OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 16 May 2018

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, G.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, G.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 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, S.B.S., 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, S.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

THE HONOURABLE KWOK WAI-KEUNG, J.P.

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, B.B.S., 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, B.B.S., M.H., J.P.

DR THE HONOURABLE CHENG CHUNG-TAI

THE HONOURABLE KWONG CHUN-YU

THE HONOURABLE JEREMY TAM MAN-HO

THE HONOURABLE GARY FAN KWOK-WAI

THE HONOURABLE AU NOK-HIN

THE HONOURABLE VINCENT CHENG WING-SHUN, M.H.

THE HONOURABLE TONY TSE WAI-CHUEN, B.B.S.

PUBLIC OFFICERS ATTENDING:

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

CHIEF SECRETARY FOR ADMINISTRATION
THE HONOURABLE JAMES HENRY LAU JR., J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

DR THE HONOURABLE LAW CHI-KWONG, G.B.S., J.P.
SECRETARY FOR LABOUR AND WELFARE

DR RAYMOND SO WAI-MAN, B.B.S., J.P.
UNDER SECRETARY FOR TRANSPORT AND HOUSING, AND
SECRETARY FOR TRANSPORT AND HOUSING

PROF THE HONOURABLE SOPHIA CHAN SIU-CHEE, J.P.
SECRETARY FOR FOOD AND HEALTH

THE HONOURABLE MICHAEL WONG WAI-LUN, J.P.
SECRETARY FOR DEVELOPMENT

THE HONOURABLE KEVIN YEUNG YUN-HUNG, J.P.
SECRETARY FOR EDUCATION

THE HONOURABLE PATRICK NIP TAK-KUEN, J.P.
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

CLERKS IN ATTENDANCE:

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

MISS ODELIA LEUNG HING-YEE, DEPUTY SECRETARY GENERAL

MS ANITA SIT, ASSISTANT SECRETARY GENERAL

MS DORA WAI, ASSISTANT SECRETARY GENERAL
PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members to the Chamber.

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

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments

<table>
<thead>
<tr>
<th>Description</th>
<th>L.N. No.</th>
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<tbody>
<tr>
<td>Pharmacy and Poisons (Amendment) (No. 3) Regulation 2018</td>
<td>80/2018</td>
</tr>
<tr>
<td>Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2018</td>
<td>81/2018</td>
</tr>
<tr>
<td>Practising Certificate (Solicitors) (Amendment) Rules 2018</td>
<td>82/2018</td>
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Other Papers

No. 107 — Securities and Futures Commission
Approved budget of income and expenditure for the financial year 2018/2019

No. 108 — The Government Minute in response to the Report of the Public Accounts Committee No. 69 of February 2018

Report of the Bills Committee on Inland Revenue (Amendment) Bill 2018

Report of the Bills Committee on Employment (Amendment) Bill 2017
ADDRESS

PRESIDENT (in Cantonese): Address. The Chief Secretary for Administration will address the Council on "The Government Minute in response to the Report of the Public Accounts Committee No. 69".

The Government Minute in response to the Report of the Public Accounts Committee No. 69 of February 2018

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, laid on the table today is the Government Minute responding to Report No. 69 of the Public Accounts Committee ("PAC").

The Chairman of PAC submitted to the Legislative Council on 7 February Report No. 69 which embodies a conclusion of and recommendations on the chapter of "Procurement and maintenance of government vessels" in the Director of Audit's Report. I welcome the PAC Report and I am also grateful for the time and effort that the Chairman and members of PAC devoted to investigating this subject.

There had been some inadequacies in the Marine Department ("MD")'s procurement of government vessels before 2013 and the two professional grades of MD has been plagued by persistent manpower shortage. We are pleased to note that the PAC Report recognizes a series of reform measures implemented by MD in the Government Fleet Division ("GFD") and the improvement measures and work adopted to resolve the manpower shortage problem of MD's professional grades in recent years.

We accept PAC's various recommendations and have set out in detail in the Government Minute the specific responses of the Transport and Housing Bureau ("the Bureau") and MD. Today, I would like to highlight the key measures that the Government has taken to improve MD's work in procurement and maintenance of government vessels, including those implemented and the progress made.

In May 2013, the Government established the Steering Committee on Systemic Reform of the Marine Department ("the Steering Committee") chaired by the Secretary for Transport and Housing to personally steer and monitor MD in conducting the review and reform. The Steering Committee published its
Final Report in April 2016, which recommended MD to replicate the good practices introduced in certain divisions in other divisions of MD, notably GFD, to improve its operations and work procedures. In this connection, MD’s Task Force on Reform has been stepping up its efforts in reforming GFD since 2016, with a series of reform measures progressively implemented to further enhance the efficiency of GFD.

The slow progress in the procurement of government vessels during the period from 2010 to 2013 has led to the ageing of major vessels in the Government fleet. MD has strengthened the management oversight of GFD since December 2015 to better monitor the implementation of various improvement measures. To expedite the procurement of government vessels, additional resources had been obtained for the Government New Construction Section to create time-limited posts for setting up two teams to clear procurement backlogs, and arrangement was made for the secondment of two Supplies Officer grade officers with rich procurement experience from the Government Logistics Department to assist professional grade staff in MD in vessel procurement.

The reform measures of GFD have started to deliver results. For instance, as compared with only two to three tenders each year before 2016, MD has expedited vessel procurement with a total of 15 tenders issued involving 63 government vessels for six departments between 2016 and 2017.

For government vessels which have reached their reference serviceable lifespan but are still in operation, MD has strengthened the inspection and maintenance work for the hull, machineries and equipment of the vessels during maintenance services to ensure that the vessels are safe and efficient to operate.

In improving the management of maintenance materials in the Government Dockyard, MD had completed the review on over 2,000 items without movement for more than 20 years and is now reviewing the items without movement for less than 20 years. The disposal of obsolete or dormant items, in accordance with the procedures stipulated in Stores and Procurement Regulations (including commercial disposal or dumping, etc.), has been conducted in phases following the review. MD is also proceeding with the enhancement of the Government Fleet Information System with a view to strengthening its analytical capacity and management reporting functions to facilitate the stock management of the Government Dockyard.
On the issue of manpower shortage of the professional grades staff in MD, the Administration is pleased to note that the Standing Commission on Civil Service Salaries and Conditions of Service has completed a grade structure review ("GSR") for the two professional grades of MD, i.e. the Marine Officer and Surveyor of Ships grades, and will seek the approval of the Finance Committee of the Legislative Council soon. Subject to the approval of the Finance Committee, we will implement the recommendations of GSR as soon as possible to resolve the manpower shortage and succession problems of the two grades in the long run.

The Bureau will continue to perform the duties of a Policy Bureau. Through regular meetings with the senior management of MD, the Bureau will closely monitor MD's overall work performance and progress on various issues and, as and when necessary, discuss with MD the issues requiring the Bureau's attention and provide policy steer and guidance. Moreover, the Bureau also maintains ongoing daily communications with MD on different issues requiring policy inputs, and arranges visits to the facilities and offices of MD by the senior management of the Bureau from time to time to gain a more comprehensive understanding of the issues MD is facing at the operational level, so as to enable the Bureau to formulate policies in a timely and effective manner. Other than these, the Bureau will assess and monitor the performance of MD in various aspects with reference to certain indicators developed and adopted, and in case a target is not met or when the performance has deteriorated, examine the issues and reasons with MD, keep in view the development of these matters as well as consider whether further steer and guidance from the Bureau is necessary.

The Government also attaches great importance to the manpower training of the maritime sector and in April 2014, $100 million was established to set up the Maritime and Aviation Training Fund ("MATF"), which aims to attract and encourage young people and in-service practitioners to receive aviation and maritime education and training, thereby enhancing the overall competitiveness and the professional standards of the industries. As at end-2017, 12 maritime-related training subsidy and incentive schemes were implemented under MATF, benefiting over 2 780 students and maritime practitioners and involving an amount of $31 million. Furthermore, the Manpower Development Committee ("MDC") has also been set up under the Hong Kong Maritime and Port Board since the Board's inception in April 2016 with a view to facilitating the formulation of manpower development strategies. In summary, in response
to the manpower shortage problem faced by the industry, the Bureau will continue to work closely with MDC, industry stakeholders and relevant education institutions to explore and devise new measures and enhancements to the existing initiatives under MATF. Besides, the Bureau would embark on a review of the overall implementation and effectiveness of MATF, with a view to mapping out its way forward.

President, I would like to thank the Chairman and all members of PAC again for their efforts and guidance. The Bureau and MD will strictly follow their responses in the Government Minute and implement improvement measures in a timely manner in order to enhance the overall service quality of the Government fleet.

Thank you, President.

ORAL ANSWERS TO QUESTIONS


Improving the effectiveness of the work of the Joint Office on handling water seepage complaints

1. MS YUNG HOI-YAN (in Cantonese): The Buildings Department ("BD") and the Food and Environmental Hygiene Department ("FEHD") set up a Joint Office ("JO") in 2006 to handle reports on water seepage in buildings. However, the Audit Commission and the Office of The Ombudsman released reports in 2016 and 2018 respectively, pointing out certain inadequacies in the work of JO. In addition, in recent years, I have received from time to time complaints from residents and District Council members in New Territories East that JO has been very slow in following up reports on water seepage, leaving residents troubled by water seepage nuisance in misery. In this connection, will the Government inform this Council:

(1) of a breakdown by District Council district of the following: the number of reports received by JO, the numbers of reports handled by JO as classified by handling results, the number of entry warrants
granted by the Court, and the respective numbers of cases in which the persons concerned were prosecuted and convicted (to be set out one by one by the legislation involved), in each of the past three years; the average and longest handling time for those cases the handling of which was completed, and the respective numbers of personnel deployed by BD and FEHD to station in JO, in each of the past three years;

(2) whether the Development Bureau and the Food and Health Bureau have conducted a value-for-money assessment on the performance of JO since its establishment; if so, of the criteria adopted for and the outcome of the assessment; if not, whether they will conduct such an assessment; how the authorities will improve the performance of JO by addressing areas such as manpower, resources, case handling procedure, internal division of work, and law enforcement powers of JO; and

(3) of the locations selected, the commissioning dates, the number of personnel to be deployed and the estimated annual expenditure, in respect of the four regional joint offices planned to be set up by JO; given that FEHD has planned to form a special team to conduct a comprehensive review on JO's procedural guidelines and explore the feasibility of setting up a tribunal to deal with water seepage cases, of the details, including the composition and operation of the special team, and the expected time for the completion of the relevant feasibility study; how BD and FEHD will complement each other in order to enhance the performance of JO?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, water seepage in buildings is generally caused by the defective fabric or installations of buildings and the lack of proper maintenance. Proper management, maintenance and repair of buildings, including resolving water seepage problems, are the responsibilities of building owners and occupiers and require the cooperation of the owners and occupiers concerned. In general, if water seepage occurs in private buildings, the owners should first arrange their own investigation of the cause of seepage and, as appropriate, coordinate with the occupiers and other owners concerned for repair works.
Nevertheless, the Government recognized that owners will encounter difficulties in dealing with water seepage problems. Before the setting up of the Joint Office ("JO"), the investigation and enforcement actions taken by different departments according to their respective policy focus and professional expertise sometimes rendered us unable to provide better services to the public. In view of this, "Team Clean" initiated in December 2004 the setting up of JO by the Food and Environmental Hygiene Department ("FEHD") and the Buildings Department ("BD") to improve inter-departmental coordination and deal with building water seepage in a swift and effective manner. JO started to provide service to the public in 2006 through 19 districts in Hong Kong.

Once the source of seepage and nuisance have been identified during investigation, JO will issue "nuisance notice" to the person concerned under the Public Health and Municipal Services Ordinance (Cap. 132), requiring the abatement of nuisance within a specified period of time and instigate prosecution against non-compliance with the "nuisance notice". If a building safety problem or waste of water caused by defective water supply pipes is found during investigation, JO will also refer the case to BD and the Water Supplies Department for follow-up and enforcement action in accordance with relevant legislation.

JO is now facing many challenges including the high number of water seepage reports, difficulties in gaining entry into premises for investigation as well as the limitations imposed by the tests. Nonetheless, such difficulties have not held us back; we strive to seek solutions for which I will introduce in my reply later.

The Development Bureau and the Food and Health Bureau provide a joint reply to the three parts of the question as follows:

(1) The geographical statistics on water seepage reports received by JO, reports handled, investigation results and enforcement actions taken from 2015 to 2017 are set out at Annex 1. Overall speaking, in the past three years, JO received an average of some 34 000 water seepage reports per year, in which 28 000 cases have been handled and investigation completed including cases that needed not be dealt with due to, for instance, cease of water seepage during investigation. JO had issued some 5 200 "nuisance notice"
annually over the same period, with majority of the "nuisance notice" complied with. Over the same period, JO instigated about 90 prosecutions under the Public Health and Municipal Services Ordinance annually.

The staff establishment of JO in the past three financial years is set out at Annex 2.

In general, JO staff will contact the informant within six working days upon receipt of a water seepage report to arrange for inspection in the building concerned. With the cooperation of the owners or occupants concerned, the investigation can normally be completed within 90 working days and the informant will be advised of the outcome. If the investigation cannot be completed within 90 working days, JO will notify in writing the informant of the investigation progress.

Outlined above is only the normal processing time. The time required for processing a water seepage case largely depends on the complexity of the case and the extent of cooperation of the parties concerned. For complicated cases which for instance involve multiple seepage sources, recurring or intermittent water seepage, JO staff will have to conduct different, ongoing or repeated tests and monitoring. As these tests take time and require full cooperation of the owners or occupants concerned, the processing of such cases generally takes more time. The processing time for cases involving vacant units or uncooperative owners or occupants would be even longer. JO does not compile statistics on the time for investigating water seepage cases.

(2) and (3)

The main objective of JO is to provide a one-stop service to the public by setting up a working team with both the legal authority of FEHD and the building survey expertise of BD. FEHD and BD have drawn up clear operational guidelines on the investigation, enforcement and prosecution procedures and plan on division of labour for handling water seepage cases since the establishment of JO.
To strengthen internal coordination and case monitoring, FEHD and BD have been maintaining close liaison through regular meetings at all levels. The meetings discuss how best to tackle complicated seepage cases and review guidelines and procedures governing the handling of water seepage reports, so as to enhance the efficiency and effectiveness in handling seepage cases. JO has increased the manpower to tackle the increasing number of reports. The number of FEHD's staff has increased from 81 in 2006 to 224 at present. The number of BD's staff has increased over the same period, and the spending on appointment of consultants for carrying out of stage III professional investigation has substantially increased from $1.4 million to $34 million over the same period. In addition, most of the posts of the two departments at JO has turned from non-civil service contract posts at the beginning into permanent civil service ones gradually.

The Audit Commission conducted a value-for-money audit on the joint operations on water seepage in buildings in 2016 and made a series of recommendations for JO on handling water seepage. The Food and Health Bureau and the Development Bureau have been closely supervising the two departments to actively follow up the various improvement measures so as to enhance the effectiveness of JO.

On the tests adopted by JO in investigating water seepage, the consultant engaged by BD has, upon examining and researching into the latest technological methods, identified various methods for identifying sources of water seepage, conducted field tests and is now formulating detailed technical guidelines. JO is in parallel arranging full application of these new technological methods in pilot districts. JO will evaluate their effectiveness and consider whether to extend such methods to all districts of Hong Kong. We anticipate that the new technologies can increase the chance of identifying the sources of water seepage and suitably relieve the stress of frontline staff.

To further improve the handling of water seepage cases, a task force led by Coordinator of FEHD and a senior professional officer of BD is formed to comprehensively review the current operation of JO. The Food and Health Bureau and the Development Bureau will closely steer the review.
To enhance the communication between JO staff of the two departments and to improve the overall efficiency of JO, JO is seeking assistance of the Government Property Agency to identify suitable office space for setting up of four regional joint offices for co-location of JO staff of the two departments. According to the current progress, the four regional joint offices are expected to be set up in the second half of 2019. The staff establishment and estimated expenditure of JO in 2018-2019 are set out at Annex 3.

President, the above measures aim to enhance the overall efficiency of JO and our service to the public.

Annex 1

2015

<table>
<thead>
<tr>
<th>District</th>
<th>Number of reports received</th>
<th>Number of cases screened out (a)(b)</th>
<th>Number of cases with seepage ceased during investigation (c)</th>
<th>Number of cases for which source of seepage could not be identified (d)</th>
<th>Number of cases with investigation completed (e)</th>
<th>Number of cases with source of seepage identified (f)</th>
<th>Number of nuisance notices issued (g)</th>
<th>Percentage of nuisance notices complied with by the court (h)</th>
<th>Number of prosecutions instigated under the Public Health and Municipal Services Ordinance (i)</th>
<th>Number of convictions (j)</th>
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<td>Number of cases screened out</td>
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<td>Number of nuisance notices issued</td>
<td>Percentage of compliance of nuisance notices</td>
<td>Number of prosecutions instigated under the Public Health and Municipal Services Ordinance</td>
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<td>468</td>
<td>133</td>
<td>116</td>
<td>104</td>
<td>353</td>
<td>99.3%</td>
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<td></td>
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<tr>
<td>Total</td>
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<td>12 000</td>
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<td>3 494</td>
<td>4 679</td>
<td>13 093</td>
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</table>

Legend:
- (a) Number of cases for which source of seepage could not be identified
- (b) Number of cases with source of seepage identified
- (c) Number of cases with investigation completed
- (d) Number of nuisance notices issued
Notes:

(1) These include unjustified cases and withdrawn cases, in respect of which no investigation will be made by JO.
(2) The figures do not necessarily correspond to the number of reports received in the same year.
(3) The figures only reflect the number of convictions per the prosecutions instigated in the same year.

<table>
<thead>
<tr>
<th>District</th>
<th>Number of reports received</th>
<th>Number of cases screened out (^{(1)}) (^{(2)})</th>
<th>Number of cases for which seepage ceased during investigation (^{(2)})</th>
<th>Number of cases with source of seepage identified (^{(2)})</th>
<th>Number of cases with investigation completed (^{(2)})</th>
<th>Number of nuisance notices issued (^{(2)})</th>
<th>Percentage of compliance of nuisance notices (^{(2)})</th>
<th>Number of prosecutions instigated under the Public Health and Municipal Services Ordinance (^{(2)})</th>
<th>Number of convictions (^{(2)}) (^{(3)})</th>
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</thead>
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<td>133</td>
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<td>0</td>
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<td>Wan Chai</td>
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<td>164</td>
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<td>169</td>
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<td>104</td>
<td>100%</td>
<td>1</td>
</tr>
<tr>
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<td>619</td>
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<td>677</td>
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<td>3</td>
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<tr>
<td>Southern</td>
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<td>74</td>
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<td>34</td>
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<td>16</td>
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<tr>
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<td>771</td>
<td>151</td>
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<tr>
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<td>100%</td>
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<tr>
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<td>507</td>
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<td>653</td>
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<td>699</td>
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<td>7</td>
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<tr>
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<td>5</td>
</tr>
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<td>Number of cases for which source of seepage could not be identified (^{(2)})</td>
<td>Number of cases with source of seepage identified (^{(2)})</td>
<td>Number of cases with investigation completed (^{(2)})</td>
<td>Number of nuisance notices issued (^{(2)})</td>
<td>Percentage of compliance of nuisance notices (^{(2)})</td>
<td>Number of prosecutions instigated under the Public Health and Municipal Services Ordinance (^{(2)})</td>
<td>Number of convictions (^{(3)})</td>
</tr>
<tr>
<td>-------------</td>
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<td>---------------------------------------------------------------</td>
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<td>159</td>
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<td>98.1%</td>
<td>2</td>
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<td>721</td>
<td>607</td>
<td>538</td>
<td>459</td>
<td>1 604</td>
<td>308</td>
<td>97.4%</td>
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<td>826</td>
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<td>340</td>
<td>798</td>
<td>277</td>
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<td>578</td>
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<tr>
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<td>15 952</td>
<td>5 584</td>
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</tr>
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Notes:

(1) These include unjustified cases and withdrawn cases, in respect of which no investigation will be made by JO.

(2) The figures do not necessarily correspond to the number of reports received in the same year.

(3) The figures only reflect the number of convictions per the prosecutions instigated in the same year.
<table>
<thead>
<tr>
<th>District</th>
<th>Number of reports received</th>
<th>Number of cases screened out (1)(2)</th>
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<th>Number of cases for which source of seepage could not be identified (2)</th>
<th>Number of cases with investigation completed (2)</th>
<th>Number of nuisance notices issued (2)</th>
<th>Percentage of compliance of nuisance notices (2)</th>
<th>Number of cases with entry warrants granted by the court (2)</th>
<th>Number of prosecutions instigated under the Public Health and Municipal Services Ordinance (2)</th>
<th>Number of convictions (2)(3)</th>
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<td>Number of cases with source of seepage identified</td>
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<td>Number of nuisance notices issued</td>
<td>Percentage of compliance of nuisance notices</td>
<td>Number of prosecutions instigated under the Public Health and Municipal Services Ordinance</td>
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<td>5</td>
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<tr>
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<td>4 172</td>
<td>6 253</td>
<td>5 006</td>
<td>97.8%</td>
<td>62</td>
<td>114</td>
<td></td>
</tr>
</tbody>
</table>

Notes:

1. These include unjustified cases and withdrawn cases, in respect of which no investigation will be made by JO.
2. The figures do not necessarily correspond to the number of reports received in the same year.
3. The figures only reflect the number of convictions per the prosecutions instigated in the same year.

---

**Annex 2**

**Staff Establishment of JO**

<table>
<thead>
<tr>
<th></th>
<th>2015-2016</th>
<th>2016-2017</th>
<th>2017-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of investigation and coordinating staff of FEHD</td>
<td>219</td>
<td>220</td>
<td>224</td>
</tr>
<tr>
<td>Number of professional and technical staff of BD</td>
<td>64</td>
<td>64</td>
<td>64</td>
</tr>
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</table>
MS YUNG HOI-YAN (in Cantonese): President, the buildings and the population in Hong Kong are both facing the ageing problem. Setting up JOs is well-intentioned but we always find that JOs are low in efficiency. According to the figures in Annex 1 of the Secretary's main reply, the number of reports received in 2017 was about 36,000. If we exclude the "number of cases screened out" and the "number of cases with investigation completed (a)+(b)+(c)", there are still more than 5,300 cases which have not been accounted for and to which the authorities have not responded. It is now May 2018 and all cases that need to be handled have been processed, but more than 5,300 cases have still not been accounted for. There were more than 4,100 cases for which the source of seepage could not be identified last year. The Secretary stated in the main reply that JO is arranging the application of new technological methods in pilot districts. My supplementary question is: What are the new technologies used by the authorities and whether they will introduce newer methods for identifying the source of seepage? Many people are plagued by this problem; if the Bureau only conducts a "colour water test", it will not be able to identify the source of seepage. What are the new technologies adopted by the Government?
SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Ms YUNG for her supplementary question. In the past few years, the source of seepage could be identified in about 40% of the cases. As compared with only 14% of successful cases before setting up JO, efficiency has indeed been improved. I hope Members will understand that.

What are the new methods currently used in pilot districts? First, infrared is used for testing the moisture content of the seepage surface layers and the possibility of seepage; second, microwave is used for scanning surface layers and in-depth inspection because the gaps in floor slabs could be the source of water seepage; third, doppler is used to measure liquid flow in pipes.

The new methods used in the pilot districts have been rather effective. In 2016, we found the source of seepage in more than 70% of cases, which was more satisfactory than the original 40% success rate and the number of successful cases exceeded 90% last year. We will soon use new technologies to handle more complex cases in three districts, namely Wan Chai, Central and Western District and Kowloon City. If proved effective, it is expected that the new technologies will be used to handle cases in 19 districts throughout Hong Kong next year. We hope that the rate of successfully identifying the sources of seepage will then substantially increase.

MR TONY TSE (in Cantonese): President, the major objective of setting up JO is to assist private properties in solving seepage problems. However, since the establishment of JO in 2006, it seems that we are getting farther and farther away from the target in terms of the number of cases or handling time. According to the Secretary's reply, the number of personnel concerned has increased from 81 to nearly 300. The handling time is still very long despite the continuous increase in manpower.

We also need to study whether public funds have been used properly. As the Secretary mentioned in the main reply, proper management, maintenance and repair of private buildings, including resolving seepage problems, are the responsibilities of building owners and occupiers. Therefore, I welcome the Secretary's proposal of forming a task force to conduct a review on JO's structure and handling methods.

I would like to ask if the Secretary can study …
PRESIDENT (in Cantonese): Mr Tony TSE, please state your supplementary question and do not express your views.

MR TONY TSE (in Cantonese): President, my supplementary question is whether the task force will review the recommendations put forward by the Hong Kong Institute of Surveyors in 2005, i.e. establishing a Building Affairs Tribunal ("BAT") for resolving disputes over maintenance and repair of private buildings, including seepage problems, and empowering BAT to help private owners identify the source of seepage and solve the problems.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr Tony TSE for his supplementary question and proposal. The Government understands that relying solely on government officials and public power to deal with issues may not be the best practice. If we can use market forces or capitalize on the powers of professional bodies and professionals, and adopt their proposals, we welcome this approach.

Nevertheless, the Government will also face challenges. If the Government grants public power to certain professionals, how can it ensure that the power will be properly used? Assuming that BAT will really be set up in the future, how can the Government ensure that this mechanism will be recognized by various sectors of the community? This is a big challenge.

Mr TSE just now asked whether the task force would also review the recommendations made earlier by BAT or professional bodies. We will do so.

MR AU NOK-HIN (in Cantonese): President, many people have strong views on JO and they do not understand why FEHD and BD have failed to identify the source of seepage after they have spent three to four years on conducting investigations.

Some time ago, the Frontline Health Inspector Union lodged a complaint with the Complaints Division of the Legislative Council and put forward three inadequacies. First, despite the difficulties faced by BD's outsourced consultants in entering the flats in question, BD has not assumed the
responsibility to apply to the court for entry warrant; second, the authorities wrongly cited the Public Health and Municipal Services Ordinance in instituting prosecutions; third, BD enforced the law …

PRESIDENT (in Cantonese): Mr AU Nok-hin, please hold on. Please state your supplementary question directly.

MR AU NOK-HIN (in Cantonese): … I am stating my supplementary question. I pointed out earlier the problem of unclear delineation of powers and responsibilities of BD and FEHD. Will the Secretary inform this Council whether improvement proposals have been made during the review?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr AU for his supplementary question. Staff of JO have a heavy workload. As the management, we understand that colleagues want to express their feelings and we will actively enhance communication between JO staff of the two departments. As for specific measures, as I stated in my main reply, among all the offices in various districts, only four offices have JO staff of the two departments working together. We are actively identifying places and JOs will be divided into four regional joint offices in the future, i.e. Hong Kong, Kowloon, New Territories East and New Territories West. If staff of the two departments can work together in the same office, they can have better communication and circulation of files will be sped up. In addition, Mr AU just now asked whether the future review would examine the relevant procedures and how division of work would be conducted. I would like to point out that the current division of work has its historical grounds and justifications, but we will consider if there is room for improvement.

MR VINCENT CHENG (in Cantonese): President, as stated by the Secretary in the main reply, four regional joint offices are expected to be set up in the second half of 2019, which is only a year or so from now. I think the division of work between the two departments is unclear. Can the authorities introduce a short-term proposal this year or in the coming months to expedite the relevant procedures? Must we wait till the establishment of the regional joint office to carry out the relevant work?
SECRETARY FOR DEVELOPMENT (in Cantonese): I thank Mr CHENG for his supplementary question and proposal. We are now working on several tasks at the same time. As I mentioned just now, we are testing new technologies and if the result is satisfactory, we will use these new technologies in 19 districts. I also mentioned the regional joint office, why is it that only four regional joint offices can be set up in the second half of 2019? There are now offices in 19 districts and we will have to look for four more spacious offices to allow more colleagues to work together.

In addition, as I also mentioned in the main reply, we have started using a new information system since March this year. As Ms YUNG Hoi-yan said earlier, we were criticized in the past for the lack of data but the public have the right to access the relevant data. As the management, we think that the data can also help us follow up on the cases better. We started aggregating the relevant data since March; generally speaking, it may take 12 to 18 months before we can have clear aggregated data. As pointed out by Mr CHENG, if we find in the process that certain measures can be implemented before sufficient data have been aggregated, we will introduce the relevant measures first.

MR LEUNG YIU-CHUNG (in Cantonese): President, many members of the public have high hopes on JO because only JO can help them solve the seepage problems. Regrettably, JO mainly contracts out the work and as mentioned by the Secretary just now, the technologies adopted by JO are not adequate. For example, in a recent case, JO staff asked the household to consider hiring a loss adjuster to handle the problem because the loss adjuster has better technologies including infra-red technology. The Secretary mentioned just now that three new technologies were now put on trial but they would only be widely used next year. I would like to ask the Secretary if the loss adjuster is now using the three new technologies and whether the authorities can expedite the use of these technologies to benefit households plagued by seepage problems. Furthermore, when the authorities test the water quality, is it possible not to test only one kind of sewage but also test the water leaking from other places?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mr LEUNG for his supplementary question. On the second point of his supplementary question, though tenants are affected by rain seepage, this does not constitute nuisance and does not fall within the scope covered by the relevant Ordinance.
In fact, we also want to deal with these issues as quickly as possible. As I mentioned earlier, we will try out new technologies in three districts, namely Wan Chai, Central and Western District and Kowloon City, for reasons that there are more old buildings and more complicated cases in such districts. In the first and second phases, we will still adopt simpler technologies and we will only adopt the new technologies in the third phase. In our view, after learning in the first and second phases the structure of the upper floor unit, the location of the drainage pipes or places that possibly caused seepage, it will be conducive to the use of new technologies in the third phase. Yet, if the results are significant, we will use new technologies in various districts as soon as possible through resources allocation and appropriate training.

PRESIDENT (in Cantonese): Quite a number of Members are concerned about the issues raised in this question but only five Members can raise questions. May I remind Members that they can ask one supplementary question, they should be as concise as possible and should not engage in making lengthy remarks so that more Members can raise supplementary questions. In addition, I also ask officials to make their answers as concise as possible.

Second question.

Illegal carriage of passengers for reward

2. MR FRANKIE YICK (in Cantonese): On the 19th of last month, a serious traffic accident occurred in Kowloon City killing one person and injuring four others, and all of the four vehicles involved in the accident were damaged. It has been reported that a private car, which was involved in the accident, was being used for illegal carriage of passengers for reward (commonly known as "white licence cars' service") at the time of the accident and had a passenger on board. Some members of the insurance industry have pointed out that the third party risks insurance for vehicles being used as white licence cars may be rendered invalid as a result of such use. While the e-hailing platform concerned claimed that a third party risks insurance policy had been taken out for the white licence car concerned, the details of the relevant policy have never been made public. Regarding white licence cars' service, will the Government inform this Council:
(1) whether it has assessed the insurance protection currently provided for the drivers and passengers of white licence cars, the drivers and passengers of other vehicles, the passers-by, etc., involved in traffic accidents involving white licence cars; and

(2) whether it will step up, from the public education, legislation and law enforcement fronts, its efforts in clamping down on white licence cars' service, such as reminding members of the public that they may not be protected by a third party risks insurance if they travel on white licence cars, amending the legislation to raise the penalties on drivers of white licence cars, as well as setting up a reporting hotline; if so, of the details; if not, what other measures are in place to eradicate white licence cars' service?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the Government has all along been concerned about the situation on illegal carriage of passengers for reward by private cars. Section 52(3) of the Road Traffic Ordinance (Cap. 374) ("RTO") stipulates that no person shall drive or use a private car, or suffer or permit a private car to be driven or used, for the carriage of passengers for hire or reward unless a hire car permit ("HCP") is in force in respect of the vehicle. Otherwise, it is an offence. Under section 14 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D), an application for a HCP shall be made, together with supporting documents, to the Commissioner for Transport ("the Commissioner") by the registered owner of the private car concerned to the satisfaction of the Commissioner that the application has met the specified requirements. One such requirement is that there is in force in relation to the private car a third party risks insurance policy which complies with the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272).

My reply to the various parts of Mr Frankie YICK's question is as follows:

(1) As advised by the Financial Services and the Treasury Bureau, when taking out a third party risks insurance policy for a private car, the policyholder is generally required to provide information on the uses of the vehicle, which will form the basis of underwriting. If the policyholder fails to truthfully disclose that the vehicle will be used for hire or reward, the policy may be invalidated. Based on the
established practice of the insurance industry in handling traffic accident cases, the insurance company will first compensate the third party whose injury or death has been caused by the traffic accident, and then recover the loss from the vehicle owner. If the vehicle owner or driver has died in the accident, the insurance company is still entitled to recover the loss from the estate of the deceased. The coverage of statutory third party risks insurance does not include the personal injury or death of the vehicle owner or driver.

As for the traffic accident referred to in Mr Frankie YICK's question, the Insurance Authority ("IA") understands from the relevant insurance company that the insurance policy taken out by online car hailing company Uber aims to insure passengers and third parties against injury or death caused by ride-sharing trips. In order not to affect the investigation and subsequent legal proceedings, the Financial Services and the Treasury Bureau and IA will not comment on the accident.

(2) The Government has been combating illegal carriage of passengers for reward through publicity and education campaigns as well as law enforcement efforts.

In respect of publicity and education campaigns, the Transport Department ("TD") has been making use of various channels, including broadcasting announcements of public interest on radio, displaying samples of HCPs on the TD's website, and putting up posters in public places. These efforts serve to promote to the public that when they use hire car service, they should ensure the private car concerned is issued with a valid HCP; and educate the public on how to identify licensed hire cars. In the related publicity and education campaigns, TD has also reminded the public that the third party risks insurance for an illegal hire car may be invalidated. TD will further strengthen public education work, including increasing the number of channels for broadcasting announcements of public interest and the frequency of such broadcast on radio, increasing the number of government venues for displaying posters, etc. TD will keep up with its efforts to promote the online enquiry system for HCP on the GovHK website through the TD's mobile applications, and continue to communicate with the transport trades
so as to remind drivers of the need to abide by the law. In addition, the Police will continue to arrange stand-up briefings with the media after taking enforcement actions on illegal carriage of passengers for reward. In the briefings, the Police will publicize the risks involved in using illegal hire car service and remind citizens that the third party risks insurance for the hire car concerned may be invalidated.

On the other hand, the Government has been taking stern enforcement actions against illegal carriage of passengers for reward and will not condone such activities. Section 52 and Schedule 4 of RTO stipulate that an offender who uses a private car or light goods vehicle ("LGV") for the illegal carriage of passengers for reward, or who solicits or attempts to solicit any person to travel in such vehicles, is liable to a fine of $5,000 and three months' imprisonment on the first conviction. The licence of the subject vehicle may also be suspended for three months. On the second or subsequent conviction, the offender is liable to a fine of $10,000 and six months' imprisonment. For a subsequent offence in respect of the same motor vehicle, the licence of that vehicle may be suspended for six months. Under section 69 of RTO, a court may order a person convicted of any offence under RTO in connection with the driving of a motor vehicle to be disqualified to drive for such period as the court thinks fit. The aforesaid provisions are also applicable to companies or persons who provide booking services for illegal hire car service through smartphone applications or online platforms. TD is currently reviewing the need to raise the penalties for the relevant offences so as to enhance the deterrent effects.

The Police will also continue to step up efforts to combat the offences. Between 2015 and 2017, the Police have undertaken enforcement actions on 126 cases concerning illegal carriage of passengers for reward by private cars or LGVs. The Police will continue to combat the offences through targeted operations, including collecting intelligence, investigating and following up on referral cases as well as complaint cases. Members of the public may report to the Police if they find any cases of illegal carriage of passengers for reward. The contact information of the relevant police stations and traffic report rooms can be found on the web pages of the Hong Kong Police Force.
MR FRANKIE YICK (in Cantonese): Secretary, many people engaging in illegal carriage of passengers for reward usually provide hire car services through mobile applications, and these platforms are precisely the root of such illegal activities. I do not know if these platforms, which allow private car owners to provide carriage services without HCPs, have contravened the Trade Descriptions Ordinance, but drivers have committed an offence for carrying passengers illegally for reward. If these illegal activities cannot be eliminated, they will continue to proliferate and more members of the public will be caught by the law.

Last year, there was a case of illegal carriage of passengers for reward involving 21 people from different walks of life, who claimed to be students, teachers, insurance brokers, company owners and retired persons. From this, we can see that the problem is pretty serious. If private cars are used as commercial vehicles and travelling on the road plying for illegal activity …

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

MR FRANKIE YICK (in Cantonese): … this will not only seriously undermine the policy on road traffic management, but will also drastically increase the loading of roads, thereby undermining the protection for passengers and other road users. I would like to ask the Secretary if the Government has introduced any measure to vigorously clamp down on these e-hailing applications.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr YICK for his supplementary question. We must stress one point, if cars for hire have valid HCPs, they are permitted by the existing law to provide hire car service through different platforms. Therefore, the question lies in whether the cars for hire have valid HCPs.

As I mentioned in the main reply just now, the Police will take stern enforcement actions and clamp down on these activities through various means. TD is currently reviewing the penalties for the relevant offences, and is expected to report to the Panel on Transport and consult Members' views in the next legislative session, i.e. 2018-2019.
MR LUK CHUNG-HUNG (in Cantonese): There is a demand for personalized point-to-point transport service and drivers are eager to explore different means for making a living. However, the e-hailing services provided by Uber (that is, white licence cars services) have invalidated the third party risks insurance so that the drivers may easily breach the law inadvertently. In the past, the Government was lax in law enforcement and only targeted at the drivers but not the companies which was extremely unfair. The underlying reason is …

PRESIDENT (in Cantonese): Mr LUK Chung-hung, please raise your supplementary question.

MR LUK CHUNG-HUNG (in Cantonese): … an absence of clear regulation and legitimate arrangement. I would like to ask the Secretary if the Government will regulate, govern or legislate on these point-to-point e-hailing services, or whether it has embarked on the relevant studies.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr LUK Chung-hung for his question. I mentioned one point just now, and that is, if the cars for hire have valid HCPs, they are permitted by the existing law to make hire car arrangements through various channels. The question lies in whether the cars for hire through the e-hailing platforms have valid HCPs.

A lot of work has been done by the Government in this regard. As I have pointed out in reply to Mr Frankie YICK’s main question, while the Government is reviewing the need to raise the penalties, it has also commenced the legislative work of franchised taxis. The Committee on Taxi Service Quality conducted a meeting some time ago to explore how services provided by the local taxi trade could be improved. We are pleased to learn that the Hong Kong Taxi Trade Council is developing an e-hailing platform, thereby enabling members of the trade to match passengers with taxi services through e-hailing. The taxi trade is also encouraged to develop, through resource deployment, a common platform so that the e-hailing service provided can cater for people's demand for point-to-point transport services in a more regulated manner, as well as in compliance with the existing legislation.
MR CHAN KIN-POR (in Cantonese): President, as mentioned by a number of colleagues just now, there is indeed a demand for e-hailing service. I would like to ask if the Government will develop a scheme to impose regulation and restriction that is acceptable to the taxi trade. After all, taxi owners have paid a high premium for taxi licences, there is no reason for other car owners to be permitted to provide e-hailing service at wish. Has the Government considered any relevant proposals?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr CHAN Kin-por for his question. Although the existing law does not prohibit the provision of e-hailing service, I must stress that all hire cars must obtain valid and legal HCPs. As I mentioned earlier on, while the Hong Kong Taxi Trade Council is developing an e-hailing platform, the Government has also encouraged various taxi trades to build a platform to facilitate members of the public and provide point-to-point service, so that the taxi trades can develop in a regulated and healthy manner.

Our next task of this year is to introduce franchised taxis. Franchised taxis with an e-hailing feature will operate in a regulated manner. We also hope to strike a balance between maintaining the healthy and sustainable development of the taxi trade and satisfying people's demand for point-to-point transport service with an e-hailing feature.

MR TOMMY CHEUNG (in Cantonese): The Secretary has been evasive. President, the issue that I wish to highlight is how insurance can protect members of the public who use hire car service. We are still unable to figure out if the existing insurance covers passers-by or hire car passengers injured in a traffic accident. May I ask if it is possible to specify in an insurance policy all the conditions that will not be covered, such as hire cars will not be covered by third party risk insurance, so that drivers will not think that they are protected under the third party risks insurance policy? Will the Government consider enhancing the provisions to avoid ambiguity by requiring the operators of hire car service to take out insurance policies for passers-by and car passengers? While I have no idea why people engaging in illegal activities are allowed to take out insurance, my concern is how passers-by and passengers can be protected. Can the Secretary give us a response in this regard?
SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): First of all, I thank Mr Tommy CHEUNG for raising this question about insurance. I must stress that if a vehicle owner fails to specify that the vehicle will be used for the carriage of passengers or activities for reward when he takes out third party risks insurance policy, the insurance policy may be invalidated. Under the existing legislation, it is an offence for a vehicle owner not having any valid HCP to engage in illegal carriage of passengers. I think it would be very difficult to take out insurance for illegal activities as this involves a wide array of considerations.

Take the case of Uber as an example, if all the hire cars under this e-hailing platform have obtained valid HCPs, there is no problem for it to provide e-hailing service for passengers. However, if the cars providing such services have not obtained the relevant permits, this would constitute an illegal practice. According to my understanding, the policy taken out by Uber only insure passengers and third parties against injury or death, but does not insure the damage caused to properties. Therefore, it all depends on the terms and conditions of the insurance policy and no seeping generalization can be made.

MR SHIU KA-FAI (in Cantonese): Many companies operating under the banner of sharing economy have come into being in recent years, and one example is e-hailing companies. While some members of the public consider such services very convenient, there are many hidden worries. Members should have learnt from news reports that a female Mainland flight attendant was killed while riding on this kind of hire car on 5 May, and the murderer allegedly committed suicide. On 19th last month, in Hong Kong …

PRESIDENT (in Cantonese): Mr SHIU Ka-fai, please raise your supplementary question.

MR SHIU KA-FAI (in Cantonese): ... I get it, President, and will ask my question very soon. Subsequent to that traffic accident, people began to worry about the car passengers and even the vehicles being hit. Given that a review of the system is now underway, will the Bureau consider permanently revoke the licence of those white licence cars or impound vehicles that have engaged in illegal activities by making reference to the practice of the Customs and Excise Department? Will the Bureau consider such an approach?
SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): First of all, I thank Mr SHIU Ka-fai for his question. His supplementary question is about whether the licence of a car used for illegal carriage of passengers for reward will be permanently revoked. Of course, penalties have been laid down. As I have mentioned in the main reply, TD is conducting a review of the penalties, during which the taxi trades will be consulted. We expect to submit a report to the Panel on Transport and brief members in the next legislative session.

In a written reply given by the incumbent Acting Secretary for Transport and Housing in May 2017, he said there was no plan to introduce a penalty to impound vehicles involved in the offence. On this issue, I hope that during the review of the penalties, we will be able to collect more views from different trades, and listen to the opinions and aspirations of Legislative Council Members.

MR YIU SI-WING (in Cantonese): The regulation of e-hailing of white licence cars varies with different places, and it is even legitimate in some places. Since inbound tourists are generally unaware of the relevant regulation in Hong Kong, they may hire white licence cars via the e-hailing companies.

According to the paper, while there are promotions targeting at members of the public, there is none for tourists. May I ask if the Secretary will consider stepping up promotions for overseas tourists; if so, what will the authorities do?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr YIU Si-wing for his opinion. As mentioned in my main reply, we will step up efforts in publicity and education in this respect, and apart from making more broadcasting announcements of public interest on radio, we will also make use of various channels to educate the public. As for tourists, they are surely one of the targets of our work and direction. We will continue our effort on publicity and education using different channels to help people distinguish legal and illegal e-hailing services, so that they will not defy the law.

MR GARY FAN (in Cantonese): Secretary, the Government and the Police have strived to combat white licence cars and e-hailing cars from illegal carriage of passengers for reward, but such cars still manage to mushroom and have even become a major trend.
May I ask the Government, when combating illegal carriage of passengers for reward, has it adopted innovative thinking to explore the co-existence of e-hailing services and taxis with a view to providing quality services for the people of Hong Kong?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr Gary FAN for his opinion and supplementary question. As I said just now, according to the existing legislation, we do not oppose e-hailing service on the premise that all hires cars must have HCPs. While we welcome the use of advanced technology by the trade to provide more convenient services for members of the public, we must stress that the Government will take stern enforcement actions against illegal carriage of passengers for reward and will not condone such activities. Also, the Police will gather intelligence and conduct investigation and take follow-up action upon receipt of complaints or referrals from members of the public. I want to stress that the relevant penalties are being reviewed and will probably be raised to enhance the deterrent effects. Nonetheless, we welcome the trade to provide quality services to member of the public by adopting innovative technology and mode of operation.

PRESIDENT (in Cantonese): Third question.

Securing the provision of amenities ancillary to housing

3. MRS REGINA IP (in Cantonese): President, in 2005, the Hong Kong Housing Authority ("HA") divested certain retail and car parking facilities of its public rental housing ("PRH") estates to The Link Real Estate Investment Trust ("The Link"). The Link was subsequently renamed as Link Real Estate Investment Trust ("Link REIT"). Following the relaxation in 2014 of the constraints under the Code on Real Estate Investment Trusts regarding the investment scope of this type of trusts, Link REIT repeatedly divested a number of properties in PRH estates. Some members of the public have pointed out that to achieve profit maximization, Link REIT has substantially raised the rents of shops after the refurbishment of the shopping centres and markets in PRH estates, refused to renew tenancy agreements with small shop operators so as to introduce large chain stores, as well as divested incessantly its assets. They
opine that Link REIT and the new owners have only profits in mind and disregard the livelihood of small shop operators and the daily needs of the PRH residents. In this connection, will the Government inform this Council:

(1) given that according to the provisions in the sale and purchase agreement signed back then between HA and The Link, if, within 10 years from the listing of The Link, HA wished to further divest its retail and car parking facilities, HA had to offer a sale proposal to The Link first, meaning that The Link was entitled to a right of first refusal, of the reasons why HA made such an arrangement back then and the specific contents of the relevant provisions; and

(2) as section 4(1) of the Housing Ordinance provides that HA has the duty to secure, for the residents, the provision of amenities ancillary to housing as HA thinks fit, of the new measures to be put in place to ensure that HA will fully discharge its duty under this provision, and that the usage of the commercial facilities in its housing estates complies with the relevant land lease conditions and meet the needs in the daily lives of PRH residents?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):
President, my consolidated reply to various parts of Mrs Regina IP's question is as follows.

In 2005, the Hong Kong Housing Authority ("HA") divested 180 properties, including retail and carparking facilities, through The Link Real Estate Investment Trust ("The Link") (now known as Link Real Estate Investment Trust ("Link REIT")) in order to focus on its core function of providing subsidized public housing and improve its financial position in the short-to-medium term with proceeds from divestment. It was also considered that the efficiency of the relevant commercial facilities would be enhanced under the operation of a private entity in accordance with commercial principles.

One of the documents relating to the listing of The Link was the Deed of Right of First Refusal ("the Deed"), under which HA is obliged offer The Link a right of first refusal in the event that it wished to sell certain retail and carparking facilities retained within its housing estates or that HA might develop in the future. Since 2005, HA has not further divested its commercial facilities, and
thus the right of first refusal has never been exercised. The right of first refusal was effective for a period of 10 years commencing from the listing day, which means that it has already expired in November 2015.

Under the right of first refusal, the price at which HA would offer the properties to The Link is the higher of two independent valuations calculated by specific valuation methods. If The Link does not opt to purchase the properties, HA can complete the sale by offering the properties to any third parties on such terms as it determines within two years, otherwise the right of first refusal will apply again to such properties. When the Government briefed the Legislative Council on matters about the divestment of HA's retail and carparking facilities in January 2006, it had provided detailed information on the right of first refusal.\(^{(1)}\)

HA's decision then to grant the right of first refusal had gone thorough in depth deliberation, and taken into account a variety of views during the process. One of the main reasons for making this decision was because, in preparation for the divestment, HA considered that the revenue potential of some of its facilities had yet been fully realized. In an effort to maximize its revenue from the public offering, HA did not incorporate these retail and carparking facilities into its divestment plan. HA considered that some of these properties might be suitable for divestment when their revenue potential was fully realized in future. HA also had plans at that time to divest the retail and carparking facilities of its new estates which would be completed in the coming years, with a view to withdrawing from commercial operation and focusing on its core function as a provider of public housing.

At that time, HA believed that granting the right of first refusal might help attract investors and maximize its revenue from the public offering. Furthermore, in order not to compromise HA's long-term pursuit of more innovative asset management/disposal avenues, a time limit was set for the right of first refusal.

HA's then decision to divest its properties was made after careful deliberation. HA was of the view that such a decision would be conducive to the discharge of its function as a provider of subsidized housing. Given the limited land and public resources, HA has to prioritize and focus its resources on providing public rental housing ("PRH") to eligible families, especially to the

\(^{(1)}\) Please refer to LC Paper No. CB(1)815/05-06(01)
low-income families who cannot afford private rental accommodation. In responding to the motion debates in the Legislative Council in November 2012 and November 2016, the then Secretary for Transport and Housing clearly stated that the Government and HA had no plan to buy back Link or individual divested properties, as this would be incompatible with public interests and the principle of prudent financial management. This position still remains valid.

Section 4(1) of the Housing Ordinance requires HA to secure the provision of housing and "such amenities ancillary thereto as the Authority thinks fit" for the persons concerned. As for HA's divestment of its properties in 2005, when handing down its Judgement in 2005 on a relevant judicial review case, the Court of Final Appeal ("CFA") affirmed that the divestment plan by HA was consistent with the objective laid down in section 4(1) above. According to CFA, it was not stipulated in the Housing Ordinance that tenants of PRH had any statutory right to the continued retention and control by HA of the facilities while the tenants were still using the facilities; and so long as the facilities were available to tenants, it meant that HA had secured the provision of such facilities, even if they were provided by a third party over whom HA had no control. In reaching its conclusions, CFA noted that a market-oriented commercial approach would be adopted in operating the divested properties, whereas HA's approach at that time might not be in line with private sector practice. CFA was also aware of the fact that there might be changes in the operation of the relevant facilities, such as the tenant trade mix might be different.

In fact, HA would consult the public when designing each new public housing project, and try to include, as far as practicable, various facilities suggested by the public, such as retail, welfare, community, education, transport, etc. For existing estates, HA regularly receives opinions on various facilities from Estate Management Advisory Committees and other members of the public. HA would try to adjust existing facilities or add new facilities as far as practicable. The above practices and procedures are established, regular and transparent.

In respect of lease enforcement, the Lands Department ("LandsD"), in the capacity of the landlord, handles the leased land under the conditions in the land leases. As with other private properties, LandsD mainly acts on complaints, referrals or enquiries about suspected breaches of the lease conditions of the divested properties by conducting inspections and taking follow-up actions in accordance with the existing procedures. Depending on the circumstances,
LandsD will also consult the relevant Policy Bureaux/government departments and seek legal advice. If breaches of the lease conditions are confirmed, LandsD will take appropriate lease enforcement actions. HA, as one of the owners of housing estates, maintains communication with other owners on matters relating to the daily management of such estates, with a view to protecting its rights under the deeds of mutual covenant ("DMCs") and the restrictive covenants. Any suspected breach of land leases identified by HA will be referred to DMC Managers, Owners' Corporation and the relevant District Lands Offices for follow-up.

Apart from the land lease conditions, owners of divested properties must, in the same manner as other private property owners, abide by the relevant statutory requirements and the restrictive covenants contained in the assignment deeds of the properties during the operation of such properties, whereas the government departments concerned would carry out supervision in the light of the actual circumstances. As long as the relevant statutory requirements and land lease conditions are complied with, and the aforementioned covenants with HA are not breached, the Government and HA cannot and will not interfere with the owners' day-to-day operations and commercial decisions. However, if it is confirmed that the owner concerned is in breach of any laws, land lease conditions or covenants with HA, the relevant government departments and HA will certainly pursue the matter seriously and take appropriate actions.

MRS REGINA IP (in Cantonese): President, I am very disappointed with the answer of the Secretary for Transport and Housing. The Secretary said that the shopping centres were divested so that HA could focus on PRH development, but at present, hundreds of thousands of people are waiting for PRH and the waiting time has hit a new record high. The Government has seriously neglected its duty. Besides, I have not asked the Secretary about buying back Link REIT, why did he reiterate that the Government would not do so? He answered a question which I have not asked, but did not answer the question which I have asked.

My question is: According to section 4 of the of the Housing Ordinance, HA has a clear duty to provide suitable amenities for the residents, but some Home Ownership Scheme ("HOS") courts do not have such facilities at all. A case in point is Tin Ma Court in Wong Tai Sin. Since 2016 when Link REIT divested the shopping centre to Vantage International (Holdings) Limited ("Vantage"), the vacancy rate of the shopping centre has been very high. At
present, there is no supermarket or Chinese restaurant in the shopping centre and the only shop still in business is a small Hong Kong-style cafe. The residents, including elderly people, have to walk more than 20 minutes to Lok Fu Place for shopping. Some people providing community services in the district have even set up a co-op to help residents buy goods together, but the result is unsatisfactory. Some residents have also complained that Vantage has rented car parking spaces to non-residents without applying for exemptions. Vacancy of shops has not only affected …

PRESIDENT (in Cantonese): Mrs Regina IP, please raise your supplementary question.

MRS REGINA IP (in Cantonese): I will first provide the figures and then raise my supplementary question. Vacancy of shops has not only affected 2,800 households of Tin Ma Court, but also 600 households of Tin Wang Court nearby. How come HA has neither enforced the law nor asked LandsD to enforce the law; and how come it has not secured, for the residents, the provision of amenities and facilities to meet their daily needs?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mrs Regina IP for her supplementary question and views.

Regarding whether an assignment of divested property will affect the lives of residents, any owner of a divested property should discharge the duties provided in the relevant land lease conditions and restrictive covenants. As I said in the main reply, according to the Judgement of CFA, HA itself is not required to retain and control the relevant facilities. If facilities are provided by a third party, HA has already complied with the requirement of section 4(1) of the Housing Ordinance. Regarding the situation of the specific HOS court mentioned by Mrs Regina IP, it depends on the requirements and details of the land lease conditions and I cannot make sweeping generalizations. If any breach of the requirements is suspected, the authorities will refer the case to LandsD for law enforcement in the capacity of the land owner.
MR AU NOK-HIN (in Cantonese): Will the President please do not impede Members from asking questions.

May I ask Secretary Dr Raymond SO why the Transport and Housing Bureau has not yet commenced a study on how the communities, especially PRH, are affected by the relaxation of the Code on Real Estate Investment Trusts ("the Code") by the Securities and Futures Commission ("SFC"); and why it has not asked SFC to amend the Code to stop Link REIT from continuing to divest its properties?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr AU Nok-hin for his views and supplementary question.

I must emphasize one point and that is, SFC amended the Code in August 2014 mainly to keep pace with international regulatory practices and market development. However, even if the relevant criteria have not been amended, under the old criteria, real estate investment trusts could still divest their businesses; the new criteria only seek to keep pace with international regulatory practices. The Code, as it now stands, has not caused any impact on divestment of properties. I have also heard many different views and I think the impact of divestment on communities is actually beyond the scope of regulation of the Code.

MR TOMMY CHEUNG (in Cantonese): President, the Secretary needs not be so defensive on this issue because the properties concerned had already been sold before he assumed his position.

In 2005, when I was a member of HA, I opposed the selling of properties in shopping centres by HA because we could hardly have another landlord as good as HA in Hong Kong. After the properties were sold, we lost the one and only good landlord. Subsequently, I vigorously demanded HA not to sell any more of its properties in shopping centres, and fortunately, none has been sold up till now.

Nevertheless, Secretary, I think you should take actions to address the problems raised by Members. At present, the landlords, whoever they are, should provide services to PRH residents. Has the Bureau found any acts of
contravention by the landlords? As mentioned a moment ago, one example is the leasing of car parking spaces in PRH estates to non-residents, resulting in PRH residents having to pay high fees for renting car parking spaces elsewhere. In this connection, may I ask the Secretary how many times the Bureau has objected to such acts? The Secretary said earlier that such cases would be referred to LandsD; how many referrals have been made? Can the Secretary provide these figures? If he cannot do so today, can he provide the figures later, so that we can understand how much effort the Bureau has made in protecting the rights of PRH residents?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr Tommy CHEUNG for his supplementary question and views.

As I emphasized just now, if breaches of land lease conditions are found, LandsD will seriously enforce the law in the capacity as the land owner. Regarding the specific figures asked by Mr CHEUNG, I will give a written reply after the meeting. (Appendix I)

MR SHIU KA-CHUN (in Cantonese): President, after Link REIT outsourced the management of Yat Tung Market to Uni-China, the rent payable by the small shop operators increased from $30,000 to $50,000. As a result, members of the public cannot afford to buy food in that market. No wonder some people would say, "Link REIT, go to hell!" May I ask what measures the Government has put in place to stop Link REIT from outsourcing the management of more markets?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr SHIU Ka-chun for his views and supplementary question.

As I said in the main reply, if the landlord has not breached any laws, land lease conditions or restrictive covenants, HA and the Government cannot interfere with its operation, as with any other private enterprises. Nevertheless, we understand the strong demands of the public regarding the market. The Government also adopted a new mindset and announced in the Policy Address in 2017 that public markets would be built in Tung Chung, Hung Shui Kiu and Tin Shui Wai in response to the demands of local residents. In 2016, the Food and Environmental Hygiene Department ("FEHD") conducted a study on the prices of
goods in markets and concluded that markets managed by FEHD did not necessarily offer the cheapest prices. Nevertheless, we have heard the voices of the people.

**MS ALICE MAK** (in Cantonese): President, upon hearing the Secretary's reply, I can only say that he is "shirking responsibilities". Apparently, when HA divested its assets in 2005, the scene was set. Following the relaxation in 2014 of the constraints under the Code, Link REIT divested its assets even more unrestrainedly. If the Secretary said that the current problem was beyond the scope of regulation of the Code, is there anything he can do?

After the Government saw how Link REIT hurt the residents for the first time in 2005, it allowed Link REIT to divest its assets in 2014 and hurt the residents for the second time. Is there anything the Secretary can do? It turns out that should a problem arise, the Secretary will shirk his responsibilities to the Director of Lands by referring the case to him to investigate whether Link REIT has contravened any land lease condition. Besides, President, it is stated in the main reply that Link REIT has complied with section 4(1) of the Housing Ordinance in securing the provision of suitable amenities for the residents, etc. Nevertheless, take Yat Tung Estate in Tung Chung as an example. When residents requested to replace the paving blocks in the plaza, Link REIT's approval was required. Link REIT asked the residents to wait a few years for there was no money to carry out the works now. In another example, when residents of Kwai Shing East Estate requested to retrofit escalators, Link REIT's approval was again required. In On Ting Estate, after Link REIT had carried out large-scale refurbishment works in the shopping centre, people have to pay more than $60 for a bowl of noodles in that old housing estate. How can the elderly people afford to pay so much? Also, when residents wanted to retrofit a canopy over a ramp at Chung Fu Shopping Centre to facilitate persons with disabilities, no progress has been made after discussing the matter with Link REIT for a few years. If the Secretary thinks that should any problem arise, the Director of Lands can be asked to review whether Link REIT has breached any land lease conditions, does it mean that we have to bend to the will of Link REIT whenever we are fighting for these facilities? Does it mean that the time for replacing paving blocks, retrofitting canopies over pavements or installing escalators for the residents will all depend on when Link REIT is willing to undertake the works? What actually can the Secretary do to help the residents?
SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Miss Alice MAK for her views and supplementary question. I must stress that Link REIT is the landlord of the divested properties of PRH estates, and HA, as DMC Manager, must communicate with the landlord to discuss how to do a better job on implementing plans and works to beautify the estates. In this connection, we will maintain good communication with the owners' corporations, Link REIT and other landlords. However, the process inevitably takes time because many different groups and projects are involved and there may be different views. Nevertheless, we will work very hard to provide quality services to the residents.

MR HO KAI-MING (in Cantonese): President, back then, the Government provided amenities such as mushroom-shaped food kiosks (the predecessor of cooked food stalls) in many PRH estates through the Housing Department. People not only carry out commercial activities in these kiosks, but also community activities. Nevertheless, Link REIT has, on the pretext of increasing the value of its assets, incessantly demanded kiosk operators to refurbish the premises and pay higher rent. For example, the kiosk operators in Lok Wah South Estate used to serve Cantonese food, but Link REIT not only asked them to serve Vietnamese food, but also requested them to refurbish the premises. Eventually, kiosk operators, who had been doing business for many years, had been expelled. May I ask the Secretary: Is the Government turning a blind eye to such acts of Link REIT; will it ask Link REIT to fulfil its pledge to PRH residents back then so that ordinary business operators in the estates will not be expelled or will not have a hefty rent increase?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr HO Kai-ming for his views. As I said in the main reply, if the landlord has not breached any laws, land lease conditions or restrictive covenants, the Government cannot and will not interfere with its normal business operation. This is an area which also concerns corporate social responsibility. The trend of thought nowadays attaches importance to corporate social responsibility. Every listed company has to regularly report to its shareholders on its performance in fulfilling corporate social responsibility, which will be clearly stated in a special chapter in its annual report. In this connection, we will encourage the landlords to fulfil their corporate social responsibility.
MR HO KAI-MING (in Cantonese): President, the Secretary has not answered my supplementary question. I asked about the Government's pledge to PRH residents back then, not Link REIT's …

PRESIDENT (in Cantonese): You have already pointed out the part of your supplementary question which has not been answered. Secretary, do you have anything to add?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): We will try and encourage companies and private enterprises to fulfil their corporate social responsibility.

PRESIDENT (in Cantonese): Fourth question.

Traffic congestion caused by the implementation of high wind management measures and two-way toll collection

4. MS ALICE MAK (in Cantonese): To ensure road safety, the Tsing Ma Control Area operator implements high wind management measures ("HM measures") at the Lantau Link and the Ting Kau Bridge during strong wind conditions. HM measures include closure of the centre lanes, lowering the speed limit for vehicles, etc. It has been reported that serious traffic congestion occurred from time to time at the Lantau Link and the Ting Kau Bridge, as well as in areas within and surrounding Kwai Ching and Tsuen Wan while HM measures were in force. Furthermore, some drivers opine that the two-way toll collection of the Lantau Link implemented in August last year has made it necessary for vehicles travelling to and from Lantau via the Lantau Link to slow down or stop at the toll plaza to pay the toll, resulting in a traffic bottleneck. In this connection, will the Government inform this Council:

(1) of the respective numbers of times in each of the past five years for which HM measures were implemented in the Tsing Ma Control Area and traffic congestion occurred in the areas concerned while such measures were in force; the measures taken by the Tsing Ma Control Area operator and the Transport Department before and during the implementation of HM measures to divert traffic flow and inform drivers of the situations;
(2) whether the authorities will, before the approach of this year's typhoon season, review the impacts of the implementation of HM measures on traffic, and formulate measures to prevent HM measures from causing serious traffic congestion in extensive areas; if so, of the details; and

(3) whether the authorities will comprehensively review if the two-way toll collection arrangement at the Lantau Link has led to traffic congestion, and consider abolishing the toll collection as well as improving vehicle flow control and road design, in order to reduce the occurrences of traffic congestion at the Lantau Link; whether the authorities will expeditiously plan for the construction of new trunk roads to connect Lantau with urban areas, so as to alleviate the traffic load of the Lantau Link in the long run?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, to ensure the safety of motorists, when high wind situations occur at the Lantau Link and Ting Kau Bridge in Tsing Ma Control Area ("TMCA"), high wind traffic management measures will be implemented in phases commensurate with prescribed wind speeds. Since the implementation of traffic management will lead to fewer available traffic lanes on the bridge deck, lowered speed limits and traffic diversion, traffic flow on related approach roads and major bridges will inevitably be affected.

My reply to the various parts of Ms Alice MAK's question is as follows:

(1) From January 2013 to April 2018, there were altogether 84 instances of implementing Stage I (with hourly mean wind speed in excess of 40 kilometres per hour ("kph")) and 12 instances of implementing Stage II (with the hourly mean wind speed in excess of 65 kph) of high wind traffic management on the Lantau Link and Ting Kau Bridge. Among those instances, the Transport Department ("TD") recorded 14 instances of traffic congestion of varying degrees when traffic management was in force. The number of such instances by year is at Annex.

Before and during the implementation of high wind traffic management, TD and the management company of TMCA will take traffic management and contingency measures as appropriate in accordance with the established procedures and mechanism to ease
traffic flow and notify the public, with a view to minimizing the impact as far as practicable while ensuring the safety of motorists. Such measures include:

(i) notify the public as early as possible, at about 45 minutes in advance of the implementation of Stage I of high wind traffic management, through, inter alia, radio and other media, and the websites and mobile applications of TD, public transport service operators (including bus companies and MTRCL) and the Airport Authority, to disseminate the message of the high wind traffic management and latest information on traffic and public transport services;

(ii) make use of the message signs on the major roads of TMCA and Tsing Sha Control Area and those on some major roads in other districts, as well as the radio broadcasting system inside various tunnels, to remind motorists of traffic conditions on the Lantau Link and keep the travelling passengers informed so that they can consider switching to railway services; and

(iii) contact public transport service operators, including MTRCL, so that these operators can adjust their services according to the needs of passengers. The service frequency of the Airport Express Line and Tung Chung Line of MTR will also be increased to cope with the additional passenger demand.

(2) and (3)

As observed by TD through the traffic control and surveillance system, since the implementation of two-way toll collection arrangement on the Lantau Link on 20 August 2017, the traffic to the Airport at the Lantau Link Toll Plaza ("Toll Plaza") remained smooth and there was no congestion during the high wind traffic management. Therefore, the traffic congestion at Tsing Yi was not related to the implementation of two-way toll collection arrangement on the Airport bound of Lantau Link.

To minimize the impact of high wind traffic management on the public, the Highways Department ("HyD") and TD have commissioned a study on the high wind traffic management on the Lantau Link to review the existing overall traffic arrangement in the
event of high wind and consider traffic improvement measures during high wind. The study is expected to be completed in mid-2018. Separately, TD is reviewing the current detailed arrangement of traffic diversion (including the temporary traffic arrangement at the diversion points of Lantau Link) in order to improve the traffic flow at the diversion points. When the high wind traffic management are in force in future, TD will make use of message signs on more major roads (including the message signs at West Kowloon Highway and the new message signs to be added at North Lantau Highway) to display the concerned information, and explore the use of additional channels, such as message signs at major public transport interchanges, to inform the public on matters relating to high wind traffic management.

As for road design and planning of new trunk roads, HyD is carrying out in full swing the construction works of Tuen Mun—Chek Lap Kok Link ("TM CLKL")—Northern Connection, which is expected to be completed in 2020 at the earliest. The completed project will serve as the most direct route connecting the Northwest New Territories ("NWNT") and Lantau Island, linking up Tuen Mun, Hong Kong-Zhuhai-Macao Bridge ("HZMB"), the Airport, North Lantau and Tung Chung. Part of the traffic capacity of the existing routes (such as the Lantau Link and Ting Kau Bridge, etc) will also be released to further relieve the traffic flow. The TM CLKL—Northern Connection will then become another road corridor connecting the Airport and North Lantau with the urban area, offering an alternative to the Lantau Link and North Lantau Highway.

In addition, to cope with the traffic demand generated by the future NWNT developments and to build the third vehicular access to Lantau Island, upon granting of funding approval of the feasibility study on Route 11 by the Legislative Council Finance Committee on 13 April, 2018, HyD has commenced a feasibility study on Route 11, which also looks into the need of planning for the Tsing Yi—Lantau Link ("TYLL") and related road traffic options, with a view to allowing the traffic flow between NWNT and the urban area to make use of TYLL without having to route through the North Lantau Highway and Lantau Link. The feasibility study is expected to be completed in 2020.
The number of instances of implementing high wind traffic management and traffic congestion occurred on Lantau Link and Ting Kau Bridge in Tsing Ma Control Area

<table>
<thead>
<tr>
<th>Year</th>
<th>Stage I of high wind traffic management</th>
<th>Stage II of high wind traffic management</th>
<th>Stage III of high wind traffic management</th>
<th>Traffic congestion</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>23</td>
<td>2</td>
<td>0</td>
<td>4</td>
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<td>2014</td>
<td>16</td>
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<td>2</td>
</tr>
<tr>
<td>2017</td>
<td>19</td>
<td>6</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>2018 (as at end-April)</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>84</td>
<td>12</td>
<td>0</td>
<td>14</td>
</tr>
</tbody>
</table>

Notes:

(1) In calculating the number of instances of implementing high wind traffic management, every such instance for the respective stage of high wind management for each of Lantau Link and Ting Kau Bridge is counted separately.

(2) When the hourly mean wind speed on the Lantau Link or Ting Kau Bridge is in excess of 40 kph, TD will implement Stage I of traffic management. Vehicles with an overall height exceeding 1.6 m, motor cycles and motor tricycles (wind susceptible vehicles) will be banned from using the bridge deck. The centre lanes on the bridge deck will remain closed throughout the period and the speed limit of vehicles will be reduced from 80 kph to 50 kph.

(3) When the hourly mean wind speed on Lantau Link or Ting Kau Bridge is in excess of 65 kph, TD will implement Stage II of traffic management. All lanes on the upper deck of the Lantau Link will be closed and all vehicles must use the single-lane carriageway on the lower deck with a speed limit of 50 kph. Ting Kau Bridge will be completely closed.

(4) When the hourly mean wind speed on Lantau Link is in excess of 165 kph, TD will implement Stage III of traffic management. Both upper and lower decks of the Lantau Link will be completely closed.
MS ALICE MAK (in Cantonese): President, the Secretary pointed out in the first paragraph of parts (2) and (3) of the main reply that "the traffic to the Airport at the Lantau Link Toll Plaza remained smooth and there was no congestion during the high wind traffic management. Therefore, the traffic congestion at Tsing Yi was not related to the implementation of two-way toll collection arrangement on the Airport bound of Lantau Link". Besides, TD showed pictures to the press on 6 April, saying that the traffic in the area of the Toll Plaza was sparse and smooth, and thus the traffic congestion at Tsing Yi was not related to the implementation of two-way toll collection arrangement. However, TD did not reveal to the press that the Cheung Tsing Tunnel was closed at that time. As no vehicles were allowed to use the tunnel or the bridge, the traffic around the Toll Plaza would certainly be smooth.

My question for the Secretary is: If the traffic congestion at Tsing Yi was not related to the implementation of two-way toll collection arrangement on the Lantau Link, was it related to the closure of the Cheung Tsing Tunnel? Was the Government trying to conceal the congestion problem in the area of the Toll Plaza by closing the Cheung Tsing Tunnel to deny vehicle access to the bridge?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Ms Alice MAK for her supplementary question.

First of all, I would like to explain the reasons for the traffic congestion at Tsing Yi on 6 April this year. Owing to monsoon, Stage I of high wind traffic management was implemented on the Lantau Link and Ting Kau Bridge at around 3:30 pm on 6 April. Wind susceptible vehicles were diverted to use the lower deck of the Lantau Link and were banned from using the Ting Kau Bridge. This measure remained in force until 3:00 am on 7 April. When the management company implemented traffic diversion measures according to the established mechanism and guidelines, traffic flows on the trunk road and the bridge would inevitably be reduced, causing congestion of varying degrees. There were two main bottlenecks for the traffic congestion at Tsing Yi mentioned earlier: first, the diversion point near the North West Tsing Yi Interchange on Cheung Tsing Highway (northbound); and second, the diversion point for the entrance of the lower deck of Lantau Link (Kowloon bound). Worse still, an accident occurred on Tsing Yi North Coastal Road (Tsuen Wan bound) at around 6:00 pm on the same day, resulting in the closure of the fast lane. The traffic queue then extended to the North West Tsing Yi Interchange. As road traffic was affected by the accident, the congestion got worse.
We have proposed various enhancement measures in response to these cases so that in future we can improve our performance on traffic diversion and expeditiously inform the public to minimize the impact.

**MS ALICE MAK** (in Cantonese): President, I am not sure whether the Secretary will, as he did last time, close the Cheung Tsing Tunnel in future to deny vehicle access to the bridge and the tunnel whenever traffic measures like high wind traffic management are in force, so as to present to the public that traffic in the vicinity of the Toll Plaza is smooth. If so, TD can always show pictures to the press, telling them that the traffic in the vicinity of the Toll Plaza is smooth. I hope the Government will not do so.

It is stated in the main reply that the construction works of TM CLKL—Northern Connection are expected to be completed in 2020. However, as we all know, HZMB is expected to be commissioned in the middle of this year. Will the time gap between the commissioning of HZMB and the completion of the aforesaid works in 2020 have any impact on the traffic load of the North Lantau Highway? If high wind traffic management measures have to be implemented, and coupled with the various works projects now underway on the North Lantau Highway, both the fast lane and the slow lane may have to be closed. I would like to ask the Secretary: How strong is your determination to ensure that the traffic congestion on the Lantau Link and the North Lantau Highway will not affect local traffic, especially residents in Tung Chung and passengers heading to the Airport? As far as I am aware, the previous congestion had forced many airport-bound passengers to take the next plane.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): I thank Ms Alice MAK for her views and questions. I must admit that the construction works of TM CLKL—Northern Connection will not be completed until 2020. At present, on land transport, the Lantau Link is the only road link between Lantau Island and urban areas. We are aware of this point. However, the traffic volume of the Lantau Link has not yet reached the saturation point. Meanwhile, in view of the imminent commission of HZMB, we have developed various contingency plans and diversion measures. On the part of the Police, they have also prepared for the possible contingencies. We even have tow trucks standby at various strategic locations so that in case of accidents, the vehicles involved can be removed from the scene quickly to ensure smooth traffic. Contingency measures are in place to minimize the overall impact.
MR CHU HOI-DICK (in Cantonese): President, I am not sure if the Secretary was telling the truth when he said that the traffic congestion at Tsing Yi was not related to the implementation of two-way toll collection arrangement on the Airport bound of Lantau Link, but I am sure that the traffic congestion on roads leading from Yuen Long or Tuen Mun to urban areas is related to the implementation of two-way toll collection arrangement on the Lantau Link. However, my supplementary question is not about this matter.

As the Secretary mentioned in the main reply, the Administration will study the building of Route 11 and the new TYLL. My supplementary question is: Will these two bridges, which are likely to be built, and HZMB all be subject to the same high wind traffic management measures?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr CHU Hoi-dick for his supplementary question. Regarding Route 11, we are considering its alignment and design and we have a number of options at the moment. If we take Tsing Lung Tau as the connection point for the link to North Lantau and adopt the bridge option, this bridge will certainly be subject to high wind traffic management. Yet, due to the differences in geographical conditions, the measures to be taken may vary from place to place; there is no single measure for high wind traffic management.

As for the proposed TYLL, I must emphasize that we are only at the preliminary stage of exploring this proposal by conducting a feasibility study. If this link is to adopt the bridge option, the choice of high wind traffic management measures will depend on its geographical conditions, wind direction and contingency measures.

In respect of HZMB, as it involves the Mainland waters, the Governments of the three places have already worked out their contingency plans in times of high winds. The Governments of the three places will also maintain close communication so as to disseminate relevant messages to motorists and travellers expeditiously.

MR CHU HOI-DICK (in Cantonese): President, the Secretary was very unclear when answering the question on HZMB. I want him to clearly answer whether HZMB will be subject to high wind traffic management like the Ting Kau Bridge and the Lantau Link.
PRESIDENT (in Cantonese): Mr CHU, please sit down. Secretary, do you have anything to add?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): HZMB is a national project with a length of more than 40 km. As it is built over water, it will certainly be susceptible to high winds. The Administration will therefore formulate high wind contingency measures. Under the main bridge, there will also be duty officers to maintain contacts with the Governments of the three places, so as to ensure traveller safety and disseminate timely messages to travellers to make travel arrangements.

MR HOLDEN CHOW (in Cantonese): President, the Secretary stated in the main reply that Stage I of high wind traffic management would be implemented whenever the mean wind speed was in excess of 40 kph. In fact, we have discussed this issue with members of the Islands District Council and TD's officers before.

I would like to ask: Are the criteria for implementing high wind traffic management measures for the Lantau Link different from those for other bridges in Hong Kong? If so, will these measures be adjusted as appropriate? The implementation of high wind traffic management measures is of course necessary but the Administration should also consider the serious impact of such measures on the public and traffic. Will the Secretary please answer.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr Holden CHOW for his views and questions. As the Tsing Ma Bridge is now the only road link between Lantau Island and urban areas, whenever it is under high winds, lots of people and travellers will be affected. We are now exploring how we can bring convenience to travellers in times of high wind traffic management by reviewing the temporary traffic arrangements at various diversion points during such traffic management, and so on, in order to minimize traffic congestion.

Bridges may have variations in their design. For example, the Tsing Ma Bridge is built with a lower deck for the use of vehicles in case of high winds, but the Ting Kau Bridge, which does not have the same design, may have to be closed in times of very strong winds.
In this connection, HyD has commissioned a consultancy firm to review the high wind traffic management on the Lantau Link in collaboration with TD, with a view to introducing new criteria for the implementation of high wind traffic management measures to reduce the impact of such measures. The review is expected to be completed by mid-2018.

Moreover, I must say that after the incident on 6 April, an immediate review was conducted by TD to examine the existing high wind traffic management measures of TMCA. TD will also implement new high wind traffic management measures in the future to provide passengers with more relevant messages.

In order to strengthen communication with the transport sector during high wind traffic management, TD has, since May, disseminated messages concerning such traffic management to the sector, including taxi, trucking and public bus trades, in the hope that travellers and trade members can obtain first-hand information and minimize the impact.

MR GARY FAN (in Cantonese): President, part (3) of the main question is about whether the two-way toll collection arrangement at the Lantau Link has led to traffic congestion, and whether the toll collection will be abolished. If we look at some of the road designs currently adopted by the Government, we can see that the construction plan of the Tseung Kwan O—Lam Tin Tunnel does not include a toll plaza and the installation of overhead toll gantries is planned for the Shing Mun Tunnels. In order to deal with traffic congestion caused by the toll collection arrangement at the Lantau Link, I would like to ask the Government: Will the use of fully automatic toll collection system be one of its options?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Mr Gary FAN for his supplementary question. Before answering in brief to his question, I must first explain that tunnel tolls are now set according to the "cost-recovery" and "user-pays" principles and with full consideration from different perspectives of various factors, such as traffic flows, economic conditions, public affordability, acceptability and alternative routes. As regards the introduction of technology, it can enhance the existing toll collection systems.
Just now, Mr Gary FAN said that no toll plaza was proposed to be built for the Tseung Kwan O—Lam Tin Tunnel. In fact, we have earlier stated in various papers that we will consider introducing a new generation of detectors for automatic toll collection. As for whether this proposal can be applied to other tunnels, we will keep a close eye and stay abreast of technological development in order to bring convenience to the public and improve traffic management at the same time.

IR DR LO WAI-KWOK (in Cantonese): President, I do not think the Secretary has given a satisfactory reply on the toll issue of the transport network across the territory. In some of our familiar cities, such as Shanghai, all bridges, tunnels and roads are toll-free. Although the Government has, in its response, said that tolls were set in accordance with the "user-pays" principle, the reality is that many roads in Hong Kong are toll-free despite their high construction costs. In this connection, I would like to ask the Secretary whether the Administration will conduct a comprehensive and thorough policy review on the toll issue of all types of roads and give a serious thought to a full waiver.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I thank Ir Dr LO Wai-kwok for his views. As I said just now, under the existing toll policy, there are a number of criteria for determining the toll levels. As regards the possibility of a full waiver, I must highlight that, in the case of the Lantau Link mentioned earlier, its toll level has not been adjusted since its commissioning in 1997. Any adjustment to toll fees may affect traffic flows and hence the overall transport plan, causing adverse impact on traffic management. Therefore, we have no plan to change the toll collection arrangement of the Lantau Link, but the views just given by Ir Dr LO are noted.

PRESIDENT (in Cantonese): Fifth question.

Issues relating to the promotion of "Hong Kong independence"

5. DR JUNIUS HO (in Cantonese): President, subsequent to his initiation of the occupation movement in 2014, Associate Professor Benny TAI Yiu-ting, who teaches at the Faculty of Law of the University of Hong Kong, attended an activity entitled "The 10th Anniversary of the Taiwan Youth Anti-Communist
National Salvation Corps—A Forum on Freedom and Human Rights in Hong Kong, Macao, China, Taiwan and Multi-ethnic Groups" held in Taipei on 24 March this year. When speaking at the forum, he said that "the autocratic regime in China will eventually come to an end one day … With the success in toppling the autocratic regime, it is necessary to build a democratic state and a democratic society … By then, Hong Kong people can decide whether or not to found an independent state or form a federation or confederation with the ethnic groups in other regions of China". On the 30th of last month, in response to the aforesaid remarks, the Government pointed out that any advocacy of "Hong Kong independence" ran against "One Country, Two Systems" and the Basic Law as well as the overall and long-term interest of the society of Hong Kong, and strongly condemned the remarks of Professor TAI. Professor TAI said in response to the criticisms against him that "there is a solid academic thinking behind" his remarks, and "this was what a scholar did to put the outcome of his academic researches into personal practice". However, there are public criticisms that Professor TAI is actually promoting Hong Kong independence under the pretext of academic freedom. In this connection, will the Government inform this Council:

(1) whether the law enforcement agencies have studied if Professor TAI has committed any criminal offence (including the offence of "seditious intention" under section 9 of the Crimes Ordinance) by making the aforesaid remarks; if they have not studied, of the reasons for that; if they have, the outcome; whether and when law enforcement actions will be taken; if no law enforcement actions will be taken, of the reasons for that;

(2) whether the authorities will seek from Professor TAI or the University of Hong Kong the following information about the academic researches referred to by him: the titles and scopes of the research projects concerned; the commencement and completion dates of such researches; the dates of publication of the research outcome; the amounts of expenditure incurred on the researches and the sources of funding; the numbers of working hours Professor TAI spent on such researches and the numbers of workers participating in the researches; among these research workers, the ratios of full-time workers to part-time workers, and whether students were included; if students had participated in the researches, of the numbers of hours they worked; and
(3) whether the Education Bureau has issued guidelines to various education institutions (including various tertiary institutions) to prevent school campuses from becoming the breeding ground for spreading the idea of Hong Kong independence or inciting students to conduct activities related to Hong Kong independence?

(Mr CHU Hoi-dick stood up)

PRESIDENT (in Cantonese): Mr CHU Hoi-dick, what is your point?

MR CHU HOI-DICK (in Cantonese): President, in accordance with Rule 39(b) of the Rules of Procedure, may I ask Dr Junius HO to clarify the source of Associate Professor Benny TAI's speech at the Forum quoted by him? After looking up the verbatim recording of the press, I found that there are discrepancies between the speech made by Benny TAI and the speech quoted by Dr Junius HO.

PRESIDENT (in Cantonese): Mr CHU, please sit down. Dr Junius HO, do you wish to clarify?

DR JUNIUS HO (in Cantonese): President, I read the speech online and I do not have the explanatory notes with me here. But if Mr CHU Hoi-dick is interested in learning more, I will tell him the source later on.

SECRETARY FOR EDUCATION (in Cantonese): President, the Preamble of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law") spells out clearly that Hong Kong has been part of the territory of China since ancient times. Upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its history and realities, the People's Republic of China ("PRC") decided that upon its resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region ("HKSAR") would be established and the Basic Law would be enacted by the National People's Congress in accordance with the Constitution of the PRC ("Constitution").
Article 1 of the Basic Law clearly points out that the HKSAR is an inalienable part of the PRC. Article 12 of the Basic Law also clearly elucidates that the HKSAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central People's Government. This shows that Hong Kong has always been an inalienable part of China. "One country, two systems" is the best institutional arrangement to ensure Hong Kong's long-term prosperity and stability after our return to the Motherland.

Everybody with a passion for Hong Kong has the responsibility to ensure that, here in Hong Kong, "one country, two systems" advances in the right direction, the obligation to say "no" to any attempt to threaten our country's sovereignty, security and development interests, as well as the duty to nurture our next generation into citizens with a sense of national identity, an affection for Hong Kong and a sense of social responsibility. Any advocacy of "Hong Kong independence" runs against "one country, two systems", the Basic Law as well as the overall and long-term interest of the society of Hong Kong. The community has high expectations of our teachers and professors in particular. The remarks by Associate Prof Benny TAI that Hong Kong could consider becoming an independent state were strongly condemned by the HKSAR Government on 30 March 2018.

Our reply to Dr Junius HO's question is as follows:

(1) The HKSAR Government reiterated in its statement on 30 March 2018 that any advocacy of "Hong Kong independence" runs against "one country, two systems", the Basic Law as well as the overall and long-term interest of the society of Hong Kong. When meeting the media in April 2018, the Chief Executive also pointed out that the HKSAR Government and Hong Kong society both had the responsibility to safeguard national security, territorial integrity and development interests. Hence, "Hong Kong independence", in word and deed, is totally unacceptable as it violates the Constitution and the Basic Law, undermines "one country, two systems" and the prosperity and stability of the HKSAR. With regard to any acts that may constitute criminal offences, as in the past, law enforcement departments will handle such cases in accordance with the law.
(2) To set the record straight, the HKSAR Government issued a statement on 30 March 2018 to strongly condemn Associate Prof Benny TAI's remarks related to "Hong Kong independence". This was not an issue of freedom of speech or academic freedom.

We safeguard and respect academic freedom and institutional autonomy according to the law. The universities have the authority to decide on their research disciplines and projects and those of their academic staff. According to the Notes on Procedures of the University Grants Committee ("UGC"), the initiation and acceptance of research proposals is a matter of institutional autonomy. That said, the Notes on Procedures also state that the autonomy does not exempt institutions from public interest. We trust that institutions will handle institutional affairs according to the law and established mechanisms. We do not maintain information on specific academic research projects.

Associate Prof Benny TAI's remarks have aroused public concern. In response to the question raised by Member of the Legislative Council, the Education Bureau has made enquiries with the Research Grants Council ("RGC") and the University of Hong Kong ("HKU"). According to the information provided by RGC, it has not funded Associate Prof Benny TAI to conduct any academic research projects that advocate "Hong Kong independence". HKU has advised that information on research findings, conference papers, publications, etc. of its academics (including Associate Prof Benny TAI) is available in detail at the HKU Scholars Hub <hub.hku.hk/> for public reference.

(3) Our stance all along is that any proposals or activities advocating "Hong Kong independence" should not be allowed on our campuses. We also request the education sector to guard against pro-independence activists from infiltrating into our campuses. We have all along maintained communication with the education sector on various matters and offer them support and advice as and when necessary. In fact, the education sector has gained considerable experience over the years in handling politicized incidents with appropriate responses, demonstrating professionalism in ensuring that students can study in a safe and orderly environment, are taught professionally and are offered counselling as needed.
Post-secondary institutions are autonomous bodies and the Education Bureau believes that they have the responsibility as well as the ability to deal with incidents on their campuses properly while looking after their students' interests. Our post-secondary institutions are obliged to ensure that nothing in contravention of the Basic Law would occur in any aspect of their operation, including that none of their platforms and resources will be abused to advocate "Hong Kong independence" and promote such activities. Such obligation is in line with public expectations. In this connection, all our universities have clearly stated that they do not support "Hong Kong independence", recognizing it a contravention to the Basic Law.

The Government and post-secondary institutions are committed to safeguarding academic freedom and freedom of expression as guaranteed by the Basic Law. Meanwhile, in view of the importance of higher education to the development of our society, it is incumbent upon the Government and the community at large to have a legitimate interest in the operation of the institutions. Both faculty and students should bear in mind Articles 1 and 12 of the Basic Law, respect law and order, and exercise their freedom of expression with caution.

In respect of elementary education, we elucidated in August 2016 our stance in a letter addressed to principals and teachers of all secondary schools in Hong Kong, calling upon them to uphold professionalism in discharging their duties and protect students from being misled into taking part in the promotion of any activities that contravene the Basic Law or the law. The Education Bureau officers meet with principals of the public sector and Direct Subsidy Scheme secondary schools from time to time. In these meetings, we discuss with the principals and advise them on the proposed approach to handling controversial issues, including "Hong Kong independence". In addition, the schools are urged to make the best endeavours to implement the Basic Law education effectively. The attendees also share their past experience of dealing with similar cases and explore concertedly how to guide students in developing proper concepts on the issues in question.
DR JUNIUS HO (in Cantonese): President, I am rather disappointed with the Secretary's reply. Part (1) of the main question should certainly be answered by the Secretary for Justice but of course the Secretary is now speaking on her behalf. He said in the main reply that the case would be handled in accordance with the law. However, one should not forget that no action has been taken by the Government in the one and a half months after the above mentioned statement was made on 30 March. It is rather disappointing. The main reply cannot give us any information about the progress made by the authorities in handling the case.

As regards education, the Government is simply preaching, indicating that it would discuss with the relevant parties how to handle similar issues and how to avoid the advocacy of "Hong Kong independence". The Secretary did not say what action would be taken if similar incidents recurred and who would be held responsible. Everybody is aware of the principle, but what is happening now is that someone has broken the law without having to face any consequences …

PRESIDENT (in Cantonese): Dr HO, please raise your supplementary question.

DR JUNIUS HO (in Cantonese): … and that is the biggest problem with Hong Kong now.

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

SECRETARY FOR EDUCATION (in Cantonese): President, should some incidents happen inside a school, for example, in the past, when someone distributed leaflets outside a primary or secondary school, the school took appropriate measures, including confiscating the leaflets that promoted wrong concepts. If there were students attempting to promote or advocate such concepts, the school would also take appropriate actions to counsel the students and make them understand the requirements of the Basic Law.

As regards law enforcement, the HKSAR Government will take action against any illegal actions in accordance with the law.
MR LUK CHUNG-HUNG (in Cantonese): President, I am also very disappointed with the Secretary's reply. Some academic staff of universities, Benny TAI being a typical case in point, are bogus academics and true advocates of "Hong Kong independence" under the disguise of academic freedom. They lead our younger generations astray and neglect their own proper duties. Even if the person involved did not use the resources of the university to conduct illegal and unconstitutional studies, he did, in his capacity as Associate Professor, make use of the university as a platform, including the research resources such as public areas and libraries, to help him propagate illegal and unconstitutional ideas. May I ask the Administration: Under the existing university management framework, is there any mechanism to sanction academic staff for misconduct, including dismissal or suspension? Have such measures been taken before and is there such a mechanism?

SECRETARY FOR EDUCATION (in Cantonese): Eight government subsidized universities in Hong Kong are all independent and autonomous institutions and they operate with powers granted to them by the law. Regarding the appointment of staff, including Professors, Associate Professors and other academic staff, the university has full power to make its own decision in accordance with the power granted to it by the relevant ordinance. The HKSAR Government has never got involved in the appointment of staff in universities. Apart from not being granted such power by law, the Government had never interfered in such matters. As I have said in the main reply, while post-secondary institutions have independent administrative power, academic freedom and institutional autonomy, they must also take into consideration different voices in the community when determining how to handle certain matters. I still believe that universities have the capability to handle their internal affairs. I think that we can allow universities to handle the matters on their own.

(Mr LUK Chung-hung stood up)

PRESIDENT (in Cantonese): Mr LUK Chung-hung, which part of your supplementary question has not been answered?

MR LUK CHUNG-HUNG (in Cantonese): I think the Secretary has not answered my question concerning whether there is a mechanism to handle cases of misconduct of university academic staff.
PRESIDENT (in Cantonese): I think the Secretary has answered your supplementary question.

MS STARRY LEE (in Cantonese): President, "one country, two systems" was, is and will be the best arrangement for our country and Hong Kong. It is most saddening that many people with ulterior motives have propagated "Hong Kong independence" on school campuses, poisoning our next generations and undermining "one country, two systems". Many members of the public have seen such a phenomenon in society, including the propagation of "Hong Kong independence" by Benny TAI, resulting in more and more young people supporting "Hong Kong independence" and even self-determination. We are very angry. Many people say that students have been brainwashed in school, and they are particularly vulnerable to these poisonous ideas in university.

President, like many Members, I am very disappointed with the Secretary's reply. According to him, all problems can be solved by citing independence and autonomy. Regarding the possibility of people propagating "Hong Kong independence" in secondary schools, the authorities merely issued a letter to the school principals and regarded the problem solved. I would like to ask the Secretary: Will the Government review the present approach and conduct a study on formulating guidelines, subject to certain conditions, to be issued to post-secondary institutions, as well as secondary and primary schools on measures to be taken to prevent certain professionals from violating their professional code of conduct and propagating "Hong Kong independence" on school campuses?

SECRETARY FOR EDUCATION (in Cantonese): President, I must clarify here that the Government has a firm position against "Hong Kong independence", as well as against the propagation of "Hong Kong independence" on school campuses or any activities to promote such an advocacy. As for what measures should be taken, we have, through communications with schools and school principals, made our stance very clear. As mentioned by Ms LEE, the Government has written to schools expressing our views. We have requested school principals not to allow any propagation of "Hong Kong independence" or any such activities to take place in their schools. As regards how individual incidents should be handled, according to our past experience, schools could handle such incidents on their own. Of course, if schools have any difficulties or problems that need the help of the Education Bureau, the Bureau is more than happy to resolve the problems together with the schools.
In respect of teachers, we have high expectations of them and have requirements on their professional conduct. If there is evidence proving that they have violated the law, or breached their professional code of conduct, we have an established mechanism to handle the case.

(Ms Starry LEE stood up)

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

MS STARRY LEE (in Cantonese): The Secretary has not answered me. What he said just now about issuing letters, expectations, etc. are all very vague. My question is very clear. As many members of the public do not wish to see the propagation of "Hong Kong independence" in school campuses, will the Government draw up guidelines according to the present situation to stop people with ulterior motives from propagating "Hong Kong independence" on school campuses? If there are such incidents, or if there are academic staff violating their professional code of conduct, will the Government formulate such guidelines?

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

SECRETARY FOR EDUCATION (in Cantonese): President, after linking up Ms LEE's questions, I believe she asked in particular if there were measures preventing teachers from violating their professional code of conduct by propagating "Hong Kong independence" on school campuses. I think the present system or guidelines have already covered this situation, that is, we require teachers not to encourage or incite students to engage in any illegal activities; otherwise it is a breach of teachers' professional code of conduct. Hence, I believe the present system already covers the relevant situations.

MR IP KIN-YUEN (in Cantonese): President, in the main reply the Secretary pointed out some of the Government's stances, including its views on "one country, two systems" and "Hong Kong independence", as well as its views on post-secondary institutions and their autonomy. The Secretary also said, "We (the Education Bureau) safeguard and respect academic freedom and
institutional autonomy according to the law" and also, "post-secondary institutions are autonomous bodies and the Education Bureau believes that they have the responsibility as well as the ability to deal with incidents on their campuses properly while looking after their students' interests".

On this premise, we can see that recently, including today, some people have given their views to the University of Hong Kong on the appointment or dismissal of individual persons. I believe their repeated actions have exceeded the scope of providing views and are in reality exerting pressure on the University.

The autonomy of institutions may be undermined under such pressure. Concerning this issue, may I ask the Secretary whether the Education Bureau will take specific actions or measures to safeguard the autonomy of institutions, an important core value of Hong Kong?

SECRETARY FOR EDUCATION (in Cantonese): President, the present legislation, including Article 137 of the Basic Law, provides the greatest protection to the autonomy of post-secondary institutions. Individual law enacted specifically for each institution stipulates the autonomous status of the relevant institution.

Many members of the general public like to comment on various issues. As I said in the main reply, it is reasonable for people to be concerned about the internal affairs of post-secondary institutions as these institutions have very important social functions and the Government allocates large amounts of money to post-secondary education. Hence, it is reasonable for Members to show concern.

I believe that Members belonging to different camps have expressed views on many different incidents in the past. If such views are taken to be exerting pressure, I believe that many people, including Mr IP, have expressed many views on the operation of universities, and they might give people the impression that they were exerting pressure. But I believe that everyone may express their views freely. The universities will fully consider such views and make appropriate decisions.

PRESIDENT (in Cantonese): Last oral question.
Eligibility for candidacy of persons who have chanted a certain slogan to run for the Legislative Council election

6. **MS CLAUDIA MO** (in Cantonese): *It has been reported that late last month, a former Director of the Hong Kong and Macao Affairs Office of the State Council was asked by the media on whether people who had chanted "end the one-party dictatorship" slogan in the Hong Kong Special Administrative Region ("HKSAR") might run for the Legislative Council ("LegCo") election. He replied that "it should be the case that they may not, as such an act contravenes the Country's Constitution and is an unlawful act". In this connection, will the Government inform this Council:

(1) if it knows whether there is any legal basis for the statement that chanting the "end the one-party dictatorship" slogan in HKSAR is an unconstitutional and unlawful act; if there is, of the details;

(2) whether a Returning Officer ("RO"), when determining the validity or otherwise of a nomination of a candidate for the LegCo election in future, will be required to consider if that person has previously done the following acts: having chanted the "end the one-party dictatorship" slogan, having joined an organization whose political platform consists of such a slogan, and having participated in activities organized by this type of organizations; whether an RO may decide that the nomination of a candidate is invalid on the ground that the candidate has previously done these acts; and

(3) whether there are other provisions in the Constitution, apart from Article 31 of the Constitution under which HKSAR was established, that are applicable to HKSAR; if so, of such provisions and the legal basis for their being applicable to HKSAR, as well as the legal consequences to be borne by those Hong Kong people who have contravened such provisions?

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, having consulted the Department of Justice, our consolidated reply to Ms Claudia MO's question is as follows:
According to the Preamble of the Constitution of the People's Republic of China ("the Constitution"), "[t]he Constitution, in legal form, affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the State; it is the fundamental law of the State and has supreme legal authority. The people of all nationalities, all State organs, the armed forces, all political parties and public organizations and all enterprises and institutions in the country must take the Constitution as the basic standard of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation."\(^{(1)}\)

Article 31 of the Constitution provides that "[t]he State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress ("NPC") in the light of specific conditions". Article 62 of the Constitution prescribes the functions and powers that may be exercised by NPC, including, as provided by sub-paragraph (14), "to decide on the establishment of special administrative regions and the systems to be instituted there". In accordance with the Constitution, NPC enacted the Basic Law of the Hong Kong Special Administrative Region ("HKSAR") of the People's Republic of China ("the Basic Law"), prescribing the systems to be practised in HKSAR, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong, namely, "one country, two systems", "Hong Kong people administering Hong Kong" and "a high degree of autonomy".

At the Celebrations of the 20\(^{th}\) Anniversary of Hong Kong's Return to the Motherland and the Inaugural Ceremony of the Fifth Term Government of the HKSAR on 1 July last year, President XI Jinping clearly stated that "[t]he Basic Law is a basic legislation enacted in accordance with the Constitution. It stipulates the systems and policies practised in HKSAR, codifies into law and makes institutional arrangement for the principle of 'one country, two systems', and provides legal safeguards for the practice of 'one country, two systems' in HKSAR."

Article 11(1) of the Basic Law stipulates that, in accordance with Article 31 of the Constitution, the systems and policies practised in HKSAR, including the social and economic systems, the system for safeguarding the

\(^{(1)}\) This English translation of the Preamble of the Constitution of the People's Republic of China is a direct quote from the official website of the National People's Congress of the People's Republic of China <www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372962.htm>.
fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of the Basic Law.

As Article 31 of the Constitution already authorizes NPC to prescribe the systems to be instituted in special administrative regions by law, in accordance with Article 31 of the Constitution, the systems and policies of HKSAR that were prescribed in the Basic Law and enacted by NPC shall have an overriding status. Therefore, the provisions on the socialist system and policies in the Constitution are not implemented in HKSAR.

The Constitution and the Basic Law form the constitutional basis of HKSAR. Under this constitutional framework, we must be well aware that the political party system of the People's Republic of China is a system of multiparty cooperation and political consultation led by the Communist Party of China. HKSAR is an inalienable part of the People's Republic of China. We must respect the Constitution. While HKSAR implements "one country, two systems" in accordance with the provisions in the Basic Law, HKSAR must also respect the system in the Mainland.

As regards the parts relating to the Legislative Council election in the question, the Legislative Council Ordinance (Cap. 542) clearly stipulates that a person intending to run in a Legislative Council election must make a declaration to the effect that he/she will uphold the Basic Law and pledge allegiance to HKSAR. In accordance with the Legislative Council Ordinance and Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), the Returning Officers must, based on the specific circumstances of each case, decide whether or not a person intending to run in the election is validly nominated as a candidate.

We will continue to perform the relevant duties in accordance with the law and ensure that elections are conducted in a fair, open and honest manner.

**MS CLAUDIA MO** (in Cantonese): Upon hearing the reply of the Secretary, all learned people will be filled with anger and regret, apart from not knowing whether to laugh or cry. In his main reply, the Secretary did not dare to mention a word about the "end the one-party dictatorship" slogan. Of the motions on "vindicating the 4 June incident" deliberated by the Legislative
Council in the past 10 years, at least two had contained the words "end the one-party dictatorship". The Council had also conducted formal and appropriate debates on these motions. In the third last paragraph in his main reply, the Secretary has mentioned that "the political party system of the People's Republic of China is a system of multiparty cooperation and political consultation led by the Communist Party of China". If "leadership" is not the same as "dictatorship", then chanting the "end the one-party dictatorship" slogan will be the same as "throwing a punch in the air". However, the Secretary still did not dare to give a reply. I ask him once again. Is chanting the "end the one-party dictatorship" slogan unlawful and unconstitutional? What political consequences must be borne? Please stop acting like a "quail".\(^1\)

**PRESIDENT** (in Cantonese): Ms Claudia MO, please withdraw the last two Chinese characters in your supplementary question.

**MS CLAUDIA MO** (in Cantonese): I will rephrase it as: Will the Secretary please refrain from displaying a "quail-like" attitude.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, in response to the supplementary question raised by Ms MO, as I made clear in the main reply just now, we must consider our constitutional framework when addressing this issue. This point per se must be clarified. As HKSAR is part of the People's Republic of China, all politicians must uphold the Basic Law and pledge allegiance to HKSAR. At the same time, they must respect the Constitution and the system in the Mainland. Only by doing so will they be politically logical and reasonable. As to whether the chanting of a certain slogan will …

(Ms Claudia MO stood up)

**MS CLAUDIA MO** (in Cantonese): Is this unlawful and unconstitutional?

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\(^1\) The Chinese word used by Ms Claudia MO is "鵪鶉", which describes people who are timid and draw away in fear.
PRESIDENT (in Cantonese): Please let the Secretary finish his reply first. Secretary, please continue.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): ... As regards whether a certain slogan is unlawful, we in Hong Kong will basically handle all cases in accordance with the law. The words and deeds of Members are also regulated by the relevant laws and the Rules of Procedure. As such, I will not predict the consequences arising from an individual statement.

MS CLAUDIA MO (in Cantonese): Isn't he acting like a "quail"?

PRESIDENT (in Cantonese): Ms Claudia MO, please withdraw the offensive word you have used.

MS CLAUDIA MO (in Cantonese): I was simply asking a question.

MR CHAN CHI-CHUEN (in Cantonese): President, Ms Claudia MO has raised her question in a very clear, simple and direct way. Is chanting the "end the one-party dictatorship" slogan unconstitutional and unlawful in Hong Kong? If so, what is the legal basis? The so-called "end the one-party dictatorship" slogan is not intended to end any political party or political regime. Instead, it is a proposal on political structural reform. Proposing an amendment to the Constitution is not tantamount to contravening the Constitution; likewise proposing an amendment to the Basic Law is not tantamount to contravening or declining to uphold the Basic Law. The Secretary was talking about political logic with Members just now. In fact, what he was talking about was only linguistic logic, not political logic. There should be no reason why the Secretary is unaware of this point.

In his reply to Ms Claudia MO's question, the Secretary has stated that we must respect the Constitution and the system in the Mainland. I will now discuss linguistic logic with the Secretary. "Disrespectful" or "not respectful enough" is quite different in meaning from "contravening". Neither the word
"unconstitutional" nor "unlawful" has been found in the Secretary's reply. I am raising this supplementary question in the hope that the Secretary will confirm one point, or deny it if he likes. Will he please answer "yes" or "no". Neither the word "unconstitutional" nor "unlawful" has been found in the Secretary's reply. In response to the oral question raised by Ms Claudia MO in relation to the chanting of the "end the one-party dictatorship" slogan, it has not been stated in the main reply that the act is unconstitutional or unlawful. Can the Secretary confirm this point?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, regarding Mr CHAN's supplementary question, as I pointed out in my reply just now, the chanting of a certain slogan by any persons may give rise to many different interpretations and narratives. However, we must grasp the following principles: First, while the Basic Law protects such rights of the public as freedom of speech and freedom of demonstration, the public must abide by the law and act in accordance with the Basic Law at the same time. Under the constitutional system, we must respect the Constitution, the Basic Law and the system in the Mainland. We must follow these principles when we view our personal words and deeds.

Unlike the general public, politicians will become part of the establishment or political system of HKSAR after they join the Legislative Council. They must of course comply with the corresponding requirements. For example, people running in a Legislative Council election must, according to the statutory requirements, make a declaration to the effect that they will uphold the Basic Law and pledge allegiance to HKSAR. As an inalienable part of the People's Republic of China, HKSAR was established on the basis of the Country's Constitution. "Two systems" have been established in the Mainland and Hong Kong on the basis of "one country". Going by this political logic, we must respect the Constitution and the system in the Mainland. Any people in the political system may appear to have defied the logic and norm if they have an attitude or views against the Country's system.

Therefore, the main reply I have given has clearly set out the principles and practice we have been following.
MR CHAN CHI-CHUEN (in Cantonese): President, the Secretary has not answered my supplementary question. My question was fairly simple, which is: Is it true that the Secretary has not mentioned that chanting the "end the one-party dictatorship" slogan is unconstitutional or unlawful in his main reply?

PRESIDENT (in Cantonese): You have already pointed out the unanswered part of your supplementary question. Please sit down. Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I have already replied to the question.

MS STARRY LEE (in Cantonese): President, the Country's Constitution stipulates that the People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants, instituting a system of the multiparty cooperation and political consultation led by the Communist Party of China. In view of this, the so-called "one-party dictatorship" is essentially non-existent. The Constitution and the Basic Law have laid the constitutional foundation of HKSAR. The Constitution is the root, the mother, and the source of all laws including the Basic Law. Any act to incite or attempt to overthrow the Country's Constitution and the systems founded upon the Constitution is both unconstitutional and unlawful.

    The Secretary pointed out in the main reply just now that all candidates must uphold the Constitution and the Basic Law. Returning Officers must also carefully consider all the particulars in accordance with the requirements of the Basic Law in determining the eligibility of candidates. I consider it the only appropriate approach. The Secretary and Returning Officers must cautiously carry out the relevant work in order to prevent anyone with ulterior motives from entering the Legislative Council and turning the Council into a platform for propagating "Hong Kong Independence". Otherwise, the consequences will be unthinkable.
To effectively safeguard "one country, two systems", it is necessary to attach importance to and safeguard the Hong Kong system. In addition, it is also necessary to respect the political system instituted in the Mainland. "End the one-party dictatorship" is admittedly a false proposition. However, if some people chant this slogan all day with the real intention to overthrow the political system of the Country, what will be the view of the Government; have these acts contravened the Constitution and the Basic Law?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I thank Ms LEE for raising the supplementary question. As I pointed out just now, under the operation of "one country, two systems", "Hong Kong people administering Hong Kong" and "a high degree of autonomy", HKSAR implements policies and measures in accordance with the Basic Law. For this reason, the socialist system instituted in the Country will not be implemented in Hong Kong. Under "one country, two systems", we must firmly grasp and bear in mind that Hong Kong is part of "one country", as prescribed in the Country's Constitution. As I mentioned in my reply just now, all the policies and systems prescribed in the Basic Law shall be based on the Basic Law, while the Constitution applies to policies and systems out of the scope of the Basic Law. As a result, politicians in particular should uphold the Basic Law and pledge allegiance to HKSAR. They must also respect the Constitution and the system in the Mainland, respect "one country" and cherish "two systems".

Ms LEE has just mentioned that Returning Officers will consider the specific and actual situation as required by the law when determining the validity of a nomination of a candidate for the Legislative Council election before making a decision in accordance with the law. We will conscientiously implement and carry out the work in this regard. We are keen to ensure that elections are conducted in an open, fair and honest manner.

MR CHU HOI-DICK (in Cantonese): President, I am quoting part of the supplementary question raised by Mr CHAN Chi-chuen just now as my question put to the Secretary. My supplementary question is: Will proposing an amendment to the Basic Law or the Constitution constitute a violation of the Basic Law or the Constitution?
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, as the relevant procedures for amending the Basic Law have been prescribed therein, it will be difficult for me to predict what will automatically happen based on Mr CHU's assumption that an amendment has been proposed to the Basic Law. I consider it necessary to consider the context and specific situation, and it is not appropriate to make sweeping generalizations.

In some cases, a fairly simple question can evoke a far from simple response. In my view, the most important point is that we must grasp the constitutional basis. We have very often focused our attention on the Basic Law and "two systems". But at the same time, we must also uphold the principle that "two systems" must be approached from the perspective of "one country". As "one country" is the root and the basis, Hong Kong is simply implementing another system under "one country". Under the Basic Law, we implement "one country, two systems", "Hong Kong people administering Hong Kong" and "a high degree of autonomy".

MR CHU HOI-DICK (in Cantonese): President, the Secretary has not answered whether proposing an amendment to the Constitution is unconstitutional.

PRESIDENT (in Cantonese): Mr CHU, please sit down. Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, as I said just now, within the territory of Hong Kong, under the Basic Law and the Hong Kong legislation, all people are entitled to the freedom of speech, of expression and of demonstration. Whether certain speeches or actions are unlawful must be determined in accordance with the law.

DR KWOK KA-KI (in Cantonese): President, in fact, Hong Kong people strongly wish to abide by the Constitution. However, what has happened around us has often impeded our knowledge and understanding of the Country's Constitution and the Basic Law. For example, a Hong Kong journalist, without breaking any law, was assaulted by public security officers when he was covering
news in the Mainland today. President, the Secretary gave a long main reply and responded to Members' questions just now. Probably due to some problems with my ability to understand him or other reasons, I actually do not understand his reply. The main question raised by Ms Claudia MO has been very clear. She cited a senior Beijing official who had visited Hong Kong as saying that anyone who proposed "ending the one-party dictatorship" was not eligible for running in the Legislative Council election. For many years in the past, over millions of Hong Kong people have taken part in 4 June rallies, with the highest turnout recorded being 180 000 people in one year. In other words, millions of Hong Kong people have chanted the "end the one-party dictatorship" slogan. Ms Starry LEE said just now that "one-party dictatorship" has never existed given that China has been under the rule of the working class. I of course consider her remark to be faulty. Even if I were to believe in the assumption she had made that "one-party dictatorship" was essentially non-existent and that chanting the slogan is tantamount to "throwing a punch in the air" …

PRESIDENT (in Cantonese): Dr KWOK Ka-ki, please raise your supplementary question.

DR KWOK KA-KI (in Cantonese): President, I will proceed to raise my supplementary question. The Secretary is not even willing to answer such a simple question of common sense. I will not put this question to him. I will ask him a question about operational matters. Will the Government use facial recognition technology to record the speeches of all Hong Kong people from now on? For example, at the upcoming 4 June rally, will it record all the people who have chanted the "end the one-party dictatorship" slogan and then send the files to the Constitutional and Mainland Affairs Bureau or the Registration and Electoral Office for their future use?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, Dr KWOK said just now that he did not understand after reading my main reply. I will hereby explain it in detail again, or I may further communicate with him in future. In the main reply, the most important point is that we must clearly understand the constitutional foundation and constitutional framework of HKSAR. This point is crucial for the implementation of "one
country, two systems”. We must respect the Constitution and the Basic Law. While we are implementing the HKSAR system, it is extremely important that we must also respect the system in the Mainland. The freedom of speech or of expression enjoyed by the general public in their daily life has been guaranteed under the Basic Law, and we will also act in accordance with the Hong Kong legislation. For this reason, we should not confuse matters of different nature. However, people who have taken up public offices in HKSAR are part of the political system of HKSAR. They must not only uphold the Basic Law but pledge allegiance to HKSAR. It also follows that they must respect the system instituted in the Country, including the party system and other content of the Constitution. In my reply to the main question today, relevant issues have been dealt with based on these principles.

(Dr KWOK Ka-ki stood up)

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

**DR KWOK KA-KI** (in Cantonese): My supplementary question is very clear. I have asked about operational matters. There are more than 3 million voters in Hong Kong. How will the Secretary know who will run in the Legislative Council election? If we go by the logic of the Secretary, should we record all people who have chanted the "end the one-party dictatorship" slogan in previous 4 June rallies for the Administration's reference? Will the Secretary do so?

**PRESIDENT** (in Cantonese): Dr KWOK, please sit down. You have raised your follow-up question. Secretary, do you have anything to add?

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, we have an established mechanism in place to process the application of all people who intend to run in the Legislative Council election in accordance with the law.
(Mr HUI Chi-fung stood up to indicate his intention to raise a point of order)

PRESIDENT (in Cantonese): Mr HUI Chi-fung, what is your point of order?

MR HUI CHI-FUNG (in Cantonese): President, I move a motion under Rule 16(2) of the Rules of Procedure that the Council do now adjourn for the purpose of holding an urgent debate on the use of force against a Hong Kong journalist covering news in Beijing this morning. I consider this to be an issue of urgent importance. I hope that the President will consider giving leave for me to move this motion. As I understand it, the journalist is still being held in custody by the Public Security, and some Hong Kong journalists are still covering the incident there. The wording of the motion is as follows …

PRESIDENT (in Cantonese): I now suspend the meeting to deal with the motion proposed by Mr HUI Chi-fung.

1:27 pm

Meeting suspended.

1:50 pm

Council then resumed.

PRESIDENT (in Cantonese): Mr HUI Chi-fung has requested to move an adjournment motion under Rule 16(2) of the Rules of Procedure. I understand that Members are very concerned about the case in which a Hong Kong journalist had been taken away when covering news in the Mainland, as well as the importance of the freedom of news coverage.
Mr HUI Chi-fung has requested that the Council discuss this matter forthwith, but I do not consider it to be an issue of urgent public importance as laid down in Rule 16(2) of the Rules of Procedure because Members will not lose the opportunity to express their views on this matter even if it is not debated at this meeting. For this reason, I will not give leave for him as requested.

(Mr HUI Chi-fung stood up to indicate his intention to raise a point of order)

PRESIDENT (in Cantonese): Mr HUI Chi-fung, what is your point of order?

MR HUI CHI-FUNG (in Cantonese): President, there are still journalists covering news about human rights lawyers in Beijing. Is their personal safety not of urgent importance? Can you explain your ruling?

PRESIDENT (in Cantonese): This is not a point of order. I have met with you and I have already made the ruling. No debate shall arise on the President's ruling.

(Ms Claudia MO raised her hand in indication)

PRESIDENT (in Cantonese): Ms Claudia MO, what is your point?

MS CLAUDIA MO (in Cantonese): President, I wish you can clarify one point. Under Rule 16(2) of the Rules of Procedure which you referred to just now, have you ruled that the matter is neither urgent nor important?

PRESIDENT (in Cantonese): If you have paid attention to my explanation, you should have understood my meaning. Although this matter is of public importance, Members will not lose the opportunity to express their views on it even if it is not debated at this meeting. For this reason, I have not given leave for Mr HUI as requested.
WRITTEN ANSWERS TO QUESTIONS

Expenditure on consultancy fees for public works projects

7. MR TONY TSE (in Chinese): President, regarding the expenditure on consultancy fees involved in the delivery of public works projects, will the Government inform this Council of:

(1) the following information in respect of the public works projects with an approved estimated cost exceeding $15 million implemented by each works department in the past three years: (i) the title of the construction project, (ii) the approved estimated project expenditure, (iii) the comparison between the original estimated expenditure on consultancy fees at the design stage and the approved estimated project expenditure, (iv) the awarded price of the contract for the construction works, (v) the comparison between the original estimated expenditure on consultancy fees at the design stage and the awarded price of the consultancy contract (design stage), and (vi) the reasons for the discrepancy between the original estimated expenditure on consultancy fees at the design stage and the awarded price of the consultancy contract (design stage) (set out in a table); and

(2) the criteria and methods adopted for calculating the expenditure on consultancy fees for public works projects at the design stage, and whether a limit has been imposed on the expenditure concerned?

SECRETARY FOR DEVELOPMENT (in Chinese): President, to continuously improve citizens' quality of life, enhance Hong Kong's long-term competitiveness and promote our economic development, the Government has been implementing all types of public works projects in an orderly manner. The implementation of public works projects involves efforts on various fronts including project study, investigation, design, construction supervision and contract management, and
requires the participation of a large number of professional and qualified persons as well as support of other technical personnel. In general, government departments will procure architectural or engineering consultancy services when the Government does not have sufficient in-house manpower resources to implement public works projects within a reasonable period of time.

My reply to Mr Tony TSE's question is as follows:

(1) For public works projects implemented by the works departments (involving project design undertaken by consultants) with funding approved in the past three years, the information including the title of the construction project, the approved project estimate ("APE"), the awarded prices of works contract(s) as well as the comparison between the original estimated consultancy fees for the design stage and APE of the construction project is set out at Annex 1.\(^{(1)}\)

The comparison between the original estimated consultancy fees for the design stage and the awarded prices of consultancy agreements (design stage) is provided at Annex 2.\(^{(2)}\)

As indicated in Annex 2, the awarded prices of about 71% of the architectural or engineering consultancy agreements concerned are lower than the works departments' pre-tender estimates.

In general, the differences between the original estimated consultancy fees for the design stage and the awarded prices of consultancy agreements (design stage) are attributable to a number of factors, which can broadly be classified as follows:

(1) The construction projects in Annex 1 do not cover the block vote projects, projects entrusted to other organizations, projects designed and built by contractors, and those designed by in-house staff of works departments.

(2) To avoid over-disclosure of information which would affect the competitive position(s) of the Government and/or consultants, the information is presented in a consolidated form.
- competition and price fluctuations in the consultancy services market;

- changes in the job market and wage fluctuations for professionals and technical personnel;

- different working strategies proposed by consultants based on the complexity and risks of individual projects;

- Innovative and creative proposals of different consultants to meet the needs of individual projects; and

- Previous experience, knowledge and expertise of different consultants and their employees.

(2) At present, the procurement of architectural or engineering consultancy services undertaken by works departments shall follow the Stores and Procurement Regulations, the Architectural and Associated Consultants Selection Board ("AACSB") Handbook or the Engineering and Associated Consultants Selection Board ("EACSB") Handbook, and the relevant Development Bureau Technical Circulars (Works) ("DEVB TC(W)").

During the procurement of architectural or engineering consultancy services, works departments will follow the above guidelines to compile the estimated consultancy fees taking into account the required manpower input of various categories of professional and technical personnel and the associated market rates based on the degree of complexity of and efforts required for various disciplines in taking forward individual public works projects. Therefore, there may not be a fixed relationship between the estimated consultancy fees for the design stage and APE of a construction project.
All along, the works departments have attached great importance to the quality and cost-effectiveness of professional services provided by architectural or engineering consultants. Therefore, both the professional technical proposals and tender prices are key considerations in the selection of consultants. According to DEVB TC(W) No. 2/2016 and the related AACSB/EACSB Handbooks, the works departments will generally adopt a "two-envelope" bidding system in the selection of consultants, in which consultants' technical proposals and tender price proposals are assessed separately and then the overall best performing tender will be selected. The competitiveness of a tender is subject to the quality of its technical proposal and how high or low its price is. Moreover, to prevent consultants from bidding at an unreasonable price level, the works departments would compare consultants' tender prices with the estimated prices as well as the market prices. The above assessment criteria, which help establish an appropriate and fair bidding system, have been included in the said technical circular and adopted in tender documents for architectural or engineering consultancy agreements.

At present, if the estimated expenditure on the design, preparation of tender documents and other related work carried out by a consultant prior to commencement of the construction works does not exceed $30 million, the consultancy fees at the design stage will normally be charged against the funding of a Category D item. If the estimated expenditure will exceed $30 million, the works department will need to make application to the Finance Committee of the Legislative Council for upgrading part of the public works project to Category A to fund the consultancy fees at the design stage. The works department should ensure that the estimated expenditure at the design stage for any awarded architectural or engineering consultancy agreement will not exceed APE of the Category D or A item concerned.
Annex 1

Relevant information of public works projects implemented by works departments (involving project design undertaken by consultants) with funding approved in the past three years

<table>
<thead>
<tr>
<th>Works department</th>
<th>Year of funding approval</th>
<th>Title of construction project</th>
<th>APE ($ million)</th>
<th>Contract sum of works contract(s) already awarded (2) ($ million)</th>
<th>Comparison between the original estimated consultancy fees for the design stage and the APE of the construction project (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ArchSD</td>
<td>2015</td>
<td>Construction of Rank and File Quarters for Customs and Excise Department at Yau Yue Wan Village Road, Tseung Kwan O</td>
<td>604.8</td>
<td>375.9</td>
<td>Below 2%</td>
</tr>
<tr>
<td>ArchSD</td>
<td>2015</td>
<td>A 36-classroom primary school in Area 36, Fanling</td>
<td>417.2</td>
<td>302.3</td>
<td>Below 2%</td>
</tr>
<tr>
<td>ArchSD</td>
<td>2015</td>
<td>Two special schools at Sung On Street, To Kwa Wan</td>
<td>484.0</td>
<td>398.8</td>
<td>About 2% to 4%</td>
</tr>
<tr>
<td>ArchSD</td>
<td>2015</td>
<td>Liantang/Heung Yuen Wai boundary control point and associated works-construction of boundary control point buildings and associated facilities</td>
<td>8,811.9</td>
<td>7,110.5</td>
<td>About 2% to 4%</td>
</tr>
<tr>
<td>ArchSD</td>
<td>2015</td>
<td>Reprovisioning of Food and Environmental Hygiene Department Sai Yee Street Environmental Hygiene offices-cum-vehicle depot at Yen Ming Road, West Kowloon Reclamation Area</td>
<td>1,549.9</td>
<td>782.8</td>
<td>About 2% to 4%</td>
</tr>
<tr>
<td>ArchSD</td>
<td>2015</td>
<td>Provision of Columbarium and Garden of Remembrance at Tsang Tsui, Tuen Mun</td>
<td>2,874.3</td>
<td>1,818.8</td>
<td>Below 2%</td>
</tr>
<tr>
<td>Works department</td>
<td>Year of funding approval</td>
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<tr>
<td>ArchSD 2015</td>
<td>Construction of staff quarters for Immigration Department at Heng Lam Street, Kowloon</td>
<td>391.0</td>
<td>312.3</td>
<td>About 2% to 4%</td>
<td></td>
</tr>
<tr>
<td>ArchSD 2015</td>
<td>A 12-classroom special school for children with mild intellectual disability near Hoi Lai Estate, Sham Shui Po</td>
<td>256.6</td>
<td>221.3</td>
<td>About 2% to 4%</td>
<td></td>
</tr>
<tr>
<td>ArchSD 2015</td>
<td>Two 24-classroom primary schools at ex-Tanner Road Police Married Quarters site at Pak Fuk Road, North Point, Hong Kong</td>
<td>660.0</td>
<td>521.2</td>
<td>Below 2%</td>
<td></td>
</tr>
<tr>
<td>ArchSD 2015</td>
<td>Open space at Hing Wah Street West, Sham Shui Po</td>
<td>122.0</td>
<td>73.0</td>
<td>About 4% to 6%</td>
<td></td>
</tr>
<tr>
<td>ArchSD 2015</td>
<td>Construction of the East Kowloon Cultural Centre</td>
<td>4,175.7</td>
<td>2,731.3</td>
<td>Below 2%</td>
<td></td>
</tr>
<tr>
<td>ArchSD 2016</td>
<td>Sports centre, community hall and football pitches in Area 1, Tai Po</td>
<td>2,163.1</td>
<td>1,531.0</td>
<td>Below 2%</td>
<td></td>
</tr>
<tr>
<td>ArchSD 2016</td>
<td>Provision of Columbarium at Wo Hop Shek Cemetery—Phase 1</td>
<td>945.6</td>
<td>669.0</td>
<td>About 2% to 4%</td>
<td></td>
</tr>
<tr>
<td>ArchSD 2016</td>
<td>A school for social development for boys in Area 2B, Tuen Mun</td>
<td>408.5</td>
<td>305.9</td>
<td>About 2% to 4%</td>
<td></td>
</tr>
<tr>
<td>ArchSD 2016</td>
<td>A 30-classroom primary school at Site KT2b, Development at Anderson Road, Kwun Tong</td>
<td>351.1</td>
<td>278.5</td>
<td>About 2% to 4%</td>
<td></td>
</tr>
<tr>
<td>ArchSD 2016</td>
<td>A 30-classroom secondary school at Site 1A-2, Kai Tak development</td>
<td>446.7</td>
<td>381.0</td>
<td>About 2% to 4%</td>
<td></td>
</tr>
<tr>
<td>Works department</td>
<td>Year of funding approval</td>
<td>Title of construction project</td>
<td>APE ($ million)</td>
<td>Contract sum of works contract(s) already awarded(^2) ($ million)</td>
<td>Comparison between the original estimated consultancy fees for the design stage and the APE of the construction project(^3)</td>
</tr>
<tr>
<td>------------------</td>
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<tr>
<td>ArchSD</td>
<td>2016</td>
<td>The demolition of existing structures on Sites A and B1 of the Sung Wong Toi Vehicle Repair and Maintenance Workshop</td>
<td>99.3</td>
<td>30.9</td>
<td>About 2% to 4%</td>
</tr>
<tr>
<td>ArchSD</td>
<td>2016</td>
<td>Renovation works for the West Wing of the former Central Government Offices for office use by the Department of Justice and law-related organizations</td>
<td>1,078.9</td>
<td>844.0</td>
<td>About 2% to 4%</td>
</tr>
<tr>
<td>ArchSD</td>
<td>2016</td>
<td>Construction of staff quarters for Correctional Services Department at Tin Wan, Aberdeen</td>
<td>256.1</td>
<td>192.2</td>
<td>About 2% to 4%</td>
</tr>
<tr>
<td>ArchSD</td>
<td>2017</td>
<td>A special school for students with mild, moderate and severe intellectual disabilities in Area 108, Tung Chung</td>
<td>334.7</td>
<td>268.0</td>
<td>About 2% to 4%</td>
</tr>
<tr>
<td>ArchSD</td>
<td>2017</td>
<td>Conversion of the former French Mission Building for accommodation use by law-related organizations and related purposes</td>
<td>234.2</td>
<td>147.0</td>
<td>About 4% to 6%</td>
</tr>
<tr>
<td>ArchSD</td>
<td>2017</td>
<td>Reprovisioning of Shanghai Street refuse collection point and street sleepers' services units to the site at Hau Cheung Street, Yau Ma Tei for the phase II development of the Yau Ma Tei Theatre project</td>
<td>223.3</td>
<td>136.0</td>
<td>About 2% to 4%</td>
</tr>
<tr>
<td>Works department</td>
<td>Year of funding approval</td>
<td>Title of construction project</td>
<td>APE ($ million)</td>
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</tr>
<tr>
<td>ArchSD</td>
<td>2017</td>
<td>Reprovisioning of Tsun Yip Street Playground facilities to Hong Ning Road Park and Ngau Tau Kok Fresh Water Service Reservoir</td>
<td>382.2</td>
<td>0</td>
<td>About 2% to 4%</td>
</tr>
<tr>
<td>CEDD</td>
<td>2015</td>
<td>Ma On Shan development—roads, drainage and sewerage works at Whitehead and Lok Wo Sha, phase 2</td>
<td>252.8</td>
<td>154.7</td>
<td>Below 2%</td>
</tr>
<tr>
<td>CEDD</td>
<td>2015</td>
<td>Roads and drains in Area 16 and Area 58D, Sha Tin</td>
<td>224.5</td>
<td>93.0</td>
<td>Below 2%</td>
</tr>
<tr>
<td>CEDD</td>
<td>2015</td>
<td>Kai Tak development—infrastructure works for developments at the southern part of the former runway</td>
<td>5,757.1</td>
<td>4,123.0</td>
<td>About 2% to 4%</td>
</tr>
<tr>
<td>CEDD</td>
<td>2016</td>
<td>Kai Tak development—stages 3B and 5A infrastructure works at former north apron area</td>
<td>2,152.8</td>
<td>1,042.1</td>
<td>About 4% to 6%</td>
</tr>
<tr>
<td>CEDD</td>
<td>2016</td>
<td>Cycle tracks connecting North West New Territories with North East New Territories—Tuen Mun to Sheung Shui section (Remaining)</td>
<td>890.9</td>
<td>509.3</td>
<td>Below 2%</td>
</tr>
<tr>
<td>CEDD</td>
<td>2016</td>
<td>Development of Anderson Road Quarry site—site formation and associated infrastructure works</td>
<td>7,693.4</td>
<td>2,967.3</td>
<td>Below 2%</td>
</tr>
</tbody>
</table>
### Works Department

<table>
<thead>
<tr>
<th>Year of funding approval</th>
<th>Title of construction project</th>
<th>APE ($ million)</th>
<th>Comparison between the original estimated consultancy fees for the design stage and the APE of the construction project ($ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEDD 2016</td>
<td>Road and infrastructure works for development at Lin Cheung Road, Sham Shui Po</td>
<td>114.8</td>
<td>68.8 Not applicable&lt;sup&gt;(4)&lt;/sup&gt;</td>
</tr>
<tr>
<td>CEDD 2016</td>
<td>Infrastructure works for development at Queen's Hill, Fanling</td>
<td>1,459.5</td>
<td>573.8 Below 2%</td>
</tr>
<tr>
<td>CEDD 2016</td>
<td>Tseung Kwan O—Lam Tin Tunnel—main tunnel and associated works</td>
<td>15,093.5</td>
<td>12,199.1 Below 2%</td>
</tr>
<tr>
<td>CEDD 2016</td>
<td>Improvement works at Mui Wo, phase 2 stage 1</td>
<td>72.3</td>
<td>42.5 Not applicable&lt;sup&gt;(4)&lt;/sup&gt;</td>
</tr>
<tr>
<td>CEDD 2016</td>
<td>West Kowloon Reclamation—main works (remainder)—footbridge at the junction of Sham Mong Road and Tonkin Street West in Sham Shui Po</td>
<td>368.9</td>
<td>222.2 Not applicable&lt;sup&gt;(4)&lt;/sup&gt;</td>
</tr>
<tr>
<td>CEDD 2016</td>
<td>Demolition and ground decontamination works for development at North West Kowloon Reclamation Site 1, Sham Shui Po—phase 1</td>
<td>108.4</td>
<td>55.4 About 4% to 6%</td>
</tr>
<tr>
<td>CEDD 2016</td>
<td>Improvement works at Tai O, phase 2 stage 1</td>
<td>124.0</td>
<td>74.7 Not applicable&lt;sup&gt;(4)&lt;/sup&gt;</td>
</tr>
<tr>
<td>CEDD 2016</td>
<td>Expansion of mountain bike trail networks in Mui Wo and Chi Ma Wan, South Lantau</td>
<td>41.6</td>
<td>24.9 Above 6%</td>
</tr>
<tr>
<td>CEDD 2017</td>
<td>Site formation and infrastructure works for public housing developments at Chung Nga Road and Area 9, Tai Po—phase 1</td>
<td>1,146.8</td>
<td>92.8 Below 2%</td>
</tr>
<tr>
<td>Works department</td>
<td>Year of funding approval</td>
<td>Title of construction project</td>
<td>APE ($ million)</td>
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<tr>
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<td>------------------------------------------------------------------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>CEDD</td>
<td>2017</td>
<td>Infrastructure works for public housing development at Area 54, Tung Chung</td>
<td>284.8</td>
</tr>
<tr>
<td>CEDD</td>
<td>2017</td>
<td>Tung Chung New Town Extension—reclamation and advance works</td>
<td>20,210.0</td>
</tr>
<tr>
<td>CEDD</td>
<td>2017</td>
<td>Site formation and associated infrastructural works for development of columbarium at Sandy Ridge Cemetery</td>
<td>1,849.6</td>
</tr>
<tr>
<td>CEDD</td>
<td>2018</td>
<td>Development of Anderson Road Quarry site—road improvement and infrastructure works</td>
<td>2,654.4</td>
</tr>
<tr>
<td>DSD</td>
<td>2015</td>
<td>Tuen Mun sewerage—Castle Peak Road trunk sewer and Tuen Mun village sewerage</td>
<td>722.5</td>
</tr>
<tr>
<td>DSD</td>
<td>2015</td>
<td>Trunk sewers at Hiram's Highway</td>
<td>68.9</td>
</tr>
<tr>
<td>DSD</td>
<td>2016</td>
<td>Upgrading of San Wai sewage treatment works—phase 1</td>
<td>2,572.3</td>
</tr>
<tr>
<td>DSD</td>
<td>2016</td>
<td>Construction of additional sewage rising main and rehabilitation of the existing sewage rising main between Tung Chung and Siu Ho Wan</td>
<td>1,362.6</td>
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<tr>
<td>DSD</td>
<td>2017</td>
<td>Construction of dry weather flow interceptor at Cherry Street box culvert</td>
<td>664.6</td>
</tr>
<tr>
<td>DSD</td>
<td>2017</td>
<td>Upgrading of West Kowloon and Tsuen Wan sewerage—phase 1</td>
<td>277.4</td>
</tr>
<tr>
<td>Works department</td>
<td>Year of funding approval</td>
<td>Title of construction project</td>
<td>APE ($ million)</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------------</td>
<td>-------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>DSD</td>
<td>2017</td>
<td>Rehabilitation of trunk sewers in Kowloon, Sha Tin and Sai Kung</td>
<td>678.5</td>
</tr>
<tr>
<td>DSD</td>
<td>2017</td>
<td>Upgrading of Kwun Tong preliminary treatment works</td>
<td>349.9</td>
</tr>
<tr>
<td>DSD</td>
<td>2017</td>
<td>Enhancement works for Kwun Tong sewage pumping station</td>
<td>1,054.4</td>
</tr>
<tr>
<td>HyD</td>
<td>2015</td>
<td>Road improvement works for West Kowloon Reclamation Development (Phase 1)</td>
<td>845.8</td>
</tr>
<tr>
<td>HyD</td>
<td>2015</td>
<td>Retrofitting of noise barriers on Tuen Mun Road (Town Centre Section)</td>
<td>826.5</td>
</tr>
<tr>
<td>HyD</td>
<td>2015</td>
<td>Dualling of Hiram's Highway between Clear Water Bay Road and Marina Cove and improvement to local access to Ho Chung</td>
<td>1,774.4</td>
</tr>
<tr>
<td>HyD</td>
<td>2016</td>
<td>Lift and pedestrian walkway system between Kwai Shing Circuit and Hing Shing Road, Kwai Chung</td>
<td>239.4</td>
</tr>
<tr>
<td>HyD</td>
<td>2016</td>
<td>Retrofitting of noise barriers on Tuen Mun Road (Fu Tei Section)</td>
<td>786.2</td>
</tr>
<tr>
<td>HyD</td>
<td>2017</td>
<td>Central Kowloon Route—main works</td>
<td>42,363.9</td>
</tr>
<tr>
<td>HyD</td>
<td>2017</td>
<td>Lift and pedestrian walkway system between Tai Wo Hau Road and Wo Tong Tsui Street, Kwai Chung</td>
<td>249.4</td>
</tr>
<tr>
<td>Works department</td>
<td>Year of funding approval</td>
<td>Title of construction project</td>
<td>APE ($ million)</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------------</td>
<td>-------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>WSD</td>
<td>2015</td>
<td>In-situ reprovisioning of Sha Tin water treatment works (South Works)—advance works</td>
<td>1,658.0</td>
</tr>
<tr>
<td>WSD</td>
<td>2016</td>
<td>Implementation of Water Intelligent Network, stage 1</td>
<td>239.7</td>
</tr>
</tbody>
</table>

Notes:

(1) The construction projects in the above table do not cover the block vote projects, projects entrusted to other organizations, projects designed and built by contractors, and those designed by in-house staff of works departments.

(2) For some construction projects, not all their tenders have been invited nor works contracts awarded.

(3) The original estimated consultancy fees for the design stage do not include contingencies and price adjustments. Moreover, since the year in which a consultancy agreement for the design stage was awarded may be much earlier than the year in which funding for a construction project was approved, the comparison between the original estimated consultancy fees for the design stage and the APE of a construction project is subject to market changes and price fluctuations at different times. To minimize such effect, the original estimated consultancy fees have been adjusted according to the changes in the Consumer Price Index (C) between the above mentioned years before making comparison.

(4) Since the consultancy agreements for the design stage involve a number of public works projects and some of the projects may have not entered into the construction stage, the comparison information is not available.

Abbreviations:

ArchSD—Architectural Services Department
CEDD—Civil Engineering and Development Department
DSD—Drainage Services Department
HyD—Highways Department
WSD—Water Supplies Department
Comparison between the original estimated consultancy fees for the design stage and the awarded prices of consultancy agreements (design stage) in respect of public works projects implemented by works departments with funding approved in the past three years

<table>
<thead>
<tr>
<th>Comparison between the original estimated consultancy fees for the design stage and the awarded prices of consultancy agreements (design stage)</th>
<th>Percentage of the number of consultancy agreements(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The awarded prices of consultancy agreements (design stage) are higher than the original estimated consultancy fees for the design stage</td>
<td>Above 30%</td>
</tr>
<tr>
<td></td>
<td>Above 20% to 30%</td>
</tr>
<tr>
<td></td>
<td>Above 10% to 20%</td>
</tr>
<tr>
<td></td>
<td>Above 0% to 10%</td>
</tr>
<tr>
<td>The awarded prices of consultancy agreements (design stage) are lower than the original estimated consultancy fees for the design stage</td>
<td>0% to 10%</td>
</tr>
<tr>
<td></td>
<td>Above 10% to 20%</td>
</tr>
<tr>
<td></td>
<td>Above 20% to 30%</td>
</tr>
<tr>
<td></td>
<td>Above 30%</td>
</tr>
</tbody>
</table>

Note:

(1) The above table only includes statistics on the consultancy agreements for the design stage associated with the public works projects at Annex 1.

Supporting Hong Kong enterprises to operate in industrial estates

8. **MR CHUNG KWOK-PAN** (in Chinese): President, the Government has been actively promoting re-industrialization in recent years. Moreover, the Hong Kong Science and Technology Parks Corporation ("HKSTPC") revised the Industrial Estate ("IE") policy in 2015 so as to make better use of its three IEs respectively located in Tai Po, Yuen Long and Tseung Kwan O. It is learnt that in recent years, quite a number of Hong Kong manufacturers have intended to relocate their production lines on the Mainland back to Hong Kong. Also, quite a number of enterprises in traditional industries have planned to find sites in Hong Kong for building factories, and to make use of new production technologies to give full play of the effects of Hong Kong-researched-and-developed, Hong Kong-invested and Hong
Kong-manufactured high quality brands, thereby bringing the development of Hong Kong's manufacturing industries back on a rising track. Regarding the support for Hong Kong enterprises to operate in IEs, will the Government inform this Council:

(1) whether it knows the current occupancy rates of the sites/units in the various aforesaid IEs; the (i) names and (ii) number (broken down by business type) of the enterprises currently operating in each IE;

(2) whether it knows the respective numbers of applications, received by HKSTPC in each year since HKSTPC revised the IE policy, for renting (i) IE sites for building standalone factories and (ii) IE units for establishing companies; among such applications, the respective numbers of those approved and not approved (set out a breakdown by name of IE), and the reasons for some of the applications not being approved;

(3) whether it knows, in each year since HKSTPC revised the IE policy, (i) the total amount of rents received by HKSTPC in respect of each IE, and (ii) the rates of rental adjustment made by HKSTPC in respect of IE sites/units; how the rental levels compare with those of private commercial and industrial buildings; the criteria currently adopted by HKSTPC for determining the rental levels and the duration of tenancy agreements of IEs;

(4) whether it knows the fees payable by the tenants of the aforesaid IEs in addition to rental payments; if the tenants are required to pay management fees, the current management fee levels and how such fee levels compare with those of private commercial and industrial buildings; the criteria currently adopted by HKSTPC for determining IE's management fee levels and the management modes of IEs;

(5) whether it knows if HKSTPC has, in its management of the aforesaid IEs, provided support (e.g. rental concessions and measures facilitating business operation) for tenants, in order to dovetail with the policy objective of re-industrialization and encourage more enterprises to operate in IEs; if HKSTPC has, the details; if not, the reasons for that and whether HKSTPC will consider providing such support for IE tenants; and
of the measures to (i) facilitate enterprises’ relocation of their production lines back to Hong Kong and their admission to the aforesaid IEs, and (ii) support and encourage the use of "Hong Kong-made" high-quality brands for the development of the relevant industries in Hong Kong?

SECRETARY FOR INNOVATION AND TECHNOLOGY (in Chinese): President, the Government is committed to promoting re-industrialization with a view to developing high-end manufacturing that is based on new technologies and smart production but does not occupy much land, thereby providing a new engine for growth of Hong Kong’s economy and creating quality and diversified employment opportunities. The Government and the Hong Kong Science and Technology Parks Corporation ("HKSTPC") revised the industrial estate ("IE") policy in 2015, under which HKSTPC would develop specialized multi-storey industrial buildings for rental to multiple users in order to attract high value-added technology industries and manufacturing processes suitable for Hong Kong.

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

(1) Currently, 95% of the industrial sites in the three IEs' have been granted. As at end April 2018, there were 159 enterprises operating in IEs. The breakdown by industries of the enterprises in IEs is at Annex. As for their names, please refer to HKSTPC's website as follows: <https://www.hkstp.org/zh-hk/directory/industrial-estates/companies-directory/>.

(2) After revising the IE policy in 2015, only in exceptional cases would HKSTPC grant sites on long-term lease to meritorious applicants for building standalone factories. HKSTPC has so far received three relevant applications which are currently under vetting.

As for development of multi-storey specialized industrial buildings, HKSTPC completed refurbishing a 4-storey factory (with a total gross floor area ("GFA") of 84,000 sq ft) in Tai Po IE into the Precision Manufacturing Centre ("PMC") in March 2017 with a view to fostering smart production. As at end March 2018, HKSTPC had received nine formal admission applications from applicants engaging in industries such as precision engineering and assembling,
new material manufacturing, and advanced indoor hydroponic, etc., and approved seven of them after vetting. Among the seven approved applications, four enterprises have already moved in, occupying 75% of the GFA, and the other three eventually did not set up operation due to various commercial considerations. The remaining two admission applications were not approved as they could not pass the vetting requirements (for instance, the company's business did not belong to HKSTPC's target industries).

(3) Under the revised IE policy, rental charges at IEs is set at competitive level, having regard to the prevailing market conditions and other relevant factors (such as facilities and restrictions on use etc.), and after valuation on the concerned buildings by independent surveyor. Currently, HKSTPC receives a rental income of about $460,000 per month from PMC. The rent of upstairs units is around $7 to $8.5 per square feet, more or less similar to, or even slightly lower than, privately-run multi-storey factory buildings in the same district. The rental charges will be reviewed by HKSTPC once every three years. Since the first lease of PMC was concluded in the third quarter of 2017, review or adjustment of rent is not yet due. Separately, the term of the first lease is generally six years, and each renewal contract thereafter, if granted, will last for three years.

(4) Taking PMC as an example, HKSTPC has engaged an external facility management company for professional management. Apart from rent, tenants are obliged to pay monthly management fee and chilled water charge of $2.77 and $1 per square feet respectively. Management fee is charged by HKSTPC on a cost-recovery basis, and is set at a similar level with that of industrial buildings of the same type in neighbouring districts. Besides, tenants, as users, need to bear rates and Government rent, and other charges such as water, electricity, gas, sewage, etc.

(5) HKSTPC has been providing one-stop infrastructure and support services to technology-based companies, in order to encourage manufacturers to set up their production bases in Hong Kong. The IE policy was revised in 2015 to support re-industrialization by developing and managing specialized multi-storey industrial buildings for high value-added technology industries
(e.g. pharmaceutical, health care, biomedical and advanced machinery etc.), so that the manufacturers can operate efficiently therein. With regard to PMC, HKSTPC has specifically set up a large-scale rigid frame at the rooftop to facilitate the installation of extra air-conditioners, specialized water tank for industrial use, refrigeration unit and large-sized mechanical lifting exit etc. by tenants. Under special circumstances, HKSTPC would offer flexible lease arrangements, including rent concession or deferral of move-in time etc. having regard to the needs of tenants to install additional facilities and alter the factory units.

(6) To encourage enterprises to relocate their production lines back to Hong Kong and re-build the "Made in Hong Kong" brand, the Government has been working closely with HKSTPC to provide related infrastructure and facilities. To tie in with the revised IE policy, HKSTPC is constructing a Data Technology Hub and an Advanced Manufacturing Centre in Tseung Kwan O IE, which are expected to be completed in 2020 and 2022 respectively.

On technological support, the Government provides funding support through the Innovation and Technology Fund ("ITF") for applied R&D projects that contribute to technology upgrading in manufacturing and services industries and promotion of innovation. As at January 2018, over 7,000 projects were funded by the ITF, with a funding of about $13.6 billion. The Government has also set aside $500 million under ITF to launch a Technology Talent Scheme in the third quarter of 2018, which includes a Re-industrialisation and Technology Training Programme to subsidize local enterprises on a matching basis for training staff in advanced technologies, especially those related to "Industry 4.0", with a view to driving re-industrialization.

Meanwhile, the Hong Kong Productivity Council ("HKPC") has been dedicating efforts to promoting re-industrialization to facilitate enterprises in moving towards high value-added production and gradually upgrading towards Industry 4.0, including setting up the Smart Industry One Consortium as a platform to facilitate the industry to exchange information on smart industry; establishing an Invention Centre jointly with the Fraunhofer Institute for Production Technology of Germany to assist the industry in accelerating adoption of Industry 4.0-related technologies; and setting up a
HKPC Institute of Innovation & Technology (Shenzhen) to provide Hong Kong entrepreneurs in the Bay Area with solutions and services based on intelligent manufacturing, artificial intelligence, big data, environmental technology, etc.

Annex

Number of Enterprises by Industries in Industrial Estates
(As at end April 2018)

<table>
<thead>
<tr>
<th>Industry</th>
<th>Tai Po Industrial Estate</th>
<th>Yuen Long Industrial Estate</th>
<th>Tseung Kwan O Industrial Estate</th>
<th>Total (Percentage*)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food and Beverages</td>
<td>22</td>
<td>5</td>
<td>4</td>
<td>31 (19.5%)</td>
</tr>
<tr>
<td>Biotech and Pharmaceutical</td>
<td>9</td>
<td>14</td>
<td>0</td>
<td>23 (14.5%)</td>
</tr>
<tr>
<td>Supporting Services</td>
<td>6</td>
<td>6</td>
<td>3</td>
<td>15 (9.4%)</td>
</tr>
<tr>
<td>Information and Telecom</td>
<td>3</td>
<td>0</td>
<td>11</td>
<td>14 (8.8%)</td>
</tr>
<tr>
<td>Machinery and Parts</td>
<td>6</td>
<td>5</td>
<td>1</td>
<td>12 (7.5%)</td>
</tr>
<tr>
<td>Printing and Publishing</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>11 (6.9%)</td>
</tr>
<tr>
<td>Metal Parts and Products</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>8 (5.0%)</td>
</tr>
<tr>
<td>Plastic Resins and Plastic Products</td>
<td>4</td>
<td>3</td>
<td>0</td>
<td>7 (4.4%)</td>
</tr>
<tr>
<td>Green Technology</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>5 (3.1%)</td>
</tr>
<tr>
<td>Broadcasting</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>4 (2.5%)</td>
</tr>
<tr>
<td>Others (e.g. Building Materials, Chemicals and Gases, Electronics parts and Paper Packaging)</td>
<td>14</td>
<td>9</td>
<td>6</td>
<td>29 (18.2%)</td>
</tr>
<tr>
<td>Total†</td>
<td>78</td>
<td>49</td>
<td>32</td>
<td>159 (100%)</td>
</tr>
</tbody>
</table>

Notes:

* Due to rounding, the percentage may not add up to 100%.

# The above figures only include factories and industrial sites that have already been granted or rented.
Import control measures on food from five prefectures of Japan

9. **MR TOMMY CHEUNG** (in Chinese): President, following the incident of leakage of radioactive matters from the Fukushima nuclear power plant in Japan which happened on 11 March 2011 (“the Fukushima incident”), the Government issued an order under section 78B of the Public Health and Municipal Services Ordinance (Cap. 132) to prohibit the import of all vegetables, fruits, milk, milk beverages and milk powder (“Category A food items”) from five prefectures of Japan (namely, Fukushima, Ibaraki, Tochigi, Chiba and Gunma), as well as to require that the import of all chilled or frozen game, meat and poultry, all poultry eggs and all live, chilled or frozen aquatic products (“Category B food items”) from these five prefectures must be accompanied by a certificate issued by the competent authority of Japan certifying that the radiation levels of such food items do not exceed the guideline levels. The order took effect on 24 March 2011 and is still in force. The Government has indicated that it has all along been maintaining communication with the authorities of Japan and reviewing such import control measures in the light of the latest situation. In this connection, will the Government inform this Council:

(1) of the number of samples of imported Japanese food tested on their radiation levels by the Centre for Food Safety (“CFS”) since the occurrence of the Fukushima incident, and the respective numbers and percentages of samples the test results of which were satisfactory and unsatisfactory;

(2) whether CFS has fully grasped the outcome of the tests conducted by the authorities of Japan and other economies on the radiation levels of Categories A and B food items exported from the five aforesaid prefectures; if so, of the respective latest test results, including whether the radiation levels of these two categories of food items have met the standards for safe consumption; and

(3) of the factors that CFS takes into consideration in its review of the aforesaid import control measures, and the circumstances under which such measures will be relaxed or revoked?

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, following the Fukushima nuclear power plant incident in Japan on 11 March 2011, the Centre for Food Safety (“CFS”) of the Food and Environmental Hygiene
Department immediately stepped up the surveillance of the radiation levels of food imported from Japan to safeguard food safety. On 23 March 2011, CFS detected that the radiation levels of three samples from the vegetables imported from Chiba prefecture on that day had exceeded the guideline levels adopted by the Codex Alimentarius Commission (Codex guideline levels). On 24 March 2011, the Director of Food and Environmental Hygiene issued an order under section 78B of the Public Health and Municipal Services Ordinance (Cap. 132) (the Order) to safeguard food safety and public health.

The Order prohibits the import of all vegetables, fruits, milk, milk beverages and milk powder from the five affected prefectures, namely Fukushima, Ibaraki, Tochigi, Chiba and Gunma. The import of all chilled or frozen game, meat and poultry, poultry eggs and all live, chilled or frozen aquatic products from the above prefectures is prohibited, unless the food products are accompanied by a certificate issued by the competent authority of Japan certifying that their radiation levels do not exceed the Codex guideline levels. The Order is still in force.

CFS has been conducting tests on the radiation levels for every consignment of food products imported from Japan (not limited to those imported from the five prefectures) ever since the Order has come into effect, to ensure food safety. CFS updates the latest figures and the test results on food imported from Japan on its website every working day for public inspection.

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

(1) From 24 March 2011 to 8 May 2018, CFS tested more than 490,000 samples of food imported from Japan. The test results showed that none of the samples had radiation levels exceeded the Codex guideline levels.

(2) Since 1 April 2012, the Japanese authorities have set more stringent levels for radiocaesium (Caesium-134 and Caesium-137) than the Codex guideline levels. Details are as follows:

<table>
<thead>
<tr>
<th>Food category</th>
<th>Japanese levels</th>
<th>Codex guideline levels</th>
</tr>
</thead>
<tbody>
<tr>
<td>General food products</td>
<td>100 Bq/kg</td>
<td>1 000 Bq/kg</td>
</tr>
<tr>
<td>Milk</td>
<td>50 Bq/kg</td>
<td></td>
</tr>
<tr>
<td>Food products for infants and young children</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Information from the Ministry of Health, Labour and Welfare of Japan indicated that, as at early March 2018, over two million food samples were collected in Japan for radiation testing. The radiation levels of a great majority of these samples were below the Japanese levels, which are more stringent than the Codex guideline levels. When samples are found to have radiation levels exceeding the Japanese levels and the Codex guideline levels, the Japanese authorities will prohibit the domestic sale and export of the food concerned.

According to the information available, over the past three years, the European Union, the United States, Canada, Singapore, Australia and New Zealand had not announced any cases of Japanese food samples, including vegetables, fruits and milk from the aforementioned five prefectures, found to have exceeded the prescribed radiation levels.

(3) Ensuring food safety is the Government's prime consideration. The Food and Health Bureau and CFS have been maintaining communication with the Japanese authorities and reviewing the control measures on food imported from Japan in the light of the latest situation. The factors taken into account include assessments made by international agencies, food surveillance results of the Japanese authorities, the latest control measures taken by other economies on food from Japan, local food surveillance results, consistency of the control measures with the World Trade Organization's requirements and public concern, etc.

Aircraft noise mitigating measures

10. **MR MICHAEL TIEN** (in Chinese): President, the Civil Aviation Department currently implements a number of aircraft noise mitigating measures, such as (i) refusing to allow aircraft which do not comply with the prescribed noise standards to land and take off at the Hong Kong International Airport ("HKIA"), (ii) encouraging airlines to deploy newer and quieter models of aircraft and (iii) adopting a set of "Radius-to-Fix" flight procedure. Such flight procedure allows aircraft which can use satellite-based navigation technology in their flights to adhere closely to the nominal centre line of the flight track when
they take off towards the northeast and make south turn to the West Lamma Channel, and thus enables the aircraft to keep a distance away from the areas on the vicinity of the flight paths (e.g. Ma Wan), thereby reducing the impact of aircraft noise on those areas. In this connection, will the Government inform this Council:

(1) of the respective numbers of times, as recorded by the various aircraft noise monitoring terminals in late hours (i.e. between 11 pm and 7 am of the next day) in each year from 2012 to 2017, for which aircraft noise levels reached (i) 70 to 74 decibels ("dB"), (ii) 75 to 79 dB and (iii) 80 dB or above;

(2) among the take-off flights in each year from 2012 to 2017, of the respective numbers and percentages of those which adopted the Radius-to-Fix flight procedure; the measures taken by the authorities since 2012 to encourage airlines to adopt such flight procedure;

(3) whether it is feasible for all take-off flights to adopt the Radius-to-Fix flight procedure; if not, of the ceiling percentage, and whether the authorities have estimated the respective numbers of times for which aircraft noise levels reaches (i) 70 to 74 dB, (ii) 75 to 79 dB and (iii) 80 dB or above will be recorded by the various aircraft noise monitoring terminals in late hours when the percentage of flights adopting such flight procedure has reached the ceiling;

(4) of the progress and specific achievements (e.g. the number and percentage of flights for which quieter types of aircraft were deployed by airlines) made by the authorities in each year from 2012 to 2017, in respect of (i) refusing to allow aircraft which do not comply with the prescribed noise standards to land and take off at HKIA, and (ii) encouraging airlines to deploy newer and quieter models of aircraft; and

(5) of the aircraft noise mitigating measures, apart from the aforesaid three measures, which are currently implemented by the authorities and their effectiveness?
SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the Civil Aviation Department ("CAD") is conscious of the impact that aircraft operations have on the local communities and has implemented a number of aircraft noise mitigating measures based on the guidelines of the International Civil Aviation Organization ("ICAO") to alleviate the noise impact on areas in the vicinity of flight paths.

Our reply to the various parts of Mr Michael TIEN's question is as follows:

(1) CAD has 16 noise monitoring terminals ("NMT"). The aircraft noise events recorded between 11:00 pm and 7:00 am the following day by these terminals from 2012 to 2017 are set out at Annex 1.

(2) and (3)

CAD has implemented the Radius-to-Fix ("RF") turn flight procedures since 2012 to allow aircraft equipped with satellite-based navigation technology to adhere closely to the nominal centre line of the flight track when departing to the northeast of the Hong Kong International Airport ("HKIA") and making south turn to the West Lamma Channel. This keeps the aircraft at a distance away from areas located in the vicinity of the flight paths (particularly Ma Wan), and reduces the impact of aircraft noise on these areas.

CAD has not set any "ceiling" for the utilization of the RF turn flight procedures. Whether an aircraft can adopt the flight procedures is mainly dependent on the equipage of the required navigational equipment on board, the relevant training for the flight crew members, and the respective operational approval issued by the aviation authority of the place of registry of the aircraft concerned.

Amongst all aircraft departing towards the northeast direction from HKIA, the proportion of aircraft adopting the RF turn flight procedures between 11:00 pm and 7:00 am the following day from 2012 to 2017 are set out at Annex 2. The figures show that the utilization rate was steadily increasing since the implementation of these flight procedures in 2012.
CAD has also been closely following up on the overall adoption of these procedures. Between 2012 and 2018, CAD has conducted four surveys to gather relevant information from airlines on the utilization of the RF turn flight procedures. The latest information shows most of the new aircraft types are already equipped with the required navigational equipment. As a result of the fleet modernization by the airlines, more suitably equipped aircraft will enter into service. CAD will continue to encourage airlines to adopt these flight procedures and closely monitor the effectiveness.

(4) Aimed to reduce aircraft noise at source, only aircraft that comply with the noise standards stipulated in Chapter 3 of Part II, Volume I of Annex 16 to the Convention on International Civil Aviation ("Chapter 3 noise standards") and the relevant standards of noise prescribed in the Civil Aviation (Aircraft Noise) Ordinance (Cap. 312) are permitted to operate in HKIA since 2002. Such restriction is in line with practices in other major international airports. According to CAD's record, there were no non-compliant aircraft operated in HKIA between 2012 and 2017. There was also no record of refusal of application for the use of aircraft which did not comply with the relevant noise standards at HKIA.

In addition, with effect from 2014, CAD no longer allows aircraft which are marginally compliant with Chapter 3 noise standards to land and take off in Hong Kong. To further strengthen this measure, CAD is also planning to impose more stringent requirements with additional operating restrictions on aircraft which do not comply with the noise standards in Chapter 4 of Part II, Volume I of Annex 16 to the Convention on International Civil Aviation ("Chapter 4 noise standards"\(^{(1)}\), or equivalent, to operate at HKIA from 10:00 pm to 7:00 am on the following day starting from the Summer Season of 2019. Airlines have been consulted on the plan, and they showed understanding and support. This measure, when implemented, will further alleviate the aircraft noise impact on the local communities.

\(^{(1)}\) Part II, Volume I of Annex 16 to the Convention on International Civil Aviation sets out the aircraft noise standards formulated by ICAO at different times. The aircraft noise standards of Chapter 4, which are applicable to aircraft for which the application for a Type Certificate was submitted between 2006 and 2017, were more stringent than those of Chapter 3. Generally speaking, the noise levels of Chapter 4-compliant or equivalent aircraft were lower than those of Chapter 3-compliant aircraft.
Apart from the above measures, as newer-model aircraft are benefited from the advancement of aviation technology, aircraft engines are quieter than before and the improved design of airframe has also helped reduce noise significantly. CAD has been encouraging airlines to use newer-model and quieter aircraft. Many airlines are progressively modernizing their fleet. Based on our latest statistics, the percentage on the use of newer passenger and cargo aircraft\(^{(2)}\) operating at HKIA during night period has increased from 66% in 2012 to 85% in 2017. As the number of newer-model aircraft in their respective fleet continues to increase, the aircraft noise impact will be further alleviated in the long run.

(5) The other noise mitigating measures introduced by CAD in addition to the above are:

(i) between midnight and 7:00 am, subject to acceptable operational and safety considerations, arriving aircraft are required to land from the southwest. This measure aims at reducing the number of aircraft overflying populated areas such as Sha Tin, Tsuen Wan, Sham Tseng and Tsing Lung Tau;

(ii) between 11:00 pm and 7:00 am, subject to acceptable operational and safety consideration, aircraft departing to the northeast of HKIA are required to use the southbound route via the West Lamma Channel. This measure aims at reducing the number of aircraft overflying populated areas such as the Kowloon Peninsula and Hong Kong Island;

(iii) all aircraft approaching HKIA from the northeast between 11:00 pm and 7:00 am are required to adopt the Continuous Descent Approach ("CDA"), subject to operational considerations. As aircraft on CDA fly higher and normally on a lower power/low drag configuration, noise experienced in areas such as Sai Kung and Ma On Shan will be lowered; and

\(^{(2)}\) Newer passenger and cargo aircraft cover aircraft types such as Airbus A320, A330, A340, A350 and A380 and Boeing B777, B747-8 and B787, etc.
(iv) Aircraft departing to the northeast of HKIA are required to adopt the ICAO noise abatement take-off procedures so as to reduce the noise impact on areas located in the vicinity of HKIA. Aircraft adopting these procedures are required to reduce their power upon reaching an altitude of 800 ft or above to abate aircraft noise.

CAD's regular reviews of the noise mitigation measures showed that the above measures are effective in alleviating the aircraft noise impact on the local communities. Taking the noise data of CAD recorded at Ma Wan NMT as an example, the number of noise events of high decibel ("dB") level (80 dB or above) during the night period in 2017 have significantly reduced by 80% compared with 2012, and those of 70 dB or above during the night period have also reduced by 33% during the same period.

Annex 1

Noise events recorded by NMT from 2012 to 2017
(between 11:00 pm and 7:00 am the following day)

<table>
<thead>
<tr>
<th>NMT</th>
<th>Noise Level (dB)</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Mei Lam Estate, Tai Wai</td>
<td>70-74</td>
<td>12</td>
<td>16</td>
<td>15</td>
<td>17</td>
<td>19</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>75-79</td>
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<td>4</td>
<td>1</td>
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<tr>
<td></td>
<td>≥80</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2. On Yam Estate, Kwai Chung</td>
<td>70-74</td>
<td>121</td>
<td>198</td>
<td>247</td>
<td>371</td>
<td>222</td>
<td>151</td>
</tr>
<tr>
<td></td>
<td>75-79</td>
<td>2</td>
<td>5</td>
<td>7</td>
<td>9</td>
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<tr>
<td></td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>3. Yiu Tung Estate, Shau Kei Wan</td>
<td>70-74</td>
<td>27</td>
<td>24</td>
<td>32</td>
<td>17</td>
<td>7</td>
<td>16</td>
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<td></td>
<td>≥80</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>4. Beverly Heights, Cloud View Road, North Point</td>
<td>70-74</td>
<td>56</td>
<td>30</td>
<td>42</td>
<td>25</td>
<td>19</td>
<td>31</td>
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<td>≥80</td>
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<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5. Fairmont Gardens, Conduit Road, Mid-Levels</td>
<td>70-74</td>
<td>9</td>
<td>4</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>12</td>
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<tr>
<td></td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>NMT</td>
<td>Noise Level (dB)</td>
<td>2012</td>
<td>2013</td>
<td>2014</td>
<td>2015</td>
<td>2016</td>
<td>2017</td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
<td>------------------</td>
<td>--------</td>
<td>--------</td>
<td>--------</td>
<td>--------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>6. Hong Kong Garden, Tsing Lung Tau</td>
<td>70-74</td>
<td>3319</td>
<td>2940</td>
<td>3505</td>
<td>4307</td>
<td>3711</td>
<td>3856</td>
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<tr>
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<td>256</td>
<td>249</td>
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<td>264</td>
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<td></td>
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<td>59</td>
<td>5</td>
<td>4</td>
<td>2</td>
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<td></td>
</tr>
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<td>7. Sha Lo Wan, Lantau</td>
<td>70-74</td>
<td>3812</td>
<td>3603</td>
<td>3496</td>
<td>4817</td>
<td>5839</td>
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<td>590</td>
<td>777</td>
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<tr>
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<td>78</td>
<td>60</td>
<td>38</td>
<td>45</td>
<td>72</td>
<td>213</td>
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<tr>
<td>8. Caribbean Coast, Tung Chung</td>
<td>70-74</td>
<td>1662</td>
<td>1546</td>
<td>1244</td>
<td>1571</td>
<td>1064</td>
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<tr>
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<td>75-79</td>
<td>128</td>
<td>109</td>
<td>162</td>
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<td>8</td>
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<tr>
<td>9. Ma Wan Mariner Traffic Station, Ting Kau</td>
<td>70-74</td>
<td>1273</td>
<td>1033</td>
<td>1886</td>
<td>2522</td>
<td>1517</td>
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<td>75-79</td>
<td>37</td>
<td>26</td>
<td>53</td>
<td>64</td>
<td>29</td>
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<td>0</td>
<td>0</td>
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<td></td>
</tr>
<tr>
<td>10. Park Island, Ma Wan</td>
<td>70-74</td>
<td>6599</td>
<td>6689</td>
<td>5701</td>
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</tr>
<tr>
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<td>122</td>
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<tr>
<td>11. Tai Lam Chung Tsuen</td>
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<tr>
<td>12. Yau Kom Tau, Tsuen Wan</td>
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<td>1108</td>
<td>1240</td>
<td>1094</td>
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<td>0</td>
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</tr>
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<td>13. Cheung Hang Estate, Tsing Yi</td>
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<td>487</td>
<td>468</td>
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<td>810</td>
<td>629</td>
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</tr>
<tr>
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<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>14. MTR Siu Ho Wan Depot, Sunny Bay</td>
<td>70-74</td>
<td>4858</td>
<td>4385</td>
<td>3143</td>
<td>2661</td>
<td>2108</td>
<td>2953</td>
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<tr>
<td></td>
<td>75-79</td>
<td>378</td>
<td>251</td>
<td>203</td>
<td>145</td>
<td>86</td>
<td>115</td>
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<td>1</td>
<td>0</td>
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</tr>
<tr>
<td>15. Mount Butler Road, Jardine's Lookout</td>
<td>70-74</td>
<td>351</td>
<td>31</td>
<td>19</td>
<td>14</td>
<td>11</td>
<td></td>
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<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Mount Haven, Liu To Road, Tsing Yi</td>
<td>70-74</td>
<td>177</td>
<td>112</td>
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<td>65</td>
<td>131</td>
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</tr>
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</tbody>
</table>
Annex 2

Proportion of aircraft departing towards the northeast which adopted the RF flight procedures from 2012 to 2017 (between 11:00 pm and 7:00 am the following day)

<table>
<thead>
<tr>
<th>Year</th>
<th>Proportion of aircraft adopted the RF flight procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>--*</td>
</tr>
<tr>
<td>2013</td>
<td>9%</td>
</tr>
<tr>
<td>2014</td>
<td>17%</td>
</tr>
<tr>
<td>2015</td>
<td>25%</td>
</tr>
<tr>
<td>2016</td>
<td>39%</td>
</tr>
<tr>
<td>2017</td>
<td>44%</td>
</tr>
</tbody>
</table>

Note:

* The statistics were compiled since 2013

Provision of railway services for residents in Northwest New Territories

11. **MR FRANKIE YICK** (in Chinese): President, some residents in Northwest New Territories ("NWNT") have relayed that with the rolling out of the Hung Shui Kiu New Development Area and Yuen Long South development projects by the Government, the population in NWNT will increase substantially in the coming decade, generating additional demand for railway services both within and outside the district. They have pointed out that NWNT residents currently have to take rather indirect routes for travelling to Hong Kong Island by railway. For example, they have to take the West Rail Line trains first, followed by a several-minute walk before interchanging for trains of the Tsuen Wan Line or Tung Chung Line, and the passenger throughputs of such railway lines have already reached the maximum capacities during peak hours. Moreover, as the East Rail Line and the Kwun Tong Line are very crowded during peak hours, the Northern Link, which is under planning, will bring little convenience to NWNT residents travelling to the Hong Kong Island by railway. In this connection, will the Government inform this Council:

   (1) given that it takes some 10 to 20 years to construct a new railway from feasibility study, inception to the commissioning of the railway, whether the Government will expeditiously embark on a study on the
construction of a new railway which provides a direct link between NWNT and Hong Kong Island; if so, of the details; if not, the reasons for that; and

(2) whether it will consider afresh the proposal to construct a Coastal Railway between Tuen Mun and Tsuen Wan, with a view to relieving the loading of the West Rail Line; if so, of the timetable and other details; if not, the reasons for that, and other measures to be put in place to cope with the additional demand for railway services arising from the development in NWNT?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, my reply to Mr Frankie YICK's question is as follows:

(1) At present, residents of the Northwest New Territories ("NWNT") use the West Rail Line ("WRL") to travel to the urban areas. WRL originally operated with 7-car trains. In 2015, the hourly frequency at each direction was about 20 during the morning peak hours of weekdays, i.e. the headway was about three minutes. Under the Shatin to Central Link ("SCL") project, the MTR Corporation Limited ("MTRCL") has increased the number of train cars of WRL from seven to eight since 2016, through the purchase of 148 new train cars and modifications of existing trains. Comparing with 2015, the carrying capacity of WRL is expected to increase by at least 14% when it is fully operated with 8-car trains in the second half of 2018. After the commissioning of the "Tai Wai to Hung Hom Section" of SCL in mid-2019, WRL will be operated with 8-car trains and provide train services with maximum hourly frequency of 24 at each direction. When comparing with 2015, there is an increase in carrying capacity of about 37%. Subject to the actual patronage, WRL can further increase its carrying capacity by increasing its fleet size after mid-2019. We expect that the ultimate carrying capacity of WRL will be provided by train services of 8-car trains with an hourly frequency of 28 at each direction. On this basis, the carrying capacity of WRL will increase by 60% when comparing with that in 2015. In this regard, MTRCL will strengthen the services of WRL by increasing the train frequency.
After the completion of "Hung Hom to Admiralty Section" of SCL in 2021, the passengers from NWNT to Hong Kong Island can interchange for Tung Chung Line at Nam Cheong Station, or choose to interchange for SCL at Hung Hom Station in order to reach Exhibition Centre and Admiralty. The interchange arrangement for SCL at Hung Hom Station will be more convenient when comparing with the interchange for Tung Chung Line at Nam Cheong Station followed by interchange for Island Line at Hong Kong Station.

The Government is planning to take forward the "Strategic Studies on Railways and Major Roads beyond 2030" ("RMR2030+ Studies"). RMR2030+ Studies would examine holistically, based on the latest planning data in Hong Kong, the transport demand of the whole territory from 2031 to 2041 (or later). In particular, RMR2030+ Studies would take into account the recommendations of the planning study "Hong Kong 2030+: Towards a Planning Vision and Strategy Transcending 2030" being conducted by the Development Bureau and the Planning Department, including the transport demand of the two strategic growth areas (i.e. New Territories North and East Lantau Metropolis), for planning the necessary strategic transport infrastructure network (including railways and major roads). RMR2030+ Studies would also explore whether it is necessary to construct a new heavy rail for connecting NWNT and the urban areas.

(2) This Bureau announced the Railway Development Strategy 2014 ("RDS-2014") in September 2014. Having regard to transport demand, cost-effectiveness and the development needs of New Development Areas, RDS-2014 recommends that seven new railway projects be completed in the planning horizon up to 2031.

RDS-2014 sets out the blueprint for territory-wide railway development based on the findings and final recommendations of the consultancy study. Apart from giving due consideration to the views collected during the Public Engagement exercises in 2012 and 2013, it takes into account a wide range of factors, including transport demand, land use planning, local development needs, as well as the economic and financial returns, social benefits, environmental impact and engineering feasibility of the railway projects.
Our consultant at that time evaluated in detail the feasibility of constructing a railway along the coastline between Tuen Mun and Tsuen Wan. According to the consultant's analysis, the local population is mainly concentrated at the eastern and western ends of the coastline between Tuen Mun and Tsuen Wan; while the development density of the remaining areas is relatively low and no basis for new source of passengers is anticipated. Meanwhile, due to the technical difficulties involved, solely the construction cost of a railway along the coastline between Tuen Mun and Tsuen Wan is expected to be very high. The cost-effectiveness can hardly be established up to this point.

Furthermore, after the completion of the improvement works for Tuen Mun Road in 2014, the road network between Tuen Mun and the urban areas has been further improved. This helps shorten the journey time for the bus services between Tuen Mun and the urban areas. Insofar as time savings are concerned, more passengers may prefer to travel to and from Tuen Mun by buses, making the railway scheme relatively less attractive. Besides, implementation of this scheme will create negative visual and landscape impacts along the scenic coastal areas. In longer term, we would consider revisiting the railway proposal if there are further changes in the planning circumstances and population as well as an increase in transport demand in the coastal areas between Tuen Mun and Tsuen Wan, or other relevant new considerations in the planning for development in the region.

Complaints and claims of medical negligence received by the Hospital Authority

12. **DR PIERRE CHAN** (in Chinese): *President, regarding the complaints and claims of medical negligence received by the Hospital Authority ("HA"), will the Government inform this Council:

   (1) whether it knows the number of claims of medical negligence received by each public hospital in each of the past five years (i.e. from 1 January 2013 to 31 December 2017), and set out a breakdown by type of claims in tables of the same format as Table 1;*
(2) whether it knows the number of complaints in each public hospital which were found, in each of the past five years, to be substantiated and needed further follow-up actions after being handled by the hospitals concerned, and the respective numbers of the various types of healthcare personnel (i.e. doctors, nurses and allied health professionals) who were punished because they had made mistakes in the relevant incidents, and set out a breakdown by type and rank of such personnel in tables of the same format as Table 2; the forms of punishment they received;

(3) given that complainants may appeal to the Public Complaints Committee ("PCC") of HA if they are not satisfied with the decisions made by public hospitals in respective of their complaints, whether it knows the number of appeal cases received by PCC in each of the past three years and, among them, the number of those found by PCC to be substantiated or partly substantiated (set out in Table 3);

(4) whether it knows the number of claims of medical negligence in each of the past two years, broken down by different handling methods/results (set out in Table 4);

(5) whether it knows the number of claims for which compensation was paid to the patients concerned or their families by HA in each of the past two years, and the respective total amounts of compensation paid and the relevant expenditure incurred, for various types of claims (set out in Table 5); and

(6) given that the target response time set by HA for handling complaints is within six weeks (within three months for complex cases), and that by PCC is within three to six months (possibly longer time needed for complex cases), whether it knows, among the complaints the handling of which was completed by each public hospital and by PCC in each of the past five years, the respective numbers of those in which the response time failed to meet such targets (set out in Table 6), and the reasons for failure to meet the targets?
Table 1: Number of claims of medical negligence

<table>
<thead>
<tr>
<th>Type of cases</th>
<th>Year</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 2: Number of healthcare personnel punished

<table>
<thead>
<tr>
<th>Healthcare personnel</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
</tr>
<tr>
<td>Doctors:</td>
<td></td>
</tr>
<tr>
<td>(of different ranks)</td>
<td></td>
</tr>
<tr>
<td>Nurses:</td>
<td></td>
</tr>
<tr>
<td>(of different ranks)</td>
<td></td>
</tr>
<tr>
<td>Allied health professionals:</td>
<td></td>
</tr>
<tr>
<td>(of different ranks)</td>
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</table>

Table 3: Number of appeal cases received by the Public Complaints Committee

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<th>Appeal cases</th>
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<tbody>
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<td></td>
<td>2015</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Number of cases found to be substantiated or partly substantiated</td>
<td></td>
</tr>
</tbody>
</table>

Table 4: Number of claims of medical negligence, broken down by handling method/result

<table>
<thead>
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<th>Year</th>
</tr>
</thead>
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<td>2016</td>
</tr>
<tr>
<td>Settled out of court</td>
<td></td>
</tr>
<tr>
<td>Referred to mediation</td>
<td></td>
</tr>
<tr>
<td>Settled during mediation</td>
<td></td>
</tr>
<tr>
<td>Settled after mediation</td>
<td></td>
</tr>
<tr>
<td>Referred to arbitration</td>
<td></td>
</tr>
<tr>
<td>Settled through arbitration</td>
<td></td>
</tr>
<tr>
<td>Ruled by the court</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>
Table 5: Total amount of compensation paid and relevant expenditure incurred for claims

<table>
<thead>
<tr>
<th>Type of compensation/expenditure</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2016</td>
</tr>
<tr>
<td>Total amount of compensation paid</td>
<td></td>
</tr>
<tr>
<td>Total amount of compensation paid in respect of cases settled out of court</td>
<td></td>
</tr>
<tr>
<td>Total amount of compensation paid pursuant to the agreements reached by mediation</td>
<td></td>
</tr>
<tr>
<td>Total amount of compensation paid pursuant to arbitration awards</td>
<td></td>
</tr>
<tr>
<td>Total amount of compensation paid pursuant to court rulings</td>
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</tr>
<tr>
<td>Mediation fees paid by HA Mediators</td>
<td></td>
</tr>
<tr>
<td>Mediation fees paid by HA Lawyers</td>
<td></td>
</tr>
<tr>
<td>Mediation fees paid by HA Others</td>
<td></td>
</tr>
<tr>
<td>Arbitration fees paid by HA Arbitrators</td>
<td></td>
</tr>
<tr>
<td>Arbitration fees paid by HA Lawyers</td>
<td></td>
</tr>
<tr>
<td>Arbitration fees paid by HA Others</td>
<td></td>
</tr>
<tr>
<td>Legal fees paid by HA Lawyers</td>
<td></td>
</tr>
<tr>
<td>Legal fees paid by HA Court</td>
<td></td>
</tr>
<tr>
<td>Legal fees paid by HA Others</td>
<td></td>
</tr>
</tbody>
</table>

* excluding fees related to mediation and arbitration

Table 6: Number of complaints in which the response time failed to meet the targets

<table>
<thead>
<tr>
<th>Year</th>
<th>Public Complaints Committee</th>
<th>Public hospitals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the Hospital Authority ("HA") has a two-tier mechanism in place to handle complaints lodged by patients and the public. The first tier is at the hospital level which covers the handling of all complaints lodged for the first time. If the complainant is not satisfied with the outcome of the complaint, he or she may appeal to the second tier, i.e. the Public Complaints Committee ("PCC") of HA. PCC is a committee established under the HA Board responsible for independently considering and deciding on all appeal cases and putting forward recommendations on service improvement to HA. Members of PCC are not employees of HA and, by virtue of their independent status, will handle all appeal cases fairly and impartially.

My reply to the various parts of the question raised by Dr Pierre CHAN is as follows:

(1) HA has not classified the cases of claims arising from medical incidents by nature. The table below sets out the number of claim received by HA by cluster in the past five years:

<table>
<thead>
<tr>
<th>Hospital cluster</th>
<th>Year in which the claims were reported</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
</tr>
<tr>
<td>Hong Kong East</td>
<td>14</td>
</tr>
<tr>
<td>Hong Kong West</td>
<td>10</td>
</tr>
<tr>
<td>Kowloon Central</td>
<td>11</td>
</tr>
<tr>
<td>Kowloon East</td>
<td>11</td>
</tr>
<tr>
<td>Kowloon West</td>
<td>43</td>
</tr>
<tr>
<td>New Territories East</td>
<td>41</td>
</tr>
<tr>
<td>New Territories West</td>
<td>21</td>
</tr>
</tbody>
</table>

Notes:

(1) Cases reported under the medical incidents insurance scheme of HA.

(2) The number of claims reported in a particular year as set out in the above tables include the number of claims settled through mediation and out of court in that year. For example, for the claims reported in 2016, as at the end of April 2018, a total of 119 claims were received, of which 12 were settled out of court.
(2) One of the main objectives of the HA's complaint mechanism is to help resolve problems for the complainants and improve service delivery during the course of complaint handling. Hence, when HA handles the cases, the emphasis is not on whether the cases are substantiated. In fact, whenever room for improvement in the delivery of service is identified in the handling of complaints, HA will take appropriate follow-up actions irrespective of whether the cases are substantiated or not. HA does not collect data on whether the complaint cases handled at the first-tier level are substantiated or not.

HA has put in place an established mechanism to handle disciplinary matters of its staff. Disciplinary actions taken are not confined to cases relating to medical complaints and claims. HA will consider the seriousness of the incidents and take appropriate disciplinary actions, including counselling, verbal or written warnings, and dismissal for cases of gross misconduct.

HA does not maintain statistics on disciplinary actions by rank and by type of staff. The table below sets out the number of disciplinary actions taken by HA in the past five years:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of disciplinary actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-2013</td>
<td>302</td>
</tr>
<tr>
<td>2013-2014</td>
<td>363</td>
</tr>
<tr>
<td>2014-2015</td>
<td>322</td>
</tr>
<tr>
<td>2015-2016</td>
<td>386</td>
</tr>
<tr>
<td>2016-2017</td>
<td>363</td>
</tr>
</tbody>
</table>

(3) The table below sets out the statistics on the appeal cases handled by PCC of HA in the past three years:

<table>
<thead>
<tr>
<th>Appeal cases</th>
<th>Year 2015</th>
<th>Year 2016</th>
<th>Year 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of cases</td>
<td>320</td>
<td>303</td>
<td>269</td>
</tr>
<tr>
<td>Number of substantiated or partially</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>substantiated cases</td>
<td>21</td>
<td>20</td>
<td>19</td>
</tr>
</tbody>
</table>
(4) and (5)

The tables below set out the statistics on cases of claims received by HA in respect of medical incidents in the past two years:

Statistics on the number of claims and handling methods
(as at the end of April 2018)

<table>
<thead>
<tr>
<th>Year in which the claims(^{(1)}) were reported</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of claims(^{(2)})</td>
<td>119</td>
<td>101</td>
</tr>
<tr>
<td>Number of claims settled out of court(^{(3)})</td>
<td>12</td>
<td>8</td>
</tr>
<tr>
<td>Number of claims referred to mediation(^{(4)})</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(a) Number of claims settled during mediation</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(b) Number of claims settled after mediation</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Number of claims referred to arbitration</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Number of claims settled through arbitration</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Number of claims ruled by the court</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Amount of compensation and relevant fees for cases of claims
(as at the end of April 2018)
(all figures are round numbers and in million dollars)

<table>
<thead>
<tr>
<th>Year in which the claims(^{(1)}) were reported</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total amount of compensation paid(^{(5)}) in respect of claims settled out of court(^{(3)})</td>
<td>6.49</td>
<td>1.85</td>
</tr>
<tr>
<td>Amount of compensation paid pursuant to arbitration awards</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Amount of compensation paid pursuant to court rulings</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Amount of fees paid by HA to mediators</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Amount of arbitration fees paid by HA</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Amount of legal fees paid by HA in respect of claims settled out of court</td>
<td>0.91</td>
<td>0.25</td>
</tr>
</tbody>
</table>

Notes:

(1) Cases reported under the medical incidents insurance scheme of HA.

(2) The number of claims reported in a particular year as set out in the above tables include the number of claims settled through mediation and out of court in that year. For example, for the claims reported in 2016, as at the end of April 2018, a total of 119 claims were received, of which 12 were settled out of court.
(3) Including claims settled out of court after legal proceedings had commenced.

(4) Included in the number of claims settled out of court.

(5) None of the claims settled out of court has been referred to mediation. In general, as the content of the compensation agreements must be kept confidential and the number of cases settled during mediation is relatively small, HA is unable to provide a breakdown on the amounts of compensation paid according to the agreements reached by mediation.

(6) The hospitals and PCC will, upon receipt of complaints, handle these cases as soon as possible. As the complexity of each case varies, the time required for handling individual cases is different.

Some complaint cases cannot be concluded within the target response time possibly because of the involvement of several hospitals or several departments within a hospital in the case, the need for multiple clarification or evidence collection during investigation, the involvement of complex clinical management in the case, or the need to seek advice from independent medical experts.

The table below sets out the number of complaint cases handled by PCC and HA by clusters that were completed beyond the target response time:

<table>
<thead>
<tr>
<th>Year</th>
<th>PCC</th>
<th>Hospital cluster</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Hong Kong East</td>
<td>Hong Kong West</td>
</tr>
<tr>
<td>2013</td>
<td>89</td>
<td>8</td>
</tr>
<tr>
<td>2014</td>
<td>78</td>
<td>1</td>
</tr>
<tr>
<td>2015</td>
<td>151</td>
<td>4</td>
</tr>
<tr>
<td>2016</td>
<td>124</td>
<td>18</td>
</tr>
<tr>
<td>2017</td>
<td>112</td>
<td>10</td>
</tr>
</tbody>
</table>
A listed company allegedly releasing misleading information

13. MR CHAN CHI-CHUEN (in Chinese): President, in March 2017, ZTE Corporation ("ZTE"), a listed company in Hong Kong, entered into a plea agreement with the authorities in the United States ("US") in respect of ZTE's violation of the US export control laws. Under the agreement, not only was ZTE required to pay a substantial amount of penalty, but the US authorities would also impose a denial order for seven years that would restrict and prohibit, among other things, ZTE from applying for or using any licenses, or buying or selling any item exported from US that was subject to US export control regulations. However, the aforesaid denial order was suspended subject to ZTE's compliance with the requirements under the agreement, and would be waived after a seven-year suspension period. On 15 April (US time) this year, the US authorities announced the activation of the denial order with immediate effect until 13 March 2025 as ZTE had failed to fully comply with the agreement. The Chairman of ZTE later admitted that the sanction had a great impact on the company and would plunge the company into a state of shock immediately. On the other hand, ZTE stated in the Notes to Financial Statements in its Annual Report 2017 that, for a comprehensive execution of the agreement, the company would take a series of measures to ensure its compliance with the obligations under the agreement, and thus ZTE believed that it was unlikely that the company would violate the agreement. Some investors opined that ZTE's statement in that annual report had misled them, and hoped that the Securities and Futures Commission ("SFC") would immediately conduct a proactive investigation into the matter. In this connection, will the Government inform this Council if it knows:

(1) whether SFC has received, since April this year, any complaint about ZTE having allegedly misled its investors; if so, of the number of such complaints;

(2) whether SFC will take the initiative to investigate whether ZTE has made false or misleading statements; if not, of the reasons for that; and

(3) whether, in the light of this case, SFC will examine the introduction of a mechanism for class actions so that minor shareholders who have been misled and thus suffered losses may claim compensations from the companies and persons concerned through such mechanism; if so, of the details; if not, the reasons for that?
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, our reply to the three parts of the question is as follows:

(1) and (2)

The Securities and Futures Commission ("SFC") follows its established procedures in handling complaints involving matters under its statutory powers and responsibilities and in carefully assessing the allegations made therein. SFC will take appropriate actions if irregularities, including those in respect of non-disclosure of inside information by listed companies, are detected. SFC will not comment on any specific case.

(3) The Law Reform Commission ("LRC") published a report in 2012, recommending an incremental approach to implementing a class action regime in Hong Kong. The class action regime proposed by LRC is to start with consumer cases, covering tortious and contractual claims made by consumers in relation to goods, services and immovable property. The Department of Justice has established a cross-sector working group to study and consider the proposals of the LRC's report on class action. The working group will take into consideration views from different sectors and strike a balance for the overall benefits of our society. It will make recommendations to the Government upon completion of the study. Our understanding is that according to the LRC's recommendation regarding the introduction of a class action regime, disputes among company shareholders or issues of shareholders' rights would not be covered at the initial stage.

At present, the Government has no plan to introduce a class action regime for disputes among company shareholders or issues of shareholders' rights. However, under the existing rules, the Court already has unfettered discretion to handle proceedings involving the same interest of numerous persons through "representative proceedings" should the plaintiffs satisfy the threefold test of establishing "a common interest, a common grievance and a remedy which is beneficial to all the plaintiffs".
Use of Exchange Fund for investment purpose

14. **MR JAMES TO** (in Chinese): President, the Hong Kong Monetary Authority ("HKMA") established the Infrastructure Financing Facilitation Office ("IFFO") in 2016. One of the functions of IFFO is to facilitate infrastructure investments and their financing in countries and regions along the Belt and Road. It was reported in the press in August last year that the Chief Executive of HKMA had said that plans were being made to establish a mechanism through IFFO under which HKMA would take the lead in identifying infrastructure projects in countries and regions along the Belt and Road, and then it would collaborate with other IFFO partners to conduct investment. On the other hand, HKMA signed an agreement in September last year with International Finance Corporation ("IFC"), a member of the World Bank Group, committing US$1 billion to the innovative Managed Co-lending Portfolio Programme ("MCPP") debt mobilization platform for emerging markets to support IFC in financing projects across more than 100 countries. In this connection, will the Government inform this Council:

(1) of the number of infrastructure investment and financing projects facilitated by IFFO since its establishment, and set out by project name the regions in which the proposed infrastructure facilities are to be located, the investment and financing amounts, and the names of proponents and investors;

(2) whether HKMA has (i) deployed the Exchange Fund, or (ii) collaborated with IFFO partners upon identification of infrastructure projects through IFFO, to invest in projects in countries and regions along the Belt and Road; if so, set out by project name the regions in which the proposed infrastructure facilities are to be located, the forms of investment, the amount of investment and its percentage in the investment portfolio, the amount of profit or loss recorded to date, and the names of investment partners (if any);

(3) of the amount of money paid to MCPP by HKMA, the usage of such funds and the amount of profit or loss recorded to date; and
(4) whether HKMA has established any mechanism to monitor the implementation of those infrastructure projects in countries and regions along the Belt and Road in which HKMA has invested; if so, of the details; if not, the reasons for that; of the measures HKMA has in place to ensure that for infrastructure projects in which it intends to invest, the proponents will fulfill their environmental and social obligations in the regions concerned?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, our replies to the four parts of the question are as follow:

(1) The HKMA Infrastructure Financing Facilitation Office ("IFFO") was established in July 2016 to facilitate infrastructure investments and financing by working with a cluster of key stakeholders. IFFO is not an investor and does not provide deal-matching services. IFFO puts in place a platform for interested partners to collaborate in identifying infrastructure investment and financing opportunities.

(2) to (4)

The Hong Kong Monetary Authority ("HKMA") actively sources and reviews investment opportunities globally as appropriate, including Belt and Road related investments, while taking into consideration evolving market conditions and available investment opportunities.

Infrastructure is a key asset class of the Long Term Growth Portfolio ("LTGP") of the Exchange Fund. HKMA has put in place the same robust mechanisms and rigorous procedures for pre-investment due diligence and post-investment monitoring for every infrastructure investment, regardless of whether being along the Belt and Road. Prior to making an investment decision, each investment shall be evaluated based on, among other things, its commercial merits, expected investment returns, and its complementarity to the LTGP's overall portfolio construction. Preparatory studies and appropriate measures to diversify risks will also be carefully conducted for all investments.
The pre-investment due diligence on the HKMA's General Partners ("GP") and the investment proposal is conducted in a prudent and critical manner. Its scope covers a wide range of topics, including capability and stability of the investment team, and financials and risk factors of the investment proposal, etc. HKMA will also review the GP's ability to integrate environmental, social and governance factors into their investment decision-making process. Priority will be accorded to jurisdictions and projects with proper governance and environment protection framework.

As for ongoing post-investment follow-up work, HKMA maintains close contact with GPs and monitors the pace and usage of the capital drawdowns throughout the process of its post-deal monitoring work. Regular reports will be made to the Exchange Fund Advisory Committee and its Investment Sub-Committee.

Noting the potential market sensitivities pertaining to the investment of the Exchange Fund, HKMA does not reveal specific details thereof.

**Measures to improve special education services**

15. **MR IP KIN-YUEN** (in Chinese): President, since the 2009-2010 school year, special schools have offered 12-year education for students with intellectual disability. As individual students may need to have their years of study extended due to various reasons, the Education Bureau ("EDB") has, from the 2010-2011 school year onwards, progressively implemented improvement measures to cater for the extension of students' years of study. As additional classrooms and facilities are involved, EDB has stated that it will implement the improvement measures progressively and will examine the carrying out of conversion works in some schools. In addition, starting from the 2017-2018 school year, EDB has provided additional allied health and nursing manpower in special schools to improve special education services. In this connection, will the Government inform this Council:

(1) in respect of each type of special schools in each of the past three years, of (i) the number of students waiting for enrolment (including those who changed schools) and the average waiting time, and (ii) the number of students waiting for boarding places and the average waiting time;
(2) in respect of each type of special schools, of a list of the schools and the costs of the conversion works involved, broken down by the progress of the works needed to be carried out (including (i) the authorities' discussion with the schools on the works projects yet to commence, (ii) funding approval for the works being awaited, (iii) works in progress, and (iv) works completed);

(3) given that starting from this school year, the Government has provided an occupational therapist and an occupational therapist assistant for each special school for children with mild intellectual disability, moderate intellectual disability and visual impairment, of the conditions of service of such posts, and the average post-to-student ratio;

(4) among each type of special schools, of the number of schools that have recruited sufficient manpower to fill the posts mentioned in (3) at present, the total number of in-service allied health staff members, and the total number of vacancies of allied health posts;

(5) as quite a number of schools have relayed that they have experienced difficulties in recruiting occupational therapists, whether the authorities have approached those schools to find out the reasons for that, and whether they will review the salaries and conditions of service of the relevant posts in order to attract such type of professionals to take up the posts; if so, of the details; if not, the reasons for that; and

(6) apart from providing additional allied health manpower in special schools, whether EDB has provided such schools with related facilities and equipment (e.g. dedicated special rooms or treatment rooms, occupational therapy equipment), so that such staff members may arrange on-campus treatment and movement training for students; if so, of the details; if not, the reasons for that?

SECRETARY FOR EDUCATION (in Chinese): President, to enhance the quality of education, the Education Bureau has all along been reviewing the development and resource of special education and introducing viable improvement measures as necessary in accordance with education professionalism and the learning needs of students. The Government has been
increasing resource input for special education. Over the five financial years from 2013-2014 to 2018-2019, the funding allocation increased by 50% from over $1.8 billion to over $2.7 billion.

Since assuming office, the current-term Government has provided additional teaching and allied health manpower and resources, such as occupational therapists ("OT") and speech therapists ("ST"), to improve the special education services. It has been announced in the 2018-2019 Budget that the Government will improve the provision of school nurses and social workers of special schools from the 2018-2019 school year. Moreover, the Education Bureau has been actively improving the premises and facilities of special schools through various viable means, including conversion/addition, reprovisioning or in-situ redevelopment, to provide a better learning environment to students of special schools.

Our reply to the question of Mr IP kin-yuen is as follows:

(1) Overall speaking, there are sufficient special school places presently. The Education Bureau will, subject to the assessment and recommendation of specialists and the consent of parents, refer students with more severe or multiple disabilities to special schools. Basically, if parents follow the placement arrangement to special schools made by the Education Bureau for their children, waiting for school places is not required.

As regards boarding places of special schools, the number of students waiting for boarding places in the past three school years from 2014-2015 to 2016-2017, as at 15 September of each school year, is set out at Table 1. The figures include cases with boarding places allocated who are going through the procedure for admission, cases deferring admission on the request of parents and cases waiting for alternative boarding placement after parents' refusal of the initial offer made by the Education Bureau.

Table 1: Number of students waiting for boarding places of special schools

<table>
<thead>
<tr>
<th>Type of school</th>
<th>2014-2015</th>
<th>2015-2016</th>
<th>2016-2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>School for children with visual impairment (&quot;VI&quot;)</td>
<td>4</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
The average waiting time for boarding places of special schools from
the 2014-2015 to 2016-2017 school years is set out at Table 2.

Table 2: Average waiting time for boarding places of special schools

<table>
<thead>
<tr>
<th>Type of school</th>
<th>2014-2015</th>
<th>2015-2016</th>
<th>2016-2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>School for children with physical disability (&quot;PD&quot;)</td>
<td>34</td>
<td>27</td>
<td>26</td>
</tr>
<tr>
<td>School for children with moderate intellectual disability (&quot;MoID&quot;)</td>
<td>117</td>
<td>101</td>
<td>113</td>
</tr>
<tr>
<td>School for children with severe intellectual disability (&quot;SID&quot;)</td>
<td>13</td>
<td>16</td>
<td>14</td>
</tr>
</tbody>
</table>

In the calculation of the average waiting time, we have taken into
account the period of postponement of students who had been
allocated a boarding place towards the end of a school term/year but
their parents had requested to postpone admission for better
adaptation and integration of the students. The time spent under
such circumstances had also been counted.

The Education Bureau has been closely monitoring the supply and
demand of boarding places in special schools and exploring feasible
ways to increase the supply with reference to the actual demand.
Currently, the overall supply of boarding places for different types of
special schools is sufficient to meet the demand, except for schools
for children with MoID. In this connection, the Education Bureau
has made optimal use of the space available in the boarding sections
of schools for children with MoID, where relevant ordinances and
regulations permit, for provision of additional boarding places in
recent years. In addition, we have explored new measures with a
view to increasing the provision. For instance, in the 2017-2018
school year, we have piloted the operation of two MoID classes with 20 boarding places in a school for children with SID. Also, some new school projects are in the pipeline. Subject to the funding approval and the timely completion of the construction works, the number of boarding places for students with MoID will be increased to around 400 in the 2020-2021 school year.

(2) The Education Bureau has carried out 43 improvement works to address the circumstances and needs of individual special schools. To ensure that school needs are catered for properly, the Education Bureau has all along maintained close liaison and communication with the schools concerned to gauge their views on the design, details and arrangements of the works. During the implementation of the projects, consultants are required to submit layout plans and design proposals to relevant government departments for vetting and approval with a view to complying with relevant statutory requirements. For those projects involving more complicated issues such as lease modification, it will take longer time to process. As at April 2018, 18 special school improvement projects with an estimated funding have been completed, involving a total estimated expenditure of about $171.60 million, and another 25 projects are being implemented at different works stages. The actual amount of funding required for these projects will be determined after the project details are finalized.

(3) Starting from the 2017-2018 school year, schools for children with MiID, schools for children with MoID, the school for children with VI and the school for children with HI operating six or more approved classes are provided with one occupational therapist II ("OT II") and one occupational therapist assistant ("OTA"). Regarding schools for children with MiID and MoID, each section operating six or more approved classes are provided with one OT II and one OTA respectively. As at September 2017, the salary scale for OT II and OTA is as follows:

<table>
<thead>
<tr>
<th>Post</th>
<th>Salary scale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupational therapist II</td>
<td>$27,485-$44,415</td>
</tr>
<tr>
<td>Occupational therapist assistant</td>
<td>$18,205-$28,865</td>
</tr>
</tbody>
</table>
(4) In the 2017-2018 school year, there are 39 OT II/OTA posts in 34 schools for children with MiID, schools for children with MoID, the school for children with VI and the school for children with HI. We learnt that, as at April 2018, 29 out of these 34 schools employed an OT and/or frozen the post to obtain a cash grant for recruiting temporary staff and hiring the related service. The remaining five schools have six OT vacancies but they neither recruited any OT nor obtained the cash grant. One school froze only one out of two OT posts. In other words, there are seven OT vacancies. As for the manpower of OTA, 26 schools are at full or partial strength while eight schools have yet to recruit such staff, involving a total of 11.2 posts.

(5) OT of special schools are remunerated by the Salaries Grant on a pay scale linked to that of the civil service. Their pay and conditions of service are set according to the established mechanism of the Government. The Education Bureau maintains communication with individual special schools and the Hong Kong Special Schools Council through various channels to learn about their difficulties in recruiting OT. In view of the keen demand for OT, the fundamental solution lies in increasing the overall supply of manpower through training. In this connection, the Education Bureau has requested universities to increase their training capacity and encouraged self-financing post-secondary education sector to offer designated programmes, including nursing programmes through the Study Subsidy Scheme for Designated Professions/Sectors to nurture talent in support of specific industries with keen demand for human resources. For the meantime, to alleviate the difficulties in recruiting OT, special schools may choose to freeze some of the OT vacancies in exchange for cash grant to recruit temporary staff or hire related services.

(6) Students of schools for children with MiID, schools for children with MoID, the school for children with VI and the school for children with HI often display weaknesses in their fine motor skills and eye-hand coordination which require the support of OT. Generally speaking, schools can make available OT to support students through direct (such as individual/group OT sessions) and indirect (such as in-class support) intervention at school. The said intervention services will enable needy students to develop and improve their fine motor skills and eye-hand coordination through individualized daily
learning and teaching activities in the school environment. Schools can make flexible use of the existing hardware to offer OT service to their students. If necessary, schools can also make use of the Expanded Operating Expenses Block Grant as well as the Composite Furniture and Equipment Grant to procure the equipment needed for the therapy.

Dangerous, abandoned and unauthorized signboards

16. **DR CHIANG LAI-WAN** (in Chinese): President, at present, there are tens of thousands of unauthorized signboards in the territory, and abandoned signboards that may endanger public safety are not uncommon. The Government launched the Validation Scheme for Unauthorized Signboards in 2013 to allow the continued use of certain unauthorized signboards after they have undergone safety inspection, strengthening (if necessary), and certification by prescribed building professionals or registered contractors. On the other hand, it has been reported recently that although the Buildings Department ("BD") has arranged to remove some abandoned signboards upon receipt of reports from members of the public, most of the abandoned signboards are still left unattended. Each year, BD issues a number of removal orders in respect of dangerous, abandoned and unauthorized signboards, and there are nearly 2 000 signboards in respect of which the removal orders have not been complied with. Some experts have warned that such type of signboards, if become dilapidated, will pose hazards to public safety at any time. In this connection, will the Government inform this Council:

1. of the respective numbers of dangerous, abandoned and unauthorized signboards which the authorities arranged to remove in each of the past five years, broken down by District Council district;

2. whether it will, for the purpose of safeguarding public safety, allocate additional resources and manpower to expedite the handling of abandoned signboards and cases of signboard owners' failure to comply with the removal orders upon expiry of the deadlines; if so, of the details; if not, the reasons for that;

3. given that under urgent circumstances, BD will engage government contractors to remove dangerous signboards and recover the cost of such works plus supervision charge and surcharge from the
signboard owners afterwards, of the number of such cases, the total expenses involved and the sum of money recovered, in each of the past three years;

(4) whether it will set up a hotline dedicated to reporting abandoned signboards by the public with a view to removing abandoned signboards expeditiously; if so, of the details; if not, the reasons for that;

(5) whether it will publish regularly the locations of the abandoned signboards which have yet to be removed by signboard owners pursuant to the removal orders, so as to raise the alertness of the public; if so, of the details; if not, the reasons for that;

(6) whether it will review and improve the Validation Scheme for Unauthorized Signboards, e.g. stepping up the promotional work and changing the nature of the scheme from voluntary to mandatory so as to enhance the effectiveness of the Scheme; if so, of the details; if not, the reasons for that; and

(7) whether it will increase the penalties to be imposed on signboard owners who have failed to comply with the removal orders, so as to enhance the deterrent effect; if so, of the details; if not, the reasons for that?

SECRETARY FOR DEVELOPMENT (in Chinese): President, the Government has all along attached great importance to signboard safety. At present, any signboards erected without obtaining the approval and consent of the Buildings Department ("BD") or following the requirements under the Minor Works Control System ("MWCS") are unauthorized building works (except that the signboard, due to its scale, is regarded as designated exempted works ("DEW") which can be carried out without obtaining prior approval and consent of BD or complying with the MWCS requirements\(^1\)). BD may issue statutory removal orders to signboard owners or individuals concerned in accordance with section 24 of the Buildings Ordinance ("BO") (Cap. 123). Regarding abandoned

\(^1\) One of the examples of signboard falls under the category of DEW is the erection of a wall signboard fixed to the external wall of a building with display area of not more than 1 sq m, not comprising any display system consisting of light emitting diodes, projecting not more than 150 mm from the wall, and with a distance of not more than 3 m from the ground.
or dangerous signboards, BD may issue Dangerous Structure Removal Notices ("DSRNs") to their owners in accordance with section 105(1) of the Public Health and Municipal Services Ordinance ("PHMSO") (Cap. 132), requiring removal of the signboards concerned. In emergency situations, BD may engage government contractors to remove dangerous signboards immediately and then recover the costs from the individuals concerned.

Taking into consideration the fact that many of the existing signboards in Hong Kong are in active use by business operators and that their existence carries considerable value for sustaining local commercial activities and contributing to Hong Kong's prosperity, BD has implemented the Signboard Validation Scheme ("SVS") since 2 September 2013. SVS allows the continued use of signboards that are relatively small in scale, pose less potential risk, were erected before the implementation date of the scheme and meet the prescribed technical specifications for minor works on the condition that they have undergone safety inspection and strengthening (if necessary) by prescribed building professionals and/or prescribed registered contractors validated by BD, and undergone inspection on a regular basis.

The current Signboard Control System is adopting the "risk-based" principle. Apart from implementing SVS on an ongoing basis, BD also carries out large-scale operations ("LSO") in selected target streets to comprehensively handle the unauthorized signboards of particular sections of the selected target streets. When carrying out LSOs, BD officers will issue statutory removal orders against unauthorized signboards that have yet joined SVS in order to urge the relevant owners to join SVS as early as possible, as well as issue statutory removal orders or DSRNs against those large-scaled unauthorized signboards which are ineligible for SVS, so as to eliminate the possible public safety risks.

Besides, BD will take immediate enforcement action against signboards constituting obvious hazard to life or property, and give priority to enforce against unauthorized signboards under construction or newly erected.

In consultation with BD, the Development Bureau provides a consolidated reply as follows:

(1) As mentioned above, at present, BD mainly issues statutory removal orders or DSRNs in accordance with the relevant provisions of BO or PHMSO to signboard owners or individuals concerned, requiring them to remove or repair the unauthorized signboards concerned within the time specified in the orders or DSRNs. The
geographical distribution of the numbers of unauthorized signboards handled by BD with the aforesaid approach in each of the past five years are tabulated below:

<table>
<thead>
<tr>
<th>District</th>
<th>Year</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central and Western</td>
<td></td>
<td>115</td>
<td>214</td>
<td>230</td>
<td>173</td>
<td>262</td>
</tr>
<tr>
<td>Eastern</td>
<td></td>
<td>149</td>
<td>101</td>
<td>234</td>
<td>227</td>
<td>226</td>
</tr>
<tr>
<td>Kowloon City</td>
<td></td>
<td>281</td>
<td>235</td>
<td>241</td>
<td>169</td>
<td>244</td>
</tr>
<tr>
<td>Kwai Tsing</td>
<td></td>
<td>27</td>
<td>18</td>
<td>27</td>
<td>38</td>
<td>16</td>
</tr>
<tr>
<td>Kwun Tong</td>
<td></td>
<td>10</td>
<td>83</td>
<td>61</td>
<td>37</td>
<td>84</td>
</tr>
<tr>
<td>North</td>
<td></td>
<td>30</td>
<td>10</td>
<td>42</td>
<td>132</td>
<td>69</td>
</tr>
<tr>
<td>Islands</td>
<td></td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>44</td>
<td>2</td>
</tr>
<tr>
<td>Sai Kung</td>
<td></td>
<td>3</td>
<td>13</td>
<td>40</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>Sham Shui Po</td>
<td></td>
<td>155</td>
<td>270</td>
<td>203</td>
<td>237</td>
<td>271</td>
</tr>
<tr>
<td>Sha Tin</td>
<td></td>
<td>0</td>
<td>38</td>
<td>53</td>
<td>32</td>
<td>57</td>
</tr>
<tr>
<td>Southern</td>
<td></td>
<td>55</td>
<td>16</td>
<td>53</td>
<td>49</td>
<td>29</td>
</tr>
<tr>
<td>Tai Po</td>
<td></td>
<td>15</td>
<td>18</td>
<td>39</td>
<td>59</td>
<td>44</td>
</tr>
<tr>
<td>Tsuen Wan</td>
<td></td>
<td>28</td>
<td>84</td>
<td>74</td>
<td>56</td>
<td>149</td>
</tr>
<tr>
<td>Tuen Mun</td>
<td></td>
<td>16</td>
<td>12</td>
<td>22</td>
<td>37</td>
<td>32</td>
</tr>
<tr>
<td>Wan Chai</td>
<td></td>
<td>164</td>
<td>252</td>
<td>350</td>
<td>434</td>
<td>356</td>
</tr>
<tr>
<td>Wong Tai Sin</td>
<td></td>
<td>22</td>
<td>22</td>
<td>20</td>
<td>38</td>
<td>26</td>
</tr>
<tr>
<td>Yau Tsim Mong</td>
<td></td>
<td>208</td>
<td>602</td>
<td>868</td>
<td>737</td>
<td>632</td>
</tr>
<tr>
<td>Yuen Long</td>
<td></td>
<td>12</td>
<td>72</td>
<td>86</td>
<td>116</td>
<td>143</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>1 290</td>
<td>2 062</td>
<td>2 644</td>
<td>2 623</td>
<td>2 651</td>
</tr>
</tbody>
</table>

(2) BD has been taking enforcement action against unauthorized signboards by following up public reports and taking proactive inspections including carrying out LSOs. In 2017-2018, the number of professional and technical staff of the Signboard Control Unit in BD had increased from 35 to 42 to centralize the handling of cases related to unauthorized signboards as well as to step up the enforcement actions against them.

BD will continue to closely monitor the effectiveness of enforcement and manpower requirement, and would bid for additional resources in accordance with the established procedures as necessary.

(3) At present, BD engages government contractors to deal with unauthorized signboards in relation to expired non-compliant statutory removal orders or DSRNs to avoid them from affecting
public safety. In the past three financial years, the numbers of relevant cases are 387, 410 and 280 (up to the end of 2017) respectively. BD will recover the costs from the signboard owners or individuals concerned after the completion of works. BD however does not compile readily available separate statistics on the expenses involved and the sum of money recovered from relevant signboard owners of these cases.

On the other hand, if any signboards are found to constitute obvious hazard to life or property through public reports or when conducting proactive inspections, BD will immediately appoint government contractor to remove the dangerous signboards and will recover the costs from the individuals concerned afterwards. The statistics on emergency works to remove dangerous signboards by government contractors appointed by BD in the past three financial years are tabulated below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of cases with emergency removal of dangerous signboards by government contractors(1)</th>
<th>Expenditure on removal works covered by government funding due to failure to identify signboard owners ($)</th>
<th>Expenditure on removal works with signboard owners identified ($)</th>
<th>Amount recovered from signboard owners ($) (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td>5(1)</td>
<td>11,064</td>
<td>40,063</td>
<td>22,626</td>
</tr>
<tr>
<td>2016-2017</td>
<td>6(1)</td>
<td>9,707</td>
<td>68,240</td>
<td>60,987</td>
</tr>
<tr>
<td>2017-2018</td>
<td>4(2)</td>
<td>11,792(2)</td>
<td>28,043</td>
<td>0(4)</td>
</tr>
</tbody>
</table>

Notes:

(1) Figures in brackets denote the number of cases in which signboard owners could not be identified.

(2) Another case involving a sum of $11,826 will be paid to the contractor by BD in 2018-2019.

(3) The year in which the sum was recovered may not be the same as that in which the relevant demand note was issued.

(4) BD will issue demand notes to relevant signboard owners shortly.
(4) At present, members of the public may report cases in relation to unauthorized signboards to BD through various channels, including the 1823 Call Centre operating 24 hours a day, BD Hotline 2626 1616 (handled by "1823" officers), BD's email (enquiry@bd.gov.hk), and the Electronic Reporting Form on BD's website. We consider there is no need to set up a dedicated reporting hotline at this point.

(5) When handling abandoned or dangerous signboards, BD will generally require signboard owners to remove the signboards concerned within the specified time (normally 14 days) upon issuing DSRNs in accordance with section 105(1) of PHMSO. In case of non-compliance of DSRN, BD will also engage government contractors to remove the signboards as soon as practicable. In other words, such cases would be dealt with within a short period of time. Notwithstanding the aforesaid, to enhance transparency, BD will, having regard to cost-effectiveness consideration, consider whether and how to release information relating to unauthorized signboards.

(6) In regard to SVS, as at the end of April 2018, BD received a total of 662 applications for validation. Among them, 274 signboards have been validated and 51 applications are being processed, whereas the remaining cases were returned due to ineligibility.

Other than participating in SVS, owners of unauthorized signboards may choose to remove their old signboards and re-erect signboards in accordance with the specifications of MWCS. Besides, some signboards are ineligible for SVS. Owners of these signboards must remove and re-erect their signboards under MWCS. We noted that in the 32 months before the implementation of SVS (from 31 December 2010 to 1 September 2013), 2,992 minor works for signboards\(^{(2)}\) were received, i.e. an average of 94 submissions per month prior to the implementation of SVS. In the 56 months after the commencement of SVS (from 2 September 2013 to 30 April 2018), the figure rose significantly to 24,839, i.e. 444 submissions per month on average (or an increase of 372%).

\(^{(2)}\) Viz. the removal, erection or alteration of signboards that meet the specifications of MWCS.
To enhance the participation rate of SVS and the effectiveness of enforcement against unauthorized signboards, BD launched territory-wide LSOs against unauthorized signboards in target sections of 21 streets in various districts from 2014 to 2017. Statutory removal orders and DSRNs were issued against unauthorized signboards which had not been validated under SVS or were ineligible for validation. In 2018, BD will launch LSOs in certain sections of 10 other target streets. BD will constantly review the effectiveness of enforcement as well as manpower resources, and make annual adjustment to the scale of annual LSOs in a timely manner.

Besides, to enhance public awareness of SVS, BD will continue to disseminate relevant information to the public through different means, for instance, by making available relevant guidelines on the website, broadcasting Announcement in the Public Interests, conducting briefings for the industry and public, distributing promotional leaflets, etc.

(7) In accordance with section 40(1BA) of BO, any person who, without reasonable excuse, fails to comply with a statutory removal order, including statutory removal orders issued against unauthorized signboards, shall be guilty of an offence and shall be liable on conviction to a fine of $200,000 and to imprisonment for 1 year, and to a fine of $20,000 for each day during which the offence has continued. In addition, under section 40(1AA) of BO, any person who knowingly carries out building works, including erecting signboards, without having obtained from BD the approval of plans and consent to the commencement of works, shall be guilty of an offence and shall be liable on conviction to a fine of $400,000 and to imprisonment for 2 years, and to a fine of $20,000 for each day during which the offence has continued. Generally, the compliance rate of statutory removal orders and DSRNs is satisfactory and we consider the existing penalty level is sufficient to create a deterrent effect.
Impacts on Hong Kong's telecommunications services caused by a sanction on a telecommunications equipment supplier

17. **MR CHARLES PETER MOK** (in Chinese): President, the authorities of the United States ("US") announced on 15 April (US time) this year an immediate ban on US companies selling telecommunications equipment components to ZTE Corporation ("ZTE") for a period of seven years up to 13 March 2025. It is learnt that ZTE's businesses include the supply of telecommunications equipment and network solutions. ZTE is also a supplier of mobile networks and broadband equipment for a number of telecommunications service operators ("TSOs") in Hong Kong. Some members of the information technology sector are worried that the sanction will affect the stability of telecommunications services as well as commercial operations and public communications in Hong Kong. In this connection, will the Government inform this Council:

(1) whether it knows, among the TSOs currently providing local fixed carrier services, fixed network broadband services and mobile network services, the respective numbers and detailed situations of those which are using (i) the network infrastructure equipment and (ii) other telecommunications products and services provided by ZTE, with a breakdown of such numbers and information by the service scope of the TSOs (set out in a table);

(2) whether it has taken the initiative to request the various TSOs concerned to draw up contingency plans and take appropriate measures to ensure that the telecommunications services that they provide will not be affected in the event that ZTE is unable to continue its supply of the necessary network infrastructure equipment and related services to them; and

(3) whether it has studied the impacts on the development of 5G mobile communications services by TSOs in Hong Kong (including the testing and the application of the relevant network technologies) in the event that the US authorities impose similar sanctions on other Chinese-funded telecommunications equipment suppliers?
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, my reply to the three parts of the question is as follows:

(1) According to the information the Office of the Communications Authority ("OFCA") obtained from the major local fixed network operators ("FNOs") and mobile network operators ("MNOs"), at present four FNOs and two MNOs have respectively used some network equipment and some telecommunications equipment supplied by Zhongxing Telecommunications Equipment Corporation ("ZTE").

(2) OFCA has already reminded the relevant operators that they should assess the impact on their telecommunications services in light of the ban imposed on ZTE by the authorities of the United States, and adopt appropriate responsive measures to minimize any possible impact. After conducting internal assessments, the relevant operators considered that the incident would not cause any immediate impact on their services and network operations at this stage. Even if ZTE cannot continue to provide technical support, spare parts, or new equipment, they will be able to source such products from other suppliers in order to maintain the normal service operation.

(3) So far, the United States authorities have not announced that it would impose trade restrictions or other sanctions against other Chinese telecommunications equipment suppliers. It would be difficult at this stage to assess the impact of any such restriction or sanction on the development of fifth generation ("5G") mobile services in Hong Kong. The Government will keep a close watch on the situation.

Smuggling by air

18. MR JIMMY NG (in Chinese): President, according to the information of the Security Bureau, there has been an upward trend in smuggling activities by air in recent years. The number of such cases detected by the Customs and Excise Department increased from 4,141 in 2013 to 7,786 in 2017, representing a cumulative increase of nearly 90%; and among them, the trend of increase was
more apparent for cases of smuggling by means of air postal packets and express cargoes (with a rate of increase being 264%), and the percentage of which in the total number of air smuggling cases also increased from 12% in 2013 to 23% in 2017. In this connection, will the Government inform this Council:

(1) of the number of each type of air smuggling cases detected (including cases of bringing undeclared dutiable goods into Hong Kong as well as import or export of prohibited/controlled articles without the licences/certificates required by the law) in each of the past five years (i.e. from 2013 to 2017); and among the people engaged in such smuggling activities, of the respective percentages of individual travellers and members of organized crime syndicates;

(2) given that the rapid development of e-commerce in recent years has made it increasingly convenient and inexpensive for smugglers to transport illicit articles by means of air postal packets and express cargoes, of the targeted measures, on the premise of striking a balance between facilitating e-commerce and curbing smuggling activities, to be adopted by the authorities for eradicating such smuggling activities; whether the authorities have plans to deploy additional cargo examination staff and detector dogs to various air cargo terminals and the Air Mail Centre; if so, of the numbers; if not, the reasons for that; and

(3) given that the number of cases involving the use of air postal packets and express cargoes to smuggle drugs in 2017 increased by almost 40% compared with that in 2016, and that there is an array of tactics used by drug traffickers to commit crimes and conceal drugs, of the mechanism or procedure to be adopted by the authorities for detecting drugs in air postal packets and express cargoes, as well as the advanced examination equipment or chemical processes that will be employed for this purpose?

SECRETARY FOR SECURITY (in Chinese): President, the Customs and Excise Department ("C&ED") is the primary agency responsible for the suppression of smuggling activities in Hong Kong. Smuggling refers to the illegal movement of goods and articles into and out of Hong Kong. Common smuggling activities include bringing undeclared dutiable goods (e.g. cigarettes)
into Hong Kong, as well as import and export of prohibited/controlled articles (e.g. dangerous drugs, infringing goods, endangered species, firearms, ammunition and weapons, etc.) without licences/certificates required by the law. The enforcement powers for customs officers are vested in various ordinances, mainly the Customs and Excise Service Ordinance (Cap. 342) and the Import and Export Ordinance (Cap. 60). The maximum penalty for conviction on indictment of the most serious smuggling offence is life imprisonment and an unlimited fine.

C&ED has all along been combating various smuggling activities proactively, and the overall smuggling situation in Hong Kong has been under effective control. C&ED noticed that in recent years, smugglers are transporting illicit articles through air postal packets and express cargoes, which are increasingly convenient and much lower in cost. Against this trend, C&ED has devised pragmatic and holistic strategies to intercept illicit articles, in an efficient way, from being transported to and from Hong Kong.

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

(1) In the past five years, the number of air smuggling cases (including through cargoes, postal packets and travellers) detected by C&ED surged from 4,141 cases in 2013 to 7,786 cases in 2017, involving dutiable goods, dangerous drugs, infringing goods, endangered species as well as firearms, ammunition and weapons (see details at Annex). C&ED does not have statistics on the respective percentages of individual travellers and members of organized crime syndicates among the people engaged in such smuggling activities.

(2) C&ED adopts an intelligence-driven and risk management approach to guard against and combat criminal activities. Apart from taking stringent enforcement actions at the airport and various boundary control points, the Syndicate Crimes Investigation Bureau was set up in 2013 to combat organized crime syndicates by conducting in-depth investigation into the syndicated mode of smuggling operation and employing financial investigation skills to trace criminal proceeds and funding sources. In light of the exponential growth in the volume of air postal packets and express cargoes, C&ED has implemented multi-pronged strategies and measures to cope with this challenge.
On deployment of manpower resources, customs officers station at all air cargo terminals and Air Mail Centre ("AMC") round the clock. In combating smuggling activities using air postal packets and express cargoes, C&ED steps up the enforcement through flexible manpower deployment and with the assistance of canine units to detect narcotics. C&ED has planned to create additional new posts to enhance law enforcement capability on customs clearance of air cargoes and postal articles.

On collaboration with the industry, C&ED has been working closely with express couriers to facilitate its law enforcement. In 2015, C&ED signed a Memorandum of Understanding with major express courier operators to address the ever-increasing smuggling activities. Meanwhile, C&ED shares with frontline courier staff the latest smuggling trend through regular outreach programmes. C&ED has also taken the initiative in cooperating with the Hongkong Post to enhance examination of high-risk air postal packets at AMC and other mail processing centres.

On intelligence gathering, C&ED has enhanced networking with Mainland and overseas law enforcement agencies through frequent and timely intelligence exchanges and mounting of joint operations. In addition, C&ED is proactively developing the Customs and Excise Information and Risk Management System ("CEIRMS"). CEIRMS will provide a centralized repository to facilitate quick entity matching and analysis of information as well as automatically capture the latest findings of an entity being searched, making C&ED's risk profiling work more efficient. CEIRMS will be implemented in June 2018.

On publicity and education, C&ED has been actively disseminating anti-smuggling messages to the public through leaflets, press conferences, press interviews with officers and other means. C&ED also launches various initiatives to educate youngsters, such as the Youth Ambassador Against Internet Piracy Scheme, and joins hands with the Education Bureau to enhance the youth's self-discipline and civic responsibility to stay away from illicit activities.
(3) To enhance detection capability, C&ED has been actively using advance technology in customs clearance. Keeping abreast of the technological development in x-ray scanners and trace detectors, C&ED is endeavoured to source the most updated equipment for deployment by frontline staff, including the ion scanner and Raman spectroscopy for detection of narcotics and explosives, as well as other specialized equipment such as the fibroscope, density meter, radiation detector, etc.

Besides, C&ED is working towards enhancing the degree of automation in postal clearance, so that selected air postal packets can be automatically and more quickly conveyed to the customs examination hall for x-ray scanning and further inspection if required. This will facilitate elimination of labour-intensive processes, enabling frontline staff to focus on risk profiling and examination of selected packets.

Annex

Type and number of air smuggling cases (including through cargoes, postal packets and travellers) detected by C&ED in the past five years are as follows:

<table>
<thead>
<tr>
<th>Type of cases</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dutiable commodities</td>
<td>3 318</td>
<td>4 414</td>
<td>4 308</td>
<td>4 641</td>
<td>5 424</td>
</tr>
<tr>
<td>Dangerous drugs</td>
<td>203</td>
<td>484</td>
<td>542</td>
<td>590</td>
<td>761</td>
</tr>
<tr>
<td>Infringing goods</td>
<td>161</td>
<td>272</td>
<td>381</td>
<td>290</td>
<td>379</td>
</tr>
<tr>
<td>Endangered species</td>
<td>259</td>
<td>279</td>
<td>233</td>
<td>199</td>
<td>306</td>
</tr>
<tr>
<td>Firearms, ammunition and weapons</td>
<td>19</td>
<td>99</td>
<td>76</td>
<td>68</td>
<td>70</td>
</tr>
<tr>
<td>Others*</td>
<td>181</td>
<td>259</td>
<td>472</td>
<td>662</td>
<td>846</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>4 141</td>
<td>5 807</td>
<td>6 012</td>
<td>6 450</td>
<td>7 786</td>
</tr>
</tbody>
</table>

Note:

* Mainly covers cases of pharmaceutical products and medicines without an import licence, etc.
Air quality of covered public transport interchanges

19. **MR KENNETH LEUNG** (in Chinese): President, the Practice Note on Control of Air Pollution in Semi-confined Public Transport Interchanges, which was issued by the Environmental Protection Department ("EPD") in 1998, provides guidelines on aspects such as the air quality, the design required as well as the operation and maintenance of the ventilation systems of semi-confined public transport interchanges ("PTIs"). Recently, a newspaper reported that the concentrations of two types of air pollutants, namely nitrogen dioxide and fine suspended particulates (i.e. PM2.5) as recorded in several covered PTIs had substantially exceeded the relevant target limits under the Air Quality Guidelines of the World Health Organization. In this connection, will the Government inform this Council:

(1) of the current total number of covered PTIs in Hong Kong and, in respect of each PTI, (i) the location, (ii) the area, (iii) the number of bus routes which can be accommodated, and (iv) the type of ventilation system installed;

(2) of the number of complaints about the air quality of covered PTIs received by the authorities in the past five years; the contents of the complaints and the names of the PTIs involved;

(3) whether it conducted any detailed study in the past five years on ways to improve the related facilities and environment (including air quality or ventilation systems) of covered PTIs; if so, of the details, if not, the reasons for that; and

(4) given that in the light of the latest development in air quality standards, EPD is liaising with the relevant government departments so as to review the aforesaid guidelines, of the details of such review, and how EPD will improve the air quality of PTIs?

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, my reply to various parts of Mr Kenneth LEUNG's question is as follows:

(1) At present, there are a total of 65 covered public transport interchanges ("PTIs") managed by the Transport Department ("TD") in Hong Kong to facilitate passengers' interchange between different
public transport services. The locations of the covered PTIs managed by TD, their respective size, the number of bus routes observing PTIs and the type of ventilation systems installed are at Annex 1.

(2) From 2014 to April 2018, TD received a total of 111 complaint cases concerning PTIs' air quality or ventilation systems, involving 37 PTIs (details at Annex 2). The complaint cases were mainly about the insufficient ventilation, air quality, damages and noise nuisance of ventilation systems, etc.

(3) and (4)

In respect of the daily operation and management of PTIs, TD, together with the Electrical and Mechanical Services Department ("EMSD"), have been monitoring the air quality of PTIs as well as the operation of the ventilation systems regularly, and have carried out repair and maintenance works as appropriate. Besides, TD commissions EMSD to conduct air quality measurements in the covered PTIs managed by TD approximately every two years. The frequency of measurements would be increased as the actual situation requires. Every air quality measurement covers 24 hours a day, including both the morning and evening peak hours, and collects data about the concentration of carbon monoxide ("CO"), sulphur dioxide ("SO2") and nitrogen dioxide ("NO2") in PTIs. Based on the measurement results, TD will work with the relevant government departments to consider and implement appropriate improvement measures, including extending the operating hours of ventilation systems, increasing the air volume, strengthening the management of switching off idling engines at PTIs and requesting the bus companies to deploy more environmentally friendly models of buses (including Euro IV and V) to operate the routes involved.

As regards the formulation and review of the Practice Note for Professional Person—Control of Air Pollution in Semi-Confined Public Transport Interchanges ("Practice Note"), the existing Practice Note sets out the air quality (including CO, NO2 and SO2) guidelines for semi-confined PTIs, as well as the design of PTIs and operation and maintenance of the systems required to meet the air
quality guidelines for reference by the relevant professionals. The Environmental Protection Department ("EPD") will work with relevant government departments to review the Practice Note. According to EPD, factors including the actual operation and need of PTIs as well as the local and overseas short-term air quality standards of similar air pollutants will be taken into consideration when reviewing the Practice Note.

The Government will continue to closely monitor the air quality and the operation of ventilation systems in PTIs, and examine the causes of the unsatisfactory air quality. Additional measures will be taken based on the actual situation in order to enhance the air quality in PTIs.

Annex 1

Information on Covered PTIs managed by TD

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Size (sq m)</th>
<th>Number of Bus Routes (including supplementary routes and special departures)</th>
<th>Type of Ventilation System Installed#</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Hong Kong Island</td>
<td>Central and Western Admiralty Station (East) Bus Terminus</td>
<td>2 414</td>
<td>15</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
<tr>
<td>2 Central (Exchange Square) Bus Terminus</td>
<td>9 800</td>
<td>33</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
<td></td>
</tr>
<tr>
<td>3 Central (Hong Kong Station) PTI</td>
<td>5 630</td>
<td>4</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
<td></td>
</tr>
<tr>
<td>4 The Peak Public Transport Terminus</td>
<td>5 300</td>
<td>2</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
<td></td>
</tr>
<tr>
<td>District</td>
<td>Name</td>
<td>Size (sq m)</td>
<td>Number of Bus Routes (including supplementary routes and special departures)</td>
<td>Type of Ventilation System Installed*</td>
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</tr>
<tr>
<td>5</td>
<td>Eastern</td>
<td>Sai Wan Ho (Grand Promenade) PTI</td>
<td>7 500</td>
<td>4</td>
</tr>
<tr>
<td>6</td>
<td>Siu Sai Wan (Island Resort) PTI</td>
<td>14 500</td>
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<td>7</td>
<td>Shau Kei Wan Station PTI</td>
<td>1 312</td>
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<td>Wan Chai</td>
<td>Tin Hau Station PTI</td>
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<td>10</td>
<td>Southern</td>
<td>South Horizons PTI</td>
<td>5 352</td>
<td>9</td>
</tr>
<tr>
<td>11</td>
<td>Cyberport PTI</td>
<td>8 155</td>
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<tr>
<td>14</td>
<td>Kowloon City</td>
<td>Laguna Verde PTI</td>
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<td>Kowloon Tong (Suffolk Road) PTI</td>
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<tr>
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<td>Kwun Tong</td>
<td>Kowloon Bay PTI</td>
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<tr>
<td>District</td>
<td>Name</td>
<td>Size (sq m)</td>
<td>Number of Bus Routes (including supplementary routes and special departures)</td>
<td>Type of Ventilation System Installed</td>
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<td>Olympic Station PTI</td>
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<td>Number of Bus Routes (including supplementary routes and special departures)</td>
<td>Type of Ventilation System Installed#</td>
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<td>32</td>
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<td>34 New Territories</td>
<td>Sha Tin Bayshore Towers PTI*</td>
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<td>Ma On Shan Town Centre Public Transport Terminus</td>
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<td>Wu Kai Sha Station PTI</td>
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<td>Tiu Keng Leng Station PTI</td>
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<tr>
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<td>Tseung Kwan O Station PTI</td>
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</tr>
<tr>
<td>43</td>
<td>Sheung Tak Public Transport Terminus</td>
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</tr>
<tr>
<td>District</td>
<td>Name</td>
<td>Size (sq m)</td>
<td>Number of Bus Routes (including supplementary routes and special departures)</td>
<td>Type of Ventilation System Installed</td>
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</tr>
<tr>
<td>44</td>
<td>Tsui Lam Bus Terminus</td>
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</tr>
<tr>
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<tr>
<td>46</td>
<td>Northern Luen Wo Hui Public Transport Terminus</td>
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<td>47</td>
<td>Sheung Shui Bus Terminus</td>
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<td>Mechanical Ventilation System (Timer-controlled)</td>
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<tr>
<td>48</td>
<td>Tuen Mun Lung Mun Oasis Bus Terminus</td>
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<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
<tr>
<td>49</td>
<td>Sam Shing Bus Terminus</td>
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<td>50</td>
<td>Tuen Mun Central Bus Terminus</td>
<td>2 950</td>
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<td>Mechanical Ventilation System (Timer-controlled)</td>
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<tr>
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<td>Tuen Mun Pier Head Bus Terminus</td>
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<td>Natural Ventilation</td>
</tr>
<tr>
<td>52</td>
<td>Tuen Mun Station PTI</td>
<td>10 648</td>
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<td>Mechanical Ventilation System (Sensor-controlled)</td>
</tr>
<tr>
<td>53</td>
<td>Tsuen Wan Bayview Garden Bus Terminus</td>
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<td>6</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
<tr>
<td>54</td>
<td>Discovery Park PTI</td>
<td>2 400</td>
<td>8</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
<tr>
<td>55</td>
<td>Nina Tower Bus Terminus</td>
<td>4 200</td>
<td>4</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
<tr>
<td>56</td>
<td>Sai Lau Kok Road PTI</td>
<td>1 900</td>
<td>0</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
<tr>
<td>District</td>
<td>Name</td>
<td>Size (sq m)</td>
<td>Number of Bus Routes (including supplementary routes and special departures)</td>
<td>Type of Ventilation System Installed#</td>
</tr>
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</tr>
<tr>
<td>57</td>
<td>Tsuen Wan Station PTI</td>
<td>5 200</td>
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<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
<tr>
<td>58</td>
<td>Tsuen Wan West Station PTI</td>
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<td>Mechanical Ventilation System (Timer-controlled)</td>
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<tr>
<td>59</td>
<td>Vision City Public Light Bus Terminus *</td>
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<td>Mechanical Ventilation System (Sensor-controlled)</td>
</tr>
<tr>
<td>60</td>
<td>Yuen Long Tin Shui Wai Town Centre PTI</td>
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<td>Mechanical Ventilation System (Sensor-controlled)</td>
</tr>
<tr>
<td>61</td>
<td>Yuen Long Station (North) PTI</td>
<td>9 600</td>
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<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
<tr>
<td>62</td>
<td>Island Tung Chung Station Bus Terminus</td>
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<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
<tr>
<td>63</td>
<td>Kwai Tsing Kwai Fong Station Bus Terminus</td>
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<td>19</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
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<tr>
<td>64</td>
<td>Kwai Hing Station Bus Terminus</td>
<td>2 100</td>
<td>10</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
<tr>
<td>65</td>
<td>Kwai Shing (East) Bus Terminus</td>
<td>1 960</td>
<td>9</td>
<td>Mechanical Ventilation System (Timer-controlled)</td>
</tr>
</tbody>
</table>

Notes:

* Terminus for red public light buses/green minibuses

# "Timer-controlled" refers to those ventilation systems operated in accordance with the pre-set timing function while "Sensor-controlled" refers to those ventilation systems equipped with sensors and when the pollutant (carbon monoxide, sulphur dioxide and nitrogen dioxide) concentration levels reach a pre-set value, the ventilation systems will be automatically switched on/off.
Annex 2

PTIs involved in Complaints relating to Air Quality- or Ventilation Systems

1. Central (Hong Kong Station) PTI
2. Central (Exchange Square) Bus Terminus
3. Tin Hau Station PTI
4. Siu Sai Wan (Island Resort) PTI
5. South Horizons PTI
6. Sai Wan Ho (Grand Promenade) PTI
7. Cyberport PTI
8. Lam Tin Station PTI
9. Ping Shek PTI
10. Kowloon Station PTI
11. Whampoa Garden PTI
12. Yen Chow Street PTI
13. Diamond Hill Station PTI
14. Kowloon Tong (Festival Walk) PTI
15. Park Avenue PTI
16. Langham Place Public Light Bus Terminus
17. Sha Tin Central Bus Terminus
18. Po Lam PTI
19. Tiu Keng Leng Station PTI
20. Sheung Tak Public Transport Terminus
21. Tuen Mun Central Bus Terminus
22. Tsuen Wan West Station PTI
23. Wu Kai Sha Station PTI
24. Ma On Shan Town Centre Public Transport Terminus
25. Hang Hau Station PTI
26. Tseung Kwan O Station PTI
27. Bayview Garden Bus Terminus
28. Discovery Park PTI
29. Nina Tower Bus Terminus
30. Sai Lau Kok Road PTI
31. Tsuen Wan Station PTI
32. Vision City Public Light Bus Terminus
33. Tung Chung Station Bus Terminus
34. Bayshore Towers PTI
35. Tai Wai Station PTI
36. Kwai Fong Station Bus Terminus
37. Kwai Hing Station Bus Terminus
Protecting the consumers' rights and interests of online shoppers

20. MR PAUL TSE (in Chinese): President, recently, some members of the public have complained that allegedly deceptive online shopping advertisement pages, which offer high-priced authentic commodities (e.g. famous brand headsets, electronic game players, video recording equipment, intelligent robots, sneakers and pricey jewellery) for sale at low prices, are prevalent on the social media platform Facebook. It is learnt that such pages mostly use "closure of physical shops", "presence of defects in the commodities" or "detention of goods by the customs and excise authorities" as a pretext for commodities being sold at prices as low as about 10% or 20% of the original prices, and are uploaded with captured images of bills to prove the authenticity of the goods concerned, which lured members of the public to rush to place purchase orders. Some of the pages even use the addresses of shops selling authentic goods as collection points in order to dull the vigilance of members of the public. However, members of the public who had made payments for the purchases found out that (i) they had been defrauded only when they went to pick up the goods at the relevant addresses, or (ii) the goods did not match the descriptions only after they had unwrapped the package of the goods delivered by couriers. Subsequently, when those members of the public tried to take up the matter with the sellers, they found out that the pages in question had been deleted and the sellers could not be contacted. In this connection, will the Government inform this Council:

(1) of the number of reports of online shopping fraud received by the Customs and Excise Department, the Police and other relevant government departments in the past three years, the amount of money involved and the respective numbers of relevant prosecutions and convictions;

(2) of the policies or measures in place to assist members of the public who have been defrauded in recovering the payments made to fraudsters;

(3) how the Consumer Council followed up the aforesaid type of complaints in the past three years;

(4) how the authorities follow up those online shopping fraud cases which were found upon investigation to have involved overseas criminal syndicates; whether they will take the initiative to contact the relevant departments of the countries concerned to seek assistance from them;
(5) as more and more members of the public make use of social media platforms for online shopping, whether the authorities have studied new measures and policies to combat online shopping frauds so as to protect the consumers' rights and interests; and

(6) as it has recently been reported by the media that the credit card data of customers amassed by several online shopping platforms are available on websites associated with illegal activities (commonly known as "dark webs"), and the situation is serious, whether the authorities have received relevant reports; if so, of the details; the measures the authorities have put in place to protect the personal confidential data of members of the public from being stolen and used when they shop online?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, after consulting the Security Bureau, the Constitutional and Mainland Affairs Bureau, the Office of the Government Chief Information Officer ("OGCIO") and the Consumer Council, my reply to the six parts of the question is as follows:

(1) The number of complaints against unfair trade practices related to online shopping received by the Customs and Excise Department ("C&ED") and the relevant enforcement statistics in the past three years are set out at Table 1. As some complainants did not provide information on the amounts involved in the complaint cases, C&ED does not have statistics on the amounts involved. The figures of online shopping fraud cases received by the Police in the past three years are set out at Table 2. The Police do not maintain prosecution and conviction figures for online shopping fraud cases.\(^1\)

(2) In criminal cases (including fraud cases) handled by the Police, upon handing down judgments, the court will issue orders to direct the handling of lost properties or cash involved which were seized by the Police as exhibits during the investigation. If the court is satisfied

\(^1\) Currently, as a general practice, prosecution and conviction statistics are only compiled in respect of offences in the law (e.g. "obtaining property by deception" or "theft") but not specific cases. Since a particular case could involve various offences in the law (e.g. online shopping fraud cases may involve "obtaining property by deception" or "dealing with property known or believed to represent proceeds of indictable offence", etc), prosecution and conviction statistics by case nature cannot be provided.
that an exhibit belongs solely to a particular victim, it may issue an order for its return. In addition, if a bank account is found to be used for handling criminal proceeds, the Police will, where appropriate, request the bank to freeze the relevant suspicious assets. During such period, the victim may consider claiming compensation for the loss suffered through civil action. If necessary, the victim may obtain their documents relating to the case from the Police to take forward such procedures.

On the other hand, under section 36 of the Trade Descriptions Ordinance (Cap. 362) ("the Ordinance"), aggrieved consumers may institute civil claim for damages if they have suffered loss or damages due to conduct directed to them which constitutes a fair trading offence.\(^{(2)}\) Separately, under section 18A of the Ordinance, where a person is convicted of any of the fair trading offences, the court may order the convicted person to compensate any person for the financial loss resulting from the offence.

(3) Consumers who have disputes with online traders may seek assistance from the Consumer Council. The Consumer Council acts as a conciliator in handling disputes between consumers and traders. It assists traders and complainants to resolve their disputes, for example, by trying to contact the traders with a view to helping both parties develop mutually acceptable agreements. In cases that involve suspected illegal conduct, the Consumer Council will refer the cases to law enforcement authorities for follow-up.

(4) In handling cases of online fraud, if the Police needs to conduct investigation or adduce evidence in respect of incidents which took place outside Hong Kong, the Police will exchange intelligence and seek cooperation with relevant law enforcement agencies outside Hong Kong, and the Interpol. Besides, if local or websites outside Hong Kong are found to be conducting illegal activities, C&ED may demand such websites to remove the relevant contents or links. Depending on the need and circumstances, joint operations with enforcement agencies outside Hong Kong may also be conducted.

(2) The Ordinance prohibits specified unfair trade practices deployed by traders against consumers, including false trade descriptions, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment.
(5) The Police are committed to combating technology crimes (including online shopping frauds). Since 2012, the Police have put "combating technology crime" as one of the Commissioner of Police's Operational Priorities, and have been enhancing their technology, equipment and resources input in this regard. In July 2017, an enforcement action codenamed "Operation DRUMSKY" was launched to combat online shopping frauds, in which 30 persons were arrested and 162 cases and loss of about HK$890,000 were involved. In addition, C&ED attaches great importance to protecting consumer rights. C&ED will monitor different types of illegal online activities by using advanced tools for evidence collection and investigation, and initiate appropriate follow-up actions and prosecutions on complaints received.

Apart from proactive law enforcement, publicity and education are equally important in protecting consumer rights. In the study report on online shopping published by the Consumer Council in 2016, the Council reminds consumers that as online shopping becomes increasingly popular, they should be aware of some common problems associated with it. The report also gives a number of recommendations to traders, encouraging them to strictly comply with the law, adopt good business practices and enhance customer service. The CHOICE Magazine published by the Consumer Council has in recent years featured a good number of articles on the subject of online shopping, including giving tips to consumers on what they should pay attention to when making a purchase online by "cash on delivery" in the March 2018 issue. C&ED also reminds consumers from time to time to stay vigilant when shopping online and procure products from reputable traders. They should not trust advertisements at suspicious websites or social networking platforms easily, and should examine goods when accepting delivery to avoid incurring losses.

On the other hand, the Police's Commercial Crime Bureau established the Anti-Deception Coordination Centre in July 2017 to reinforce the combat against deception cases and raise the public's anti-deception awareness. Its major duties include monitoring and analysing the trends of deception cases, with a view to formulating and implementing combating strategies; coordinating anti-deception
publicity work; setting up a 24-hour hotline "Anti-Scam Helpline 18222" to facilitate public enquiries and provide timely assistance; and expediting the investigation of similar deception cases and minimizing the loss of victims. The Police will regularly produce short videos and anti-crime information, as well as advise the public of the latest modus operandi of fraudsters through the Police's electronic platforms, including YouTube, the Hong Kong Police Mobile Application, the Police website, the Police Facebook page and the "Fight Scams Together" scam prevention information platform. The Police also disseminate anti-crime messages to the public through Police Magazine and traditional media (i.e. television, radio and newspapers).

(6) OGCIO attaches great importance to cyber security education and protection, and has been paying close attention to information security threat intelligence, including information circulated in the "dark web". That Office has not received any report so far regarding customer data of online shopping platforms being circulated in the "dark web". It will continue to work with the Hong Kong Computer Emergency Response Team Coordination Centre to constantly remind businesses and the public to stay vigilant, adopt suitable security measures on their computers and use Internet services safely, in order to protect personal information and guard against cyber attacks. Separately, the Office of the Privacy Commissioner for Personal Data ("PCPD") has not received relevant reports either. PCPD from time to time issues or revises Codes of Practice and Guidances, such as the "Guidance for Data Users on the Collection and Use of Personal Data through the Internet" and "Protecting Privacy—Using Computers and the Internet Wisely", so as to assist data users of various trades to understand the requirements they must comply with in the online collection and use of personal data, and to remind the public to protect their personal data when using the Internet.

The Police have also been monitoring different types of alleged illegal acts on the web (including the "dark web") and will take appropriate actions in light of the circumstances. Thus far, the Police have not received relevant reports related to customer data of
online shopping platforms being circulated in the "dark web". From time to time, the Police would remind the public to be vigilant when conducting online transactions, for example to patronize businesses with good reputation. Members of the public who suspect unauthorized use of their credit cards or leakage of relevant information should report to the Police as soon as practicable.

Table 1

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of complaints</td>
<td>296</td>
<td>586</td>
<td>1 227</td>
</tr>
<tr>
<td>Number of prosecution cases</td>
<td>2</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Number of conviction cases</td>
<td>2</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>Number of convictions (company/individual)</td>
<td>2</td>
<td>3</td>
<td>11</td>
</tr>
</tbody>
</table>

Note:
"Number of prosecution cases" and "Number of conviction cases" for the same year are slightly different because trials of some prosecution cases were/will be conducted in the subsequent year.

Table 2

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases *</td>
<td>1 473</td>
<td>1 302</td>
<td>1 663</td>
</tr>
<tr>
<td>Amount lost ($ million)</td>
<td>35.2</td>
<td>27.5</td>
<td>29.7</td>
</tr>
</tbody>
</table>

Note:
* Online shopping fraud cases include (1) transactions between individuals; (2) transactions between businesses and individuals; or (3) transactions between businesses.
Regulation of unmanned aircraft systems

21. MR CHAN HAK-KAN (in Chinese): President, according to the existing legislation, any person must apply to the Civil Aviation Department before operating any unmanned aircraft system ("UAS") weighing over 7 kilogrammes (without fuel) or operating a UAS for reward. In recent years, while UASs have become increasingly versatile, the privacy and safety issues arising from the operation of UASs have aroused growing concern. In this connection, will the Government inform this Council:

(1) of the number of complaints about clandestine photo-taking by using UASs received by the authorities in the past three years; the follow-up actions taken by the authorities in respect of those complaints, and whether they have instituted prosecutions against the UAS operators concerned;

(2) as UASs are currently not allowed to be flown in areas such as the vicinity of an airport or aircraft approach and take-off paths and country parks, of the number of reports received by the authorities in the past three years about UASs intruding into the said no-fly zones; the follow-up actions taken by the authorities in respect of these cases, and whether they have instituted prosecutions against the UAS operators concerned; whether they will consider using new technological equipment (e.g. an electronic interference system) to prevent UASs from intruding into the no-fly zones; if so, of the details; if not, the reasons for that;

(3) given that more and more people operate UASs as a leisure activity, whether the authorities will consider relaxing the provision prohibiting the flying of UASs in country parks, or designating a park in which flying UASs is allowed; and

(4) given that UASs are currently deployed overseas for delivering goods by some companies, whether the authorities have plans to assist the relevant industry in Hong Kong in the development of that kind of service?
SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, in Hong Kong, unmanned aircraft systems ("UASs") are classified as aircraft and are governed, as far as aviation safety is concerned, by the civil aviation legislation. The Civil Aviation Department ("CAD") is committed to ensuring aviation safety, including UAS operations, such that these operations are performed in compliance with flight safety rules. According to the prevailing laws, any operator of UAS, regardless of the weight of UAS, must observe Article 48 of the Air Navigation (Hong Kong) Order 1995 (Cap. 448C). Under this provision, a person shall not recklessly or negligently cause or permit an aircraft to endanger any person or property. Articles 3, 7 and 100 of Cap. 448C also provide that any person must apply to CAD for a Certificate of Registration and a Certificate of Airworthiness for any UAS weighing more than 7 kg (without fuel) before he/she could operate such aircraft in Hong Kong. Furthermore, Regulation 22 of the Air Transport (Licensing of Air Services) Regulations (Cap. 448A) requires that, regardless of the weight of UAS, if a person uses a UAS for reward, he/she must lodge an application with CAD before operating such aircraft and abide by the conditions stipulated in the permit granted by CAD in providing the service. Apart from operating in a safe manner in accordance with the applicable civil aviation legislation, operators must also observe other relevant laws of Hong Kong, such as the Telecommunications Ordinance (Cap. 106).

At present, CAD publishes safety guidelines and textual information in its website (<https://www.cad.gov.hk/english/Unmanned_Aircraft_Systems.html>) on areas where UAS should not be flown. Such guidance serves to protect aircraft as well as other people and properties (e.g. UAS should not be flown in populated and congested areas, UAS should be operated 50 m away from other person or structure, etc.). In addition to the above, there may be other restrictions imposed by other government bureaux/departments, authorities or venue managers which may be applicable to UAS operations.

At the same time, CAD will continue the promotion of safe UAS operations through various channels, including CAD's website, social media platform, etc. Since October 2016, CAD has distributed over 33 800 safety leaflets to UAS operators as well as general public through major distributors, manufacturers, flying clubs/associations, Home Affairs Enquiry Centres of all 18 Districts. To reach out to a wider audience, CAD launched a campaign to broadcast UAS safety messages through television and radio programmes in May 2017.
On the specific questions asked, our reply is as follows:

(1) to (2)

The numbers of complaints of UAS operations received by CAD in the past three years are as follows:

<table>
<thead>
<tr>
<th>Name of Department/Organization</th>
<th>Year/Number of Complaint Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAD</td>
<td>2015</td>
</tr>
<tr>
<td></td>
<td>27</td>
</tr>
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</table>

Note:

The Hong Kong Police Force does not keep record on the number of complaints on UAS operations.

Since 2017, CAD has started categorizing complaints received in relation to UAS. Complaints received in the year mainly involved UAS being operated at an inappropriate time, location and/or height. In addition, 9 out of 60 complaints in 2017 concerned or involved privacy-related issues.

At present, the safety guidelines of CAD list out areas where UAS shall not be flown or areas not suitable for UAS operations, for example, populated and congested areas, the Hong Kong International Airport, helipads, Victoria Harbour and its coastal area etc. In 2017, CAD received 41 complaints which related to UAS operations in areas specified in the above mentioned safety guidelines.

Upon receipt of complaints, CAD will take appropriate follow-up actions which may include obtaining further information from the parties concerned, urging the parties concerned to comply with UAS safety guidelines and rules published by CAD, requesting the relevant Police division to step up patrol. When needed, CAD will refer the complaint case to the Police for follow up. CAD will also provide support to the Police on enforcement actions.

As regards prosecution, as of the first quarter of 2018, in the past three years, the Hong Kong Police Force has initiated prosecution on two cases. One case (which took place in 2017) was convicted and one case (which took place in 2016) was under trial by the Court.
To assist the Government to review the appropriateness and effectiveness of the existing statutory requirements and in exploring ways to refine the prevailing regulatory regime with a view to accommodating the technological development and diversified uses of UAS while safeguarding public safety, CAD engaged a consultant in March 2017 to conduct a study on the regulation of UAS. In early April 2018, CAD published the consultancy report (<https://www.cad.gov.hk/english/uas_view.html>) and launched a three-month public consultation on six key proposals regarding the UAS regulatory regime, including the establishment of a UAS registration system, risk-based classification of UAS operations, training and assessment requirements, drone maps for UAS operators, insurance requirements for UAS, and indoor operations of UAS. Members of the public can also express their views on other UAS related issues. CAD will study the public's views in consultation with relevant government bureaux/departments, with the aim of striking an appropriate balance between facilitating usage and development of UAS on the one hand and protecting public safety on the other. Subject to the outcome of the public consultation, CAD will formulate a detailed proposal on the way forward.

The role of the Electronic Health Record Sharing System in the Healthy Cities projects

22. **DR ELIZABETH QUAT** (in Chinese): President, the Government is currently planning for the Stage Two development of the Electronic Health Record Sharing System ("eHRSS"), including initiating further data standardization exercises on existing and new data categories (such as Chinese medicine ("CM") information, personal life-style habits as well as care and treatment plan) to facilitate data sharing, as well as enhancing patient's choice over the scope of data sharing and facilitating patient access to eHRSS. On the other hand, the World Health Organization ("WHO") launched the "Healthy Cities" programme in 1986 to engage the international community in improving health services and living conditions through the collaborative efforts of the public, private, voluntary and community sectors. WHO also advocates the
inclusion of health as a factor to consider by governments around the world in their policy-making process. The first Healthy Cities project in Hong Kong was launched in 1997. Such projects are now being rolled out at District Council district level. Regarding the role of eHRSS in Healthy Cities projects, will the Government inform this Council:

(1) given that inter-sectoral action and community participation are essential in taking forward Healthy Cities projects, whether the Government will designate social workers and teachers as two categories of persons authorized to view and share patients' electronic health records; if so, of the details; if not, the reasons for that;

(2) given that the Report of the Working Party on Primary Health Care entitled Health for All, The Way Ahead published in 1990 recommended the establishment of a Primary Health Care Authority by the Government to monitor the delivery of primary health care services, whether the Government will, upon making reference to the experience of the governments of the United Kingdom and Australia in establishing the Clinical Commissioning Groups and Primary Health Networks respectively, study the establishment of such an Authority with a view to coordinating inter-sectoral collaborations and enhancing the efficiency in providing medical services; if so, of the details; if not, the reasons for that;

(3) whether it will analyze eHRSS data to grasp the medical needs and characteristics of each district, thereby assisting in the planning for the provision of the medical services required in various districts and formulating performance indicators; if so, of the details; if not, the reasons for that;

(4) whether it will, for the purpose of conducting health needs assessment, collect relevant data from the Hospital Authority, relevant policy bureaux and departments (including the Education Bureau, Department of Health, Census and Statistics Department and Social Welfare Department), non-governmental organizations and university departments offering programmes on public health; if so, of the details; if not, the reasons for that;
whether it will plan for the prevention, screening, diagnoses and treatments as well as palliative treatment of diseases that are common among city-dwellers (such as mental illness, diabetes mellitus and cardio-cerebral-vascular diseases) and pain-causing illnesses, and make use of the three analysis tools (cost-effectiveness analysis, cost-utility analysis and cost-benefit analysis) to assess the impact of such efforts on the medical services to be provided in various districts and the effectiveness that can be achieved; if so, of the details; if not, the reasons for that;

whether it will facilitate the role of CM in Healthy Cities projects, including (i) extensively applying the medical concept and treatment method of "preventive treatment of disease" as adopted by Chinese medicine practitioners, (ii) instilling the knowledge of philosophies on health as adopted by Chinese medicine practitioners in patients seeking consultations at District Health Centres so as to enhance their capabilities to manage their own health, (iii) popularizing Chinese medical services so that chronically ill and terminally ill patients can access such services more easily, (iv) applying the "emotional health theory" as adopted by Chinese medicine practitioners to soothe the emotion of mentally ill patients and the mental stress suffered by their family members, and (v) stepping up the training on community health and family medicine for Chinese medicine practitioners so as to promote integrated Chinese-Western medicine; if so, of the timetable and other details; if not, the reasons for that;

whether it will, at the institutional level, enhance the capabilities and participation of members of the public in managing their own health, so as to solve the existing problems caused by a lack of participation by patients as well as a relatively low level of health ownership and literacy among them; if so, of the details; if not, the reasons for that; and

whether it will formulate a standing mechanism for conducting opinion surveys and consultations for the purpose of understanding the public's health concerns and encouraging them to participate in formulating the relevant policies and measures in order to perfect the implementation of the Healthy Cities projects; if so, of the details; if not, the reasons for that?
SECRETARY FOR FOOD AND HEALTH (in Chinese): President, my reply to the question raised by Dr Elizabeth QUAT is as follows:

The purpose of setting up the Electronic Health Record Sharing System ("eHRSS") is chiefly to provide a territory-wide information infrastructure which enables authorized health care providers in the public and private sectors, with a patient's informed consent, to view and share his/her electronic health records ("eHRs") under the "need-to-know" and "patient-under-care" principles in the course of provision of health care services, so as to promote public-private collaboration, facilitate continuity of care, and enhance the quality and effectiveness of health care services. Having regard to the purpose of setting up eHRSS and the vision mentioned above, and the fact that eHRSS contains a large quantity of patient records and that eHRs need to be handled with clinical expertise, we do not have plans to extend the categories of persons who can view and share eHRs to include non-health care professionals at this stage. On the other hand, to facilitate patients to more proactively manage their health and to tie in with the development of primary health care, we are studying the setting up of a Patient Portal to enable patients to access some of their health records on eHRSS, receive health information, perform registration and other account setting functions, etc. Subject to the outcome of the study, the various functions of the Patient Portal are expected to be rolled out in phases in the coming years.

The Chief Executive has announced in her 2017 Policy Address that a pilot district health centre ("DHC") with a brand new operation mode will be set up in Kwai Tsing District to strengthen primary health care services, through which we aim to encourage the public to take precautionary measures against diseases, enhance their capability in self-care and home care, and reduce the demand for hospitalization. DHC will help strengthen medical-social collaboration and care coordination through maintaining a clinical and multidisciplinary service network.

DHC is expected to commence services in the third quarter of 2019. With the experience gained from the pilot scheme, we will progressively set up DHCs in other districts. We have also established a Steering Committee on Primary Healthcare Development ("the Steering Committee") to comprehensively review the existing planning of primary health care services and draw up a development blueprint. The Steering Committee will review the efficiency and effectiveness
of the software and hardware for the delivery of primary health care services (including the framework for the delivery of services) and make recommendations.

The Steering Committee will also explore the use of big data in devising strategies which best fit the health care needs of the community. Currently, the Steering Committee is deliberating on the operation mode of DHC to be set up in Kwai Tsing District, including the establishment of an electronic platform by drawing reference from eHRSS to facilitate the provision of primary health care services by DHC and the service providers of its network, as well as the use of the data collected via the platform for service planning and evaluation. As a territory-wide eHR sharing platform, eHRSS does not only realize the concept of "records follow the patient" which facilitates the provision of continuous care for patients by different public and private health care providers, but also contains eHRs which can be used for research and statistical purposes from the perspectives of public health or safety. We will consider how to put in place a mechanism in this regard when a critical mass of information that is meaningful for research and statistical purposes has been accumulated in eHRSS.

To tackle major non-communicable diseases (such as cardiovascular diseases, diabetes mellitus and pain) and common behavioural risk factors (i.e. harms caused by unhealthy diets, lack of physical activities, smoking and drinking) currently threatening the health of Hong Kong people, we will look into the relevant scientific evidence and statistics, implement measures on disease prevention, screening and identification in a systematic manner, and evaluate the anticipated effectiveness of such measures. DHCs can also play a proactive role in public education and disease prevention. When considering the scope of services to be provided by DHC in Kwai Tsing District, the Steering Committee took into account data from multiple sources, including the Hospital Authority's ("HA") statistics on chronically ill patients, the Population Health Survey of the Department of Health, the Thematic Household Survey of the Census and Statistics Department, and a large-scale household survey under the "FAMILY: A Jockey Club Initiative for a Harmonious Society" jointly implemented by the Hong Kong Jockey Club and the School of Public Health of the University of Hong Kong. The Steering Committee opined that DHC should direct resources to the treatment of the most prevalent chronic diseases that consume substantial medical resources and explore how to manage their conditions through risk management and early intervention, thereby reducing the unwarranted use of hospital services.
On promoting the development of Chinese medicine ("CM"), the Government is actively examining the future development needs of the CM sector, so that the widely accepted traditional CM can play a more active role in promoting public health.

To gather experience regarding the integrated Chinese-Western medicine ("ICWM") and the operation of CM inpatient services, the Government commissioned HA to launch the ICWM Pilot Programme ("the Pilot Programme") in September 2014. Phase II of the Pilot Programme commenced in December 2015. Under the Pilot Programme, ICWM treatment covering inpatient services and CM outpatient follow-up services for inpatients of three selected disease areas (namely stroke care, low back pain care and cancer palliative care) is provided in seven hospitals of HA. Phase III of the Pilot Programme commenced in April 2018 and extended to cover a new disease area on shoulder and neck pain care. In addition, HA provides training on community health and family medicine for Chinese medicine practitioners ("CMPs") employed by the Chinese Medicine Centres for Training and Research operated under a tripartite collaboration model. Such training includes:

(i) Pre-service training for CMP trainees: It enables the trainees to understand the roles of various medical professions in community health, covering an introduction to medical professional services, site visits and sharing sessions.

(ii) Commissioned training: It includes courses in "community psychiatry", "holistic health" and "integrative rehabilitation", so as to enhance CMPs' understanding of community health and family medicine. The collaborating institutions include the Centre on Behavioral Health, and the Department of Family Medicine and Primary Care of the University of Hong Kong; and the Department of Rehabilitation Sciences of The Hong Kong Polytechnic University.

The Government has endeavoured to understand the needs of community through District Councils ("DCs"). To further the implementation of the Healthy Cities Projects, various departments have sent their representatives to DC meetings to listen to community views, brief DCs on the Government's policies and plans, and respond to district needs and problems.
GOVERNMENT BILLS

Second Reading of Government Bills

Resumption of Second Reading Debate on Government Bill


INLAND REVENUE (AMENDMENT) BILL 2018

Resumption of debate on Second Reading which was moved on 21 March 2018

(Mr CHAN Chi-chuen stood up)

PRESIDENT (in Cantonese): Mr CHAN Chi-chuen, what is your point?

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

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

(While the summoning bell was ringing, THE PRESIDENT'S DEPUTY, MS STARRY LEE, took the Chair)

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

DEPUTY PRESIDENT (in Cantonese): A quorum is now present. Will Members please return to their seats and keep quiet. The meeting continues.
DEPUTY PRESIDENT (in Cantonese): Mr WONG Ting-kwong, Chairman of the Bills Committee on the Bill, will address the Council on the Committee's Report.

MR WONG TING-KWONG (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on Inland Revenue (Amendment) Bill 2018 ("Bills Committee"), I now submit to the Legislative Council the Report of the Bills Committee and report on the highlights of the work of the Bills Committee.

The Inland Revenue (Amendment) Bill 2018 ("the Bill") aims to implement various proposals concerning tax concessions in the 2018-2019 Budget, including starting from the year of assessment 2018-2019 increasing and widening the tax bands for salaries tax and tax under personal assessment, increasing various allowances and introducing a personal disability allowance, as well as reducing salaries tax, tax under personal assessment and profits tax for the year of assessment 2017-2018.

The Bills Committee held one meeting to discuss the Bill with the Administration. The Bills Committee supports the proposals of the Bill. In the scrutiny process, the Bills Committee discussed the tax regime concerning salaries tax and tax under personal assessment, the levels of adjusting tax allowances, and the impact of the proposed one-off reduction of profits tax on the wealth gap.

A member considers that the amount of dependent parent or grandparent allowances and the extent of the proposed increases are small compared with those of child allowances, thus failing to effectively encourage the younger generation to live with or take care of their parents or grandparents. The member advises the Administration to consider increasing dependent parent or grandparent allowances at a greater magnitude in the future. The Administration has advised that dependent parent or grandparent allowances have been adjusted frequently previously. The Administration will continue to regularly review the various allowances and deduction ceilings, and propose levels of adjustments as appropriate.

A member is concerned about whether the proposal on reducing profits tax will widen the wealth gap in Hong Kong. In this connection, the Administration has provided the Bills Committee with information to confirm that the proposed
one-off reduction of profits tax has no impact on any of the existing Gini Coefficients compiled by the Census and Statistics Department, adding that it is technically not feasible to assess the impact of the adjustments to tax bands and marginal rates on the post-tax Gini Coefficients.

As regards the existing mechanism for assessing salaries tax and tax under personal assessment, a member considers that those who earn more should pay more tax, and thus the Administration should consider abolishing the standard rate of 15% and adopting only progressive rates. The Administration has explained that if the tax calculated at progressive rates exceeds the amount calculated at the standard rate, the person is only required to pay the lower amount of tax at the standard rate. This regime aligns with the policy intent to maintain the simple and low tax system of Hong Kong, and is commensurate with the two-tiered profits tax rates regime. The Administration has advised that while there is no plan at this stage to abolish the standard rate for salaries tax and tax under personal assessment, it will continue to regularly review the taxation system of Hong Kong, including the tax bands and rates of various taxes.

Deputy President, the Bills Committee has noted that the Administration will propose a technical amendment and has raised no objection to the amendment. The Bills Committee will not propose amendments to the Bill and supports the resumption of the Second Reading debate on the Bill.

Deputy President, the following are my personal views on the Bill.

Regarding this year's Budget, the Financial Secretary has, apart from spending a huge sum of $25.5 billion on a one-off reduction of salaries tax, tax under personal assessment and profits tax for the year of assessment 2017-2018 by 75%, subject to a ceiling of $30,000 per case, further proposed a series of permanent adjustments for salaries tax and tax under personal assessment, such as increasing and widening the tax bands for salaries tax and tax under personal assessment, increasing basic and additional child, dependent parent or grandparent allowances, and introducing a personal disability allowance. In fact, when compared with a one-off tax reduction, such permanent adjustments for salaries tax and tax under personal assessment can better reduce the tax burden on the general public and benefit more people. In particular, increasing and widening the tax bands for salaries tax and tax under personal assessment will be of great help to many young taxpayers.
The authorities propose in the Bill that the existing tax bands for salaries tax and tax under personal assessment be widened from the existing $45,000 to $50,000 each, the number of tax bands be increased from the original four to five, and marginal rates be changed from the original 2%, 7%, 12% and 17% to 2%, 6%, 10%, 14% and 17%. In the case of a single taxpayer who earns a monthly income of $20,000 and who is not entitled to dependent parent, grandparent, brother or sister allowances, this taxpayer needs to pay salaries tax of $4,770 in the case of the original tax bands, and the salaries tax he needs to pay in the case of the new tax bands amounts to only $3,760, a significant reduction of $1,010 or 21% as compared with the original amount of tax.

Undoubtedly the new tax bands will significantly reduce the tax burden on some young taxpayers, particularly those who are not entitled to other tax allowances, and be of considerable help to them. In addition, as the new tax band will be wider than the original one, and the number of tax bands will be increased from four to five, the number of cases where a taxpayer needs to pay a higher amount of tax because his chargeable income goes beyond a lower tax band and falls within a higher tax band will be minimized. For this reason, the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") and I agree that the current tax concession arrangements can alleviate the burden on taxpayers.

However, DAB and I hope that the authorities will consider allowing taxpayers to deal with their applications for allowances in a flexible and discretionary manner, such as allowing taxpayers who are brothers and sisters to split dependent parent, grandparent, brother or sister allowances as they wish.

At present such allowances can only be claimed by one taxpayer rather than be shared with his brothers and sisters, thus giving rise to a winner-take-all situation. For example, the two allowances for dependent parents can at most be enjoyed by two children, and other children are not entitled to such allowances, thus often leading to disputes in families with many brothers and sisters and dealing a blow to family harmony.

Similarly, for a family with only one kid and the couple earning comparable incomes, only one of them can enjoy child allowance. Even if the couple opt for joint assessment, the tax concession arising from the tax allowances may not be as desirable as what they can enjoy if they opt for separate
taxation and split the child allowance equally. For this reason, if the authorities allow taxpayers to split various allowances as they wish, it will not only reduce disputes in families concerning who should enjoy the allowances, but taxpayers will also enjoy more tax concessions and convenience. Such a move will bring only benefits without doing any harm to taxpayers.

With these remarks, Deputy President, I support the Bill. I hope that the authorities will consider handling taxpayers' applications for allowances in a more flexible and discretionary manner.

MR KWOK WAI-KEUNG (in Cantonese): Deputy President, it is now May, and many wage earners are going to receive the green envelope from the Inland Revenue Department. When they receive it, they are bound to be as emotional as when they receive a wedding invitation. While getting a wedding invitation will make you feel happy for the betrothed couple, it also means that you will have to put your hand in your pocket. As for the payment of tax, it seems to be something unavoidable.

Wage earners receive tax returns every year, but when they receive them this year, they should feel less pressure than before because the Government has proposed a series of tax concessions. The most generous move is, of course, to reduce salaries tax by 75%, subject to a ceiling of $30,000. These concessions are the Government's commitments and promises to the middle class, including the measures covered by the Inland Revenue (Amendment) Bill 2018 ("the Bill"), such as increasing the child allowances from $100,000 to $120,000, increasing the dependent parent/grandparent allowances, raising the deduction ceiling for elderly residential care expenses, and introducing a personal disability allowance.

In addition, the Government has proposed to increase the number of tax bands for salaries tax from four to five and widen the tax bands from $45,000 to $50,000 each. This is a long-term measure, which will presumably reduce the Government's tax revenue by at least a few billion dollars a year. Given the sound fiscal position of the Government, the reduction in tax revenue will not have a negative impact on its long-term finances, and will serve to ease the tax burden on the public. Therefore, The Hong Kong Federation of Trade Unions ("FTU") supports the Bill.
Tax relief (i.e. tax cuts) can certainly alleviate the burden on wage earners, but one of the measures proposed by the Government this time around has a more significant meaning, for it represents the first tax reform to increase the number of tax bands for salaries tax since Hong Kong's return to China in 1997. All along, the middle class has been the class that shoulders the heaviest tax burden among all salaried classes in Hong Kong. Over the past few years, middle-class people have rarely benefited from the Government's sweeteners and have never received its general giveaways such as social benefits and housing subsidies. They have paid their taxes in full, and yet the expenses incurred by them are on the rise. It is natural that they have more and more grievances, and the only way for them to relieve their pressure is to air their grievances.

This time, the Financial Secretary has proposed to increase the number of tax bands for salaries tax from four to five with marginal rates at 2%, 6%, 10%, 14% and 17% respectively, and widen the tax bands from $45,000 to $50,000 each. These changes can definitely reduce the tax burden on the "mid-middle class"; in theory, it is the sandwich class in the middle class that should benefit the most. These several adjustments can ease the tax burden on 1.34 million taxpayers, who account for about 40% of all the 3 million-odd wage earners in Hong Kong. For example, it is estimated that the amount of tax to be paid by a four-member family in which the husband and wife have a child and an elderly person to support with a monthly income of $60,000 can be reduced by $10,000 or so for the current year. This can be regarded as a benevolent initiative in this year's Budget.

Although the salaries tax rate adjustments can help alleviate the pressure on the public, the payment of salaries tax is related to the amount of income after all; that is, people who earn more money have to pay more salaries tax. However, as for the indirect tax in the form of increased housing expenses arising from soaring land premiums and rents, it must be paid regardless of the amount of income, and consumes a higher proportion of income than other taxes do.

The total amount of tax revenue collected for the last year of assessment is $328.6 billion (provisional), an increase of $38.4 billion compared to the previous year's $290.2 billion. In particular, the revenue from stamp duties last year rose to $95.2 billion, an increase of $33.3 billion or over 50% from the previous year, representing the largest year-on-year growth among all taxes. Of this revenue, 60% (over $57 billion) came from property transactions, an increase of 50% from the previous year.
Given the Government's collection of a substantial amount of tax on the back of buoyant property sales, it is only right for the Budget to introduce various concessionary measures. That said, the Government should also consider using financial measures to ameliorate the long-standing imbalance between housing supply and demand, which is a pressing issue. As mentioned by the Secretary for Financial Services and the Treasury last week, developers are in possession of 9 000-odd vacant units, and the Rating and Valuation Department has forecast that some 18 000 private residential units will be completed this year. In other words, the number of vacant units—9 000-odd—held by developers is equal to half of the number of new private residential units to be completed and supplied this year. Are developers hoarding those units with a view to selling them at a higher price in the future?

A few years ago, the increasingly harsh "curb" measures were able to cool down the property market within a short period of time, but now they have become a contributory factor in pushing up property prices, victimizing ordinary users while cracking down on speculative activities. The original purpose of the "curb" measures was to buy time, but it was never achieved. The Government is still at its wits' end when it comes to solving the housing problem.

DEPUTY PRESIDENT (in Cantonese): Mr KWOK Wai-keung, please speak on the content of the Inland Revenue (Amendment) Bill 2018.

MR KWOK WAI-KEUNG (in Cantonese): Very well, Deputy President. I will finish in about two minutes. Over the years, FTU has been advocating the introduction of a vacant property tax as it sees no reason why the Government should not take action against the "predators" that have reaped the most benefits from high property prices. FTU urges the Financial Secretary to expeditiously study the introduction of a vacant property tax so as to combat the hoarding of first-hand flats, increase supply and prevent property prices from rising endlessly. In the secondary property market, there are about 43 000 vacant flats. While the vacancy rate of second-hand flats is not high, we hope that the introduction of a vacant property tax can increase supply in the rental market, thereby easing the upward pressure on rents.
Deputy President, seeing that the government coffers are flush with cash, many members of the public are reluctant to pay tax. Even though salaries tax is to be reduced, people's money will just be "transferred from the left pocket to the right pocket" and eaten up by other living expenses. Nowadays, as dwellings are getting more and more expensive but smaller and smaller, and exorbitant rents are driving up prices, people's livelihood burden is becoming increasingly heavy. I hope the authorities can expeditiously and carefully study ways to suppress rents and property prices, so that the lives of the masses can be truly improved.

I so submit.

DEPUTY PRESIDENT (in Cantonese): I remind Members that their discussion should focus on the content of the Inland Revenue (Amendment) Bill 2018. I understand that Members are very concerned about issues relating to the property market, but they can debate these issues on other occasions.

DR KWOK KA-KI (in Cantonese): Deputy President, the Inland Revenue (Amendment) Bill 2018 ("the Bill") seeks to widen the tax bands and reduce tax. I actually have no reason to oppose it. The current proposals include: increasing the number of tax bands from four to five with marginal rates at 2%, 6%, 10%, 14% and 17% respectively and widening the tax bands from $45,000 to $50,000 each, thereby benefiting 1.34 million taxpayers and reducing tax revenue by $4 billion a year; increasing the child allowances from $100,000 to $120,000, thereby benefiting 335,000 taxpayers and reducing tax revenue by $1.3 billion a year; increasing the allowance for maintaining a dependent parent or grandparent aged between 55 and 59 to $25,000; and most importantly, introducing a personal disability allowance for eligible taxpayers.

Increasing the number of tax bands, lowering the marginal rates and increasing the child allowances are the common aspirations of all middle-class people or taxpayers. Nonetheless, we must ask one question: Are the tax cuts fair? The Government is very generous, but not to the middle class. The most generous initiative of the Government this year is to reduce the profits tax rate for the first $2 million of profits of enterprises to 8.25%, a decrease of 50%. Why is the Government not as generous to the middle class and taxpayers who have to
maintain their children or parents or people with disabilities ("PWDs")? The Government certainly will not be generous to these taxpayers as it does not have to kowtow to them, but it has to kowtow to the business sector.

The Government thought that reducing the profits tax rate by half, the business sector would surely use their profits to reward their employees. Perhaps the Government also thought that offering tax concessions to the business sector could, to some extent, facilitate the task of abolishing the Mandatory Provident Fund ("MPF") offsetting mechanism. However, the Government has probably learned a lesson. Businessmen are penny-pinching and calculating. On the one hand, they have asked for a tax rate reduction, but on the other, they have collectively opposed the abolition of the MPF offsetting mechanism, expressing their unwillingness to pay so much money and demanding that the Government make a greater commitment. At the end of the day, members of the business sector think that they have almost no responsibility, for in their eyes, it is either the Government or the employees themselves that should take the greatest responsibility for retirement protection.

The Government or the Secretary should wake up to reality. They should not waste their efforts on something meaningless. At the very least, after the Government announced the proposals to increase the child and grandparent allowances and widen the tax bands for middle-class people, they did not turn against the Government by levelling more criticisms at it. But what the business sector is doing is different: it is biting the hand that feeds it after earning as much as possible and reaping the most benefits. Regrettably, no matter how hard the middle class or taxpayers in Hong Kong try to make their voices heard, the Government does not pay much heed to them because under the current political system, the actual power to control the election of the Chief Executive or the appointments of senior government officials is in the hands of the business sector. Therefore, the Government's partiality or bias towards the business sector is par for the course.

From the perspective of taxpayers, is it gratifying to see an increase in the number of tax bands? Yesterday, the Government announced a piece of "good news": a site in Kai Tak was sold at a staggeringly high price, making it the new "land king" in the city. The land premium per square foot of floor space of the site is between $17,000 and $18,000. It is estimated that the selling price of the flats to be built on the site will be set at some $30,000 per sq ft …
DEPUTY PRESIDENT (in Cantonese): Dr KWOK Ka-ki, please point out the relevance of what you have said about the site in Kai Tak to the Inland Revenue (Amendment) Bill 2018.

DR KWOK KA-KI (in Cantonese): Deputy President, what I have said is very important, as it will affect those who seem to be benefiting from the Bill. As you also know, the tax cuts currently proposed by the Government are aimed at benefiting the middle class. If the Government thinks that the introduction of these small tax concessions can enable a middle-class person to own a cosy home, it is really wrong. I will come back to the subject of this debate very soon. It would be wishful thinking to expect the Government's tax cuts to bring about any improvement in people's daily lives in respect of clothing, food, accommodation and transport, for the Government's policies have all along been biased towards the business sector, real estate developers and property owners.

As a scholar has recently said, we should not think that an increase in supply will always lead to a decline in property prices. Many people, including developers, do not want property prices to fall. And I believe that deep down, the Government definitely does not want property prices to fall either. In the past, different political parties in this Council, be they leftist, centrist or rightist, had gone to great lengths to demand that the Government increase the number of tax bands, ease the tax burden on the public, increase the child and grandparent allowances, and so on. We thought we would be lucky this time, but as it turns out, all these are meaningless because in any event the tax reductions will be less than the amount of money taken from people's pockets.

Nowadays, parenting is more than just paying for the education of children. Parents hope that their children will become homeowners one day. It is for this reason that we now see the strange home-buying phenomenon of parents queuing up to buy homes for their children. So …

DEPUTY PRESIDENT (in Cantonese): Dr KWOK Ka-ki, I think you have strayed too far from the subject. Please come back to the subject of the Second Reading debate on the Inland Revenue (Amendment) Bill 2018.
DR KWOK KA-KI (in Cantonese): Deputy President, my speech is relevant to the Bill. I have not strayed too far from the subject. The Government’s current proposal to increase the child allowances is aimed at benefiting parents and thus helping their children. Yet the whole idea is like asking people to act against their own interests. The Secretary has just smiled surreptitiously. On the face of it, the Government is trying to help Hong Kong people, but in fact it is twisting the knife in the wound. I will not oppose this proposal, but then I would like the Government to tell me how the increased child allowances can help parents.

As we can see now, parents do not only have to pick up the tab for their children’s schooling, but also have to pay increasingly high fees for their children to take part in extracurricular activities, which cost them a few hundred dollars to $1,000 a lesson—I am sure you know this, Deputy President. In Hong Kong, under the distorted and failed education system, all families and parents need to spend as much of their meagre income as possible on their children. Sadly, not only has the Government failed to improve the education system to make parents feel at ease, but it has also contrarily caused them the need to spend their meagre salaries on the next generation. To put it bluntly, the tuition fees for a child for a year would readily use up the $120,000 child allowance.

Another proposal from the Government is to increase the dependent parent allowances. This is really infuriating. The SAR Government is not doing what it ought to do for retired elderly residents of Hong Kong. It ought to introduce universal retirement protection at the right time to ensure that the elderly are duly provided for. The Government has refused to take this responsibility but shifted it onto every family, every adult child and every Hong Kong citizen. How can the slight increase of $4,000 in the allowance for maintaining a dependent parent aged 60 or above be of help to taxpayers? The Government has refused to take responsibility for the livelihood difficulties currently faced by all elderly people aged 60 or above, the health care and dental services they need, and all the social services they are entitled to. It is heartless and unrighteous of the Government to ask the elderly or their children to solve such problems on their own and then give them a $4,000 allowance. Actually, people would rather give $4,000 back to the Government in exchange for its due provision of retirement protection, as well as health care, dental care and elderly care services, because only these can help them. The proposal to increase the allowance by $4,000 is hypocritical and cannot help ease the heavy burden on the public.
Is it true that the Government has no responsibility? Of course not. The Government has an adequate fiscal surplus to provide the elderly with health care, dental care and retirement protection, but it has let the opportunity slip through its fingers and opted to dole out hundreds of billions of dollars' worth of sweeteners aimlessly with no philosophy whatsoever in mind. It considers the handing out of sweeteners a one-off measure instead of a long-term annual initiative. This is the approach that the Government has adopted over the years. What new fiscal philosophy does it have? What long-term planning does it have? It will not do long-term planning for the public. Rather, it deals with problems in an isolated manner. This Government simply makes us sick.

Besides, the Government has proposed to introduce a personal disability allowance for eligible taxpayers, at a rate on a par with the current disabled dependant allowance of $75,000. However, the biggest problem facing PWDs in Hong Kong at present is not that they have no tax allowance. I believe they do want to pay tax. The employment rate of PWDs in Hong Kong is very low. Even though we are close to full employment now, the employment rate of PWDs is still the lowest among all types of workers in the city. Over the years, we have been demanding that the Government require the employment rate of PWDs in the civil service and statutory bodies to reach a certain percentage, for example 2%. Has the Government done so? No, not at all.

DEPUTY PRESIDENT (in Cantonese): Dr KWOK Ka-ki, I have reminded you repeatedly …

DR KWOK KA-KI (in Cantonese): Deputy President, my speech is actually relevant to the Bill …

DEPUTY PRESIDENT (in Cantonese): Please let me finish before you speak. I remind Members that in accordance with Rule 54(3) of the Rules of Procedure, during the Second Reading debate, Members should focus their discussion on the general merits and principles of the Bill, and should not extend their discussion on the Bill to policies concerning other areas.
DR KWOK KA-KI (in Cantonese): I would like to point out that this is a very
shoddy …

DEPUTY PRESIDENT (in Cantonese): If Dr KWOK's argument was tenable,
then Members would be at liberty to extend their discussion on tax allowances to
all other policies. Dr KWOK, please focus your discussion on the content of the
Bill.

DR KWOK KA-KI (in Cantonese): I am not going to discuss all other policies.
I will only discuss the policy relating to PWDs in the Bill. I must point out how
the Government has neglected PWDs over the years.

Deputy President, no one will object to the proposals in the Bill, which
include increasing the number of tax bands and easing the tax burden on the
public. The ultimate aim of any tax concession is surely to improve the lives of
taxpayers. This is a very simple concept which I believe everyone agrees with.
But in Hong Kong, the several kinds of people mentioned by me are just unable
to have their lives improved through tax concessions.

In today's Hong Kong, property prices are high, the employment rate of
PWDs is low, and the elderly are not properly cared for. In the circumstances,
these so-called tax concessions are so unappealing that they should not even be
called sweeteners. What is going on now is like someone giving you a cup of
bitter tea—I would be given a preserved plum to go with bitter tea when I was
small—or a cup of bitter poison, together with a tiny preserved plum that you can
swallow in less than three seconds. With their tax returns for this year in their
hands, taxpayers cannot stay happy for more than three hours; they can no longer
be happy when they think of the rents they have to pay, current property prices
and the circumstances of society. The latest economic figures released by the
Government show a growth in GDP, but why are Hong Kong people increasingly
unhappy at the same time? Our happiness index has been declining. Has the
Government reflected on what it has done? It had better not tell us that these are
the only measures it can take.

In fact, the Government is pretending that it is ignorant, incompetent and
unable to deal with problems. It knows full well that there are things it will do,
and there are things it will not do. Yet, judging from these tax concessions, I
absolutely do not think the Government will make Hong Kong people happier. Neither the lowest income group nor the middle class will feel any warmth from the Government. Those who can get the most warmth from the Government are perhaps businessmen, but they will not thank the Government. As I said just now, the business sector has asked the Government for money on the one hand and attacked the Government on the other. The Government is only wasting its efforts on something meaningless. I can hardly object to these tax concessions, but I will not agree with them, and I will not thank the Government, because the way it has treated the middle class and all taxpayers over the years is heartless and unrighteous. These measures are by no means sufficient compensations.

I so submit.

DEPUTY PRESIDENT (in Cantonese): I remind Members once again that this Council is now holding the Second Reading debate on the Inland Revenue (Amendment) Bill 2018. Pursuant to Rule 54(3) of the Rules of Procedure, the debate should focus on the general merits and principles of the Bill. I hope that Members will conduct the debate in accordance with the Rules of Procedure.

MR KENNETH LEUNG (in Cantonese): Deputy President, you need not remind me. I will comment on the five major changes introduced by the Inland Revenue (Amendment) Bill 2018 ("the Bill") one by one. As pointed out by Mr WONG Ting-kwong, Chairman of the Bills Committee, just now, the Bill aims to implement various proposals concerning tax concessions in the 2018-2019 Budget, and introduce amendments concerning other matters. The Bills Committee completed the scrutiny of all clauses of the Bill by convening only one meeting. What is the reason for the speedy scrutiny? As indicated by many Members, such relief measures, which had been implemented in the past, are reintroduced this year. While the remark made by many people that the relief measures benefit the middle class is valid, it cannot reflect all the changes introduced in the Bill.

First, regarding the widening of marginal bands and lowering of marginal rates for salaries tax, the revised marginal rates will be 2%, 6%, 10%, 14% and 17% respectively, and the tax bands will be widened from $45,000 to $50,000 each. Certainly, as known to many Members, middle-class people face heavy
tax burden but receive little help from the Government, for we believe in self-reliance. Sitting on a surplus of some $148 billion, the Government should use the excessive taxes collected for the purposes of first, reallocating resources; second, reimbursing taxpayers. Which taxpayers will be reimbursed the excessive taxes collected? Pursuant to the Bill, the Government will reimburse excess taxes paid by taxpayers. This rationale is acceptable by all.

Regarding the adjustments of marginal rates and tax bands, I once raised a question at the Bills Committee, that is, why salaries tax was computed by ways of standard rate and progressive marginal rates. Under the taxation system of Hong Kong, the only tax that is computed at progressive rates is salaries tax. The Government is committed to reallocating resources only if the amount of tax is computed merely at marginal rates. The reason is that it is rather time-consuming and fruitless to compute salaries tax at both the standard rate and marginal rates, and then allow taxpayer to pay the lower amount after a comparison is made. Of course, middle-class taxpayers consider that this arrangement is beneficial to them, but if the Government tells them that one of the functions of taxation is to reallocate resources, I believe taxpayers will not mind the assessment of salaries tax merely at marginal rates.

As far as actual cases are concerned, those who need to pay tax at the standard rate are high-income earners with an annual income of $2 million to $3 million, depending on their family conditions and the number of children. If the Government assesses salaries tax only at progressive marginal rates, I do not believe that there will be significant outcry, but the Government certainly needs to handle the matter carefully to avoid opposition from those who have vested interest in salaries tax. The Government should let Hong Kong people know that our taxation system mainly aims at reallocate resources, and assessing salaries tax only at marginal rates will be a long-term target of reform.

Another major change is a one-off reduction of salaries tax for the year 2017-2018 by 75%, subject to a ceiling of $30,000 per case. This is also a measure implemented many times in the past. As I said just now, even though the Government has collected excessive taxes and recorded huge reserves, it does not want to rashly lower the marginal rates for salaries tax or profits tax rates, for such changes will have long-term implications. For this reason, a one-off reduction of tax gives little cause for criticism.
A new change is the introduction of a personal disability allowance, for which Dr Fernando CHEUNG has striven for persons with disabilities ("PWDs"). The amount of this new allowance is $75,000. If a PWD has no income, he needs not pay tax, and the allowance of $75,000 is simply useless to him. Hence, to increase the employment opportunities for PWDs in the long run should be a fundamental solution to the problem. Certainly, the provision of a tax allowance to PWDs is also an initiative that enables the general public to know that the Government will listen to the views of Legislative Council Members and cater to the needs of people of various social strata.

Another change introduced by the Bill is a standing change, which is increasing basic and additional dependent parent and grandparent allowances as well as increasing child allowances. I recollect that at similar Bills Committees last year and the year before last, some Members asked why such allowances were not adjusted based on the Consumer Price Index each year. I am still perplexed today. If such allowances are adjusted based on the Consumer Price Index (C) every year, the Government needs not introduce a new bill every year to adjust such allowances.

The Government has not provided us with a good explanation as to why the adjustments of such allowances are not pegged to the Consumer Price Index. One of the reasons may be related to fiscal management. If there is a hyperinflation rate of 15% in a certain year—I do not see this possibility in the coming 10 years—the Government may find that its revenue cannot cope with a sudden 15% increase in such allowances. I hope that when submitting a similar bill in 2019, the Government will give us a proper reply to this question. As far as I am concerned, a reply has yet to be given to this question. Some Members put such a question to me, and I also did some thinking about why the Government refused to do so.

At similar Bills Committees established one or two years ago, I also asked the Government about why it did not review all the allowances every year. As the Government adjusts dependent parent allowances this year and child allowances next year, it seems that the adjustment of allowance each year is decided by drawing lots, and people are thus befuddled. I look forward to listening to the explanation of the Secretary for Financial Services and the Treasury.
In addition, as regards population policy, I have all along believed that merely providing child allowance is not enough. I hope that the Government will consider offering a cash allowance each year to a family with a child born in Hong Kong to either parent who is a permanent resident of Hong Kong for a period following the child's birth, say when the child is one to five years old, rather than merely provide tax allowance. I will raise such a proposal in response to the Policy Address to be released in October, with the hope of stimulating the population growth of Hong Kong. Certainly, the provision of a subsidy of several thousand dollars each year may not encourage childbearing by Hong Kong people, for there are many other factors that have impacts on childbearing. Deputy President, I shall say no more on this issue, otherwise you may order me to stop speaking on the grounds that I have deviated from the subject.

Regarding the last change, I have to commend the Government. Regarding the holding over of payment of provisional salaries tax and provisional profits tax, clauses 6 and 8 of the Bill seek to amend sections 63E(2) and 63J(2) of the Inland Revenue Ordinance. In each of the past several years, the Government invariably added a new schedule to the Inland Revenue Ordinance, so as to provide for provisions relating to holding over of payment of provisional salaries tax and provisional profits tax on additional grounds. Each year the Government has to stipulate lengthy provisions in this regard and explain to the Bills Committee. When scrutinizing the Inland Revenue (Amendment) Bill 2014, I suggested that the Government should consider introducing a standing provision, which would be better than having to add a new schedule and explain to the Bills Committee each year. I welcome such a change introduced by the Government four years later.

Tax reform is one of the important tasks of the current-term Government. Two of the most important policy objectives of tax reform are: first, to facilitate the reallocation of social resources; second, to stimulate the development of certain industries. Of course, such objectives are out of the scope of the Bill. In general, not only will the Bill benefit the middle class, but it will also take care of families with dependent parents and certain PWDs. Certainly, family or personal circumstances of an individual person will have a bearing on whether he can benefit from the Bill.

With these remarks, Deputy President, I support the resumption of the Second Reading of the Bill.
DR FERNANDO CHEUNG (in Cantonese): Deputy President, first of all, I would like to express my support and appreciation for the inclusion of a new personal disability allowance in the present Inland Revenue (Amendment) Bill 2018 ("the Bill"). With regard to this year's Budget, I have proposed to the Financial Secretary that the allowance currently available only to disabled dependent should be extended to persons with disabilities ("PWDs"), whose employment or overall income would be given an allowance as a kind of encouragement. This year, the Government is able to put it into practice. We seek to promote the employment of PWDs and hope that the Government will take the initiative to employ more PWDs.

As a matter of fact, the employment situation of PWDs is currently very unsatisfactory and there is a lack of information for us to understand the relevant situation. For example, there is no way we can obtain the yearly unemployment rate of PWDs, not to mention the monthly figures, and the latest set of data was released in 2013. According to the Hong Kong Poverty Situation Report on Disability 2013 ("the 2013 report") presented to the Commission on Poverty ("CoP"), the unemployment rate of PWDs was 6.7%, which was more than double of the approximately 3% unemployment rate of the overall population. While the employment rate of PWDs aged 18 to 64 was only 39%, it was 72.8% for the overall population in the same age group. We certainly understand that some PWDs may have difficulties in securing employment in the open market, but it is pretty disappointing to see such a low employment rate, or borrowing a remark from the Census and Statistics Department ("C&SD"), a low proportion of PWDs being categorized as economically active by economic activity status. Therefore, while supporting the introduction of a new personal disability allowance this year, we also call on the Government to implement more positive measures to provide more employment opportunities for PWDs as employment is indeed a fundamental right.

The Government estimated that this proposal would lead to a reduction in revenue by $450 million, but according to my preliminary calculation, I am afraid that the amount has been overestimated. According to the Government's present proposal, only recipients of disability allowance are eligible for this new allowance. Similarly, the allowance for disabled dependent is only given to recipients of disability allowance.
While the statistics of December 2017 showed that there were 146,190 recipients of disability allowance, the 2013 report pointed out that less than 40% of the PWDs were economically active. On this basis, 57,000 PWDs had the opportunity to participate in economic activities and receive income. However, the 2013 report further highlighted that the median monthly employment earnings of PWDs was only $10,000, which was much lower than the median employment earnings of $13,000 of the overall population back then. After deducting the basic allowance of $132,000, there are actually not many PWDs eligible for the $75,000 allowance, unless their annual earnings exceed $132,000. According to the Special Topics Report No. 62 published by C&SD, only about 48% (less than 50%) of PWDs earn more than $120,000 a year.

Based on this percentage, it is projected that of the 57,000 recipients of disability allowance who are income earners, more than 27,000 are eligible for the new allowance. Yet, the number will not be so big if we calculate using the standard rate because the income of PWDs is notably lower. For taxpayers paying tax at the standard rate of 15%, their annual earnings must be over $2 million according to Mr Kenneth LEUNG. Therefore, on this basis, the tax revenue forgone for the Government will at most be about $300 million. I wonder why the Government said that the estimated amount of tax revenue forgone was $450 million.

I nonetheless think that the key is not figure, but the wish that the policy can genuinely promote the employment of PWDs and enable more of these people to become self-reliant. Under the existing system, however, I am afraid that the present tax incentives may not be able to achieve any notable effect for the time being. In my opinion, the Government should at least take the initiative to employ more PWDs.

The Government once said that PWDs represented 2% of the strength of the Civil Service. However, statistics showed that the Government employed less than 90 PWDs every year, only either 70-odd or 50-odd, but more than 200 of them left the Civil Service in each year. In that case, there should be fewer and fewer PWDs in the Civil Service, but how come the percentage of PWDs in the Civil Service has all along been maintained at nearly 2% throughout these years? The truth is most of these employees became disabled only after they joined the Civil Service, and they did not belong to this category before they joined. Therefore, I think the relevant figure misleading as it gives people an impression that PWDs represented 2% of the strength of the Civil Service, which
is deceiving. Thus, while we support the present tax incentives, we would like to call on the Government to achieve this target set for the employment of PWDs. If the target was set to be 2%, the Government should formally recruit 2% of PWDs as civil servants and then extend it to cover subvented bodies or services subsidized by public money so as to provide more job opportunities for PWDs.

I very much agree with the remark made by Mr Kenneth LEUNG just now that the tax system is indeed a mechanism for the redistribution of wealth. The present proposal to increase the number of tax bands from four to five will help to alleviate the disparity between the rich and the poor. But unfortunately, it is not vigorous enough. Hong Kong is well-known for the disparity between the rich and the poor, and as evidenced from the report published by CoP in March this year, our poverty rate is as high as 19.9%. This is precisely attributable to the problem of distribution under a capitalist free market, and the Hong Kong's situation can even be described as the subjugation of the weak by the strong within a jungle-like environment.

The poverty rate of Hong Kong was 19.6% in 2014, 19.7% in 2015 and 19.9% in 2016. After policy intervention, which include tax intervention and welfare provision, the poverty rate became 14.3% in 2014, 14.3% in 2015 and 14.7% in 2016. Deputy President, these figures showed that even with the intervention of tax policy, our poverty problem has not improved.

While wealth disparity and poverty are two different concepts, they are somehow interrelated. And yet, we have failed to effectively bring down the rate of poverty through wealth redistribution. Let us not forget that the Government has already introduced some welfare systems in the past, including the Old Age Living Allowance Scheme and the Low-income Working Family Allowance Scheme (now known as the Working Family Allowance Scheme), which should be able to drastically reduce the size of the poor population and, more importantly, lower the rate of poverty. But unfortunately, we failed to do so.

The Bill will help alleviate the tax burden of 1.34 million taxpayers, and the tax revenue forgone for the Government is about $4,090 million per year. Furthermore, we have introduced a two-tiered profits tax rates regime to help enterprises of relatively smaller scale or having profits less than $2 million, so that their tax payment can be reduced by about $5.8 billion, which has
outweighed the reduction in taxpayer's tax burden resulted from the tax band reform. In addition, there are rates concession and reduction in profits tax. Although these one-off concessionary measures may not be comparable to the present tax incentives, the tax incentives provided in this Budget or the proposed amendments to the Inland Revenue Ordinance for the long term have failed to effectively build a fairer society, make wealth distribution more just, and more importantly, reduce the size of poor population.

Therefore, Deputy President, although we do not oppose the Bill which is heading towards the right direction, the proposals are not vigorous enough. While low-income earners may not be able to benefit from the Bill, many middle-class people are now bearing many additional expenses, including the expenditure on children's education. Many middle-class families have to plan for their children's education, and families with children having special education needs may incur even more additional expenses, but the assistance provided by the Government may not benefit them at all. As for housing expenses, I do not have too much to say because the current property prices have far exceeded the affordability of an average person. As for medical expenses, a large number of medicines are still purchased by patients.

With a lack of protection in basic health care, education and housing, even income-earners feel insecure. If the Government wants to do a better job, it will have to devote more resources to these areas. If the Government asks where the money comes from, the present tax reform or tax revision may provide the necessary funding. If we adopt progressive tax bands and abolish the standard rate as proposed by Mr Kenneth LEUNG, so that tax payment will be calculated on the basis of progressive tax bands, I believe government revenue will greatly increase. The Government can then devote more resources and bring benefits to the middle class and low-income earners.

Deputy President, I so submit.

MR CHAN CHI-CHUEN (in Cantonese): Deputy President, I support the direction of the majority of the proposals contained in the Inland Revenue (Amendment) Bill 2018 ("the Bill"), but there is certainly plenty of room for improvement.
The Bill mainly covers a few key proposals, for example, increasing the number of tax bands for salaries tax and tax under personal assessment from four to five and widening the tax bands from $45,000 to $50,000; increasing the child allowance and an additional one-off child allowance in respect of each child born in the year of assessment; increasing both the basic and additional dependent parent or grandparent allowances as well as raising the deduction ceiling for elderly residential care expenses for each eligible parent or grandparent. I support the proposals to widen the tax bands and increase the child allowance, dependent parent allowance and the deduction ceiling for elderly residential care expenses. The proposal to introduce a new personal disability allowance for eligible taxpayers with disability, which Dr Fernando CHEUNG indicated support earlier, has been put forward for quite some time and is finally put into practice by the Government this year. Apart from the provision of the disabled dependent allowance, persons with disabilities also enjoy tax allowance for working, which is considered more reasonable.

Members of the public are facing a rising cost of living, especially in housing and consumer prices, and the increase in rental has resulted in inflated prices of commodities and a heavier burden on the general public. Given that the Treasury is flooded with cash, it is reasonable to increase the tax allowances or broaden the tax base to relieve the tax burden of middle-class families. However, I would like to point out that increasing the child allowance to $120,000 may not be very helpful. As we all know, nowadays parents spent at least $10,000 per month on their children, so it is reasonable to further increase the child allowance to $150,000.

Mr Kenneth LEUNG just now queried that the provision of an additional one-off child allowance in respect of each child born in the year of assessment could have the effect of encouraging childbearing. In my opinion, parents should not have this idea at all as this measure can only slightly reduce their burden. If the Government really wants to encourage childbearing, it should provide bonus instead of tax allowance, for example, a bonus of $100,000 will be given to each child born. Deputy President, will you give birth to another child because of the bonus given by the Government? I think the majority of parents will not do so. When I discussed the population policy with Carrie LAM back then, I pointed out that it was not the low tax allowance that discouraged people from having children, but the poor environment of Hong Kong which had turned our children into hostages. Of course, she rebutted, saying that people dared not have children probably in view of the rows and fights in this Council. In fact,
the real cause is an absence of a population policy in Hong Kong, and there is not any policy to encourage childbearing. All the piecemeal measures to provide tax allowances are of little help only, so Members should not associate this with encouraging childbearing.

Increasing the dependent parent allowance to $50,000 is not sufficient as well, because the monthly allowance will be less than $5,000 if the whole sum of money is spread out, I therefore propose to increase the allowance substantially to $100,000. Since we do not have universal retirement protection and it is the society's understanding that children have the basic responsibility to support their parents and enable them to age in the community, thus there is still room to further increase the dependent parent allowance.

However, I am most unhappy about the taxation relief arrangements proposed in the Bill. According to clause 9 of the Bill, the Government proposes to reduce the salaries tax by 75% for this year, subject to a ceiling of $30,000 per case. The Government has included this measure under the part of "Sharing Fruits of Success" of the Budget, highlighting that while the measure will reduce tax revenue by $22.6 billion, it is estimated that 1.88 million taxpayers will benefit. The stance of the People Power and I is very clear, we prefer a direct refund to all people to the provision of rates concession or reduction in salaries tax.

There are certainly divergent views among Members of this Council, but in spite of our different views, I have great respect for Dr Fernando CHEUNG because he is consistent in logic. He opposes giving cash handouts, thinking that the Government is lazy in providing of rates concession and salaries tax refund, and it should better utilize our resources. This is the viewpoint of Dr Fernando CHEUNG, which is different from mine, but at least his views are consistent. Nonetheless, in this Council, some Members oppose the direct refund of money to each person on the one hand, but on the other hand, remain neutral with the provision of rates concession and reduction in salaries tax and tax under personal assessment. I think they should rise to explain clearly to members of the public why they oppose a direct refund to each person but support the present proposal to reduce salaries tax and tax under personal assessment. What is the logic behind? Do they think one should work more and earn more or do they consider it necessary to ease the livelihood pressure of the "kings of employees"? This is what we need to think very clearly.
Next, I would like to analyse with Members the number of people who can fully enjoy the $30,000 tax concession. Since the Government has fine-tuned the structure of the tax bands in the Bill, it is very difficult for us to accurately predict the number of people who can fully enjoy the tax concessions of $30,000 this year using the past statistics. However, in order to fully enjoy the $30,000 tax concession, the average tax payment should reach as high as $40,000 or more. According to the 2015-2016 salaries tax assessment, about 3.59% of taxpayers earning an annual income of $700,000 to $800,000 paid a tax of $40,000, which means that taxpayers earning this amount or more will be able to fully enjoy the $30,000 tax concession.

However, since the Government has proposed to widen the tax bands, perhaps only those earning an annual income of $800,000 to $900,000 may fully enjoy the tax concession of $30,000. Given the high cost of living at present, even people earning a monthly income of $60,000 to $70,000 will have great difficulty in renting flats. Are they worthy of our help? They are worthy of our help because the living conditions of people earning $60,000 to $70,000 and those earning $20,000 to $30,000 are actually more or less the same, and it is possible that people living in public housing are happier than households earning $60,000 to $70,000 per month. Can the $30,000 tax concession, which is approximately equivalent to half of their monthly income, help them improve their quality of living? I think it can. However, should people whose total earning is well above this level deserve to have this tax concession of $30,000 as well? I doubt it.

The Treasury has been overflowing with cash for many years, so if the Government wants to spend money and share the fruits of success with the community, the simplest way is to give rates concession and tax rebates by sticking to the old rut, which has never been challenged. Nor has the Government considered more reasonable and better alternatives. Even if rates concession will be provided, which is the subject of the relevant bill to be discussed later on, in the words of the Government, can the measure be more target specific?

According to the 2015-2016 Annual Report, the average tax payable by a taxpayer earning an annual income of $1 million to $1.5 million was $119,000, whereas that of a taxpayer earning an annual income of $10 million and above was $3.18 million. An annual income of $1 million would mean a monthly income of about $80,000, whereas an annual income of $10 million would mean
a monthly income of as high as $800,000. According to the information of 2015-2016, although the number of taxpayers earning an annual income between $1 million and $10 million accounted for only 8.13% of all taxpayers, they paid 72.77% of the tax.

Under the current taxation relief arrangements introduced by the Government, those super high income earners can indiscriminately enjoy the tax concession of $30,000. In other words, not only taxpayers earning a monthly income of $80,000 to $90,000 can enjoy the $30,000 tax concession, those earning a monthly income of $900,000 can also enjoy the tax concession of $30,000. Even taxpayers earning a monthly income of $200,000 to $300,000, including all the accountability Directors of Bureaux and the Chief Executive, will enjoy the tax concession of $30,000. In 2015-2016, there were 150,000 taxpayers earning an annual income of $1 million and above. If each of them is granted the tax concession of $30,000, this alone would lead to tax revenue forgone of $4.5 billion, which is equivalent to one fifth of the $22.6 billion incurred in the entire tax concession proposal.

Is it necessary for the Government to introduce such an indiscriminate or unrestricted taxation relief arrangement? We cannot help but ask how the living conditions of the Chief Executive will be improved if her salaries tax is reduced by less than 10% of her monthly salary, which is nearly $400,000. Will Carrie LAM have fewer meals if she is not given the $30,000 tax concession? We may also ask, for those four "kings of employees" whose annual income exceeded $10 million and their daily income was around $30,000 in 2015-2016, what does the $30,000 reduction in salaries tax mean to them? It is totally unnecessary for us to indiscriminately grant the $30,000 tax concession to taxpayers whose annual income ranges from $1 million to $10 million. Since they do not have any livelihood problems, they will not feel grateful to the Government for the reduction in salaries tax, nor will they have any feeling about the taxation relief arrangement.

Reducing the salaries tax of this group of high-income earners by $30,000 will cost the Government about $5 billion, which is equivalent to one month of the standard rates under the Comprehensive Social Security Assistance, Old Age Allowance, Old Age Living Allowance or Disability Allowance. If this group of people had not been entitled to a reduction in salaries tax, the Government could have given an additional month payment to these recipients. The amount of
$5 billion is also equivalent to 30 times of one-year's examination fee, which is enough to cover the examination fees for the Hong Kong Diploma of Secondary Education Examination in the next 30 years.

In my opinion, the Government should not reduce salaries tax in an indiscriminate manner because one of the functions of salaries tax is to redistribute wealth. People earning higher income should pay more tax, hence the Government can redistribute the tax revenue received from the rich to people in need. However, the present arrangement of salaries tax reduction has instead allowed the super-rich to save $30,000. Can the $30,000 be used in more meaningful way if we seek to utilize resources in a more targeted manner? Therefore, in case the Government introduces salaries tax reduction again in the future, can it impose some restrictions in a more targeted way such that tax revenue will not be unnecessarily reduced?

An alternative proposal that can be considered, which I will also be affected, is to provide that taxpayers paying a tax of more than $100,000 will not be granted any reduction in salaries tax. In fact, we can consider setting the threshold at tax payment of $200,000. Generally speaking, only taxpayers earning an annual income of more than $1 million are required to pay salaries tax of more than $100,000. In that case, taxpayers earning an annual income of $1 million or over $10 million will not be granted any reduction in salaries tax, which is precisely my previous suggestion for the Government to increase tax revenue by $4-odd billion.

If any Member proposes an amendment to the Bill by introducing a limit, such that taxpayers earning an annual income of $10 million or more will not be entitled to the tax reduction, I wonder if the Government would once again oppose the amendment on the pretext that government revenues will be affected, even though the final outcome is an increase of government revenues. A similar case is that when we proposed to impose a limit on the number of units to be granted rates concession or when I proposed to impose a ceiling on the per-square-foot price to be raised in the next section, the Government alleged that the expenditure would increase as a result, which I do not think will reasonably happen. In fact, the Government can simply specify that the tax concessions will not apply to taxpayers earning a taxable income of $1 million or over $2 million. This measure can be implemented without requiring any computer programming.
Due to time constraint, I cannot elaborate any further. I only hope that the Government can implement targeted measures under the principle of "sharing fruits of success", thereby preventing anyone from buying iPhones or travel abroad with the tax savings, which actually is the same outcome as granting tax rebate and rates concessions to or reducing the salaries tax of the "kings of employees". Will the Government consider imposing reasonable restrictions should it introduce tax concessions again in the future, so as to exclude taxpayers who consider the $30,000 saving not helpful and remain indifferent?

I so submit.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Financial Services and the Treasury to reply. Then, the debate will come to a close. Secretary, please speak.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I would like to thank various Members for supporting the resumption of the Second Reading of the Inland Revenue (Amendment) Bill 2018 ("the Bill") today, so as to expeditiously implement various tax concession measures proposed in the Budget this year. I would like to particularly thank Mr WONG Ting-kwong, Chairman of the Bills Committee, and various members for scrutinizing the Bill.

As I said when moving its Second Reading, the Bill aims to amend the Inland Revenue Ordinance, so as to provide that starting from the year of assessment 2018-2019, the following adjustments will be made for salaries tax and tax under personal assessment:

(a) increasing the number of tax bands from four to five with marginal rates at 2%, 6%, 10%, 14% and 17% respectively and widening the tax bands from $45,000 to $50,000 each;
(b) increasing both the child allowance for each eligible child and the additional one-off child allowance in respect of each child born in the year of assessment from $100,000 to $120,000;

(c) increasing basic and additional dependent parent or grandparent allowances. For each parent or grandparent who is aged 60 or above or who is eligible to claim an allowance under the Government's Disability Allowance Scheme, the allowance will be increased from $46,000 to $50,000; for each parent or grandparent who is aged 55 or above but below 60, the allowance will be increased from $23,000 to $25,000;

(d) raising the deduction ceiling for elderly residential care expenses for each parent or grandparent from $92,000 to $100,000; and

(e) introducing a new personal disability allowance of $75,000.

The above tax concession measures will together reduce tax revenue by $6.43 billion each year.

Apart from the above mentioned regular measures, the Bill also provides for a reduction of salaries tax, tax under personal assessment and profits tax for the year of assessment 2017-2018 by 75%, subject to a ceiling of $30,000 per case. The reduction will be reflected in taxpayers' final tax payable for the year of assessment concerned. This measure will reduce tax revenue by $25.5 billion. We hope that the above mentioned measures will help relieve the burden on taxpayers and share the fruits of our economic development.

The Bills Committee has held in-depth and detailed discussions over the Bill. Some Members were concerned about whether the Government should abolish the standard rate, so as to narrow the wealth gap and increase tax revenue. In this regard, I would like to point out that at present salaries tax is calculated at progressive rates on a person's net chargeable income (i.e. assessable income after allowances and deductions) or at the standard rate of 15% on the net total income (i.e. assessable income after deductions but before allowances). If the tax payable on the basis of a person's net chargeable income exceeds the tax charged at the standard rate on the person's net total income, the person is only required to pay the lower amount of tax. This regime aligns with the policy intent to maintain the simple and low tax system of Hong Kong. The Government has no
plan at this stage to abolish the standard rate for salaries tax, but it will continue to regularly review the taxation system of Hong Kong, including the tax bands and rates of various taxes.

Deputy President, I urge Members to support the passage of the Bill, so that we can expeditiously implement the aforementioned measures that will benefit taxpayers. Following the passage of the Bill by the Legislative Council, the Inland Revenue Department will implement the relevant concessionary measures in notices of assessment to be issued from late July.

In addition, I have carefully listened to Members' views, particularly the views of Mr WONG Ting-kwong, Chairman of the Bills Committee, and we will consider such views as and when appropriate in the future. I would like to point out, in particular, that when studying any tax measures, the Government will take into account factors in various areas, such as the prevailing local and external economic environment, the financial position of the Government and inflation. When preparing the Budget each year, the Government will comprehensively take into account various factors. This provides more flexibility than introducing a permanent mechanism and can cater to social needs.

I so submit. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Inland Revenue (Amendment) Bill 2018 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.

Council became committee of the whole Council.

Consideration by Committee of the Whole Council

DEPUTY CHAIRMAN (in Cantonese): Council now becomes committee of the whole Council to consider the Inland Revenue (Amendment) Bill 2018.

Members may refer to the Appendix to the Script for the debate and voting arrangements for the Bill.

INLAND REVENUE (AMENDMENT) BILL 2018

DEPUTY CHAIRMAN (in Cantonese): I will first deal with the clauses with no amendment. I now propose the question to you and that is: That the following clauses stand part of the Bill.

CLERK (in Cantonese): Clauses 1 to 8 and 10 to 15.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): If no, I now put the question to you and that is: That the clauses read out by the Clerk 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): I now deal with the clauses with amendments. I now propose the question to you and that is: That the following clauses stand part of the Bill.

CLERK (in Cantonese): Clauses 9 and 16.

DEPUTY CHAIRMAN (in Cantonese): The Secretary for Financial Services and the Treasury will move his amendments as set out in the Appendix to the Script.

Members may now proceed to a joint debate on the original clauses and the amendments.

Secretary for Financial Services and the Treasury, you may move your amendments.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move my amendments as set out in the Appendix to the Script to amend "Schedule 44" to the Inland Revenue (Amendment) Bill 2018 ("Bill") to "Schedule 43". The Bills Committee had no objection to the amendments.

As the Bill will become a law before the Inland Revenue (Amendment) (No. 6) Bill 2017, we hope to renumber the proposed new schedule to the Bill, so as to reflect the actual order of the schedule after the Bill has become a law. For this reason, we propose to amend "Schedule 44" to the Bill to "Schedule 43". The amendments are purely technical in nature and will not change the essence of the Bill.
Deputy Chairman, I urge Members to support the amendments proposed by the Government.

Proposed amendments

Clause 9 (see Annex I)

Clause 16 (see Annex I)

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendments moved by the Secretary for Financial Services and the Treasury be passed.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): If no, I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services and the Treasury be passed. Will those in favour please raise their hands?

(Members raised their hands)

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 amendments passed.

CLERK (in Cantonese): Clauses 9 and 16 as amended.
DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 9 and 16 as amended 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): All the proceedings on the Inland Revenue (Amendment) Bill 2018 have been concluded in committee of the whole Council. Council now resumes.

Council then resumed.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I now report to the Council: That the Inland Revenue (Amendment) Bill 2018 has been passed by committee of the whole Council with amendments. I move the motion that "This Council adopts the report".

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Financial Services and the Treasury be passed.

In accordance with the Rules of Procedure, this motion shall be voted on without amendment or debate.
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.

Third Reading of Government Bill


INLAND REVENUE (AMENDMENT) BILL 2018

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

Inland Revenue (Amendment) Bill 2018

be read the Third time and do pass.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Inland Revenue (Amendment) Bill 2018 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.


Resumption of Second Reading Debate on Government Bill

DEPUTY PRESIDENT (in Cantonese): This Council resumes the Second Reading debate on the Employment (Amendment) Bill 2017 ("the Bill").

EMPLOYMENT (AMENDMENT) BILL 2017

Resumption of debate on Second Reading which was moved on 17 May 2017

DEPUTY PRESIDENT (in Cantonese): Mr WONG Ting-kwong, Chairman of the Bills Committee on the Bill, will address the Council on the Committee's Report.

MR WONG TING-KWONG (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on Employment (Amendment) Bill 2017 ("the Bills Committee"), I report on the deliberations of the Bills Committee.

A Bills Committee has been set up by the last Legislative Council to scrutinize the Employment (Amendment) Bill 2016 ("the 2016 Bill") introduced by the Administration in 2016. The 2016 Bill sought to enhance protection of
employees by proposing that the employer's agreement would not be a prerequisite for ordering reinstatement or re-engagement of the employee in cases of unreasonable and unlawful dismissal. Although the Bills Committee on Employment (Amendment) Bill 2016 ("the Former Bills Committee") had expressed support for the resumption of the Second Reading debate on the 2016 Bill, the Labour Advisory Board ("LAB") advised that they would need time to further consult respective organizations on the views put forward by the Former Bills Committee and the amendments proposed by individual members, including those on the ceiling of the further sum. For this reason, the Second Reading debate of the 2016 Bill could not be resumed before the prorogation of the last Legislative Council. The Employment (Amendment) Bill 2017 ("the Bill") is essentially the same as the 2016 Bill except for increasing the ceiling of the further sum payable by the employer to the employee for non-compliance with an order for reinstatement or re-engagement from the originally proposed $50,000 to $72,500 as proposed in the Bill.

The Bills Committee has held a total of three meetings. During one meeting, the Bills Committee has received views from organizations and individuals. I will briefly report on the items of particular concern to the Bills Committee as follows.

(The President resumed the Chair)

Regarding the scope of the applicability of an order for reinstatement or re-engagement, some members have expressed concern about whether the Bill covers employees who are not employed under a continuous contract and foreign domestic helpers. Some members have also taken the view that the scope of the Bill should be extended to cover unreasonable dismissal cases.

The Administration has advised that the object of the Bill is to enhance protection of employees, including foreign domestic helpers, against unreasonable and unlawful dismissal. Hence, the Administration has no plan to extend compulsory reinstatement or re-engagement to other types of dismissal. Employees who are not employed under a continuous contract are also covered by the Bill under certain circumstances, such as the dismissal of employees with work-related injury before the award of compensation.
As proposed in the Bill, on making an order for reinstatement or re-engagement for unreasonable and unlawful dismissal cases, the court or Labour Tribunal must specify in the order at the same time that if the employee is not reinstated or re-engaged as required by the order, the employer must pay to the employee three sums, including terminal payments, compensation and the further sum as proposed in the Bill. As noted by members, in light of the views of the Former Bills Committee, the ceiling of the further sum has been raised from $50,000 to $72,500 or three times the employee's average monthly wages, whichever is lesser. However, despite their respect for LAB's suggestion on raising the ceiling of the further sum, some members have maintained the view that the ceiling of the further sum should be increased to somewhere between $100,000 to $200,000 or six times the average monthly wages of employees, whichever is the higher, in order to provide better protection for employees, in particular high-salaried employees.

The Administration has stressed that the ceiling currently proposed in the Bill is a new consensus reached after thorough deliberations by LAB of, among others, the views of the Former Bills Committee. Any significant changes to the Bill would have to be reverted to LAB for discussion in accordance with the standing practice, which would inevitably delay the implementation of the legislative proposal. The Administration has advised that it would review the need to adjust the amount of the further sum in due course after the implementation of the Bill. In addition, the Administration has reiterated that depending on the adjudication of the court or Labour Tribunal, the employer may be liable to pay all the three sums specified in the order.

Some members have expressed concern that an employer can evade the obligation to reinstate or re-engage an employee by paying the latter the further sum. Some members have therefore taken the view that the employer's failure to comply with an order for reinstatement or re-engagement should be made a criminal offence even though the employer would pay the employee the three sums awarded by the court or Labour Tribunal. This would enhance the deterrent effect against unreasonable and unlawful dismissal of employees, particularly those who have participated in trade union activities.

The Administration has explained that instead of imposing criminal liability on employers, it is the consensus of LAB that the employee concerned should be paid the terminal payments, compensation and further sum in an
expeditious manner. However, an employer who wilfully and without reasonable excuse fails to pay the further sum to an employee commits an offence under the Bill.

The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill, and it will not propose any amendments to the Bill.

President, the Bills Committee has noted that the Administration had intended to resume the Second Reading debate on the Bill at the Legislative Council meeting of 31 January 2018. The Administration had subsequently indicated that it had to withdraw the notice to resume the Second Reading debate because an individual member had proposed amendments to the Bill which had never been discussed at the Bills Committee and LAB. In April this year, the Administration issued a letter to the Bills Committee noting that it had reported to LAB on the amendments concerned and that the Second Reading debate on the Bill could be resumed based on the original proposals.

President, the following is my personal view on the Bill. The Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") and I support the Bill because it will further improve the benefits to employees. Firstly, when making an order for reinstatement or re-engagement, the Labour Tribunal will not be required to obtain the consent of employer in advance, and it must at the same time order a further sum on top of the terminal payments and compensation to be paid to the employee by the employer in the event that the employer fails to reinstate or re-engage the employee as required by the order. Under this arrangement, the employee will be spared the need to file another application to the Labour Tribunal and will obtain the further sum the soonest possible.

In addition, the ceiling of the further sum has also been raised. As a consensus reached by LAB after considering the views expressed by the last Legislative Council during the scrutiny of the 2016 Bill, the ceiling has been raised from $50,000 to $72,500 or three times the employee's monthly wage. Any employer who wilfully and without reasonable excuse fails to pay the further sum to an employee commits an offence.

Furthermore, the Bill also seeks to make supplementary provisions on the procedural arrangement for the engagement of the employee by the employer and the successor or associated company under an order for re-engagement, and on the respective obligations of the parties involved. If the employee is re-engaged
by the employer's successor or associated company, his or her previous length of service with the original employer will be accepted and recognized by the new employer. These arrangements have enhanced the existing Employment Ordinance by strengthening the protection for employees. As such, both DAB and I support the Bill.

During the scrutiny of the Bill by the Bills Committee, Members have particularly raised one point which I will hereby further elaborate on.

Some members have expressed the views that an employer can evade the obligation to reinstate or re-engage an employee by paying the latter the further sum; that the amount of the further sum is not sufficient to deter employers; and that the protection for employees is not adequate. Some members have even suggested that even the employee is reinstated or re-engaged, the employer may still deliberately create difficulties for the employee. In the end, the employee will resign on his or her own initiative over the loss of dignity or suffering beyond endurance. I do not think that will be the case.

In fact, employer-employee relationship should not be viewed as confrontational, and employers and employees should be partners working in collaboration. I strongly believe that employers hope to maintain good, long-term employment relationship with employees. By working shoulder to shoulder, employees will benefit, and their companies can sustain their development. Only then will a win-win situation be created. The so-called unscrupulous or mean employers are only the black sheep in a small number. Frankly speaking, after the Labour Tribunal has made an order for reinstatement or re-engagement, I believe that employers will make arrangement in accordance with the law. However, after employers and employees had confronted each other in court, their relationship would have possibly turned worse, and they would no longer be on good terms even if they work together again. The further sum arrangement offers an alternative arrangement under which employees can obtain the further sum the soonest possible without going through protracted and tedious legal proceedings. This arrangement is thus more beneficial and practicable. The further sum arrangement is a consensus reached between employers and employees through the effective negotiation platform of LAB.

In order to strike an appropriate balance, we should consider not only the need to provide adequate protection for employees, but also the affordability of enterprises, particularly the owners of small and medium enterprises. In
addition to a further sum of $72,500, employees will also get a terminal payment and a compensation not exceeding $150,000. In other words, the employees will get three sums altogether, which should not be regarded as a small amount. This will certainly have an impact on employers.

The 2016 Bill was shelved in the last Legislative Council because a member had proposed amendments thereto, which required further studies by LAB. The same situation has recurred during the scrutiny of the Bill by this Legislative Council. In January this year, after the deliberation of the Bills Committee, a member proposed amendments just before the resumption of the Second Reading debate. Subsequently, the Government had to withdraw the Bill again and report to LAB. I do not endorse the member's move to propose amendments on an ad hoc basis. The Government has currently made arrangement for the resumption of the Second Reading debate on the Bill. And since the amendments of Dr Fernando CHEUNG had not been discussed at the Bills Committee and no consensus had been reached at LAB, both DAB and I oppose the amendments.

Lastly, I hope that the Bill will be passed the soonest possible and will not be delayed time and again. In this way, employees will benefit. I also hope that the Administration will review the implementation of the Employment Ordinance at regular intervals.

With these remarks, President, I support the Bill and oppose Dr Fernando CHEUNG's amendments.

MR POON SIU-PING (in Cantonese): President, I speak in support of the Employment (Amendment) Bill 2017 ("the Bill"). Strictly speaking, the last Legislative Council had almost completed the scrutiny of the Employment (Amendment) Bill 2016 ("the 2016 Bill"), during which the only disagreement was the amount of compensation payable by employer for non-compliance with an order for reinstatement or re-engagement. The Government had agreed to relay the views to the Labour Advisory Board ("LAB") to seek a consensus. The Bill has not been introduced for scrutiny until this legislative session.

Based on the consensus of LAB, the Government has agreed to raise the ceiling of the further sum payable by the employer for non-compliance with an order for reinstatement/re-engagement from the originally proposed $50,000 to
$72,500. This is not the most ideal arrangement, and some members of the labour sector have considered the adjustment inadequate. However, as the representative of the labour sector, I have to respect the consensus reached between employers and employees at LAB. I also hope that this will become the starting point for enhancing the protection of employees in respect of reinstatement.

Although at present the Bill has not set out a mechanism for reviewing the relevant penalties, the Government has undertaken to conduct review where appropriate after the implementation of the relevant proposals. I hope that the Government will honour its pledge by reviewing the operation of the Employment Ordinance sometime after the implementation of the proposals, including the upward adjustment of the amount of compensation.

The Bill is the outcome of the discussion on the amendments of Dr Fernando CHEUNG reverted to LAB by the Government. I understand the purpose of the amendments. I support the Bill under the principle of respecting LAB.

President, I so submit.

DR FERNANDO CHEUNG (in Cantonese): President, the Employment (Amendment) Bill 2017 ("the Bill") is once again submitted to the Legislative Council in its original form. The Bill is mainly to amend Part VIA of the Employment Ordinance ("the Ordinance"), providing that in case of an unreasonable and unlawful dismissal, if the court or Labour Tribunal finds that it is reasonably practicable for the employer to reinstate or re-engage the employee, then even if only the employee agrees, the court or Labour Tribunal may make an order for reinstatement or re-engagement. The Bill also provides that if the employer does not follow the order and terms of the order to reinstate or en-gage the employee, he will have to pay the employee a further sum amounting to three times the employee's average monthly wage, but no more than $72,500.

The point at issue with Part VIA of the Ordinance is whether we agree that an employer can dismiss workers as he likes. We do not think workers are commodities that can be summoned and dismissed by employers at will. The
International Labour Standards also provide that employers must have sound and reasonable grounds to dismiss an employee. An unfairly dismissed employee is entitled to be reinstated or re-engaged to uphold the dignity of workers.

During the colonial era, Mr LEUNG Yiu-chung once proposed an Unfair Employment Bill on behalf of the labour sector. To prevent the passage of the Bill, the British Hong Kong Government took pre-emptive action to introduce certain provisions, which form Part VIA of the existing Ordinance. Compared with the Member's Bill of Mr LEUNG Yiu-chung, many details could not be found in Part VIA. Simply put, Part VIA does not provide employees with the right to fight against unfair dismissal. It can at best plug the legal loophole involving long service payment by preventing an employer from dismissing an employee whose length of service is about to qualify him for long service payment. Though Part VIA has been in force for over 20 years, the Government has no intent to review comprehensively the employment protection provisions. It simply ignores many key issues.

The Bill in question only makes patchy fixes to Part VIA of the Ordinance. As stated in the background brief prepared by the Legal Service Division of Legislative Council Secretariat, the Government completed the review of the relevant provisions in as early as April 2000 and the Labour Advisory Board ("LAB") also admitted in its year book that it agreed to the relevant amendments in 2000. After stalling for 18 years, the Government has yet to complete the relevant legislative procedure. During those 18 years, Matthew CHEUNG (who now takes up the high position as the Chief Secretary for Administration) had been in charge of labour policies most of the time. One can thus see how incompetent government officers are.

More infuriating still, the Government originally scheduled to resume the Second Reading of the Bill in January this year, but in order to avoid causing embarrassment to TANG Ka-piu, a candidate for the Legislative Council By-election, for The Hong Kong Federation of Trade Unions would once again betray workers' interest to support the Government, it decided to withdraw the Second Reading of the Bill. To date, LAB still has not reached a consensus on the issues concerned, yet the Government re-submitted the Bill to the Legislative Council.

The biggest problem of Part VIA of the existing Ordinance is that in case of unreasonable dismissal, without the agreement of the employer, the court or Labour Tribunal cannot make an order for reinstatement or re-engagement. This
is absolutely ridiculous. Will any employer voluntarily agree to reinstate the worker whom he has unreasonably dismissed? Because of this ridiculous arrangement, the provisions on reinstatement in Part VIA of the Ordinance are practically useless. According to the statistics provided by the Labour Department, over 5,000 claims were made by employees under Part VIA between 2011 and 2017. Among them, 4,700 of the cases were concluded and over 3,600 cases (i.e. around 80%) were ruled in favour of the employees. How many employees in those cases were eventually reinstated or re-engaged? None, as expected. The reason is very simple. As an employee can only be reinstated with the consent of the employer or with the consent of both the employer and the employee, the chance of reinstatement is like climbing a tree to catch fish.

The Government now introduces the Bill to slightly revise this ridiculous arrangement. If the Bill is passed, and in future if an employee is unreasonably and unlawfully dismissed for reasons of pregnancy and maternity leave, injury or illness, participation in trade union activities or giving evidence in a legal proceeding, the court or Labour Tribunal can make an order for reinstatement or re-engagement without the agreement of the employer. However, if the dismissal is not unreasonable, without the agreement of the employer, the court or Labour Tribunal still cannot make an order for reinstatement or re-engagement.

Under such circumstances, even if an employee wins the lawsuit, he can basically receive a terminal payment, but the pro-rata severance payment and long service payment that he is entitled to can be offset by the employers' contribution to the Mandatory Provident Fund under the present arrangement. The civil remedy is obviously insufficient and has no deterrent effect on the employer. The principle of civil remedy is to reinstate the victim as far as possible. Hence the first remedy to be considered should be to reinstate the employee to his original post, the second consideration is to re-engage him in a similar position, and only when both remedies are impracticable should a monetary compensation be considered but the amount of money should be sufficient to compensate the actual loss of the victim.

Many people mistakenly think that the Bill now proposed by the Government can reinstate the employee without the employer's agreement. But actually the Bill provides that only when a dismissal is an unreasonable and unlawful can the court or Labour Tribunal make an order for reinstatement or
re-engagement without the agreement of the employer. But the reinstatement or re-engagement of the employee still needs the employer's agreement and hence the final decision still rests with the employer.

According to the Bill, an employee has to overcome three difficult obstacles: to prove that he is dismissed other than for a valid reason; that reinstatement and re-engagement is the appropriate civil remedy and that reinstatement or re-engagement by the employer is practicable. Then he can get the order for reinstatement or re-engagement from the court or Labour Tribunal. Even so, if eventually the employer disagrees, he needs not comply with the order for reinstatement or re-engagement if he pays the employee an amount three times his monthly wages, subject to a ceiling of $72,500. The new section 32N(10) of the Bill stipulates that as long as the employer pays a further sum and other compensations, the employee has no right to enforce the order for reinstatement or re-engagement. The labour sector criticizes that this arrangement is tantamount to allowing the employer to "buy up" the employee's right to be reinstated or re-engaged. That is unacceptable to us.

I have drafted a Committee stage amendment on behalf of the Labour Party, stipulating that the employee can decide whether he accepts the further sum or other monetary compensations payable by the employer in lieu of the order for reinstatement or re-engagement. If the employee does not accept the employer's monetary compensation, he has the right to mandatorily enforce the order for reinstatement or re-engagement. Regrettably, the amendment was ruled by our dear President as irrelevant to the object of the Bill and cannot be proposed. I will propose an amendment to clause 4(1) of the Bill concerning whether the order for reinstatement or re-engagement is reasonably practicable; and also an amendment to clause 5 concerning the amount of a further sum. I will explain the relevant amendments in detail at the Committee stage later on.

Apart from the ridiculous arrangement mentioned just now that without the agreement of the employer, the court or Labour Tribunal cannot make an order for reinstatement or re-engagement in respect of an unreasonable dismissal, there are two other big defects in Part VIA of the Ordinance that have not addressed in this legislative amendment exercise. I think the Government should plug these loopholes as soon as possible.

First, if employees on fixed term contracts do not have their contracts renewed on grounds of their participation in trade unions, pregnancy, work injury, and so on, they cannot claim for civil remedy under the provisions of
unreasonable and unlawful dismissal in Part VIA of the Ordinance. In recent years, an increasing number of employees are employed on fixed term contracts, including teaching and public administration positions. Recently, Dr Benson WONG Wai-kwok, Chairman of the Hong Kong Baptist University Faculty and Staff Union and Assistant Professor in Politics and Public Administration, did not have his contract renewed by the University. It was suspected that his participation in Staff Union activities was the reason. However, owing to the loophole in Part VIA of the Ordinance, he cannot make civil claims. As a matter of fact, at present, over 67,000 people are employed under this kind of employment contract, and over one third of employees in the education sector are on fixed term contract. The loophole deprives employees on fixed term contract of employment protection and the Dr Benson WONG incident is a concrete example of suppressing unions, creating chilling effect and white terror.

Another major defect of Part VIA of the Ordinance is that even if an employee is unreasonably and unlawfully dismissed, without an order for reinstatement or re-engagement, he can only receive a compensation not exceeding $150,000, which is against the general principle of civil protection, that is, the amount of compensation must be sufficient to cover the victim's actual loss. A case in point is that in 2011, it was ruled that Cathay Pacific Airways had unlawfully and unreasonably dismissed 49 pilots and the compensation, subject to a ceiling of $150,000 could hardly compensate the loss of pilots. In fact, the average monthly wage of these pilots was above the ceiling of $150,000. Subsequently, the pilots had to file lawsuits against their employer on account of libel and each of them was awarded a compensation of $700,000.

The four anti-discrimination ordinances have not set any compensation ceiling. The biggest difference between the Ordinance and the four anti-discrimination ordinances is the compensation ceiling set in the Ordinance. The most important reason is that the four anti-discrimination ordinances have not been discussed by the Labour Advisory Board ("LAB"). As the late lyricist Richard LAM once said, "If you see Natalis CHAN showing up in any television programme, you will know that the programme will definitely be amateurish and frivolous, just like a farce." LAB is just like Natalis; any labour protection legislation discussed by LAB will become neither fish nor fowl … (The buzzer sounded) serving no purpose and a waste of time.
MR LEUNG YIU-CHUNG (in Cantonese): President, after many twists and turns, the Employment (Amendment) Bill 2017 ("the Bill") is finally submitted to the Legislative Council. Although the provisions of the Bill on the order for reinstatement show a great improvement on the existing arrangement, they are still far from adequate in protecting the rights of employees. The reason is that the employer is still taking a leading role, while the worker or the employee is, after all, a commodity, and the right of reinstatement can easily be "bought by" by the employer. In simple terms, I will say the Bill contains only minor amendments and it remains a "toothless tiger".

President, before I discuss the provisions of the Bill, I would like to talk about history. Dr Fernando CHEUNG has actually covered some of the points which I intended to make. He said that during the era of the British Hong Kong Government, I intended to move a bill on unfair dismissal. Back then, I met with Mr Stephen IP, who was the then Commissioner for Labour. After Mr IP had understood the contents of my bill, he conscientiously looked up the unfair dismissal legislation in the United Kingdom, made some amendments and turned them into the provisions on protection of employees in the Employment Ordinance ("the Ordinance"). However, as pointed out by Dr Fernando CHEUNG, those provisions only plugged the loopholes concerning long service payment. Could the objective of protecting employees against unfair dismissals be met? No, they could not. Thus, even now, the provisions cannot protect workers or employees when they are unreasonably and unlawfully dismissed.

The former version of the Employment Ordinance had been in force for many years until 1999 when the Labour Department tried to improve the arrangement by proposing reinstatement of employees if they were unreasonably and unlawfully dismissed. Unfortunately, the proposal was ridiculous in the sense that consent of the employer was required if the employee demanded reinstatement. That was absurd. The employee could only be reinstated after dismissal if consent was obtained from the employer. Unless the employer was schizophrenic, how would he consent to reinstating the employee after dismissing him? The practice did not make any sense at all. Nevertheless, for reasons unknown, the Labour Department or the Commissioner for Labour surprisingly adopted such a senseless practice. Then, in 2000, the provisions were reviewed, but no major improvement was made and the arrangement for implementing an order for reinstatement continued.
Since then, 18 years have passed. During this time, the Government has neither conducted any review nor held any serious discussion with the labour sector and the issue was only recently raised for discussion. The Government has procrastinated on the issue of reinstatement for about 20 years before the Bill was introduced into the Legislative Council. Is the arrangement for reinstatement currently proposed a big improvement? President, I am still very disappointed because the biggest change introduced by the Bill is that for employees who are unreasonably and unlawfully dismissed, the Labour Tribunal will no longer seek the consent of employers before issuing an order for reinstatement or re-engagement.

Nevertheless, President, the Bill has also opened a back door for employers at the same time. If the employer fails to comply with the court order for reinstatement of the employee, he is only required to pay a further sum equivalent to three times the employee's average monthly wages or a maximum of $72,500, and then the matter will be settled. The employer will only commit a criminal offence if he is unwilling to pay $72,500. In other words, even if the Labour Department or the Labour Tribunal has ruled that the dismissal was unreasonable and unlawful, the decision of reinstating the employee still rests with the employer. If the employer is willing to pay the sum, the dismissed employee still will not be reinstated. Thus, to employers, the Bill still has no deterrent effect; and to employees, there is still no certainty about reinstatement. Therefore, I am still disappointed.

In fact, from 2011 to 2017, among more than 5,000 applications regarding unreasonable and unlawful dismissals, judgment in favour of the employees were granted in more than 3,600 cases. However, how many employees in these cases were reinstated or re-engaged as requested? Members could have guessed the answer: none. It is that simple. The results show that even though the employee has won the case, if the employer disagrees to reinstate the employee, he has other options. Hence, the chance of reinstatement is almost nonexistent. For those employees who want to be reinstated, dismissal not only deprives them of the dignity of work, but also affects their livelihood. If the court rules that they are entitled to reinstatement, but the employer disagrees, they can at most obtain compensation of not more than $72,500. How much protection is that for an employee?

Besides, most importantly, what the employee wants most may not be monetary compensation, but dignity of work, fairness and the genuine right of reinstatement. How can we call something a right which can be "bought up" by
money? Thus, after the court has granted an order for reinstatement, the employee cannot freely choose whether to accept reinstatement or not, but the employer can decide whether he will reinstate the employee or pay compensation. Such an approach completely contravenes the underlying concept of reinstatement.

President, from this perspective, the Bill not only fails to protect the employee's right of reinstatement, but also frees the employer of any worries in dismissing the employee unreasonably and unlawfully. The reason is that the employer can solve all problems just by paying money. This approach is therefore unacceptable.

Moreover, the protection of the Bill only covers employees who are unreasonably and unlawfully dismissed. If the employee is only unreasonably dismissed, he cannot obtain any protection under an order for mandatory reinstatement. In fact, it is very difficult to meet the two criteria of "unreasonable" and "unlawful" at the same time. In addition, the employee also needs a favourable court judgment before he can have any chance of reinstatement. Even if the court rules that the employee is entitled to reinstatement, such a right can still be "bought up" by the employer. After all, does the Bill seek to give employees the right of reinstatement, or is it only making pretences by stipulating the employee's right so as to meet the expectations of society? President, the threshold for reinstatement is really too high; the obstacles for reinstatement are really too numerous; and compensation for employees is really too little.

What are the causes for these problems? The law provides a very wide range of reasons for reasonable dismissal, including the conduct of the employee, the employee's capability for performing the job, operational requirements of the business, etc. The scope of the fifth reason, "other reason of substance", is even wider and it is difficult to set the criteria. Thus, it is very difficult for employees to meet the criterion of "unreasonable dismissal". Besides, the scope of "unlawful dismissal" is very narrow too. The dismissal will be unlawful only if the employee is dismissed due to pregnancy, during maternity leave or sick leave, due to work-related injury or participation in trade union activities. I think it will be even more difficult to meet these criteria. Thus, the threshold for obtaining the relevant protection is really very high.
The Neighbourhood and Worker's Service Centre and another community group (the Hong Kong Chef Union) conducted a survey last year. Among the interviewees, 70% thought that if an employee was dismissed because of his/her political or sexual orientation, the dismissal should be regarded as unfair too. Nevertheless, these factors are not included in the current legislation and the Bill has not touched on these areas. I think the scope of protection for employees provided by the Bill is very narrow.

President, in my view, when assessing the efficacy of the Ordinance in future, the Administration should consider more from the perspective of employees. It should conduct further reviews and widen the scope of protection. We think that the applicability of the order for reinstatement should be extended to cover employees who are unreasonably dismissed and employees who have been employed for less than two years, including casual workers employed under a "4-18" continuous contract. The Government should keep abreast of the times and further extend the scope of unlawful dismissal to cover employees who are dismissed because of their political or religious stances or sexual orientations.

President, finally, I would like to talk about the problem of the Labour Advisory Board ("LAB"). In discussing the right of reinstatement, the Government keeps stressing that LAB is a bridge of communication between employers and employees. Nevertheless, to the labour sector, LAB is an authority which is doing an absolute disservice or obstructing employees from getting their protection.

President, why do I say so? That is because the Government proposed to amend the Ordinance and tabled a bill in the Legislative Council back in 2016. According to the provisions of the bill at that time, if the employer refuses to comply with an order of the Labour Tribunal and fails to arrange for reinstatement of the employee who has been unreasonably or unlawfully dismissed, the employer is required to pay compensation of not more than $50,000. The amount of $50,000 was provided then. Nevertheless, the labour sector considered the amount too little and so the democrats and Members of the labour sector strongly proposed to raise the amount from $50,000 to $100,000. The Government said we could certainly make the proposal, but it shirked its responsibility by passing the proposal to LAB for discussion, and more than a year was spent on the discussion. LAB procrastinated by proceeding slowly with the discussion and the result of the discussion was to slightly increase the amount by adding $50,000 and $100,000 and dividing the sum by two. That is how the amount of $72,500 is arrived at.
President, undoubtedly, the amount has increased, but is the protection effective? I do not think so. To our great regret, that was not the end of the matter. As Dr Fernando CHEUNG mentioned earlier, the Government originally intended to submit the Bill to the Legislative Council for Second Reading in January. At that time, Dr Fernando CHEUNG submitted an amendment to increase the further sum to six times the employee's monthly wage and abolish the ceiling. Nevertheless, due to political considerations, the Government surprisingly passed Dr CHEUNG's proposal to LAB again for discussion. That was an attempt to avoid giving the public a negative impression of royalist Mr TANG Ka-piu, a candidate for the Legislative Council by-election, and to save him from the embarrassment of being accused of betraying workers by neglecting their interests. Thus, the matter dragged on even further.

This incident blatantly reveals that LAB can actually deprive Members of their right of deliberation in the Legislative Council. While Members were preparing to discuss the Bill, the Government gave a grandiose excuse and passed the amendment to the Bill to LAB for discussion. In this way, the Government could not only buy time, but also change the result. If agreement could not be reached between employers and employees, the Government would not submit the proposal to the Legislative Council. Hence, if the proposal is to be submitted to the Legislative Council, agreement has to be reached by both parties. Since that is the arrangement, can the Legislative Council still perform any function? The Legislative Council should be responsible for monitoring the Government and urging the Government to implement policies, but the Government has used LAB as a shield to block all proposals and prevent Members from serious discussing policies. I think such an approach is highly regrettable.

For years, we have been asking the Government to review afresh whether it should maintain the current structure of having LAB and the need for reaching a consensus between employers and employees. Should the Legislative Council follow the decision of LAB? That is the biggest question. Today, as we discuss the right of reinstatement, I also hope that the Government will not only review the relevant issues in the future, but also the role and operation of LAB. Otherwise, LAB will only be an additional barrier to the labour sector, preventing us from smoothly deliberating labour issues in the Legislative Council.
MR CHEUNG KWOK-KWAN (in Cantonese): President, the Government introduced the Employment (Amendment) Bill 2017 ("the Bill") to amend the Employment Ordinance ("the Ordinance") to empower the court or Labour Tribunal to make a compulsory order without securing the consent of the employer for reinstatement or re-engagement of an employee who has been dismissed unreasonably and unlawfully, if the court or Labour Tribunal considers making such an order appropriate and compliance with it by the employer reasonably practicable. Under the proposed amendments, the court or Labour Tribunal may also order the employer to pay a further sum to the employee in the event of non-compliance with the reinstatement or re-engagement order. An employer who fails to pay the further sum wilfully and without reasonable excuse will commit an offence.

President, tracing the history of the Ordinance, the provisions relating to the protection of employees' entitlement to the right to reinstatement in the event of unreasonable dismissal came into effect in June 1997. Nevertheless, given that in the past, even if the employer was convicted by the court for unreasonable dismissal, his consent was required for the reinstatement of the employee, and non-payment of penalty on the part of the employer was not an offence, hence employees who were unreasonably dismissed could seldom be reinstated. It can be said that the protection has existed only in name. In order to address the situation, the Government and the Labour Advisory Board ("LAB") thus proposed to amend the Ordinance.

Looking back on the course of amending the Ordinance, it can be described as full of twists and turns. First, the authorities introduced the Employment (Amendment) Bill 2016 ("the 2016 Bill") in as early as March 2016. The Bills Committee of the last Legislative Council had also completed the relevant scrutiny. However, since the matter had to be reported to LAB according to the established mechanism, and different stakeholders in LAB would proceed to consult their respective employer or employee bodies, the 2016 Bill could not pass through Third Reading before the prorogation of the last Legislative Council and was thus lapsed.

Subsequently, a hard-won consensus was reached in LAB in September 2016 after five rounds of public consultation. The authorities then introduced the Bill to the Legislative Council again in May 2017. The Bills Committee of the current-term Legislative Council has completed scrutinizing the Bill, and the
Bill was also scheduled for resumption of Second Reading at the Council meeting of 31 January. However, without giving notice to the Bills Committee, Dr Fernando CHEUNG suddenly proposed some amendments on which a consensus was yet to be reached inside and outside this Council, causing the Government to withdraw the Bill abruptly. The Second Reading procedure was thus aborted again. Today, the Bill can finally be read the Second time. It can be said that the Bill is preceded by trials and tribulations.

The Bill seeks to protect employees. If an employee is dismissed by the employer in the circumstances defined by the Ordinance as without a valid reason (e.g. pregnancy, taking part in trade union activity, injury at work, illness or being retaliated for having testified in court for employment dispute, etc.), then:

(a) the employer's agreement is not a prerequisite for ordering reinstatement or re-engagement of the employee;

(b) the employer must pay a further sum to the employee if the employer fails to reinstate or re-engage the employee, with the amount increased further from $50,000 as proposed in last Legislative Council to $72,500 for enhancing deterrent effect;

(c) the employer commits an offence if the employer wilfully and without reasonable excuse fails to pay the further sum; and

(d) the existing provisions on engagement of the employee by the employer's successor or associated company under an order for re-engagement are clarified, and supplementary provisions on the procedure for such an arrangement are made.

President, in fact, the Bill enhances the current protection in terms of the right to reinstatement provided to wage earners in the event of unreasonable dismissal, and has obtained LAB's consensus reached upon consultation. It is thus worth supporting. However, the Bill was put to a halt when its legislative process was about to complete for the reason that Dr Fernando CHEUNG had proposed unilaterally, without giving prior notice, some amendments that deviated from LAB's earlier consensus. The amendments were proposed without prior consultation of both the employer and employee representatives in LAB, and moreover, they were not minor touch-ups on a couple of words.
Rather, the amendments would amend the Bill substantially. Dr Fernando CHEUNG's amendments have ruined the outcome and consensus of consultation that employer and employee representatives had strived for so industriously in both LAB and the respective Bills Committee of the two terms of the Legislative Council. We can hardly give our consent. Dr CHEUNG's action had even caused the Bill to be withdrawn by the Government for further procrastination of about four months. He has totally ignored wage earners' benefits, and can be said that he is doing a disservice out of good intentions.

The contents of Dr Fernando CHEUNG's amendments are as follows:

(a) in the event that the employer fails to comply with an order for reinstatement or re-instatement, the amount of the further sum he has to pay will increases from three times the employee's average monthly wages to six times the employee's average monthly wages, with the ceiling of $72,500 removed;

(b) in considering whether it is reasonably practicable to order a reinstatement or re-instatement, the court or the Labour Tribunal must not take into account the fact that the employer has already engaged a permanent replacement to take up the original position of the dismissed employee; and

(c) the ceiling of the further sum may be revised by resolution of the Legislative Council (i.e. positive vetting) instead of notice published in the Gazette (i.e. negative vetting).

LAB had convened a meeting to discuss Dr Fernando CHEUNG's amendments; however, not only the employer representatives but also the employee representatives refused to engage in discussion. On the one hand, the employers worried that the proposal of removing the ceiling of the further might be abused, such that employers would not be able to estimate the business costs; on the other hand, the employee representatives also stated that the Ordinance had been discussed by LAB for almost 20 years, and a consensus was only reached after many twists and turns. Such a hard-won consensus should be respected.
President, employment protection is never an easy issue to solve. It is even hard to win a consensus between employers and employees. A consensus reached between both sides in LAB this time around should indeed be supported by us.

Hence, the Democratic Alliance for the Betterment and Progress of Hong Kong supports the Government's Bill, but not Dr Fernando CHEUNG's amendments.

President, I so submit.

MR IP KIN-YUEN (in Cantonese): President, regarding the Employment (Amendment) Bill 2017 ("the Bill"), the Government completed its review on the legislative direction pertaining to the right to reinstatement in as early as April 2000; but it kept procrastinating for 18 years, such that the Legislative Council can only commence the scrutiny of the arrangement on the compulsory order for reinstatement for unreasonable and unlawful dismissal today. Many employees in Hong Kong are looking forward to this labour right.

Although the compulsory reinstatement order was eventually introduced in the Bill and is pending passage by this Council, it has gone through many twists and turns. Actually, the Employment (Amendment) Bill 2016 ("the 2016 Bill") was already introduced to this Council towards the end of the last legislative session, the scrutiny of which had not been completed. Thus, the Government has to introduce the Bill anew to the current Legislative Council. The resumption of the Second Reading debate on the Bill was originally scheduled at the Council meeting of 31 January; however the Government suddenly withdrew the Bill.

As advised by the Government, its reason for withdrawing the Bill was that Dr Fernando CHEUNG's proposed amendments had deviated from the views of the Labour Advisory Board ("LAB"). It thus had to withdraw the Bill and forward the amendments to LAB for examination again. I find this point very odd. First, LAB is an advisory body, whereas the Legislative Council has the function to make laws. If the conclusions drawn by an advisory body cannot be challenged and revised by the legislature, then isn't LAB overriding the Legislative Council and has law-making power? What is the legal basis for
this? In this connection, as mentioned by Mr CHEUNG Kwok-kwan just now, the Legislative Council should attach importance to and respect LAB's views. I believe that we do respect LAB's views, but can LAB monopolize and pre-determine the final conclusion of the Legislative Council? What is the relationship between LAB and this Council in terms of authority after all? I hope the Secretary will give an explanation later in his response.

I notice that the contents of the three amendments that the President allowed Dr Fernando CHEUNG to propose are largely the same as those he intended to propose when the Bill was scheduled to resume its Second Reading at the end of January. Therefore, according to the Government's principle that it put forward last time, it should, theoretically, likewise withdraw the Bill before resumption of the Second Reading this time; but it did not do so. Some people thus surmise that the authorities withdrew the Bill last time for some other reasons, say, saving the labour representative running for the Legislative Council by-election from embarrassment. I do not want to probe into the circumstances, but I am of the view that the relationship between the Legislative Council and LAB must be clearly delineated regarding the powers and responsibilities in making labour laws; otherwise, we can only rubber-stamp proposals submitted from LAB when dealing with the legislation concerned. What actually is the relationship between the Legislative Council and LAB?

President, the importance of compulsory reinstatement lies in protecting employees from being unreasonably deprived of their right to work due to personal preference of the employer or interest of the company on the one hand; and restoring justice to the dismissed on the other. A dismissed employee has the right to reinstatement upon ruling by the court or Labour Tribunal that he was not dismissed due to personal faults.

The Bill has mainly provided for four new arrangements: the introduction of the compulsory order for reinstatement; a further sum to be paid to the employee if the employer fails to comply with the court order; the employer will be held criminally liable if he neither complies with the court order nor pays the sum concerned to the employee; and the employer's successor or associated company is covered by the compulsory order.

The Hong Kong Professional Teachers' Union is the largest trade union for teachers in Hong Kong. Being its representative, I also took part in scrutinizing the 2016 Bill in the last Legislative Council. When the Government
reintroduced the Bill in the last legislative session, it has taken on board our views expressed in the Legislative Council of the last term and made some amendments, which include providing for the payment of a further sum to the employee in the event that the employer fails to comply with the compulsory reinstatement order made by the court, with the amount payable increased from the original "three times the average monthly wages of the employee, subject to a maximum of $50,000, whichever is lesser" to $72,500. Despite the increase, as the representative of my trade union, I still take issue with the sum. Also, I notice that Dr Fernando CHEUNG proposed amendments to the Bill to increase the further sum to six times the employee's average monthly wages with the ceiling removed, so as to enhance the deterrent effect on law-breaking employers.

President, whenever we talk about improving labour rights and welfare, people may think that the protection is mainly for grass-roots workers only, as in the earlier incident of cleansing workers of Hoi Lai Estate fighting for severance payments. However, being the largest employer in Hong Kong, the Government cannot adopt a narrow perspective in respect of labour affairs. The present ceiling of the further sum precisely reflects that the Government has taken a one-sided approach to the labour protection issue.

President, during the scrutiny of the Bills Committee of the last or current Legislative Council, members have expressed concern about the amount of further sum being too low. To certain professional posts, the sum, despite being increased in the Bill, actually fails to protect them effectively. As indicated in the information provided by the Government to the Bills Committee, of the 25 cases of unreasonable and unlawful dismissal handled by the Labour Department between 2012 to 2016 in which the employees requested reinstatement and re-engagement, employees involved in almost half (i.e. 12) of these cases received monthly wages of over $24,000.

Take teachers as an example. The entry point for certificated masters in government and aided schools is Point 14 of the Master Pay Scale, i.e. $27,485; if calculated on the basis of three times the monthly wages, the amount of further sum will be nearly $10,000 higher than the present amount. Sadly, if they were unlawfully dismissed by their employers and not compulsorily reinstated, they could only be compensated with $72,500.
The rationale for the authorities' proposal of $72,500 was that Members of the last Legislative Council proposed amendments to set the further sum at $100,000. Hence, just like bargaining in the market, while the legislators proposing $100,000 on one side and the Government proposing $50,000 on the other, LAB then struck the balance, that is, at around $72,500. First of all, the amount proposed by Members was not a fancy to ask for a sky-high amount. As I just mentioned, the amounts of further sum calculated at the entry point for certificated masters of government and aided schools or the monthly wages of the 49 pilots dismissed unreasonably and unlawfully by Cathay Pacific Airways in 2011 were even higher than the present $72,500. That was why we proposed a further sum of $100,000 in the last Legislative Council, or the sum six times the employee's wages as Dr Fernando CHEUNG has proposed in the current legislative session.

The second arrangement in the Bill is that on the making of a compulsory reinstatement order, if the court considers just and appropriate in the circumstances, it may specify the employer to pay the employee his remuneration for the period between the date of dismissal and the date of reinstatement calculated inclusive of the years of service. As a trade union representative, I support this arrangement as the employees' living should not be affected by unreasonable dismissal.

However, I wish to draw the authorities' attention that there are still loopholes in the present arrangement in protecting teachers. President, common employees contribute to mandatory provident funds, but teachers working in aided schools contribute to provident funds. Provident funds have strict restrictions regarding the years of contribution. If a teacher fails to secure employment as a regular teacher in other aided schools immediately after dismissal, his provident fund account will be cancelled unless approval for retention is given by the Education Bureau; if he fails to collect the accrued benefits in his provident fund account within three years, such benefits will even be forfeited by the Government. Even if the teacher concerned becomes a regular teacher again later, the year of his provident fund contribution has to be calculated anew. This affects his retirement protection rather significantly.

President, I understand that the Bill under scrutiny today is under the scope of the Labour and Welfare Bureau, yet I still hope the Secretary may remind the Education Bureau to plug the gap by amending the Grant Schools Provident Fund
Rules and the Subsidized Schools Provident Funds Rules as soon as possible upon passage of the Bill, such that when teachers apply to the court for reinstatement or re-engagement, they may have their provident fund accounts retained temporarily until the close of the proceedings or the employees' reinstatement, thereby protecting teachers adequately.

President, I support the passage of the Bill by the Council, so that all employees in Hong Kong can be protected under the right to reinstatement whereby the chance of unreasonable dismissal by employers is reduced. However, I also hope that in future, the court can, where practicable, complete the relevant proceedings within a short period of time. We should understand that there is a family burden behind every wage earner. Once he lost his job, the living of his whole family will be significantly affected. Certainly, if the proceedings can be processed more expeditiously, it may also prevent the employer from engaging a replacement for the reason of prolonged trial, thus causing obstacles to the reinstatement of the employee.

Although the Bill extends the coverage of the compulsory reinstatement order to the original employer's successor or associate business, the employee concerned is not returning to his original post after all. This is even more crucial for teachers. In the event that a teacher is unreasonably dismissed by the school, apart from the teacher having to face livelihood problems, students' learning and other progress will certainly be impacted, regardless of whether the teacher concerned is replaced or successfully reinstated. Even if the teacher concerned is finally reinstated, he will have to work in other school under the same school sponsoring body because a replacement has been engaged to take up his work during the course of proceedings. He will thus need time to familiarize with his work and integrate in the workplace.

Therefore, I hope the court will accord priority to reinstating the employee to his original post in processing reinstatement claims. Apart from completing the trial within a reasonable period of time, the court should, when making an order for reinstatement, also ask the employer and employee to make adequate time arrangement so that the employee may return to his original post as soon as possible.

Let me take schools as the example again. Regardless of the reason for the school to dismiss a teacher, it has to fill the post within a short period of time for lessons cannot be conducted without a teacher. However, there might be the
need to recruit teachers at the commencement of a school year, so it is possible to make adjustments. Therefore, the court may consider the actual operation of different professions in making reinstatement orders, so that the employees can be reinstated successfully.

I notice that Dr Fernando CHEUNG proposed an amendment regarding the arrangement for the engagement of a replacement by the employer upon dismissal of an employee. The amendment provides that unless the employer shows to the court that he has substantial reasons to engage a replacement to take up the work concerned, or the dismissed employee did not notify the employer that a trial would commence, the court should order the reinstatement of the employee to his original post without considering that the employer has engaged a replacement. In my view, the amendment is practical, and has also considered the employer's needs. I thus support the amendment.

President, in conclusion, the labour sector has waited for the implementation of the right to reinstatement for almost 20 years, and the progress has been very undesirable. Now we finally have the right to reinstatement, yet we find that there are inadequacies and omissions in employment protection policies. For instance, as I mentioned earlier, the further sum fails to protect employees in professional ranks and the reinstatement order only covers unlawful dismissals. If an employee is dismissed for his political or sexual orientation or in the period before or after taking maternity leave, such unreasonable dismissals are not under the protection of the compulsory reinstatement order. Therefore, the Bill still has a very big loophole regarding the protection against unreasonable dismissal, just that it is only relatively capable of dealing with unlawful dismissal.

I hope that the Government will not consider the passage of the Bill today a success; rather, it should comprehensively review the effectiveness of the legislation one year after its implementation, so as to ensure that this policy and the relevant legislation can protect employees from being unreasonably and unlawfully dismissed by employers.

I so submit.
MR LUK CHUNG-HUNG (in Cantonese): President, as good things take time, the Employment (Amendment) Bill 2017 ("the Bill") concerning the order for reinstatement has ultimately been tabled in the Legislative Council for resumption of Second Reading after years of twists and turns. We hope that no further obstacles will arise and the Bill will be passed smoothly at the Legislative Council meeting this week. Under the existing Employment Ordinance, an employee who has been unreasonably and unlawfully dismissed may seek reinstatement or re-engagement, but the problem is that the Labour Tribunal needs to first secure the employer's agreement before making an order for reinstatement. For this reason, the existing law has indeed a large loophole and is only a "toothless tiger".

The law came into effect in June 1997. Since employers' agreement must be secured, the percentage of employees being successfully reinstated was extremely low. As indicated in government papers, during the five-year period from 2012 to 2016, there were 25 claims for reinstatement made by employees who had been unreasonably and unlawfully dismissed, but none of such claims was successful. As such, there is indeed a problem. In order to rectify this problem, the Labour Advisory Board ("LAB") held rounds of discussions and public consultations before reaching a consensus.

The Government tabled in the Legislative Council the Employment (Amendment) Bill 2016, which provided that the Labour Tribunal was empowered to make an order for reinstating the employee without having to first secure the employer's agreement. Should the employer fail to comply with the order, he has to pay to the employee a further sum three times the employee's average monthly wages subject to a ceiling of $50,000. Since the ceiling was set years ago and the amount was too low, the Government submitted another proposal to LAB for discussion, and after a round of discussion, a consensus was again reached in September 2016 to raise the ceiling to $72,500. When it comes to labour rights and interests, better is better than best, and we need to seek improvements constantly. As a member of a labour group and a Member from the labour sector, I certainly understand this principle. After the Bill concerning the order for reinstatement was again placed on the agenda of the current Legislative Council, we started scrutinizing the Bill, and we finished our scrutiny after holding three meetings of the Bills Committee.

As pointed out by the President, speeches made by Members in the Chamber may not reflect the facts. Dr Fernando CHEUNG said just now that he proposed his amendments at the Bills Committee; I wonder whether he made
such remarks due to absent mindedness or out of other considerations. However, I must stress that Dr Fernando CHEUNG only proposed his amendments before the resumption of the Second Reading of the Bill. He did not propose the amendment at the Bills Committee to simply evade any in-depth discussion at the Bills Committee. Dr Fernando CHEUNG's amendments seek to increase the further sum from three times the employee's average monthly wages to six times, remove the ceiling of $72,500, and stipulate that reinstatement or otherwise should be decided solely by the employee, and the employer cannot pay money to evade reinstatement. These amendments may seem alright, but I must explain why we do not support them.

First, will it be desirable for an employee to be reinstated reluctantly? As the saying goes, "reluctance will not bring happiness". Mr LEUNG Yiu-chung also queried just now whether an employer suffered from schizophrenia if he re-engaged an employee previously dismissed by him. If the employer, after taking the Judge's advice and upon reflecting on his actions, realizes that he is wrong and re-engages the employee, the result will be good for the employment relationship will improve. However, if the employer is still deeply aggrieved and insists that the dismissal is rightful, what will happen if the employee is reinstated reluctantly? From the many cases that we have dealt with, we find that the Bill cannot resolve problems concerning employment relationships. The employer will surely resort to dirty tricks to force the employee to resign, such as not asking the employee to work and forcing him to sit in the toilet. He who has a mind to beat his dog will easily find his stick. A small number of unscrupulous employers may use other reasons to accuse the employee of poor performance and dismiss him after issuing several warning letters. In this case, the employee cannot receive a further sum of $72,500. Hence, sometimes reluctance will not bring happiness. Members should perceive this issue pragmatically rather than theoretically.

Second, as for the further sum, it is certainly the higher, the better. Even if the further sum is set at three times the employee's average monthly wages, we still believe that there is room for improvement, as six times or even eight times or 10 times will certainly be better. Of the six employee representatives of LAB, one comes from The Hong Kong Federation of Trade Unions ("FTU"). FTU is a responsible labour organization which will honour the consensus reached during the negotiations between employers and employees. Why is integrity so important? The reason is that if there is no trust, it will be even more difficult for employers and employees to negotiate in the future. Despite
having to bear the risk of being questioned by the Labour Party and other opposition political parties for not supporting the amendments, FTU still strives to maintain the negotiation results as well as the platform for future negotiation between employers and employees.

Under "one country, two systems", Hong Kong is a capitalist society where employers and employees co-exist. As regards future labour laws, should the labour sector and the commercial sector still have to sit down to negotiate? Is a consensus still needed? LAB is the highest-level body for negotiations between employers and employees in Hong Kong. As we often talk about the concept of collective bargaining, LAB is exactly a platform where this concept is actualized. The employee representatives of LAB, who are returned by some 800 trade unions through "one union, one vote", are highly representative. The practice of consensus politics is so hard to come by that we should not easily break this practice as well as the fragile trust between employers and employees.

Contradictions do exist between employers and employees. Let me talk about philosophy. In dialectical materialism, there is a concept known as the unity of contradictions or opposites. Contradictions do arise among related things. The relationship between employers and employees is one of cooperation, and this will certainly give rise to contradictions. Employees certainly hope to enjoy more rights and interests, while employers hope to minimize costs. Mr CHUNG Kwok-pan, as you are looking at me, do you also think likewise? This is a normal phenomenon. Despite the existence of contradictions, we must cooperate for the smooth functioning of society, and thus unity comes about. According to Karl MARX, seeking unity among contradictions is the impetus to drive social progress and transformation. If we forever stay on opposite sides and fail to identify a unifying point, society will never make progress. When employees insist on labour rights and interests and occupy a high moral ground, and employers continue to be calculating and penny-pinching, society will only come to a standstill.

As such, under the existing social circumstances of Hong Kong, it is very important to maintain consensus politics and a negotiating mechanism between employers and employees. May I put a question to the Honourable Member who did not propose any amendments at the Bills Committee and only proposed his amendments immediately before the resumption of the Second Reading of the Bill: Do we still need a social environment in which employers and employees can engage in negotiations? Should he continue to be domineering, self-centred
and supercilious, holding that others are not striving for labour rights and interests while only his proposals are the best? I hope this colleague will reflect on his act.

Some Members indicated that the Government withdrew the Bill last time because it did not want to embarrass TANG Ka-piu, who represented FTU to run in the Legislative Council by-election New Territories East constituency. I think this saying is unfounded, irrelevant and labelling. Exactly because a Member proposed amendments, the Government had to withdraw the Bill and made the best effort to submit the proposals to LAB for discussion, but LAB still could not reach a consensus within a short period of time. Therefore, the Government decided to first table and pass the Bill in the Legislative Council and it may propose further legislative amendments in the future. The Government decided to withdraw the Bill exactly because it attached great importance to the platform for negotiations between employers and employees. Linking this act with election is simply a means of political mud-slinging.

President, over the past 70 years, FTU has never forgotten its mission of steadily striving for labour rights and interests. From the days of having no labour laws to the introduction of rest days, long service payment, severance payment, paternity leave and maternity leave, etc., we have never slacked off and we constantly seek improvements. In fact, when a consensus has been reached over a bill after discussions, there are certainly other areas in which improvements can be made, but is it good if one leaves no room for future negotiations? If so, one will be penny-wise and pound-foolish. I need to clearly state that FTU today supports the arrangement concerning the order for reinstatement, on which a consensus has been reached by LAB, as well as the Bill introduced by the Government. The Bill may not be impeccable, but there are areas in which progress has been made. If one seeks to damage a well-established platform for communication, it will not be conductive to striving for labour rights and interests in the future.

I so submit.

MR CHUNG KWOK-PAN (in Cantonese): President, regarding the script read out by Mr LUK Chung-hung just now, it will be appropriate for me to read it out once again; for what he said was so true. The relationship between employers and employees should be amicable rather than antagonistic; there should be
negotiation but not confrontation. Such remarks are forever true, and I could not agree more. Regardless of how capable an employer is, he will not attain success without the support of his employees.

Concerning the Employment (Amendment) Bill 2017 ("the Bill") on the order for reinstatement, several Members spoke from the perspective of employees just now, and I now speak from the perspective of employers. That being the case, we all hold the same views. If an employer is required to re-engage an employee dismissed by him, is he schizophrenic? I also agree to the saying that reluctance will not bring happiness. How can there be any happiness if an employer reinstates a dismissed employee reluctantly?

Under the existing Employment Ordinance, if the employer has unreasonably dismissed an employee, and the Labour Tribunal has not made an order for reinstatement, the employer is already required to offer the employee terminal payments and compensation up to $150,000. The Bill provides that if an employer is ruled to have unreasonably and unlawfully dismissed an employee, he has to re-engage the employee; should the employer refuse, he has to pay to the employee a further sum three times the employee's average monthly wages. In other words, the employer is required to pay a further sum in addition to the terminal payments and compensation up to $150,000.

The existing Employment Ordinance only refers to "unreasonable" but not "unlawful". It is easy to understand "unlawful". For example, an unlawful dismissal occurs when an employer knowingly and forcibly dismisses a pregnant female employee. As for "unreasonable", as pointed out by a Member from the labour sector just now, "unreasonable" is abstract and unpredictable. It is not that the employee finds it unpredictable, but the employer. I myself fail to know what is meant by unreasonable dismissal. For this reason, while it is easy to deal with "unlawful dismissal", it is a hassle to deal with "unreasonable dismissal".

Why do I say that an employer suffers from schizophrenia if he re-engages a dismissed employee? After an employer has dismissed an employee whom he was dissatisfied with, even if the employer is in the wrong and is required to re-engage the employee, grudges still exist between both parties, and reluctance will not bring happiness. For this reason, the Bill provides that if the employer refuses to reinstate the employee, he has to pay to the employee a further sum
three times the employee's average monthly wages. I think there are problems with the Bill itself. If there are already grudges between both parties, why should the dismissed employee be reinstated mandatorily?

Mr LUK Chung-hung said just now that an employer might, after realizing that he should not dismiss an employee, be willing to reinstate that employee. However, the Bill stipulates that the court is not required to secure the employer's agreement before making an order for reinstatement. Should the employer refuse to reinstate the employee, he has to pay to the employee a further sum three times the employee's average monthly wages. It seems that the employer is forced to accept this provision. Although the Government claimed that a consensus has been reached by the Labour Advisory Board ("LAB"), given the Government's determination to implement the Bill, employers and employees have been forced to negotiate and LAB would certainly find a way forward.

As I have already pointed out at the Bills Committee, there are serious problems with the Bill. A Member mentioned industrial actions just now, industrial actions initiated by employees of small and medium enterprises may lead to the closure of the enterprises. If those employees are reinstated, will they not initiate industrial actions again? In such cases, the ending can hardly be happy. Despite a consensus reached by LAB, I will not support the Bill, and I have given many reasons just now. It will be better if employers and employees negotiate to resolve their disputes.

Mr LUK Chung-hung gave an example just now, saying that if the court has made an order for reinstatement, and the employer did not want to pay a further sum set at three times the employee's average monthly wages or $72,500, he might find fault with the reinstated employee and forced him to resign on his own accord. In my view, the employer will have a hard time or even suffer from schizophrenia if he takes all possible means to force the employee to resign voluntarily so as to save $72,500. This is therefore not a real-life scenario. The real-life scenario is that the employer would rather pay a further sum.

The employer shall offer the employee terminal payments in the case of an unreasonable dismissal, and pay a further sum to the employee in the case of an unreasonable and unlawful dismissal. This is better than reinstating the employee reluctantly. Following the employee's dismissal, the employer will certainly recruit a new employee to fill the vacancy. If the court rules several
months later that the dismissed employee should be reinstated, should the post be split into two and taken up by two persons? Ultimately one of the two persons will have to be dismissed. In real life, this is simply not practicable.

As such, I do not support the Bill. As for the amendments, I will speak again during the Committee stage. Thank you, President. I so submit.

MR HOLDEN CHOW (in Cantonese): President, concerning the Employment (Amendment) Bill 2017 ("the Bill"), I would like to explain briefly to those who are watching live television broadcast. The Bill is mainly related to the arrangements for orders for reinstatement, so as to provide employees with further protection. In simple terms, if the court makes an order for reinstatement in a labour dispute case and orders the employer to re-engage an employee, the order for reinstatement is basically compulsory and the consent of the employer needs not be secured.

Under the existing mechanism, if the Labour Tribunal or the court makes an order for reinstatement and orders an employer to re-engage an employee, it must secure the consent of the employer. This mechanism has been in place for a long time. The Bill goes one step further and stipulates that where reasonably practicable, the court may make a compulsory order for reinstatement without securing the consent of the employer. To put it simply, the Bill can protect employees who desperately want to be re-engaged.

Of course, there are two sides to a coin. If people think that the protection under the Bill is still not enough, they have ignored the voices of employers, especially the owners of small and medium enterprises ("SMEs"). As pointed out by some employers, if the court makes a compulsory order for reinstatement without securing the consent of the employer, a reluctant reinstatement will not bring happiness. As for some employers, even though they are reluctant, they will comply with the court order for reinstatement. From the perspective of employers, this arrangement is a big step forward but they have to bear a risk, i.e. even if the employment relationship is strained for various reasons, since the court has made an order for reinstatement, the employer is forced to re-engage the employee, leading to various other problems.

In considering the Bill, I hope that we can consider the views of both employers and employees so as to strike a balance. I have also noticed that the Administration introduced the Bill in the light that the Labour Advisory Board
("LAB") had conducted in-depth and detailed discussions in the past and eventually reached a consensus. Therefore, I respect the consensus of LAB and support the arrangements of the Bill.

Although I have not participated in the deliberations of the Bills Committee, I have read the report of the Bills Committee and other papers. I would like to take this opportunity to make a few points. The Bill specifies that if a change of circumstances has occurred after the making of the order for reinstatement, an employer is allowed to apply to the court to change the original order or to apply for relief from the liability to pay the further sum. Many people may hence question why an employer is allowed to apply to the court to change the original order due to a change of circumstances; does it not mean that the making of an order cannot protect the employee?

As a practising lawyer, I am obliged to explain to Members that it is very common for a change to be made to the original order due to a change of circumstances. Let me cite an example. For a divorced couple, even if the court has already issued a decree of divorce and made arrangements for alimony, etc., either party can still apply to the court for changing the alimony clauses in the decree of divorce in future based on a change of circumstances or inability to afford a certain level of alimony. The court will examine whether the changes are true and make a further order.

Hence, I think that this arrangement should be allowed. If an employer is not allowed to apply for a change of the original order for reinstatement based on a change of circumstances, this will differ from the arrangements in many other cases under the existing law. I would like to take this opportunity to bring out this point.

Moreover, Dr Fernando CHEUNG proposed an amendment to increase the further sum from three times the employee's average monthly wages as proposed in the Bill to six times the employee's average monthly wages. If the employer fails to comply with the order for reinstatement made by the court within the time limit, he has to pay the further sum up to $72,500 as prescribed by the Bill. Dr Fernando CHEUNG proposed to substantially increase the further sum from three times the employee's average monthly wages to six times. Of course, Dr Fernando CHEUNG has his considerations but I would like to give a kind reminder. Many colleagues have expressed their views today and Mr LUK Chung-hung, as a representative of trade unions, has emphasized the need to
foster a consensus in the negotiations between employers and employees in order to make progress. If each party makes its own demand and a consensus cannot be reached, the negotiation will break down and ultimately no progress can be made. If a proposal without reaching a consensus is implemented, the negotiation will eventually break down and both parties will not benefit.

LAB has only reached a consensus after prolonged discussion and I think it is more appropriate to set the further sum at three times the employee's average monthly wages. If each party proposes a certain amount, the party asking for a larger amount will certainly get more applause from supporters. Yet, nothing can eventually be achieved, and this is undesirable. It is more preferable to objectively assess what can actually be achieved so that the demand made will be reasonable and practical. If we objectively assess the actual situation and ultimately obtain results that are reasonably expected, we can give a better account to our supporters and the community as a whole.

I support the Bill introduced by the Government on the compulsory order for reinstatement. After the Ordinance has taken effect, I also hope that the Government will conduct regular reviews on matters such as whether the implementation of the compulsory order for reinstatement will lead to more complaints from employers and employees, especially from employers, or whether some new situations will arise affecting many SMEs. I hope that the Government will regularly examine these matters after the Ordinance has taken effect.

As a matter of fact, I have repeatedly stressed that should problems arise in labour relation, it is best for both parties to sit down and discuss, and they should not lightly be put in the limelight. In many cases, if such a tactic is resorted, labour relations will break down and both parties will have difficulties in accepting the reinstatement. After the Ordinance has taken effect, I hope that the Government will continue to conduct reviews in due course and find out if SMEs will be affected and whether follow-up actions will be required.

I so submit, President.

MR GARY FAN (in Cantonese): President, I speak in support of the Second Reading of the Employment (Amendment) Bill 2017 ("the Bill"), as well as the amendments proposed by Dr Fernando CHEUNG.
President, seeing a trade union representative and a business representative speak with one voice today was an eye-opener for me. Just now, Mr CHUNG Kwok-pan of the Liberal Party said that it would not be a problem if he were to read out the script of the speech delivered by Mr LUK Chung-hung of The Hong Kong Federation of Trade Unions ("FTU"). I believe that after seeing this, wage earners in Hong Kong have gained a better understanding of why we are having this discussion today.

Why do we need trade unions? Why do we need legislation to safeguard wage earners? This is because employers and employees are not on an equal footing when they negotiate or debate with each other. That is why we need to provide legislative safeguards for wage earners. If, as Mr LUK Chung-hung of FTU suggested, employers and employees could really solve problems under a consultation mechanism and the important principle of consensus politics through continuous or perpetual discussion, there would not have been such a great need for us to safeguard employees by legislation and deal with problems arising from employer-employee conflicts.

President, in February this year, dissatisfied with a pay adjustment package announced by Kowloon Motor Bus ("KMB"), the Monthly-Paid Bus Drivers' Alliance staged a strike in an attempt to seek an opportunity for dialogue with the management. However, YIP Wai-lam, founder of the Alliance, and her husband LAU Cheuk-hang, who joined her in the strike, as well as two other participating bus drivers, were subjected to reprisal by KMB 11 days after the strike. KMB alleged that the four bus drivers had seriously violated the company's rules, and dismissed them summarily. This was a real-life incident that happened before our very eyes. Subsequently, given the Hong Kong public's large-scale action to support the four bus drivers, KMB was forced to allow them to return to work temporarily pending appeal. It was not until last month that they were officially reinstated.

This case tells us that although the Basic Law expressly provides that Hong Kong residents shall have the right and freedom to form and join trade unions and to strike, in reality it is by no means easy for Hong Kong wage earners to form trade unions to fight for their rights and interests when their employers raise objections or stand in their way. Let us look at some figures. In each of the years from 2012 to 2016, only one to three strikes took place in Hong Kong, except in 2013, which saw seven strikes including the container terminal labour dispute. This was in stark contrast to the situations in many other developed
countries. For example, in 2013, 114 strikes took place in the United Kingdom, and there were 71 and 72 strikes respectively in Japan and South Korea, two of our neighbouring Asian countries. Sadly, the number of strikes in Hong Kong is small not because we have better labour rights and interests than those countries, but because the laws of Hong Kong simply do not provide proper or sufficient safeguards for wage earners who are unreasonably dismissed.

President, if Hong Kong wage earners should be dismissed or picked on by their bosses or supervisors for striking, the price they have to pay for striking is very high. Under the existing laws of Hong Kong, unreasonably and unlawfully dismissed employees may not be reinstated unless with their employers' approval. In other words, where a trade union representative has been subjected to reprisal by his employer, even if the Labour Tribunal rules that it is a case of unlawful dismissal, the employee may not be reinstated unless with the employer's prior consent. President and fellow Hong Kong citizens, as the employer is bent on dismissing the trade union representative in order to weaken the strength of the trade union, how would it be possible for the employer to willingly approve the reinstatement of the trade union representative? Thus, under the existing laws of Hong Kong, a so-called order for reinstatement is just a "toothless tiger" which not only fails to safeguard wage earners but also objectively condones employers' dismissal of trade union members whom they consider disobedient.

According to the statistics compiled by the Labour Department, only 30% of the employees who were unreasonably and unlawfully dismissed between July 1997 and December 2011 and requested reinstatement were eventually rehired. The statistics show that even if wage earners are unfairly treated by their bosses, the current legal mechanism cannot effectively safeguard the employees' right to reinstatement; that is to say, even if there is an order for reinstatement, there is no right to reinstatement.

President, the purpose of introducing the concept of "unreasonable and unlawful dismissal" is to protect wage earners dismissed by their employers for reasons unrelated to their work performance, such as pregnancy, injuries at work, and forming trade unions. However, over the years, due to the loopholes in the Employment Ordinance, even if an order for reinstatement or re-engagement was made in a case of unreasonable dismissal, the order could not take effect unless with the employer's consent. In other words, employers who have unreasonably dismissed their employees are, in effect, entitled to the privilege of unreasonable dismissal, leaving wage earners unprotected.
In fact, as early as 1999, the Labour Department already reviewed the Employment Ordinance, and it was proposed that when dealing with a case of unreasonable and unlawful dismissal, the Labour Tribunal should have the power to make an order for reinstatement if it considered it appropriate and reasonably practicable to do so, without having to secure the employer's consent. Refining the mechanism for making orders for reinstatement is a policy commitment made by the Government more than 17 years ago, but what has the Government done? It has been procrastinating and has not amended the Employment Ordinance over the years. The Bill before us right now is not flawless or perfect. It would be more difficult to make further amendments in the future.

President, originally, the Second Reading debate on the Bill could have resumed in January this year, but at the time, the Government withdrew the Bill on the grounds that the amendments proposed by Dr Fernando CHEUNG were deviations from the consensus of the Labour Advisory Board ("LAB")—this is very similar to the consensus politics mentioned by Mr LUK Chung-hung of FTU in his speech just now—thus preventing the Bill from being read the Second time and delaying this Council's consideration of the Bill. Actually, the fact that the President had given the green light to Dr CHEUNG's amendments was proof that his amendments were within the scope of the Bill, but as the Government disliked his amendments, it suddenly withdrew the Bill and farcically returned it to LAB for consultation. What was the result? President, the result was that after four months, the Bill was resubmitted in its original form to this Council for scrutiny. The objective effect of doing so was, of course, that the Bill avoided the sensitive timing of the Legislative Council By-election held on 11 March. That was why it was reported in the press that the Government "killed the Bill" for the sake of TANG Ka-piu, an FTU member appointed to LAB, so as to save FTU from being put in the awkward situation of having to vote on the controversial amendments to the Bill during the by-election period.

Just now Mr LUK Chung-hung used such words as "unfounded" and "labelling" to describe another Member's comments, and criticized Dr Fernando CHEUNG's clearly admissible amendments over and over again as if they were too wicked to be pardoned. As a matter of fact, any Member had the right to propose amendments even if he did not propose amendments at a meeting of the Bills Committee, and yet Dr Fernando CHEUNG was fiercely criticized by the Member from FTU in the Second Reading debate. President and fellow Hong Kong citizens, fixing the person who brought up the problem does not mean that the problem has been fixed.
Why do I support Dr Fernando CHEUNG's amendments? The main reason is that compared with the Government's amendments, his amendments can better enable the legislation to ensure that only under specific circumstances can employers refuse to reinstate employees on the grounds of having engaged other people, so as to ensure that employers have no excuse not to reinstate employees.

Also, Dr Fernando CHEUNG's amendments seek to increase the amount of compensation to be paid to the employee in the event of the employer's failure to comply with the order for reinstatement from three times the employee's average monthly wages, to be capped at $72,500, to six times the employee's average monthly wages with no cap. My understanding is that as the threshold in the Government's proposal is not high, it means that the employer would be able to "buy up" the employee's right to reinstatement, and with a cap of just $72,500, the sum to be paid would not serve as a sufficient deterrent to the employer, and the employee would have no choice but to accept it. Therefore, it is impossible for any Member, trade union or trade union representative on the side of employees to oppose Dr CHEUNG's amendments.

We should not oppose Dr CHEUNG's amendments for the sake of debate, negotiation and continuous discussion. Just now Mr LUK Chung-hung talked about being penny-wise and pound-foolish. To me, Dr CHEUNG's amendments are "the pound". Mr LUK kept referring to what he called consensus politics, and cited dialectical materialism as the basis of his discussion on contradictions vis-à-vis unity, and ideals vis-à-vis reality. That kind of discussion is actually "the penny". We must not fall into the trap of preaching to wage earners that we have to engage in continuous discussion or perpetual striving, as if it were the solution. It is not.

President, the Government cannot repeatedly use the consensus of LAB as a shield, because the Bill itself is targeted at employers who unreasonably and unlawfully dismiss their employees, and seeking a solution totally agreeable to employers is actually tantamount to sacrificing labour rights and interests. Take, for example, the KMB drivers' strike mentioned by me at the start of my speech. If the people and media of Hong Kong had not expressed concern about the strike and exerted pressure on KMB, KMB as the employer simply would not have made a concession and withdrawn its decision to dismiss the bus drivers. In the small hours of the material day, a number of pro-democracy Members and I went to KMB's Lai Chi Kok Depot to support the several bus drivers. The incident is still fresh in my mind.
What we now see in reality is a serious imbalance in labour relations. The voice of wage earners is often denied the attention it deserves, or even ignored, in the process of formulation of labour policies by the Government. The rights and interests of wage earners are not duly protected, nor has the Government done its part to properly safeguard their rights and interests. Rather, it keeps passing the buck to LAB. Nonetheless, the representativeness of LAB is questionable and debatable, as the outcomes of or solutions emerging from negotiations between appointed representatives of employers and employees are often biased in favour of employers to the neglect of labour rights and interests.

Therefore, President, on behalf of the Neo Democrats, I support the Second Reading of the Bill, as well as Dr Fernando CHEUNG's amendments. I hope the Government will accept his proposals, genuinely take responsibility, and readily follow good advice in safeguarding employees' right to reinstatement. Relying on continuous discussion and consensus politics is not a real solution.

With these remarks, President, I hope the Government will listen to the voice of wage earners in Hong Kong.

DR KWOK KA-KI (in Cantonese): President, I speak to support the Second Reading of the Employment (Amendment) Bill 2017 ("the Bill").

The right to reinstatement is not new to Hong Kong. Just now, I heard many Members, including those from the business sector, expressing their worries about the Bill being abused, such as forcing employers to re-engage their dismissed employees. This remark is somewhat ignorant because under the current Employment Ordinance, the scope of "unreasonable and unlawful dismissal" is so narrow that it basically only covers some special circumstances, such as dismissal of a female employee who has been confirmed pregnant or has served a notice of pregnancy to her employer; dismissal whilst the employee is on paid sick leave; dismissal by reason of an employee giving evidence or information in any proceedings or inquiry in connection with the enforcement of the labour legislation, work accidents or breach of work safety legislation; dismissal of an employee for trade union membership and activities; and dismissal of an injured employee before having entered into an agreement with the employee for employee's compensation. Therefore, anyone who interprets the return of "the right of reinstatement" as a right that can be arbitrarily exercised will merely expose his ignorance.
While it was ridiculous that the Bill was introduced after delaying for many years, the fact that the Bill was withdrawn by the Government in January before the Second Reading was even more ridiculous. On the face of it, the withdrawal was due to the fact that Dr Fernando CHEUNG had proposed a number of amendments without consulting the Labour Advisory Board ("LAB") and thus the Government had to deal with these amendments in all seriousness. However, if the Government had really attached so much importance to Dr Fernando CHEUNG's amendments, it would have made use of this time gap to offer further explanations to Dr CHEUNG and convince all others that the Bill could address the problems without having to make any amendment, or the Government would have put in efforts to refine the Bill. Had it done so? No, it had not done anything.

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

The Government only had one important date in mind, i.e. 11 March, the date of by-election. As we all know, one of the candidates for this by-election was TANG Ka-piu, a former representative of The Hong Kong Federation of Trade Unions ("FTU"). He now represents the Democratic Alliance for the Betterment and Progress of Hong Kong. I have no comment on TANG Ka-piu personally. I am not sure whether the candidate fielded by these organizations will speak from their conscience. I have more trust in him personally than the organizations behind him. Nevertheless, the move taken by the Government was obviously an attempt to canvass votes for the pro-establishment camp. If the Bill was put to vote before 11 March, how would FTU cast its votes? The answer is crystal clear. While FTU has been notorious for betraying workers … I have drawn up a list to show how FTU betrayed workers, but I am afraid I may not have enough time to go into details. The Government was deeply worried that FTU's vetoing of Dr Fernando CHEUNG's amendments would once again expose its duplicity to the public in the Legislative Council.

What is actually so special about Dr Fernando CHEUNG's amendments? He proposes to raise the maximum fine. As we all know, the maximum fine of $72,500 proposed in the Bill is far from sufficient to protect many middle-level employees. Although the Bill has not explicitly stated the pay level of employees to be protected, the law should give protection to all employees, regardless of their pay levels. In a narrowly-defined case of "unreasonable
dismissal" ruled by the Labour Tribunal, if the maximum fine lacks deterrent effect, the employer can hardly be forced to comply with the reinstatement order. Employer associations have made it clear that a rich and powerful employer can always settle the dismissal disputes with money, no matter why the employees were dismissed and how wrong the employer might be. Yet, even if the disputes can be settled with money, the compensation should be reasonable, right? As the monthly wages of high-paid employees are likely to exceed $72,500, will employers be in a highly advantageous position under the present provision? After paying compensation at an amount of less than one month's wage, the employers can act arrogantly and dismiss their employees unreasonably and unlawfully. I therefore consider this amendment necessary, but I am not going to elaborate.

Moreover, I do not think the present legislation can protect employees who are dismissed for participation in trade union activities or for their sexual orientation. The existing Labour Tribunal Ordinance, which is narrow in scope, fails to cover such dismissals. One good example is the dismissal case involving LSG Sky Chefs in 2017. At that time, the large corporation LSG Sky Chefs dismissed its employee NG Chi-fai, Chairman of the Hong Kong Chef Union. Mr NG clearly indicated that his employer was aware of his position in the trade union, but he was dismissed for the ostensible reason of poor attitude instead of his being the Chairman of a trade union or exercising the rights of trade union. Employers can indeed make up lots of excuses for dismissal.

While we will not and should not vote down the Second Reading of the Bill in the Legislative Council at this stage, the Bill is actually riddled with loopholes. Yet, what I find most unacceptable is that Mr LUK Chung-hung from FTU criticized and attacked Dr Fernando CHEUNG recklessly. I do not know if I have enough time to talk about FTU's betrayals of workers. In 1997, the first task performed by the Provisional Legislative Council was to scrap the collective bargaining right. In my view, this is the most outrageous example of FTU's flagrant betrayal of workers. The collective bargaining right is so powerful that it allows trade unions to have negotiations with employers. This right did not come easy as it had taken the labour sector a long fight. Regrettably, the relevant legislation was later repealed for FTU gave its support to the Government in removing the right. This example may only be the tip of the iceberg.
Just now, some Members repeatedly emphasized the representativeness of LAB. In response, I must cite the most representative act of LAB. In our previous discussion of statutory working hours, the then representative of LAB, i.e. Stanley NG, the incumbent Chairman of FTU, echoed the views of employers that contractual working hours should be introduced instead. It goes without saying that implementing contractual working hours is a betrayal of workers. While we had made it clear that statutory working hours must be introduced to protect employees, they went so far as to …

(Mr HO Kai-ming indicated his wish to raise a point)

DEPUTY PRESIDENT (in Cantonese): Dr KWOK Ka-ki, please hold on. Mr HO Kai-ming, what is your point of order?

MR HO KAI-MING (in Cantonese): Dr KWOK Ka-ki just now mentioned Stanley NG, Chairman of FTU. I hope he will give us his source of information, such as whether or not the information came from news articles. I do not believe Stanley NG would make such remarks.

DEPUTY PRESIDENT (in Cantonese): Mr HO Kai-ming, are you asking Dr KWOK Ka-ki to clarify?

MR HO KAI-MING (in Cantonese): Yes, I ask him to tell us the source of information of his earlier remarks. He should not make an unsubstantiated accusation.

DEPUTY PRESIDENT (in Cantonese): Mr HO Kai-ming, please sit down. Dr KWOK Ka-ki, Mr HO Kai-ming has requested you to clarify your earlier remarks. You may decide whether to clarify or not.

DR KWOK KA-KI (in Cantonese): I really do not know how to make clarification if Members do not even bother to read newspapers. I would urge Members to read newspapers.
DEPUTY PRESIDENT (in Cantonese): Dr KWOK Ka-ki, please focus your discussion on the content of the Employment (Amendment) Bill 2017.

DR KWOK KA-KI (in Cantonese): No problem, Deputy President. I do not want my speech to be interrupted either.

Please shut up and respect the Legislative Council.

(A number of Members spoke in their seats)

DEPUTY PRESIDENT (in Cantonese): Will Members please stop voicing your views in your seats. Dr KWOK Ka-ki, please continue.

DR KWOK KA-KI (in Cantonese): Okay. Deputy President, perhaps I happened to have touched a raw nerve of Mr HO Kai-ming. He did not want me to speak out the fact of how FTU had betrayed workers.

The fight for paternity leave is another example. We may recall that when most of the Legislative Council Members representing workers and trade unions were fighting for seven days' paternity leave, FTU gave in and agreed to accept three days' paternity leave.

Over the years, there have been a myriad of incidents involving different trade unions, such as unions of steel-fixers, KMB drivers' unions. Every time when …

DEPUTY PRESIDENT (in Cantonese): Dr KWOK Ka-ki, you have spent too much time responding to FTU's Members. Please focus your discussion on the content of the Employment (Amendment) Bill 2017.

DR KWOK KA-KI (in Cantonese): Deputy President, I will go back to this subject and I hope he will listen. From all these examples, it is well evident that workers may only rely on those Members who truly represent the labour sector to speak up on the issue of unfair dismissal. Today, given the narrow scope of the Bill, the so-called penalties do not have deterrent effect on employers and are
meaningless. For many large corporations, the maximum fine of $72,500 is insignificant. Dr Fernando CHEUNG has therefore proposed amendments to the Bill to better protect labour rights. After the Government withdrew the Bill before the Second Reading, I had hoped that the Secretary would make some improvements. Some months have passed and it is now May, but not even the slightest change has been made to the Bill. I do not think the Bill can do justice to workers since the maximum fine set by the Government does not have sufficient deterrent effect on employers to force reinstatement.

I am not sure when another review of the Employment Ordinance will be conducted, for I have more than once heard that the Government considers the current Bill sufficient. As the Labour Tribunal seldom rules a dismissal as "unreasonable", I am worried that most of the dismissal cases will not be able to meet the criterion. I have therefore heard the remarks made by officers of the Labour Department that the impact of the Bill would be minimal. If the impact is minimal, why not raise the fine level to enhance the deterrent effect? How big can the impact be? Why does the Government insist on adhering to "decisions" which do not represent workers? If the Government believes that the existing LAB is an effective mechanism for solving problems, how come the decisions made after negotiation are met with strong objection? The objection represents the voice of workers.

We all know that FTU is now in control of more than 200 votes in LAB. It is a fact that cannot be changed. I agree that in future, there should be "one person, one vote", so that each worker can cast his vote rather than being represented by trade unions in voting. However, I do not think it is easy to make this change because the Government … at present, FTU is obviously an important component of the pro-establishment camp; FTU is even represented in the Executive Council. On many issues which affect labour rights, such as the absence of collective bargaining right, the absence of adequate paternity leave, the absence of statutory working hours and the absence of universal retirement protection, FTU has indeed sided with the business sector, only that it flaunts the banner of "FTU" to deceive tens of thousands of workers, misleading them into believing that this trade union will fight for their interests. I, however, trust that workers' eyes are discerning. They know which persons and which Members truly represent workers.

With these remarks, I support the Second Reading of the Bill and the amendments of Dr Fernando CHEUNG. Thank you, Deputy President.
MR HO KAI-MING (in Cantonese): Deputy President, I would like to first respond to some Members who smeared The Hong Kong Federation of Trade Unions ("FTU") in the Chamber. Workplace is nothing like our Chamber. In the Chamber, our words do not have to be based on facts; we may rise to give some casual comments and then leave. While Members may leave the Chamber whenever we feel irritated, employees will have to spend one third of their lifetime in workplace. Apart from our beds, workplace is where we spend most of our lifetime. Why does FTU care so much about each piece of labour legislation and hopes to make expeditious improvement? That is because labour protection is far from sufficient in Hong Kong but we spend far too much time in our workplace. FTU therefore spares no effort to make every step forward to improve labour laws.

Just now, a number of Members questioned why the Council did not perfect the Bill in one go. That is also our wish but is it possible in reality? Or can we just fight for every step forward? Dr KWOK Ka-ki has already left the Chamber. If he really cares about workers, why does he not stay in the Chamber till the end of the debate? As we may see, some people only show up when there is spotlight. FTU, however, is always present to help wage earners solve their problems. We have done so over the past 70 years and will keep on helping wage earners even if there is no spotlight.

For example, we helped a pregnant senior manager some time ago. If the Employment (Amendment) Bill 2017 ("the Bill") had been passed before her pregnancy, she would have had more protection. The pregnant employee worked in a renowned international hand cream chain enterprise, earning several ten thousand dollars a month. She never thought that pregnancy would get her into trouble because, theoretically, companies of this kind would have good personnel policies to provide employees with various protections. Unfortunately, soon after her probation period, there were some staff changes in her company. Her supervisor, who previously let her pass her probation in advance, had a drastic change in attitude and fired her right away. Of course, this dispute was immediately mediated by the Labour Department ("LD") for it involved unlawful dismissal even before the passage of the Bill.

Yet, what happened to this employee after her reinstatement? Originally, she worked in a manager's room, but after the reinstatement, she was moved to a desk close to the toilet. Although she was a manager, her company email account was cancelled and her supervisor blamed her for not executing the orders
of the company. Deputy President, how can we know what our tasks are when we do not have access to company emails? If even a senior female employee of a large international chain enterprise had such an unpleasant treatment, how many female employees had been dismissed unlawfully in the Hong Kong society in this new millennium? I guess the number is quite a lot. The lack of legal protection for reinstatement has caused an increase in the number of such cases. I have not yet finished the story. The employee was dismissed two weeks after her delivery. By telling her story, I hope the Government will give more protection to female employees, though her case has nothing to do with the reinstatement order.

Let me go back to the reinstatement order. In fact, this kind of malpractice was common before the enactment of the Family Status Discrimination Ordinance, but relevant cases have dropped after the Ordinance came into effect. I do not expect that pregnant employees are still being badly treated in this era. At present, employees cannot make claims for dismissal after maternity leave because the current legislation does not provide for protection period of postnatal employment. The aforesaid malpractice, which is both unreasonable and unlawful, keeps on recurring in our workplace. Dismissal after maternity leave is not a single incident. Worse still, it is only the tip of the iceberg regarding labour issues.

Under the current legislation, employees may apply for reinstatement or re-engagement after unreasonable and unlawful dismissal. However, their reinstatement or re-engagement requires the consent of employers. LD handled 25 cases of similar nature in the five years between 2012 and 2016. In other words, it dealt with an average of about five cases per year. Why did the Government not take expeditious action to formulate the Bill to protect the employees? We really cannot understand why. Among those 25 cases, there have not been any successful cases of reinstatement so far; there were 13 cases in which the employees agreed not to proceed with their claims after the mediation of LD; and there were four cases where the employers and the employees eventually agreed to settle the disputes with pecuniary compensation.

The arrangement under the current legislation is unsatisfactory because, without the consent of the employer, the employee can never be reinstated as he/she wishes. Moreover, the employer is not required to make any compensation for not consenting to the reinstatement. That was why there were only four cases granted with pecuniary compensation in the past five years (i.e. not even one case per year).
The Bill under scrutiny today concerns reinstatement orders, and can make up for the inadequacies of the current legislation. It does not only offer a legal channel for employees to request reinstatement after unreasonable and unlawful dismissal; more importantly, it allows reinstatement without the consent of employers. If the Bill had been passed earlier, both Ms YIP—the bus driver just mentioned by other Members—and the employee whom I mentioned just now would have had stronger support to fight against their employers. However, as the provisions of the Bill still cannot be invoked, the problems will drag on for the next few months.

Under the reinstatement order provided in the Bill, any non-compliance with the order will cost the employer an additional compensation of $72,500. This sum as well as the terminal payments and the compensation not exceeding $150,000 are required to be paid by employers under the current legislation. Though the amount of compensation is not huge, it can be considered as a kind of protection to employees. This legislative amendment is going to make a real enhancement to the original reinstatement orders since the reinstatement orders made by the Labour Tribunal in future will have the true effect of orders, completely fixing the old problem of allowing employers to decide whether to accept the reinstatement orders or not. Any employers who refuse to comply with the reinstatement order will be required to make compensation. This requirement can make up the inadequacies of the current legislation.

Some employers may worry that the Labour Tribunal may not be in the best position to rule on the reinstatement of employees. However, before making a ruling, the Labour Tribunal will consider the merits of each case. The employer and the employee in question may illustrate their viewpoints to the Tribunal separately for its consideration. LD will also mediate the dispute and submit its report to the Labour Tribunal upon the agreement of the employer and the employee. All parties will have thorough discussions before a ruling is made by the Tribunal. Hence, the Labour Tribunal cannot make arbitrary decisions.

Therefore, there is no point for good employers to worry about this legislative amendment as the Bill only targets at law-breaking employers who dismiss their employees unreasonably and unlawfully. Without unlawful dismissal, no claims will arise from the reinstatement order. Besides, in case of disputes, the Labour Tribunal will be responsible for conducting the trial and making a ruling. It will not just listen to one-sided claims; instead, it will consider the justifications raised by both parties. Therefore, people who come
out to point their fingers are indeed speaking for the unscrupulous employers with the ill-intention of covering up their faults. Deputy President, legal protection for employees should keep up with the times. It has taken 20 years for the reinstatement order to take a step forward and employees have been waiting far too long. We hope that the Bill can be passed smoothly as soon as possible.

I so submit and urge Members to support the Bill.

MR AU NOK-HIN (in Cantonese): Deputy President, before formally presenting my views, I have to talk about the past incidents first. The resumption of debate on the Second Reading of the Employment (Amendment) Bill 2017 ("the Bill") was originally scheduled to be held at the Legislative Council meeting on 31 January 2018, but the Government suddenly withdrew the Bill on 29 January. A few Members have mentioned this point earlier. On the face of it, the Government claimed that a Member's amendments to the order for reinstatement had deviated from the consensus previously reached by the Labour Advisory Board ("LAB"). However, regarding the Bill that we are discussing today, a consensus has yet to be reached by LAB. The so-called consensus is only an excuse and the situation has not changed at all. In fact, LAB had conducted five consultations since 1997 and the consensus finally reached in September 2016 was incorporated into the Bill, but the amendments proposed by Dr Fernando CHEUNG were not incorporated.

The Bill stipulates that if an employer refuses to comply with an order for reinstatement, he should pay to the employee a sum three times the employee's average monthly wages, subject to a ceiling of $72,500. In other words, the employer makes payment to settle disputes. For this reason, we consider that this proposal exists in name only. The Bill is telling us that even if a wage earner is dismissed for participating in a trade union, he can only receive $72,500 as compensation at the most. Even if trade unions have to get involved to settle problems concerning labour relations, the biggest price to be paid by the employer is only $72,500. If an employer agrees to pay a further sum, he can "buy up" trade unions and settle disputes, which is, to a certain extent, a great value for money.

Today, when this Council discusses the amendments proposed by Dr Fernando CHEUNG to the Bill, I feel rather sad. The right of reinstatement proposed by Dr Fernando CHEUNG is actually a basic labour right. If the
Government had taken the initiative to protect the rights and interests of wage earners, we would not have to discuss the amendments in this Council. All those who criticize Dr Fernando CHEUNG for proposing amendments without notice have ignored this fact. Given that LAB has spent so many years reaching the so-called consensus on the reinstatement order, the original ideas of the employees might have changed after repeated discussions between employers and employees. After the submission of the relevant proposals to the Bills Committee and before the tabling of such proposals at the Legislative Council, many functional constituency Members have gravely distorted the appeals of employees. Dr Fernando CHEUNG wants to make public the real plight of wage earners. If he does not propose amendments without notice, how can the amendments be discussed in the Legislative Council today so that the public will know the truth of the matter?

A Member from The Hong Kong Federation of Trade Unions ("FTU") has just described LAB as the highest labour consultation body in Hong Kong. It is precisely this way of thinking that belittles the status of the Legislative Council. Does LAB really represent all wage earners in Hong Kong? LAB is only an advisory body while the Legislative Council has the statutory power to enact legislation. Under the LAB structure, employers do not represent all small and medium enterprises and employees do not represent all trade unions or all workers.

There was a rather interesting scene just now: Mr CHUNG Kwok-pan said that he could share his script with Mr LUK Chung-hung. I want to say a few words for Mr LUK Chung-hung and I believe he does not quite accept this suggestion. After all, these two Members represent employers and employees respectively and there is simply no reason why they should do so. Otherwise, how can Mr LUK be accountable to trade union members in the future?

However, we must understand that employers and employees cannot be on common ground in this way. I do not know if Mr LUK Chung-hung and Mr CHUNG Kwok-pan can be on common ground because he does not have a chance to respond. At the very least, he cannot be on common ground with me. Mr LUK Chung-hung talked about dialectical materialism just now. According to dialectical materialism, labour relations are always contradictory. That being the case, we should not insist on upholding the consensus of LAB. Deputy President, I do not know if you are familiar with dialectical materialism. According to dialectical materialism, events will develop from imbalance to balance and then from new imbalance to new balance—of course, I am not...
referring to the brand name New Balance. In simple terms, without resistance, there will be no changes. What I mean to say is that resistance is a way that trade unions should not ignore …

DEPUTY PRESIDENT (in Cantonese): Mr AU Nok-hin, you have spoken for five minutes, please return to the subject of the Second Reading debate on the Employment (Amendment) Bill 2017.

MR AU NOK-HIN (in Cantonese): Deputy President, I will return to the subject of this debate. Deputy President, I get it. Regarding the contents of Dr Fernando CHEUNG's amendments, Mr LEUNG Yiu-chung had in fact raised such points in the later days of the British Administration in Hong Kong. I would like to spend a little time reading out the relevant contents. According to the minutes of meeting of the Legislative Council Panel on Manpower on 26 May 1997, Mr LEUNG Yiu-chung made the following points when presenting his Unfair Dismissal Bill: First, "if enacted, his Bill would apply to all government employees whilst the Administration's Bill excluded all government employees from its application"; second, "the compensation proposed under his Bill was more comprehensive than that proposed by the Administration. The former would comprise a basic award, a compensatory award and a special award"; and third, "unlike the Administration's Bill which would require the mutual consent of the employer and the dismissed employee for the grant of a reinstatement or re-engagement order, his Bill would only require the consent of the employee".

What are the relations between Mr LEUNG Yiu-chung's proposal back then and the Bill and its amendments that we are discussing today? The third point I just quoted is actually the same as the contents of the amendment to the Bill in Appendix 1. The proposal made by Mr LEUNG Yiu-chung years ago about a basic award, a compensatory award and a special award was exactly what was included in the amendment to the Bill in Appendix 2, i.e. an additional compensation which is equal to six times the average monthly wages of employees. In other words, the reform proposal made by Mr LEUNG Yiu-chung 21 years ago has not yet been realized and it will be tabled at the Legislative Council again in the form of an amendment. Is this an absurdity of Hong Kong?
What is even more ridiculous is that Dr Fernando CHEUNG has proposed another amendment which mainly proposes that the employer must pay to the employee wages and other entitlements in accordance with the terms of the order made by the court or Labour Tribunal, even though the employee is not actually reinstated or re-engaged. President Andrew LEUNG ruled that the amendment is outside the scope of the Bill and is therefore inadmissible. I am greatly disappointed. In discussing the rights of reinstatement, we should certainly talk about the arrangements for reinstatement. If the employee finally fails to be reinstated, this will also give rise to disputes concerning protection. This amendment proposed by Dr Fernando CHEUNG seeks to protect employees. Even if they ultimately fail to be reinstated, they can be fully protected through the orders to be made by the court or Labour Tribunal. Nevertheless, the President has adopted very stringent criteria and ruled that this amendment is inadmissible which undoubtedly limits the rights of Members to engage in policy discussions and strive for reform. Some of the amendments proposed by Dr Fernando CHEUNG have been ruled by the President as inadmissible before being considered by the Bills Committee.

When we talk about reinstatement, we must not forget that workers should enjoy the rights of reinstatement. Workers should not be dismissed without cause, including "unlawful dismissal" and "unreasonable dismissal".

Section 32K of the Employment Ordinance stipulates that valid reasons for dismissal include the conduct of the employee; the capability or qualifications of the employee for performing his/her duties; redundancy or other genuine operational requirements of the business of the employer; stipulation of the law or any other reason of substance. If the reasons do not fall into any one of the above categories, the dismissal is "unreasonable dismissal". If an employer dismisses employees for pregnancy, taking part in strikes, taking sick leave, participating in a work injury incident investigation, participating in trade union activities and involving in work injury disputes, he may meet the threshold of unreasonable and unlawful dismissal.

The provisions of the Employment Ordinance on "unreasonable employment" uphold the spirit of recognizing the dignity of all wage earners. Employers should not arbitrarily dismiss employees because of their financial ability or their status as wage payers. They can only dismiss employees for justified reasons such as financial reasons, business needs and work ability.
The provisions on "unlawful dismissal" clearly protect the rights of employees who are in a disadvantaged position. When an unscrupulous employer violates the provisions and dismisses a pregnant woman, a worker who sustains injuries at work or even penalizes and dismisses a trade union representative, such acts are absolutely not allowed under the law. We can hardly tolerate if employers performing such acts are only required to make payments to employees. Dr Fernando CHEUNG's proposed amendment to the Government's original Bill is an important turning point, and this is obviously an issue about justice. The Government has the responsibility to ensure that employees have the rights of reinstatement so that justice can be done.

Looking back at the previous discussions in the Legislative Council, the Panel on Manpower commenced discussions on the "Proposed amendments to reinstatement and re-engagement provisions under the Employment Ordinance" on 20 November 2003. The meeting paper I have in hand set out the result of the review of the Employment Ordinance by the Labour Department ("LD") in 1999. The Administration's recommendation was as follows: "the reinstatement and re-engagement provisions be amended to the effect that where an employee who has been found to be unreasonably and unlawfully dismissed makes a claim for reinstatement/re-engagement, the Labour Tribunal may make an order of reinstatement/re-engagement if it considers it appropriate and reasonably practicable. This would remove the need to secure the consent of the employer".

The Government made this recommendation when LD reviewed the Employment Ordinance in 1999, but there is still a big gap between the current legislation and the related recommendation. Moreover, the meeting paper at that time also mentioned: "Similar provisions for the court to make compulsory order of reinstatement already exist in the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. The Court is empowered, under the respective legislation, to order, among other things, the respondent to employ, re-employ or promote the claimant". In other words, LD completed the review 19 years ago in 1999 and it came to the following conclusion: The Government should treat all employees equally and make the Employment Ordinance consistent with three other ordinances on discrimination so that the District Court can invoke the orders for reinstatement under the Employment Ordinance. Nonetheless, the Legislative Council is still discussing the relevant amendments up till now. The Government had also said that if LAB failed to reach a consensus, we could ignore it and had discussions
first. It has been 19 years and no progress has been made. Why are we still having discussions now? Why has legislation not been enacted after repeated consultations?

In fact, employees may lodge complaints with the Equal Opportunities Commission ("EOC") under the ordinances on discrimination and ask for monetary compensation or reinstatement. However, we are not sure about the scope of responsibilities of EOC. Is EOC only responsible for mediation? Does it have the right to apply to the court for an order for reinstatement? In any case, there is still a long way to go to perfect the arrangements for making an order for reinstatement. It is definitely most desirable to perfect the Employment Ordinance so that the Labour Tribunal and LD can act in accordance with the law when dealing with inequality in the workplace and there is no need to refer matters to EOC, making it difficult to follow up on cases. Dr Fernando CHEUNG's amendments just echo the demands of the predecessors and I will certainly support them. As for various labour rights including the right to collective bargaining which was abolished by the Provisional Legislative Council and paternity leave which was reduced to three days by FTU, I think the Legislative Council should uphold justice and continue to improve the relevant arrangements in the future.

I so submit, Deputy President.

MS ALICE MAK (in Cantonese): Deputy President, I speak in support of the Employment (Amendment) Bill 2017 ("the Bill"). When many colleagues spoke just now, they were all concerned about one issue, which is, how many Members are from the labour sector? Every time this Council discusses about labour rights and interests, opposition colleagues seem to have hit the jackpot and seize the opportunity to revile The Hong Kong Federation of Trade Unions ("FTU"), attacking it repeatedly for the same old reasons.

Perhaps Mr AU Nok-hin is new to the Legislative Council and is not familiar with the matters concerning paternity leave. I had once given an explanation on those matters, but at that time he was not a Member of the Legislative Council.

If each time the labour issues are discussed in the Legislative Council, they are politicized by opposition Members with their political stance, overshadowing the focus of the subject matter, how then can we continue to protect and strive for
the rights and interests of workers in Hong Kong? Each time when we discuss labour issues, I wonder why opposition Members do not discuss the problems concerning "employers", the opponent of "employees", but revile FTU instead. When trade unions are disunited and attack one another, how can they strive for the benefits of workers? The parties that benefit will of course be the employers and the "Zen" Government which does nothing.

The focus of many questions is the role of the Labour Advisory Board ("LAB"). In respect of paternity leave or an order for reinstatement now under discussion, FTU will, having a clear idea about LAB's role, take full advantage of the platform of LAB to help employers and employees reach a consensus expeditiously, so that any proposal to strive for labour rights and interests can be passed in this Council. Does the Government not have a role to play? The "Zen" Secretary and the "Zen" Government just allow employers and employees to engage in disputes; and no matter what proposal will arrive at after the dispute, the Government will consider that it has done its job. LAB has discussed the order for reinstatement for years. Why has it taken so long to discuss the issue? No matter it is about paternity leave or an order for reinstatement, after the issue has been discussed by LAB, we will hold tight to our position because we know that if we do not stand firm and adhere to the result reached through the platform of collective bargaining, all our efforts will be futile if a dispute is arisen in the Council.

Mr AU Nok-hin is simply ridiculous. It is a shame that Members' remarks made in the Council are protected under the Legislative Council (Powers and Privileges) Ordinance; otherwise, he will have to bear legal liability. Just now Dr KWOK Ka-ki dare accused Stanley NG of supporting contractual working hours. Mr HO Kai-ming demanded a clarification from Dr KWOK Ka-ki, but Dr KWOK spoke nonsense in asking us to read the newspapers. Dr KWOK Ka-ki, since you know nothing about labour matters, let me give you a brief lesson.

Stanley NG withdrew from a meeting with representatives of the labour sector when the Standard Working Hours Committee intended to introduce contractual working hours. Instead of reading the newspapers, you should read the minutes of the meeting. At the general conference held by the labour sector, the labour sector reached a consensus against contractual working hours; that was why we withdrew from the meeting of the Standard Working Hours Committee together with the labour representatives. Out of his own political purposes,
KWOK Ka-ki dared slander other people, accusing Stanley NG of supporting contractual working hours. Stanley NG followed the proper procedure when dealing with this issue. He submitted papers to the Chief Executive to express his opposition to contractual working hours and his aspiration of enacting legislation on standard working hours. Under such circumstances, how dare Dr KWOK slander others!

Mr AU Nok-hin is even more ridiculous in saying that we gave up on striving for paternity leave. Do you know who supported three days of paternity leave? It was the Members of the opposition camp sitting over there. They all supported three days of paternity leave. I have explained numerous times here that the decision on paternity leave was not a matter of three days or seven days but a matter of zero days or three days. The Government said that if the amendment was passed, it would withdraw the bill and members of the public would not even have three days of paternity leave. Of course, FTU was stupid for being too honest. We should have acted like those who, though fully aware that the Government would withdraw the bill, still supported the amendment in order to win political applauses. As such, we would not have given them any pretext to accuse us. But more importantly, if we just cared for winning temporary applauses, we would have failed to strive for three days of paternity leave.

Why do we spend so much time to discuss at LAB? If employers and employees have reached a consensus at LAB after discussion, and a bill is submitted to the Legislative Council, it can be passed by Members. That is the important function of LAB. If the results of negotiation reached at LAB are disputed by some Legislative Council Members and even the employers join in the dispute, then the issues discussed at LAB would not be passed at the Legislative Council. That is the present situation.

It does not matter that Dr KWOK Ka-ki has wrongly accused us, but please accuse us of some other issues, but not of a well-grounded issue. Collective bargaining power? Does he know that according to the proposal back then, how many bargaining channels a 50-strong enterprise could have? Could this kind of collective bargaining power achieve anything? Every time we discuss labour rights and interests, certain people do not want to stick to the facts but shoot at random for their own political purposes, and that is exasperating. Deputy President, as I have said, Dr KWOK Ka-ki and his like belong to the same constituency, big or small, as us. As there is competition between us, he naturally has to attack us. But even so, he should state the facts and should not
slander us. What are the facts? Let me tell the people of Hong Kong, especially the grass roots, when they demanded the Government to dole out money, Dr KWOK Ka-ki of the Civic Party raised objection. In a television programme, while I supported doling out money, he opposed. This is a fact. The only right remark he made is "workers' eyes are crystal clear". Hence, when workers have problems, they will ask FTU for help. Last week, there was a dispute over wage arrears in a construction site at Nim Wan. Who took care of a few dozen workers there? It was a member union of FTU. In the first quarter of this year, in respect of the cases of wage arrears that we have handled, the wages in arrears already totalled over $30 million. Why? Of course, we are trusted by the workers. Unfortunately, the contractors/employers who did not pay their workers claimed that owing to filibustering in the Legislative Council, their funding application could not be approved, and thus they did not have money to pay workers …

DEPUTY PRESIDENT (in Cantonese): Ms Alice MAK, as several Members criticized FTU in their speeches earlier, I thus allowed you to respond. But you have spoken for almost eight minutes now. May I ask you to return to the subject concerning the Second Reading of the Employment (Amendment) Bill 2017 in your remaining speaking time. Just now after Mr AU Nok-hin had spoken for five minutes, I also made the same reminder. Please focus on discussing the Employment (Amendment) Bill 2017.

MS ALICE MAK (in Cantonese): Deputy President, I have already stated that we would support the order for reinstatement in my earlier speech. LAB has discussed the Bill for a long time. It always spends a long time discussing amendments to labour laws or newly enacted labour laws, and we respect this channel for negotiation. However, I would like to ask the Secretary and the Government to respect LAB as well. Please strengthen the missions of LAB and do not turn LAB into your shield.

Actually, be it an order for reinstatement now under discussion, the paternity leave that was discussed previously or other labour laws to be discussed in future, the Government only tells the public that discussion is now in progress at LAB. Concerning the agenda of labour laws, the Government will only submits the proposal it wants to discuss to LAB for discussion; as for other proposals the Government does not want to discuss, it will just say that LAB has
How much importance does the Government attach to LAB or how much respect does it have for the role of LAB? To what extent society is allowed to understand the work of LAB? And now some people are even accusing FTU of controlling LAB! Will the Secretary please seriously explain to members of the public what kind of organization LAB is and how it promotes the enactment of labour protection legislation, including the order for reinstatement that this Bill, which is to be read the Second time, is concerned with. The Secretary should explain how LAB performs its functions, the matters it has discussed and the relevant procedures involved. Very often, we only see the results of LAB's discussions, including the order for reinstatement proposed in the Bill. That is why we support the Bill, and I believe we need to let the public know the discussion process involved, otherwise many of us, including the representatives in LAB, will be forced to suffer in silence.

Deputy President, the order for reinstatement proposed in the Bill is very important to employees because we are aware that between 2012 and 2016 there were 25 cases demanding for reinstatement, none of the claimants was reinstated. We hope that the Bill will be passed as soon as possible, so that employees who are unreasonably or unlawfully dismissed can have a chance to be reinstated, and even if they are not reinstated, they will still get the compensation they are entitled to. Deputy President, we will support the Bill.

DEPUTY PRESIDENT (in Cantonese): I would like to remind Members that a number of Members have discussed the role of LAB in depth. I also understand that LAB plays a rather important role in matters relating to the Employment (Amendment) Bill 2017. However, will Members please do not discuss the role of LAB in detail. Even if it is necessary to make a comment, please keep it concise and do not repeat the points other Members have already mentioned. So far 14 Members have spoken in this debate.

Mr SHIU Ka-chun, please speak.

MR SHIU KA-CHUN (in Cantonese): One does not love without a reason; one does not hate without a reason; and one does not criticize the Labour Advisory Board ("LAB") without a reason. Instead of discussing this subject area, I will directly say that I support the amendments on the Employment (Amendment) Bill 2017 ("the Bill") proposed by Dr Fernando CHEUNG.
Dr Fernando CHEUNG proposes that the provisions stipulate that the employer has to show that he engaged the replacement for the employee without having heard from the employee that the employee wished to be reinstated. Besides, Dr CHEUNG also proposes to increase the further sum payable by the employer to the employee from three times to six times the employee's average monthly wages, and abolish the ceiling of $72,500. Dr CHEUNG also proposes in Appendix 3 of the document that the ceiling shall be amended by the Legislative Council by resolution instead of by the Commissioner for Labour. I support all of the three amendments.

In fact, the Second Reading debate on the Bill was initially scheduled to resume in the Legislative Council at the beginning of this year. The Government withdrew the Bill earlier for the reason that Dr Fernando CHEUNG had proposed some major amendments which deviated from the consensus reached by LAB. However, the Government has now resubmitted the Bill in its original form to the Legislative Council and Secretary Dr LAW Chi-kwong also stated very clearly that LAB had not reached any consensus on the amendments. So, why did the Government withdraw the Bill which was scheduled for debate in the first place?

Obviously, the Government had a skeleton in its closet. In view of the by-election on 11 March, the Government understood that the Bill, which concerned labour rights, would be a sensitive subject. As the Government was worried that deliberation on the Bill would embarrass the pro-establishment candidate and affect his chances of winning, it deliberately withdrew the Bill. The decision of putting political interests before labour rights makes me furious and that is most regrettable. If the Government wants Members to discuss a bill, it will ask us to do so; otherwise, it will immediately withdraw the bill. It simply shows no respect for the Legislative Council.

Now that the by-election is over and Members supporting the Bill introduced by the Government form the majority of the Legislative Council, the Government can pass whatever bill it likes since it will secure an adequate number of votes. Knowing full well that Dr Fernando CHEUNG will not obtain enough votes to pass his amendments, the Government resubmitted the Bill in its original form to the Legislative Council.
Nevertheless, I must point out that Dr Fernando CHEUNG's amendments precisely seek to protect the greatest interests of workers. Thus, I would like to urge Members who often say that they side with workers and protect their interests to seriously consider supporting Dr CHEUNG's amendments instead of holding a candle to the devil again.

The proposed amendments to the Employment Ordinance ("the Ordinance") seek to protect employees and empower the court or Labour Tribunal to order the employer to re-engage or reinstate the employee in cases of unreasonable and unlawful dismissal. After the Ordinance has been amended, the court or Labour Tribunal can order an employer who fails to comply with an order for reinstatement or re-engagement to pay the employee a further sum.

In fact, comparing the Bill to the Employment (Amendment) Bill 2016, the amount of the further sum has already been adjusted. However, I must point out that the further sum is only payable when the employer has failed to comply with an order for reinstatement or re-engagement made by the court or Labour Tribunal. I believe the amount of the further sum should have a deterrent effect, but the Bill only provides that the sum shall be three times the employee's average monthly wages. I think such a level is too low.

For a full-time employee earning the minimum wage, his monthly wage is generally only $7,000 to $8,000. The further sum of $20,000-plus will enable the employer to keep on deferring to comply with the order for reinstatement. The employee, with a further sum of three times his average monthly wages, can only maintain his livelihood for three months. What is more, the employer may even deliberately defer payment of the further sum. One can imagine the long process involved in fighting for the employee's interests. Thus, providing for a penalty with a deterrent effect is a must; and a further sum equivalent to three times the average monthly wages of the employee is not enough.

Besides, the employee is in a weaker position of power in an employment relationship. Confronted with an unreasonable and even unlawful dismissal, the employee has to make more effort, both mentally and physically, in fighting for justice. After being dismissed, the employee working hand to mouth will find difficult to attend the Labour Tribunal and the court on various occasions and provide evidence of unreasonable dismissal by the employer. If the court or Labour Tribunal rules that the employee has been unreasonably dismissed and issues an order for reinstatement or re-engagement to the employer, the employer
can still refuse to comply with the order. If that is the case, the employer, who obviously shows no respect for the Ordinance, the court and labour rights, should be seriously punished.

The further sum given to the employee only serves as a basic award to compensate his loss during this period as far as possible and enable him to pay for the daily living expenditures. Let me repeat, that is only a basic compensation. Thus, I support Dr Fernando CHEUNG's proposal to increase the amount of the further sum.

Regarding the proposal to empower the Legislative Council to amend the amount of the further sum by resolution instead of by the Commissioner for Labour, I think it is also quite reasonable. In the past, the Government has been very slow in handling the administrative procedures of adjusting such amounts. Besides, the Commissioner for Labour is not a representative of the people and so he cannot represent public opinion in revising the amount. On the contrary, although half of the seats of the Legislative Council are returned from functional constituencies instead of by "one person, one vote", a resolution of the Legislative Council will have higher representativeness than a decision of the Commissioner for Labour. Thus, it is more appropriate to empower the Legislative Council instead of the Commissioner for Labour to amend the amount of the further sum. Therefore, I cannot think of any reason not to support Dr Fernando CHEUNG's amendment.

Deputy President, my speech will not be very long. I would only like to state clearly that although I do not know much about labour issues or the Ordinance, I know very well the original intent of Dr Fernando CHEUNG in moving his amendments to the Bill. Thus, I support Dr CHEUNG's amendments.

Thank you, Deputy President.

MR ANDREW WAN (in Cantonese): I speak to express my views on the Employment (Amendment) Bill 2017 ("the Bill") and indicate that the Democratic Party supports Dr Fernando CHEUNG's amendments.

Deputy President, the essence of today's debate is very simple, i.e. can a worker be dismissed at will by the employer. That is a point frequently raised recently. The essence of Part VIA of the Employment Ordinance ("the
Ordinance") is also related to this issue. Do we agree that workers can be recruited and dismissed at will? Are workers merchandise? How should we treat employees? According to the International Labour Standards established long ago, the employer must have reasonable grounds for dismissing the employee, and the employer must also pay reasonable compensation. If the employee is unfairly treated and dismissed, he has the right to be reinstated and receive compensation. These requirements seek to protect the dignity of workers. I believe no one, including the Government, the democrats and pro-establishment Members, will object to these major principles and no one dares to raise any objection. The question at issue is where to draw the line in order to meet the relevant standards.

In fact, some Members have proposed legislative amendments in this connection before. For example, during the colonial era, Mr LEUNG Yiu-chung introduced the Unfair Dismissal Bill, but he was intercepted by the Government. The authorities replaced Mr LEUNG's Bill with some other provisions which are currently contained in Part VIA of the Ordinance. The relevant provisions certainly have some shortcomings; otherwise the Secretary needs not submit the Bill to the Legislative Council today to amend the Ordinance. Thus, this is not a point of dispute.

Deputy President, some Members were infuriated when they were arguing earlier. I think that is unnecessary. The point at issue is whether the arrangement for enforcing the order for reinstatement is reasonable. At present, consent of the employer is required before the order for reinstatement can be enforced. It is ridiculous, isn't it? It is indeed ridiculous; otherwise, the Government needs not submit the Bill, am I right?

Deputy President, I think the Government has performed poorly during the Second Reading of the Bill. As we all know, the Government suddenly withdrew the Bill scheduled for a debate on its Second Reading at the beginning of the year. On the face of it, the Government claimed that since no consensus had been reached on Dr Fernando CHEUNG's amendments by LAB and his amendments had created some problems, it had to withdraw the Bill. Nevertheless, people with discerning eyes and I believe the majority of the public know the real reason. As the by-election of the Legislative Council was drawing near, the "unlawful interception" and "ungentlemanly acts", which are common on football pitch, could also be seen in the Legislative Council.
We were certainly indignant and raised severe criticism. But unfortunately, the Government withdrew the Bill anyway. To avoid causing embarrassment to a candidate of a certain camp and subjecting him to criticisms, the Government had resorted to such tactics which really saddened Hong Kong people. The Government often says that it will protect the general public, and attach importance to people's livelihood and the rights of workers, but it has surprisingly taken such actions. This proves that the authorities put political interests and the number of seats secured in the Legislative Council before all other matters.

(THE PRESIDENT resumed the Chair)

What is most laughable today? President, when the Government withdrew the Bill back then, it gave the reason that consensus had not been reached by LAB, as some Members have mentioned. However, today, the Government also says that consensus has not been reached by LAB; how then can it resubmit the Bill in its original form to the Legislative Council? After all, the Government is only making all sorts of excuses which do not represent the truth. Frankly speaking, I think that the Government is only trying to avoid the risks related to the by-election. Now that the by-election was over, it will be meaningless to talk about it. Instead, I will use the remaining time to explain why we support Dr Fernando CHEUNG's amendments.

The Bill provides that if the court makes an order for reinstatement of an employee who has been unreasonably dismissed but the employer fails to comply with the order, the currently proposed penalty is three times the monthly wages of the employee up to a maximum of $72,500. If the employer fails to comply with an order for reinstatement, he only needs to pay compensation and the matter will be resolved. Frankly speaking, the order for reinstatement exists only in name and it cannot be compulsorily enforced. Dr Fernando CHEUNG initially proposed four amendments, but one has been ruled inadmissible by the President. What are the remaining three amendments?

First, the court or Labour Tribunal must not take into account the fact that the employer has engaged a replacement for the employee in making a finding of whether the employer shall reinstate or re-engage the employee, unless the employer shows that it was not practicable for the employer not to engage a
replacement. In other words, the employer cannot arbitrarily use engagement of a replacement as an excuse. Second, Dr Fernando CHEUNG proposed to increase the further sum (i.e. the penalty) from three times to six times the average monthly wages of the employee, and abolish the ceiling of $72,500. The third proposal is that amendments to the ceiling of the further sum shall be enacted through positive vetting instead of negative vetting. Frankly speaking, these amendments are very reasonable, and all of them seek to protect the rights of the working class.

In fact, the labour sector has been fighting for the employees' right of reinstatement for many years. Back in 1997, the Unfair Dismissal Bill which I briefly mentioned earlier was introduced in the Legislative Council. Unfortunately, success could not be attained because of various factors, including the attitudes of the employers and the Government. I understand that many trade union groups have waited more than 10 years for this day, but at this point in time, we feel like being cheated by a dishonest shopkeeper who gave us less barbecued pork than what we paid for. The provisions of the Bill cannot really protect the rights of workers.

Frankly speaking, we also support Dr Fernando CHEUNG's amendments. Dr CHEUNG is very pragmatic as he has not proposed to increase the compensation amount to 30 times the average monthly wages of the employee. In some overseas countries, compensation is set at a punitive level which can be as high as 10 times or more the average monthly wages of the employee. Nevertheless, Dr CHEUNG opines that the livelihood of workers should be protected. It will be hard for the worker if the employer fails to comply with an order for reinstatement. To protect the worker's livelihood, will the amount of three times his average monthly wages be adequate to maintain his living before he finds another job in the near future? President, that is the idea; thus, the proposal of giving the worker six times his average monthly wages is very pragmatic. I would also like to say on behalf of Dr CHEUNG that his request is very undemanding, pragmatic and reasonable. If Members can step into the shoes of workers, they will realize that if the amount is any less than what is proposed, the worker's situation will be miserable.

Nevertheless, many Members said that Dr CHEUNG's amendments disrupted the whole situation and showed no respect for LAB. They claimed that the results achieved by LAB were not easy to come by. I do not want to see Members insisting on their own views such that they will criticize the views
voiced by others. I think that LAB has performed its functions and we cannot deny the value of its work. However, it is a fact that no consensus has yet been reached by LAB. Members of the labour sector even disagree to increasing the amount of the further sum to three times the average monthly wages of the employee because they think that is too much, not to mention Dr CHEUNG's proposal of increasing the amount to six times. Following this logic, the Government should not introduce the Bill to the Legislative Council, but should forward the proposals to LAB for slow discussion, until the most prefect proposal is far from prefect, why should the authorities submit a proposal without reaching a consensus to the Legislative Council? Is the business sector responding very positively to the Bill? Have members of the business sector supported the Bill with applause? No.

There is another point which I find very odd. In fact, Dr CHEUNG's amendments are consistent with the main direction of the Government, the pro-establishment camp, the pro-democracy camp or trade unions of any sector; and his amendments only seek to protect workers' rights. Are Dr CHEUNG's amendments seeking to exploit workers' rights? Can the proposal to increase the further sum from three months to six months the average monthly wages of the employee give better protection to workers' rights? Even if the employee is unfortunately dismissed, he will receive six months his average monthly wages to maintain his livelihood while seeking employment. Members have no reason to object to the proposal; and I cannot think of any strong reason to do so. Suppose the Government's proposal sets the minimum charge, passing Dr CHEUNG's amendment will be adding icing to the cake; why should there be any argument? I found it very strange that some Members flushed with agitation when they argued earlier.

If Members base their decisions on reason and logic, they should support Dr CHEUNG's amendments. They should help the working class according to their conscience. Here with us are many Members returned from direct elections; as representatives of the general public, they have no reason to oppose Dr CHEUNG's amendment. They should support his amendments. If the amendments are passed, icing will be added to the cake; if not, there is nothing we can do but accept the minimum charge proposed by the Government. President, I am not saying that we have to veto the Government's proposal; in fact, we agree with its general direction. I am only saying that the level set by the Government is too low and querying whether it can be raised. This is what Dr CHEUNG has been requesting for. It is a pragmatic and reasonable request
to protect the working class. How come a proposal based on a common direction has caused Members to rebuke one another? Why would the democrats cause trouble to the whole situation? I find it very strange that Members would even express such a view.

Finally, President, is this debate a demon detector? I do not know. Has the debate revealed the hypocrisy of the Government and its intent to put politics before people's livelihood? Has it revealed that the Government puts seats in the Legislative Council before workers' rights? I believe members of the public have a clear picture in their mind. President, the voting results will be there for all to see.

That is the end of my speech. Thank you, President.

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

MR CHAN CHI-CHUEN (in Cantonese): President, the Second Reading debate of the Employment (Amendment) Bill 2017 ("the Bill") was originally scheduled to resume in the Legislative Council at the end of January. Yet, owing to the amendments proposed by Dr Fernando CHEUNG, the Government withdrew the Bill and forwarded the proposed amendments to the Labour Advisory Board ("LAB") for discussion.

During LAB's discussion, the representatives of employers and employees could not reach a consensus on the amendments—that is not surprising—but they agreed to resubmit the original proposal to the Legislative Council for scrutiny. Although this outcome was well-expected, I still throw my support behind the then amendments proposed by Dr Fernando CHEUNG. Some Members are of the view that when the proposal agreed by LAB is introduced into the Legislative Council for scrutiny, we should "pocket it first" or else nothing can be achieved. But if this logic is right, all labour bills might as well be solely handled by LAB. What is the point of submitting them to the Legislative Council for scrutiny?

Today, some Members brought up the issue of paternity leave again. I will not discuss this subject but the logic behind it is actually the same as that behind the Bill. On both issues, there is an argument over whether we should "pocket first" or "nothing gained". The Government would of course threaten
us, saying that regarding the paternity leave proposal, our choice was not between
"three days" and "seven days" but between "zero day" and "three days". While
different Members may have different judgments, what we are doing now is to
fight for what we think is ours. If I owe Dr Fernando CHEUNG $100,000, but
just pay back $1,000; if he does not accept, he will not even have $1,000. Some
Members may think it is better for Dr Fernando CHEUNG to "pocket the $1,000
first". However, if all of us in this Council think in this way, we can never help
wage earners fight for their rights. Therefore, I support the amendments
proposed Dr Fernando CHEUNG some time ago and today.

The amendments proposed by Dr Fernando CHEUNG include: to increase
the further sum from three times the employee's average monthly wages to six
times the employee's average monthly wages, with the ceiling of $72,500
removed; to revise the ceiling for the further sum by positive vetting instead of
negative vetting; and to amend clause 4(1) of the Bill by specifying that the
employer must show the replacement was engaged without having been informed
by the employee of his/her wish of being reinstated.

Under the Bill, the Labour Tribunal can make a reinstatement or
re-engagement order without securing the consent of the employer if it considers
making such an order appropriate and practicable. In case the employer later
fails to comply with the said order, he will be required to pay the employee a
further sum amounting to three times the employee's average monthly wages,
subject to a ceiling of $72,500. An employer who fails to pay this sum wilfully
and without reasonable excuse will commit an offence. To some labour groups,
these amendments in the Bill are, however, too piecemeal to give a real solution
to the problem of unlawful or unreasonable dismissal commonly faced by
employees, not to mention the deep-rooted issue of "strong capitalists and weak
workers" in Hong Kong.

Regarding Part VIA of the current Employment Ordinance, its biggest
problem is that, in a case of unreasonable dismissal, the court or Labour Tribunal
is not empowered to make a reinstatement or re-engagement order without the
consent of the employer. This arrangement is simply absurd. Will there be any
employers willing to admit and confess their wrongdoings after unreasonable
dismissal and voluntarily re-engage their employees and become nicer to them?
This absurd arrangement has rendered the reinstatement provision in Part VIA
exist in name only. According to the figures provided by the Labour
Department, more than 5,000 claims were made under Part VIA between 2011 and 2017. Among them, 4,700 cases were concluded and over 3,600 cases (i.e. around 80%) were ruled in favour of the employees. Nevertheless, how many employees in these cases were eventually reinstated or re-engaged? The answer is "zero". Therefore, by making this legislative amendment, the Government is finally taking the move to slightly rectify this absurd arrangement.

Upon the passage of the Bill, should there be any future cases ruled as "unreasonable and unlawful dismissal", the court or Labour Tribunal will be able to make a reinstatement or re-engagement order without the consent of the employer. However, the scope of "unreasonable and unlawful dismissal" is still narrow under the Bill, confining to the few circumstances detailed by some Members earlier. If the unreasonable dismissal in question does not involve pregnancy, injury or illness, trade union or the giving of evidence, the court or Labour Tribunal will still have their hands tied and cannot make a reinstatement or re-engagement order without securing the consent of the employer. In this situation, even if the employee wins the case, he will usually only be awarded with terminal payments, among which the severance payment or long service payment payable on a pro rata basis may be offset by the employer's contributions made to a Mandatory Provident Fund scheme. From this, we can see that the civil remedy is clearly inadequate and has no sufficient deterrent effect on employers.

Over the past few years, there have repeatedly been cases in which employees were dismissed for political activities or industrial actions. I also note that some employees were dismissed for their sexual orientation. However, such dismissals were not in breach of the Employment Ordinance. Under the Employment Ordinance, the Labour Tribunal may only rule that there is an unreasonable and unlawful dismissal in the circumstances mentioned earlier. Dismissal for political stance, religion or sexual orientation cannot be ruled as unreasonable and unlawful dismissal. Previously, there was a school requesting its employees to make statements declaring that they were not sexual minority persons; otherwise, they would be fired. Besides, some university teaching staff, though failing to have their contracts renewed for joining trade union activities or activities considered as political activities, cannot claim for unreasonable and unlawful dismissal. We therefore request the Government to include unreasonable dismissal in the Bill, so that the Labour Tribunal can make a
reinstatement or re-engagement order for unreasonable dismissal without securing the consent of the employer. Meanwhile, I think dismissal for sexual orientation should be covered under the scope of unreasonable and unlawful dismissal.

Dr Fernando CHEUNG has requested, in his amendments, that the cap of the fine set at $72,500 be removed, and that the amount be increased to six times of the employee's average monthly wages. His objective is to target at large corporations given that the nominal fine imposed by the Bill has little deterrent effect. One distinct example is an old case in which Cathay Pacific Airways was ruled to have unreasonably and unlawfully dismissed its pilots. Since the maximum compensation of $150,000 was far less than the losses suffered by the pilots, those pilots had to file another case against their employer for defamation. Finally, each pilot could obtain an award of damages of $700,000. What is more, no caps are set on damages awarded for employment cases in the four existing discrimination ordinances. Therefore, we do not think Dr Fernando CHEUNG has made excessive requests in his amendments; these requests are simply fair and reasonable.

While the current Employment Ordinance has failed to protect most of the employees in Hong Kong, the amendments proposed in the Bill are also too piecemeal to address the deep-rooted issue of "strong capitalists and weak workers". Labour rights in Hong Kong are inter-related. They can only be improved if legislative amendments are made in all aspects, including reviewing the minimum wage on an annual basis, implementing standard working hours, abolishing the "offsetting" mechanism, legislating for collective bargaining right again and removing the "4-18" rule; holistic efforts directed from different angles are also necessary.

Today, some Members share the view that "reluctance will not bring happiness". There are even Members saying that employers, if forced to reinstate an employee, may use other excuses to pick on and fire the reinstated employee. The employees will end up losing their entitled compensation, though small in amount. It is very true indeed. As the saying goes, "Shameless has no limit." I cannot imagine how shameless an unscrupulous employer can be. I once told the sexual minority that in our fight to legislate against sexual orientation discrimination, if the Constitutional and Mainland Affairs Bureau was
unwilling to draft the relevant law, the Labour and Welfare Bureau should, in my view, draft a law to address dismissal of sexual minority on the grounds of sexual orientation or gender identity. These tasks fall squarely on their shoulders. I urge the two bureaux to discuss between themselves whether they prefer enacting a single law to address sexual orientation discrimination or enacting laws in different aspects to offer protection.

I have a few words for the press and the public. There are tons of excuses for employers to dismiss their employees. If the employer wants to fire an employee who is found to be a sexual minority person, the employer can always cover up the real reason for dismissal. But does it mean that we do not have to enact laws or fight for our rights? Of course not. Legislation is the last resort. Legislation will not make employers be good to their employees. Legislation only allows workers have a say under the situation of "strong capitalists and weak workers". This right to have a say is hardly a right. In case an employer puts up excuses for a dismissal, after the enactment of legislation, the dismissed employee will have the right to say that he is protected under the law. There are many similar examples of legislation enactment in overseas countries. While one may argue that an employer can use other excuses to dismiss his employee, it will not be difficult to tell whether a dismissal is due to pregnancy, sexual orientation, colour, sex or family status after the relevant legislation has been in effect for a period of time. Moreover, the employee can then make claim under the statutory mechanism.

I do not understand why some Members, being legislators, would say that it is useless to enact laws. Employers can put up various excuses for dismissing an employee; this is a fact in view of "strong capitalists and weak workers" as we often say. However, does it mean that we, being Members, should aid and abet injustice and reject this humble request simply because we think it is useless to enact laws? My request is that the legislation should at least clearly provide for the most basic protection for workers and the most basic requirements for employers in our society. Of course, employers can resort to various means to play dirty and give their reinstated employees a harder time, so as to force them to resign voluntarily. We do not have to teach the employers such tricks, they know them well. Nevertheless, we should not thus consider that discussions about reinstatement orders as a waste of time. While the President considered Dr Fernando CHEUNG's amendment on "buying the reinstatement right of
employees" outside the scope, some other Members hold that granting reinstatement right to employees was useless because reinstatement would cause hardship but not happiness to employees.

I will certainly give my support to the Bill. Please do not wrongly believe that the Bill will get Members' support after being discussed by LAB. Some of the Members who are employers have indicated earlier that they would vote against the Bill as they did not endorse its broad direction.

Lastly, I support the Second Reading of the Bill as well as the amendments proposed by Dr Fernando CHEUNG. I so submit.

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

MR KWOK WAI-KEUNG (in Cantonese): President, I speak in support of the expeditious passage of the Employment (Amendment) Bill 2017 which puts forward the order for reinstatement. The following are the three main reasons for my support. First, the past practice of requiring the employer's consent in making an order for reinstatement by the court is now abolished; second, if the employer fails to comply with the order, he must pay the further sum not exceeding $72,500; and finally, non-compliance with the order for reinstatement is an offence.

The above conditions provide one more protection to employees who are unreasonably or unlawfully dismissed, but this arrangement is implemented later than we have expected. I remember that in the Council of the last term, we were concerned about how the reinstatement order could be implemented expeditiously. People asked when the Labour Advisory Board ("LAB") began the discussion on the reinstatement order. The discussion began in 2008 and at that time the compensation ceiling was not capped at $72,500 but $50,000. When this Council discussed the reinstatement order again in 2016, the compensation ceiling was still capped at $50,000, and we agreed that LAB should be asked to discuss whether the compensation ceiling should be adjusted. Finally, the limit was set at $72,500.
People would ask how the amount of $72,500 was derived. Of course, as far as compensation is concerned, the higher amount, the better. If you ask me, I am fine with $100,000 or $80,000. According to the figures provided by the Government, the monthly wages of most of the employers involved in the cases handled between 2012 and 2016 were below $24,000. Taking $24,000 as the median, we can see that $72,000 is three times of that amount and hence I find this amount basically acceptable.

There is an amendment to raise the ceiling of the compensation. Of course, a higher compensation is welcomed by all. Mr Andrew WAN queried why the good amendments proposed by Dr Fernando CHEUNG could not be implemented? I wonder if Mr Andrew WAN has a poor memory. Members should recall the incident about the proposal to increase the seating capacity of light buses. Though the Government had already decided to increase the number of seats from 16 to 19, Mr Andrew WAN proposed an amendment to increase the number of seats to 20. For the general public, a 20-seat light bus was certainly good as one more passenger could get on the light bus and get to work earlier. But eventually, Mr Andrew WAN withdrew the amendment without waiting for the voting. His explanation was something to the effect that the amendment was not good enough or there were some other reasons. Let me tell you the real reason. At that time, the Transport and Housing Bureau made it very clear that if Members proposed an amendment to increase the seating capacity of light buses to 20, the Bureau would withdraw the proposal to increase the seating capacity to 19 and would discuss the whole issue all over again. If so, it was not clear when 19-seat light buses would be introduced again, perhaps not even until today. If Mr Andrew WAN indicated that he would support Dr Fernando CHEUNG’s amendments which were so good, he might have to recall what happened to his amendment on 20-seat light buses and reflect on why he had to withdraw the amendment.

We must understand that we should strive for the implementation of the proposal, rather than simply looking for a chance to vote at the last possible moment. Members do not seem to grasp the reality. As regards whether LAB is the best platform or whether it assumes a supreme role, to be frank, I love and hate it at the same time …

(Mr Andrew WAN indicated his wish to raise a point)
PRESIDENT (in Cantonese): Mr KWOK Wai-keung, please hold on. Mr Andrew WAN, what is your point of order?

MR ANDREW WAN (in Cantonese): President, I would like to seek a clarification from Mr KWOK Wai-keung. Perhaps owing to his poor memory, when he mentioned my amendment on increasing the number of seats in a light bus, the nature was a bit …

PRESIDENT (in Cantonese): Mr Andrew WAN, this is not a point that needs to be clarified. Mr KWOK Wai-keung was just relating the fact. You may make a response when you speak later on.

MR ANDREW WAN (in Cantonese): President, he was not relating the fact because at that time the Government threatened to withdraw the bill concerned but this time there is no …

PRESIDENT (in Cantonese): Mr WAN, this is not your turn to speak now. Please sit down.

MR KWOK WAI-KEUNG (in Cantonese): Thank you, President. If Mr WAN must ask, I would have to answer this way. In the words of Mr CHAN Chi-chuen, they stand firm till the very last moment and then make a final bet. During the discussion about paternity leave in the Council of the last term, I used King Solomon's story as a metaphor. When facing two women fighting over a child, King Solomon drew his sword and said he would cut the child into two, and give one half of the child to each woman. In the end the birth mother of the child backed down and begged King Solomon not to cut up the child. At present, whenever this Council discusses labour issues or issues about labour rights and interests, someone would pretend to be the mother of the child and said: cut it up, let it die. They bear no responsibility for the failure of the proposal and claim that the Government should be blamed for doing nothing. The same story repeats every time. Members like us who genuinely wish to implement the proposal have to beg them not to cause any troubles, so that the relevant bill can be passed expeditiously to resolve the employees' problems.
For example, when we discussed the abolition of the offsetting arrangement of the Mandatory Provident Fund schemes, we also requested the Government to speed up the process because the further delay of the matter would make more people suffer. This is a fact. Of course, the opposition Members merely consider problems from the political perspective and what they say are untrue. However, that is their longstanding practice and we need not argue further here.

President, concerning the role of LAB, I wish to point out that I love and hate it at the same time. I love LAB because basically for any proposal which a consensus can be reached by LAB, it can be passed with sufficient votes in the Legislative Council. Likewise, for proposals that have not been discussed by LAB, they will unlikely be passed with sufficient votes in the Legislative Council. Proposals having passed through LAB will more likely be passed by this Council and be implemented. That is my reason for loving LAB. However, I hate LAB because of the inherent defect of its composition. LAB is composed of six employee representatives, six employer representatives and the Commissioner for Labour. One can thus see that the results of LAB's discussions will be middle-of-the-road in nature, which will never be in the best interest of the employees even though LAB is chaired by the Commissioner for Labour. I always say that if the Commissioner for Labour does not help the employees, he should be called the "Commissioner for Employer and Labour".

As a result of the composition of LAB, the proposals it passed will be middle-of-the-road in nature. After the proposals are submitted to the Legislative Council, they will be watered down even further. The situation is the same before and after the reunification. President, I think the Government should bear the biggest responsibility because the Commissioner for Labour it appoints should play a decisive role in LAB. Yet, to our regret, the Government does not give LAB sufficient support. As pointed out by a colleague just now, the Government has always regarded LAB as a shield so as to evade problems. Does the Government support LAB? If so, it should turn it into a statutory body. In fact, the Government does not have the backbone to take up responsibility. A colleague just now called the Government a hypocrite. We do not think the Government attaches so much importance to LAB as it claims. That is our view.

President, please allow me to speak a little more in response to some Members' unfair criticisms against The Hong Kong Federation of Trade Unions ("FTU"), especially on the issue concerning the collective bargaining right. They have actually told a small part of the whole story. I must stress that at that
time, all motions, not individual items, which had not been scrutinized before the reunification, were repealed after the reunification. I must stress that the order for reinstatement approved then would lead to serious confusion and could hardly be enforced. Hence, even though FTU is anxious to strive for the collective bargaining right, it has to adhere strictly to the principle, i.e. such issues need to be scrutinized by this Council. If someone, especially the opposition Members, want to skip over such an important principle today and then use it to attack FTU, it is no different from what they intended to do earlier, that is, to directly pass or vote on motions that have yet to be scrutinized by this Council ... If so, I ask them not to filibuster any more, and no longer say that issues not having been scrutinized or not having enough time to be scrutinized should not be voted on. Why did they specifically bring up the collective bargaining right and then use double standards to criticize FTU? It is absolutely shameless of them.

President, FTU very much hopes that all motions concerning labour rights can be passed expeditiously and the Government will conduct a comprehensive review on the whole set of labour laws as soon as possible. That is far better than having heated debates over each provision. There are many parts and provisions in the Employment Ordinance. If we argue about each provision, I wonder how many provisions the incumbent Government can deal with and how many the next-term Government will be able to deal with. Only by reviewing all labour laws comprehensively can we respond to changes in society. Our economy has been restructured and the operation of society has also changed. Since many years have passed after the reunification, how come the labour laws enacted before the reunification are still in use today and have not been reviewed? I think the Secretary for Labour and Welfare should bear the responsibility. I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Labour and Welfare to reply. Then, the debate will come to a close. Secretary, please speak.
SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, first of all, I thank Chairman WONG Ting-kwong and members of the Bills Committee on Employment (Amendment) Bill 2017 ("the Bill") for their detailed scrutiny of and discussion on the provisions of the Bill, such that the scrutiny work can be completed smoothly. I am also grateful to the various deputations and parties for expressing their views on the Bill to the Bills Committee.

To be concise and given the time constraint, I cannot respond to the views of Members one by one. Nevertheless, I must clarify one point. I must also thank Mr CHAN Chi-chuen because he knows the subject well and has indirectly, or inadvertently, clarified this point for me. However, I believe many Members might not have got the message of what Mr CHAN said and so I have to clarify this point once again. The Labour Advisory Board ("LAB") has not reached a consensus on one issue, namely, the amendments proposed by Dr Fernando CHEUNG. Nonetheless, LAB has reached a consensus on the proposals of the Bill introduced by the Government this time and so I hope Members will not make comments out of context.

Let me reiterate, the Bill mainly seeks to amend Part VIA and IXB of the Employment Ordinance ("the Ordinance") to empower the Labour Tribunal to make an order without securing the consent of the employer for reinstatement or re-engagement of an employee who has been dismissed unreasonably and unlawfully as mentioned in section 32A(1)(c) of the Ordinance and has claimed for reinstatement or re-engagement, if the Labour Tribunal considers making such an order appropriate and compliance with it by the employer reasonably practicable. If the Labour Tribunal makes an order for reinstatement or re-engagement, but the employer has not complied with the order, the employer shall pay a further sum to the employee. The employer who fails to pay the sum will commit a criminal offence. In addition, the Bill also clarifies and supplements the provisions in the Ordinance regarding the conditions of the employer's successor or associated company under an order for re-engagement.

According to the current provisions on employment protection of Part VIA of the Ordinance, if an employee has been unreasonably and unlawfully dismissed and claims for reinstatement or re-engagement, the Labour Tribunal can only make such an order if consent of the employer has been secured and other conditions have been met. Thus, we have proposed in the Bill to abolish the requirement of consent of the employer for reinstatement of the employee in
cases of unreasonable and unlawful dismissal. The Bill targets unreasonable and unlawful dismissals. In other words, the dismissal by the employer should be unreasonable and has taken place under circumstances not permitted by labour legislation. Although the Labour Tribunal is not required to secure the consent of the employer before making an order for reinstatement or re-engagement, the Bill has adequately considered the circumstances of the employer. For example, the Labour Tribunal will only make an order for reinstatement or re-engagement if it finds that making such an order is appropriate and compliance with it by the employer is reasonably practicable. Furthermore, before making a finding, the Labour Tribunal must give an opportunity to the employer and the employee to present each of their cases and consider a number of factors, including the relationship between the employer and the employee; the relationship between the employee and other persons with whom the employee has connection in relation to the employment; the circumstances surrounding the dismissal; and any real difficulty that the employer might face in complying with the order, etc.

The Bill also proposes that in cases of unreasonable and unlawful dismissal, if the employer fails to comply with an order for reinstatement or re-engagement of the employee made by the Labour Tribunal, the employer must, apart from paying terminal payments and the amount of compensation awarded as required under the existing provisions of the Ordinance, also pay the employee a further sum three times the employee's average monthly wages up to a maximum of $72,500, as many Members have mentioned. If the employer wilfully and without reasonable excuse fails to pay the further sum, he/she commits a criminal offence, may be prosecuted and is subject to a maximum fine of $350,000 and three years' imprisonment on conviction. The penalty is consistent with the current penalty for an employer who fails to pay the amount of compensation awarded to the employee by the Labour Tribunal in cases of unreasonable and unlawful dismissal.

Dr Fernando CHEUNG has proposed three groups of Committee stage amendments. I will respond later to these amendments one by one after Dr CHEUNG has moved them.

Many Members and Mr WONG Ting-kwong mentioned the development from the 2016 Bill to the present, particularly how we arrived at the amount of $72,500 for the further sum proposed in the Bill. The amount is the new consensus reached by members of LAB representing the employers and the
employees after thorough consideration and numerous discussions and negotiations. It is a practical and feasible proposal which is considered reasonable by both the employers and the employees; and it strikes a balance between the interests of both sides.

I must reiterate that after the consensus of LAB has been accepted by the Government, it represents the stance of the Government. This is not a question of LAB overriding the Legislative Council. This is the stance of the Government.

Finally, I would like to briefly explain the provisions on re-engagement of the employee by the employer's successor or associated company. The provisions are rather technical. The existing section 32N(6) of the Ordinance provides that "an order for re-engagement is an order that the employee shall be engaged by the employer, or by a successor of the employer or by an associated company". The existing section 32N(3), which empowers the Labour Tribunal to make an order for re-engagement, stipulates that the Labour Tribunal shall make the order after getting the agreement of the employer and the employee. However, section 32N(3) does not make any reference to the employer's successor or associated company. Given that the employer's successor or associated company is not a party to the proceedings relating to the employee's claim, there is doubt about how an order made by the Labour Tribunal may involve a successor or associated company and, if such an order is made, what the liability of the employer is if the successor or associated company fails to engage the employee. We propose that legislative amendments be made to remove the doubt and make necessary supplementary provisions on the respective obligations of the employer and the successor or the associated company.

Without obtaining the consensus of LAB, pressing an increase of the further sum to six times the average monthly wages of the employee and removing the relevant ceiling will seriously jeopardize the cooperative relationship between the labour sector and the business sector fostered through negotiations in LAB over the years, and bring far-reaching negative impact on the labour relationship. That is unacceptable to the Government. Thus, I implore Members to pass the Bill introduced by the Government and oppose Dr Fernando CHEUNG's amendments. If the Member's amendments are passed, given the reasons stated above, the Government does not rule out the possibility of considering the withdrawal of the entire Bill.
President, I believe Members and the Government have a common objective, namely, the expeditious passage of the Bill. I hope that Members will adopt a pragmatic approach and support the Government's proposals on the basis of the consensus reached between the representatives of the employers and the employees in LAB.

President, I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Employment (Amendment) Bill 2017 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr CHUNG Kwok-pan rose to claim a division.

PRESIDENT (in Cantonese): Mr CHUNG Kwok-pan 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.

(Mr AU Nok-hin indicated his wish to raise a point)

PRESIDENT (in Cantonese): Mr AU Nok-hin, what is your point?
MR AU NOK-HIN (in Cantonese): President, I am sorry. I made a mistake when casting the vote just now. I meant to vote in favour of the motion.

PRESIDENT (in Cantonese): Mr AU, you can now cast your vote again.

(Mr AU Nok-hin cast his vote again)

PRESIDENT (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Mr James TO, Mr LEUNG Yiu-chung, Prof Joseph LEE, Mr Jeffrey LAM, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mrs Regina IP, Ms Claudia MO, Mr Michael TIEN, Mr Steven HO, Mr Frankie YICK, Mr WU Chi-wai, Mr YIU Si-wing, Mr MA Fung-kwok, Mr Charles Peter MOK, Mr CHAN Chi-chuen, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Mr Kenneth LEUNG, Ms Alice MAK, Dr KWOK Ka-ki, Mr KWOK Wai-keung, Mr Dennis KWOK, Mr Christopher CHEUNG, Dr Helena WONG, Mr IP Kin-yuen, Dr Elizabeth QUAT, Mr Martin LIAO, Mr POON Siu-ping, Ir Dr LO Wai-kwok, Mr Andrew WAN, Mr CHU Hoi-dick, Mr HO Kai-ming, Mr LAM Cheuk-ting, Mr Holden CHOW, Mr SHIU Ka-chun, Mr Wilson OR, Ms YUNG Ho-yi, Dr Pierre CHAN, Mr CHAN Chun-ying, Ms Tanya CHAN, Mr LUK Chung-hung, Mr LAU Kwok-fan, Dr CHENG Chung-tai, Mr Jeremy TAM, Mr Gary FAN, Mr AU Nok-hin, Mr Vincent CHENG and Mr Tony TSE voted for the motion.

Mr CHUNG Kwok-pan and Mr SHIU Ka-fai voted against the motion.

Dr Fernando CHEUNG abstained.

THE PRESIDENT, Mr Andrew LEUNG, did not cast any vote.
THE PRESIDENT announced that there were 57 Members present, 53 were in favour of the motion, 2 against it and 1 abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.


(Some Members spoke loudly in their seats)

PRESIDENT (in Cantonese): Will Members please keep quiet.

Council became committee of the whole Council.

Consideration by Committee of the Whole Council


Members may refer to the Appendix to the Script for the debate and voting arrangements for the Bill.

EMPLOYMENT (AMENDMENT) BILL 2017

CHAIRMAN (in Cantonese): I will first deal with the clauses with no amendment. I now propose the question to you and that is: That the following clauses stand part of the Bill.

CLERK (in Cantonese): Clauses 1, 2, 3 and 6 to 18.

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

(No Member indicated a wish to speak)
CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses read out by the Clerk stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): In order that we can effectively deal with the remaining procedures of the committee of the whole Council, I now suspend the meeting until 9:00 am tomorrow.

*Suspended accordingly at 7:19 pm.*
Annex I

Inland Revenue (Amendment) Bill 2018

Committee Stage

Amendments moved by the Secretary for Financial Services and the Treasury

<table>
<thead>
<tr>
<th>Clause</th>
<th>Amendment Proposed</th>
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<tbody>
<tr>
<td>9</td>
<td>In the proposed section 100(6), by deleting “44” (wherever appearing) and substituting “43”.</td>
</tr>
<tr>
<td>16</td>
<td>By deleting “Schedule 44” (wherever appearing) and substituting “Schedule 43”.</td>
</tr>
</tbody>
</table>
Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Transport and Housing to Mr Tommy CHEUNG's supplementary question to Question 3

As regards "Securing the provision of amenities ancillary to housing", information on cases of alleged breaches of land lease conditions in divested properties for which the Hong Kong Housing Authority ("HA") has provided information and/or referred cases to the Lands Department (1 January 2017 to 7 May 2018) is set out at Annex.

Annex

Alleged Breach of Land Lease Conditions in Divested Properties with Information Provided and/or Cases Referred to Lands Department ("LandsD") by HA
(from 1 January 2017 to 7 May 2018)

<table>
<thead>
<tr>
<th>Estate</th>
<th>Estate Type</th>
<th>Issue</th>
<th>Actions Taken by HA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tin Wan</td>
<td>Public Rental Housing (&quot;PRH&quot;)</td>
<td>Temporary closure of footbridge access connecting shopping centre to estate and proposed alteration of shopping centre</td>
<td>In response to LandsD's enquiry, provided comments to LandsD on 15 March 2017 on the proposed alteration works of the shopping centre.</td>
</tr>
<tr>
<td>Choi Fai</td>
<td>PRH</td>
<td>Letting of carparks to non-residents</td>
<td>Referred to LandsD on 20 March 2017.</td>
</tr>
<tr>
<td>Lower Wong Tai Sin (II)</td>
<td>PRH</td>
<td>Alleged unauthorized extension of shop area</td>
<td>Provided information to LandsD on 23 May 2017 as per LandsD’s request.</td>
</tr>
<tr>
<td>Estate</td>
<td>Estate Type</td>
<td>Issue</td>
<td>Actions Taken by HA</td>
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<tr>
<td>Yat Tung PRH</td>
<td></td>
<td>Letting of carparks to non-residents and closure of certain floors of carpark No. 3</td>
<td>As the Deed of Mutual Covenant (&quot;DMC&quot;) Manager, wrote to the owner to remind them to comply with the provisions in the land lease and DMC on the use of carpark facilities. Referred the case to LandsD on 23 April 2018.</td>
</tr>
<tr>
<td>Kwai Hing Tenants Purchase Scheme</td>
<td>Alleged unauthorized use of common areas for commercial use</td>
<td>In response to LandsD's enquiry, advised LandsD on 4 April 2018 that the Incorporated Owners of Kwai Hing Estate had issued verbal advice and written notice on 12 January 2018 and 10 February 2018 respectively to the shops concerned for rectification of the alleged obstruction. HA also requested the management office to tighten up the management of the common areas.</td>
<td></td>
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</tbody>
</table>
**WRITTEN ANSWER — Continued**

<table>
<thead>
<tr>
<th>Estate</th>
<th>Estate Type</th>
<th>Issue</th>
<th>Actions Taken by HA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hing Man</td>
<td>PRH</td>
<td>Alteration and Addition (&quot;A&amp;A&quot;) submission for commercial and carpark block involving modification of a 24-hour access route and closure of dental clinic</td>
<td>In response to LandsD's enquiry, provided comments to LandsD on the A&amp;A submission on 27 October 2017; also, informed LandsD on 7 May 2018 that HA's approval is required for changing the use of the welfare premises other than as dental clinic under the Welfare-letting Covenant (&quot;the Covenant&quot;). HA will continue to monitor the actual use of the premises to ensure that the Covenant will be observed by the owner and relevant parties.</td>
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</tbody>
</table>