to the relevant motion, Members should pay attention that Hong Kong, as a contracting party to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment ("the Convention"), has the moral obligations and responsibilities to properly handle refugees who seek asylum in Hong Kong in accordance with the international humanitarian protocol. It should not evade such obligations and responsibilities.

The actual cause of the existing problem is that the examination and screening mechanism is far too lengthy, thus a large number of non-refoulement claimants are stranded in Hong Kong. Besides, they have been stranding in Hong Kong for a substantial period of time, so much so that we cannot absorb the growth that keeps on accumulating, and hence the Hong Kong Government has to bear a heavy burden of public expenditure for handling claimants stranded in Hong Kong. For that reason, if the problem is due to the lengthy examination and screening mechanism, the solution should be focus on the cause and speed up the examination and screening mechanism.

I suggest that the screening process should be divided into two stages. In the first stage, we should spend a shorter period of time and adopt some highly effective measures to identify those claimants who are more likely to award refugee status. If they are successfully screened during the initial stage, then they will be awarded the opportunities to engage in specific types of jobs or to be assigned to do some specific jobs. In so doing, we can provide this as an incentive to applicants. In return, they will take the initiative to provide the relevant identifications with self-motivation for the purpose of being granted the refugee status and the job opportunity within a short period and rejoining society and leading a new life.

As to the arrangement for the holding centre, actually it will be inappropriate to throw them into confinement and to restrict their personal freedom. We should bear in mind that the purpose of the Convention is to ban torture and other cruel, inhuman and degrading treatment or punishment. If we throw them into confinement, then we are actually imposing the kind of treatments that the claimants have experienced in their home countries. It will not be helpful at all. On the contrary, if we adopt the proposed two-stage mode, then we can step up the enforcement action against illegal workers and increase the penalty, so that those claimants who fail to pass the initial stage of screening will not be eligible to work in Hong Kong during that time period. Besides, the

increase of penalty and the stepping up of enforcement will enhance the deterrent effect, which will deter claimants from engaging in illegal work by delaying the screening process. On the contrary, if they can pass the first stage of screening and successfully awarded the refugee status, then then will get the work permit and will be assigned to do some jobs that the Government considers suitable for them. Besides, they can find jobs in the market and employers can differentiate them from illegal workers, so that they will not contravene the law inadvertently.

For that reason, the two-stage screening can help the claimants to rejoin society in a speedy and effective way on the one hand, so that they can lead a new life and grasp the job opportunity. On the other hand, we can provide them with the incentive, so as to prevent some claimants from engaging in illegal activities in Hong Kong by employing some delaying tactics.

Lastly, as to legal aid, we should note that the purpose of legal aid services is to help litigants to mitigate the inequality due to a disparity in financial strength. Therefore, if we limit the ceiling for legal aid, we will actually deprive the rights of people who have limited financial means but have the need to seek access to justice through legal process. Besides, it is even possible to cause errors of judgment or erroneous examination and screening, resulting in preventing Hong Kong from fulfilling the moral obligations and responsibilities as a contracting party of the relevant convention.

In sum, I consider that as far as the motion is concerned, we should step up the enforcement and speed up the examination and screening process in order to prevent abuse. Nevertheless, if claimants are found to be eligible, we should ensure them to effectively and properly integrate into the Hong Kong society. The prerequisite for the setting up of a holding centre is that it should be set up for the sake of settling down, so that they can exercise personal liberty and adapt themselves to the life in Hong Kong.

Thank you, Deputy President.

MR LEUNG CHE-CHEUNG (in Cantonese): Deputy President, Mr Holden CHOW proposes the motion debate on "Combating 'bogus refugees'", and this allows us to discuss the solutions for this refugee problem.

Deputy President, the "bogus refugees" issue has been haunting Hong Kong for many years. It has also posed tremendous pressure on Hong Kong's law and order or even public trust in the Government.

The latest Government papers show that of 5 648 cases of non-refoulement claims, only 43 are confirmed, which is less than 1%. The process of non-refoulement claims has been abused and used as an instrument for illegal entrants to seek a prolonged stay in Hong Kong.

Deputy President, one of the popular ways for illegal entrants to smuggle themselves into Hong Kong is to use the Mainland as a midway point before sneaking into Hong Kong. I used to take a boat to the smuggling black spot in Deep Bay for the purpose of a site inspection. The two places are not that far apart. Some local oyster farmers told me that illegal entrants would swim to Hong Kong with the current, and that would only take a little more than 10 minutes. Therefore, it will be a correct direction to intercept illegal entrants on Mainland before they can smuggle themselves into Hong Kong. I note that after the commencement of the joint anti-illegal immigration operations among border security units, immigration units, criminal investigation units, anti-terrorism units of Guangdong, Guangxi, Yunnan, Xinjiang and the Hong Kong Police Force at the beginning of this year, the number of illegal entrants intercepted by Hong Kong has declined. It shows that the joint enforcement operations between China and Hong Kong are effective.

In the wake of the continual occurrence of incidents involving the use of violence by refugees, a number of European countries have tightened their refugee policies. Illegal entrants have also caused social as well as law and order issues in China. Mainland security authorities also point out the fact that illegal entrants engaging in illegal work have also committed in crimes such as burglary, robbery, drug trafficking, and so on. They have disrupted economic order on the Mainland as well as the social order in Guangdong and Hong Kong. Mainland authorities would mete out strict punishment to "snakeheads" or their collaborators. In July this year, a dozen of people on the Mainland charged for committing the offence of organizing others to cross the boundary stealthily have been sentenced to prison term of three to ten years.

In Hong Kong, the Government has amended the relevant law substantially by increasing the penalty for the smuggling of illegal entrants by "snakeheads" to the prison term of 14 years and a fine of $5 million. Nevertheless, from July to

October this year, two "snakeheads" who have smuggled illegal entrants into Hong Kong were sentenced to a prison term of 40 months and 42 months respectively. There was a big disparity between the sentences and the maximum penalty imposed by the relevant legislation, as the maximum penalty lacked the deterrent effect against criminals who operated human-smuggling syndicates for extortionate profits. The two judges of the above cases pointed out that they hoped the prosecution side could provide more information for legal reference and consideration by the Court before the court could mete out sentences. This impliedly means that lenient sentences imposed on "snakeheads" have something to do with the insufficient information provided by the Department of Justice. Therefore, will the Government respond whether or not there are inadequacies in this area?

Deputy President, I have proposed the setting up of a holding centre for the management of non-refoulement claimants. As to the mode of the holding centre, we may impose limits on the hours of operation of the holding centre. That will not only provide shelters for the claimants, but also help the Government to know their whereabouts or even facilitate the provision of humanitarian aids. I think genuine refugees will not resist the establishment of the holding centre.

I heard that many colleagues have mentioned the difficulties related to different aspects of the claimants daily living in Hong Kong, Dr Fernando CHEUNG and Dr YIU Chung-yim has mentioned such difficulties. However, the holding centre can address their housing problem. It may even help the Government to provide food assistance in a uniform way. In so doing, we can save some administrative efforts and I believe that will help the Government to expedite the process of non-refoulement cases. This will also help to alleviate the impact of the "bogus refugees" issue on the community.

Yuen Long and Tuen Mun are the popular habitats for these claimants. In particular we can see groups of alleged refugees who have nothing to do and hanging around at the entrance of villages in rural areas. Village representatives of those villages have told me that these people would often get drunk and cause troubles or even involve themselves in brawls. Shop owners in the vicinity also told me that these people would simply entre their shops, take the foods and walk away without making any payment. Most villagers will tolerate silently because they are afraid of retaliation if they call the police. Moreover, the complexion of these claimants are almost the same, thus it is difficult for villagers to identify

them. Villagers dared not voice their anger. In some villages, villagers will install closed-circuit televisions at their own expenses in order to protect themselves for safety reasons. Villagers considered that the Government was too soft to deal with these "bogus refugees". They required the Government to stop receiving these "bogus refugees" and repatriate them as soon as practicable. If the Secretary has time, I would like to invite him to join me and inspect the real situation of these villages.

Deputy President, I so submit. Thank you.

MR NATHAN LAW (in Cantonese): Ms LEE, some Members mentioned just now that the amount of subsidy granted to refugees in Hong Kong is over $3,000 per person per month, sounding as if this is an earthly paradise where they can enjoy a very good life with that sum of money. Yet, anyone who seldom reads the *Oriental Daily News* or who judges the matter with common sense would realize that in a city like Hong Kong, what kind of a miserable life will a person lead if he has only $3,000-odd to spend each month.

It would not be difficult for regular viewers of such programmes as the News Magazine and Hong Kong Connection to understand that these people are actually seeking shelter in squatter huts converted from pig sties and hen-houses and feeding on expired food. If they have not been driven into a corner, will they be willing to leave their native place and lead a lonely and wandering life in a foreign land like this tiny city of Hong Kong? Many refugees have been trapped in a helpless situation as they were besieged by political suppression, religious persecution, torture and inhuman treatment. Hong Kong people are constantly suppressed by the Chinese Communist Party in recent years, and we can all see the terrible implications of totalitarian rule from the Kevin LAU incident, the Causeway Bay Books incident and the prolonged detention of some Hong Kong people by Mainland public security authorities. As all beings grieve for their fellow beings, we do have the responsibility to render assistance to refugees, not to mention Hong Kong's obligation as a contracting party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to assist refugees who are subject to cruel treatment. SNOWDEN, a former employee of the Central Intelligence Agency of the United States, revealed earlier that he was hiding himself away in the residence of a refugee when he stayed in Hong Kong in 2013 to disclose the details of the surveillance programme implemented in the United States. Contrary to what

pro-establishment Members or the Government have described, these people are no troublemakers, robbers, savage and wicked terrorists, but are underprivileged people who are most in need of our attention in society.

However, the unified screening mechanism for non-refoulement claims ("unified screening mechanism") introduced in 2014 has always been the subject of criticisms. The United Nations Committee against Torture has pointed out in its report that the mechanism implemented in Hong Kong has set a distinctly high threshold for granting protection, and non-refoulement claims are handled perfunctorily. Adequate resources have not been provided to the Immigration Department ("ImmD"), which often fails to arrange appropriate translation and interpretation services for claimants and takes a very long time to handle the claims received. Claimants are thus made to wait endlessly and in some extreme cases, arrangement of resettlement to a third country has still not been made for claimants who have already been recognized as refugees for 10 years. As a result, a backlog of claims has accumulated and the substantiation rate is only 0.48%. Yet, some Members have cited the low substantiation rate to prove that many of these claimants are actually trying to take advantage of the mechanism. This is a typical demonstration of victim blaming, and it really sends a chill down my spine.

According to a report prepared by Justice Centre, as the Government has failed to thoroughly consult the general public and professional sectors on the introduction of the unified screening mechanism and prudently enhance the mechanism in accordance with legal procedures, a number of judicial reviews were instituted, thus leading directly to the accumulation of a backlog of non-refoulement claims. In other words, the Government is largely responsible for the serious backlog of claims or the extremely low substantiation rate because it has failed to make a holistic assessment when a reform was introduced, and this has brought about some major flaws in the mechanism. Under such circumstances, ImmD should indeed give top priority to enhancing staff training and allocating additional resources to improve the unified screening mechanism. However, ImmD only seeks to put the blame on others, and tries to make the figures more presentable by restricting the rights of claimants.

The Security Bureau first proposed in 2015 the adoption of such measures as the setting of a statutory time limit, the imposition of a cap on legal assistance, and I strongly oppose the idea. The Hong Kong Bar Association has already stated clearly in 2014 that the unified screening mechanism is too harsh, and this

is grossly unacceptable that the Government is now seeking to tighten further the unreasonable mechanism. Moreover, ImmD has neither announced the time taken nor set a time limit for screening a claim, and arrangement has still not been made for some claimants who have lodged their claim in 2014 to attend their first screening interview. When it comes to expediting the screening process, why does ImmD not review its practices but rather, try to shift all responsibilities to claimants? The Government should also be held largely responsible for this.

It is also pointed out in the same report that unlike what the Government has said, not only was there no increase in the number of non-refoulement claims starting from 2014, the number has also shown a downward trend. Yet, attempts have been made by the Government to manipulate public opinion. According to information revealed by Justice Centre, records of the Information Services Department ("ISD") show that as seen from the numbers of people holding a recognizance form (commonly known as a "going-out pass") announced by the Government on a continued basis in the past one year, a sudden and acute increase has been recorded in the current quarter. We have reasonable suspicion that the Government is using such data released by ISD to manipulate public opinion and tell Hong Kong people that we are facing a very serious problem of "bogus refugees", which is a subject created by pro-establishment Members to serve their own political interests, but this is of course something that does not tally with the facts.

Hence, judging from what I mentioned above, the entire Government is just trying to label non-refoulement claimants, but has rarely thought over the problems with the existing mechanism. The only objective of meeting the so-called "high standards of fairness" is to reduce the number of non-refoulement claims. Under the manipulation of pro-establishment Members and the Government, who are dominated by their own political interests, this group of underprivileged people are now subject to all kinds of discrimination and deep-rooted prejudice in our society. As a forum for the deliberation of public business, not only should this Council refrain from adding insult to injury, it should also bear the responsibility of identifying the crux of the existing problem. Hence, I oppose any measures which seek to impose a limitation on fair trial, and I also oppose the suggestion of setting up holding centres.

Political parties of the pro-establishment camp such as the Democratic Alliance for the Betterment and Progress of Hong Kong, the Business and Professionals Alliance for Hong Kong, and so on, have already made their

intention clear through various media channels and the speeches delivered just now. They want to stop "bogus refugees" from wandering around and making trouble in the community, and the opinion survey conducted by Mr Holden CHOW recently is exactly about the setting up of closed holding centres for claimants. The term "holding centres" is therefore actually the modified version of "closed camps". The setting up of closed camps would incur very high costs, and as this is a very inhuman option, there is no closed camp in both Germany and the United Kingdom, while Australia is also phasing out such detention centres. If we adopt such an option today to manage refugees and the underprivileged, there will also be the risk of treating other social groups, including elderly in poverty and political dissidents, in the same way some day in the future.

All of us who support democracy, let us hold fast to this bottom line and protect all people from social groups under suppression in Hong Kong. Hence, I object to the original motion and all amendments which contain the proposal of setting up holding centres. I so submit.

MR SHIU KA-CHUN (in Cantonese): Deputy President, the subject of the motion moved today is "Combating 'bogus refugees'", but I think the subject itself is quite modest and reserved. It is because what they really want to talk about is not "bogus refugees", and "bogus refugees" to them are actually robbers, villains and scoundrels. It is just a matter of presentation to have such a subject as "Combating 'bogus refugees'", and the truth is that they consider all refugees robbers, scoundrels and villains, and thus the need to combat them.

(THE PRESIDENT resumed the Chair)

I would like to say a few words about the book entitled *Regarding the Pain of Others*, which is a masterpiece of Susan SONTAG, a literary critic of the United States. The book talks about our feelings, which are made up of our experiences, cultural background, political stance and ideology. As every one of us has different reaction to and feelings about the same thing, we cannot understand the pain of others simply with our own cognition. Since we have all along assumed the role of an onlooker and looked upon the agony of others as an onlooker, we fail to understand their pain. We are just trying to satisfy our

desire to peep into the personal feelings of others, and are looking for sensory stimulation by doing so. How can we separate ourselves from the role of an onlooker? Only by separating ourselves from such a role can we face the pain of people of different races and nationalities from different parts of the world, and try to bring an end to or relief the suffering of others bravely and actively.

We are talking about refugees today, and what is the meaning of "refugee"? The United Nations Convention relating to the Status of Refugees was drawn up in 1951, and what definition it has given to the term "refugee"? Under the Convention, the term "refugee" shall apply to any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality. This definition has been in place since the 1950s and has never been subject to any review all these years. Today, it can no longer be used to define comprehensively the meaning of "refugee".

Under the definition, and according to the report entitled Global Trends published by the United Nations High Commissioner for Refugees, there were a total of 21 million refugees all over the world in 2015, and 65 million people were displaced from their home involuntarily in the same year. However, there were only about 4 000 cases involving illegal entrants in Hong Kong in 2015, and the number of non-refoulement claims received in the same year was about 5 000. The figures reveal that as compared with the global refugee trends, the burden shouldered by Hong Kong is just like a drop in the bucket. As far as the international issue of refugee problem is concerned, Hong Kong has in fact been quite spared from its serious impact. Nevertheless, I do not think the definition is in itself adequate to cover all refugee problems we can identify in 2016. In 2016, we should broaden our vision on the issue of refugees.

President, in a risk society, there is a chance for every one of us to become a refugee. The threats of climate change will lead to forced displacement, and an average of 21.5 million people were displaced from their home every year since 2008 as a result of sudden disasters related to extreme weather conditions, such as floodings, storms, forest fires and extreme climates. A large number of people were also forced to flee under the threats of slowly developing disasters, such as droughts. According to the projections made by scientists, as a result of climate change and some other factors, there will be an ever increasing number of people displaced. Climate change has also become a multiplier of threats in various conflicts nowadays, and the seeds of discord thus sowed have also intensified the problem of forced displacement. The Arab Spring is generally

regarded as the cause leading to the conflicts in Syria, but people seldom remember that before the outbreak of civil war in the country, the north-eastern part of Syria has been stricken by a five-year drought and about 1.5 million people were made homeless. In fact, weather change can render all of us refugees.

On the other hand, due to political reasons, it is also possible for us to become refugees. Under the suppression of the Chinese Communist regime, quite a number of human rights activists have become refugees and were forced to stayed permanently in places outside China. After the June Fourth Incident, many participating students have become refugees and were forced to seek political asylum from overseas countries. I am sure their names are so well known to all of us that there is no need for me to read them out one by one here. We should bear in mind the moral of "not to do unto others what we would not do unto ourselves", and under the present political environment and environmental risk, Hong Kong people can also turn into refugees anytime and what would we expect by then? Would it be our hope to have some onlookers watching us suffer with folded arms, just like what we are doing today? Or should we be more generous and serve these people sympathetically? Is the motion debate we are having today a sword drawn and pointed to the weak?

In 2015, a young man who was once a Vietnamese refugee posted a very impressive message on his Facebook page, which has got 180 000 "Likes" and been forwarded over 10 000 times in just five days. He recalled that he arrived in the United Kingdom as boat people in 1984 with his mother and settled down in a dwelling place arranged by the British Government. As a woman with four children who got no money, were shabbily dressed and did not know any English, his mother was faced with very great discrimination and extreme hostility. However, they soon met a young man who was more than willing to share his clothes with refugees settled down in the community. The young British man was not exceptionally well-dressed or rich, but he greeted them in a very friendly manner using hand signals. Other people started to follow suit and offered them clothes, food and drinking water. This man who was once a Vietnamese refugee said that his mother has never forgotten the young British man who shared his coat with her that day, and neither has she forgotten the warmth that the coat brought to her at that moment. The incident has engraved on the heart of every member of his family. Today, he has already graduated from medical school in the United Kingdom and returned to Vietnam to settle down in Ho Chi Minh City.

The story may shed some light on how we should treat refugees. This is a story happened in the United Kingdom, but how I wish it would become a story long remembered and talked about by all of us in Hong Kong.

I so submit. Thank you, President.

MR WU CHI-WAI (in Cantonese): President, the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment ("the Convention") has been applicable to Hong Kong since 1992. It is stipulated under the Convention that: "No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Therefore, assisting genuine refugees is a rightful responsibility that Hong Kong should take on as an international city, and its duty as a State Party.

Many people in the community say that some claimants have abused the system, therefore creating a heavy burden on Hong Kong society. As various figures have indicated, this is true. However, does it mean that we should describe all torture claimants as some unqualified people abusing our system? In fact, among these non-refoulement claimants, anyone identified as a "bogus refugee" with a false identity will be deported right after the screening procedures. So, they are indeed someone whose identity is pending screening. If we casually describe these people with unverified identity as "bogus refugees", it is obviously that we intend to mislead the public and create a false or negative label on this group of torture claimants.

In fact, the Court of Final Appeal issued a very clear judgment in this respect, in which it is judged that assessment of claims made under the Convention require high standard of fairness, and it declared that the followings are unfair and unlawful: refusal to allow legal representatives for claimant during screening interviews with immigration officers; failure to provide publicly-funded legal representation; irregularity of the decision-maker being a different person than the interviewing officer; lack of training of decision-makers; and failure to provide for an oral hearing and representation at an oral hearing. This indicates the stringent requirements laid down by the Court of Final Appeal on screening procedures for torture claims. Of course, this will put heavy strain on the Security Bureau's resources during screening, yet this is understandable.

However, in the course of today's discussion, many pro-establishment Members have been pointing out that the problem lies in the torture claimants' engagement in illegal employment or the possibility that they may commit crimes. If they were earnestly trying to solve this problem, is it not better for them to raise this to the Security Bureau? Say, any violation of the laws of Hong Kong during their stay will result in termination of their applications or even immediate deportation. As in the case for many people from the Mainland who have breached the conditions of stay, they will be immediately deported after they are released from imprisonment for their offences. Is this practice more reasonable? It will not create an image among the public or society that we are labelling them indiscriminately.

That said, when they care so much about the crimes committed by torture claimants in Hong Kong, it is interesting and strange to note that they are rarely seen to have targeted this problem specifically throughout the entire discussion. Instead, they have ascribed everything to this problem as if they want to label all claimants as someone who threatens the interests of overall society and public order. Is this fair?

As a matter of fact, can the Security Bureau tell us that Hong Kong has the mechanism to deport any claimant who are convicted for taking up illegal unemployment before their claims are assessed. I trust that this is in the interests of the public, and that this can correct the present phenomenon of indiscriminate labelling.

On the other hand, refugees merely receive 1,200 dollars for food each month when their claims are pending, and an accountable rent allowance of 1,500 dollars each month, lower than the standard rates under the Comprehensive Social Security Assistance Scheme. From this perspective, should we adjust the amounts concerned? As they have stayed in Hong Kong anyway, we believe that they must have been subject to some form of political or religious persecution in their original place of residence. They are someone pending an identity assessment. Can we fulfil their basic needs in this way? These supplementary measures will also facilitate society to understand that the Government has the means to focus on those individual torture claimants who break the laws in Hong Kong.

However, generally speaking, we still have to undertake Hong Kong's responsibility internationally as a State Party, as well as to fulfil the standards and requirements set by the Court of Final Appeal on assessment procedures.

Moreover, we also have to deploy sufficient resources to address the issue, so as to expedite the screening process. This is the only real solution, but not the other direction to lock every new comers in holding centres, which is in fact unfair as it attaches a derogatory label on everyone.

I wish the Security Bureau can start from this perspective and explore the way to address the root causes in order to ensure a fair treatment to torture claimants. At lease, they should not be stigmatized as criminals. Such a label will also affect the ethnic minorities living in Hong Kong. Therefore, I believe the Government has the responsibility to seriously deal with these problems.

MR LEUNG KWOK-HUNG (in Cantonese): I believe that there is far fewer Members than a quorum.

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)

MR LUK CHUNG-HUNG (in Cantonese): President, Mengzi (or Mencius), philosopher of the Xian Qin era, said: "Every man has a merciful heart." In Christianity, all the teachings are founded on the concept of universal love. Hong Kong is a place where the Chinese culture merges with the Western culture and its people are known for having a very caring heart. I believe everyone present here is no exception. However, when it comes to the problem of "bogus refugee" which we are now facing—let me use the term "bogus refugees"—we must face it squarely and take a hard line when handling the issue.

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") has been applied in Hong Kong since 1992. As a member of the international community, Hong Kong has to fulfil its humanitarian obligation to deal with and cater for those genuine refugees who have fallen victims to torture. Thus, we have put in place a political asylum system. Any non-refoulement claimants claiming to have been subjected to political persecution or torture can come to Hong Kong to apply for political asylum. However, many non-Chinese people have tried to come to Hong Kong

through various ways, including illegal entry to Hong Kong, overstaying, and even abuse of the unified screening mechanism for non-refoulement claims in recent years.

Why call it "abuse"? It is a straight fact that the percentage of successfully substantiated claims is less than 1%, or even less than 0.5%. Of course, some Members are of the view that such a low percentage of substantiated claims may be a result of the overly stringent screening mechanism. Nevertheless, should Hong Kong, as a member of the international community, lower the threshold to allow those people freely enter Hong Kong as a stepping stone, but send them to a third country afterwards? I believe that this is by no means a responsible practice. Therefore, the Immigration Department and the United Nations High Commissioner for Refugees Sub-Office in Hong Kong have put in place an equitable mechanism to handle such claims. I should have confidence in this mechanism.

Let us look at the actual situation facing us now: the number of non-Chinese illegal entrants has increased significantly since 2004. In 2004, there were 1 984 non-Chinese illegal entrants and the number increased to 3 819 in 2015. Most of them came from India, Vietnam, Pakistan, Bangladesh, etc. Some even came to Hong Kong on visitor visas but overstayed after expiry of their visas.

What kinds of problems have been caused by "bogus refugees" then? As a Member representing the labour sector affiliated to FTU (The Hong Kong Federation of Trade Unions), my greatest concern is about the employment of local workers being affected by the problem of illegal employment. We must think about the motives of those bogus refugees coming to Hong Kong. There is such a saying: "Let go of a bed of roses and engage in something that requires blood, toil, tears and sweat." I believe all Cantonese must know this slang. Why do they have to go through all sorts of hardships to come to Hong Kong? Is it merely for the some three thousand dollars' worth of food coupons? Someone has remarked that money is the incentive, but that kind of money is not meant to be taken away. Well, less than 1% of them have their refugee status confirmed? The straight fact is that the great majority of them came to Hong Kong to work as illegal workers. This is supported by relevant data. In the first 10 months of 2016, the Immigration Department has arrested 421 non-Chinese illegal workers, representing a significant increase of 26% as compared with the same period in 2015.

Secondly, a lot of the non-refoulement claimants engaged in many law-breaking activities that had undermined the law and order. According to the Security Bureau, a total of 1 214 non-Chinese persons holding "going-out passes" were arrested in the first 10 months of 2016, most of whom being non-refoulement claimants. The number has gone up 9% from 1 113 in 2015 and shown a drastic increase of 83% as compared with that in 2014. Problems involving shoptheft, serious narcotics offences, illegal immigration etc. are the most serious of which the number of such cases recorded had increased by fold(s).

Thirdly, as many Members have mentioned just now, a great deal of public money was spent on them. Taking into account the expenses on providing humanitarian assistance and publicly-funded legal assistance to the non-refoulement claimants, it is estimated that the total expenditure for the fiscal year 2016 will be as high as $644 million, an increase of 64% over the previous three years. More importantly, the overall public perception on the local ethnic minorities was marred by the presence of those claimants. In fact, the vast majority of the ethnic minorities in Hong Kong are law-abiding people who love Hong Kong and work very hard. Yet, the image of those people belonging to ethnic minorities originally residing in Hong Kong has been badly tarnished because of the emergence of many non-community-friendly phenomena resulting from those non-refoulement claimants' acts of committing criminal offences and taking up illegal employment.

Dr Fernando CHEUNG has touched on a point just now, that is, why they would have come to Hong Kong—he made a comparison with the percentages of overseas places, for example, the percentage of successful applications is somewhere between 30% and 40%—why? What lies at the root of the problem is economic incentives. On eliminating economic incentives, I have two points to make. First, set a time limit for the screening of each non-refoulement claim which should be completed within a specified time limit so as to enhance efficiency in handling cases, and to increase the manpower for handling relevant work (e.g. increase the manpower in the Immigration Department for handling both old and new cases). Meanwhile, put in place a mechanism to deal with uncooperative claimants, such as those who repeatedly did not turn up. Second, consider the establishment of closed camps. We are certainly not suggesting putting all non-refoulement claimants into closed camps at one stroke. We simply hope that those who fail to provide comprehensive information or report

to the authorities concerned on a regular basis and even those with criminal records in Hong Kong will be made to live in the closed camps so as to tackle the problem at its root which will discourage them from coming to Hong Kong.

We have to be realistic *(The buzzer sounded)* … in handling this problem … so please support Mr Holden CHOW's original motion …

PRESIDENT (in Cantonese): Mr LUK Chung-hung, please stop speaking.

MR LUK CHUNG-HUNG (in Cantonese): … and the amendments proposed by Mr HO Kai-ming. Thank you, President.

MR CHAN KIN-POR (in Cantonese): Hong Kong is a signatory to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention"). Without any question, on legal or humanitarian grounds, we have the obligation to assist genuine refugees in obtaining non-refoulement protection. But at present, the substantiation rate of non-refoulement claimants is only 0.48%, meaning that over 99% of such claimants are found to be "bogus refugees", or "economic refugees", during the vetting and approval process.

As the purpose of such "bogus refugees" who come to Hong Kong is not to evade torture but mainly to make money, two problems have resulted. The first is the emergence of illegal workers. In the first 10 months of this year, the number of non-ethnic Chinese illegal workers arrested by the Immigration Department stood at 421, an increase of 26% over the figure in the same period last year. I believe there is actually a far larger number of illegal workers. More illegal workers will be arrested when the Immigration Department steps up enforcement actions. The second is the problem of security. In the first 10 months of this year, the Police arrested a total of 1 214 non-ethnic Chinese persons holding "going-out passes" for committing criminal offences, a great majority of whom were non-refoulement claimants. The figure represents respective rises of nearly 10% and over 80% when compared with the figures of last year and two years ago. Meanwhile, it has been reported that some of the claimants have engaged in triad activities. The situation has become very worrying.

I have listened to the speeches of several opposition Members just now and found that they simply ignore the nuisance caused by such "bogus refugees" to Hong Kong people and also their financial, employment and security impacts on Hong Kong people. They only focus on assailing the pro-establishment camp as if all problems are caused by the latter. I think their attitude is one of refusing to talk about any facts and concentrating on assailing the pro-establishment camp. This attitude was frequently seen in the several recent debates. I hope they can realize that sensible reasoning on the basis of facts is the only way to convince Hong Kong people. They must not level groundless criticisms at the pro-establishment camp after seizing the moral high ground. Actually, they have repeatedly used such tricks over the past few years, so the tricks have gradually become less effective. I trust that only those who genuinely work for Hong Kong people will get the appreciation and understanding of the general public at the end of the day.

In addition to the problems mentioned above, the handling of non-refoulement claims also involves huge financial outlay. According to the Government, the estimated expenditure for the year 2016-2017 is as high as $1.13 billion, an increase of 50% over the previous year. I believe that if the objective is to provide assistance to refugees in genuine need in the long run, most people will still accept this heavy burden despite their helpless reluctance. Yet, the fact is that over 90% of the claimants are actually economic refugees seeking only to abuse the unified screening mechanism for non-refoulement claims. The public will surely be unwilling to let the community pay such heavy costs because of any bogus refugees, including the financial outlays and security and employment costs which I have referred to. Therefore, there is a practical need to combat the abuse of the unified screening mechanism for non-refoulement claims.

In fact, due to the efforts made by the authorities in recent years, the situations of illegal entry and abusing the unified screening mechanism for non-refoulement claims have started to show some improvement. Therefore, I support the Government's moves in four areas, namely pre-entry control, vetting and approval procedures, detention, law enforcement and repatriation. All these can bring about stop-gap and ultimate solutions to the problems.

However, at present, the backlog of non-refoulement claims still numbers more than 10 000 cases. If new cases keep outnumbering completed cases, the number of cases will only rise endlessly and the problem will remain unresolved

forever. At present, the annual screening capacity of the Immigration Department has increased from 2 200 cases in 2015-2016 to 3 000 cases in 2016-2017. However, the Government already received 3 481 cases just in the first 10 months of this year. Given the speed of screening 3 000 cases a year, the authorities will not be able to cope, and the backlog of cases will only grow. Fortunately, the Immigration Department has decided to allocate more resources and streamline its procedures, undertaking to increase its annual screening capacity to 5 000 cases by 2017-2018. If the undertaking can really be fulfilled, the backlog can be cleared step by step.

In the long run, as long as the Convention continues to apply in Hong Kong, cases of non-refoulement claims will continue to emerge. Therefore, we should formulate a long-term strategy. In my opinion, the Government should set specific goals for tackling the backlog of cases. For example, whenever there is a backlog of more than 5 000 cases, additional resources must be allocated immediately for expediting the screening process. This is the only way to ensure that the number of people stranded in Hong Kong is always on the decline and the pressure on the security of Hong Kong can be eased. Besides, chances for the claimants to work as illegal workers can be reduced and their waiting time will also be shortened.

Some Members suggest setting up detention centres to properly accommodate and manage such claimants. Nevertheless, the Government has indicated that according to legal principles, if the Immigration Department cannot repatriate these people within a reasonable period of time, the persons concerned must not be detained on a prolonged basis. That is why there will be a certain degree of difficulty in setting up detention centres. But if my suggestion is put into practice, the waiting time for these claimants will be greatly reduced. In that case, the legal problem with setting up detention centres can be solved. Apart from this, there is also the suggestion that we should study and learn from foreign governments' practice of revoking the refugee status of those who have committed serious crimes and repatriating them. Hong Kong may consider adopting the same practice. I also think that this suggestion merits our further consideration if it is legally viable.

I opine that as Members of this Council, we are absolutely responsible for coming up with solutions to the problems facing Hong Kong. I hope that Members will sensibly look at the facts instead of assailing the pro-establishment

camp at will. The way you assail the pro-establishment camp will only make people realize that pro-establishment Members are doing real work and thus show greater respect for them.

Thank you, President.

DR ELIZABETH QUAT (in Cantonese): Since the time of the last Legislative Council, I have been following the "bogus refugees" problem, that is, cases of abusing the unified screening mechanism for non-refoulement claims ("unified screening mechanism"). The problem has become increasingly serious. As pointed out by the Under Secretary when he spoke, over 13 000 people have made non-refoulement claims since 2014; and to date, there are still a backlog of over 10 700 non-refoulement claims pending screening and over 4 000 cases pending appeal. Most of the claimants are not from war-torn countries. They mainly come from India, Vietnam and Pakistan. In the past, confirmed cases accounted for less than 1% of all non-refoulement claims.

In the previous financial year, the Government spent more than $700 million on handling non-refoulement claims. The corresponding expenditure in 2015-2016 was as high as $1.1 billion. Bogus refugees come to Hong Kong with the main aim of earning money. Some of them work as illegal workers or take part in other illegal activities like drug trafficking. Many police officers, especially marine police officers with catching illegal entrants and bogus refugees at sea as their daily duty, have told me that as soon as such illegal entrants are arrested, they will raise their hands immediately to indicate their intention of filing a non-refoulement claim. Marine police officers must then treat them like VIPs.

At present, the Castle Peak Bay Immigration Centre is already overloaded and there have been several clashes so far, because it is not designed to accommodate so many non-refoulement claimants . As we can see, Hong Kong is already overburdened by this problem. We are faced with such a real problem, but just now, Ms Claudia MO and Dr Fernando CHEUNG only kept picking on the pro-establishment camp, accusing us of fomenting discrimination and questioning us about our basis of describing such people as "bogus refugees". Some other Members also accuse us of stirring up panic with the intention of deceiving electors to get their support.

President, people are sometimes blinded by prejudice. We often hear many pan-democratic Members say that they want to help Hong Kong people. But when we are faced with all such problems that truly affect the everyday lives of Hong Kong people, they simply ignore them, totally refusing to consider the impact of bogus refugees on Hong Kong people, particularly the ethnic minority Hong Kong residents. They talk righteously about the need for humane treatment to bogus refugees who abuse the unified screening mechanism, but they ignore the threats Hong Kong people are facing. What they say is not true. In contrast, the situation we notice is very real.

President, back in 2008, 2012 and 2016, some from the Indian Chamber of Commerce told me of how certain Indian businessmen trading lawfully in Hong Kong had been beaten badly on the head and robbed of their jewelleries. They said the robberies were committed by bogus refugees. They also said that if the Government did not protect them, they could not live here anymore and would have to leave. Many women have also told me that in the past, they could go out at night without any fear, but these days, when they go out at night in certain districts, such as Yuen Long and Sham Shui Po, they are all very afraid. Why? Because some women going home late have really been robbed by bogus refugees. These are not fictitious stories. The crime figures are not fabricated. They are real. Some people say that these problems are fabricated by the *Oriental Daily News* and the Government with the aim of stirring up panic. But President, these are hard facts.

Dr Fernando CHEUNG keeps questioning us about our basis of describing those claimants as bogus refugees. In return, I also want to question Dr Fernando CHEUNG about his basis of regarding all those claimants as genuine refugees. The plain fact is that some male non-refoulement claimants have been sentenced to imprisonment for working as illegal workers. These are real crime figures. The plain fact is that more and more bogus refugees are coming to Hong Kong, and they even begin to form gangs, vie for territories and engage in street gang fights. All these are real cases, and even one such case is already too many. How many more figures do they want to have, and how many more injuries or even deaths of Hong Kong people do they want to see, before they can realize the truth that this problem must be tackled? They say that they want to help genuine refugees. We also want to help them. But if we do not screen out bogus refugees first, how are we going to help the people in genuine need?

Last week, Mr Holden CHOW and I visited a person with confirmed refugee status. Before that, I also met with some human rights lawyers and talked with people from non-governmental organizations serving refugees. They too admit that some people have been abusing the unified screening mechanism, agreeing that the loophole in the law must be plugged. They agree that the Government needs to strengthen its manpower and impose a statutory time limit for cap on publicly-funded legal assistance for non-refoulement claims. They agree to all of the above. We have the same goal—to screen out bogus refuges and help the genuine ones. If we really want to help those who are genuinely facing persecution and in need of help, we should expedite the screening process and increase the resources in this regard, so that they can have their refugee status confirmed as soon as possible and then start a new life. It is useless for the Members concerned to keep chiding the Democratic Alliance for the Betterment and Progress of Hong Kong and the pro-establishment camp. How can this solve the problem?

Over the past one or two years, I have kept urging the Government to seek an ultimate solution to this problem. In fact, as the Under Secretary said just now, the Government has put in place various measures over the past few months, and their effect is beginning to be felt. Nevertheless, the problem is not yet completely solved. Hence, the aim of this motion today is precisely to ask the Government to consider the feasible measures adopted in other places. Please do not be so sceptical all the time, and please do not always look at us with a conspiracy theory, saying that we want to persecute others and deceive electors to get their support.

When we notice a problem, we should tackle it. The measures we propose are also adopted in countries with similar problems. For instance, in Germany, the screening of non-refoulement applications is required to be done within a certain time limit, while in Switzerland, the screening procedure has to be completed within 48 hours. I also wish to know how they can do it. Regarding the feasibility of setting up holding centres, similar centres are found in Germany and Australia. If other countries can do it, why can't we do it in Hong Kong? Even if the Government does not find this proposal feasible, it should tell us the reasons. Moreover, we propose that if a non-refoulement claimant commits a criminal offence, he should not enjoy the right to a non-refoulement claim. According to the findings of a survey, 91% of the respondents support this proposal. If Germany can do it, why can't Hong Kong? Or, is it feasible to introduce the concept of "safe country of origin"?

I thus hope that Members can set aside their disagreement so that together we can find a way to tackle the problem of "bogus refugees" and do justice to the people of Hong Kong. We should not use public money recklessly; rather, we should use it to uphold Hong Kong as a safe city and help those in genuine need.

President, I so submit.

IR DR LO WAI-KWOK (in Cantonese): President, first, I would like to thank Mr Holden CHOW for moving the original motion. I and fellow Members belonging to the Business and Professionals Alliance for Hong Kong ("BPA") basically agree to the recommendations proposed to handle the problem of "bogus refugees". The amendment by Dr Priscilla LEUNG has also specifically supplemented the contents of the original motion.

In recent years, the issue of "bogus refugees" has gradually deteriorated, leading to many social problems. People unqualified for a genuine refugee status are coming to Hong Kong by every possible means, while some lawless persons have reaped profits by providing them with so-called "one stop" service for coming to Hong Kong. When arriving Hong Kong, these "bogus refugees" will abuse the unified screening mechanism for non-refoulement claims ("unified screening mechanism"). On top of lodging non-refoulement claims, they will even try to prolong the screening procedures, say, by lodging such claims after they have gone hiding for 11 months on average. Some "bogus refugees" will take up illegal employment when staying in Hong Kong, which will in turn affect job opportunities for local workers, and some even resort to break the law and take part in various illegal activities, threatening the daily life of local residents.

In fact, in the nine months between March 2014 and September this year, among the 10 172 non-refoulement claims assessed by the Immigration Department, only 65 cases were substantiated, representing a success rate of less than 1%; the backlog of pending cases has reached 10 815, and in 2015-2016, we spent 644 million dollars on screening the claims and supporting the claimants. This demonstrates the very serious nature of the problems concerning and arising from "bogus refugees", which have exerted heavy pressure and burden on Hong Kong's immigration control, judicial system, law and order and welfare, and so on, arousing grave concern among different sectors of society. I and fellow Members belonging to BPA all consider that, apart from paying attention to the

rights of non-refoulement claimants which are truly needy, Hong Kong should not allow "bogus refugees" to abuse our system and even infringe the rights and benefits of Hong Kong people.

President, we must get to the root and implement various specific measures in order to resolve the problem of "bogus refugees". First, expeditiously review the existing system and plug the loopholes against incoming "bogus refugees" with a view to creating immediate effects. Given the urgency of the matter, the SAR Government should comprehensively review current mechanism and policy measures concerned and draw reference from overseas practices, including reviewing the unified screening mechanism to prevent abuse, such as stop issuing Recognizance Forms (commonly known as "going-out passes") to non-refoulement claimants whose identity has not been verified. At the same time, more resources should be deployed to speed up the screening procedures for non-refoulement claims, so as to clear the huge backlog. Furthermore, the Government should set up holding centres to settle and manage the people concerned. Moreover, support mechanism for non-refoulement claimants should also be reviewed, such as imposing a cap on the publicly-funded legal assistance to quickly reduce the incentives for "bogus refugees" to flood into Hong Kong.

Second, strengthening interception at source to comprehensively relieve the nuisance caused by "bogus refugees" at the core. One of the measures is to step up publicity at various countries of origin of "bogus refugees" in order to clearly disseminate the message by stating expressly that Hong Kong will close the loopholes in the system, and will not allow any abuse of the unified screening mechanism, while there will be no job opportunities for non-refoulement claimants. Also, we should enhance cooperation with neighbouring regions and stringently combat people-smuggling syndicates in collaboration with the countries concerned to cut off illegal entrants. In particular, we should ask help from the Central Government.

Moreover, the Government should provide more resources to alleviate the direct impact of the problem of "bogus refugees" on Hong Kong people's everyday life. The authorities have to strengthen the manpower of law enforcement agencies like the Immigration Department and the Police, enhance inspection of black spots of illegal workers, and crack down on non-refoulement claimants engaging in illegal employment, as well as severely punishing relevant employers, so as to protect the employment opportunity of local workers.

Furthermore, the Police should strengthen patrolling effort in regions with more "bogus refugees" to improve law and order in such places, and protect the safety of residents there.

President, I and fellow Members belonging to BPA reject the amendment proposed by Ms Claudia MO as it cites the relevant convention in a wrong way. Although Hong Kong is a State Party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, yet the Convention does not require any verification of refugee status for non-refoulement claimants. Under existing policy, a claimant's identity as an illegal entrant will not change, regardless of the result of his non-refoulement claims.

As regards the amendments proposed by Dr Fernando CHEUNG and Mr James TO, we cannot agree to the deletion of certain pragmatic solutions proposed under the original motion, such as imposing a cap on the publicly-funded legal assistance and setting up holding centres.

President, I so submit.

MR CHEUNG KWOK-KWAN (in Cantonese): President, we often see parents accompanying their children on weekend mornings to sell flags for charities on the street. We want our next generation to learn how to care for society and other people. Apart from being a place where one can easily make a living, we also want Hong Kong to be a place of compassion. Hong Kong has had a history of helping refugees coming from other places since many years ago. From the 1970s to the 1990s, Hong Kong was declared the "port of first asylum" by the British Government and received hundreds of thousands of Vietnamese boat people. Frankly, to date, the United Nations Refugee Agency still owes the Hong Kong Government almost $1 billion.

It is reasonable to say that Hong Kong, this piece of land, does have a history of caring for refugees under persecution and affected by war. It is also justifiable to say, as also mentioned by many Members today, that Hong Kong has the legal obligation to help refugees subject to torture treatment because we are a contracting party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. So, it is both reasonable and justifiable that we offer help. But as a matter of fact, some people of other nationalities are now taking advantage of their refugee status to abuse the lax screening mechanism in Hong Kong to make money here, and they create serious

social problems. Should we continue to be a kind but stupid person? Should we act like Mr Dongguo in *Zhongshan Lang Zhuan* (The Story of the Wolf of Zhongshan) who kind-heartedly saved the cunning wolf but almost ended up being eaten by it?

We hope that Members are clear about one thing. The motion moved by Mr Holden CHOW today focuses on bogus refugees because they come to Hong Kong not to escape torture treatment but to make money. They have created different social problems in Hong Kong, such as engaging in illegal employment and even working for triad societies to perform illegal activities. According to available information, some bogus refugees illegally entered Hong Kong in an organized manner; and some entered Hong Kong through legitimate channels but overstayed in the territory, and some even lodged torture claims immediately after being arrested by Immigration officers. They stayed in Hong Kong working as illegal workers when they received a "going-out pass".

As discovered by the news media, most of the torture claimants are represented by certain law firms. We cannot help but suspect that some black sheep in the legal sector are assisting foreigners to come here in an organized manner and then lodge non-refoulement claims, and in return the firms receive service fees from them for mutual benefits. How much longer do Hong Kong people have to put up with this situation and loophole?

President, I cannot agree with the amendments proposed by several Members today. First of all, Ms Claudia MO's amendment puts the focus on illegal entrants from the Mainland and the border control problem of the exit and entry control departments in the Mainland. In fact, her amendment has distorted the truth. As Members, we are duty-bound to find out the cause to a problem and then administer the right remedy. We should not use the same remedy for everything; otherwise, the problem will become worse.

Ms Claudia MO and Mr James TO both think that the protracted screening mechanism and a lack of adequate and appropriate professional training for officers processing non-refoulement claims are the cause to refugees being stranded in Hong Kong. But the actual situation we find is that bogus refugees have deliberately stalled the screening process by not providing the information for processing their claims. In our opinion, the two Members' remarks are very unfair to frontline Immigration officers and have disregarded the efforts the frontline Immigration officers have made in finding the genuine torture claimants.

Just now, I heard Dr Fernando CHEUNG cite the example of Malala YOUSAFZAI, a Pakistani girl who has been granted asylum in the United Kingdom. She herself is a proof that there are genuine refugees in the world. I believe no one will disagree with this point. If Malala came to Hong Kong to lodge a torture claim, I believe she would meet the application requirements of a refugee and Hong Kong people will offer help without hesitation. Regrettably, the present situation we now see is that most of the refugees stranded in Hong Kong are not genuine refugees like Malala. They are bogus refugees that abuse the mechanism for non-refoulement claims. Please bear in mind that we have never denied there are genuine refugees in Hong Kong. But the example of Malala cited by Dr Fernando CHEUNG is actually not in any way related to the present problem of bogus refugees in Hong Kong. The two issues should not be mixed up.

Dr Fernando CHEUNG's amendment reverses cause and effect and inverts right and wrong. He says that the Government has provided inadequate support to non-refoulement claimants, and this seriously undermines their mental health and dignity, thus forcing them into illegal workers. I do not rule out the possibility that some genuine refugees are forced to engage in illegal employment due to financial difficulties, as Dr Fernando CHEUNG has claimed. But Dr CHEUNG should not take a part for the whole and use this to conceal the fact that bogus refugees are abusing the loophole in the present mechanism to come here to make money or even commit crimes.

President, we need to help the genuine refugees. Let us not deceive ourselves and allow the problem of bogus refugees to persist any longer in Hong Kong.

President, I so submit.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): It is now 7:58 pm. I suspend the meeting until 9:00 am tomorrow.

Suspended accordingly at 7:58 pm.

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Financial Services and the Treasury to Mr Kenneth LEUNG's supplementary question to Question 2

As regards the Securities and Futures Commission's ("SFC") arrangement and enforcement in relation to obtaining audit working papers from the Mainland, SFC has entered into various cooperation arrangements with the China Securities Regulatory Commission ("CSRC") since 1993, including:

(i) Memorandum of Regulatory Cooperation between CSRC, SFC, the Shanghai Stock Exchange, the Shenzhen Stock Exchange and the Stock Exchange of Hong Kong (1993);

(ii) Memorandum of Understanding between CSRC and SFC on Strengthening of Regulatory and Enforcement Cooperation under the Mutual Access between the Mainland and Hong Kong Stock Markets (2016); and

(iii) IOSCO Multilateral Memorandum of Understanding.

SFC has been working very closely with CSRC in relation to requests for investigatory assistance. From June 2013 to July 2016, CSRC has obtained for SFC audit working papers in seven cases.