OFFICIAL RECORD OF PROCEEDINGS

Thursday, 17 May 2018

The Council continued to meet at Nine 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 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 CHUI TAK-YI, J.P.
UNDER SECRETARY FOR FOOD AND HEALTH, AND
SECRETARY FOR FOOD AND HEALTH

MR JOSEPH CHAN HO-LIM, J.P.
UNDER SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

CLERKS IN ATTENDANCE:

MISS FLORA TAI YIN-PING, ASSISTANT SECRETARY GENERAL

MS DORA WAI, ASSISTANT SECRETARY GENERAL

MR MATTHEW LOO, ASSISTANT SECRETARY GENERAL
GOVERNMENT BILLS

Consideration by Committee of the Whole Council

CHAIRMAN (in Cantonese): Good morning. Committee will now continue to consider the Employment (Amendment) Bill 2017.

EMPLOYMENT (AMENDMENT) BILL 2017

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 4 and 5.

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG will move his three groups of amendments as set out in the Appendix to the Script: The first group of amendments seeks to amend clause 4; the second and third groups of amendments seek to amend clause 5 respectively.

Members may now proceed to a joint debate on the original clauses and the amendments. I will first call upon Dr Fernando CHEUNG to speak and move his first group of amendments.

CHAIRMAN (in Cantonese): Upon the conclusion of the debate, the committee of the whole Council will first vote on Dr Fernando CHEUNG's first group of amendments.

Irrespective of whether Dr Fernando CHEUNG's first group of amendments is passed or not, he may move his second group of amendments.

If Dr Fernando CHEUNG's second group of amendments is passed, he will withdraw his third group of amendment.
CHAIRMAN (in Cantonese): Dr Fernando CHEUNG, you may move your first group of amendments.

DR FERNANDO CHEUNG (in Cantonese): Chairman, I move my first group of amendments as set out in the Appendix to the Script.

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG, do you wish to continue to speak?

DR FERNANDO CHEUNG (in Cantonese): Chairman, first of all, I would like to explain the first group of amendments. This group of amendments mainly amends clause 4(1) of the Bill. If an employee has been unreasonably and unlawfully dismissed and it is proved to the satisfaction of the court that the employee has been unreasonably and unlawfully dismissed and reinstatement or re-engagement of the employee is an appropriate civil remedy, and the court also finds that reinstatement or re-engagement of the employee is reasonably practicable, it may make an order for reinstatement or re-engagement.

As regards what is meant by reasonably practicable, my first group of amendments actually addresses this issue. Certainly, the court also adopts ordinary people's perception of what is practicable when considering the case. However, in order to give more specific description to reasonably practicable, I have put forward two points for consideration by the court.

A number of colleagues said earlier that my proposed amendments might render the court unable to consider an important situation, that is, the employer has engaged a replacement for the aggrieved person, and my amendment would exclude this important factor from the scope of the court's consideration of reasonably practical. The above remark is incorrect. I definitely will not change this factor for consideration, but will make it more specific. I think the court should consider the following two points.

First, if the employer has engaged a replacement for the original employee, even if it has been proved by the court that the employee has been unreasonably and unlawfully dismissed and that reinstatement or re-engagement should be arranged (reinstatement is to return to the original post while re-engagement is to
be transferred to similar posts), the employer should try to transfer the employee concerned to a similar post even though it is generally considered, from the civil perspective, that returning to the original post is the best arrangement. Therefore, when the court considers whether re-engagement of the employee concerned is reasonably practicable, the employer must first prove that if he does not timely engage a replacement for the aggrieved employee, it will not be operationally practicable.

Let me explain this more clearly. For example, a company only has three employees and all the posts are very important. The company needs a receptionist to answer phone calls every day during office hours and to receive guests at the reception. If the receptionist is unreasonably and unlawfully dismissed by the employer, even if the court considers that the dismissal is inappropriate, the employer must engage another person to replace the aggrieved employee to maintain the company's operation. Hence, if the employer can prove to the satisfaction of the court that the whole company will fail to operate if he does not timely engage a replacement for the aggrieved person, this point should be considered by the court.

I am not saying that the employer is not allowed to engage a replacement for the aggrieved employee, rendering the situation not practicable. Instead, my amendments seek to point out that if the court considers that the aggrieved employee should return to the original post but the employer has engaged another employee, the employer will have to prove that the company will fail to operate if he does not engage a replacement. It is just that simple.

In the case of a small and medium enterprise ("SME"), if a company has less than 10 employees, even if there is a lack of one person's productivity, the overall operation of the company may also be seriously affected. In this case, the employer can explain to the court that if he does not engage a replacement, the company will not be able to operate and will suffer heavy losses or serious damages. This is the focal point of my amendments which should be considered by the court. Thus, Members should not say that I disallow consideration by the court. I just make the factor of reasonably practicable more specific.

Second, the employer can also prove that the employee who has been unreasonably and unlawfully dismissed has never indicated his intention to be reinstated or re-engaged, and that he has also engaged a replacement after the lapse of a reasonable period. Chairman, this is highly reasonable. After the
employer has dismissed an employee, even if the court considers that the dismissal is unreasonable and unlawful, if the dismissed employee has not indicated his intention to return to the original post and the employer has waited for a reasonable period of time—I think it is best for the court to decide what constitutes a reasonable period of time—say the employee has not worked for a month or two and has never indicated to the employer that he wished to be reinstated, the employer naturally cannot wait any longer and has to engage a replacement. The employer can reflect this situation to the court, and it can be a factor for considering whether reinstatement is reasonably practicable as a replacement has been engaged. It is easier for SMEs to prove this point to the satisfaction of the court as the scale of operation is relatively smaller and having one employee less may have real impacts on the company or may constitute a major obstacle to the provision of services.

This group of amendments has only added these two conditions, so that the court can more specifically consider whether it is reasonably practicable for the employee concerned to return to the original post or to be transferred to a similar post after reinstatement. Chairman, I do not understand why my colleagues have raised objections and even said that the amendments would make it impossible for the employer concerned to engage a replacement.

In fact, the contents of these amendments are rather similar to the provisions of the Employment Rights Act 1996 of the United Kingdom. It is not meant to make some highly unreasonable arrangements but to ensure basic protection for the court and the aggrieved person. The employer must explain that there is full justification to engage a replacement such that the aggrieved person cannot be reinstated or cannot return to a similar post. The employer cannot make up any excuse for engaging a replacement after dismissing the employee to convince the court whether reinstatement is practicable.

Chairman, regarding the controversy over the reinstatement order, the Labour Advisory Board ("LAB") and some colleagues who spoke yesterday both expressed the concern that the passage of my amendments might bring about many abuse cases. Why will there be abuse? The whole process has to pass three hurdles: First, the court must rule that the dismissal is unreasonable and unlawful but it is not easy to establish such a ruling. The ruling on unlawful dismissal is very specific. If it is proved to the satisfaction of the court that the employee is not dismissed during work-related injury, during sick leave or pregnancy, by reason of participating in labour union activities or giving evidence
to fight for trade union or employment rights and benefits, then he will not regarded as being dismissed unlawfully. Thus, the threshold is fairly high. In the past, among thousands of such claim cases, not many cases involved employees who really wanted to be reinstated and the number of cases where the employees were finally reinstated or ordered reinstatement or re-engagement by the court was zero. We hope that it will not be necessary to secure employers' consent in the future after these amendments have been passed. If so, the number of such cases will increase in the future.

About the three hurdles to be overcome, the first hurdle is that it must be proved to the satisfaction of the court that the employee has been unlawfully and unreasonably dismissed. The second hurdle is that the court must consider that the employee's return to the original post is a more appropriate or proper remedy, which is not easy. Since most dismissed employees, especially the employees of SMEs, nurse a grievance against employers, there is no point in allowing the employees to return to the original posts. Therefore, we are generally referring to companies of larger scale. In most cases, after the employees of these companies have been unreasonably and unlawfully dismissed by employers, the employment relationship will break down. As my colleagues have said, "reluctance will not bring happiness". When an employee is facing an employer with greater power, he may unavoidably be mistreated. Who would like to work under such circumstances?

I really want to remind colleagues from The Hong Kong Federation of Trade Unions ("FTU") that in many past cases, organizations of larger scale were involved and employees who insisted on reinstatement were trade union members. Since they had been suppressed when they organized trade unions, they insisted on returning to the original posts. They very often did not take their own self-interest into account. They insisted on returning to the original posts after they had been unreasonably and unlawfully dismissed because they still wanted to organize trade union and did not want to leave after being suppressed. They did not want to lose the trade union and the leadership positions. Hence, if FTU gives due consideration, it should definitely support my amendments.

The last hurdle is that the court must consider whether reinstatement or re-engagement of the employee is reasonably practicable.
Chairman, my amendments are highly reasonable, giving more specific and detailed description of the factors to be considered by the court in deciding whether reinstatement or re-engagement of the employee is reasonably practicable. Moreover, the employer cannot refuse to reinstate or re-engage the employee on the pretext of having engaged a replacement.

Chairman, I have other amendments and I would like to clarify whether this debate also covers the second and third groups of amendments. If so, I would like to speak again later. Chairman, may I ask for directions?

Proposed amendments

Clause 4 (See Annex II)

CHAIRMAN (in Cantonese): Yes, committee will have a joint debate on the three groups of amendments.

I now propose the question to you and that is: That the first group of amendments moved by Dr Fernando CHEUNG be passed.

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

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, regarding the reinstatement orders, many people are worried that the mechanism will be abused by employees, and hence employers will be put in a difficult position. Dr Fernando CHEUNG's amendments are in fact well-considered. For example, the final decision will not rest solely on the demand of the employee but is up to the court to make a ruling. Meanwhile, the employer may raise objection on reasonable grounds with the support of evidence. As this is a fact beyond dispute, employees will have no way to abuse the mechanism at will.

As I said in the Second Reading debate and illustrated by Dr Fernando CHEUNG earlier, the relevant threshold is very high. Firstly, the dismissal must be unreasonable; secondly, the dismissal must be unlawful. Employees cannot ask for reinstatement unless these two criteria are met, which is very difficult. If both criteria are met, there comes another gatekeeper, i.e. the court, and going through the court's review is even more difficult. In other words, reinstatement
will not always be granted upon the request of the employee; the employer can also produce evidence or give reasons to raise objection. As reinstatement may only be granted when it is practicable, I do not think there should be worries about the mechanism being abused.

Of course, it is known that labour relations involve many issues which also exist in small and medium enterprises ("SMEs"). However, as Dr Fernando CHEUNG stated just now, such disputes do not very often involve SMEs because cases of employees of SMEs striving for labour rights and interests can usually be settled by the Labour Tribunal without having to resort to the court. Most of the disputes happen in medium and large enterprises where some of the employees stand up for the rights and interests of fellow workers. Therefore, as clearly stated by Dr Fernando CHEUNG just now, these disputes are often related to trade union activities, mainly involving the employee-employer relations in an enterprise rather than targeting at individual employees who are dismissed for persistently being late to work. It is indeed unnecessary to worry that this legislative amendment will jeopardize the future operation of SMEs. While I dare not say that this worry is unjustified, the possibility of having this situation is minimal. I urge Members to take note of this point.

Chairman, I must reiterate my views in this connection. The introduction of reinstatement orders can actually help the labour sector in its fight for raising the statutory status of trade unions. This is of vital importance. Currently, in the absence of collective bargaining rights, workers' representatives do not have a clear statutory status to negotiate with employers on issues concerning higher wages, better fringe benefits and working conditions, etc. The introduction of reinstatement orders will not only facilitate the formation of workers' groups or trade unions to maintain ties among workers, but also promote communications between employees and employers or management to foster their relations. To me, it is a positive development because workers can boldly discuss or negotiate with their management or employers without fearing of being dismissed.

In fact, the Government also keeps stating the importance of communication between employees and employers. Yet, the problem is that the unequal footing of two parties has hindered their communication and hence created many complicated issues. If workers will not be plagued by the psychological obstacles and psychological threats … as we all know, what wage earners worry most is losing their jobs because they need a job to support their families. If employers settle the score in future or threaten employees who speak out, many workers or their representatives will be put under great pressure.
One example is the KMB incident that happened some time ago. A number of workers' representatives were dismissed in the settling of accounts. They would not have been reinstated if their employer had not been pressured by the public. If, unfortunately, there had not been any public concern over this incident, workers might apply for reinstatement after being dismissed, and if the court confirmed that their replacement might not be practicable or ruled that their dismissals were unnecessary, they might finally be reinstated. I think this arrangement would be highly conducive to the fight for workers' well-being.

Therefore, Chairman, I support Dr Fernando CHEUNG's amendments. As for the amount of the further sum, I will speak on it later as it falls under another group of amendments. In my view, this amount is very important. Although I should not speak on this issue at this moment, I must point out its importance. Dr Fernando CHEUNG's amendments have been criticized by many people as allowing employees to abuse the mechanism and undermining labour relations. I urge Members to take this issue from a positive perspective. The building of a harmonious labour relation will bring positive impact not only to a single enterprise but also our economic development.

Chairman, I so submit.

CHAIRMAN (in Cantonese): I remind you that the committee of the whole Council is now having a joint debate. You may speak on all the three groups of amendments moved by Dr CHEUNG.

MR WONG TING-KWONG (in Cantonese): Chairman, as the adage goes, "birds choose good trees to perch on". If I were an employee working for an unreasonable and unscrupulous employer, I would just quit. Apart from that particular employee, all other employees should also quit. Why should one still work for this unscrupulous employer?

Frankly speaking, working is to make gains, not pains. As cited by Dr Fernando CHEUNG in his earlier speech, some employees do have such unreasonable and unscrupulous employers in their workplace. They are not on speaking terms and hate each other as if they are enemies. What is the point of having this relationship? Even Dr CHEUNG shares the view that "reluctance will not bring happiness". If so, why not seek reasonable compensation and
leave. If employers and employees have to resort to legal proceedings, their relationship is beyond repair. So what is the way out? A peaceful breakup is the solution and each party can get what it wants. This is better than perishing together. Will wage earners only be happy if the company winds up? What is his benefit? Will employers only be elated when the employee leads a poor life and is driven to a dead end? I do not think we should ever foster this atmosphere in society.

If there were such an unscrupulous employer, I believe not only his employees would quit, but the whole company would collapse. How could such kind of companies survive? They should have been closed down for a long time. No one would want to work for such companies nor would such companies have any customers. How could companies of this kind continue to survive?

Just now, both Dr Fernando CHEUNG and Mr LEUNG Yiu-chung mentioned an important point, i.e. this issue concerns trade unions or workers' associations rather than individual employees. All enterprises have their own discipline and culture. Sometimes, the requirements of individual employees and their fringe benefits … in reality, the one who takes will never consider he has taken enough while the one who gives will always think that he has given too much. The problem is how to strike a balance. In the give-and-take relationship, both sides should collaborate in discussions and negotiations. None of them should play hardball. Take the pro-establishment and pro-democracy camps as an example. Despite differences in political stances, the two camps should collaborate. This is how we should behave.

Therefore, I have many doubts about Dr Fernando CHEUNG's first group of amendments, as well as his other two groups of amendments. Is it necessary to intensify the conflicts? Is it the only way to solve the problems? I urge Members to think about it. When I was young, labour relations was not like that. In future, will employees and employers be bound to stand against each other as enemies? In my view, employees and employers are interdependence like lips and teeth.

Thank you, Chairman.
MR AU NOK-HIN (in Cantonese): Chairman, I think Mr WONG Ting-kwong did not need to be so agitated. If I have not mistaken Mr WONG Ting-kwong's criticism of Dr Fernando CHEUNG, I think he considered Dr Fernando CHEUNG's amendment "Kamchulia", meaning being forcibly imposed. I wonder if my understanding is right. I hope I have not been mistaken. In fact, I do not even know if that is a Chinese or English expression. I think certain cases are related to the order for reinstatement or re-engagement, and they are worthy of Members' consideration.

When Members, either representing the employer or the employee, spoke on the amendments, they all said that "reluctance will not bring happiness". When making this remark, do they mean that there is no need for our legal system to provide better and more proper protection for employees? I think there is room to ponder on this issue. What does it mean by "reluctance will not bring happiness"? I think we all know very well that if an employer and his employees have a heated dispute and they resort to legal proceedings, and if the judge made an order for reinstatement, requiring the employer to allow the employee to continue working for his company, will this arrangement bring benefits to both parties?

In his amendment, Dr Fernando CHEUNG establishes the role of the court by stipulating "when making a finding whether it is reasonably practicable for the employer to reinstate or re-engage the employee, the court or Labour Tribunal must not take that fact into account unless the employer has satisfied the conditions specified in the proposed section 32N(3CA)". In other words, when the court considers if a certain action is "reasonably practicable", it has to take into account the relationship between the employer and the employee at that time. I also believe that when the judge makes a finding, he understands that if the dismissed employee continues to work for the original company, it will be very awkward for both parties and the labour relationship may further deteriorate. As their differences will remain unresolved, the result will not be satisfactory. Hence, I believe the court will make a finding based on the evidence provided by both sides. An employer-employee relation goes both ways. It does not mean that once Dr Fernando CHEUNG's amendments are passed, the court will force the employer to re-engage the employee concerned and eventually, the employee will certainly benefit while the employer will certainly lose out.

For example, if a labour dispute happens in a small enterprise with an owner and several employees, their relationship is very simple. If the court makes an order for reinstatement, requiring the employer to re-engage the
employee concerned, I think it will be very hard for both sides to get along harmoniously and pretend that nothing has happened. It is very difficult to handle such a case. However, if the employer is a bigger company and the one who dismissed the employee is not in the highest echelon of the company, when the dismissed employee is reinstated under the reinstatement order, he can be transferred to another department. This arrangement will not only resolve the dispute but also allow the employee to be re-engaged. Hence, there is much room for deliberation in this area.

Chairman, I once handled a case and I wonder if the person in question would get the help he needed if a reinstatement order was made. The person who sought my help was a teacher. He opined that the school principal always picked on him, constantly asking him to take up work outside his scope of responsibility. He was thus greatly disturbed, and other teachers supported him and did not want to see him being picked on. Eventually, the case was not dealt with by the Labour Tribunal as the school transferred that teacher to another school run by the same school sponsoring body.

From this case we can see that not all labour disputes need to resort to legal proceedings. Even if a case is handled by the Labour Tribunal, the dispute can still be settled through mediation. The reason why the amendments under discussion now are so important is that once both sides fail to reach an agreement, they will have to settle their disputes through legal means.

Chairman, I have talked about Dr Fernando CHEUNG's first group of amendments. The proposed amendments do not intend to impose any pressure on employers but facilitate interaction between employers and employees. As for the second group of amendments, I think there are points worth deliberating. How much is a worker worth? As I said in my previous speech, if a worker is only worth a little more than $70,000, when he organizes a trade union, the price that an employer has to pay in order to drive him away is only a little more than $70,000 at most. I think such a price is extremely low. I hope that I have not mistaken the remark made by a colleague from The Hong Kong Federation of Trade Unions ("FTU"). If I remember correctly, yesterday a Member mentioned in his speech that the compensation made in most of the cases were under $70,000. Did I understand it correctly? The compensations made in many of the cases were only $20,000. I hope that I have not wrongly quoted the figures. If the compensations made in many of the cases were below the ceiling, why are we asking for an increase? That is because we wish to warn all employers that if
their employees are dismissed on grounds of pregnancy, organization of trade union or other reasons that are very clear to everyone, these employees deserve more than $70,000. How much these employees are worth should be decided by the court according to the actual situation and let the court determine how much compensation they should get. Hence, I find Dr Fernando CHEUNG's first and second groups of amendments desirable and hope that Members will consider them.

Lastly, I wish to respond to Secretary Dr LAW Chi-kwong and I hope that the Chairman will not say that I have digressed. The order for reinstatement and the motion now under discussion are closely related to the Labour Advisory Board ("LAB"). Secretary Dr LAW Chi-kwong said last night that the stance of LAB was the Government's stance. If the amendments proposed by Dr Fernando CHEUNG were passed today, the Government might consider withdrawing the entire Employment (Amendment) Bill 2017. I hope I have not mistaken his meaning.

I think we must consider a fundamental problem, i.e. what exactly is LAB's consensus? Chairman, I hope that you will allow me to talk about the composition of LAB, which has something to do with the consensus that I just talked about.

LAB was established under the spirit of tripartite consultation as provided in the International Labour Organisation Convention (No. 144), but very often, we see that …

CHAIRMAN (in Cantonese): Mr AU Nok-hin, the committee is now having a joint debate on the first, second and third groups of amendments moved by Dr CHEUNG.

MR AU NOK-HIN (in Cantonese): Chairman, I understand but I think it is necessary to point out that LAB's consensus …

CHAIRMAN (in Cantonese): If you continue to express your views on this subject, I will have to ask you to stop speaking.
MR AU NOK-HIN (in Cantonese): As a matter of fact, we have also mentioned about the consensus of LAB. If you or the Deputy Chairman has listened to my previous speech, you would know that I did mention that the consensus of LAB was a salient point of this amendment debate.

The reason for the great controversy over the reinstatement order is that it has not been put on the agenda of LAB for discussion and how come LAB has not formed a view on the reinstatement order? The reason lies in the fact that the employees’ representatives in LAB comprise a government representative and five other representatives and a block voting system is adopted. LAB is not a democratic organization; that is why the voices of so many workers cannot be brought into LAB, right? Hence the International Labour Organization had, upon inspection of the situation in Hong Kong, pointed out that the Hong Kong Government had breached the agreement. Therefore, if the Government really thinks that LAB’s consensus is its consensus, we must point out that it is an undemocratic consensus. Chairman, I so submit.

DR FERNANDO CHEUNG (in Cantonese): Chairman, this is a joint debate that deals with all the relevant amendments. The Clerk has just informed me. I will continue to explain the other amendments …

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG, I made it clear at the beginning of the debate that this was a joint debate. If you had paid attention, you would not have to clarify with the Clerk. Now please continue with your speech.

DR FERNANDO CHEUNG (in Cantonese): Chairman, I did listen but sometimes it is better to be more careful. Later on I will respond individually to the comments made by colleagues and the Secretary yesterday. Just now, I have already explained the main contents of my first group of amendments, which is, the court requires an employer to make two clarifications before considering whether it is reasonably practicable to reinstate an employee. I will not repeat the two conditions but I consider them very important.

Let me explain the second group of amendments now. This group of amendments is mainly concerned with the amount of compensation. It amends clause 5 of the Employment (Amendment) Bill 2017 ("the Bill"). Clause 5
suggests that in the case of an unreasonable and unlawful dismissal, if the employer fails to reinstate or re-engage the employee before the expiry day specified in the order for reinstatement or re-engagement according to the terms of the order, the employer has to pay the employee a sum equal to three times the employee's monthly wages but no more than $72,500. My amendment proposes to increase the sum to six times the employee's monthly wages and remove the ceiling.

Why is it necessary to make this amendment? The reason is very simple. It is a grave issue that a court order can be "bought up" with a sum of money. First, I oppose this approach in principle and I will explain my worries again later on. Second, even if an employer can "buy up" a court order with money, the price is just too low (three times the employee's monthly wages and $72,500, whichever is lesser). For employers, the price is really too low.

Mr WONG Ting-kwong said just now that my amendments would intensify conflicts. How would they intensify conflicts? My amendments are actually very reasonable. He also said that "reluctance will not bring happiness". Why did an employer dismiss an employee, and the dismissal might even be considered as unlawful by the court? The reasons for dismissal might be the employee's participation in the organization of a trade union or his being a union leader. In order to get rid of this thorn in his flesh, the employer is willing to take the risk of dismissing the employee unlawfully. When the court ruled that the dismissal was unreasonable and unlawful and made an order for reinstatement when it considered the reinstatement practicable, the employer said, "I could not care less about the order. I will 'buy up' the order with money. I will not comply with the court order." Conflicts will really be intensified under such a situation. Why must the employer go to such an extent? That is because he has to remove the thorn in his flesh. And why does the employee insist on reinstatement even if he is not on speaking terms with the employer? The reason is that he has to safeguard the trade union.

The cases cited by Mr WONG Ting-kwong involved small and medium enterprises ("SMEs"), but such situations simply would not happen in SMEs. The cases that I am referring to very often happened in big corporations or big public bodies, such as universities. Some universities have recently fired a number of teaching staff. For example, The Hong Kong Polytechnic University, where I used to teach before retirement, has recently fired eight or nine tutors who helped social work students with their placement. Two months ago, it fired
six teaching staff in the Faculty of Applied Mathematics. The staff union stepped in to offer help. If an employer fires employees on grounds that they cause trouble, what is the price to pay? The price is only $72,500. However, the monthly salary of a professor or a trade union leader is very often $100,000 or even higher. A few years ago, Cathay Pacific Airways fired more than 40 pilots and their monthly salary was over $100,000. Without even paying a month's salary, an employer can even ignore a court order, "I just fire you and buy you up. What can you do about it?" Is the price just too low?

This principle itself is already hard to accept. A court order can be "bought up". Does it make sense? And the price is also very low: three times an employee's monthly wages or $72,500. If an employee has a high monthly wage, does it mean that he can be removed with only a month's wage? Will the further sum become payment in lieu of notice? Of course, payment in lieu of notice must be paid, but the price is really too low to have any deterrent effect. How can an employer be allowed to totally ignore the reinstatement order made by the court after deliberation—I mentioned the three hurdles earlier which I will not repeat now—by paying such a low price? And why should a ceiling be set?

According to the four anti-discrimination ordinances in Hong Kong, if an employee is dismissed on account of his disabilities, the employer will have to pay compensation and no ceiling amount has been set. If an employee is dismissed on account of discrimination owing to his family status, gender or race, the employer will have to pay compensation and no ceiling amount has been set. Why is the ceiling amount of $72,500 set in this ordinance? Why three months' wages? In the United Kingdom, it is provided that the employer has to pay compensation to an employee at six months' to one year's wages, or 26 to 52 weeks' wages. My amendments only raise the compensation to the minimum standard in the United Kingdom, that is, six months' wages, and remove the ceiling.

As a matter of fact, six months' wages do not have a particularly strong deterrent effect, but at least the employer will have to think very carefully as it is still a good sum of money. One should pay a good sum of money if he ignores a court order. But some Members even consider my approach unreasonable and say that I force it through. That is totally beyond me.

Just now, I pointed out that my first group of amendments only stipulated certain circumstances under which the court could consider whether it was reasonably practicable to reinstate an employee. The amendments are
reasonable, and obviously they will not affect SMEs. This group of amendments only increases the price for not complying with the court order, which can hardly be considered unimaginable. The amount proposed is the minimum standard in countries like the United Kingdom.

The third group of amendment is relatively technical. It mainly targets at the practice to revise the compensation amount specified in the Bill. It is stipulated in the Bill that the amount can be revised by means of subsidiary legislation which is subject to negative vetting and needs not be first examined by the Legislative Council. Subsidiary legislation is certainly handled in this way, but I propose to turn the practice into a part of the principal ordinance, subject to positive vetting. Why? That is because of the Government's poor track record.

The Employment Ordinance was enacted in 1997, more than 20 years ago. As Mr AU Nok-hin said yesterday, the Labour Department admitted in a paper that it reviewed the Ordinance in 1999 and a consensus was reached in the Labour Advisory Board ("LAB"), such that "agreement by both sides" or "agreement by the employer and the employee" was no longer required and amendments should be made. The Labour Department also told the International Labour Organisation that it would amend the Ordinance as soon as possible. All these happened in 1999 and 2000. Members can read the annual report of LAB which contained a paragraph on this issue.

The Government introduced the Bill now, after a delay of many years. I do not understand why some colleagues claimed that the Government was forced to withdraw the Bill because of my proposed amendments, making it impossible to amend the Ordinance even after such a long wait. What is wrong with them? I proposed the amendments in 2018 and the incumbent Government withdrew the Bill for the first time. The last time the Government withdrew the Bill was in 2016, toward the prorogation of the legislative term. The Government has delayed for so many years. How can we ask it not to delay again? I propose to adopt the positive vetting approach so that Members can revise the compensation amount by resolution.

To be frank, I really wonder how long we will have to wait for the Government to revise the amount. Even if the Government is willing to revise the amount, we are all aware that the scrutiny of the subsidiary legislation subject to negative vetting has to comply with the "four plus three" rule. That is, if no Member puts forward a resolution in four weeks, the relevant amendment will be
passed; or if a Member proposes, within the four-week period, to extend the scrutiny for three weeks, the period will be extended for three weeks and we at most only have seven weeks for scrutiny. Under the present operation of the Council, there is a great deal of business that needs to be considered, when can motions proposed by Members be dealt with? A wait for six months may be needed, but the four-week scrutiny period, which is merely a month, will be elapsed in the wink of an eye. As such, we are forced to accept whatever amendments proposed by the Government.

Why should we allow the Government to do so? According to the past government records, the Government has been reluctant to take on the task, and what it has done may not meet the needs of the public. By proposing this amendment, my aim is to return the power to the Legislative Council by means of positive vetting and by allowing Members to put forward proposals by resolutions, so that we can make timely amendments. When the amount of compensation is totally out of touch with the real needs and no longer has any deterrent effect, the employers may abuse the situation. As the compensation is merely a little more than $70,000, if an employer forcibly dismisses a trade union leader, can we do anything to stop him?

We should not forget, and Mr WONG Ting-kwong should know better that many leftist trade union leaders had been suppressed by employers in the past. When they were forcibly dismissed, what did those trade union leaders do? They stood firm and faced the unscrupulous employers fearlessly. The unscrupulous employers would say, "Just leave and cause no trouble." Mr WONG Ting-kwong should know very clearly the sacrifice made by many trade union leaders in the past. In the past, during labour movements of the leftist or the rightist, how many trade union leaders were suppressed? If reinstatement order was made at that time, would trade union leaders insist ongoing back to their original posts? They certainly would. These amendments are to protect workers' basic dignity and to ensure that trade union leaders can be reinstated in case of unreasonable and unlawful dismissals. Mr WONG Ting-kwong definitely understands this. Even though he represents the business sector, I know that he is very familiar with the history in question.

By proposing the amendments now, I do not mean to stir up conflicts but to make the legislation reasonable. Yesterday, Secretary Dr LAW Chi-klwong said that if my amendments were passed, he would withdraw the Bill. He did not say he would certainly withdraw the Bill, he just indicted that he did not rule out the
possibility. Such threats to the Legislative Council should be condemned. The Legislative Council has its own independent will and Members may amend government bills. If the Government threatens to withdraw the bill whenever Members propose any amendment, it is downright threatening and hijacking the Council, an indication of executive hegemony.

MR HOLDEN CHOW (in Cantonese): Chairman, Dr Fernando CHEUNG has proposed several amendments to the Employment (Amendment) Bill 2017 ("the Bill"). First of all, as I said yesterday, the Labour Advisory Board ("LAB") has spent a long time discussing the issue concerned. After employer and employee representatives had reached a final consensus at the platform of LAB, the Government submitted the Bill to the Legislative Council for scrutiny. All stakeholders hope that the Bill can be passed and the consensus of LAB be implemented as soon as possible. The amendments suddenly proposed by Dr CHEUNG at this stage are not within the scope of consensus reached by LAB. Dr CHEUNG also proposed to increase the further sum from three times to six times the employee's monthly wages. Frankly speaking, considering the time spent and efforts made by LAB in negotiation before reaching the consensus, I think the amendments are unfair to LAB. We have to respect the consensus and foundation reached by LAB after spending so much time and efforts.

Secondly, frankly speaking, the sudden increase of the further sum from three times to six times the employee's monthly wages will obviously frighten employers, especially those of small and medium enterprises ("SMEs"). In the case of SMEs, the present business environment is already rife with difficulties. For example, in the face of the possible abolition of the offsetting arrangement of the Mandatory Provident Fund schemes, SMEs are considering various contingency measures. And if SMEs suddenly have to face the new arrangement concerning the reinstatement order and the increase in compensation from the original three times the employee's monthly wages to six times the employee's monthly wages, they not only have to face difficulties but also anxieties.

I wish to make one point concerning Dr Fernando CHEUNG's amendments. I have listened to his speech very attentively. The first group of his amendments involves the factors to be considered by the court in making orders. In the government paper concerning the Bill, it is clearly stated that in the past, the court must obtain the employer's agreement before making an order
for reinstatement. This is a long-standing practice under the present mechanism. The Bill moves a step forward by removing the requirement of the employer's agreement when making an order for reinstatement. Of course, the pre-requisite is that the court finds the reinstatement of the employee practicable. It is not necessary to have the employer's agreement before the court makes an order for reinstatement. In theory, this helps the employee who genuinely wishes to be reinstated. However, Dr Fernando CHEUNG's amendments go even further. I have been listening very attentively. Under his amendments, when deciding whether reinstatement is practicable, the court needs not take into account the employer's agreement, as well as whether the employer has engaged a replacement for the dismissed employee. Engaging a replacement is a very normal practice but the court cannot take that factor into account. To put it simply, even if the employer has engaged a replacement, it is provided that the court cannot take that into account. When the court decides whether an order for reinstatement should be made, it cannot consider whether the enterprise has engaged a replacement for the dismissed employee.

This is exactly the salient point of Dr Fernando CHEUNG's amendment. He suggests that the court needs not take into account the objective reality of whether the employer has engaged a replacement. The decision on making an order for reinstatement must rest entirely with the employee's wish. If the employee requests to be reinstated, the court must make an order for reinstatement, even if the employer has already engaged a replacement. His amendments also set down some other pre-requisites, such as whether the employee has told the employer his intention of being reinstated. To put simply, I believe Dr CHEUNG also understands that this further step is bound to arouse the resentment of SMEs.

Perhaps I can put it in the most straight forward way. Assuming that an employee is dismissed during work and that he is dismissed unreasonably or unlawfully, which is certainly wrong. Anyway, after considering various factors, the employer finally decides to engage a replacement and does not wish to reinstate the original employee. As we often say, "reluctance will not bring happiness". Maybe the employer and the employee are at odds with each other and can no longer cooperate. The employer will certainly engage a replacement to take up the work. However, if this amendment is passed, it will be unlawful for the employer to engage a replacement. If the employee insists on being reinstated, the employer must make such an arrangement. To a certain extent, the court must make an order to allow the employee to be reinstated. As
Mr WONG Ting-kwong has just said, "reluctance will not bring happiness". Although the employer-employee relationship is beyond repair, the employer is still required to comply with the order to reinstate the employee, which is the objective fact. Frankly speaking, employers, especially those of SMEs, are worried about the proposals in the amendment. I do not agree to the arrangement proposed in the amendment. I have already stated the reason for my objection.

The amendment proposes to remove the $72,500 ceiling of the further sum paid by the employer to the employee. Some Members said that no ceiling should be set for the further sum. Removing the ceiling will at least show that the employee is priceless and he cannot be labelled as being worth $70,000. According to my understanding, the ceiling is taken as the amount to "buy up" an employee, meaning that he is worth $70,000 at most.

I do not agree to this viewpoint. First, to many employers, removing the ceiling will mean that the further sum will not be capped. According to the arrangement proposed in the amendment, if the employer fails to comply with the reinstatement order, the compensation will not be capped. Frankly, this proposal will bring great operation difficulties to employers and inevitably employers will be worried.

The proposal to increase the further sum from three times to six times the employee's monthly wages will increase the employer's "invisible cost". I agree with Mr WONG Ting-kwong that it would be best if both employers and employees can work together to resolve their differences. We certainly do not wish to see labour disputes. The Bill stipulates the way to resolve a labour dispute and set down the amount the employer must pay, and that is the "invisible cost" that we are talking about. If the amount is suddenly raised from three times the employee's monthly wages to six times, it will significantly increase the employer's "invisible cost".

To be honest, it is necessary to set down certain regulations in order to settle labour disputes, but overregulating will eventually affect those who aspire to start up a business or do business. In the face of various regulations, people who have yet to start a business have to worry about the unexpected situations should they cease business operation. I am worried that the proposed amendments will significantly increase the worries of entrepreneurs and dampen their desire to start up a business or do business.
Frankly speaking, only with the concerted efforts of employers and employees will business of an enterprise thrive. Consequently, the employees will get better pay, both sides will benefit and society will operate smoothly. In the face of closure of enterprises or overregulation, an employer who intended to set up one more company might abolish the plan. In that case, no one will benefit. I think one should follow the doctrine of the mean. Finally, I support the Bill submitted by the Government and we should concentrate on implementing the proposals on which consensus has been reached by LAB. If a Member suddenly puts forward proposals that are not within the scope of the consensus, I am really worried that they would not be acceptable to SMEs. If both sides end up confronting each other with no possibility of reconciliation, it will benefit no one.

Owing to the above reasons, I support the Bill proposed by the Government and oppose the arrangements proposed in the amendments. Chairman, I so submit.

MR CHUNG KWOK-PAN (in Cantonese): Chairman, just as I said yesterday, the Employment (Amendment) Bill 2017 ("the Bill") is pretty unrealistic. The Bill proposed that the court may, without securing the consent of the employer, rule that the employer has to re-engage an employee who has been dismissed. I surely understand that the court made the ruling due to the misconduct of the employer, that is, his unreasonable and unlawful dismissal of an employee. If an employer has dismissed an employee unreasonably and unlawfully, it would be reasonable for the court to rule that he has committed an offence. Yet, the unreasonable arrangement is the reinstatement. After all, the employer and the employee concerned are disgruntled with each other after the conflict and they can hardly work together again. I trust that in reality, the chance of enforcing compulsory reinstatement is not very high.

The first and second groups of amendments proposed by Dr Fernando CHEUNG are even more unrealistic. After an employee has been dismissed, there is no reason for the Government to prohibit the enterprise concerned from engaging a replacement to fill the vacancy. In particular, given the stringent manpower situation of small and medium enterprises ("SMEs"), it is necessary for them to engage a replacement after an employee has been dismissed. Should an SME only be allowed to engage a replacement or re-engage the previous employee after a decision is made by the court on the reinstatement of the
employee who has been dismissed? How could this possibly happen? An employee who has been dismissed may decide whether or not to make a claim for remedies with the Labour Tribunal within nine months after the dismissal. What can the enterprise concerned do within these nine months? Large enterprises may deploy other colleagues or staff from other departments to temporarily take up the position, but as I said earlier on, most SMEs have stringent manpower. If the SMEs concerned are only allowed to recruit new staff after the court ruled that they have not breached the law, they may have closed down by then.

Dr Fernando CHEUNG proposed the second group of amendments because he considers it unreasonable to set the ceiling of the further sum at three times the employee's average monthly wages or $72,500. He opines that the amount is too small, and employers should not be allowed to use some $70,000 to "buy up" a position or "buy up" the dignity of the dismissed employee. Under the proposed amendments, it turns out that money can still be used to settle the dispute. Dr Fernando CHEUNG said just now that an employer who refused to comply with the court's ruling might use money to "buy up" the ruling. Following this logic, Dr CHEUNG should not have proposed this amendment. Is his request to raise the further sum to six times the employee's average monthly wages and remove the relevant ceiling not associated with money? The only difference is a higher amount of the further sum. Can employers likewise ignore the court's ruling by paying more? Dr CHEUNG might as well propose an amendment to provide for an imprisonment penalty, which would have a greater deterrent effect. In sum, money can still be used to "buy up" a position or the dignity of work; the only difference is that the required amount has increased from three times the monthly wages or $72,500 to six times the monthly wages. Even for a pilot of Cathay Pacific Airways earning a monthly wage of $100,000, an amount of $600,000, which is six times his monthly wage, can "buy up" his position. In that case, what is the difference between the Bill and the amendment? Both of them seek to use money to settle the dispute. The amendments seem to accuse the Bill of being too mean to employees, yet it all boils down to the question of money. We can settle any dispute with money. If this is the case, the amendments proposed by Dr CHEUNG would be a slap on his face.

Chairman, simply put, with these remarks, I oppose the two groups of amendments.
MR CHU HOI-DICK (in Cantonese): Chairman, I speak to support Dr Fernando CHEUNG's amendments.

After hearing the suspected threat made by Secretary Dr LAW Chi-kwong yesterday, we should realize one fact. While apparently these three groups of amendments will eventually be voted down due to political reality, why did the Secretary, being well aware of this political reality, still make this verbal coercion? I think he was trying to minimize the criticism to be directed against The Hong Kong Federation of Trade Unions ("FTU") for it will be forced to vote against the amendments. What is the reason for FTU to act as the "villain" or the "bad guy"? That is because FTU is told by the Government that if Dr Fernando CHEUNG's amendments were passed with its support, the Government would withdraw the entire Employment (Amendment) Bill 2017 ("the Bill"). If this is the case, the whole incident is actually consistent with the logic of FTU, i.e. no fights and more negotiations with employers. That is exactly what the Labour Advisory Board ("LAB") is doing now. The clear motive of the Secretary actually reflects that Dr Fernando CHEUNG's amendments are reasonable in the eyes of ordinary people or in the opinion of the public. If Dr Fernando CHEUNG's amendments were so unreasonable and were scourges, as described by Mr Holden CHOW and Mr CHUNG Kwok-pan, to deter business operation and investment, the Secretary actually did not need to make any verbal coercion since we would naturally berate Dr Fernando CHEUNG.

The manoeuver of the Secretary well illustrates the situation in Hong Kong. The Government, which always sides with LAB, has to face the reality. What are the views of the several million citizens in the real world? While the self-contradictory FTU hides itself in LAB, its views on standard working hours has likewise been ignored … FTU wants to stay in the pro-establishment camp on the one hand, and claims to represent workers on the other. Consequently, it offends the two sides. As this point was discussed by many colleagues yesterday, I am not going to go into details here.

Regarding Dr Fernando CHEUNG's amendments, I would like to first talk about his second group of amendments, i.e. the further compensation be increased from three months' wages to six months' wages, and the so-called ceiling be removed. Members opposing these amendments will naturally put up LAB as their shield in their speeches, given that the words of LAB are always right and no further explanation is required. However, the remarks of the
pro-establishment Members may make many people and employers of small and medium enterprise ("SME") misunderstand this group of amendments. For example, Mr Holden CHOW focused his discussion on the issue of "without ceiling". In fact, there are no such words as "without ceiling" in Dr Fernando CHEUNG's amendments. He only proposes to delete the amount of "$72,500" and revise the amount of further compensation to six months' wages. How can we say that the compensation amount has no ceiling? There is in effect a ceiling set at six times the employee's monthly wages. Therefore, the issue of "without ceiling" as mentioned by Mr Holden CHOW earlier does not exist and Members should stop repeating this point.

Secondly, why should the amount of "$72,500" be deleted? I recall that Dr Fernando CHEUNG said just now that there were different types of wage earners, some making $100,000 a month, some $50,000 or $30,000. In the first place, it is really absurd for the Bill to allow a reinstatement order to be replaced by compensation because, in this case, the court is not ordering the employer to reinstate the employee but granting the employee with an additional sum of compensation. I will, however, first leave this issue aside. When determining the amount of further compensation to be paid by employers, we should consider from two perspectives. Firstly, will the compensation amount exert proportional pressure on employers to make them reconsider the possibility of reinstatement? Secondly, when a dismissal is ruled as unreasonable and unlawful and the employer is required to pay further compensation for non-compliance with the reinstatement order, will the compensation amount be considered as adequate from the employee's point of view? The first point is considered from the perspective of employers. I strongly support the fourth group of amendments intended to be proposed by Dr Fernando CHEUNG but were regrettably ruled as inadmissible by the President. In all cases, employers should not be allowed to make monetary compensation in lieu of compliance with the court's reinstatement orders. Since the fourth group of amendments was ruled inadmissible by the President, we can only increase the amount of further compensation to be paid by employers to make them think twice. The amount must be a specified multiple of the wages of different professions or jobs and should not be capped at $72,500. Just now, Dr Fernando CHEUNG already cited some high-paid professions as examples to illustrate this point.

Many Honourable colleagues will again put themselves in the shoes of SMEs when discussing this issue. In fact, we are now seeking to protect the right to strike, the right to form trade unions and the right to take industrial actions. In what circumstances will trade union leaders become leaders? First
of all, they must work in large companies. Will a trade union be formed in a small enterprise with only a handful of employees? Of course not. In contrast, in a company with hundreds of employees, even the board members will be changed frequently, it is therefore necessary to protect the rights of the worker leaders. This move does not mean to protect their individual rights but the rights of workers as a whole because if the worker leaders are dismissed, their followers will probably disperse. Therefore, we must first protect the leaders and then protect the whole labour movement. If the further compensation is not proportionate, i.e. calculated by multiplying the monthly wage of the employee by a specified multiplier, it will not be able to exert pressure on employers. By then, the situation will become what Mr CHUNG Kwok-pan has depicted, i.e. use money to settle disputes, and the ceiling of $72,500 will somehow become a fixed penalty. Dr Fernando CHEUNG proposed the amendments to avoid the situation of turning the further compensation into a fixed penalty. The higher wish is that employers will not dismiss their employees.

Chairman, from the employees' perspective of making a living … we tend to think that the employer, after making an unreasonable dismissal, will compensate the employee at once. In fact, it is not the case. If the dismissed employee considers his dismissal unreasonable, he will have to make a claim to the court or Labour Tribunal and go through various procedures including a trial before a ruling is made. How much time and energy will the employee have to spend? How many months will it take for the employee to go through all these procedures? Secretary, can you make a pledge on the time required for this process? No one knows how long the process will take. If I were a victim of unreasonable dismissal seeking reinstatement, I would have to go through all the troubles and legal procedures, provide documentary proofs to justify my case, and so on. Let us do a calculation. If the employee has to pay a car loan and a property mortgage, maintain his children and parents, as well as meeting various family expenses … assuming the employee earns $100,000 a month, his family expenses are likely to reach $60,000 or $70,000. What is the use of giving him a compensation of $72,500? It is a punishment to the victim of unreasonable dismissal. If a person with a monthly wage of $100,000 strived for fair treatment but ended up getting only a compensation of $72,500, the message behind is that he should not make claim for his unreasonable dismissal but should immediately find a new job. Therefore, if we put ourselves in the shoes of employees and consider all the legal procedures that they have to go through, we will agree that the compensation amount at the level of six months' wages is by no means generous. It is even absurd to cap the compensation at $72,500.
Chairman, just now, Mr CHUNG Kwok-pan highlighted Dr Fernando CHEUNG's first group of amendments, i.e. the court, in making its ruling on reinstatement, should not refuse to make a reinstatement order solely on the ground that the employer has engaged a replacement. Dr Fernando CHEUNG has added a number of conditions, but these conditions do not prohibit the employer from engaging a replacement; instead, they seek to request the court not to consider the fact that there has been a replacement unless the employer can prove that it was impracticable and unreasonable not to engage a replacement. As this group of amendments does not prohibit the employer from engaging a replacement, the scenario described by Mr CHUNG Kwok-pan will not happen, that is, employers may have great difficulties in running his business for a period of six to nine months.

Lastly, while the third group of amendment proposed by Dr Fernando CHEUNG seems technical in nature, it is indeed crucial, given that the original Bill introduced by the Government seeks to confer the power of revising the amount of further compensation solely to the Administration. If this power is conferred solely to the Administration, our lengthy discussion in the Council may become meaningless. The reason why we spend time to have discussion here is that we hope our views given in the Legislative Council from different perspectives can be consolidated into a collective will. However, under the Bill, even if we have formed a collective will, the Government can still revise the amount of further compensation at its discretion without having to seek the consent of the Legislative Council. Therefore, the textual amendments proposed by Dr Fernando CHEUNG to the Bill in this group of amendment are indeed necessary from the perspective of the Legislative Council. We are not requesting the adoption of the positive vetting procedure; we are asking the Government to submit its proposal for the revised amount to the Legislative Council so that Members from different parties can consider if the proposed amount is appropriate and make amendments accordingly. From the perspective of maintaining the relationship between the Executive Authorities and the legislature, this step should in no way be skipped arbitrarily.

Chairman, it can be seen from my brief speech that Dr Fernando CHEUNG is actually doing something that many pro-establishment Members would like to do, i.e. to strike a reasonable balance by seeking common ground while accommodating differences. In my view, the most basic logic behind this issue is that the reinstatement order made by the court should not in any way be replaced by monetary compensation. In this connection, I strongly agree with
the viewpoint of Mr CHUNG Kwok-pan. Regrettably, the President did not allow Dr Fernando CHEUNG to propose his fourth group of amendments, taking away the chance for us to vote on them. As for the three groups of amendments now proposed by Dr Fernando CHEUNG, they should be passed with Members' support because the amount of further compensation as amended can, on the one hand, make employers realize that they should not dismiss their employees and on the other hand, provide employees with reasonable protection.

I so submit.

DR KWOK KA-KI (in Cantonese): Chairman, I speak to support Dr Fernando CHEUNG's amendments. Frankly speaking, I do not think Dr Fernando CHEUNG should be the one to propose these amendments because, as we all know, there are workers' representatives among the Legislative Council Members. Though the system of functional constituencies is absolutely unreasonable, given the original objectives of the representative system, these workers' representatives are duty-bound to propose amendments. However, the truth is that they have not proposed amendments for either Dr Fernando CHEUNG or workers and, more regrettably, they stand against the amendments.

Just now, I heard many fallacious views. If we carefully study the provisions, we will find that the making of reinstatement orders is not arbitrary. Instead, it will be subject to the ruling of the Labour Tribunal and the scope is narrow, some people even regard the scope too restrictive. The Labour Tribunal's ruling on unreasonable and unlawful dismissal is based on a very clearly defined definition. Let me reiterate, an employee is considered as unreasonably dismissed for the following circumstances: for pregnancy, for taking paid sick leave, for engaging in legal proceedings in connection with work accidents or breach of work safety legislation, or most important of all, for trade union membership and activities. The Hong Kong Federation of Trade Unions ("FTU"), which represents trade unions, is in itself a workers' union, isn't it? How come it "flaunts the red flag to oppose the red flag"?

After 1997, we no longer can tell right from wrong, we no longer have a sense of justice, and we no longer can reason with each other. In my view, these phenomena are unreasonable and ridiculous. However, I am most disappointed with the response of Secretary Dr LAW Chi-kwong. Although the Employment (Amendment) Bill 2017 ("the Bill") was not introduced by him, the incumbent
Secretary, he should have respect for the constitutional role of the Legislative Council during the scrutiny. The Secretary was once a Member but surprisingly, he said that should Dr Fernando CHEUNG's amendments be passed by the Legislative Council—which is of course impossible, and Dr CHEUNG should not dream about the passage, given the number of Members in the opposite camp—the Government might withdraw the Bill.

Let us look at the composition of the Labour Advisory Board ("LAB"). According to the legal documents of the Government, LAB is basically a consultative body but not a statutory body. The Government will, however, exaggerate the role of LAB whenever it thinks fit for LAB is under its control. As we all know, LAB's members include employer representatives who always act in the interests of employers and the business sector. As for employee representatives, as more than half of the votes among employee representatives are controlled by FTU, its candidates will always win the election of employee representatives, leaving no room for other candidates. FTU is an integral part of the political regime and the establishment. Its members have even joined the Executive Council. Mr WONG Kwok-kin, who is not present, has all along been engaging in the business of FTU. CHENG Yiu-tong is also a member of FTU. Everybody knows that they will do favours to each other. To put it crudely, they are in the same boat to "earn their keep". After exaggerating the role of LAB, the Government then threatened and blamed the Members who have acted in accordance with the Rules of Procedure of the Legislative Council. Back in the day when the Secretary was a Member, had he ever done something so ridiculous?

No matter how bad the Legislative Council may be, since half of its seats are directly elected, it can somehow represent members of the public. Though under the procedures designed by the Government, any amendments opposed by the Government or the business sector will definitely not be passed, the Secretary still cannot blatantly defy the representative system. The duty of the Legislative Council, i.e. to monitor the Government, is enshrined in the Basic Law. It is something that we should understand and respect. We should also uphold the precious representative system left to Hong Kong by making laws properly. The move taken by Secretary Dr LAW Chi-kwong is so outrageously that he brings disgrace to himself as a scholar and a former Member.
The making of reinstatement orders is subject to stringent conditions. We all know that the issue has been procrastinated by the Government since 1997, and we have been waiting for more than two decades. It is until now that the Bill is resubmitted to the Legislative Council for discussion …

CHAIRMAN (in Cantonese): Dr KWOK Ka-ki, please speak on the three groups of amendments.

DR KWOK KA-KI (in Cantonese): Chairman, I will return to the subject but I must illustrate why I support Dr Fernando CHEUNG's amendments. In view of the development of labour rights, Dr Fernando CHEUNG has proposed amendments to revise the unreasonable provisions, which includes raising the fine to a reasonable level. Just now, a number of Members described the miserable conditions facing small and medium enterprises ("SMEs"), but we should be sensible in considering this matter. In the past, most of the cases handled by the Labour Tribunal actually did not involve SMEs. Most of the outrageous cases involved trade union activities, particularly trade union activities and worker leaders in large corporations. The recent KMB drivers' incident is a case in point.

KMB is very mean to its staff. When some of its staff members stood up to strive for their fellow workers' rights in Hong Kong, KMB was thinking of dismissing them unreasonably. However, as the drivers concerned had not yet formed a trade union at that time, they could not be protected by this law, even if it is enacted now. From this case, we can see the great disparity in strength of employers and employees, with the former having a much higher status than the latter. Right now, some Members seek to correct this imbalance which is not new to Hong Kong. Our Government has, since colonial days, always showed favour to the business sector. We just hope that such imbalance will somewhat be corrected.

The current legislation is indeed problematic. After an employee has been unreasonably dismissed, the employer is allowed to settle the dispute with money if he refuses to reinstate the employee. How can this be allowed? Allowing the non-compliance with the court's order on reinstatement be settled with money is in itself ridiculous. In the past, there were many major labour disputes. Take Cathay Pacific Airways, the Vocational Training Council and universities as
examples, their employees were of course under employment and, in the words of FTU, they were the great working class. They were also wage earners living from hand to mouth. Some of these employees might have high salaries, their one-month's wage was likely to exceed the maximum compensation of $72,500 proposed by the Government. In case of any future disputes, the employer will not even be required to compensate the employee with one-month's wage. After paying $72,500, the employer who dismissed the employee for trade union activities and refused his reinstatement can just send the employee packing right away.

In fact, many dismissed employees have difficulty in finding a comparable job. For example, it is not easy for a lecturer of The Hong Kong Polytechnic University to find a similar job. Frankly, no other tertiary institutions will recruit a lecturer who has stood up for his rights. We all know how easy it is for an employer to make up an excuse for rejecting a candidate. As for pilots, it is also hard for them to find another job. Nowadays, many tycoons in the Mainland are in need of private jet pilots and it may be a way out for the pilots dismissed by Cathay Pacific Airways. However, should there be any anti-corruption campaigns and the corrupted officials decide to sell their jets, I do not know what the pilots should do.

Nevertheless, apparently even giving six month's wages as compensation is still unreasonable, and it is wrong to settle the unlawful act with money. The proposed amendment is meant to inflict greater pains on employers. Dr Fernando CHEUNG, I am not sure if employers will actually feel the pain. For large organizations like Cathay Pacific Airways and the eight tertiary institutions in Hong Kong, I do not think they will feel the pain. In particular, the payment of compensation cannot punish the eight tertiary institutions as their expenses are borne by the Government. The vice-chancellors can still have a salary of more than $1 million. As long as they are willing to listen to and befriend the Government, they will continue to have an easy life. Even so, we consider it necessary to amend the Bill so that the compensation amount can become more realistic. As a matter of fact, the amendments proposed by Dr Fernando CHEUNG only seek to reflect the reality. The ceiling of $72,500 implies that the monthly wage is some $24,000. Many middle-class people or many staff members of the Legislative Council Secretariat earn more than $24,000 a month. To put it crudely, the Secretary General can dismiss a staff on the ground of his engagement in activities of a trade union under the Legislative Council. After all, members of the Legislative Council Commission can do whatever they like.
Dr Fernando CHEUNG’s amendments only aimed at putting things back on the right track. In principle, I do not accept the buyout of rights. How can this be allowed? However, having the amendment is better than not. Unfortunately, government officials, Members belonging to the pro-establishment camp and FTU not only do not support Dr Fernando CHEUNG but direct scathing criticism against him, to put it crudely. What is happening actually? Have any of them ever considered from the perspective of wage earners? The speeches they make are true reflection of their stances.

At present, as our environment has changed, employees are in a highly disadvantaged position. Do not think that earning over $24,000 a month is really something. Employers are always the boss. Employers are still the ones having the upper hand under the current labour laws and the Employment Ordinance. The Government now takes the move to introduce the Bill simply because, after 20 years of delay, it has no choice but to deal with the problems. Why does the Council not seek justice? Why does the Council not amend the Bill in the light of the actual situation? Even if no ceiling is set for compensation as proposed, is it likely that people like Norman CHAN and those making $10 million or $5 million a year will seek compensation? The right-hand man under LI Ka-shing also earns hundreds of millions of dollars per year. His case may be thorny too. However, we do not have to worry because neither Norman CHAN nor the one surnamed FOK has engaged in trade union activities. We only aim at helping the employees with little bargaining power in their workplace. In fact, we feel very sorry for workers engaging in trade union activities. Apart from performing their own duties, they also have to fight for workers' rights in the face of suppression. All they wish is to seek justice, but the Legislative Council is failing them as the laws we passed can hardly give them any protection.

In most cases, the employer will indeed send the employee packing after paying $72,500. It is doomed to happen. Even if the Government has put in huge efforts to provide for a reinstatement order to be made by the Labour Tribunal, we all know that the order is fake. How can reinstatement be possible? The so-called reinstatement is fake because the Government has sided with employers by settling the dispute with $72,500. For large corporations with profits amounting to billions or tens of billions of dollars, $72,500 is negligible. As for public organizations, the expenses are met with public funds but not with the employers' own money. So, what is the big deal to pay
$72,500? They will not feel the pain. What is so powerful about the reinstatement order? The order is, in effect, a buyout of rights. In my estimation, reinstatement orders will even be more useless in future because, in a few years' time, the real value of some $70,000 after discounting inflation will be reduced to $50,000 or $60,000. Perhaps, after a long wait, say 20 years later, another legislative amendment will be introduced and by then, the real value will sadly be minimal.

Also, I agree with Dr Fernando CHEUNG's proposal that the ceiling for the further sum should not be revised by way of negative vetting, given that negative vetting has lost its effect in the Legislative Council. As we may see, even though positive vetting procedure is adopted for the co-location bill, the actions taken by the royalists and the pro-establishment camp will bring the same outcome. While discussion is allowed during the scrutiny of bills, all draconian bills supported by the royalists and the pro-establishment camp will eventually get passed after discussion. In spite of this, we must keep hope alive, hoping that sometime in the future when functional constituencies no longer exist, Hong Kong will have a democratic political system.

(The CHAIRMAN'S DEPUTY, MS STARRY LEE, took the Chair)

While this hope is hard to fulfil, we must be aware of what is happening in the Mainland. The frequent attacks on reporters and the fact that people chanting "one country, two systems" are barred from running for elections warn us about the dangerous situation of Hong Kong. We cannot tell how long our status quo can be maintained, not to mention improving the representative system. However, we must keep fighting because the Legislative Council was originally designed to empower Members to fight for the people. With the people's mandate, the Legislative Council should live up to the expectation of the people by upholding justice. Yet, the Government is not the only body which takes the lead to ruin these beliefs, the royalists, the pro-establishment camp and the Members who claim to support workers have also joined in, which is the most saddening to me. Their behaviour has actually exposed their injustice. I so submit.
MR CHAN CHI-CHUEN (in Cantonese): Deputy Chairman, I support the amendment proposed by Dr Fernando CHEUNG to the Employment (Amendment) Bill 2017 ("the Bill") during the Committee stage.

I hope everyone understands what is being debated here at the moment. The so-called reinstatement order now under discussion is actually the price that should be paid by an employer for dismissing his employees unreasonably and unlawfully. While an employer can absolutely dismiss an employee in his own way, even if that is unreasonable and unlawful, he has to pay a price. The amendments proposed by Dr Fernando CHEUNG merely seek to increase the price concerned.

The first point I would like to make is that the unreasonable and unlawful dismissal now under discussion is not to be decided by employees, but by the court. The court decided, after a trial, whether the dismissal was unreasonable and unlawful. Just now some Members from the pro-establishment camp said that the essence of employment relationship was harmony and negotiation. This is known to all. However, when employers and employees fell out and resort to legal proceedings to settle their disputes, the last resort is to require the employers to pay a price. From the perspective of employees, they have to get the final relief and strive for the final justice. Will the employees be reinstated in the end? No, because as long as the employers are willing to pay a price, they can dismiss their employees. What is the point of being harmonious? When it comes to the trial, all these are nonsense. Members please stop talking about such nonsense because if the two sides could reach a consensus, the disputes would not be brought to the court.

First of all, Dr Fernando CHEUNG has proposed three groups of amendments and I am going to start with the mildest one, a group of technical amendment. If the pro-establishment camp intends to oppose this group of amendment, please state the reasons clearly. This group of amendment seeks to amend the procedure to revise the highest price (that is, $72,500) to be paid by an employer for the unreasonable and unlawful dismissal of an employee, if fortunately, the Government plans to make such revision in the future.

Dr Fernando CHEUNG proposes to change the way of revision from negative vetting to positive vetting so as to allow the Legislative Council to have more time to discuss, or "pretend" to discuss, the proposed amount. I will explain later why I said "pretend" to discuss. Dr CHEUNG's proposal will
extend the scrutiny period of the Legislative Council and allow it to amend the bill introduced for this purpose with less difficulty, secure a greater chance of success and lower the risk of not being able to revise the amount (which is the present ceiling of the further sum). That is it.

I fail to see why Members of the pro-establishment camp oppose the third group of amendment proposed by Dr Fernando CHEUNG. They may probably think that the provisions drafted by the Government are final and no changes should be made, and that the formation of a Bills Committee to examine and discuss the bill is just a waste of time. Last but not least, they would feel embarrassed if they are asked to consider and vote on the Bill. Therefore, they do not support Dr Fernando CHEUNG’s amendments.

If this is what they have in mind, please tell us clearly so that we can recall the concluding speech made by the Secretary during the resumption of the Second Reading debate yesterday. As Members may be aware, press releases will be issued for speeches made by government officials at the Legislative Council. Being industrious, I immediately printed out a copy. I am going to read out the second last paragraph of the press release, which the Secretary may repeat when he makes his concluding speech later: "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 will bring far-reaching negative impact on the labour relationship."

In fact, whenever a legislation relating to labour rights and interests is discussed, the Secretary would speak like a recorder and repeat the same remarks. I think he will act the same in the future. The following remark made by the Secretary is the highlight: "That is most unacceptable to the Government. Thus, I implore Members to pass"—those are the words of the Secretary not mine—"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." In that case, we will once again be caught in the dilemma of "pocket it first" or nothing at all.

Honestly speaking, the Secretary would not assume that after making such remarks, Members who originally supported Dr Fernando CHEUNG’s amendments would change their mind for the overall interest of society and
choose between nothing at all and "pocket it first". Are we going to say to Dr Fernando CHEUNG: sorry, we are convinced by the Secretary and will now stand on his side and oppose your amendments; otherwise we will have nothing at all? We will surely not do so, and no one would believe even if we pretend to have said such words.

What is the second purpose of the Secretary in making such remarks? He intends to give a good excuse to some people to explain to the supporters of the labour sector. They can say: Since the Secretary has said time and again that we might end up having nothing at all if we support Dr Fernando CHEUNG's amendments, hence we have no choice but stop supporting Dr CHEUNG's amendments even though they are reasonable. Instead, we have to support the Secretary's Bill for the overall interest of society. If Members of the pro-establishment camp have such thoughts in mind, they will certainly oppose the third group of amendment proposed by Dr Fernando CHEUNG as there is no point to put up a show. The lie may be exposed during the show, is that right? The longer the scrutiny period, the longer the show and hence the chance of exposing the lie will be higher. Therefore, the pro-establishment camp is reluctant to "pretend" to scrutinize the subsidiary legislation. It would be best if Members filibuster on other bills, such that the 49-day negative vetting period will expiry and the subsidiary legislative will automatically come into effect, thereby saving the trouble for Members to vote. That is the future scenario if the pro-establishment camp does not support Dr Fernando CHEUNG's amendments.

As for the remaining two groups of amendments proposed by Dr Fernando CHEUNG, some Members are trying to confuse the facts. In fact, the first group of amendments is not like what Mr CHUNG Kwok-pan has described. According to Mr CHUNG, for a company having only two employees, if one of them was dismissed and has lodged an appeal, the employer is not permitted to engage a replacement and the company is bound to close down. If this is the case, the company would probably close down before the dismissed employee is reinstated. I am not sure if the employee can claim compensation if the company really closes down. I guess he can claim compensation, but he certainly cannot be reinstated as the company has closed down. In other words, the company could not possibly start operating again so that the employee could be reinstated. This will not be the case. The employer will certainly engage a new staff to fill the vacancy. The purpose of Dr Fernando CHEUNG's amendments is to provide that, even if the employer has engaged a replacement, this does not constitute any reason to prevent the reinstatement of an employee.
In other words, the engagement of a replacement cannot be a factor that must be considered by the court, or cannot be cited as a defence. Of course, if an employee wins the case, the employer should theoretically reinstate him. In that case, the employer may have to sign a short-term contract with the new staff recruited to fill the vacancy, or make other arrangements, so as to reserve the vacancy for the employee who won the case. Yet, this is not the case in reality. In reality, employees do not have the absolute right to reinstatement, they only have the right to receive the so-called "humiliation allowance" or compensation.

Mr CHUNG Kwok-pan also pointed out, since Dr Fernando CHEUNG did not only ask for an absolute right to reinstatement in his amendments, but also proposed to increase the further sum from three times to six times the employee's average monthly wages and remove the $72,500 ceiling, he was also going after money and his motive was not so pure. Dr Fernando CHEUNG's amendments contradicted his remarks that workers did not want money; that workers were priceless and could not be dismissed at wish, and that the rights and interests of workers could not be purchased by money. What Mr CHUNG meant is that Dr Fernando CHEUNG should not propose to increase the further sum but should only ask for an absolute right to reinstatement.

Firstly, we cannot ask for an absolute right to reinstatement. Considering from the perspective of labour rights and interests, all workers should have the right to choose. While some people prefer "no removal and no demolition", others may be willing to accept reasonable compensation and they should be given a choice. We certainly know that when employers and employees completely fell out and the disputes were brought to the court, reinstatement would only cause embarrassment to both parties. This is, however, secondary, as the employer can always make life unbearable and painful for the employee. Dr Fernando CHEUNG, in my opinion, even if employees have the absolute right to reinstatement and return to his previous position in the company, it is possible that the employer would dismiss him again. Their disputes would be brought to the court again and the employee would then be reinstated, after that he might be dismissed by the employer again. They would be trapped in a vicious cycle. Employees can only have the so-called absolute right to reinstatement if the penalty prescribed is imprisonment but not compensation, i.e. employers who refuse to reinstate their employees will be imprisoned. As a matter of fact, the present amendments do not contain the absolute right to reinstatement. Hence I reiterate that Dr Fernando CHEUNG's proposal to remove the ceiling of the further sum is reasonable. Many Members have also said that in the
anti-discrimination ordinances, if an employee is dismissed by an employer on grounds of sex, race or disability, there is no ceiling for the relevant compensation.

Therefore, the Government should respond to this point. Of course, the Government may say that it has no established position on the matter. If LAB and employers agree to increase the further sum from three times to six times the monthly wages, the Government will surely be overjoyed; if LAB and employers agree to remove the ceiling of $72,500, the Government will also be overjoyed. But does the Government really have no role to play? This is the usual practice of the Government, passing the ball to employers and employees and let them fight among themselves. Given that employers are strong whereas employees are weak, the latter can only move like ants and achieve little success each time. Some people may think that little success has been achieved after all, but to the pro-democracy Members who have all along cared about the workers and fought for them for decades, it seems that the present dispute will remain unresolved even 10 years later. If the Government is not committed and advises irresponsibly that everything is possible with consensus of the two sides after negotiation, or everything is impossible without consensus such that the Bill might be withdrawn and the efforts saved, is the Government failing to perform its duties? If a person who adopts such an attitude can become the Secretary, then everyone is capable of taking up this job.

Likewise, I have requested the Government time and again to enact legislation on discrimination on grounds of sexual orientation, but it replied that the issue had given rise to controversy and public views were divergent. May I ask which policy that the Government previously introduced had not given rise to controversy? Has the co-location arrangement given rise to any controversy? How about the National Anthem Law? I will not go into the details. The Government should have a sense of commitment and judgment and throw weight behind the weak side by speaking out for it. If today the Secretary still repeats the remarks made by him yesterday, that is, he does not rule out the possibility of considering the withdrawal of the entire Bill, the labour sector will certainly not be convinced. Pro-establishment Members from the labour sector should stop chiding Dr Fernando CHEUNG and the pro-democracy camp, as I am simply stating the facts. The show they are putting up requires them to keep chiding the Government and when Dr Fernando CHEUNG's amendments are put to vote, they will cast an opposition or abstention vote or even leave the Chamber. I think this should be the script. I suggest Members of The Hong Kong Federation of Trade Unions act along this line. Thank you, Deputy Chairman.
MR LEUNG YIU-CHUNG (in Cantonese): Deputy Chairman, I speak on Dr Fernando CHEUNG's amendments, especially the one to amend clause 5 of the Employment (Amendment) Bill 2017 ("the Bill"), which increases the ceiling of the further sum specified in the proposed section 32NA(1)(b) from three times the employee's average monthly wages or $72,500 to six times the employee's average monthly wages and removes the ceiling.

Deputy Chairman, let me first explain what is meant by removing the ceiling. The Bill originally stipulates that regardless of the wage of an employee, the maximum amount payable by the employer is $72,500, which is the ceiling. Dr Fernando CHEUNG proposed to remove the ceiling, but this does not imply that the sum to be paid in the future will be as high as $1 billion, $10 billion or even an infinite amount, for the amount will be set at six months' wages. Therefore, it is not an astronomical sum of money. Just now, a Member said that removing the ceiling would involve the payment of a huge sum of money, which is totally out of context. Many people often quote out of context and make incessant comments without truly understanding the actual situation. I would like to make further explanation on behalf of Dr Fernando CHEUNG. There is actually a ceiling for his proposal, which is six months' wages. He has not stated the exact maximum amount, but it should be six months' wages at most. This is the first point.

Secondly, I would like to criticize the Labour Advisory Board ("LAB") for not conducting any discussion of Dr Fernando CHEUNG's amendments. As I said earlier on, employers are worried that increasing the sum payable by the employers and removing the ceiling may give rise to abuse. This is precisely what I am going to discuss. How will the provision be abuse? I do not understand, the Secretary may later explain how this provision will be abused by employees.

As we have just said, two hurdles have been added: the first one is unreasonable dismissal and the second one is unlawful dismissal, the court will then decide if it is satisfied with the employee's application for reinstatement. Before an employee is reinstated, the court has to examine if this is practicable. During the process, the employer may raise objection; an employee's application for reinstatement will not be approved as a matter of course. The court will first examine the implication of reinstatement on the employer-employee relationship before making a finding. This is a hurdle which is extremely difficult to overcome. Therefore, it would be extremely difficult for the court to come up with the final decision of making an order for reinstatement.
It is only when the court makes an order for reinstatement despite all the difficulties and the employer refuses to reinstate the employee that the court invokes this penalty provision to require the employer to pay a sum six times the employee's average monthly wages. Hence, there are actually numerous hurdles in the process and it is very difficult to overcome such hurdles. So, how can there be abuse? People just put up a lame excuse without justifiable grounds or they entertain unnecessary worries that the proposal will pose serious threats. I remember that Mr Holden CHOW seemed to have said that employers of small and medium enterprises ("SMEs") were very worried about the amendments and might dare not continue with the business. I have nothing to say if Members misleadingly misinterpret the spirit of the Bill, but if Members do understand the spirit of the Bill, how likely will an employee be awarded that sum of money? I think the chance is very slim.

Deputy Chairman, the recent fiasco of the Kowloon Motor Bus Company ("KMB") is a very good example. Some KMB staff were dissatisfied with the operation of the company and rose to fight for their rights and interests, but KMB decided to dismiss them on the ground that they failed to comply with the instructions of the company. Fortunately, an appeal mechanism has been put in place and the staff concerned were eventually reinstated without being dismissed. In reality, such cases are rarely referred to the court, especially because large corporations have already put in place various mechanisms and the Labour Department is readily available to provide mediation services. Therefore, these cases will only be referred to the court at the very last moment when the situation becomes very tense. From the employees' point of view, I think the court is the last resort when the employer-employee relationship completely breaks down.

Just now Mr WONG Ting-kwong pointed out that if the situation became so bad, no one would want to be reinstated. In fact, this is not the case. Having worked in a company for many years, many employees may have sentimental ties with the company and do not want to leave. They normally hope that the company can continue to operate, and employers and employees can work together in harmony and maintain good relationship. However, when some worker representatives rose to fight for the rights and interests of their co-workers, they may, after discussing certain issues with the employers or management, faced suppression or retaliation, such problems do occur from time to time. To protect these worker representatives, some legal protection must be stipulated, otherwise it would be very difficult to improve the employer-employee relationship. This is the most important point.
I do not understand why the Government has been so reluctant to legislate for the right of collective bargaining and has not further enhanced the status of trade unions. In this sense, the introduction of the Bill is better than none. As I said yesterday, the Bill only contains some minor patch-up measures and it remains a "toothless tiger" which cannot properly safeguard employees, especially workers representatives fighting for the rights and interests of co-workers. That said, the Government is now willing to amend the provisions concerning the reinstatement order and rectify the established absurd practice of obtaining the employers' consent before the court can make an order. An employee can surely be reinstated with the consent of the employer; it is therefore superfluous to require the court to make the relevant order. Only the last-term Government could come up with such a ridiculous idea to showcase its accountability. Yet, the Bill simply cannot address the issue at all.

The Bill has made some improvements by requiring the employers to enforce the ruling of the court. However, a loose end is left behind in that even if the employer does not enforce the court order, the issue can be settled with money. As for the amount of payment, a number of Members have pointed out that the amount is too small to have great deterrent effect. Deputy Chairman, I try not to use the word "deterrent" because it is meaningless in my view. The point is that if the employer simply ignores a court order, where lies the dignity of the court? The order for reinstatement is made by the court after thorough consideration of the actual situation, if the employer simply ignores the court order, where lies the dignity of the court?

Hong Kong attaches great importance to justice and the spirit of the rule of law. The order for reinstatement is not hastily made by the court at the request of employees, but is a decision that has taken into consideration all the possible circumstances. Therefore, in my view, the purpose of stipulating the sum of money is not to "deter" the employers, but to punish them for defying court orders. Hence, if employers do defy court orders, shouldn't we impose a heavy penalty?

Referring to the proposal put forward by a Member earlier to impose a custodial sentence, I consider it appropriate. How can someone defying a court order not be imprisoned? The Government will certainly not do so for fear that this would frighten the business sector and discourage overseas investment in Hong Kong. Therefore, I consider Dr Fernando CHEUNG's amendment a
middle-of-the-road proposal to prevent the relationship between employers and employees from becoming too tense on the one hand, and avoid scaring off the business sector's investment in Hong Kong on the other. He chose to take the middle course to avoid disputes and proposed the further sum be set at six times the employee's average monthly wages. As we all know, the standard of living is continuously rising at present, so are the wages, and it is possible that the management would dismiss employees who fight for the rights and interests of their co-workers. To protect these worker representatives, I consider the relevant amendments reasonable.

Mr Holden CHOW pointed out that since LAB has accepted certain proposals, we should respect its decision. Yesterday, the Secretary also said that LAB's stance was the Government's stance, hence if Members did not accept the proposals put forward by the Government or LAB, the Government might withdraw the Bill. Deputy Chairman, very regrettably, the Secretary had also been a Member of this Council, I wonder how important the role of the Legislative Council is to him. However, it seems that the role of this Council is to accept and rubber-stamp LAB's views. Can it still be called the Legislative Council?

At present, the reality before us that we must obey the decision of LAB, or else the Government will withdraw the Bill, and we are nothing but a legislature to rubber-stamp LAB's views. I have nothing to say if Members echo this view. This democratically-elected Council has now become a legislature to follow the decisions of LAB and do whatever it said, thus Members can simply be rubber stamps and hand-raising machines.

Even if someone is willing to do so, I am not willing to do so, because I am elected by the people through "one person, one vote". We do not obtain popular mandate to be yes-men in the Council, nor to act as hand-raising machines or rubber stamps. We should have our own stance and views and can therefore neglect any government structure. Why should we refuse to adopt the option that can offer protection to our employees but cave in to the practice which I would describe as barbaric though I would not describe as threatening? This makes me feel very regrettable and disheartening. Members who have once fought so hard for democracy had surrendered their power to LAB, is this not very pathetic?
Deputy Chairman, I know that the chance of the amendments getting passed today is very low, but the function of the Council is to allow us to express different views, which is precisely what we value and treasure. We should not merely echo the views of a certain organization and blindly obey its decisions.

Deputy Chairman, I so submit.

**MR WONG TING-KWONG** (in Cantonese): Deputy Chairman, since we resumed the Second Reading debate of the Employment (Amendment) Bill 2017 ("the Bill"), many Members have spoken, especially when we discussed the amendments proposed by Dr Fernando CHEUNG. With regard to this Bill, I eagerly hope that Secretary Dr LAW Chi-kwong and the Government would make some clarifications, so that members of the public and whoever watching the live broadcast of this meeting would not be misled.

(The Chairman resumed the Chair)

Firstly, the Secretary should explain the role and position of the Labour Advisory Board ("LAB") in respect of labour matters, labour welfare or labour relations, and clearly describe its relationship with the Legislative Council and the Government. I hope the Secretary can clarify so as to avoid LAB being accused of overpowering from time to time. What actually is the relationship between LAB and the Legislative Council? Do we respect LAB? What kind of attitude and stance should we adopt towards the discussion outcomes of LAB? What is the position of the Government? Such clarifications can prevent the Legislative Council from indulging in ego-inflation and being too arrogant to consider other people. I hope that the Secretary can make such clarifications.

Secondly, it is about the order for reinstatement. Some people have kept saying that the employer's payment of three months' wages or $72,500 to the dismissed employee is just a small sum of money. According to the law, employers are required to pay three sums of money to the employees who have been dismissed, what are those three sums of money? What is the relationship between these three sums of money and the three months' wages or the ceiling of $72,500? Is it not worthwhile for the employers to pay the three months' wages
or $72,500? The Secretary must clearly explain what those three sums of money are and give a clear account to members of the public or whoever watching the live broadcast of this meeting.

Thirdly, it is about the court order. Many Members said that allowing the employers to use money to cancel out the court order is a disrespect for the court. What kind of court order are we talking about? Is it an order that enables employees to be reinstated and employees will receive compensation for not being reinstated? Is this compensation part of the order for reinstatement rather than a standalone payment? The Bureau must explain clearly that money cannot be used to cancel out court order and employers must comply with the requirements for reinstatement and compensation, so that people will not be misled into thinking that employers can use money to cancel out court order. It is necessary for the Bureau to explain clearly so as not to mislead the general public.

Fourthly, the Secretary mentioned in his speech yesterday that if Dr Fernando CHEUNG's amendments were passed, the Bureau might withdraw the Bill. Many Members have mentioned in their speeches that the Government withdrew the Employment (Amendment) Bill 2016, and it might withdraw the Bill again this time. They put all the blame on The Hong Kong Federation of Trade Unions ("FTU"), saying that FTU was the sinner and the withdrawal was attributable to the Legislative Council by-election held on 11 March and FTU. I therefore hope that the Bureau will clearly explain if the withdrawal is for the sake of FTU. However, FTU is really stupid because in response to a proposal to revise the sum to six months' wages, FTU should have proposed to revise it to one year's wages and see if other Members will render support. Given that the proposal is indeed unrealistic, I trust that FTU will not take this reckless action. Is it true that whoever can produce a bigger gourd is the master of martial arts? Are we CHO Dat-wah and YU So-chau? It is thus necessary for the Bureau to clearly explain why and for whom the Bill was withdrawn.

FTU should act smarter in the future and stop thinking that it is a pleasure to stand on the moral high ground as one may be killed in a blink of an eye.

Chairman, with these remarks, I implore the Bureau to give a clear explanation in its response.
MR HO KAI-MING (in Cantonese): Chairman, first of all, I would like to thank Mr WONG Ting-kwong for his advice as that is the area where a review should be conducted by The Hong Kong Federation of Trade Unions ("FTU").

Dr KWOK Ka-ki just now also said that FTU enjoyed a pretty high status in the labour sector and controlled the trade unions of the labour sector. Notwithstanding that, I think people who are familiar with the laws of Hong Kong would know that seven persons can form a trade union and conduct voting. As a matter of fact, it is not difficult to gather seven persons to form a trade union, the greatest difficulties lie in operating and maintaining the union. If Dr KWOK Ka-ki really finds it worthwhile to form a trade union, I welcome his participation in the labour movement, and I hope that his Member's Office can form a trade union to fight for rights and interests. And yet, I do not think he will do so as he is not devoted to this task.

While discussion of any topic in the Council is one-off in nature, or to put it more directly, it is a kind of game theory; what happens in the workplace is not one-off in nature, but a continuous and repetitive game, therefore the judgment and considerations involved should be different from that of this Council. Simply put, each family has its problems and what happened in the workplace may be far more complicated than the situation in the Council. At present, Members can only imagine what would happen to workers, but I think they would have different viewpoints when they actually face the problem.

Theoretically, as we all work for the benefit of workers, there should not be much conflicts between our trade unions and those of the opposition camp, even though we may have different points for consideration. We do not only deal with large-scale labour disputes, but also small-scale disputes involving one or two persons. In the past, as trade unions of the opposition camp refused to handle cases involving less than 200 people, the persons in question thus approached us for help. We had also helped some teachers as their case, involving less than 200 people, were rejected by certain trade unions. We stood out for them right away. Therefore, while some Members only focus on cases involving more than 200 people, our concern is to take care of each worker who have met various problems in their workplace and try to resolve their problems. Similarly, the essence of the reinstatement order is whether or not a worker can be reinstated.
Members of the public who have been watching the live broadcast this morning may still not be able to grasp the main point of discussion, and are at a loss given that Members have been beating around the bush. Not only members the public are at a loss, but also Members who are unfamiliar with the relevant legislation. In fact, there is only one main point, and that is, the reinstatement order can now be made without the consent of the employer, which is different from the previous approach that even if an employee had the intention to be reinstated, consent of the employer must be obtained before the order for reinstatement could be made by the Labour Tribunal. It is now proposed that the Labour Tribunal can, with the consent of the employee, make the reinstatement order to reinstate him, and this is the main point.

A less important point is the amount of compensation to be paid by the employer if he fails to comply with the reinstatement order. Members just now said that $72,500 was a small sum of money which was far from enough. I surely think that the amount should best be $720,000, but Members who are familiar with the entire legislation should know that apart from the terminal payments, there is also an award of compensation of $150,000 plus the newly proposed sum of $72,500. If an order for reinstatement is issued to an employee, the sum of $72,500 will be an additional compensation. Hence, people can judge by themselves whether the amount is enough.

Secondly, Dr Fernando CHEUNG's amendments seek to make the decision of making the reinstatement order more specific, for example, under what circumstances should an order of reinstatement be made. However, if Members have read the amendments originally proposed by the Government and approved by the Labour Advisory Board ("LAB"), they should notice that the circumstances which the Labour Tribunal should take into account when making an order of reinstatement have been clearly set out, including the circumstances of the employer and of the employee; the circumstances surrounding the dismissal; any difficulty that the employer might face in the reinstatement or re-engagement of the employee, as well as the relationship between the employer and the employee.

If the drafting of the law is as specific as suggested by Dr Fernando CHEUNG, there will be some circumstances that must be considered. If in the course of examination, the Labour Tribunal considers it inappropriate for the employers and employees to work together, but the legislation is so specific that the two sides cannot possibly settle the dispute or split up in a peaceful manner, then will Members insist on supporting Dr Fernando CHEUNG's amendment? In my opinion, this is not the best option.
Dr Fernando CHEUNG has put forward another proposal, that is, any revision to the $72,500 ceiling must be approved by the Legislative Council. As deliberation of the reinstatement order alone has taken up so much time, is it a good idea to empower the Legislative Council to revise the ceiling? Or would it be better for the Government to immediately deal with the relevant requests made by us? I think Members probably have an answer in mind. The Labour Tribunal has handled 25 cases related to the reinstatement order over the past five years, which is roughly five cases per year. Is it really necessary for us to bring these matters to the political row of the Legislative Council and lengthen the discussion process? I think this is not necessarily the best alternative.

Chairman, I am doubtful about the importance that the Secretary has attached to LAB. At present, LAB is comprised of representatives from different trade associations and trade unions, and they will thoroughly discuss each and every case. If LAB has to submit all of its discussion outcomes to the Legislative Council, the decision of its members may be called into question because not only trade associations will accuse them of undermining their interests, even trade unions will accuse them of betraying the workers. In that case, can LAB continue with its discussions? How credible will the discussion outcomes be? If the Government cannot maintain the credibility of LAB, it would be impossible to distance the negotiations between employers and employees from the political row of this Chamber.

Just now I said that the discussion of labour matters is a continuous game of the two sides, which is very complicated, I therefore hope that the Secretary will consider how LAB's credibility can be maintained so as to minimize the disputes that may arise from its discussion outcomes. If Hong Kong keeps turning a blind eye to this problem, it will be even more difficult for us to improve labour rights and interests. Given the disadvantageous position of wage earners, dragging the issue of labour rights and interests into the political row will only make the problem even more difficult to be resolved, such that no improvement can possibly be made in the long run. At present, only slight improvements have been made and there is still plenty of room for improvement. If the Secretary still does not face up to the problem, it will certainly affect the credibility and reputation of the SAR Government in the future.

I so submit, thank you, Chairman.
CHAIRMAN (in Cantonese): Does any other Member wish to speak?

DR FERNANDO CHEUNG (in Cantonese): Chairman, I find it necessary to respond to certain Members' misunderstanding or deliberate misinterpretations of my proposed amendments. I am very grateful to the few Members who have made clarifications for my amendments just now, including Mr CHU Hoi-dick, Dr KWOK Ka-ki, Mr LEUNG Yiu-chung, Mr CHAN Chi-chuen, and so on. However, it seems that some Members still failed to understand regardless of the explanations given. Mr HO Kai-ming just now said that my third group of amendment to amend the ceiling of the further sum through the positive vetting procedure would slow down the amendment process, and the Government should be allowed to make amendment by notice published in the Gazette. It seems that he has not listened to my speech. I proposed this amendment because I am worried about the Government's inaction. Under the negative vetting procedure, we are completely passive if the Government does not take any action at all.

However, if my amendment is passed, Members of the Legislative Council may, by resolution, amend the ceiling of the further sum, and the initiative to move resolution rests with the two sides, namely the Government and Members of the Legislative Council. While the Government is not deprived of any power, the Legislative Council resumes the right to play a leading role. I propose this amendment based on the past performances of the Government. In some cases, the Government has not taken any action for 20 years. Are we going to wait 20 years for the Government to take action to revise the ceiling of the further sum? I propose this amendment to prevent the Government from slowing down the process. Yet, no matter how I explained, some Members still failed to understand and I wonder if they suffered from particular disabilities in certain respects. Let me state clearly once again, this group of amendment seeks to enable the Legislative Council to resume its right to play a leading role.

On the other hand, Mr CHUNG Kwok-pan and Mr Holden CHOW have pointed out time and again that my amendment has prevented the employer to engage a replacement. According to them, even if the court ruled that the dismissal of the employee was unreasonable and unlawful, the employer still has to engage a replacement. I have never said that employers are not allowed to engage a replacement. When the court considers whether reinstatement or
re-engagement of an employee is reasonably practicable, the most common pretext given by the employer is that he has already engaged a replacement to fill the vacancy. According to my amendment, the employer can engage a replacement, but when the court considers whether the reinstatement is reasonably practicable, it should not take into consideration the fact that the employer has engaged a replacement unless the employer can meet two conditions.

First, the failure to promptly engage a replacement for the position may affect the operation of the company. This condition is very reasonable and small and medium enterprises ("SMEs") will not be adversely affected. Second, the employer engaged a replacement after the lapse of a reasonable period without having heard from the employee that he wished to be reinstated. This condition is also very reasonable. If an employer engaged a replacement under either of these circumstances, the court may rule that it is not reasonably practicable to reinstate the employee. This is a pretty reasonable arrangement. However, some Members accused me of being unreasonable for not allowing the employer to engage a replacement. Mr CHUNG Kwok-pan pointed out that my amendment would disallow the employer to engage a replacement for a long period of time, thereby making it impossible for the company to operate. This argument exactly contradicts my amendment. Provided that there is an appropriate reason, the employer can immediately engage a replacement so as to ensure the continuous operation of the company. The employer can immediately engage a replacement if he provides a clear explanation to the court. My amendment is to stop employers from using the excuse that a replacement has been engaged all the time.

I am not going to repeat the details of my arguments about the amendments. Mr HO Kai-ming highlighted that the most important point about the Employment (Amendment) Bill 2017 ("the Bill") is that the court can make an order for reinstatement without the consent of the employer. However, I would say this is the most basic right. After an employer has unreasonably and unlawfully dismissal his employee, if we still have to seek his consent for the employee's reinstatement, it is just like climbing a tree to catch fish, it is really the most absurd measure. Mr HO Kai-ming, this is not the main point. The main point is that we should give employees the right to reinstatement. The Bill introduced by the Government is only concerned with the reinstatement order,
stating that the court can make a reinstatement order without the consent of the employer. This is the basic requirement, but only the reinstatement order is involved, but not the right to reinstatement. As I have explained time and again, an employer can make a payment in lieu of enforcing the reinstatement order, which will deprive the employees of their right to reinstatement.

Therefore, I had attempted to propose an amendment to give employees the right to choose. After the unreasonable and unlawful dismissal, employees may choose to be reinstated. Although both parties are aware that "reluctance will not bring happiness" and they are at odds with each other, some employees may still choose to be reinstated for various reasons, and I will explain this later on. This right to choose should be given to employees but not employers. I intended to propose a relevant amendment, but the President ruled that it was out of scope. Therefore, Mr CHUNG Kwok-pan was right in saying that I should not only raise the ceiling of the further sum to six times the employee's average monthly wages, but should also provide for the employees' right to reinstatement in the Bill. Regrettably, I was unable to do so and therefore I have to make myself clear. Thus, when we resumed the Second Reading of the Bill, I abstained from voting. If my amendments are not passed, I can only abstain from voting during the Third Reading of the Bill as it fails to give employees the right to reinstatement, which I cannot agree in principle.

Why do I insist to fight for the right to reinstatement apart from the fact that it is a basic right? Why would an employee want to be reinstated after being unreasonably and unlawfully dismissed by the employer? Probably because he is the leader of a trade union. In 1983 and 1984, there were labour disputes of workers of the MTR Corporation Limited ("MTRCL"). Dissatisfied with the implementation of long/short shifts, more than 700 workers took part in the strike at its peak and the Chairman and Vice-Chairman of the trade union even went on a hunger strike. The first strike was a success, but the second strike was crushed with an iron hand. More than 300 workers were dismissed in one go, and the rest were forced to write letters of apology before they were reinstated. In the end, 13 workers were not re-engaged and most of them were union leaders, including the Chairman, Vice-Chairman and workers playing an active role in the strike. This is a lesson and up till now, the trade union of MTRCL is still unable to resume the organization and strength back then.
It is absolutely possible for a large corporation to thwart the forces of a trade union by unreasonably and unlawfully dismissing its leaders. As The Hong Kong Federation of Trade Unions ("FTU") had experienced many strikes in the past, including the Canton-Hong Kong Strike and the general strike of tram workers in the early years, it should know very well how union leaders were suppressed. If the Bill gives union leaders the right to reinstatement, the bosses will not be so fierce. When an employer unreasonably and unlawfully dismissed an employee, he should bear in mind that the court might find him guilty and make an order for reinstatement. There is no way he could evade his responsibilities with respect to the order or remove his eyesores, and only in so doing can the trade union regain its strength.

I believe colleagues of FTU are well aware of this, but it is sad that they are now part of the pro-establishment camp. They have always belonged to the pro-establishment camp—of course they acted differently before the reunification, and have a brand new look now. After joining the Executive Council, they have been sandwiched between the labour rights and interests and the role as royalists. I wonder how a balance can be struck. Therefore, they totally agree with the recommendations made by the Labour Advisory Board ("LAB"). But what kind of organization is LAB? According to the website of LAB, "it is a non-statutory body to advise the Commissioner for Labour on labour matters. The Commissioner for Labour is the chairman of LAB, which has 12 unofficial members, six representing employers and six representing employees".

The employee representatives are not elected by the 3-odd million wage earners, but by trade unions by ballot. Given that more than half of the trade unions are FTU's member unions, they can elect all the five employee representatives by one-union-one-vote and basically manipulate the representativeness of LAB. Even the International Labour Organization ("ILO") has indicated that this way of returning employee representatives has violated the provision of the Tripartite Consultation (International Labour Standards) Convention (No. 144) on allowing representative trade unions to take part in the tripartite consultation. While the Government claims that LAB is a manifestation of ILO's spirit of tripartite consultation, ILO has pointed out that there are problems with LAB's election method.
Chairman, I would like to ask Mr WONG Ting-kwong to allow the Secretary to clearly explain what kind of organization LAB is. Why is it that amendments to legislation relating to labour rights and interests and employer-employee relations can only be made with the consent of LAB; and why is it that the Legislative Council is not allowed to make any amendment to the proposal agreed by LAB? With regard to the Bill under discussion, Mr WONG Ting-kwong even accused the Member who proposed amendments of being overweening. Mr WONG Ting-kwong, which body is responsible for the enactment of laws, LAB or the Legislative Council? A Member of the Legislative Council who proposed amendments to a government bill has been criticized as being overweening. Mr WONG Ting-kwong, what is wrong with you?

Members, especially directly elected Members, are representatives of public opinions and can certainly express views on behalf of members of the public. In our opinion, there is problem with the Bill introduced by the Government because the court may make an order for reinstatement, but employees do not have the right to reinstatement, and employers only have to pay a low price for not complying with the reinstatement order. According to the Bill, an employer can pay a further sum in lieu of complying with the reinstatement order. This arrangement has aroused disputes within the legal sector and even the Judiciary has expressed strong reservation, thinking that employers should not be allowed to pay for not complying with the reinstatement order. Non-compliance with the reinstatement order is no doubt a contempt of court, which constitutes a criminal offence. But regrettably, the Government has been pulling the thread behind LAB and said that the consensus of LAB reflects the position of the Government. If the Legislative Council makes any amendment to the agreed proposal submitted by LAB, the Government does not rule out the possibility of withdrawing the Bill. This is simply a disrespect for the legislature and the public opinion that this legislature represents, and all the more a deception to the public.

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

(No Member indicated a wish to speak)
Chairman, I must clarify two points. First, Mr AU Nok-hin and Mr LEUNG Yiu-chung did not hear clearly the point I clarified after Mr CHAN Chi-chuen's speech yesterday. Let me clarify once again: after the Government has accepted the consensus of the Labour Advisory Board ("LAB"), it becomes the Government's stance. Over the years, the Government has always respected the proposals put forward by LAB based on the consensus reached between employers and employees. These proposals represent the Government's stance.

Second, just now Mr LEUNG Yiu-chung also mentioned the remark I made yesterday. I have to clarify one point, that is, LAB had discussed Dr Fernando CHEUNG's amendments but it did not reach a consensus, but LAB did reach a consensus on the Employment (Amendment) Bill 2017 ("the Bill"). As regards the clarification on other aspects, especially the details about LAB, Chairman, I do not find it appropriate to have very detailed discussion at the Committee stage today. I will exchange views with Members when the chance arises.

Dr Fernando CHEUNG has proposed three groups of amendments. In the first group of amendments, Dr Fernando CHEUNG proposes to amend clause 4(1) of the Bill, recommending that if the employer has engaged a replacement for the dismissed employee, the court or Labour Tribunal must not take that fact into account in making a finding whether it is reasonably practicable to reinstate or re-engage the employee unless—Dr CHEUNG has expounded on this point just now but I must repeat—the employer shows that (a) it was not practicable for the employer to arrange for the employee's work to be done without engaging a replacement—the term "not practicable" is very important but it has not been reflected in Dr CHEUNG's speech just now—or (b) the employer engaged the replacement after the lapse of a reasonable period, without having heard from the employee that the employee wished to be reinstated or re-engaged; and when the employer engaged the replacement, it was no longer reasonable for the employer to arrange for the employee's work to be done in other ways.

I implore Members to take note that according to Part VIA of the Employment Ordinance ("the Ordinance"), if an employee is unreasonably and unlawfully dismissed, he/she may make a claim for remedies with the Labour
Tribunal within nine months after the dismissal. In other words, an employee may make his/her wish to be reinstated or re-engaged known on any day within nine months after the dismissal. As such, by demanding the employer to engage a replacement only after the lapse of a certain period, without having heard from the employee the wish to be reinstated or re-engaged, Dr CHEUNG's amendments will incur practical operational difficulties.

Whether the employer's engagement of a replacement has made it not practicable for the employer to reinstate or re-engage the dismissed employee should be ruled by the court or Labour Tribunal, based on the individual circumstances of each case. Before the court or Labour Tribunal makes an order, both the employer and the employee have the chance to present their arguments. Hence, the circumstances that the court or Labour Tribunal should take into consideration in deciding whether it is reasonably practicable for the employer to reinstate or re-engage the employee should be extensive and comprehensive. We consider it unreasonable to set down excessively specific conditions.

Dr CHEUNG's amendments require the employer to show that it is not practicable for the employer not to engage a replacement. Such a requirement is over-demanding. The Government opines that the requirement will restrict the court's decision as to whether it is not practicable for the employer to reinstate or re-engage the employee and such a restriction is unreasonable. I hope members of the legal profession and Members from the legal profession will consider whether restricting the court or Labour Tribunal to decide if it is not practicable for the employer to reinstate or re-engage the employee are two different things. It is unreasonable for Dr CHEUNG to restrict the court with such a request.

In the second group of amendments, Dr Fernando CHEUNG proposes to amend the proposed section 32NA(1)(b) in clause 5 of the Bill to change the amount of the further sum from three times to six times the employee's average monthly wages and remove the ceiling of $72,500. I wish to state very clearly the Government's stance that such a practice and change are unacceptable.

Many Members think that the amount of the further sum recommended in the Bill is too small and does not have strong deterrent effect on the employer to comply with the order for reinstatement or re-engagement. I wish to point out that under the Ordinance, the court or Labour Tribunal may award an employee a
terminal payment and compensation up to $150,000, to compensate for unreasonable and unlawful dismissal. The further sum under discussion now is an extra payment that the employer is liable to pay the employee, other than the terminal payment and compensation, if the employer fails to reinstate or re-engage the employee as required by the order. Of course, we must not forget that after being unreasonably dismissed, if the employee is eligible to receive long service payment, he will also receive long service payment. Moreover, it is a criminal offence if the employer fails to pay the further sum.

On the other hand, I also wish to highlight one point, while the Government highly respects the proposals put forward by Legislative Council Members, it is duty-bound to fully consider the impact of any changes in labour laws or policies on employers and employees. LAB is a platform for us to handle labour problems appropriately. I must reiterate that any proposal put forward by the Government is the consensus reached by both sides after thorough discussions and it is not easy to come by.

The third group of amendment is on revising the ceiling for the further sum. Dr CHEUNG proposes to amend clause 5 of the Bill, recommending that the ceiling of the further sum may be revised by resolution of the Legislative Council instead of by notice published in the Gazette, i.e. by negative vetting.

I would like to draw Members' attention that the positive vetting process suggested in the amendment is different from the negative vetting process proposed in the Bill of revising the ceiling of the further sum by notice published in the Gazette by the Commissioner for Labour ("the Commissioner"). However, I must stress that no matter negative vetting or positive vetting is adopted, Legislative Council Members have the power to scrutinize, amend and vote in favour or against the proposed amendment.

What is important is that the negative vetting process proposed in the Bill for amending the amount of the further sum is consistent with the process of amending the award of compensation provided in section 32P of the existing Employment Ordinance by the court or Labour Tribunal for unreasonable and unlawful dismissal. Under section 32P(5) of the Employment Ordinance, the Commissioner may amend the amount of compensation by notice in the Gazette. We think that we should adopt the same process to amend the amounts of various compensations awarded by the court or Labour Tribunal for unreasonable and unlawful dismissal.
Dr Fernando CHEUNG proposed the three groups of amendments to the Bill in January and the Labour Department reported to LAB in March this year. As I have already explained, LAB did not reach a consensus on the amendments, meaning that Dr CHEUNG's amendments were not accepted by employers and employees. Hence, the Government considers it necessary to maintain the original proposal.

I implore Members to vote against all amendments proposed by Dr CHEUNG. Thank you.

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG, do you wish to speak again?

DR FERNANDO CHEUNG (in Cantonese): Chairman, I would like to further explain the few points just raised by the Secretary.

Firstly, according to Secretary Dr LAW Chi-kwong, my first group of amendments request the court not to take into account the fact that the employer has engaged a replacement for the employee in determining whether reinstatement of the employee is reasonably practicable, unless the employer has satisfied my two proposed conditions. Secretary Dr LAW Chi-kwong therefore queried whether those two conditions were too harsh, given that the employer has already engaged a replacement. He did not consider those conditions acceptable.

Here are the two conditions that I have proposed. First, the employer must show that it was not practicable for the employer to arrange for the employee's work to be done without engaging a replacement. This condition is very simple. Previously, I cited receptionist as an example. Suppose there are three employees in a company, and one of them is the receptionist who has to answer phone calls and receive visitors during office hours. If the receptionist is dismissed, even if the dismissal is later ruled by the court as unreasonable and unlawful, the employer still has to immediately engage a replacement for the receptionist, or else it will be impracticable for the company to operate. This condition is very clear and very reasonable, why is it unacceptable? What is wrong with it?
According to Secretary Dr LAW Chi-kwong, under the current legislation, an employee can make a claim to the court for unreasonable and unlawful dismissal within nine months after the dismissal. If the dismissed employee made a claim to the court after eight and a half months, the employer indeed has a need to engage a replacement during the said period. We cannot expect the employer to wait for nine months before engaging a replacement just to make sure that the employee will not made a claim, right? This is simply impossible. Secretary Dr LAW Chi-kwong hence accused me of proposing a very unreasonable condition. Secretary, you are wrong to say so. That is not what I mean. I do not mean to prohibit the employer from engaging a replacement. My second condition merely requests the employer to show that the replacement is engaged after the lapse of a reasonable period without having heard from the employee that the employee wished to be reinstated.

What is "a reasonable period"? As stated by the Secretary, it should be decided by the court. The question of reasonableness can just be left to the court. I have explained this point earlier but the Secretary may have missed it. If the dismissed employee has not indicated his wish to be reinstated but made a claim to the court for unreasonable and unlawful dismissal eight months after the dismissal, and by then the employer has already engaged a replacement, the court may, in considering whether the reinstatement of the employee is reasonably practicable, hold that reinstatement is quite impossible because eight months have lapsed after the dismissal and the employer did have a need to engage a replacement in this period. This is the essence of the second condition.

The court may, after considering the two aforesaid conditions, hold the view that it is reasonable for the employer to engage a replacement and hence rule that reinstatement is impracticable. What is the problem? The Secretary said that my conditions were very unreasonable but I simply cannot understand his justifications.

Regarding monetary compensation, Mr WONG Ting-kwong mentioned three sums of money, and the Secretary, who has paid good attention to Mr WONG's speech, has responded. The first sum of money is long service payment ("LSP"), which will be offset by the Mandatory Provident Fund ("MPF") benefits. Chairman, the Secretary has not yet been able to abolish the MPF offsetting arrangement. Assuming that the Employment (Amendment) Bill 2017 ("the Bill") is passed today and comes into effect immediately … in case of unreasonable and unlawful dismissal, the employer certainly has to pay LSP. It
is required under the current laws. Yet, the employer may offset LSP with the employer's MPF contributions. Therefore, LSP is not worth mentioning. Employers are always required to pay LSP to employees after dismissal. It does not matter whether the dismissal is unreasonable and unlawful or not as the payment of LSP is a basic legal requirement. Therefore, please do not portray employers as if they were saints giving generous compensation to their employees.

Secondly, $150,000 is the ceiling for compensation rather than a fixed compensation to be paid by the employer. What is more, this compensation will not be awarded unless the court rules that the dismissal is unreasonable and unlawful and reinstatement is impracticable. Therefore, please do not give people an impression that the employee can obtain two sums of compensation at the same time. The true fact is that the employee can either obtain the compensation capped at $150,000 ... the court will very often weigh the employee's share of responsibility in the relevant period. For instance, while it seems reasonable for a dismissed employee, living in financial hardship with no income, to request compensation from the employer, the court will consider whether the employee has tried to find a job or just stayed home for nine months or a year without working and just complaining about having no income. The court will take into account the employee's share of responsibility. If he has tried his best to find a job but, owing to the uniqueness of his professional skills, he has few job opportunities in Hong Kong and thus remains unemployed, then it will be a totally different story. However, will the compensation awarded to the employee in most cases reach the ceiling of $150,000? Not necessarily. If the court holds that the employee has a share of responsibility, the compensation amount will be discounted.

Moreover, as I said just now, the employee will not simultaneously be awarded with the further sum under the reinstatement order for unreasonable and unlawful dismissal because the compensation capped at $150,000 will be awarded only when it is impracticable to make a reinstatement order. Therefore, do not give people an impression that the employee can obtain two sums of compensation at the same time. Besides, why is it unacceptable to set the further sum at six times the monthly wage? I urge the Secretary to give a clear account instead of beating around the bush.
Lastly, the third group of amendment, which is about the notice referred in clause 5. In my view, the ceiling for the further sum should not be revised by notice published in the Gazette; instead, the Legislative Council should be given the opportunity to revise the ceiling by way of positive vetting. My main purpose is not to take away the power of the Government but to give back the power to the Legislative Council, so that each Member may take the initiative to propose revision by resolution rather than waiting for the Government to revise the ceiling. We have waited far too long for government's action. We have waited for 20 years. If Legislative Council Members are conferred with this power, we may by resolution revise the compensation amount at any time. For example, if, two years later, we think the compensation of six months' wages is inadequate … frankly, if my second group of amendments is passed, the third group of technical amendment will not be necessary because the ceiling for the further sum will have been removed. I have therefore made it clear that I will withdraw the third group of amendment if my second group of amendments is passed.

I urge Members to speak clearly. For those who know the Bill well, they should give fair comments instead of making straw man arguments; as for those who do not know much about the Bill, they should familiarize themselves with the relevant information rather than accusing me of acting unreasonably. The proposals that I have made in my amendments are actually the long-established practices in overseas countries and the whole system has been implemented in the United Kingdom for years. Hong Kong has been lagging behind and has let down the international community and the International Labour Organization. Today, if my proposed amendments cannot be passed expeditiously, the international community will continue to consider Hong Kong's labour protection measures extremely backwards.

In addition, while the reinstatement right is a basic human right, few employees will actually apply to the court for reinstatement orders and exercise their reinstatement right thereafter. Generally speaking, it is highly unlikely for the dismissed wage earners to insist on reinstatement after having legal disputes with their employers and suffering a relationship breakdown. We are in fact trying to protect representatives of trade unions. Chairman, I am not going to repeat this point as I have repeated it for a few times.
I hope The Hong Kong Federation of Trade Unions and the Members who really care about wage earners in Hong Kong will think over the point that the Bill actually targets at protecting a handful of people. At the end of the day, few employees will really exercise the reinstatement right conferred by the reinstatement orders, and the Bill may only be protecting a small number of trade union representatives. I thus urge Members to carefully consider supporting and passing my proposed amendments. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the first group of amendments moved by Dr Fernando CHEUNG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr Fernando CHEUNG rose to claim a division.

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG has claimed a division. The division bell will ring for five minutes.

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

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

Functional Constituencies:

Mr James TO, Mr LEUNG Yiu-chung, Prof Joseph LEE, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK, Mr IP Kin-yuen and Mr SHIU Ka-chun voted for the amendments.
Mr Abraham SHEK, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Kin-por, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr Christopher CHEUNG, Mr Martin LIAO, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan, Mr Jimmy NG, Mr Holden CHOW, Mr SHIU Ka-fai, Mr CHAN Chun-yiing, Mr LAU Kwok-fan, Mr Kenneth LAU and Mr Tony TSE voted against the amendments.

THE CHAIRMAN Mr Andrew LEUNG, Mr HO Kai-ming and Mr LUK Chung-hung did not cast any vote.

Geographical Constituencies:

Ms Claudia MO, Mr WU Chi-wai, Mr CHAN Chi-chuen, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Dr Helena WONG, Mr Alvin YEUNG, Mr Andrew WAN, Mr CHU Hoi-dick, Mr LAM Cheuk-ting, Ms Tanya CHAN, Dr CHENG Chung-tai, Mr Jeremy TAM and Mr AU Nok-hin voted for the amendments.

Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mrs Regina IP, Mr Paul TSE, Mr Michael TIEN, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Dr Elizabeth QUAT, Dr Junius HO, Mr Wilson OR, Ms YUNG Hoi-yen, Mr CHEUNG Kwok-kwan and Mr Vincent CHENG voted against the amendments.

Mr WONG Kwok-kin, Ms Alice MAK and Mr KWOK Wai-keung did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 30 were present, 8 were in favour of the amendments and 19 against them; while among the Members returned by geographical constituencies through direct elections, 30 were present, 14 were in favour of the amendments and 13 against them. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.
MS STARRY LEE (in Cantonese): Chairman, I move that in the event of further divisions being claimed in respect of any provisions of or any amendments to the Employment (Amendment) Bill 2017, this committee of the whole Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Starry LEE be passed.

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

(Members raised their hands)

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

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of any provisions of or any amendments to the Employment (Amendment) Bill 2017, this committee of the whole Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 4 stand part of the Bill. Will those in favour please raise their hands?

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG, you may move your second group of amendments.

DR FERNANDO CHEUNG (in Cantonese): Chairman, I move my second group of amendments to amend clause 5, as set out in the Appendix to the Script.

Proposed amendments

Clause 5 (See Annex II)

CHAIRMAN (in Cantonese): Before I put to you the question on Dr Fernando CHEUNG's second group of amendments, I wish to remind Members that if this group of amendments moved by Dr Fernando CHEUNG is passed, he will withdraw his third group of amendment.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the second group of amendments moved by Dr Fernando CHEUNG be passed.

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

(Members raised their hands)

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

(Members raised their hands)
Dr Fernando CHEUNG rose to claim a division.

**CHAIRMAN** (in Cantonese): Dr Fernando CHEUNG has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr James TO, Mr LEUNG Yiu-chung, Prof Joseph LEE, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK, Mr IP Kin-yuen and Mr SHIU Ka-chun voted for the amendments.

Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Kin-por, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr Christopher CHEUNG, Mr Martin LIAO, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan, Mr Jimmy NG, Mr Holden CHOW, Mr SHIU Ka-fai, Mr CHAN Chun-ying, Mr LAU Kwok-fan, Mr Kenneth LAU and Mr Tony TSE voted against the amendments.

THE CHAIRMAN Mr Andrew LEUNG, Mr HO Kai-ming and Mr LUK Chung-hung did not cast any vote.

Geographical Constituencies:

Ms Claudia MO, Mr WU Chi-wai, Mr CHAN Chi-chuen, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Dr Helena WONG, Mr Alvin YEUNG, Mr Andrew WAN, Mr CHU Hoi-dick, Mr LAM Cheuk-ting, Ms Tanya CHAN, Dr CHENG Chung-tai, Mr Jeremy TAM and Mr AU Nok-hin voted for the amendments.
Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mrs Regina IP, Mr Paul TSE, Mr Michael TIEN, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Dr Elizabeth QUAT, Dr Junius HO, Mr Wilson OR, Ms YUNG Hoi-yan, Mr CHEUNG Kwok-kwan and Mr Vincent CHENG voted against the amendments.

Mr WONG Kwok-kin, Ms Alice MAK and Mr KWOK Wai-keung did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 31 were present, 8 were in favour of the amendments and 20 against them; while among the Members returned by geographical constituencies through direct elections, 30 were present, 14 were in favour of the amendments and 13 against them. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG, you may move your third group of amendment.

DR FERNANDO CHEUNG (in Cantonese): Chairman, I move my third group of amendment to amend clause 5, as set out in the Appendix to the Script.

*Proposed amendment*

Clause 5 (See Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the third group of amendment moved by Dr Fernando CHEUNG be passed.

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

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

(Members raised their hands)

Dr Fernando CHEUNG rose to claim a division.

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG has claimed a division. The division bell will ring for one minute.

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

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

(Mr KWOK Wai-keung raised his hand in indication)

MR KWOK WAI-KEUNG (in Cantonese): Chairman, I just wanted to press the "Present" button.

CHAIRMAN (in Cantonese): Mr KWOK Wai-keung, please press the button again.

If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr James TO, Mr LEUNG Yiu-chung, Prof Joseph LEE, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK, Mr IP Kin-yuen and Mr SHIU Ka-chun voted for the amendment.
Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Kin-por, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr Christopher CHEUNG, Mr Martin LIAO, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan, Mr Jimmy NG, Mr Holden CHOW, Mr SHIU Ka-fai, Mr CHAN Chun-ying, Mr LAU Kwok-fan, Mr Kenneth LAU and Mr Tony TSE voted against the amendment.

THE CHAIRMAN Mr Andrew LEUNG, Mr HO Kai-ming and Mr LUK Chung-hung did not cast any vote.

Geographical Constituencies:

Ms Claudia MO, Mr WU Chi-wai, Mr CHAN Chi-chuen, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Dr Helena WONG, Mr Alvin YEUNG, Mr Andrew WAN, Mr CHU Hoi-dick, Mr LAM Cheuk-ting, Ms Tanya CHAN, Dr CHENG Chung-tai, Mr Jeremy TAM and Mr AU Nok-hin voted for the amendment.

Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mrs Regina IP, Mr Paul TSE, Mr Michael TIEN, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Dr Elizabeth QUAT, Dr Junius HO, Mr Wilson OR, Ms YUNG Hoi-yan, Mr CHEUNG Kwok-kwan and Mr Vincent CHENG voted against the amendment.

Mr WONG Kwok-kin, Ms Alice MAK and Mr KWOK Wai-keung did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 31 were present, 8 were in favour of the amendment and 20 against it; while among the Members returned by geographical constituencies through direct elections, 30 were present, 14 were in favour of the amendment and 13 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.
CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 5 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): All the proceedings on the Employment (Amendment) Bill 2017 have been concluded in committee of the whole Council. Council now resumes.

Council then resumed.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I now report to the Council: That the Employment (Amendment) Bill 2017 has been passed by committee of the whole Council without amendment. I move the motion that "This Council adopts the report".

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

In accordance with Rule 59(2) of the Rules of Procedure, the motion shall be voted on without amendment or debate.
PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr Fernando CHEUNG rose to claim a division.

PRESIDENT (in Cantonese): Dr Fernando CHEUNG 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 James TO, Mr Abraham SHEK, Prof Joseph LEE, 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, Mr Paul TSE, Mr Michael TIEN, Mr Steven HO, Mr WU Chi-wai, Mr YIU Si-wing, Mr MA Fung-kwok, Mr Charles Peter MOK, 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 Alvin YEUNG, Mr Andrew WAN, Mr Jimmy NG, Dr Junius HO, Mr HO Kai-ming, Mr LAM Cheuk-ting, Mr Holden CHOW, Mr SHIU Ka-chun, Mr Wilson OR, Ms YUNG Hoi-yan, Mr CHAN Chun-ying, Ms Tanya CHAN, Mr CHEUNG Kwok-kwan, Mr LUK Chung-hung, Mr LAU Kwok-fan, Mr Kenneth LAU, Mr Jeremy TAM, Mr Vincent CHENG and Mr Tony TSE voted for the motion.
Mr Frankie YICK, Mr CHUNG Kwok-pan and Mr SHIU Ka-fai voted against the motion.

Mr LEUNG Yiu-chung, Ms Claudia MO, Mr CHAN Chi-chuen, Dr Fernando CHEUNG, Mr CHU Hoi-dick, Dr CHENG Chung-tai and Mr AU Nok-hin abstained.

THE PRESIDENT, Mr Andrew LEUNG, did not cast any vote.

THE PRESIDENT announced that there were 61 Members present, 50 were in favour of the motion, 3 against it and 7 abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

Third Reading of Government Bill


EMPLOYMENT (AMENDMENT) BILL 2017

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I move that the Employment (Amendment) Bill 2017

be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Employment (Amendment) Bill 2017 be read the Third time and do pass.

Does any Member wish to speak?
MR DENNIS KWOK (in Cantonese): President, I would like to reply briefly because I heard Secretary Dr LAW Chi-kwong mention my name just now … No, he was saying that Members from the legal sector should not support Dr Fernando CHEUNG's amendments on clause 4(1) of the Employment (Amendment) Bill 2017, because supporting the amendments was tantamount to …

PRESIDENT (in Cantonese): Mr Dennis KWOK, this Council is having the Third Reading debate. Members will please do not continue with the procedure of the Second Reading debate or the committee of the whole Council. You should only state the reason for supporting or not supporting the Third Reading of the Bill in general, rather than take this opportunity to respond to the speeches made by the Secretary or other Members.

MR DENNIS KWOK (in Cantonese): President, what I want to say is that the idea of the whole piece of legislation will not, as stated by Secretary Dr LAW Chi-kwong, limit the discretionary power of the court. That is because we have our own sovereignty, i.e. parliamentary sovereignty, as a legislative assembly. We definitely have the right to state to the court what factors should or should not be considered when invoking a particular piece of legislation or handling a particular case. Therefore, the remark that the amendments concerned will drastically weaken the court's discretionary power absolutely cannot hold water.

DR FERNANDO CHEUNG (in Cantonese): President, I do not support this Council to proceed to the Third Reading of the Employment (Amendment) Bill 2017 ("the Bill"). The current amendment merely rectifies a most absurd, meaningless and practically unfeasible reinstatement order. If the court or Labour Tribunal considers that an employee has been dismissed unreasonably and unlawfully, and reinstating or re-engaging the employee a reasonable remedy and compliance with the order by the employer reasonably practicable, it may make a compulsory order for reinstatement or re-engagement without securing the consent of the employer. This requirement will only provide for making a reasonable arrangement. However, the employee only has the reinstatement order but not the right to reinstatement, because ultimately the employer can refuse to comply with the reinstatement order upon payment of a sum. Therefore, I cannot support the Bill in principle.
I do not understand why Members from The Hong Kong Federation of Trade Unions attend this meeting but do not vote on my amendments, I feel sorry about that. The Labour Advisory Board ("LAB") is not a supreme authority, and the Legislative Council has its independent legislative sovereignty. Any amendments proposed by us will be approved by the President if they conform with the law and rules, hence there should be no such concerns as proposing amendments at the eleventh-hour or disallowing amendments not having been discussed by LAB to be proposed. As the Bill is going to be read the Third time, I hope Members will be aware that only a slight improvement has been made when compared to the old practice. The Bill merely sets things right but does not bring about genuine improvement.

Thank you, President.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Dr Fernando CHEUNG rose to claim a division.

PRESIDENT (in Cantonese): Dr Fernando CHEUNG 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 James TO, Mr Abraham SHEK, 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, Mr Paul TSE, Mr Michael TIEN, Mr Steven HO, Mr WU Chi-wai, Mr YIU Si-wing, Mr MA Fung-kwok, Mr Charles Peter MOK, 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, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok, Mr Alvin YEUNG, Mr Andrew WAN, Mr Jimmy NG, Dr Junius HO, Mr HO Kai-ming, Mr LAM Cheuk-ting, Mr Holden CHOW, Mr Wilson OR, Ms YUNG Hoi-yan, Mr CHAN Chun-ying, Ms Tanya CHAN, Mr CHEUNG Kwok-kwan, Mr LUK Chung-hung, Mr LAU Kwok-fan, Mr Kenneth LAU, Mr Jeremy TAM, Mr Vincent CHENG and Mr Tony TSE voted for the motion.

Mr Frankie YICK, Mr CHUNG Kwok-pan and Mr SHIU Ka-fai voted against the motion.

Mr LEUNG Yiu-chung, Prof Joseph LEE, Ms Claudia MO, Mr CHAN Chi-chuen, Dr Fernando CHEUNG, Mr CHU Hoi-dick, Mr SHIU Ka-chun, Dr CHENG Chung-tai and Mr AU Nok-hin abstained.

THE PRESIDENT, Mr Andrew LEUNG, did not cast any vote.

THE PRESIDENT announced that there were 63 Members present, 50 were in favour of the motion, 3 against it and 9 abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

MEMBER'S MOTION ON SUBSIDIARY LEGISLATION AND OTHER INSTRUMENTS

PRESIDENT (in Cantonese): Member's motion on subsidiary legislation and other instruments.

Ms Starry LEE will move a motion under Rule 49E(2) of the Rules of Procedure to take note of the Rating (Exemption) Order 2018, which is included in Report No. 12/17-18 of the House Committee laid on the Table of this Council.

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

PRESIDENT (in Cantonese): I will first call upon Ms Starry LEE to speak and move the motion, and then call upon the chairman of the subcommittee formed to scrutinize the relevant subsidiary legislation, Mr WONG Ting-kwong, to speak, to be followed by other Members.

Each Member (including the mover of the motion) may only speak once and may speak for up to 15 minutes.

Finally, I will call upon the public officer to speak. Then, the debate will come to a close, and the motion shall not be put to vote.

I now call upon Ms Starry LEE to speak and move the motion.

Stand-over item: Member's Motion on Subsidiary Legislation and Other Instruments on "Motion under Rule 49E(2) of the Rules of Procedure" (since the meeting of 9 May 2018)

MOTION UNDER RULE 49E(2) OF THE RULES OF PROCEDURE

MS STARRY LEE (in Cantonese): President, in my capacity as Chairman of the House Committee, I move the motion, as printed on the Agenda in accordance with Rule 49E(2) of the Rules of Procedure, be passed, so that Members can debate the Rating (Exemption) Order 2018 as set out in Report No. 12/17-18 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments.

President, I so submit.
Ms Starry LEE moved the following motion:

"That this Council takes note of Report No. 12/17-18 of the House Committee laid on the Table of the Council on 9 May 2018 in relation to the subsidiary legislation and instrument(s) as listed below:

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Title of Subsidiary Legislation or Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Rating (Exemption) Order 2018 (L.N. 37/2018).</td>
</tr>
</tbody>
</table>

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

MR WONG TING-KWONG (in Cantonese): President, in my capacity as Chairman of the Subcommittee on Rating (Exemption) Order 2018 ("the Subcommittee"), I now report on the deliberations of the Subcommittee.

The Rating (Exemption) Order 2018 ("the Order") seeks to give effect to the rates concession proposed in the 2018-2019 Budget and declares that all tenements are exempted from the payment of rates up to a maximum of $2,500 for each quarter. The Subcommittee has held two meetings with the Government to examine the Order and received one submission from a member of the public.

While the Subcommittee does not object to exempt rates to help ease the financial burden of the public, a number of Subcommittee members have expressed concern that some 3.25 million properties liable to rates in Hong Kong will be covered by the rates concession measure, which will result in a total revenue forgone of $17.8 billion. For the top 10 ratepayers who are expected to receive the largest amounts of rates concession, the total rates concession amounts to over $250 million involving 40,136 rateable properties. A small number of ratepayers such as property developers and owners with many rateable properties will reap a large proportion of the total concession amount. Therefore, a number of Subcommittee members have criticized that the rates concession measure is lopsided to the rich and returning wealth to the rich, running counter to the Government's objectives of targeting the concessionary measures at the grass roots and the needy, and sharing the fruits of Hong Kong's economic success with the community.
A number of Subcommittee members have urged the Government to improve the rates concession measure to achieve a more equitable distribution of the concessions. The proposals raised by these members include: limiting the number of rateable properties per ratepayer eligible for rates concession; confining the rates concession measure to tenants and owners of self-occupied properties; and excluding completed but unsold residential properties from the rates concession measure, etc.

The Government has advised that the rates concession measure under the Order will cover about 3.25 million properties, including 796,000 public rental housing ("PRH") units. The Housing Authority will rebate the rates concessions to PRH tenants. Moreover, over 82% of the tenancies of the estimated top 10 ratepayers are of rates exclusive basis. In other words, most of the rates concessions will be rebated to the tenants concerned in accordance with the provisions of tenancy agreements although the owners remain as ratepayers.

(The President's Deputy, Ms Starry Lee, took the Chair)

The Government fully understands the concerns of the general public about the rates concession mechanism and notes the proposals raised by Members. The Government will endeavour to complete the analysis of options to improve the current rates concession mechanism by the end of 2018 and will provide a paper to the relevant Legislative Council Panel in due course.

The Subcommittee has also discussed why the Rating and Valuation Department ("RVD") had issued the demand notes for rates payment for the first quarter before commencement of the Order on 1 April 2018, setting out the rates concession amount for the first quarter. A member has queried whether such arrangement would be legally in order. The Government has explained that, given the huge quantity of demand notes issued in each quarter and taking into account that there are public holidays in late March and early April 2018, RVD starts issuing the demand notes for the first quarter on 28 March 2018 which would facilitate payers to settle the payment by 30 April 2018 (i.e. "Last Day for Payment"). The Government has stressed that similar arrangements have been in place for the rates concession measures introduced in the past years. Given that the "Last Day for Payment" of 30 April 2018 falls on a date after the Order
has come into effect (i.e. the rates to which the Order is applicable are payable only after the Order has come into effect), the arrangement of issuing demand notes for rates payment for the quarter before 1 April 2018 is legally in order.

Deputy President, my personal views on the Order are as follows.

I do not want to talk too much about the specific contents of the Order and the deliberation process. I will instead mainly focus on examining the controversies in the community arising from the current rates concession.

Undoubtedly, as property prices have skyrocketed in the past decade and rents have risen, there have been constant criticisms in the community that the Government's rates concession measure for all properties is unfair to the general public as owners holding a large number of properties can enjoy huge amounts of rates concessions. Although the Government has a huge surplus this year, the measures introduced in the Budget to take care of the grass roots have failed to meet the expectations of the public and the controversies over rates concessions has intensified.

However, I would like to say that the existing rates concession arrangement is not pioneered by the SAR Government. Since the British Hong Kong era, the Government had introduced rates concessions when there were huge surpluses or when it wanted to stimulate the economy, and the practice of providing rates concessions to all properties had started since then. In making arrangements for rates concessions, the SAR Government has just followed the past practice.

While it is true that the provision of rates concessions for all properties have really given more rates concessions to owners and property developers with more properties, they are not the only ones who benefit. As shown in the paper submitted by the Government to the Subcommittee, for the top 10 ratepayers who are expected to receive the largest amounts of rates concession in 2018-2019, the total rates concession amounts to $256 million, but over 82% of the tenancies are of rates exclusive basis and the owners are only paying rates on behalf of the tenants. As a result, commercial tenants renting premises in large property, as well as members of the public can benefit from the rates concession measure mentioned earlier. Of course, the paper submitted by the Bureau has not accounted for the amounts of rates concession received by these tenants. If the Government can provide the specific figures, it may help the public understand more clearly how tenants can benefit from rates concessions.
The Government understands the general public's dissatisfaction with the rates concession mechanism. At the first meeting of the Subcommittee, the Government pointed out that the valuation and collection of rates are based on tenements and a ratepayer can be the owner, tenant or agent of the owner. RVD collects information on the names and mailing addresses of the ratepayers, but not their Hong Kong Identity Card numbers, the Business Registration numbers, or information of the owners of the tenements.

For this reason, if the Government is to change the current arrangements for rates concession, it will need to change the valuation and collection of rates based on tenements and also update the computer system and database of RVD. At this stage, the Government cannot change the arrangements for rates concession. Thus, the Government is conducting a study on the work required to change the current arrangements for rates concession and the impacts thereof. It will report to the Legislative Council upon completion of the work at the end of this year.

In this connection, I hope that the Government will complete the study as soon as possible and consider in detail the impacts of changing the current arrangements for rates concession. For example, how should jointly-owned properties or properties held via a holding company be handled if each owner will be provided with rates concession for a property? If the tenancy agreement requires tenants to pay rates, will these tenants be deprived of rates concession? All these problems demand concrete solutions.

I so submit, Deputy President. The Democratic Alliance for the Betterment and Progress of Hong Kong and I will support the Order and we hope that the Government will complete the study on improving the rates concession mechanism as soon as possible, and reduce controversies in the community over rates concession. Thank you, Deputy President.

DR KWOK KA-KI (in Cantonese): Deputy President, rates concession is supposedly a welcoming measure. It is good news to many owners of domestic flats, office premises, parking spaces and industrial buildings in Hong Kong. This measure, however, reflects the hypocrisy and unfairness of the Government in formulating concessionary policies to provide the so-called relief.
As we may recall, in this year's Budget, the Government has planned to grant two additional monthly payments to low-income persons receiving the Comprehensive Social Security Assistance ("CSSA"), Old Age Living Allowance or "fruit grant". The Government also reduces the tax burden of salaries taxpayers based on their personal income. As for the concessions for enterprises, I have repeatedly said that the Government is making much ado about nothing by granting a 50% reduction in profits tax rate for the first $2 million of profits, which is absolutely unfair. Yet, this is not the subject matter for our discussion today. In the end, the Government is pressured into "dishing out candies", so that anyone who cannot benefit from the aforesaid relief measures will be given cash handouts of up to $4,000.

In each of the relief or "refund" measures mentioned above, there is a clear ceiling. For example, all "fruit grant" recipients, be they rich or poor, will all receive "triple pay". If LI Ka-shing has applied for "fruit grant", he can get "triple pay". Under the cold-blooded elderly policy of the Government, poor elderly persons who live in subdivided units and make a living by scavenging cardboards will also get "triple pay". They will only be given a maximum of two additional monthly payments of "fruit grant", i.e. a meagre amount of $2,000.

However, when it comes to rates concession, the Government takes a different approach. It hands out money—not with one eye closed but with both eyes wide open—as if it is worried that large landlords would receive too little money and is eager to give them more. Some queried why a ceiling is not set for rates concession? To my knowledge, many members of the Executive Council, including Arthur LI and Chief Secretary Matthew CHEUNG, have lots of properties. I also heard that the Chief Secretary had bought a flat secretly before the introduction of additional "curb" measures. As these people have in hand a lot of properties, they certainly welcome the rates concession measure and consider it fair. If they have 30 properties, they can pay $300,000 less in rates; if they have 100 properties, they can pay $1 million less. They will not feel shameful at all. Why does the Government adopt this approach? For the concessions given to the poor, the Government has set a ceiling. No matter how poor the recipients are, they will at most get two additional monthly payments, not a penny more.

The amount of rates waived is not a small sum. This time, we only request the Government to provide information on the top 10 ratepayers who are expected to receive the largest amounts of rates concession. Next time, we
should ask the Government to provide information on the top 100 or even 1,000 ratepayers. The top 10 ratepayers have 40,136 properties in total and the amounts of rates concession to which they are entitled will add up to $260 million. Among them, the top ratepayer alone has in hand 15,645 properties and the rates waived amounts to $102.6 million.

Some people wonder if this ratepayer is Link REIT. This is not at all surprising. The problem is these large landlords are not benevolent at all. Link REIT and other corporations are notorious for their greedy exploitation. To be honest, they will have their ways to exploit tenants and pocket all the rates concession. Even if the tenants can now pay $1,000 less in rates, the large landlords will later increase their rents by $3,000. Can greengrocers and small shop owners say no under the evil claws of Link REIT? In fact, Link REIT will watch for every opportunity to embezzle the $10,000 rates concession that small shop owners are entitled to. It will later increase the rent by $10,000 or even $20,000 or $30,000. This is the first point.

Secondly, as known to all, developers have at least 9,000 vacant flats, hoarding for the purpose of profiteering. They claimed that they have acted in line with the Government's housing policy to boost housing supply. We all know that is a lie. First, the Government cannot intervene even if housing production by developers is slow after purchasing the land. Second, after the completion of building works, developers may argue that the development is yet to finish. Third, even if the development is completed, developers may sell a small number of flats in phases, just like "squeezing toothpaste out of a tube". For example, the developers may sell the 100 flats in a building in 10 phases, putting up only 10 flats on sale in each phase but with a price increment of 3% or 5%. Hong Kong people are actually at the mercy of developers. These developers, including CK Asset, Sun Hung Kai and Henderson among the four large developers, have in hand thousands of flats. They can likewise have rates concession for such flats, and can save hundreds of millions of dollars. Will they be ashamed? Of course not. They will continue to pocket every penny, the more the better.

How can the Government propose such a ridiculous relief measure to favour large landlords with a large number of properties? In contrast, the reduction of salaries tax is not based on headcount. CSSA is also granted on a household basis. The allowance granted to a single-person household and a multi-person household is calculated in the same way. No matter how poor
members of a household are, their allowance is granted on a household basis. The Government, however, treats the rich differently. In a family of five, if each member owns 10-odd flats, this family will pay some $500,000 less in rates. The calculation is simple.

It is argued that the former colonial Government also adopted this measure. In fact, the new SAR Government made a change in 1999, revising the frequency of general revaluation from once about every three years to once a year. Despite its denial, the Government has actually implemented a high land price policy which drives up property prices and rents. Consequently, rates are on the rise every year, and all people of Hong Kong have to bear a heavy rates burden. Yet, the levy of rates is not in itself the origin of the issue. Rather, the issue is rooted in the Government's high land price policy, as well as the collusion between the Government and developers to profiteer. The Government is really shameless. If it had proposed a fairer way to grant rates concession, we might have considered this Government fair, despite being bad. However, it had not done so. How did government officials, including those from the Rating and Valuation Department ("RVD"), respond to our questions at the meetings of the Subcommittee? They said, "Our reporting mechanism does not allow us to do so. These items are not included in the relevant forms. If we have to double-check information of ratepayers, such as their identity cards or business registration certificates, the computer system of RVD will be overloaded."

Isn't our Government great? Didn't the SAR Government say that it wanted to develop Hong Kong into a smart city and boost innovation and technology ("I&T") development by allocating tens of billions of dollars for this purpose? I cannot believe that the computer system of RVD is incapable of updating property owners' information. I urge the Government not to lie to us. With such an inefficient computer system, how dare it say it will invest tens of billions of dollars to develop Hong Kong into an I&T city? Does the Government not feel ashamed?

Rates concession is nothing new. We request the Government to cap the amount of concession entitled by each owner ... former Member Mr Albert CHAN has three flats, but I do not think it is acceptable for each person to be granted with rates concession for as many as three flats. At first, my proposal to other Members is that the ceiling should be set at one flat. Why should the Government show favour to developers hoarding flats or to property speculators? They already have lots of flats in hand. Does Government worry about them not
having money for meals? Is that why the Government insists on feeding them until they become too fat to put on their socks? It is how our current Government behaves.

Therefore, it is really good to be businessmen or rich people in Hong Kong. Given that the first $2 million of profits will be taxed at concessionary rate, some enterprises will certainly split their profits in future and operate their businesses under the names of a number of small companies. This move is lucrative as each of these companies can then be granted with profits tax concession. As for speculators engaging in the speculation of domestic flats, retail premises and parking spaces, they can also be benefited as each of their properties will be eligible for $10,000 of rates concession. Moreover, they are offered with some other protection. For example, on the issue concerning the Employment Ordinance as discussed just now, the Government also seeks to minimize the losses of employers or the business sector. In our future discussion about the offsetting mechanism of the Mandatory Provident Fund schemes, the Government is also expected to cave in to the pressure from the business sector. What kind of world is this? What kind of phenomenon is this? What kind of Hong Kong society is this?

The Government is so foolish that it dares mention the difficulty in updating its forms as a reason for failing to revise the rates concession arrangement as requested by Members. Is this the first year that we raise this issue to the Government? Of course not. Members have put this issue to the last-term Government and its predecessor before, but has the Government made any improvement over the years? What are the obstacles for the Government to revise such arrangement? The Government loves talking about virtues, morals, fairness and justice, but it is not trustworthy at all. While Members have pointed out the loopholes of the rates concession arrangement, the Government simply turns a blind eye. We do not believe a rich and powerful government in control of a wide range of resources does not know how to deal with the small issue of fairness in granting rates concession. The Government is indeed clear about what to do, just that it is unwilling to take action for fear that many large landlords, small owners, speculators and hoarders may join hands to settle the score with it. We all know that these people are the bosses of our "servant" Chief Executive. The Election Committee is filled with these people.

Therefore, I urge the Government to stop making up excuses and telling us that it cannot get things done. I am not going to make things difficult for the officials present. After all, this issue has nothing to do with officials like the Assistant Commissioner of Rating and Valuation. They just act under the
direction of the Secretary, Carrie LAM and Paul CHAN. We will not make things difficult for them, given that they are civil servants. However, I must point out that the Government has ignored the unfairness issue in many of its schemes over the years. It is actually terrible for the Government, which has nothing but money, and which does nothing but hand out money. Here in Hong Kong, the elderly cannot get adequate care, the sick cannot afford to buy drugs and students with learning disabilities cannot get any support. There are people living in subdivided units in residential or industrial building, but the Government merely pays lip service. It now takes more than 5.1 years for an applicant for public rental housing to be allocated with a unit. Regrettably, none of these issues seems to bother the Government. All it cares is to maintain an annual budget surplus and put extra money to the public coffers. However, the reserves of the Hong Kong Monetary Authority will be gone completely one day. Our guess is that these funds will fly to the North years later. Hong Kong people are aware of this fact, but they cannot change this fate.

While it is bad enough for the Government to resort to the poor tactic of "dishing out candies" in solving our social problems, it is even more ridiculous for the measures to be lopsided to the rich, the powerful, hoarders and speculators. What a shame! Is it necessary for the Government to show its loyalty to the rich every year? Can the Government do some real work seriously?

According to the earlier remark of Mr WONG Ting-kwong, the Government will later conduct a review. I will wait and see what will be reviewed and what will be changed. While the Rating (Exemption) Order 2018 is quite unacceptable, voting it down will do no good to everyone. Yet, the Government is really shameless. (The buzzer sounded)

**DEPUTY PRESIDENT** (in Cantonese): Dr KWOK Ka-ki, your speaking time is up.

**DR KWOK KA-KI** (in Cantonese): I so submit.

**MR WU CHI-WAI** (in Cantonese): Deputy President, issues relating to the Rating (Exemption) Order 2018 ("the Order") has been discussed time and again in the Chamber of the Legislative Council. The measure of rates concession was proposed as early as in the 2001 Policy Address, but over the years, many
colleagues have pointed out on different occasions the unfair arrangement of rates concession. In the overall process of wealth sharing, owners obtained plenty of resources whereas the grass roots obtained very little. The accusation concerning the unfairness of rates concession was made more than 10 years ago, well before this meeting.

The response given by the Government, however, has been the same in the past 10-odd years. It mainly comprises the following points: Firstly, rental is rates exclusive in many cases and thus the beneficiaries are probably the tenants. Secondly, the imposition of any restriction will significantly change the Rating Ordinance ("the Ordinance") and the practices of the Rating and Valuation Department ("RVD"). This change embodies a very important idea that RVD will charge the occupier of the tenement instead of the owner for rates. Is this idea feasible? More than 10 years have passed, should the Government clearly explain to the Legislative Council whether the present method of rates collection, which has been conducted for more than a century, should be changed and owners should be charged for rates instead? If owners are charged for rates, we will be able to obtain more specific information, but the Government has not done so.

Let us move 10 000 steps back. Since the Government has refused to do this and that, how about imposing restrictions on buildings that have not yet been offered for sale, that is, buildings that have been issued with occupation permits but yet to put up for sale. Apparently, this arrangement is more accurate and manageable because developers have to submit the Requisition for Particulars of Tenements (Form Number R1C) to RVD to provide information of the newly completed properties. We would know from this form if the relevant building is still owned by the developer or has changed hands. Of course, I understand that RVD may say "there are always some counter-measures from below", and the developers can transfer their properties to other people. However, RVD can rest assured because with the introduction of the "curb" measures by the Government, the tax payable for the transfer of properties is currently as high as several hundred thousand dollars, it is therefore doubtful if there will be any property transfer.

In fact, under the existing mechanism, the Government can still adopt a number of means and measures, but it has not done so. For example, as I have said earlier on, properties owned by developers should not enjoy rates exemption. Other issues, such as computer modification, information update and changes of relationship between property owners and landlords, have not been dealt with by the Government in the past 10 years or so. I wonder how much longer the
Government will have to wait before it addresses the issues squarely. For example, in respect of rates rebate, a fair and reasonable mechanism should be put in place unlike what is happening now, the problem is not with scarcity but uneven distribution. There is a great difference in the amount of rates rebate received by an owner having one property and another having 100 properties.

In response to an enquiry from the relevant subcommittee, the Government pointed out that the largest amount of rates concession was about $102 million and the ratepayer concerned held 15,645 properties. The total amount of rates concession received by the top 10 ratepayers was about $256 million, involving 40,000 properties. This number is not small at all. And yet, the Government and RVD have shelved the problem for a long period of time and no action has been taken so far.

The Democratic Party has sought to propose two amendments at the Subcommittee, one is to provide that each company may only nominate one property to be eligible for rates concession, but this restriction does not apply to charitable organizations and government organizations; the other is to provide that properties held by developers should be excluded from the rates concession measure. However, both amendments could not be proposed under the restrictions of the Rules of Procedure. Nonetheless, I would like to point out to the Government during this take-note process that this is not the first time to raise the issue, and the Democratic Party is not the first party to propose the relevant amendments. However, the issue has not been squarely addressed in the past decade or so. If the SAR Government, for fear of us, decides not to implement rates concession measure in the future and allocates the resources so saved to address long-term social welfare issues and meet social needs, we may think this approach is more reasonable.

As we have always said in the past, in times of having fiscal surplus, if the Government can seriously address the various needs of society, look into the resources required and make long-term investments to meet the needs in health care, elderly care and education, Members may show greater appreciation of the usage of surplus. This is better than the present approach of spending the surplus by discharging the flood or handing out "candies" for fear of making long-term recurrent commitments. What actually is the new fiscal management philosophy of Financial Secretary Paul CHAN and Chief Executive Carrie LAM? Will the Government continue to adopt the present approach of handing out cash to every person when there is fiscal surplus, rather than the present approach, giving rise to the problem of uneven distribution but not scarcity?
During our discussion of the Order, I noticed a very interesting phenomenon and would like to point it out in my speech. Under the existing rating system, rural agricultural land is exempted from rates payment as long as its definition falls within the meaning of agricultural land and buildings thereon in section 36(1) of the Ordinance. Once the use of the agricultural land is changed, RVD will have to make assessment to rates. What is meant by changes in land use? The most popular uses are brownfield sites, warehouses, container yards and even conversion for recreational use, such as amusement parks. All such uses no longer fall within the meaning of agricultural land and buildings thereon.

The 2016 Director of Audit's Report criticized RVD for failing to conduct assessment to rates for agricultural land after a change in land use. Therefore, after the publication of the Report, the Audit Commission recommended the Lands Department ("LandsD") to establish a mechanism and require LandsD, when issuing warning letters to owners of agricultural land for changes in land use, send a copy to RVD so that the latter could conduct follow-up assessment.

Recently, in reply to a question raised at the special Finance Committee meeting, RVD advised that between May 2016 and March this year, RVD has received copies of warning letters involving about 2,600 agricultural lots. Furthermore, a total of 54,800 agricultural lots in various districts of the New Territories, including Tai Tong Lychee Garden and Wang Chau, Yuen Long, have been assessed to rates. The result seems quite satisfactory. However, as land and properties that are exempted from assessment to rates are not on the Valuation List, RVD cannot advise the Legislative Council on the number of agricultural land exempted from rates payment.

I tried to make a search by using the Lot Index Plan of Yuen Long South and adopting RVD's approach. I found that along Kung Um Road, Yuen Long South, a major section of the development of Yuen Long South, there are more than 30 lots with the indications of "Missing Lot" or "Details of the record subject to checking", meaning that these lots are still exempted from rates payment. Only 9 lots are liable to rates payment and the ratable values range from about $50,000 to the highest of $280,000. The Lot Index Plan that I used is published by LandsD, in which a large number of lots are indicated as warehouse space. However, some warehouse lots are indicated as "Missing Lot" in the Valuation List, meaning that RVD does not have the relevant information. In other words, such lots have not been assessed to rates by RVD in accordance with section 36(1) of the Ordinance after a change in land use, resulting in a large sum
of rates forgone. Is this a dereliction of duty? In fact, if Members go to Yuen Long South, they can see stretches of land, not agricultural land, but brownfield sites, warehouses and even car parks or junkyard for abandoned vehicle.

Even for land lots where the use has obviously been changed, only very few of them have rating records in the Valuation List after checking with the Lot Index Plan and no information is available for the rest of the lots. We can therefore imagine how difficult it is to make assessment in the absence of relevant records. Members may query if RVD and LandsD have done their job properly in respect of land management. Their failure to perform has resulted in a loss of public money. So, how can they blame Members for criticizing the Government incessantly at this Council for being unfair and lopsided to the bigwigs in the rates concession measure?

The SAR Government, though fully aware of the problem, has not taken any action. This is a dereliction of duty. In fact, criticisms were raised not only by Members, but also in 2016 Director of Audit's Report, but the Government still failed to look into and address the problem squarely.

The social inequality caused by rates concession is not merely the tens or even hundreds of millions of dollars of rates rebate enjoyed by large consortia, but also the non-payment of rates enjoyed by many owners of brownfield sites in the New Territories, which is indeed an even greater benefit. According to the Treasury, since the existing system does not record the particulars of owners, there is no way it can tell if many landlords have saved millions of dollars as a result of non-payment of rates.

In my opinion, the Government must address squarely the problems of outdated rates valuation system and insufficient database, so that when the Government implements rates concession measure again in future, a classified approach accepted by all can be adopted. This is the first point.

The second point is, the work of assessment to rates must be carried out stringently as any inadequacies will result in a loss of public money. The exemption of landlords from rates payment is one of the causes of social injustice. *(The buzzer sounded)*

**DEPUTY PRESIDENT** (in Cantonese): Mr WU Chi-wai, your speaking time is up.
MR TONY TSE (in Cantonese): Deputy President, as prices are soaring and property prices and rentals remain high, members of the public have been suffering. The Financial Secretary has proposed in this year's Budget quite a number of relief measures for the grass roots, hoping to ease their pressure. The proposal under the Rating (Exemption) Order 2018 to waive rates for four quarters subject to a ceiling of $2,500 per quarter can reduce the tax burden of the middle class and small and medium enterprises ("SMEs") and it has my support.

However, there are comments that the proposed measures may have the effect of providing people or enterprises holding large number of properties with large amounts of rates concession while government revenue has been reduced, hence running contrary to the original intent of rates concession. Therefore, the Government should expeditiously explore ways to make improvements so that if rates concession measure is to be implemented in future, it will return wealth to the public and benefit the needy, including the middle class and SMEs, instead of returning wealth to the rich.

According to government information and as mentioned by Mr WONG Ting-kwong, the rates concession measures will cover about 3.25 million rateable properties and reduce government revenue by $17.8 billion. For the top 10 ratepayers who are expected to receive the largest amounts of rates concession, the total rates concession amounts to nearly $260 million involving 40,000 rateable properties. The top ratepayer alone pays rates on some 15,000 rateable properties, and the total rates concession involved over $100 million. As stated by the Government, over 80% of the tenancies of the top 10 ratepayers are of rates exclusive basis, so most of the rates concessions will be rebated to the tenants in accordance with the provisions of tenancy agreements to help ease the rates burden of the tenants.

Though some Members have pointed out that property developers and owners holding large numbers of rateable properties (including shopping malls or offices) would receive large amounts of rates concession, I think they have oversimplified the issue. Many large enterprises in Hong Kong own properties, many of which are for self-occupation. The market value of a self-occupied commercial building often exceeds $10 billion, but it will only be considered as a single rateable property and the rates to be waived are subject to a ceiling of $2,500 per quarter. The whole building will only get a rates rebate of $10,000 for the whole year.
In addition, the tenants of shopping malls and offices held by large landlords are mostly required under the tenancy agreements to pay rates, thus the rates concessions will naturally be rebated to the tenants. If these landlords are excluded from rates concession across the board, rates will not be rebated to many SME tenants to slightly relieve them of the heavy rental pressure. Deputy President, as for those tenancy agreements under which the landlord will pay the rates, rents will naturally be higher. Tenants can make their own choice.

As regards the comment made by some Members that unsold vacant units should be excluded from the rates concession measure, I think this matter should be handled carefully. It should be noted that these vacant units may be rented or sold, if they are excluded from the rates concession measure, property owners or tenants will not be entitled to rates concession after they have bought or rented such units. Will this be fair to these property owners or tenants?

The rates concession proposal should, in principle, benefit the needy including the middle class and SMEs. If developers, institutions or large enterprises are disqualified from receiving rates concession simply because they are holding more properties, they may be inadvertently hit because the rents of their properties may not include rates. The rates for properties such as residential properties, shopping malls and offices are often paid by the tenants. Developers, enterprises or institutions holding the properties will not be impacted if they are disqualified from receiving rates concession, but their tenants (including the middle class and SMEs) will be deprived of the opportunity to enjoy the benefit of rates concession, and hence their pressures and burdens cannot be relieved.

Furthermore, I think the proposal to exclude landlords or enterprises holding a large number of rateable properties from enjoying rates concession should be carefully considered and studied. The existing system and legislation for rates collection should be changed and technical details such as the contents of the tenancy agreements should also be studied in detail. Ratepayer can be the owner, occupier or even the agent of the owner or occupier of the rateable property concerned. RVD only collects the names and mailing addresses of the ratepayers but not their Hong Kong Identity Card numbers, the Business Registration numbers or information of the owners of the property. If changes are to be made, especially changes regarding how to handle jointly-owned properties or properties held via a holding company, the Government should handle these changes prudently. Moreover, the amendment of the relevant legislation will take time and has to be passed by the Legislative Council.
Deputy President, the rates concession measure introduced by the SAR Government can ease the pressure on the middle class and SMEs, which is certainly desirable; yet people who can well afford to pay rates may also enjoy the concession, resulting in a reduction of government revenue. I think the Government should consider how improvements can be made. As this is not the first time that the rates concession measure is introduced, I urge the Government to handle this matter as soon as possible. If rates concessions are provided in the future, the Government should propose practical and feasible ways to optimize the relevant measures to genuinely benefit the needy.

I so submit, Deputy President.

MR CHAN CHI-CHUEN (in Cantonese): Deputy President, as the Treasury is flooded with cash, the Government has to discharge the flood and return wealth to the people. People Power has always believed that refunding the people directly is a fairer measure when compared to rates exemption, and can benefit more people. But as one of the measures to share the fruits of economic success, to relieve the pressure caused by wrong estimation leading to huge surplus and the Treasury overflowing with cash, as well as to relieve the pressure of public opinion, rates concession is one of the feasible measures.

Today, I am glad to hear pro-establishment Members say that the purpose of rates concession is to help the middle class and small and medium enterprises ("SMEs"). Hence, no one would object the general direction of drawing up a set of reasonable restrictions on rates concession. Just now Mr Tony TSE also has not raised any objection. However, the reasonable restrictions that different Members have in mind may vary widely.

The amount of rates exempted this year is the highest since 2012-2013, with the ceiling at $10,000, and all tenements are included. It must be noted that a tenement refers to a rateable unit of assessment, which can either be a residential or non-residential unit. Among non-residential units, many owners or tenants do not need rates concession. As a Member has just said, those owners and tenants are definitely not the middle class or SMEs.

I have said time and again in the past that rates concession will benefit big consortiums. In the case of last year, for the top 10 organizations receiving the largest amounts of rates concession, the total rates concession amounted to
$125 million. The total amount of rates concession this year will be $17.8 billion. For the top 10 ratepayers to receive the largest amounts of rates concession, the total rates concession amounts to $256 million, meaning that each ratepayer will on average save $25.6 million in rates. The consortium which receive the largest amount of rates concession have over 15 000 properties, and the total rates exempted reaches $102 million. From this we can see the apparent benefits received by consortiums. This is definitely not the relief to be enjoyed by SMEs or the middle class as everyone thinks.

The Government keeps telling us that the amounts of rates concession received by these consortiums will be rebated to their tenants such as shop tenants. At present, the five major developers in Hong Kong altogether have 6 100 vacant units. Each unit will be exempted rates for $10,000 for one year and the total amount of rates exempted will be $61 million. Recently, I have read the Valuation Lists carefully and found that even if the exempted rates are rebated to tenants, many of the tenants are chain stores, banks and telecommunication service providers. These tenants are not SMEs that Members are talking about and they do not need such relief measures to ease their burden.

For example, the total rateable value of all ATM machines in MTR stations in Hong Kong is over $200,000. All such ATM machines belong to the same banking group. If the banking group pays the rates and rent of each machine separately, it will be exempted from paying over $1 million in rates next year. Also, many buildings rent out space to telecommunications service providers for the erection of broadcasting stations. The telecommunications service providers have to pay rates and rent for the space occupied; their broadcasting stations are also subject to rates. Likewise these telecommunications service providers will also benefit from the rates concession. I once posted online the information about ATM machines in MTR stations being exempted from paying $10,000 in rates and has aroused a big outcry from the public. Actually, not only ATM machines but automatic photo machines in MTR stations will also be exempted from paying $10,000 in rates. People may think that they are even inferior to ATM machines and automatic photo machines. That is the reality. An ATM machine is like a small bank. I believe the Government should understand how people felt when they realized the contrast, especially before the "gap-plugging" initiatives were introduced.
Another area that is unreasonable is that tycoons owning a number of luxury properties can also enjoy the rates concession and the exempted rates payments must be far higher than the wages of an ordinary middle-class person. For a property to have rates exemption of $10,000 a year, its rateable value should at least be $200,000 and its market price will be over $10 million. Of course, nowadays, a $10-million residential unit cannot be considered as a luxury home, right? But is it necessary to implement this measure to help property owners? Of course, I have no property but I believe many Honourable Legislative Council Members and government officials have properties worth over $10 million. Chief Secretary Matthew CHEUNG has nine properties and if all his properties are worth over $10 million, he will be exempted from paying $90,000 in rates.

In respect of this rates concession system, which we consider unjust, the Government may consider introducing certain reasonable restrictions. Of course, people will have different opinions when discussing the restrictions and then the Government will say that implementation will be very difficult. But I think that the Government should at least initiate such a discussion and not follow the old practice and rules, saying that the Government also implemented rates concession in this way in the past. It hence does nothing and turns a deaf ear to the views of this Council. Even some pro-establishment Members also opine that reasonable restrictions should be imposed. One pro-establishment Member, whose name I will withhold, has said to me, "The measure is unreasonable. Only self-occupied properties should be exempted from rates payments." Of course, if only self-occupied properties are exempted, the Liberal Party will say that micro, small and medium enterprises cannot be benefited. As regards self-occupied properties, will owners of properties occupied by their parents be exempted from rates? All these problems should be considered.

Of course, we can also consider setting a limit to the number of rateable properties per ratepayer is eligible for rates exemption. Should each person only have one property for rates exemption, or should he have three properties at most for rates exemption? Should non-residential properties not be exempted? Should chain stores, ATM machines and broadcasting stations mentioned previously not be exempted? I believe that these options can only be implemented by the Government through amending the rating exemption order, but amendments proposed by Members can hardly be carried. Had Members ever put forward amendments? They had. Former Member Albert CHAN from the People Power once proposed an amendment to the rating exemption order. He proposed that one person could not have more than three properties
exempted from the payment of rates, which was very reasonable, but the Government said that the amendment, if implemented, involved public spending of over $40 million. As the proposal carried a charging effect, the President ruled that the amendment was inadmissible. Actually, by spending over $40 million, people could pay less rates and government revenue would increase but not decrease.

This year, another Member also requested the Government to amend the rating exemption order to make the measures more targeted. The Government said that any changes to the current rates exemption approach would imply the need for making a fundamental change to the rates collection system. This might require legislative amendments and complete replacement of the computer systems and databases of the Rating and Valuation Department ("RVD"). All relevant information would need to be constantly updated to reflect the latest title status. Also, the way of handling jointly-owned properties and properties held via a holding company might also be highly contentious. I can put myself in the Government's shoes and raise 1 000 questions. What if the ratepayer is not the property owner? What is to be done to a jointly-owned property or a property held by many persons? These kinds of questions will also arise today because according to the present "gap-plugging" proposal, if the amount of rates concession received by a person exceeds $4,000, he will not be eligible to receive the cash handouts. In the case of a jointly-owned property or a property held by seven persons, what are the amounts of rates concession received by each owner? The Government is also faced with such questions.

The Government indicated that before any conclusion was drawn, it was impossible to estimate the cost and time needed to implement those changes. But the Government has made some slight progress this time by promising to submit documents to the Legislative Council within this year, analysing the implications of various improvement schemes to the current rates concession system. I hope that my speculations on the Government's analysis results will not come true because I expect the results to be as follows: there are great implementation difficulties, the initiatives are infeasible, or the cost is too high and it is not cost-effective, etc. A conclusion is thus drawn. I think the Government has already taken a step forward by promising to study how to improve the current rates concession system. However, I think it is necessary to improve the present system to ensure that no one will have too many properties exempted from rates payment. That is actually not too difficult to enforce and the Government may have already done so under other schemes.
Members should recall that in the Budget just approved by the Legislative Council, there is a "gap-plugging" proposal involving an expenditure of $11.3 billion, which includes $300 million in administration costs, out of which $64 million will be spent on other operational costs such as land search fees. One may ask why the "gap-plugging" proposal would involve land searches. That is because the "gap-plugging" proposal provides that people receiving rates concession of more than $4,000 will not be eligible for the cash handouts. That is to say, the Government has a way to find out who has received rates concession of more than $4,000. One may wonder how this is done as the Government said that in the Valuation List, information concerning the tenement and its ratepayer is separated and it takes time to link up the two. Does it mean that this can be done? As long as the Government is willing, there is nothing that cannot be done.

How can the Government identify a person who has received rates concession of more than $4,000 for the purpose of implementing the "gap-plugging" initiatives? Actually, the Government can, through land search, confirm that the applicant has not received rates concession of more than $4,000, and is thus eligible for receiving the shortfall. Hence, I have reasons to believe that the Government is able to link up the ratepayer's identity with the records in the Valuation List. All it has to do is to compare the information in the Valuation List and that of the Land Registry. Therefore, the reason cited by the Government over the years for not limiting the number of rateable properties per ratepayer eligible for rates concession is not valid. The Government was able to do so long ago; it just does not want to undertake the work.

If the Government is too lazy to compare the information in the Valuation List and that of land records, the Democratic Party once proposed to require a property owner to apply to the Government the number of properties for rates concessions. So a person holding several hundred properties can only apply for rates concession for a limited number of properties, say one or three, and the administration cost involved is very low. The measures of limiting the number of properties eligible for rates concession or limiting the number of properties that an owner can apply for rates concession are practicable, simple and feasible. As such, the rates concession measure can be more targeted to help the needy and better tie in with the new fiscal philosophy advocated by the Government and Carrie Lam.
If the Government is too lazy to limit the number of properties eligible for rates concession, at least it should specify the types of properties not eligible for rates concession. As we all know, RVD publishes every month the prices of various types of property units, including the prices of residential and non-residential units of various sizes. Non-residential units include shops, factory buildings and offices of various grades. That is to say, the Government has information on the types of rateable units and hence it is feasible to set restrictions in the future. In a word, "That is a case of not doing it, not a case of not being able to do it."

The rating exemption order has come into operation automatically this year. We only take note of it today but we still hope that the Government will take on board Members' views and make improvements in the future, so as to show that efforts have been made.

**MR HOLDEN CHOW** (in Cantonese): Deputy President, in respect of the Rating (Exemption) Order 2018 ("the Order"), I took part in the deliberations of the Subcommittee on Rating (Exemption) Order 2018 ("the Subcommittee") earlier. I would like to give Members a clear account of the discussion process. In fact, as fellow Members are also aware, in accordance with the established procedures, the Order seeks to give effect to the rates concession measure proposed in the 2018-2019 Budget. During the discussion of the Subcommittee, members basically shared one view in respect of the implementation of the Order, that is, the Order must be enforced. However, we have also repeatedly noted at the meetings that the Government should further review the rates concession measure in the future.

In fact, members have raised some very important points during the discussion of the Subcommittee. First, if rates concession is being used or interpreted as a means to return wealth to the rich, many members of the public will really be dissatisfied. For this reason, I have proposed during the discussion that the Government should consider imposing restrictions in respect of rates concession accordingly. Let me cite an example. Property developers holding a large number of properties will benefit from this rates rebate arrangement. Although the amount rebated does not count as profits, property developers will also benefit to say the least.
According to the statistics we have looked up, the top ratepayer alone has paid rates on 15,645 rateable properties and the total rates concession involved has amounted to over $100 million. As we can imagine, this ratepayer alone has paid rates on 15,645 rateable properties. How can one individual hold over 15,000 units at the same time? This ratepayer is apparently a property developer.

We have raised this question at the Subcommittee: Should the Government consider not offering rates concession or rebates to those property developers holding a number of properties? Out of commercial and strategic considerations, property developers may hold properties for a period of time before selling them. In the past, some developers have put up very few units for sale each time in a way similar to "squeezing toothpaste out of the tube". The queue of thousands of people has given people the impression that the sale of the properties had been very satisfactory. This arrangement is of course unfair to the public.

In view of the current situation, we should consider the practice of reducing or restricting the number of flats held by property developers that are eligible for rates concession. Imposing restrictions on developers not only help the Government save up public money, but also put resources to other more suitable uses. Second, equally importantly, the Government should not offer developers an incentive which will encourage them to deliberately hoard property units. If rates concession is likely to be offered, property developers will probably have one more incentive to hoard property units. However, if the Government restricts rates rebates in the future, developers will at least lose the incentive of rates concession.

In some recent discussions in the community, it has been suggested that the Government might consider introducing vacant property tax in the future. Of course, I believe that the relevant details have to be further explored. I have talked about one of the directions of the discussions before. My point was that developers have in effect restricted our land supply if they have hoarded some sites instead of developing them. As it has been suggested that land hoarding be cracked down by means of a vacant property tax, I consider it necessary for the Government to consider limiting rates rebates to developers in the future. We should adopt a multi-pronged approach in tackling the problem of land hoarding, with a view to making more progress in stabilizing the property market or land supply.
At the meetings of the Subcommittee, I have also noticed that members had discussed imposing restrictions not only on rates rebates to developers, but also on the number of rateable properties each ratepayer is eligible for rates concession. In simple terms, it has been suggested that the number of units eligible for rates concession be capped. For example, a ceiling will be set in respect of the number of eligible units of an individual who are holding many luxury residential properties. Under this restriction, landlords of a large number of properties will not be eligible for rates concession in respect of all of their units at the same time, with a view to preventing the measure from being interpreted as returning wealth to the rich. Of course, this arrangement will have to be further explored in the future. Particular consideration should be given to the maximum number of property units to be set. I consider it necessary to conduct an in-depth discussion in future.

Undeniably, I have derived an objective fact from my observation of the discussion at the Subcommittee. Members of different political persuasions have all considered it necessary for the Government to review its rates concession measures in the future. As to the directions or particulars of the review, the Government should provide the Council with further details in the future. In my opinion, Members have reached a consensus that the Government should conduct appropriate review in the future.

After the Order is passed, I hope that the Government will respond to Members' requests, including, as what I said just now, a review of the arrangement under which developers holding a large number of properties are eligible for a substantial amount of rates rebates. In fact, this arrangement will very likely be interpreted as returning wealth to the rich. I hope that the Government can take our views on board. I so submit.

MR AU NOK-HIN (in Cantonese): Deputy President, I am not going to fully utilize my 15 minutes of speaking time. I only wish to express two viewpoints about the Rating (Exemption) Order 2018.

The speeches delivered by a number of Members just now have reflected that they have agreed on one point: The rates exemption measure of the Government over the years has produced an effect of returning wealth to the rich. While the rich people have benefited more, the majority of Hong Kong people who have not owned a property have been unable to enjoy the benefits. This
point has been illustrated by the relevant statistics. In 2016-2017, the top 10 ratepayers who had received the highest rates concessions owned 39,865 properties combined, and the total rates they had been rebated amounted to $124 million. Ten people have shared over $100 million. This has clearly shown that people who own more properties can benefit more.

I would like to add one viewpoint. Rates have been levied not only on owners with a number of properties, but also on organizations holding a number of properties. In both cases, rates rebates by the Government have achieved similar effect. I simply cite the Link Real Estate Investment Trust ("Link REIT") as an example. According to the annual reports of Link REIT, the expenditure on Government rent and rates between 2014 and 2017 were $2.09 billion, $236 million, $271 million and $282 million respectively.

Deputy President, you may probably ask: Why did the rent and rates levied by the Government amount to as much as $2 billion in one of those years? The difference had arisen because then Financial Secretary John TSANG only offered rates concessions for the first two quarters of 2014, subject to a ceiling of $1,500 per quarter. For many years thereafter, the Government has offered rates concessions for all four quarters. Obviously, the option between two quarters and four quarters of rates concessions can make such a huge difference to enterprises.

The disparity has given rise to a question. At the Legislative Council, a number of Members have often expressed opposition to Link REIT and discussed ways to impose restrictions on it, and so on. If Members are really concerned about matters concerning Link REIT, they should actually be concerned about the ultimate impact of rates concession on such enterprises as Link REIT as well. When it comes to the discussion on rates concession, we cannot ignore the aforesaid situation. When formulating rates concession measures in the future, we hope the Government will not be too lenient with such consortia as Link REIT.

Second, I would like to cite a blog entry posted by then Secretary for Financial Services and the Treasury K C CHAN exactly 10 years ago. Secretary James Henry LAU may use it as a reference or respond to it. A number of Members have suggested that the current rates concession has indisputably produced a regressive effect. To improve the effect of rates concession and achieve wealth redistribution, more progressive elements may have to be introduced. As it has turned out, then Secretary K C CHAN publicly indicated
his intention to consider and explore rates concession 10 years ago. In the article, he said that 70% of properties had been liable to a monthly rate of below $250, while the revenue from the rates levied on those 70% of properties had only accounted for about 20% of the total. On the other hand, the rates paid by the owners of 3% of properties, who had been the top ratepayers, had accounted for half of the total rates revenue.

Ten years ago, the then Secretary for Financial Services and the Treasury indicated that it was necessary to review the rates concession measure. In the past 10 years, has the Government ever conducted a review? No progress has been made in the collection of rates by the Government in the past 10 years; and the majority of Hong Kong people are still unable to benefit. In addition, then Secretary for Financial Services and the Treasury K C CHAN had already explained to the public in his article. Had rates been waived with no upper limit set for the whole year of 2008-2009, the Government would have forgone an estimated revenue of $16.7 billion; had a quarterly upper limit been set at $5,000 per household, the estimated revenue forgone would have been about $10.4 billion. Although the figures cited above were compiled 10 years ago, there would still be a difference of $6 billion—one third of the revenue back then—in the revenue collected by the Government under the two concession arrangements. In view of this, the Government should impose an upper limit on rates concession to ratepayers with many properties so that the latter would not be eligible for excessive concessions. This will produce an immediate economic effect.

(THE PRESIDENT resumed the Chair)

Given what had happened, why has the Government failed to make any progress in the past 10 years? The Government has achieved obvious results by waiving rates for only two quarters a few years ago. In the past few years, however, the Government has waived rates for all four quarters. Instead of moving forward, the Government has instead marked time by returning wealth to the rich. In his article, then Secretary for Financial Services and the Treasury K C CHAN had indicated his intention to examine the effects of progressive rates, but he had also advised that the introduction of the proposed progressive rates percentage charge would require careful consideration. In the discussion on whether progressive rates percentage charge should be introduced, the Government should consider whether it should further limit rates revenue sources
to a minority of properties. Had progressive rates percentage charge been introduced, he expected that disputes over the assessment of rateable values of properties might significantly increase every year, thereby raising the administrative costs.

As we all know, it will be highly controversial if the Government re-assesses rates of properties. Quite a number of people have even said very often that a lot of property disputes and lawsuits would arise if the Government did not waive rates, and many people would file complaints against inaccurate valuation by the Government. The current across-the-board rates waiver arrangement is much simpler, under which no such disputes will arise. In my view, in order to achieve the progressive effect, it is not necessary to include valuation as a parameter in determining rateable values. There are many other methods which can also achieve redistribution of social wealth. Quite a number of Members put forward the suggestion to set an upper limit on the number of eligible units just now, which can be one of the methods. Secondly, the Government may consider determining the ratio of rates collected based on the number and area of properties of owners. There are in fact many alternatives for the Government to consider. As such, we hope that the Administration can seriously consider ways to curb the effect of returning wealth to the rich when collecting rates from owners of rateable properties.

President, I so submit.

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

MR CHU HOI-DICK (in Cantonese): President, I know that this take-note motion will not be put to vote, but if it is put to vote, I may vote against it to indicate my objection against rates concession.

I think we have been debating minor details on this topic. In fact, what we should actually discuss is whether rates as a property tax should be charged and who should pay rates. If Members think that rates should not be charged because the Government already has many other sources of revenue, we should debate whether rates should be charged.

However, what are we debating? Since the Treasury has been flooded with cash, rates have become a channel to discharge flood, and we are discussing whether this flood relief channel will provide people holding many properties
with too much benefit. President, if you take a closer look at the nature of this debate, you will find that it is actually a debate on minor details. If the Government has a large surplus but it does not have a balanced budget (i.e. the recurrent expenditures are not well spent), how should the surplus of tens of billions of dollars be spent? Regarding this question, the scope of the debate must not be limited to the flood relief measure of rates concession, and as I pointed out in my speech during the Budget debate, using rates concession to discharge flood is a kind of bureaucratic laziness.

Why does the Government adopt this measure? That is because there is an existing system for rates collection and the Government's proposal to waive rates for four quarters subject to a ceiling of $2,500 per quarter is a relatively easy solution. The bureaucrats are lazy and they take advantage of the conditions to turn the original … as the public have noticed, the Government turns a blind eye to property developers' hoarding and monopolization of properties. That is why the rates concession measure has triggered a new round of discussions about whether the Government is returning wealth to the rich. The scope of the discussion should definitely not be limited to whether the present arrangement for the provision of rates concession will give people the impression as depicted by Mr Holden CHOW just now.

In fact, the whole territory is returning wealth to the rich and the most important problem is … I received a group of students yesterday and a student asked me a question about the Inland Revenue (Amendment) Bill 2018 we debated yesterday. He asked if it was desirable to increase the number of tax bands from four to five so as to reduce the tax burden of wage earners. I asked the student to read the news. A plot of land in Kai Tak was just sold for more than $20 billion. The "flour price" is $18,000 per square foot and the future property price is expected to reach $30,000 per square foot. While the public have tasted the sweetness of getting a small amount of rates concession, they will have to pay more when they buy properties in future, much more than what they have saved now. Some Members have said that the provision of rates concession will give people an impression of returning wealth to the rich and we should set things right. I am not strongly urging people not to set things right or not to impose restrictions to prevent property developers from benefiting too much. I will not say so. Nevertheless, when it comes to returning wealth to the rich or setting things right, there is actually a structural problem that is more serious than the problem that we are now discussing.
President, I am a tenant. I recall that Mr WONG Ting-kwong said just now that many tenancies were of rates exclusive basis, hence the benefit of rates concessions would be rebated to the tenants. However, as a tenant, I do not long for rates concession. What do I long for? I long for the implementation of rent control in Hong Kong to restrain the increase in rent. Even if the Government waives rates for a year or two, if the landlord doubles the rent or refuses to renew the tenancy agreement when my tenancy agreement expires two years later, I still cannot afford to rent the flat and I am not protected at all. The Government claims that rates concession will also benefit tenants, but it should understand that the present system is highly lopsided to the powerful landlords and large consortia. The general public, the powerless mass, the tenants of residential properties and shops have actually become "meat on the chopping board". The rates concession measure cannot help tenants solve the most important problem. They have more than 10 "knife wounds" on their body but the Government only gives them one or two Band-Aid.

Just now, Mr WONG Ting-kwong has also quoted government information, saying that the top 10 ratepayers were holding several ten thousand properties and that over 82% of their tenancies were of rates exclusive basis, with the rates concessions rebating to the tenants for the sake of management convenience, so the tenants concerned could benefit from rates concessions. President, I do not know if the Secretary would respond later. I really do not understand why the fact that tenancies are of rates exclusive basis would mean that owners will not pocket the rates concession but will rebate the rates concession to the tenants. I hope the Secretary would provide an explanation later.

In simple terms, my conclusion is that the Government should consider how rates as a property tax … Does the Government want this property tax to be progressive in nature, so that owners of more properties have to pay higher amounts of rates? I think it is more meaningful to have such discussions. In the final analysis, as I have just mentioned, issues such as uneven distribution of wealth, the Government's continuous implementation of the high land price policy and the lack of protection for the tenants' tenure rights in the absence of rent control are more worthy of our discussion.

President, I so submit.
MR SHIU KA-FAI (in Cantonese): President, I had not intended to speak on the motion because the negative vetting procedure has already started. However, I have heard from my office upstairs that many colleagues, particularly those from the non-establishment camp, had continuously accused the Government of colluding with and tilting towards the business sector. I strongly disagree with them.

What we are discussing now is rates concession. Given the substantial tax revenue and surplus this year, the Government will return some of the money to the people of different social strata. Is there anything wrong with that? Those high taxpayers and members of the business sectors have made contributions to Hong Kong, haven't they? The Government has previously allocated a lot of resources to financially worse off people. We express support for this. Whenever we in the business sector have made profits in a better economic environment, we in fact all hope that the Government can collect more tax which will in turn be spent on helping those in need.

With a surplus of over $100 billion this year, the Budget has proposed, among other measures, rates concession. Many Members from the non-establishment camp have kept saying that this measure would only benefit rich people. President, I completely disagree. Mr WONG Ting-kwong also expressed his view on this just now. A few Members have claimed that the top 10 property owners would be rebated an enormous amount of rates. Relevant government documents have clearly shown that many properties owned by the 10 property developers or individuals might be shops, and 82% of the tenancy agreements they had entered into with small shop owners prescribed that rates had to be paid by small shop owners, not by property developers. Therefore, the point I am trying to make is, the 10 property developers will not reap all the benefits. In 82% of the cases, small shop owners will be eligible for rates concession subject to a ceiling of $2,500 per quarter, or $10,000 for the year.

Mr CHU Hoi-dick just said that tenants were unable to enjoy rates concession, but I do not think that is the case. When renting a flat, many tenants had been told very clearly by their property owners that rent and rates were actually both paid by tenants separately. Property owners will not pay the rates for tenants, will they? There is no such thing as a free lunch. After all, the costs have to be borne by tenants. We all know how high the rent levels in Hong Kong are nowadays. The rates policy can help a lot of tenants this time.
I really do not understand why some Members have claimed that the Government has only favoured the business sector. The estimated public expenditure for this year is as high as over $500 billion.

Dr KWOK Ka-ki said that the two-tiered profits tax rates regime had also favoured the business sector. Under the two-tiered profits tax rates regime, micro, small and medium enterprises ("MSMEs") are after all the real beneficiaries. Large enterprises with profits of dozens of billions of dollars can only be rebated a little over $100,000. Is this a favour to big enterprises? I do not think so. MSMEs include street hawkers and newspaper vendors. Those Members should not keep saying that the Government has favoured the business sector. What they have said will only create tension between the business sector and the public. What is their purpose?

Government resources should be shared by all people because they have made their contribution. Wage earners, employers, professionals and all other people have made their contribution. The Budget's "gap-plugging" measure of giving $4,000 to each eligible person will benefit 3.2 million more people. In other words, an overwhelming majority of Hong Kong people will benefit from the Budget. The Budget has not proposed to give cash handouts to everyone. Yet even pan-democratic political parties have previously expressed their opposition to giving cash handouts to everyone. Why do we have to give cash handouts to LI Ka-shing and James TIEN? The current "gap-plugging" policy is appropriate. Except for those very rich people, all people can benefit. Why do they have to portray the Budget, particularly the rates concession proposal, in such an unflattering light? I really cannot disagree more.

With these remarks, President, I have expressed my views. Thank you.


I think the issue has nothing to do with returning wealth to the rich. People, be they rich, underprivileged, poor or widowed, are all part of the population. Since anyone who owns a property has to pay rates, rates concession is a measure, it does not mean that the rich should not enjoy the concession. The system has been proven effective and this is not the first time to implement rates concession. The Government has a huge surplus in tax
revenues. As regards whether the measure is good or not, that is another story. As far as rates concession is concerned, I believe in equality for all. I object reverse discrimination, denying a person of rates concession just because he owns a large number of properties. Unless the Government does not introduce the rates concession measure, otherwise all ratepayers should benefit from it.

Some colleagues have rightly brought up another point in this debate, i.e. how we should perceive the current tax base. The Government originally estimated the surplus to be over $10 billion, yet it turned out that the surplus, as announced in the Budget, was well over $100 billion. How come there was such a huge difference? We must find out where the problem lies. That is the first point.

Second, let us look at whether the tax base in Hong Kong is indeed very narrow. As reported by newspapers on 4 May, the total tax revenue generated from earnings and profits tax was $208.7 billion in 2017-2018 and $206.9 billion in 2016-2017. It is estimated that the revenue will be $218.4 billion in 2018-2019. Most surprisingly, the stamp duty revenue was $61.9 billion in 2016-2017 …

PRESIDENT (in Cantonese): Dr Junius HO, may I remind you that this Council is not discussing the tax base now. Please return to the subject of the debate.

DR JUNIUS HO (in Cantonese): Yes, got it. President, I was just responding to colleagues' comments. They raised the problem about the narrow tax base. The Government's tax refund should achieve the intended objectives. I was just trying to look at the problem from a macro perspective. If the President gives me two more minutes, I will finish my speech.

The stamp duty revenue was $61.8 billion in 2016-2017, $95.1 billion in 2017-2018 and is estimated to be as high as $100 billion in 2018-2019, one third of the estimated tax revenue of over $342 billion. The double stamp duty can surely curb speculations in properties but good things will not last forever. If the property market in Hong Kong becomes sluggish and property prices fall, the Government will lose one third of its tax revenue.
Hence, I must point out that we must prepare for a rainy day. We should consider more macro arrangements while we have ample fiscal reserves. Tax revenues can protect us against any unforeseeable economic downturns or unfavourable conditions in the future.

I would like to say that while the Treasury has reserves, it is right to provide tax refunds but everyone should be treated equally. We should not be antagonistic to the rich and think that the rich do not deserve a tax refund. Instead, as far as tax revenue is concerned, we should think whether there is some sort of deviation or distortion. Everyone is happy about the hefty fiscal surplus, but if one day the Government loses an important source of tax revenue, that is, the stamp duty that contributes to one third of the total tax revenue, what should we do? Broadening the tax base is the right way forward.

Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Members have already spoken. I now call upon the Secretary for Financial Services and the Treasury to speak. Then, the debate will come to a close.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, in the 2018-2019 Budget, the Financial Secretary announced a number of concessionary measures to share the fruits of our economic success with the community, including waiving rates for the four quarters of 2018-2019 subject to a ceiling of $2,500 per quarter for each property. The rates concession measure will cover about 3.25 million residential and non-residential properties and reduce government revenue by $17.8 billion.

In order to implement the aforesaid rates concession measure, the Government tabled the Rating (Exemption) Order 2018 ("the Order") in the Legislative Council in March this year for negative vetting. The Order took
effect on 1 April this year. The Legislative Council formed a Subcommittee to scrutinize the Order. I would like to particularly thank Mr WONG Ting-kwong, Chairman of the Subcommittee, and other members for their efforts, which facilitated the early completion of the scrutiny work.

I understand that the Subcommittee has raised different views on the rates concession arrangement, and I have just listened to Members' various points of view on the subject concerned. I would like to hereby respond to three matters that are of concern to Members.

First, at present, the "Last Day for Payment" of rates for each quarter falls on the last working day of the first month of each quarter, namely January, April, July and October. Given that the number of demand notes for rates payment issued by the Rating and Valuation Department ("RVD") exceeds 2.2 million each quarter, RVD will print and send the demand notes by batches. In general, RVD starts sending out the demand notes around the end of the month preceding the payment month of each quarter, so that payers will have ample time to settle the payment before the end of the payment month.

RVD started issuing on 28 March this year the demand notes for rates payment for the quarter of April to June, and the "Last Day for Payment" was set on 30 April. On the other hand, section 36(2) of the Rating Ordinance provides that the Chief Executive in Council may, by order, declare any class of tenements, or parts thereof, or any part of Hong Kong to be exempted from the payment of rates wholly or in part. In order to implement the rates concession proposed in the 2018-2019 Budget, the Chief Executive in Council already made the Order. Given that the "Last Day for Payment" of the demand notes for rates payment for the quarter of April to June falls on a date after the Order has come into effect (i.e. after 1 April), the arrangement of issuing the demand notes for rates payment before 1 April is not legally inappropriate. In fact, similar arrangements were made for the rates concession measures introduced in the past years, and a broadly similar timetable has also been formulated for tabling the Order in the Legislative Council for scrutiny.

The second matter of concern to Members is whether the rates concession tilts towards consortiums. We anticipate that for the top 10 ratepayers who will receive the largest amounts of rates concession in 2018-2019, the total rates
concession amounts to some $200 million involving some 40,000 properties which are mainly non-residential, but we have emphasized time and again to the Subcommittee that over 80% of the tenancy agreements of such properties are rates exclusive. In other words, the owners remain as ratepayers only for the sake of management convenience, and the tenants concerned, including small and medium enterprises and tenants of shops, are the actual beneficiaries of the rates concession.

In addition, the practice of setting a ceiling for rates concession can achieve a regressive effect of the policy, that is, the higher the rateable value of a property, the smaller the magnitude of benefit arising from the rates concession. Furthermore, I hope Members will note that the 3.25 million properties covered by the rates concession measure include 796,000 public rental housing units. Almost all the tenants of such public rental housing units need not pay any rates in 2018-2019. On the other hand, owners of self-occupied properties and small business operators with self-owned premises can also benefit from the measure. We can thus see the extensive coverage of the rates concession. In fact, of the expected total amount of rates concession of some $17.8 billion in 2018-2019, some $14.9 billion involve residential properties and only some $2.9 billion involve non-residential properties. This proves that the rates concession measure does not tilt towards consortiums.

The third matter of concern to Members is whether changes should be made to rates concession arrangement (if any) in the future. In order to achieve a more equitable distribution of rates concession and benefit needy people, Members have raised various proposals, including limiting the number of rateable properties per ratepayer eligible for rates concession, confining the rates concession measure to tenants and owners of self-occupied properties, providing rates concession to ratepayers of residential properties only, or requiring the ratepayers to apply to RVD for claiming rates concession.

I would like to thank Members for their proposals and concerns, but such proposals differ considerably from the existing rates collection arrangement. As the Government has explained to the Subcommittee time and again, pursuant to the Rating Ordinance, the valuation and collection of rates are based on tenements. A ratepayer can be the owner, occupier or agent of the owner or
occupier of the rateable property concerned. At present, for the purpose of issuing quarterly demand notes for rates payment, RVD collects information on the names and mailing addresses of the ratepayers, but not their Hong Kong Identity Card numbers, the Business Registration numbers, or information of the owners of the tenements. Any changes to the current rates concession approach may imply the need for making a fundamental change to the rates collection arrangement. This may involve amendments to be made to the law and complete replacement of RVD's computer systems and databases with new ones. Moreover, all the relevant information will need to be constantly updated to reflect the latest ownership status. The way of handling jointly-owned properties or properties held via a holding company may also be contentious and problematic. In addition, the new restriction may exclude those tenants who are required to pay rates by the terms of a tenancy agreement from benefiting from the rates concession measure. All these issues require careful and thorough consideration.

We understand the concerns of some Members and members of the public over the rates concession arrangement. We have therefore undertaken to provide a paper to the Legislative Council detailing the Government's analysis of options to change the current rates concession mechanism and the implications thereof. Given the complexity of the issues, we will endeavour to complete the analysis by the end of this year.

President, the rates concession in 2018-2019 will benefit people from various social strata thanks to its extensive coverage, and effectively share the fruits of our economic success with the community. I would like to thank Members for their different views on the rates concession arrangement, and we will consider their views when analysing different proposals.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): In accordance with Rule 49E(9) of the Rules of Procedure, I will not put any question on the motion.
MEMBER'S BILL

Second Reading of Member's Bill

Resumption of Second Reading Debate on Member's Bill

PRESIDENT (in Cantonese): Member's Bill. This Council resumes the Second Reading debate on the Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018.

Stand-over item: Member's Bill on "Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018" (since the meeting of 9 May 2018)

SAILORS HOME AND MISSIONS TO SEAMEN INCORPORATION (AMENDMENT) BILL 2018

Resumption of debate on Second Reading which was moved on 11 April 2018

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

MS TANYA CHAN (in Cantonese): President, initially, I did not want to teach fish to swim. That is because if I remember correctly, Mr WONG Kwok-kin probably has the experience of a seafarer. The Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018 ("the Bill") is simple enough to our ears, but I would like to take this opportunity to examine the characteristics and background of the Bill, and the general situation of the maritime services industry in Hong Kong over the years. Perhaps there are also many representatives of the relevant trades in this Council, but as I have collated a lot of information in this regard, I have decided to stand up and speak on the Bill today.

Do Members know that there is the Mariner's Club ("the Club") in Hong Kong? President, perhaps you have heard about it and Members may be more familiar with the Club in Tsim Sha Tsui. However, the Club was recently closed because the site will be developed into a new club with a hotel, almost 30 storeys high, on top of it. Thus, the Club will be re-opened in 2022. Some Members may think that there is currently no place to reprovision the Club, but that is not
true. Considering the great number of seafarers in Hong Kong, some Members may think of establishing another club directly at the Kwai Chung Container Terminal. Actually, there is a Club at the Container Port Road, Kwai Chung.

I do not know how familiar Members are with the Club, also called the Sailors Home and Missions to Seamen, because members of the general public may not enter the premises. In fact, the Bill seeks to amend some outdated provisions and I think the President may know about it. First, the Bill changes the former English term of "seamen" to "seafarers" to meet international requirements. The international requirements are stipulated under the Maritime Labour Convention 2006 ("the Convention") which was prepared by the International Labour Organization of the United Nations. Although the Convention was signed in 2006, Hong Kong has not fully implemented the relevant requirements. However, the Hong Kong Government has, to a certain extent, cared for the group of seafarers who have toiled hard. The Sailors Home and Missions to Seamen is currently the only organization in Hong Kong providing welfare services to all international and local seafarers to fulfil Hong Kong's international obligation of providing port welfare services.

Certainly, the Convention covers many areas, e.g. the working and living conditions of seafarers. As the President may be aware, seafarers are employees too and the number of Hong Kong seafarers has dropped drastically in recent years. Hong Kong used to provide a large number of seafarers in the world, particularly in 1980s when many young people were willing to enter the trade. Nevertheless, the trade is languishing. The reasons include: first, the wages payable to recruit Hong Kong seafarers are not low; and second, the rates of remuneration for some seafarers, particularly junior seafarers, are not high and so they live very difficult lives. In preparing to speak on the Bill, I read a lot of relevant material and realized that there were only very few women seafarers, especially junior seafarers. As I said earlier, the proposal of changing the term to "seafarers" in the Sailors Home and Missions to Seamen Incorporation Ordinance serves not only to meet international requirements, but more importantly, to remove the gender-specific terminology. Thus, it is proposed that "seafarers" be used to replace the former term of "seamen".

Moreover, regarding the composition and procedures of the committee of the Club, the Government and the relevant organization have, in recent years, appointed trade union members as members of the committee, certainly in the hope that their views can be incorporated. Furthermore, the Government has
localized the names of organizations with references to the term "Church of England" by replacing it with "Hong Kong Sheng Kung Hui". Certainly, many other terms used in the colonial times will also be amended under the Bill.

President, I have all along thought that Hong Kong is an outstanding maritime centre, but information shows that Hong Kong's ranking has dropped from the third to the fourth in recent years. Maritime business constitutes 90% of all businesses in the transport sector. Certainly, the transport sector also uses other modes of transport, including vehicles and planes; but it mainly relies on vessels. Hong Kong's maritime business ranked fourth in the world; how is the ranking determined? It is determined by the total tonnage of registered fleet in Hong Kong. President, upon hearing the word "tonnage", people may certainly think of various matters, but "tonnage" in this context refers to the tonnage of each vessel. As at 1 February 2013, there were only 2,200 registered vessels in Hong Kong and Hong Kong ranked third as a maritime centre then. As at April 2017, there were more than 25,000 registered vessels the tonnage of which was over 100 million, but Hong Kong ranked fourth only.

According to the information provided by the Government, Panama, Liberia and the Republic of the Marshall Islands have higher rankings in maritime business than Hong Kong. Members may wonder, where does Hong Kong's competitiveness lie? Certainly, the most important factor is the laws of Hong Kong, because legal protection is extremely important. Nevertheless, the Club is important to the hardworking seafarers who have made a lot of contributions to the trade. The Club is not an ordinary club which provides dining services. President, according to the Convention which I mentioned earlier, the Club provides not only dining services, but also sports facilities which have to meet certain standards. Besides, the Club has to provide accommodation. The facilities cannot be provided by paying lip service; they must be provided to meet all the different requirements in various areas stipulated by the Convention.

Since the Convention was drafted in English, I will not discuss it in detail. Nevertheless, the provisions stipulate that the welfare services and facilities concerned shall meet certain requirements. Regulation 4.4 stipulates the welfare and facilities which seafarers can enjoy on board. These facilities can certainly be provided by a club, but they can also be provided in other forms. Most importantly, the provisions stipulate that seafarers must be provided with "shore-based welfare facilities", including cultural and recreational facilities; and information should also be provided to seafarers with easy access as a
precondition. President, the most important principle which I think Hong Kong respects and cherishes is that these services shall be fairly provided to seafarers irrespective of sex, age, colour, race, nationality, religion, political opinion, social origin and irrespective of the flag State of the ship on which they are employed or or engaged or work. These services also include accommodation and recreational facilities, etc. which I mentioned earlier. Provision of these services is an important way and direction which helps Hong Kong maintain its position as an international maritime centre, or it is even a mission or objective which Hong Kong should aim at achieving.

The terminology of the Bill is apparently very simple, but this legislative process also enables Members to review the ups and downs of Hong Kong's maritime industry over the years. While I was doing my research, my colleague found a meaningful English article on the development of Hong Kong seafarers written by a lecturer of The Hong Kong Polytechnic University. It is stated in the article that the maritime industry and the logistics industry in Hong Kong have provided a total of 85 000 positions, but the number of Hong Kong seafarers has dropped drastically in recent years. Many young people do not want to enter the specialized trade of seafarers. The reasons are many, including low remunerations, as mentioned earlier. In fact, remunerations for seafarers were high in the past, but subsequently, they started to deteriorate as many shipping companies, ship owners and shipping merchants started to recruit staff members from the neighbouring areas of Hong Kong in the face of competition.

The trade of seafarers in Hong Kong has undergone some drastic changes. In the past, registration was not required for seafarers. However, in response to subsequent international requirements, registration is required. There have been two changes in registration. First, if I remember correctly, one of the changes occurred in 1990s when a person was required to pass an examination to register as a seafarer. This much higher requirement was suddenly imposed. Later, there was a change in the legislation which required seafarers to be re-registered. Previously, seafarers were required to register in accordance with the laws of the United Kingdom. Then, before the reunification in 1997, the system changed. The Government enacted a piece of legislation which started to take effect on 1 September 1997. Seafarers had to re-register and they had to meet a rather stringent requirement, i.e. they were required to have worked on a ship for 18 months within the past three years. In other words, they had to be actually employed instead of waiting for work on shore. Thus, the older seafarers did not re-register. In 1996, there were 64 000-plus registered seafarers in Hong Kong,
but in 1997, there were only 3 000-plus which represented a significant drop. However, the number of seafarers slightly increased each year afterwards and by 2015, the number finally accumulated to 6 000. There is a big generation gap among seafarers and seafarers are classified into farers at sea and river-farers, and farers at sea are relatively older. We have also noticed that the SAR Government has tried to set up some funds or committees in recent years to encourage young people to become or consider becoming seafarers.

In the fight for the provision of the Club or the premises of the Sailors Home and Missions to Seamen this time around, the cooperation of developers in Tsim Sha Tsui has to be enlisted before a relatively new club can be provided. I think the Government's support for seafarers is apparently inadequate. I hope that after this legislative amendment exercise, the Government will try to expeditiously meet the requirements of the Convention instead of dealing with the problems in isolation. I hope that the Government can really respect this group of very important seafarers who have worked hard and devoted their lives to serve Hong Kong. I so submit.

MR CHAN CHI-CHUEN (in Cantonese): President, I speak in support of the Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018 ("the Bill") introduced by Mr Frankie YICK.

I would only make two points of observation which have very much surprised and baffled me; and I hope that some learned Members can clear my doubts.

First, I noticed that in the Long Title of the Bill, the term "Seamen" in the English text has been changed to "Seafarers". In fact, it has been 21 years since the People's Republic of China resumed sovereignty over Hong Kong; why is the Bill introduced to the Legislative Council only now? I will certainly agree to the amendment of changing the term "Seamen" to "Seafarers" in Part 1, because there are not only men seafarers, but also women seafarers.

Mr Frankie YICK said that he replaced all references to "Seamen" by "Seafarers", following the non-gender specific terminology of the Maritime Labour Convention 2006 ("the Convention"). In other words, the term "Seafarers" appeared in the Convention in as early as 2006. From 2006 till now, women seafarers have been called "Seamen"; and that baffles me. It has been 11
or 12 years from 2006 to 2017 (and I assume that the Bill was first introduced in 2017), has the Member representing the Transport Functional Constituency previously not noticed the problem? Has the Member tried to introduce amendments, or did he want to but failed? Or, did the Government consider the amendments too trivial and did not encourage their introduction; and so they are proposed only until now?

There is another amendment which I will simply call a "decolonization" amendment. Hong Kong was a British colony, thus, many terms in the Sailors Home and Missions to Seamen Incorporation Ordinance contain rich traces of colonialism. These include the term "Church of England", which is replaced by "Hong Kong Sheng Kung Hui" in this exercise. In fact, "Church of England" was already renamed as "Hong Kong Sheng Kung Hui" in 1998 and that is very strange. No matter whether one calls it a "decolonization" or "localization" amendment, why is it proposed only this year that the term "Church of England" be changed to "Hong Kong Sheng Kung Hui"? Has anyone cared about the terms used in the Sailors Home and Missions to Seamen Incorporation Ordinance previously? In fact, I think these "decolonization" amendments should have been dealt with during the term of the Provisional Legislative Council.

Among the "decolonization" amendments, those effecting changes to signs and emblems are most important. Amendments effecting changes to the regional flag and the regional emblem had to be enacted too. The term "the Royal Hong Kong Police" was also changed, in the same evening when the sovereignty of Hong Kong was resumed; and the former Chinese term for Government House "港督府"(which means house of the Governor), was replaced by "禮賓府" (which means house for diplomatic occasions). However, some people have gone so far as to say that the emblems on old posting boxes have to be covered up; and others have even suggested to retrieve all Queen's Head coins, and stop and revoke their circulation. Nevertheless, many terms with traces of colonialism, e.g. "the Governor in Council" and "Her Majesty", remained in our legislation for as long as 20 years after the resumption of sovereignty. Certainly, the term "Her Majesty" is no longer used; it has been replaced by "the Central People's Government"; and the term "the Governor in Council" has been replaced by "the Chief Executive in Council".

If Members refer to the legislation, they would realize that many amendments to the terms therein have been made for the purpose of "decolonization" or "localization". Nevertheless, how come the amendments in
the Bill are only proposed today? In fact, they could have been proposed 20 years ago; was it very difficult to do so? Certainly, after reading some pieces of legislation, I wanted to change some of the numbers and remove the contradiction resulted from using different terms in different pieces of legislation, but the Government ignored my requests. I remember that the Court of Final Appeal once ruled that the Government's failure to amend the legislation was unconstitutional, but still, the Government did not amend the legislation. In other words, the Government would not amend the legislation even though it is obliged to do so according to the court's judgment. After being urged by various parties, the Government finally amended the terms by introducing miscellaneous amendments (like taking a free ride) to various Ordinances. The Government also said that if Members wished to amend anything in the legislation, they could amend them in the same exercise and that would expedite the process.

I have not been following the Bill, but why has it taken so long for anyone to introduce any amendment? What are the difficulties involved? It would not take a long time to scrutinize such amendments. Thus, I appeal to Members representing various sectors, particularly those who think that functional constituencies are useful, to review the legislation relating to their respective sectors and find out if there are traces of colonialism and whether the term of "Her Majesty" still exists in the legislation. How many pieces of legislation still contain these terms? As some Members have suggested working on the emblems of posting boxes instead of the legislation, is that putting the cart before the horse?

The authorities say that they have to amend the textbooks, but they have failed to amend various pieces of legislation and important documents. I would like to ask Members to review various Ordinances which have been introduced by various groups in the form of private bills and check whether there are any outdated provisions. I think that is one of the basic duties of Members. Certainly, if Members have already made a lot of effort in this regard, but the Government will not make any amendment by procrastinating, refusing to take any action and saying that the terms are unimportant, irrelevant and will not affect any judgment of the court, then Members should point out the Government's problem. 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 Mr Frankie YICK to reply. Then, the debate will come to a close.

MR FRANKIE YICK (in Cantonese): President, first of all, I would like to thank Ms Tanya CHAN for spending a lot of time on explaining the background of the Bill for me. I am also very grateful for her concern about the situation of seafarers in Hong Kong and the reduction in their number. However, I would like to point out that at present, the Sailors Home and Missions to Seamen serves not only Hong Kong seafarers, but seafarers from all over the world.

About 380 liners berth at Hong Kong each week. Since Hong Kong is an air hub, it is a popular spot for swapping seafarers and many seafarers enter and depart from Hong Kong. Under the circumstances, seafarers often have needs for temporary accommodation or various services in Hong Kong. The Sailors Home and Missions to Seamen performs its function of meeting these needs and assists Hong Kong in fulfilling its obligations of providing such services as a member of the conventions of the International Maritime Organization ("IMO").

Mr CHAN Chi-chuen asked earlier why these provisions, which should have been amended 20 years ago, are only amended today. I believe many Ordinances in Hong Kong were enacted many years ago too and no one would pay any attention to them if no problems arise. We also know that IMO has amended many of its conventions and the local legislation of Hong Kong lags far behind these developments. Members may remember that in the last term of the Legislative Council, we had allocated funding for the Department of Justice and the Transport and Housing Bureau to employ additional staff members to amend our local legislation so as to keep abreast of the developments in international law. Some progress has been made in this regard, but we have not completely caught up with international developments and the work must continue.

Mr CHAN Chi-chuen asked why the provisions were only amended today. My guess is that, and I do not know the answer, the exercise originated from the plan of the Sailors Home and Missions to Seamen Incorporation ("the
Incorporation”) submitted around 2012 to redevelop its building in Tsim Sha Tsui which was aged over 50 years. If redevelopment works were to proceed, the Incorporation had to review the relevant issues in the Sailors Home and Missions to Seamen Incorporation Ordinance ("the Ordinance") so as to understand the requirements and restrictions. In the process, the Incorporation found many outdated provisions in the Ordinance. Thus, towards the end of the last term of the Legislative Council, I and the Transport and Housing Bureau assisted in amending the current Ordinance to localize the terms and to better reflect the actual situation. Therefore, I had joined hands with the Transport and Housing Bureau to introduce the amendments.

As the amendments I have proposed are rather simple, no Member has requested to set up a Bills Committee to scrutinize the Bill. As Members have said, we are already lagging behind the developments. Thus, I hope that Members will support the Bill today and expeditiously pass and implement the amendments to revise the outdated provisions.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Mr CHAN Chi-chuen rose to claim a division.

PRESIDENT (in Cantonese): Mr CHAN Chi-chuen has claimed a division. The division bell will ring for five minutes.
PRESIDENT (in Cantonese): Will Members please proceed to vote.

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

Functional Constituencies:

Mr LEUNG Yiu-chung, Mr Tommy CHEUNG, Prof Joseph LEE, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Kin-por, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK, Mr Christopher CHEUNG, Mr IP Kin-yuen, Mr Martin LIAO, Mr POON Siu-ping, Ir Dr LO Wai-kwok, Mr HO Kai-ming, Mr Holden CHOW, Mr SHIU Ka-fai, Mr SHIU Ka-chun, Mr LUK Chung-hung, Mr LAU Kwok-fan, Mr Kenneth LAU, Mr KWONG Chun-yu and Mr Tony TSE voted for the motion.

THE PRESIDENT, Mr Andrew LEUNG, did not cast any vote.

Geographical Constituencies:

Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mrs Regina IP, Mr Paul TSE, Ms Claudia MO, Mr WU Chi-wai, Mr CHAN Chi-chuen, Mr CHAN Han-pan, Ms Alice MAK, Mr KWOK Wai-keung, Dr Fernando CHEUNG, Dr Helena WONG, Dr Elizabeth QUAT, Dr CHIANG Lai-wan, Mr Alvin YEUNG, Mr Andrew WAN, Mr CHU Hoi-dick, Dr Junius HO, Mr LAM Cheuk-ting, Ms Tanya CHAN, Mr CHEUNG Kwok-kwan, Dr CHENG Chung-tai, Mr Jeremy TAM, Mr Gary FAN, Mr AU Nok-hin and Mr Vincent CHENG voted for the motion.

THE PRESIDENT announced that among the Members returned by functional constituencies, 27 were present and 26 were in favour of the motion; while among the Members returned by geographical constituencies through direct elections, 27
were present and 27 were in favour of the motion. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was passed.


Council became committee of the whole Council.

**Consideration by Committee of the Whole Council**

**CHAIRMAN** (in Cantonese): Council now becomes committee of the whole Council to consider the Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018.

**SAILORS HOME AND MISSIONS TO SEAMEN INCORPORATION (AMENDMENT) BILL 2018**

**CHAIRMAN** (in Cantonese): 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 25.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 1 to 25 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 respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

CHAIRMAN (in Cantonese): All the proceedings on the Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018 have been concluded in committee of the whole Council. Council now resumes.

Council then resumed.

MR FRANKIE YICK (in Cantonese): President, I now report to the Council: That the

Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018

has been passed by committee of the whole Council without amendment. I move the motion that "This Council adopts the report".

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

In accordance with Rule 59(2) of the Rules of Procedure, this motion shall be voted on without amendment or debate.

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

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

Third Reading of Member's Bill

PRESIDENT (in Cantonese): Member's Bill: Third Reading.

SAILORS HOME AND MISSIONS TO SEAMEN INCORPORATION (AMENDMENT) BILL 2018

MR FRANKIE YICK (in Cantonese): President, I move that the
Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018
be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.


MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Member's motion.

Motion under Rule 49B(1A) of the Rules of Procedure to censure Dr CHENG Chung-tai.

At the Council meeting of 14 December 2016, Mr Paul TSE moved the above motion under Rule 49B(1A) of the Rules of Procedure. The debate on the motion was adjourned and the matter stated in the motion was referred to an investigation committee in accordance with Rule 49B(2A) of the Rules of Procedure.

The investigation committee has completed investigation into the matter referred to it and presented its report to the Council on 11 April 2018. In accordance with Rule 40(6A) of the Rules of Procedure, this Council now resumes the debate on the censure motion.

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

Mr Paul TSE, please speak.
Stand over items: Members' motions on "Motion under Rule 49B(1A) of the Rules of Procedure", "Report of the Joint Subcommittee on Long-term Care Policy", "Not forgetting the 4 June incident" and "Motion for the adjournment of the Council under Rule 16(4) of the Rules of Procedure" (since the meeting of 9 May 2018)

MOTION UNDER RULE 49B(1A) OF THE RULES OF PROCEDURE

Continuation of debate on motion which was moved on 14 December 2016

MR PAUL TSE (in Cantonese): President, according to my understanding, I should reply after other Members have delivered their speeches.

PRESIDENT (in Cantonese): Mr Alvin YEUNG.

(Mr Dennis KWOK stood up)

PRESIDENT (in Cantonese): Mr Dennis KWOK, what is your point?

MR DENNIS KWOK (in Cantonese): President, I would like to raise a point of order.

PRESIDENT (in Cantonese): Please state your point of order.

MR DENNIS KWOK (in Cantonese): President, I notice that there are two flags in front of Ms Starry LEE, but I would like to remind her that in accordance with formal provisions, when the national flag and the regional flag are displayed …

PRESIDENT (in Cantonese): You need not remind the Honourable Member.

MR DENNIS KWOK (in Cantonese): President, please let me continue to state my point of order.
PRESIDENT (in Cantonese): Please state your point of order to the President.

MR DENNIS KWOK (in Cantonese): The national flag shall be above the regional flat and larger in size than the regional flag as a token of respect to the national flag.

PRESIDENT (in Cantonese): This is not a point of order. Mr Alvin YEUNG, please speak.

MR ALVIN YEUNG (in Cantonese): President, Mr Paul TSE has moved a motion to censure Dr CHENG Chung-tai under Rule 49B(1A) of the Rules of Procedure. I hereby oppose this motion on behalf of the Civic Party.

Why does the Civic Party oppose this motion? Simply put, we do not endorse Dr CHENG's behaviour, but as the Court has passed a verdict and imposed punishment on his offence, if we attempt to disqualify him from his office through a censure motion, we are virtually seeking to trump up a charge against him other than the sentence handed down by the Court. This is actually a blatant attempt to suppress a political dissident which the Civic Party finds unacceptable.

President, when Mr Paul TSE moved this censure motion one and a half years ago, I specifically expressed opposition on behalf of the Civic Party. I gave three reasons at that time. First, Dr CHENG's act of inverting the national flag was not a serious offence, but the pro-establishment camp made a mountain out of a molehill, exploiting this incident as an excuse to disqualify a Member and weaken the opposition force. This is an obvious act of political suppression. Second, regarding the act and consequences of desecrating the national flag, clear definitions and corresponding punishments have been provided in the law. Since the Court has already handed down a verdict on the case, we can compare the verdict and the sentence to see if the criteria set out in the Basic Law for disqualifying a Member are met. The Basic Law stipulates that a Member may be disqualified from his office if he is convicted and sentenced to imprisonment for one month or more for a criminal offence committed. We cannot make further comments if the criteria are met. Third, Members are elected by the
people; the disqualification of a Member by the Council is tantamount to overturning the decision made by tens of thousands and even hundreds of thousands of electors, so we must act prudently but not rashly.

Certainly, in the legislature, the camp with more votes calls the shots. Pro-establishment Members forcibly established an investigation committee, comprising of their peers. The committee has spent more than one year to pad out this investigation report with some 300 pages and over ten thousand words, solely for the purpose of "killing" a political dissident whom they believe is a secessionist. Out of curiosity I have read the report to see how they strove to string reasons together to suppress a dissident. I found that the contents are not only far-fetching but also self-contradictory.

President, I will start by talking about whether this motion should be moved. The investigation committee stresses time and again in its report that it does not intend to take over the role of a court, and the censure motion aims at addressing a political issue that cannot be addressed by the court. President, perhaps we should have the following understanding. Article 79 of the Basic Law provides for seven circumstances under which a Member shall be disqualified from his office, such as "when he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons" under Article 79(1), and "when he or she, with no valid reason, is absent from meetings for three consecutive months without the consent of the President of the Legislative Council" under Article 79(2). Each of such circumstances is provided for independently, specifically and can easily be understood literally, complying with the basic principle that legal provisions should be comprehensible and predictable, so as to avoid unnecessary abuses and the violation of the rule of law.

In the case of the incident concerning Dr CHENG Chung-tai, he has already undergone judicial proceedings and court trials, so we should refer to Article 79(6) of the Basic Law, which stipulates that "when he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two-thirds of the members of the Legislative Council present". The Court convicted Dr CHENG of desecrating the national flag, but the conviction was not serious enough for imprisonment and a fine was imposed instead. As such, this obviously does not meet the conditions set out in Article 79(6), and Dr CHENG shall not be disqualified from his office immediately.
Pro-establishment Members have probably expected long ago that the Court would not impose heavy punishment on Dr CHENG, they therefore came up with the idea of taking on Dr CHENG by invoking Article 79(7) of the Basic Law, which stipulates that "when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of the Legislative Council present". Frankly speaking, President, there is no law prohibiting making two charges on the same incident, but the charge must be precise, cautious and in compliance with the rule of law. As is known to almost all my colleagues in the Legislative Council, and even this investigation report also admits that the Legislative Council has never provided any definition for "misbehaviour" or "breach of oath", for it is not easy to do so. The Committee on Rules of Procedure therefore advised previously that the then prevailing Council should decide what constituted misbehaviour or breach of oath.

Under such circumstances, President, the investigation committee must have ample justifications when affirming misbehaviour or breach of oath on the part of Dr CHENG, for if this point of view is affirmed and endorsed by the Legislative Council, not only will a severe consequence be resulted, namely the disqualification of a Member returned by tens of thousands of electors, but a precedent will be set concerning the definition of the aforesaid two behaviours. This precedent will certainly become a tool for the majority to suppress the minority in the future.

President, if this standard is adopted, the reasons set out in the investigation committee are obviously not ample, or we may even say they are very far-fetched. For example, one reason for accusing Dr CHENG of misbehaviour is that "he continued to do so despite repeated advice and warnings by Dr CHIANG and the President". In the report, many pieces of advice then given by the President and Dr CHIANG Lai-wan to Dr CHENG in the incident are quoted, and Dr CHENG is thus accused of misbehaviour for repeatedly acting against such advice. I am not seeking to defend Dr CHENG for some of his behaviours or debate his behaviours. Dr CHENG "leaving his seat at will and disturbing other Members displaying objects" is not a proper behaviour, but does this constitute a reason for his disqualification? President, the legislature should be a place where one argues strongly on good grounds. When some of the Members present were ordered by the President to leave the Chamber, they might have different reactions. If a Member who fails to comply with the order of the President should be disqualified, how many Members in the Legislative Council should be disqualified, President? Or is the pro-establishment camp actually aiming to eliminate all dissenting views in the legislature?
In addition, President, it is also stated in the report that Dr CHENG's "repeated, open and deliberate humiliation of those flags … would lead a reasonable person to come to the view that Dr CHENG was not willing or at least had no intention to recognize or respect the meanings represented by those flags. Dr CHENG's conduct of humiliating those flags indicated that he did not manifest an intention to genuinely and faithfully accept and commit himself to honour the pledges of upholding the Basic Law and bearing allegiance to the Hong Kong SAR of the People's Republic of China". President, a major logical fallacy is involved. Probably both the Court and we agree that Dr CHENG failed to respect or desecrated the national flag in his behaviour, but does this mean that, according to the report, Dr CHENG negated the meaning represented by the national flag? There might be quite a number of reasons for Dr CHENG to invert the national flag, such as his disagreement over certain acts of the Central Government represented by the national flag or of the SAR Government, or of certain remarks made by pro-establishment figures holding such a flag. We should not accuse him of being a secessionist or having taken his oath insincerely simply for the reason that he inverted the national flag. President, this is a move to condemn a person by trumping up a charge, eradicate all opposition figures and sing praises to the authoritarian rule.

President, an authoritarian society has three features. First, it has an executive-hegemonic government that is bent on, in the name of efficiency and development, kicking out all dissidents who criticize the government for its policy implementation. Second, it has a nation-centred government that is bent on bullying and suppressing the masses in the name of the state. Third, it has a legislature that favours the government by package all things into the views of the majority, and in the legislature, the big political party plays a bullying role and exercises tyranny of the majority. Should the Legislative Council today be relegated to such a state? Should the pro-establishment camp leverage all its resources and exercise its power to the fullest? Is it true that pro-establishment Members will miss no opportunity to suppress the opposition under various pretexts? President, I hope that the Legislative Council of Hong Kong today will not be relegated to such a pathetic state.

Let me reiterate that I oppose this motion on behalf of the Civic Party. I so submit.
MR TONY TSE (in Cantonese): President, Dr CHENG Chung-tai was convicted by the Court of desecrating the national flag and regional flag. He was given a fine of $5,000 as well as an imposition of a criminal record. According to reports, when he learnt about the verdict on that day, he maintained outside the Court that the case was pointless, and the judgment proved that Hong Kong society was not open and liberal. The fact that he remained unrepentant even after he was convicted of desecrating the national flag and regional flag constitutes a ground for the censure.

Everyone knows that the national flag and national emblem are the icons of a country. Not only are they the symbols of a country and its sovereignty, they also represent the independence and dignity of a nation. The regional flag and regional emblem of the Hong Kong Special Administrative Region ("HKSAR") are the symbols and icons of HKSAR. As a Member of the Legislative Council and a lecturer of a university, Dr CHENG Chung-tai should clearly understand the rationale therein.

However, the conduct of Dr CHENG completely violated the rationale therein. On that day, he repeatedly ignored the advice and warnings of other Members and the President of the Legislative Council, insisting on his own way to invert the national flags and regional flags. As we can see from the live broadcast on television and online of the open meeting, the first round of his act of inverting flags involved 21 flags displayed by 11 Members, with the second round involving 16 flags displayed by eight Members.

Further, both before and after the making of the verdict by the Court, Dr CHENG did not consider his conduct a desecration of the national flag and regional flag. He has claimed repeatedly that he is subjected to political suppression by the pro-establishment camp. Criticizing the prosecution against him as a "trumped-up charge", he has claimed that his act on that day was an expression of disapproval of the attempts made by the pro-establishment camp to abort the meeting and to stage political struggles.

Nevertheless, even if Dr CHENG's act, just as he has claimed, was an expression of disapproval of the attempts made by the pro-establishment camp to abort the meeting and to stage political struggles as described by him, Dr CHENG could have expressed his discontent through various means, such as calling press conferences and seeking signatures from Members for joint submission. He absolutely should not use the inversion of the national flag to express his
discontent. Was this conduct of Dr CHENG purposeless or had he acted purposely? He had already been found guilty of desecrating the national flag and regional flag by the Court.

With respect to Dr CHENG's comment that the pro-establishment Members' act of displaying the national flags and regional flags on the desk and leaving them unattended on that day was not a patriotic or responsible move, as a matter of fact, I have often found the opposition camp leaving banners of soliciting support, placards with expressions of discontent about the Government's initiatives, and other various props on the desks of the Chamber while they are not present. According to the view and rationale of Dr CHENG, such actions of the opposition camp are only faked and insincere pretences which are neither genuine nor responsible.

The truth is so plain to all—Dr CHENG had desecrated the national flag and regional flag. However, some Members hold that his act of inverting the national flags and regional flags in the Chamber can be regarded as an act of freedom of expression, and thus should not be censured. It is true that in the United States, according to the verdict handed down by the United States Supreme Court on the case *Texas v Gregory Lee Johnson* in 1989, burning the national flag of the United States was a means of freedom of expression and was not an offence. However, one of the Justices who did not support the verdict of not guilty held that the national flag of the United States had been in use for over 200 years. According to him, it was beyond doubt that the national flag embodied lofty sentiments of the United States, and it was sufficient for the defendant who had committed the act of burning the national flag to be penalized.

President, different countries have different cultures and laws. The law in Germany prohibits anyone from desecrating or damaging the flag of the Federal Republic of Germany. The offender can be sentenced to imprisonment of five years. Anyone who commits the act of publicly defiling the national flag and national anthem of France can be fined €7,500 (approximately HK$70,000). According to the Spanish Penal Code, anyone who desecrates the symbol or emblem of the country can be sentenced to a fixed-term imprisonment of not less than six months but not more than six years. Hong Kong is a place that upholds the rule of law. Dr CHENG should abide by the law and should not use the excuse of "pointless" to defy the law.
Moreover, some Members hold that Dr CHENG has already borne the legal consequences of this incident, censure by the Legislative Council is unnecessary and unjustified. It is the hope of the community that those who are convicted of being guilty will turn over a new leaf after being held criminally liable. Nevertheless, if the offender remains unrepentant, and since Members of the Legislative Council are exemplary models in the community, should he not be censured?

The national flag and the regional flag represents the country and HKSAR. If he does not respect the country and HKSAR, how can he act in accordance with the Legislative Council Oath under which he pledges to bear allegiance to HKSAR? In publicly and deliberately desecrating the national flag and regional flag in the capacity as a Legislative Council Member, he already breaches the Oaths and Declarations Ordinance. His conduct and his lack of repentance constitute "misbehaviour". So how can he continue to hold office as a Legislative Council Member?

President, I support the motion to censure Dr CHENG Chung-tai.

MS STARRY LEE (in Cantonese): President, Mr Alvin YEUNG stated just now that the act of inverting the national flags is wrong but, after all, it is not a serious issue and not a fatal wrongdoing, so it should not be settled by means of the censure motion which is an overkill. He also suggested that we, the pro-establishment camp, were making a mountain out of a molehill, stirring up political struggles and using the opportunity to censure a political opponent. President, I wish all Members of the opposition camp can listen to the following reasons I am going to give in my speech to support the censure on Dr CHENG Chung-tai, and I also wish they can give responses.

President, I rise to speak in support of the censure on Dr CHENG Chung-tai and the disqualification of him from the office as a Member of the Legislative Council in accordance with Rule 49B(1A) of the Rules of Procedure. It is because his act of inverting the national flags and other evidence positively indicates that CHENG Chung-tai does not genuinely and sincerely uphold the Basic Law and swear allegiance to the Hong Kong Special Administration Region ("HKSAR") of the People's Republic of China. Therefore, CHENG Chung-tai is absolutely not qualified for office as a Member; he even should not qualify for standing in the Legislative Council Election.
President, why did I draw such a conclusion? Let us "rewind the tape" together and revisit the background events leading to the inversion of the national flags that day. As Honourable Members all remember, the context in which we, Members of the pro-establishment camp, placed the national flags and regional flags in the Chamber was that Sixtus LEUNG and YAU Wai-ching and some Members made "additions" during oath-taking to insult the country and our entire nation. At the time, society as a whole reacted vehemently to "anti-insulting-China" and held deep hatred against the speeches and acts spreading "Hong Kong independence". It is obvious that the speeches and acts spreading "Hong Kong independence" violate the Basic Law and challenge the SAR Government. For this reason, on that day, in defiance of Sixtus LEUNG and YAU Wai-ching's continued use of the Legislative Council to spread "Hong Kong independence", we placed the national flags and regional flags to highlight the solemnity and pledge of upholding the Basic Law and swearing allegiance to SAR in taking the oath.

In such a context, on that day, CHENG Chung-tai blatantly inverted the national flags and regional flags and ignored the repeated advice and even warnings from Dr CHIANG Lai-wan and the President, but continued to wantonly insult the regionals flags and national flags of the country by inverting them again. As regards such acts, I believe Honourable colleagues need only give it some careful thought to agree that CHENG Chung-tai did not act out of a fleeting desire for fun but intentionally—intentionally—expressed his denial of the country and SAR by inverting the national flags and regional flags. Let us imagine: how can a person holding such an attitude convince people that he sincerely and genuinely upholds the Basic Law and swears allegiance to HKSAR of the People's Republic of China?

Allow me to present the second reason for drawing such a conclusion. Honourable colleagues can "rewind the tape" to revisit how CHENG Chung-tai read out this oath on the day of oath-taking to assume office as a Member of the Legislative Council. He did read out the oath from beginning to end, but "additions" were actually made thereto. He said "Devising constitution by all people, making new covenant, Hong Kong people predominate, all hail Hong Kong". Such "additions" evidently impose his political stance of denying the Basic Law and "self-determination" on the oath of the Legislative Council, which was a blatant act beyond any doubt.
President, we can review the press release published on the day when the returning officer of the Government disqualified Agnes CHOW from standing in the election. Paragraph five clearly states that: "Self-determination' or changing the HKSAR system by referendum which includes the choice of independence is inconsistent with the constitutional and legal status of HKSAR as stipulated in the Basic Law, as well as the established basic policies of PRC regarding Hong Kong. Upholding the Basic Law is a basic legal duty of a legislator. If a person advocates or promotes self-determination or independence by any means, he or she cannot possibly uphold the Basic Law or fulfil his or her duties as a legislator." Paragraph seven also states: "Advocating or promoting 'self-determination' is contrary to the content of the declaration that the law requires a candidate to make to uphold the Basic Law and pledge allegiance to HKSAR". On such grounds, the then incumbent returning officer could not allow Agnes CHOW to stand in the Legislative Council Election. President, these two paragraphs clearly demonstrate that advocacy or promotion of "self-determination" is absolutely contrary to the content of upholding the Basic Law and pledging allegiance to HKSAR.

The opposition camp may ask: Are those "additions" made by CHENG Chung-tai tantamount to "self-determination" and denial of the Basic Law? What is meant by "devising constitution by all people, making new covenant, Hong Kong people predominate, all hail Hong Kong"? CHENG Chung-tai has chosen to remain silent all along and has not explained or accounted for his continued acts of inverting the national flags despite repeated advices tendered that day. Of course, I surmise that, in the Chamber today, he will not tell us the meanings of the "additions" he made that day either. However, to identify Dr CHENG's political stance, I found an article penned by him entitled "Five-constituency Referendum and A constitution Drawn up by all People: The Turning Point from Civic Nationalism to State Formation", in which he expressed some of his thoughts on devising the constitution by referendum. It reads, to this effect, "devising the constitution by referendum will form the common platform of the candidates in the five geographical constituencies and thus gain broadened popular support through the election of the Legislative Council. The candidates of the five geographical constituencies will, after entering the Legislative Council, in addition to instigating more fierce resistance in the Council, engage in a more extensive discussion to combat with actions the Hong Kong communist regime. The interim goal would be making amendments to and devising the constitution, as well as conducting a study on the deletion, with specific details, of certain provisions in the Basic Law that deprive Hong Kong people of their rights and infringe on their civic rights and interests. Afterwards,
Members of the five geographical constituencies will resign from office and then stand in the by-elections to effect a de facto referendum and devise a new constitution by Hong Kong people, which will be granted a greater popular mandate, with a view to achieving the goal of making a new covenant with the Government and then gradually enacting a constitution suitable for Hong Kong."

Moreover, he further added that the campaign for devising the constitution by referendum at the time did not remain at conceptual discussion about the possibility of "Hong Kong independence"—according to Dr CHENG—but put into action the meanings of independence and self-determination in the most pragmatic and direct manner so that Hong Kong people would devise a constitution that would belong to Hong Kong. The arguments advanced therein are no longer about whether or not Hong Kong independence is endorsed, such as the availability of infrastructure like guns and cannons and potable water. The crux is that, in terms of mental preparation and action strategies, the new generation of Hong Kong people would already have a deep-rooted idea of Hong Kong being separated from China. According to him, now it is time to make use of the existing systems to realize the ideal of devising a constitution by referendum.

CHENG Chung-tai's article clearly illustrates his political stance. His concept of "devising the constitution by referendum" basically refers to a Basic Law devised by Hong Kong people, which indeed is exclusive of "one country" and thus tantamount to promotion of "self-determination". Having read this article, I consider that it clearly informs us of his ideas. As regards the "additions" made by CHENG Chung-tai on the day of oath-taking, I find it difficult to be convinced that he sincerely and genuinely upholds the Basic Law and swears allegiance to SAR.

President, frankly speaking, having read such articles, we do need to contemplate whether CHENG Chung-tai truly qualifies for standing in the Legislative Council Election and whether he can truly assume office as a Member of the Legislative Council. Given that Agnes CHOW did not qualify for standing in the Legislative Council Election, judging by the same standard, I hold that CHENG Chung-tai should not qualify for standing in the Legislative Council Election. It is because, essentially, his various arguments serve to demonstrate to us that he cannot possibly sincerely and genuinely uphold the Basic Law, neither can he sincerely and genuinely swear allegiance to HKSAR of the People's Republic of China.
President, on 14 December 2016 when the Council was discussing whether or not the incident of inverting the national flags should be referred to an investigation committee, I already provided some background information for the reference of Honourable colleagues. CHENG Chung-tai has been a key member of the Civic Passion, which has committed many acts distinctly or indistinctly to most probably promote the so-called self-determination. He may even be an activist of "Hong Kong independence".

It was reported that, when attending the "Struggle between unification and independence" forum organized by the Politics and Public Administration Association of the University of Hong Kong at the end of 2016, CHENG Chung-tai claimed that as those in power now are ruling in a dictatorial manner, Hong Kong people can only choose—he did not read out "Hong Kong independence" at the time—such a way out. He also suggested that the Civic Passion originally wished to promote devising the constitution by all people and rewriting of the Basic Law by Hong Kong people, which would be endorsed by the Court of Final Appeal of Hong Kong, bypassing the Central Authorities, to entrench the power of Hong Kong people. However, such a plan fell through due to a lack of support. I am unable to find out if it truly fell through.

In April that year, when attending a forum on "Hong Kong independence" and "Taiwan independence" organized by the Hong Kong University Students' Union, CHENG Chung-tai made it clear that Hong Kong's independence is not at all an issue but an inevitable process in history, and that the people have the power to defy their superiors. He also "spread independenism" to students there, stating that if they enter the Legislative Council, they would set up a People's Constitutional Committee and devise a constitution from Hong Kong people's perspective, reiterating that this could brook no delay, and that a Hong Kong with so-called self-determination and autonomy needed to be pursued immediately.

President, the aforementioned information shows that CHENG Chung-tai has always been denying the Basic Law and even planning to promote self-determination. Viewed in conjunction with his acts of inverting the national flags, I consider them absolutely indicative of his political stance of denying the Basic Law.

Lastly, President, please allow me to spend some time quoting a book published by CHENG Chung-tai. Honourable colleagues who do not understand the political stance of CHENG Chung-tai can read the book authored
by him. The book title is *Civic Nationalism and State Formation*, and it presents a very clear and straightforward discussion. The last paragraph of the preface of the book reads, to this effect: "Hong Kong people have no homeland, formation of a Hong Kong nation is the only way". The last paragraph of the preface reads, to this effect: "We are a different ethnic group from the Chinese. We used to think that autonomy could be achieved through universal suffrage, but actually we were just deceiving ourselves, thinking sovereignty and the power of governance could be separated. After 2014, the Communist Party of China and the Hong Kong communist regime proclaimed China's colonization of Hong Kong in various ways. Now, more and more Hong Kong people have begun to understand that what we have been fighting for in the past decades was not a mode of election, but the independence and autonomy of Hong Kong. But I think this is not enough. Yes, at least in this way Hong Kong's current civilization can be preserved, but after a hundred years, Hong Kong must have its own history and future, and Hong Kong people must have their own country. The country that Hong Kong people need to love is not China in their fantasies and delusion, but their very own country—Hong Kong. In fact, after 1989, if we can see it clearly, a line should be written on Hong Kong's sky: 'Hong Kong people have no homeland, formation of a Hong Kong nation is the only way'."

I wish to tell Honourable colleagues that I am not smearing CHENG Chung-tai, but he clearly explains his political stance in the preface of his own book. It further bears testimony to, from his act of inverting the national flags, his unquestionable denial of the Basic Law and SAR; he can even be considered an activist promoting the formation of a nation by Hong Kong people.

President, "one country, two systems" is a system that is hard to come by, one that is the best for the country and for Hong Kong in the past, at present and in the future. We ought to cherish this system. Whether "one country, two systems" will still be in place 50 years later hinges on us not allowing "one country, two systems" to become a breach that denies "one country". Let us imagine: 50 years later, should "one country, two systems" be no longer in force, who would be the greatest victims? Therefore, we cannot let anyone who is to destroy "one country, two systems" do so by using the Legislative Council to "spread independenism" and declare his political stance. It is the bottom line of the Democratic Alliance for the Betterment and Progress of Hong Kong which will never change.
President, since CHENG Chung-tai entered the Council, I have had opportunities to come into contact with him. In the Council, he can be regarded as a loner. And the most fierce action that gave me the strongest impression is that, during the incident of Sixtus LEUNG and YAU Wai-ching, he jumped onto the desk to hurl the Rules of Procedure into the air, almost causing a very dangerous situation. I find his comments quite erratic and his voting behaviour easy to predict because he basically casts dissenting votes, being a loyal member of the opposite camp. I understand his political stance though he has not made it particularly clear in the Council. However, these are not reasons for not supporting the censure because we must safeguard "one country, two systems" and safeguard this Council. We must not allow someone who does not sincerely and genuinely uphold the Basic Law to become a Member of the Legislative Council and destroy "one country, two systems".

President, I so submit.

**MS CLAUDIA MO** (in Cantonese): President, just now I heard the speech of Ms Starry LEE. How scary it was! She was simply talking nonsense. What was wrong with her? What we are discussing now is Dr CHENG Chung-tai's act of inverting the national flag, which is unacceptable and warrants censure. I agree that he should be censured. However, if you talk about stripping him of his office, I hold that this is really outrageous. It does not match the proportionality of the whole matter. It is completely out of proportion. Just now I heard Ms Starry LEE talk about inversion of the national flag. She displayed a national flag at her seat. However, the way she displayed the national flag was wrong. The national flag should be larger than the regional flag. She is precisely desecrating the national flag herself. Is she not ridiculous?

As she cannot knock Dr CHENG Chung-tai down by way of this incident of the national flag, she resorted to jumping here and there in her argument. Straying further and further, she was talking nonsense to the extent that she even discussed his voting preference. At one time, she said that his political stance was not clear. At another time, she said his political stance was never clearer. She talked about the words he had spoken, the articles he had written, the books he had published. She talked about all of these, using old accusations to pin new labels. What kind of a Council is this? She kept saying "we in DAB". She was downright ridiculous to such an extent!
She said that it was unacceptable that Dr CHENG Chung-tai had made "additions" in taking his oath. With the Department of Justice ("DoJ") doing nothing, what can she do about it? DoJ had not instituted prosecution—she has left her seat, she cannot stand it anymore—DoJ had not instituted prosecution against Dr CHENG Chung-tai. They had not disqualified Dr CHENG from office. And then Ms Starry LEE made a remark—do not deny she has said that—she said Dr CHENG Chung-tai was not qualified for candidacy of the Legislative Council Election. Who does she think she is? Is DAB ruling Hong Kong now? Are we under the one-party dictatorship of the DAB? What is wrong with her that she can make such a comment?

The remarks and behaviour of Members in the Legislative Council are protected by the Legislative Council (Powers and Privileges) Ordinance. However, insofar as the practices of the Council are concerned, remarks and behaviour are not relevant. The President frequently threatens us now, warning us that he will call in the Police the next time around. Does he think that we would be very much frightened by this? All these remarks are not sensible at all. As a matter of fact, Ms Starry LEE was only reading from a script. She knows not how to make a speech. She was muttering in the Chamber, totally devoid of logic. Individual issues should be handled individually. If she holds that the conduct of Dr CHENG is improper, she can engage in an argument with us. She has insisted that his conduct is most improper, but I think there is room for more consideration. When she could not win the argument, she said that not only today, he was like that on a certain day last week, he was like that on a certain day last year. She stopped short of saying that she had heard that Dr CHENG Chung-tai seemed to have, and might probably have, stolen a pen from his classmate when he was 10 years old, and that served as evidence that his integrity was questionable. How can one speak like that? It is really outrageous.

Someone told me it was not necessary for me to protect Dr CHENG Chung-tai as he was not a member of the pro-democracy camp. In fact, Dr CHENG Chung-tai has never joined any meeting of the pro-democracy camp. Why has he not joined the meeting? This is his personal freedom. You can ask him for a detailed explanation. But there is no need at all to use topics such as his voting preference to make up your own stories, hype up the issue, and talk nonsense. This Starry LEE is really ridiculous.
Let us have some understanding about this—we hold discussions on democracy, or call ourselves members of the pro-democracy camp—no one can monopolize the word "democracy". Does it belong to anyone? Has it been registered? He is distinct and unique. The pro-democracy camp should leave him alone. As a matter of fact, we believe that genuine democracy embraces diversified dissenting views. There will certainly be dissenting views. There is this famous proverb in the West that means if everyone sings the same note, the result will not be harmony. "If everyone sings the same note, you don't get harmony". That is the proverb.

If everyone holds the same view, that will be under one-party dictatorship. Everything is in the colour of red. Even in the pro-democracy camp, it is possible for you to find the colours of black and white, or different shades of grey. It is of little meaning to me that there are different parties and groupings in the pro-democracy camp. Even if Members of the pro-establishment camp do something like inverting the national flag—but I am sure they dare not do so—it is impossible for me to act like Ms Starry LEE, hurling the Cultural Revolution-style severe criticisms and strong denouncement almost to the extent of threatening about uprooting of one's whole family.

As for me, if someone engages in an act of inverting the national flag, I do not care which party he belongs, I hold that inverting the national flag is a childish act. But should we strip him of his office? Is it necessary to do so? Do we really have to raise the matter to this extreme level? Since Ms Starry LEE knew that she did not have sufficient justifications, she then made up a lot of stories. This is obvious. She even bought his books, used them as props, and read out some of the contents.

We do not practise cronyism. Because a person with the genuine spirit of fairness is not a "fence-sitter", who takes on the appearance of being impartial; instead, he is really capable of distinguishing between the right and wrong, black and white, light and shadow of a matter, making his own judgment and determining to what extent and how far the matter has developed. When we consider the right and wrong of a matter, if we uphold the genuine spirit of fairness, we must not be prejudiced from the outset. If I endorse the matter, even if I dislike this person, I must not speak in a partial manner. Or if the whole matter is wrong, but I like this person, what shall I do then? Must I help him? The answer is "no".
Someone from the pro-establishment camp and the pro-Government camp said—I have forgotten who he is as the profiles of these people are so very blurred, and each of them looks similar to others—Mr HUI Chi-fung should invite him to lunch, because he had done him a great favour. I can calculate with my hands that Mr HUI Chi-fung and I have engaged in conversations for not more than six times. We have to look at the actual facts of the matter itself. When do he and I belong to the same party? When have I joined the Democratic Party? You can determine by yourself.

Many people misunderstand the meaning of the genuine spirit of fairness. They believe it refers to equality and equity. That is not correct. In the English language, there is a difference between equality and equity. Insofar as equality is concerned, if everyone gets a score of 100, that is equality. In respect of equity, while the full score is 100, each person only gets the score he should get. For instance, he originally gets a score of 60, but we help him get an additional score of 40; or he originally gets a score of 80, but we help him get an additional score of 20. We lend him a helping hand. This is what we mean by genuine equity.

When Dr CHENG Chung-tai inverted the national flags two years ago, I was one of the persons who witnessed him doing so. The incident happened in October two years ago. At that time I happened to have just returned to the Chamber and saw him doing that. And then I saw Dr CHIANG Lai-wan sternly reproach him. Honestly, at the time the incident took place, I also held that Dr CHIANG's reproach was correct and Dr CHENG Chung-tai had done something wrong. Nevertheless, the Court had made its judgment. He was fined $2,500 for desecrating the national flag. As for desecrating the regional flag, he was fined $2,500, with a total fine of $5,000. I do not quite agree with the verdict handed down by the Court but I respect the conclusion of the Court. The matter should come to an end.

Can we censure, criticize and reproach him? I hold that we can because I think it is really inappropriate conduct. However, is it necessary to blow up the issue, saying that this person is extremely unbearable to the extent that his appearance in the Legislative Council is simply an eyesore and mental irritation to all? If Members do have this feeling, they had better not come to the Council. They have gone too far. As a matter of fact, we should read carefully the ruling of the Court in relation to this case. Pointing out that Dr CHENG Chung-tai was concerned about social affairs, the Judge said that he believed Dr CHENG's behaviour was not premeditated. Is this acceptable? Is the matter finished?
Frankly speaking, we can relax because cushions printed with the five-star red flag are offered for sale in department stores in Hong Kong. They are not too expensive, with the unit price being about $200. Why is the national flag allowed to be a merchandise? You can check again. It is allowed. Do not think I am making irresponsible remarks. I have the actual object and photos to serve as evidence. So why should we be so serious? Because some Members are targeting the person but not the behaviour or the national flag itself. In fact, they wish to knock Dr CHENG Chung-tai down. If they do have this wish, they should admit it. Nevertheless, they will not be able to do so for we support him. Their remarks were really an eye-opener to me—do they have the expression of "ear-opener"? What I mean is the hearing of our ears. Just now after I had heard the speech of Ms Starry LEE, no matter whether I was looking at her or listening to her, I did not only find her detestable, I was also saddened.

Having said that, do I give my 100% support to Dr CHENG Chung-tai? If someone wishes to disqualify him, I will certainly support Dr CHENG Chung-tai. His qualification as a Member should absolutely not be stripped. However, I would like to criticize him for one thing. He issued a letter to all Members on 4 May. I also received it, in which he says that Members of the Council do not qualify to disqualify other Members, only the electors qualify to do so. His remark did not comply with the Basic Law. It is stipulated in Article 79(6) and Article 79(7) of the Basic Law that disqualification can take place when it is passed by two-thirds of the Members of the Legislative Council.

I remember it was in 2000—if I have not got it wrong—that Gary CHENG resigned from office of his own accord. And before that, it was CHIM Pui-chung, who was sentenced to imprisonment for about three years. At that time, was he disqualified automatically? No, he was not. I looked up some information and found that at that time, former Member Dr LEONG Che-hung moved a motion, which was passed by two thirds of the Members present when it was put to the vote. According to my memory, all Members except one voted in favour of the motion. This procedure was conducted. If it is said that the decision should solely rest with electors; first, the two articles of the Basic Law can then be disregarded. Second, if the performance of a Member is very poor, members of the public will have to wait for the next election to not vote for him. The waiting is far too long. By the time Gary CHENG was elected, he knew that there would be problems, so he resigned immediately. Otherwise, electors would have to wait for four years. We cannot simply say that if members of the public are not satisfied with a certain Member, they should not vote for him in the future. We cannot say that. Further, I have also moved a motion to censure
Mr Holden CHOW under Article 79(7) of the Basic Law. This is because he and LEUNG Chun-ying colluded via the Internet in the middle of the night. This is a question of integrity. To me, if someone from the pro-democracy camp does something like this, it makes his offence even more serious. However, it is impossible for us to do that because we distinctly differ from each other like the colours black and white, and our stances are distinctly different.

Hence, when Members speak, we must not resort to gross exaggeration to the extent that we are making irrelevant remarks or just say whatever that comes to our minds. However, they are not saying whatever that comes to their mind. Just now I saw a pile of scripts in front of Ms Starry LEE. She was reading from the scripts, with her nose almost touching them. She had some props as well. Obviously she was well prepared. I hope that some basic structure of this Council can remain intact, and Members will not resort to even the most extreme measures with the sole aim of knocking someone down. Thank you.

MR KENNETH LEUNG (in Cantonese): President, I speak on behalf of the Professionals Guild. Dr CHENG Chung-tai inverted a number of national flags and regional flags during the suspension of meeting at the Council meeting on 19 October 2016. The Eastern Magistrates' Court handed down its judgment in respect of the case on 29 September 2017. Dr CHENG was found guilty of two charges and fined $5,000 in total. Before I elaborate my views, will the President please allow me to clarify some concepts. The national flag or the regional flag must be displayed on solemn and appropriate occasions. Just now I listened to the speeches of several colleagues from the pro-establishment camp, in which Mr Tony TSE equated the national flag with the placards displayed by us in the Council's debate sessions. I hold that this is desecration of the national flag, which is inappropriate.

President, just now I heard Mr Dennis KWOK mention, and I also ask you to remind Ms Starry LEE that when the national flag and the regional flag are displayed at the same time, the national flag must be placed above or in a more prominent position than the regional flag; the size of the national flag must also be larger than that of the regional flag. Therefore, President, I hope you will explain this to Ms Starry LEE when you have the time.

The conclusion drawn by the Professionals Guild on this incident is, we do not support the motion to censure Dr CHENG Chung-tai or disqualify him from office. Dr CHENG Chung-tai and I are not familiar with each other at all. I
am only dealing with the issue in a manner of giving the matter its fair deal.
After Dr CHENG Chung-tai had done the act on 19 October 2016, I openly stated
that this conduct of Dr CHENG was not only absolutely inappropriate, but also
frivolous and childish. Many Honourable colleagues have mentioned just now
that under Article 79(1) to Article 79(7) of the Basic Law, there are various
mechanisms which enable a Member after committing or not committing certain
acts to be disqualified from office in consequence of certain specific procedures.
Just now Mr Alvin YEUNG also clearly pointed out that Article 79(1) to
Article 79(5) are very specific and carry certainty. Article 79(6) stipulates that
when a Member "is convicted and sentenced to imprisonment for one month or
more for a criminal offence committed within or outside the Region and is
relieved of his or her duties by a motion passed by two-thirds of the members of
the Legislative Council present", this Member will no longer be qualified for the
office. The provision of Article 79(7) stipulates that when a Member "is
censured for misbehaviour or breach of oath by a vote of two-thirds of the
members of the Legislative Council present", he will also be disqualified from
office.

President, I would like to make a comparison of Article 79(7) and
Article 79(6) as both of them are related to inappropriate conduct. Article 79(6)
deals with a criminal offence, and the severity of the offence warrants a sentence
of imprisonment for one month or more. Article 79(7) does not mention or
interpret what constitutes misbehaviour or breach of oath. However, I hold that
its severity should be on the same level of that of Article 79(6). President, there
are various kinds of misbehaviour. Some colleagues put some food in their
drawers and take them out to eat. This is also a kind of misbehaviour. I know
that some colleagues do that but in fact, we all know we should not eat in the
Chamber. Some colleagues may doze off or snore in the Chamber. These are
minor forms of misbehavior. But what is the interpretation of "misbehaviour" in
Article 79(7) or what is the level of its severity? There should be a comparison.
That is why I have made a comparison of Article 79(6) and Article 79(7) in terms
of the level of severity.

Let us look at the judgment. This offence of desecrating the national flag
and the regional flag is a strict liability offence. A person can be incriminated
just because of his behavioural performance. And there is no need to analyse
whether this offender has a criminal intent or guilty mind. President, it is
obvious that under Article 79(7), there must be a guilty mind to constitute
misbehaviour or breach of oath. Of course, you heard Ms Starry LEE cite some
articles he had written and remarks he had made. All of these that were written
or spoken were related to his thinking indeed. But the question is, the offence for which he was convicted, that is, desecrating the national flag, has nothing to do with his thinking. The act is an offence. This is just like illegal parking. It is not necessary for the Police to prove that whether a person has the intent of illegal parking. I had the experience of reading a traffic sign incorrectly. Even though I read the traffic sign incorrectly and took the traffic sign for permission of parking, once I parked the car in that space, I had committed the offence of illegal parking and had to be fined. If you refuse to pay the fine and seek to defend your case, you have to appear in court. Therefore, it is not necessary for the offence of desecrating the national flag and the regional flag to have an intent mentally, or a guilty mind. This is very obvious.

I would like to talk about why I hold that even though Dr CHENG Chung-tai had done something wrong, the wrongdoing was not so grave as to warrant disqualification from office as a Member of the Legislative Council. This is because in the course of evidence collection or as seen from the judgment, this act of Dr CHENG was not considered a planned, organized, premeditated act. Further, among the various acts of desecration of the national flag, including defiling, trampling on, burning or other acts of desecration of the national flag, the Court considered that this act despite being an offence, was not the most severe act of desecration of the national flag. Moreover, this act was done by Dr CHENG Chung-tai on 19 October 2016, when he had become a Council Member for not more than three weeks. For this reason, I will give this new colleague benefit of doubt.

All in all, I hold that we must not display the national flag and regional flag on an inappropriate occasion, including placing the national flags and regional flags in the glass holders. Because the national flag and regional flag should only be displayed on a solemn and appropriate occasion. The act of Dr CHENG Chung-tai was indeed childish, frivolous, and inappropriate. If you ask me to use a word to describe his act, I would say it was really unacceptable. Nevertheless, the mechanism of disqualification of a Member of the Legislative Council from office under Article 79 must not be activated casually. Although I find Dr CHENG Chung-tai's act regrettable, after weighing evidence from all aspects and listening to the views of various people, the Professionals Guild does not support this motion.

President, I so submit.
MR MARTIN LIAO (in Cantonese): President, I look at today's motion in a very careful and serious manner, because the voting result is related to whether a Member of the Legislative Council will remain in office. The most important point is, we must respect the system, deal with the issue in a matter-of-fact manner, differentiate the important facts from the less important ones, and make a decision commensurate with the seriousness of the incident with impartiality.

President, Dr CHENG Chung-tai's conduct to be censured this time around is very clear and simple. He himself has also frankly admitted it. At the Council meeting on 19 October 2016, he had more than once inverted the national flags and regional flags displayed at the seats of Members of the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB"). This incident did not only infuriate the Members involved, but also induced an outrage among other Members of the pro-establishment camp as well as the general public who considered this unacceptable. Subsequently, Dr CHENG Chung-tai was charged with two counts of desecrating the national flag and the regional flag by publicly and wilfully defiling them. He was found guilty of both charges.

President, while the national flag represents the country and the people, our regional flag represents the Hong Kong Special Administrative Region ("HKSAR") and the residents. These symbolic meanings are internationally recognized. The act of inverting the national flag and regional flag by anyone on a public occasion is a humiliation to our country, our people, the region of Hong Kong as well as all Hong Kong people. Further, the insulting act this time around was committed by a Member of the Legislative Council, the constitutional authority of the HKSAR, during a solemn meeting of the Legislative Council. The implications and impacts of such misbehaviour are all the more widespread and far-reaching. Doubtless this misbehaviour of Dr CHENG Chung-tai ran counter to the oath he had taken a week before the incident when he assumed office and swore to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and pledged allegiance to the HKSAR of the People's Republic of China. Hence, I was one of the three Members who seconded and signed the notice of this censure motion. I was also a witness of the subsequent Investigation Committee ("IC"). I had attended the hearings as well as submitted written statements.

President, talking about IC, just now Mr Alvin YEUNG of the opposition camp asserted that IC was purely comprised of Members from the pro-establishment camp, implying that its report was the result of the pro-establishment camp working behind closed doors. This remark was
misleading and unfair. IC was purely comprised of Members from the pro-establishment camp because Members of the opposition camp had chosen not to join it. It was the choice of the opposition camp, not the choice of the pro-establishment camp. I had attended the hearings of IC. According to my personal experience, IC had adopted a stringent attitude in discharging its duties. After taking the oath, I had also recounted all that I knew. What I said was nothing but the truth.

However, President, more importantly, it has been one and a half years since this incident took place. From the relevant debate conducted by the House Committee, to the censure motion moved by Mr Paul TSE at the Council meeting on 14 December 2016, and the establishment of IC, the conduct of the investigation and the report published earlier, and even after the conviction by the Court, members of the public have not seen any sign of remorse or expression of apology shown by Dr CHENG Chung-tai in relation to this incident. Instead, we can see that he has been continuously looking for excuses to justify himself, attempting to convince the public that his act of inverting the national flags and regional flags on that day was not wrong. This is not as simple as committing a wrongdoing, as he has never held that he had done something wrong. It is his firm belief that there was nothing wrong with his conduct, not to mention offering any apology.

Based on these reasons, I have no hesitation in supporting this motion to censure the misbehaviour of Dr CHENG Chung-tai.

A Member of the opposition camp has pointed out that this punishment is not commensurate with the conduct of Dr CHENG Chung-tai. It would be understandable had this remark been made by other people. However, I can feel a chill down my spine when it is made by a Member of the opposition camp. This also reflects their hypocrisy. Members of the opposition camp have attempted to adopt the same method to seek punishment of Dr Junius HO when he used the phrase "kill without mercy". Further, Dr Junius HO had admitted that his remark was inappropriate. When compared to the conduct of Dr CHENG Chung-tai, Dr Junius HO's remark of "kill without mercy" is really no big deal. If the opposition camp is not being hypocritical, then what is it?

Dr CHENG Chung-tai and some Members have pointed out that the decision whether a Member should leave or remain in office is a matter of gravity which should be determined only by electors with their votes, instead of invoking this mechanism to censure the Member. They also hold that the offence on this
occasion is not serious enough to have him censured. If that is the case, why has the opposition camp targeted Mr Holden CHOW and Dr Junius HO to the extent of proposing the establishment of investigation committees with the intention of censuring them? Is this not another show of hypocrisy that applies double standards?

President, please allow me to ask Members of the opposition camp this question. If the act of Dr CHENG Chung-tai is not serious enough to have him censured, in the face of cardinal issues of right and wrong, such as abiding by the solemn oath, pledging allegiance to HKSAR of the People's Republic of China, upholding the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, what position do these issues hold in the depth of their minds? If a Member of the legislature insults his own country, region and people he represents, and the legislature of the place treats the matter lightly and dismisses it with a laugh, then what happens to the solemn public image of the legislature?

Article 79 of the Basic Law provides a mechanism to deal with the punishment of a Member for his misbehaviour or breach of oath. If we respect the mechanism, take the solemn image of the Legislative Council as the constitutional authority seriously, attach importance to the oath, respect our own country and region, we should support censuring the misbehaviour of Dr CHENG Chung-tai in accordance with this mechanism.

President, I so submit.

MR LAU KWOK-FAN (in Cantonese): President, just now a number of Members have spoken. Other colleagues will speak later on. I hope that each time before they speak, they will think about the contents of the oaths taken when they assumed office, and the causes of the incident of inverting the national flags by CHENG Chung-tai. Before we assume office, we have to read out the oath as follows: I swear that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China and serve the Hong Kong Special Administrative Region conscientiously. Before CHENG Chung-tai inverted the national flags, the oath-taking controversy had unfortunately taken place in the Legislative Council. Two persons had taken the
oath-taking as a platform to insult China and propagate "Hong Kong independence", and were ultimately disqualified from office due to their breach of oath.

At the time when the oath-taking was arranged once again, we as Members were very angry with the remarks that insulted China and propagated "Hong Kong independence" on that day. I would like to remind Honourable colleagues of this Council that the Hong Kong Special Administrative Region ("HKSAR") is a part of the People's Republic of China. Not only must we respect HKSAR, we must also respect the People's Republic of China. That was why some Members displayed the national flags and regional flags in the Chamber, hoping that we would remember this.

Unfortunately, Dr CHENG Chung-tai had repeatedly gone over to the seats of other Members and inverted the national flags and regional flags placed on the desks before their seats. Even though other Members, including the President, had tried to advise him against it and stop him, he had neither accepted nor heeded their advice.

Just now Mr Kenneth LEUNG raised a question: did he have a criminal intent? It was obvious that he had a criminal intent at that time. If he did not have a criminal intent or guilty mind, he would not have repeatedly gone over to the seats of other Members and insulted our country and the HKSAR Government by inverting the national flags and regional flags despite advice against it. His conduct was most distressing. It was also in breach of the oath he had taken on the day he assumed office.

Sixtus LEUNG and YAU Wai-ching were disqualified from office due to breach of the oath. Similarly, Dr CHENG Chung-tai should be held responsible for his conduct. As a matter of fact, the national flag and the regional flag are symbols of the country and Hong Kong. Under the National Flag and National Emblem Ordinance and the Regional Flag and Regional Emblem Ordinance, a person who publicly and willfully—we must remember it sets out "publicly and willfully"—desecrates the national flag or the regional flag commits an offence.

A trial was initiated by the Court last September after I had filed a report with the Police. Dr CHENG Chung-tai was convicted of desecrating the national flag and regional flag. At that time, the trial Magistrate clearly pointed out that Dr CHENG Chung-tai's act of inverting the national flag had tarnished
the dignity of the national flag and regional flag, which complied with the element of the offence of defiling the national flag and regional flag. Although consequently he was only fined $5,000, I respect the judgment of the Court. Nevertheless, it seemed that the fine of $5,000 was not successful in achieving a warning effect. After the sentence was handed down, CHENG Chung-tai has repeatedly indicated that this is only a political incident. He even holds that this is a trivial matter. This is absolutely intolerable.

As a Member of the Legislative Council, Dr CHENG Chung-tai's words and conduct should set an example for the general public. He should also take the initiative to uphold the dignity of the Legislative Council and HKSAR. However, through the online live broadcast and media reports, his conduct on that day has caused significant adverse impacts on the community. His conduct has even been widely circulated on the Internet in the Mainland. Many people are distressed that such an act had taken place in the Legislative Council of Hong Kong, causing significant adverse impacts on society.

Since the incident took place in the Legislative Council, it is justifiable and necessary for the Council to give an account to the general public. By moving the censure motion, the Council will be able to convey to the public what is right and wrong, as well as the bottom line that must not be crossed. This is the responsibility of the Council.

Some colleagues of the opposition camp pointed out that since the court has made its judgment, Dr CHENG's conduct should not be tried a second time by the Legislative Council. I hold that something is wrong with this claim. We know that many people are subject to sanctions in law because they have breached the law. There are also certain requirements for the position the offender holds in his workplace. Therefore, the offender faces not only the criminal liability through the judgment handed down by the Court, he may have to leave his position in the workplace as well. For example, this applies to those who are engaged in security work and other job types. Does this constitute the "second" punishment referred to by colleagues of the opposition camp? Absolutely not. This applies also to Members of the Legislative Council. The Court has made the judgment by targeting his breach of a certain law only. We have proposed censure on his conduct this time around because he has not fulfilled the pledge in the oath taken by him before he assumed office. Not only did he breach the oath, he also committed misbehaviour. For this reason, I hold that the Legislative Council should absolutely follow the matter up. We should
not adopt different criteria in handling such incidents. Otherwise, we would have easily made the mistakes often referred to by certain Members, and that is, "moving the goalposts" and adopting double standards.

President, discussions concerning "one country, two systems" have continued to emerge in the community in recent years. Some people have frequently used unorthodox views and behaviour to challenge "one country, two systems" and even the sovereignty of the country. Our colleagues of the opposition camp have used the pretext of freedom of speech on every occasion to harbour such behaviour. They may say: "I do not quite support such behaviour" or "I find such behaviour regrettable, but ...". Anyway, they will advance various reasons such as freedom of speech, etc. It is precisely because such an undesirable trend has not been effectively curbed that leads to the oath-taking controversy in our Council, with the consequence of some Members having to pay a price for it, thanks to Members for their connivance of this trend.

Many slogans advocating "Hong Kong independence" and various insulting expressions involving personal attacks have been found recently in tertiary institutions and the community in Hong Kong. The sources of such trends can also be found in the Legislative Council. I believe if such behaviour is not stopped, or appropriate follow-up actions and punishments are not imposed when they emerge in this Council, society will pay an even greater price. That is why we often emphasize that the principle of "one country, two systems" must be upheld. However, the behaviour of the opposition camp has precisely undermined "one country, two systems".

President, apart from being a Member of the Legislative Council, I am also a member of the Council of The Chinese University of Hong Kong. I have been heart-stricken by various phenomena on campus in recent years. It has been proved by facts that refusal to take such illegal remarks and behaviour seriously, and failure to have them stringently criticized and censured is tantamount to connivance of them. Members of the Legislative Council are public figures. Their remarks and conduct have certain impacts on young people and the general public. The slightest unwitting mistake will lead other people astray. I am not joking. We can review the earlier or recent news reports on the judgments made by the Court. For instance, several persons were convicted and sentenced for taking part in the Occupy Mong Kok movement—the so-called "fishball revolution". The penalties were by no means light. Insofar as society is
concerned, this is a lesson of blood. Owing to the fact that certain illegal acts were not censured by us in the past, some people believed as a result that it was no big deal at all and would not cause serious consequences—at the most, to be condemned by the community or warned by the Court only. Can we really bear to see so many young people being subject to heavy penalties or imprisonment of several years due to these acts of incitement or "copycat acts" to the extent of losing several years of freedom and paying a dear price?

The Hong Kong Polytechnic University has already indicated clearly that due to the severity of the relevant conduct of CHENG Chung-tai and the judgment handed down by the Court, they will not renew his contract. The University has also emphasized that this decision is not only appropriate but also in the interest of the University. Similarly, I hope that Members will support this censure motion under discussion today, because this decision is in the interest of both the Council and society.

The incident concerned took place almost two years ago. It may be a bit late but the fold should still be mended. While Hong Kong is protected by the law and the principle of "one country, two systems", Hong Kong people have the obligation to respect the principle of "one country, two systems", abide by the law and its bottom line. However rhetorical the excuse of the Member is, it should not become a pretext for insulting the country, undermining "one country, two systems" and breaching the law. In the face of the present chaos in society, the Legislative Council must take practical actions to address the problem at root.

On account of these reasons, I support the motion to censure Dr CHENG Chung-tai. Thank you, President.

MR CHRISTOPHER CHEUNG (in Cantonese): President, I rise to speak in order to state my unswerving support for the motion moved by Mr Paul TSE to censure Dr CHENG Chung-tai. This is because Dr CHENG Chung-tai had inverted the national flag and regional flag under the full gaze of the public. Such an act is not only disorderly, but also publicly tramples on the dignity of the country and Hong Kong. In the face of such frivolous and despicable action, and in terms of law, reason and fairness, we must state our severest condemnation.
Anyone who has the slightest sense of human righteousness will respect and protect his own country and nation. The national flag and the regional flag are the symbols and icons of a country and a region. Therefore, everyone is duty-bound to respect the national flag and the regional flag, and such respect is an instinct as well as a reflection of the moral character and quality of a person.

Of all people, CHENG Chung-tai, a dignified Member of the Legislative Council, not only had he disrespected the national flag of his own country and the regional flag of the Hong Kong Special Administrative Region ("HKSAR"), he had publicly inverted the national flag and the regional flag. Such an action does not only demonstrate brainless na"ivey, but also brings shame to the person concerned. I believe anyone who has a sense of national identity and nationalism will not be able to tolerate it.

Such trampling on the dignity of the country and Hong Kong should certainly be condemned. Going back on his words and breaching the oath taken by him are also despicable. At the Council meeting of 12 October 2016, Dr CHENG Chung-tai took the oath in accordance with Article 104 of the Basic Law and the Oaths and Declarations Ordinance to "uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China". While these words were still ringing in our ears, a week later, at the Legislative Council meeting on 19 October, he completely forgot the oath taken by him. Disregarding the advice of the President of the Legislative Council and other Members, he behaved like a rascal, publicly inverting the national flags and regional flags.

Irrespective of whether he had committed perjury and whether he should be held liable in law, based on his behaviour of regarding taking an oath as speaking nonsense, how can we still believe that he will fulfil his pledge in the oath, that is, swearing allegiance to HKSAR of the People's Republic of China, and serve HKSAR? It has been proved by facts that he is the kind of person who would commit perjury and breach the oath for the sole purpose of taking a seat in the Council. However, once he had achieved his goal, he would show his true colours again. He had insulted his own country and Hong Kong, the place where he was raised and brought up, in a cheeky and shameless manner. He had even criticized his own electors and called them idiots in a manner as if nothing had happened. What other things will he dare not do?
Even if we do not talk about legality, CHENG Chung-tai had tampered with the objects placed on the desks of other people without the permission of the owner. And even when he was told by the owner to stop, he continued to act like a rascal and tampered with the objects. His act was not only frivolous and impolite, but also suspected of theft. If we describe his conduct as "puerile" behaviour, I believe even those known to present "puerile" behaviour will feel offended.

Those with a sense of shame are akin to being courageous. What is most pathetic is that CHENG Chung-tai clearly knows that his act of inverting the national flag and regional flag has sparked a public outrage, in addition, he was convicted by the Court of desecrating the national flag and regional flag. Yet, he has not admitted any wrongdoing on his part, instead, he has made up all sorts of lame excuses, using the specifications of the national flag and regional flag as a shield in an attempt to absolve himself of the blame. This is talking hawk and acting chicken. Such an act is cowardly and laughable.

What is most baffling is that all Members of the opposition camp have failed to tell right from wrong. Not only have they not criticized the conduct of CHENG Chung-tai, they have even tried every means to shield his wrongdoing to the extent of merely describing CHENG Chung-tai's action of insulting the country and Hong Kong as "mischievous", "playful", and "puerile". This is simply confounding right with wrong. This is particularly so with the members of the "legal party" who usually talk incessantly about justice in law. They have seen clearly that someone has breached the Basic Law and the Oaths and Declarations Ordinance, but instead of coming forward to safeguard the dignity of law, they have aided and abetted the evildoer. I would really like to ask the politicos of the opposition camp, as they are willing to confound right with wrong in order to harbour those with similar political views today, when they are confronted with greater interests in the future, will they act like CHENG Chung-tai and publicly insult the country and Hong Kong?

President, I sincerely hope Members of the opposition camp will understand that the passage or otherwise of the motion is not only directly related to the seat of CHENG Chung-tai, it is also related to the dignity of the Legislative Council. Everyone knows that the behaviour of CHENG Chung-tai was broadcast live on television. If we do not condemn his behaviour with a strong and forceful sense of righteousness, a wrong message will be easily delivered. It will readily make people misunderstand that the act of inverting the national flag
and regional flag by Members of the Legislative Council in the Chamber will not incur any liability, and that Members can act in defiance of rules in the Legislative Council to the extent that the Council will be rendered in a state of endless eccentricities and irregularities. Will Members of the opposition camp be glad to see this?

I hope Members of the opposition camp will not focus the matter only on political stands and ignore the rights and wrongs, instead, the attitude of saying what is right as right and denouncing what is wrong as wrong must be adopted. We must analyse the matter in an objective and rational manner. With regard to a person who publicly insults his country, goes back on his words and breaches the oath taken by him; a person who knows he has done something wrong but refuses to admit it, and tries every means to put the blame on others, does he deserve to be censured? Is he still suitable to be a Member of the Legislative Council?

After all, respecting the national flag and regional flag, upholding the Basic Law, safeguarding the dignity of the Legislative Council are not matters of political stance, rather, they are issues involving major principles. If Members of the opposition camp sincerely uphold the Basic Law, and swear allegiance to the HKSAR of the People's Republic of China, just as they said when they took the oath upon assumption of office, they should support the motion moved by Mr Paul TSE to censure CHENG Chung-tai without any hesitation.

As for CHENG Chung-tai, I hope that he can conduct a self-reflection. He should realize that even if this censure motion is negatived, and he is lucky enough to remain in the Council, it is only due to Members of the opposition camp blindly shielding him, but absolutely not because his behaviour is endorsed by the public. If he hardly knows how to repent, and continues to act naively as if such behaviour is fun, I believe people will eventually use their ballots to punish him.

I so submit.

MR LUK CHUNG-HUNG (in Cantonese): President, insofar as the majority of the legislatures of countries worldwide are concerned, members of the legislature have to pledge their allegiance to the country when they take the oath upon assumption of office. This is because the moment they join the legislature, they
have simultaneously joined the constitutional framework—which is, in fact, part of the establishment—to serve the country and the people. This is a very important commitment to the country and the nation.

However, since the reunification, many Members of the Legislative Council have regarded oath-taking as a time for staging a show, making pretences, and employing various gimmicks. The gravity of their acts has been getting more and more serious. The most serious act was the one in the current term of the Legislative Council when Sixtus LEUNG and YAU Wai-ching committed acts of "spreading independenism" and insulting China. Such outrageous acts resulted in the second oath-taking of some Members at the subsequent Legislative Council meeting on 19 October 2016. President, at that time, I certainly did not endorse your decision of allowing Sixtus LEUNG and YAU Wai-ching to take their oaths again. However, we had done what we should do, and that is, we employed some tactics to stop Sixtus LEUNG and YAU Wai-ching from taking the oath for the second time, with a view to preventing them from defiling our country and the Hong Kong Special Administrative Region ("HKSAR") again. It was at that time that Dr CHENG Chung-tai might have been unwilling to be left out in the cold. As he is a member of the radical camp, he was afraid that he would be left out of the limelight. In order to attract attention, he inverted the national flags and regional flags on the desks of 11 Members. Back then, Dr CHIANG Lai-wan advised him earnestly against messing around, and the President also gave him a warning. Nevertheless, despite the advice of Dr CHIANG and the warning of the President, he continued his outrageous act of desecrating the national flags and regional flags. In the second round, he inverted 16 flags, including the national flags and regional flags, placed by eight other Members on their desks.

The national flag and the regional flag are the symbols of the country and Hong Kong. Respecting and protecting the national flag is the basic duty of all citizens. It is stipulated in law. Any acts of derogating and desecrating the national flag and the regional flag are not acceptable. Dr CHENG Chung-tai probably thought that inverting the national flag and the regional flag was no breach of the law. Section 7 of the National Flag and National Emblem Ordinance provides that: "A person who desecrates the national flag or national emblem by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 years." There are similar provisions in the Regional Flag and Regional Emblem Ordinance. Dr CHENG Chung-tai probably thought
that he had not burnt, mutilated, scrawled on, defiled or trampled on the national flag and the regional flag, and thus he had not violated the National Flag and National Emblem Ordinance and the Regional Flag and Regional Emblem Ordinance. As such, he thought he could mess around. This really is a case of "those who do not look for death are less likely to die". He is the kind of person whose acts serve him right.

The verdict of the Court clearly stated that Dr CHENG Chung-tai's act of inverting the national flags amounted to desecration of the national flag. The word "desecration" also means "dishonour", with the meaning of "humiliation". Any act of humiliating the national flag is tantamount to defiling. Hence, humiliation of the national flag is not confined to damaging the entire flag. Hence, the Court justly convicted Dr CHENG Chung-tai of desecrating the national flag—much to the elation of the general public—and he was also fined $5,000.

Of course, some colleagues of the opposition camp have tried to shield his wrongdoing. They hold that CHENG Chung-tai had already paid the price at the Court by being held criminally liable, and ask why the pro-establishment camp has to follow this up in the Legislative Council. This is because the position of a Member of the Legislative Council is a solemn public office, enacting law on behalf of the people. The Chamber is also not a common place. On that day, the Chamber was the venue of oath-taking, thus, it should be all the more cherished and respected. Further, Members have greater responsibilities than members of the public. Therefore, we are duty-bound to rectify the perverse practice and undesirable trend in the Council. I support and thank Mr Paul TSE for moving a motion under Rule 49B(1A) of the Rules of Procedure to censure CHENG Chung-tai. I joined the Investigation Committee ("IC") immediately after it had been set up with a view to speaking for the public. Members of the public have found it unacceptable that a lawmaker had actually publicly desecrated the national flag and regional flag. How can people not feel infuriated?

IC held a number of meetings to conduct objective and in-depth discussions about whether CHENG Chung-tai's conduct constitutes "breach of oath" and "misbehaviour" under Article 79(7) of the Basic Law. With respect to the allegation of "breach of oath", when CHENG Chung-tai took the oath at the Legislative Council, he had pledged to: first, uphold the Basic Law; second, bear allegiance to the HKSAR of the People's Republic of China. As a matter of fact,
CHENG Chung-tai has been very lucky. He had made "additions" during oath-taking, but the Government did not file a lawsuit in court to disqualify him. However, his subsequent conduct has reflected precisely that he is in the same gang and of the same ilk of Sixtus LEUNG and YAU Wai-ching. Basically they do not genuinely uphold the Basic Law and the country.

As pointed out by the Court of Final Appeal in its judgment on the case of HKSAR v NG Kung Siu and LEE Kin Yun: the national flag represents the People's Republic of China with her dignity, unity and territorial integrity, while the regional flag is the symbol of Hong Kong Special Administrative Region as an inalienable part of the People's Republic of China under the principle of "one country, two systems".

CHENG Chung-tai's act of inverting the national flag has clearly demonstrated that he does not respect the country and Hong Kong. Some people may query: the pro-establishment camp is not the worm in the stomach of CHENG Chung-tai, how does it know whether he genuinely respects the country and HKSAR? President, this is a matter of common sense actually. Sometimes it is very difficult to prove whether a person is 100% genuine. For instance, to some people, oath-taking is no big deal at all. They simply put on an act of taking the oath seriously. However, they may not be genuine. It is certain that CHENG Chung-tai's disorderly behaviour in public and the act of desecrating the national flag are not in the category of respecting the country, upholding the principle, and swearing allegiance. Let me cite a simple example. Will a husband deliberately invert the photo of his wife on the occasion of their wedding? Will he make fun of his wife's surname? He will certainly not do so. If he does, he will definitely be reprimanded harshly by his wife's family. I believe the wedding may even be called off. This is basic common sense, isn't it? Hence, on such a solemn occasion, anyone with a discerning eye can tell whether he upholds the Basic Law and swears allegiance to the country and HKSAR. It is clear that the moment CHENG Chung-tai inverted and desecrated the national flag, he had completely breached the pledge made by him in the Legislative Council Oath. This has fully reflected CHENG Chung-tai's attitude of regarding the oath-taking as no big deal, and his nature of a lack of political integrity. He is in the same gang and of the same ilk of Sixtus LEUNG and YAU Wai-ching. From the moment he inverted the national flag, he should be disqualified from the office of a Member of the Legislative Council in Hong Kong.
With respect to the allegation of "misbehaviour", even though CHENG Chung-tai is a Member of the Legislative Council, it does not mean that his freedom is unrestrained or he can do whatever he wants. When members of the public voted him to be a Legislative Council Member, they had hoped that he would do practical work and speak for them. It is true that he has different political views, but it does not mean that he can persist in his wilful conduct, and refuse to observe the rules. On that day in the Chamber of the Legislative Council, CHENG Chung-tai had ignored the advice of Dr CHIANG Lai-wan and the warning of the President, and inverted the national flags and regional flags more than once. After IC had published its report, and even up till now, CHENG Chung-tai has offered no apologies for his conduct in a serious and sincere manner. The series of his acts have indicated that he remains unrepentant and has not conducted any self-reflection. He has only resorted to all kinds of sophistry, glossed over his mistakes and covered up his wrongdoings, made up all sorts of lame excuses, which will result in the reputation of the Legislative Council being adversely affected and jeopardized. He had worked in the education profession before. This kind of conduct will set a bad example for young people and lead them astray. He has also conducted himself in such a way that is contrary to the high expectation of the public in respect of the standard of conduct of a Legislative Council Member. So, his conduct has in effect derogated the image of the Legislative Council in the community, which already constitutes misbehaviour.

The responsibilities of a Legislative Council Member include monitoring the Government properly, enacting laws and playing the role of gate-keeping on behalf of the people, doing practical work to serve the people, improving people's livelihood, and scrutinizing funding applications submitted by the Government. We have to discharge each responsibility in a very careful manner. Frankly speaking, CHENG Chung-tai has joined the Council for more than a year now, what is the "masterpiece" of his work? I believe if we ask members of the public, apart from his act of inverting the national flag, they do not have any impression of what he has done. I really do not know how to describe this. Such a Member was actually a university lecturer before. It is fortunate that The Hong Kong Polytechnic University has already indicated that his contract has been terminated or not renewed. As a matter of fact, he used to teach social sciences and politics, he should clearly understand these basic political ethics. As a lawmaker, if his personal conduct is not correct, how can he correct others? He has not respected the rule of law and the Council in a proper manner, instead, he has engaged in some clownish shows. And after the show is finished, he has refused to be liable for it. He is acting chicken and trying to divert people's attention.
Therefore, despite the fact that the Court has already upheld justice on behalf of the people and convicted CHENG Chung-tai, we, as Members of the Legislative Council, who similarly carry expectations of the people on our shoulders, have the similar responsibility of defending the dignity of the Legislative Council. Therefore, I call on not only Members of the pro-establishment camp, but also all Members—including the pan-democratic Members—to act decisively, say "no" to this kind of undesirable trend, and say "no" to these acts of disrespecting and desecrating the national flag, national emblem and regional flag. They should break any connection with CHENG Chung-tai. Hence, we should support this censure motion together. Do not sail with CHENG Chung-tai in the same boat again and blindly shield his wrongdoing, or else you may find yourself on board a sinking boat.

President, I so submit. I support the motion to censure CHENG Chung-tai. Thank you, President.

DR CHIANG LAI-WAN (in Cantonese): President, I speak in support of the motion moved by Mr Paul TSE under Article 79(7) of the Basic Law and Rule 49B(1A) of the Rules of Procedure to censure CHENG Chung-tai for misbehaviour and inverting the national flag.

Just now a Member compared this incident to the incidents of Mr Holden CHOW and Dr Junius HO. President, how should we describe this? They have basically resorted to sophistry. This is because these incidents are different from the incident of CHENG Chung-tai this time around. They are even different from the incident of HUI Chi-fung. This is because their incidents involve criminal offences. This is particularly so with Dr CHENG Chung-tai, who has already been convicted by the Court. If Mr Holden CHOW and others had committed wrongdoings, having done something they should not have done, and their deeds had involved criminal offences, I believe the opposition camp, with its hard-line stance, as well as its hawkish approach, would have long since filed a police report and demanded arrests to be made.

(THE PRESIDENT'S DEPUTY, MS STARRY LEE, took the Chair)
Deputy President, CHENG Chung-tai is a Doctor of Philosophy. He used to be a lecturer in a university, an academic in the teaching profession. However, at the Council meeting of 19 October 2016, when Members were summoned to form a quorum, CHENG Chung-tai inverted the national flags and regional flags placed by other Members on their desks. Despite being advised by other Members and warned by the President of the Legislative Council, he still continued to deliberately invert the national flags. The President ruled that his conduct was grossly disorderly and ordered him to withdraw from the Council. Subsequently, the Police laid charges against him for desecrating the national flag and regional flag. He was found guilty of the two charges by the trial Magistrate and fined $5,000 in total. In fact, the imposition of fines handed down in the judgment was extremely lenient.

Deputy President, a lawmaker had actually broken the law deliberately. He had actually breached the law, shown disrespect for the country and Hong Kong, trampled on the dignity of the people, and committed an unpardonable act under the full gaze of the public. This is indeed unforgivable. The Court found CHENG Chung-tai guilty. For this reason, the Legislative Council must enforce the Basic Law and censure the Member's misbehaviour.

Deputy President, it is common for a person to make mistakes occasionally. The most important point is to realize one's mistake and rectify it, and to willingly accept the consequences of the mistake made. However, from the time this incident took place, and even after he was convicted by the Court, he has remained unrepentant. This attitude has made his offence even more serious. CHENG Chung-tai has insisted that he is subjected to political suppression, and that this is a trumped-up charge imposed by the pro-establishment camp. What is wrong with him? Who is exercising political suppression? Who is imposing a trumped-up charge? Is our accusation of him incorrect? Everyone knows that on that day, several millions of Hong Kong people could see him commit the offence on television. They could see his every move. People's eyes are discerning. Do not think that people have no idea of what happened.

Here I am reminding CHENG Chung-tai once again. I hope he will recall whether there were Members who tried to stop him on that day and told him clearly what he was doing was a breach of the law. On that day, had the President of the Legislative Council not given him a warning? Nevertheless, he
turned a deaf ear to the warning and continued to go his own way, repeatedly inverting the national flags and regional flags. What was the reason for this behaviour? Why did he do that? Did he think he was very impressive? Psychiatrists have pointed out that such behaviour can be called the demonstration of an inflated ego. The person believes that his own conduct is heroic. I can tell CHENG Chung-tai, his behaviour is absolutely not heroic. In the eyes and in the minds of Hong Kong people, it is a cowardly act.

Just as the trial Magistrate said, any normal and reasonable person should understand that inverting a national flag or a regional flag would certainly tarnish the symbol of dignity of the flag. Deputy President, the national flag is the symbol of each country. I once visited Nepal. I found that each of those who planned to risk their lives for the goal of scaling the Himalayas had carried a national flag in his backpack. Each climber planned to place the national flag on the peak once he succeeded to reach the summit, with a view to dedicating the glory to the country and sharing the glory with his countrymen. Therefore, the national flag embodies a very significant symbolic meaning. It bears great significance.

CHENG Chung-tai studied in Beijing more than a decade ago. He had mentioned the reasons for his changes. He said that he did not like the idea of Hong Kong becoming like the Mainland. I can understand that. But does he know that there have been great changes in the Mainland over the past 10 years or so? Some of the developments in the Mainland have completely surpassed Hong Kong, and even surpassed the international standards.

I remember my first visit to the Mainland more than three decades ago. On my first visit to my hometown, I found the Mainland really backward, even more backward than the Beijing CHENG Chung-tai experienced more than a decade ago. Back then, I thought I was very fortunate to have had the opportunity of being born and brought up in Hong Kong. I even had the opportunity to study overseas. However, this brought about a sense of mission in my heart. I felt that I should all the more make contribution to the country, or think about how best I could contribute to the development of the country. Why should I do that? Because I believe if only we are willing to work together for the country, there will be further progress in the country. When there are improvements in the country, people will lead a better life. I also believe when the country fares well, Hong Kong will fare well.
If CHENG Chung-tai is not satisfied with the present state of the country, he should consider devoting efforts to developing the country from a positive perspective, rather than indulging in destruction. Still less should he desecrate the national flag and regional flag. If he says that he is not a Chinese, and therefore he does not have to respect the national flag, in that case, he had better take out the passport of the Hong Kong Special Administrative Region of the People's Republic of China from his pocket and return it to the State. Apart from that, he should go to the Immigration Department to declare that he will no longer be a Chinese, and that he is not Chinese.

Deputy President, it is indeed necessary for us to move a censure motion this time around. We must also alert those Members with disorderly conduct, in the hope that Members will act properly in future. We are asking them to respect the Council, respect themselves, respect Hong Kong and respect the country. For these reasons, I support this censure motion.

I so submit.

MR MA FUNG-KWOK (in Cantonese): Deputy President, today we discuss the motion on the misbehaviour of Dr CHENG Chung-tai, and decide whether we should censure Dr CHENG according to Rule 49B(1A) of the Rules of Procedure. The entire incident originated from the Legislative Council meeting on 19 October 2016. During the absence of the majority of Members, Dr CHENG Chung-tai went over to the seats of some Members and deliberately inverted the national flags of China and the regional flags of Hong Kong placed on their desks. After Dr CHIANG Lai-wan found out what happened and rearranged the national flags and the regional flags, Dr CHENG once again went over to the seats of other Members and inverted the national flags and the regional flags. This incident was most infuriating. As a matter of fact, Dr CHENG was subsequently convicted by the Court of desecrating the national flag and regional flag, and fined.

Some people may hold that since Dr CHENG had already been subjected to legal sanctions, there is no need for the Legislative Council to make this superfluous effort of moving today's censure motion. However, we can look back at the time when Dr CHENG assumed office, he had taken an oath under Article 104 of the Basic Law and the Oaths and Declarations Ordinance to uphold
the Basic Law and swear allegiance to the Hong Kong Special Administrative Region ("HKSAR") of the People's Republic of China. As the national flags and regional flags displayed on that day represent the solemn pledge and significance of upholding the Basic Law and swearing allegiance to HKSAR of the People's Republic of China, Dr CHENG's conduct was not only in breach of the oath taken by him, but also constituted "misbehaviour" under Article 79(7) of the Basic Law. The severity of this act of denying and disrespecting the country and HKSAR, tarnishing the dignity of the national flag and regional flag was, in fact, of a more serious degree than that of defiling the national flag and regional flag. It is justifiable that such conduct should be censured.

I would also like to point out that, upon assumption of office as a Legislative Council Member, Dr CHENG has become a member of the government structure. Hence, he has the obligation to discharge the responsibilities of a Legislative Council Member, accept the fact that there are rules of the Legislative Council as well as the Rules of Procedure by which Members should abide. He should absolutely not deliberately desecrate the national flag and regional flag in the Chamber. Neither should he treat lightly the solemn oath taken by him upon assumption of office at the Legislative Council as if he had never made such a pledge before.

As a matter of fact, his act this time around is not the only inappropriate act of Dr CHENG. I remember that at the meeting following this incident, that is, at the Council meeting of 26 October 2016, Dr CHENG, who sat next to me, dashed to protest in front of the President's pedestal, holding the Rules of Procedure, the one I have in hand now. He was warned by the President, but he still failed to heed his advice. Eventually he was ordered by the President to leave the Chamber because of his grossly disorderly conduct. However, Dr CHENG had again failed to comply with the President's order, instead, he pushed aside the security personnel who advised him to leave. He ran to the back of my seat and threw a copy of the Rules of Procedure, which weighs about 1 kg. The copy of the Rules of Procedure was thrown from this side of my head to that side, causing an extremely loud sound, which had not only scared me, but also scared many colleagues. And then he jumped over the fence of more than 1 m tall at the back of the Chamber before returning to his seat from this position of where my seat is. Such behaviour, on the one hand, brazenly disrupts the order of society, and on the other, causes serious hazards.
Deputy President, I have to emphasize one point. On the one hand, Dr CHENG wants to be a Legislative Council Member, but on the other, he has engaged in these deliberate, repeated, childish, frivolous acts of desecrating the symbol of the country and HKSAR, and disrupting the order of the Council. These acts have failed to differentiate the insignificant from the significant, and crossed the bottom line by which Legislative Council Members should abide. His acts have also caused great nuisances and hazards to other Members and staff of the Council, reflecting that Dr CHENG has basically disregarded the Rules of Procedure. After these incidents, he still shows no signs of remorse and offers no apology. Therefore, I support today's censure motion to take punitive action against Dr CHENG, defend the dignity of the Council, arrest such undesirable trends, and prevent similar incidents from recurring.

Thank you, Deputy President.

DR PRISCILLA LEUNG (in Cantonese): Deputy President, at the Council meeting on 11 April 2018, I addressed the Council on the Report of the Legislative Council Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr CHENG Chung-tai in my capacity as Chairman of the Investigation Committee ("IC"). At that meeting, I gave an account of the findings of IC and stressed that IC had fully observed procedural justice and substantiated the two allegations made in the censure motion against Dr CHENG Chung-tai according to a most stringent standard. In accordance with Rule 73A(12) of the Rules of Procedure ("RoP"), IC was dissolved upon its submission of the report to the Council. I will not repeat contents of my speech on that day here, but I will express my personal views on the censure motion and make suggestions on how best the Legislative Council can handle Members' misconduct more effectively.

Deputy President, the Chamber of the Legislative Council is a solemn venue for policy debates and discussions. The public has high expectations of Legislative Council Members whose behaviour will set an example for society and young people to follow. First and foremost, I think the Legislative Council is not a children's playground. Members should have the basic knowledge and character to realize that, for instance, taking of the oath is a solemn ceremony in which insulting behaviour against China should not occur. As Members of the Legislative Council, we should understand that we must abide by the Basic Law
and swear allegiance to "one country, two systems". As clearly pointed out by the Court, any normal and reasonable person would understand that inverting the national flag, which represents the country, or the regional flag will definitely tarnish the dignity of the flags. In Hong Kong, any reasonable person would consider inverting the national flag an insulting act to the country. Publicly insulting the national flag in the Chamber at a Legislative Council meeting is equivalent to publicly insulting one's country and race, which is absolutely unacceptable to the public.

In October 2016, the oath-taking incident happened in the Legislative Council. Newly appointed Members refused to abide by the law and the rules as a matter of routine in order to gain exposure. They went so far as to publicly insult their own country and race. Consequently, they set themselves on fire and were disqualified. Being a newly appointed Member at the time did not mean Dr CHENG Chung-tai was free to act however he liked in the Council. As a matter of fact, the Council should state clearly its position in respect of such behaviour so as to give an account to society and send a clear message to potential lawmakers, that there are limits to how Members may act in the Chamber and that Members may not act as they like. Although Members are protected by the Legislative Council (Powers and Privileges) Ordinance, their behaviour must not go beyond the law in violation of the Basic Law and "one country, two systems".

The Legislative Council has its overall image. As a Member of the Legislative Council, I definitely do not wish to see this kind of incidents, which are really international scandals, to happen in the Council repeatedly. It is not easy to be elected as a Member of the Legislative Council, why did they not cherish the opportunity? I understand that Members have different stances and speak from different viewpoints, but that does not mean they have to put up a show in the Council and resort to radical acts to the extent of insulting the dignity of their own country and race which is completely outrageous and will only arouse a public outcry. I sincerely hope Members of the opposition camp who oppose the censure motion today will give thoughts to how the parliamentary culture in the Legislative Council should be.

A quality parliamentary culture in the Legislative Council or any parliament depends not on the efforts of only one camp. Many Honourable colleagues like to watch football matches. I do not watch football matches
I have only watched a few World Cup matches. As a layman, I really enjoyed watching the World Cup match between France and Brazil. Both teams had superb skills and the match went to penalty shoot-out after extra time. Whether victory or defeat, both teams deserved praises. I very much hope that the Legislative Council will restore its basic dignity and culture.

Deputy President, in the remaining time, I would like to present some thoughts on the existing mechanisms of the Legislative Council for handling misconduct of Members. According to RoP, there are currently three mechanisms for handling misconduct of Members, but all three have their respective shortcomings. The first mechanism is the moving of a motion which may result in the disqualification of a Member from office under RoP 49B, which is the rule under which this motion was moved. Under Article 79(6) of the Basic Law, a Member may be relieved of his duties as a Member of the Legislative Council when he is convicted and sentenced to imprisonment for one month or more for a criminal offence, or when he is censured for misbehaviour or breach of oath according to Article 79(7), which is the article under discussion today. The two mechanisms are different in that Article 79(7) does not cover the criminal offence referred to in Article 79(6), nor misconduct which is not serious enough to constitute the misbehaviour or breach of oath referred to in Article 79(7).

The second mechanism is that any member of the committee who publishes the evidence taken before a committee prematurely may be admonished or reprimanded under RoP 81(2); or that any Member who fails to comply with the requirements in RoP in respect of declaration of interest may be admonished, reprimanded or suspended by the Council on a motion to that effect under Rule 85 of RoP. This mechanism can impose different degrees of punishment on Members, but only for specific misconduct. The third mechanism is the most commonly invoked RoP 45(2) which provides that the President shall order a Member whose conduct is grossly disorderly to withdraw immediately from the Council for the remainder of that meeting. However, this mechanism is only applicable to Members' behaviour at a meeting ruled as grossly disorderly by the President, and the penalty is limited to the Member's withdrawal from that meeting. It is not applicable to a Member's misconduct outside the meeting in his capacity as a Member.
Deputy President, the Legislative Council has conducted investigations into Members' misconduct on two occasions. The last investigation was conducted into the allegations against Mr KAM Nai-wai, and this time against Dr CHENG Chung-tai. The Secretariat and Members have been looking into this issue and considered it necessary to put forward some directions for discussion for Members' record.

According to RoP 73(1)(d), the Committee on Members' Interests may issue advisory guidelines on matters of ethics in relation to the conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such, to ensure that Members' conduct must not be such as to bring discredit upon the Legislative Council …

DEPUTY PRESIDENT (in Cantonese): Dr LEUNG, I remind you that Members may debate how RoP can properly handle misconduct of Members on other occasions. This Council is now dealing with the motion moved under RoP 49B(1A) to censure Dr CHENG Chung-tai. You have spoken for nine minutes. Please be as concise as possible and come back to the subject of the motion.

DR PRISCILLA LEUNG (in Cantonese): Yes, Deputy President. It is necessary for me to complete this part of my discussion because there was originally a chapter five in the report of IC, but IC considered that this part of views should be presented by me personally. Hence, this is actually the efforts of the entire IC and the Secretariat over the past year or so which I really wish to express on this occasion. Otherwise, there will be no other suitable occasion to do so. I hope the Deputy President will allow me to finish my speech. This is actually a concerted effort of IC instead of my personal opinion. Please allow me to continue.

In the event of a Member acting in a manner that falls short of the general public expectation of Members of the Legislative Council, the guidelines are merely advisory and will not be binding on any Member. Did the gravity of inverting the national and regional flags by Dr CHENG Chung-tai reach such a degree as referred to in Article 79(7) of the Basic Law? This is very important. As asked by some Members of the opposition camp just now, was the behaviour
of Dr CHENG Chung-tai not unforgivably serious? Was it an action of general disorderly conduct? In our opinion, Dr CHENG Chung-tai's action of inverting the national flag in the Council constituted the breach of oath referred to in Article 79(7) of the Basic Law and exceeded the gravity of disorderly conduct in the Chamber subject to the President's ruling.

Members should recall that IC established in respect of the motion to censure Mr KAM Nai-wai was unable to establish all the facts, and thereby did not recommend censure. After investigation and because of the absence of the woman concerned in the hearings, IC considered that the facts as established did not constitute grounds for censure.

However, concrete evidence was available this time around. I must also point out that IC has not only considered the court judgment imposing a $5,000 fine on Dr CHENG Chung-tai, it also seeks to establish the house rules of the Council and identify what kind of behaviour should be considered a breach of oath under Article 79(7) of the Basic Law and subject to censure on top of the President's withdrawal order. In fact, repeated discussions have been made by IC and members unanimously recommended censure without any doubt. This showed the public that one of the actions constituting a breach of oath under Article 79(7) of the Basic Law is precisely Dr CHENG Chung-tai's insulting behaviour to the country and the race that day which has shown his refusal to uphold "one country, two systems" and the Basic Law. The Legislative Council should not condone this kind of behaviour, and therefore, is duty-bound to support the censure motion.

Therefore, I wish to state here that IC has considered various degrees of punishment and suggests the Committee on Rules of Procedure to look into sanctions that are missing in the existing mechanisms. In the last chapter of the investigation report on Mr KAM Nai-wai's case, it was also suggested that the Committee on Rules of Procedure should consider afresh the need to review the current mechanisms, but since it was the final year of that legislative term, no follow-up action was taken eventually. There is still some time left in this legislative term after today's discussion. I hope the issue will be officially referred to the Committee on Rules of Procedure for further study.

With these remarks, Deputy President, I support the censure motion.
MR WONG TING-KWONG (in Cantonese): Deputy President, a person's behaviour is the expression of his thinking. As a Legislative Council Member of the Hong Kong Special Administrative Region ("HKSAR") of the People's Republic of China, I do not quite understand why Dr CHENG Chung-tai holds such profound hatred for the People's Republic of China. He is a teacher and an education worker. I am not worried about whether he is diligent or whether he is competent and capable of discharging his duties as a Member. My worry is about his education of the next generation in his capacity as an education worker. It is indeed lamentable and worrying to see a teacher like him.

I have heard some friends from the media say that CHENG Chung-tai and HUI Chi-fung had "tripped the power supply" all of a sudden—you may know what "tripped the power supply" means—that is, short-circuited, you can say "short". I do not understand why his attitude was so hostile with profound hatred when he saw the national flags and regional flags placed by pro-establishment Members on their desks to the extent that he had to go over to their seats and invert the flags. And he had done so more than once. We could see that in the video recording. At that time, Dr CHIANG Lai-wan stopped him immediately. It was the first time. And then he came back and did it again for the second time. It was at that time that President Andrew LEUNG was able to stop him on time. It is beyond my comprehension that a young man can be so hostile towards the Motherland's present powerful strength, its international reputation and achievements on all fronts.

Today, many Members of the opposition camp dare not harbour the malicious deeds of CHENG Chung-tai blatanty because he has brought the malicious deeds from the streets to this solemn Council. I understand that they all know he has been convicted by the Court. If they still harbour CHENG Chung-tai's malicious deeds, which can be referred to as crime, I am doubtful of their concept of the rule of law. Nevertheless, in the remarks they made, they still harbour him.

The most ridiculous thing is, at the beginning of this meeting, Mr Dennis KWOK actually raised a point of order, alleging that the regional flag and the regional emblem placed in front of Ms Starry LEE do not comply with certain specifications, which is tantamount to disrespect. We are grown-ups. Don't be silly. Our regional flag and regional emblem carry symbolic meanings. The regional flag, national flag, regional emblem and national emblem carry symbolic meanings. We have seen many children's paintings. Are the national flags
these paintings painted in the way as formal as printed national flags? The answer is "no". However, we can see that their paintings are filled with passion of patriotism and respect for the country.

Hence, what I have found pathetic—apart from the malicious deeds of CHENG Chung-tai on that day—are the remarks made by certain people today. I do not know whether they are childish, naïve or whatever. I do not know how to describe them. There actually are Members of this standard in this Council!

I very much support the motion moved by Mr Paul TSE today. Thank you, Deputy President.

MR WU CHI-WAI (in Cantonese): Deputy President, regarding Dr CHENG Chung-tai's act of inverting the national flag, we in the Democratic Party have stated very clearly that his conduct was childish and should be harshly criticized. Nevertheless, is the act itself sufficient to constitute an excuse for disqualifying him from office, thereby stripping him of his seat? We hold that this has exceeded the appropriate proportion. Just now Dr Priscilla LEUNG has repeatedly emphasized that, under the existing mechanism, when we wish to punish a Member, the only available approach is to disqualify him from office and strip him of his seat. However, this practice is not at all desirable. From an objective perspective, what level of punishment is considered appropriate for each act? As a matter of fact, this should be dealt with in accordance with the principle of proportionality. For this reason, with respect to various acts regarded as misbehaviour but of different degrees, it seems to be quite undesirable for the existing practice to adopt a single approach to deal with them. Among various acts regarded as misbehaviour, should we make different arrangements of punishment according to their different degrees through the Committee on Rules of Procedure as soon as possible? For instance, punishments can range from giving verbal warnings, imposing fines, prohibition to attend meetings for a period of time, to the most severe punishment of disqualification from office.

The returning of a seat in the Council is based on a public mandate. The public mandate is a very important principle which the Council should take into account because this is the preference of society when a Member is elected. Of course, when electors make their choice, they may not know that the Member they choose will act in such a childish way. But regarding the issue of whether
this Member should remain or leave, would it be more appropriate if we allow electors who vote for the Member to decide, instead of stripping the Member of his seat through Council proceedings initiated by us? Stripping a Member of his seat under the circumstance disproportionality to the incident will be interpreted by the public and society as the Council exercising its powers and exploiting its powers to the fullest extent in order to resolve the issue of misbehaviour in the Council by a political tool. I hold that it is the expectation of society that we should consider carefully what the most appropriate approach to deal with the issue is.

The Democratic Party and CHENG Chung-tai are "entities of totally different principles who can never act together". Our views are very much different from his. Nevertheless, we do not hold that we should strip him of his seat because of this incident. His misbehaviour and childish conduct had been convicted by the Court. Some people think that the verdict was not enough. Anyhow, the verdict was a decision handed down by the Court after due inquiry into the case. The relevant decision is definitely worthy reference to us—from the legal perspective, the level of punishment will not deprive him of the eligibility to stand for election again in the future.

Just now a colleague asked whether he was in breach of the oath and whether his conduct had expressed his attitude of breaching the oath. These are various issues he has to face in the future. We all know that when he stands for the Legislative Council election again, he may have to face the problem of whether his Confirmation Form will be confirmed. This is the next issue to be dealt with. However, at this meeting, with respect to CHENG Chung-tai’s childish act of inverting the national flag, we can adopt various means to criticize and highlight his disorderly conduct and childishness. Nonetheless, the Democratic Party holds that the severity of his act is not commensurate with disqualifying him from office. For this reason, the Democratic Party will oppose this censure motion.

Thank you, Deputy President.

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 Mr Paul TSE to reply. Then, the debate will come to a close.

MR PAUL TSE (in Cantonese): Deputy President, if we examine the number of attending Members and their enthusiasm in making speeches, we can tell that this motion is very embarrassing to the non-establishment Members because not too many of them are present here. Only "Class Monitor" Charles Peter MOK has all along been here. I guess Dr CHENG Chung-tai is probably watching the live broadcast outside in the Ante-Chamber, just like we were there on the same spot watching the live broadcast of his desecration of the national flags and the regional flags that day.

Deputy President, during the previous motion debate proposed by me on 14 December 2016, I already gave a detailed speech on the motion and an opposition motion proposed by Mr CHAN Chi-chuen. As time is running out, I am afraid I cannot repeat many of the key principles therein. If necessary, I hope members of the public can refer to the relevant debate, which is worthy of recommendation and viewing.

Deputy President, I would like to highlight some of the voices of opposition and arguments heard today in making my responses. I would also like to thank the 10 Honourable colleagues from the pro-establishment camp for their speeches in which they expressed from various angles some of the views I entirely agree. Certainly, I also thank the four opposition colleagues for their voices of opposition to the relevant motion. I note that the arguments of Mr Alvin YEUNG and Mr WU Chi-wai, among others, are basically similar. So, let me begin by responding to their speeches.

First of all, they said it was most important that the Court had already made a judgment. In 2016, they suggested that the matter be left to the judgment of the Court and there was no need to take any action. Certainly, the Court has now made a judgment and we all know what it is all about. But more importantly, Deputy President, may I explain the reason for the placement of the mechanism in Articles 79(6) and 79(7) of the Basic Law? This mechanism can be described as a slap in the face of Members making such comments. It is because if no action should be taken if the Court has made a judgment, then there is no need to enact Articles 79(6) and 79(7) of the Basic Law. Members should recall that one of these two provisions provides that follow-up action can be taken against a Member when he or she is sentenced to imprisonment for one month or
more. Under the other provision, however, follow-up action can simply be taken against a Member for misbehavior or breach of oath without the need for the Court to make a judgment.

More importantly, Deputy President, when these colleagues said that follow-up action was unwarranted or should not be taken before the judgment possibly made by the Court, they similarly made use of a procedure outside the Court to pinpoint the conduct of two other Honourable colleagues, namely Mr Holden CHOW and Dr Junius HO. Although their conduct had nothing to do with criminality, Article 79(7) was invoked to censure them. Given such a double standard, everyone should clearly know what was going on.

Deputy President, the second point is about leaving the matter to the electors to judge. Actually, I rarely agree with the comments made by Ms Claudia MO. However, the one and only correct point made by her today is that it is futile to leave the matter to the electors to judge, as that will take a very long time. Secondly, if we are to leave it to the electors to judge—this was precisely the argument advanced earlier—why should we need Articles 79(6) and 79(7) of the Basic Law? The entire mechanism proves that we cannot rely on the judgment made by electors at a certain point of time in future. Instead, we should be able to exercise self-constraint and self-control to ensure that the Legislative Council—let us try our best—meets a certain standard.

More importantly, Deputy President, if we review the incident, we will find that Dr CHENG Chung-tai was actually very smart and can be described as very good at cheating electors. Even he himself has conceded this point. If Members have paid attention to online audio recordings they would have found that one audio clip was made public on 10 June 2011, and Dr CHENG conceded later that he was the speaker. In the audio clip, he said that "the public are idiots" and "people supporting LEUNG and YAU and causing WONG Yuk-man to be defeated in the election must have problems with their intelligence". Although he expressed regret at that time, for what did he regret? If he was not calling the public idiots, he must be calling his electors idiots. He himself even conceded that he pretended before the very eyes of the public to befriend LEUNG and YAU in order to solicit votes by fraud. It was his personal confession. How can such a confession be treated as an account to his electors? How can it be constructed as leaving the decision to electors? He is simply cheating and humiliating electors. When the time is ripe, he will again say that he will leave the decision to electors. The public are really idiots should they trust him again.
Deputy President, another claim is that some Members are making a mountain out of a molehill or engaging in empty talk, which is on the lips of Mr CHAN Chi-chuen all the time. Deputy President, this incident is different from the ones involving Mr Holden CHOW and Dr Junius HO. Undeniably, this incident involves a criminal case and criminal consequences. So, Members are absolutely not making a mountain out of a molehill. With regard to this point, I must refute Mr Kenneth LEUNG who, as a lawyer, described it as strict liability. He is terribly wrong because the offence itself clearly implies that the act must be deliberate, so once it is deliberate it is not strict liability. Unlike illegal parking, it must be proved that the offence in question is committed intentionally and deliberately, Mr LEUNG. I am afraid your degree … Of course, I hope you will not act like your colleagues, but your comment is absolutely misleading electors and the public.

Certainly, he was not the only one who misled the public. Before that, Mr Alvin YEUNG said in the previous debate that even primary students would not consider such an act illegal. Certainly, I hope Mr YEUNG will agree with me after review that even primary students know that such an act is illegal. Counsel, we will definitely make mistakes sometimes, but if you said even primary students should have known, then Members should have a clear idea of our level.

Deputy President, the Member involved in this case was ultimately fined $5,000. I certainly agree that the penalty does not meet the threshold stipulated in Article 79(6) of the Basic Law, that is, imprisonment for one month or more. Nevertheless, Members must bear in mind that this is merely one of the penalty levels of this criminal precedent, and this level per se does not mean anything. Firstly, it is not directly related to our current discussion because there is simply no need for us to rely on the outcome of a criminal precedent to take forward this motion since we prefer to invoke Article 79(7) of the Basic Law. Secondly, the conviction itself is not a decisive factor.

Former Legislative Council Member LEUNG Kwok-hung was once convicted of criminal offences and accordingly sentenced to imprisonment for more than one month. It was I who proposed a motion at that time to give Members an opportunity to debate what to do with this criminal outcome. Honestly, five pro-establishment Members, including me, voted against the motion. In our opinion, although the threshold stipulated in Article 79(6) of the Basic Law was met as the outcome of the criminal case was imprisonment for more than one month, we considered it unnecessary to remove Mr LEUNG from
office upon making political judgments with various political factors taken into consideration. The entire mechanism is fair. Members may make political judgments on the relevant case to reflect the public's expectations on us, as well as public opinion.

Deputy President, when we examine Article 79(7) of the Basic Law this time around, we should not, as I said earlier, merely consider the factor that the case has been dealt with by the Court. More importantly, it was pointed out earlier by a number of Honourable colleagues, including Mr LAU Kwok-fan and Mr LUK Chung-hung—I would like to express my gratitude to them—that a person who has committed a criminal offence will not even be employed as a security guard because the nature of this job requires someone who has no criminal record, not to mention professionals such as lawyers, doctors, university professors or lecturers. Actually, it is precisely for this reason that the relevant university has taken action to strip Dr CHENG Chung-tai of his teaching post, on top of the sentence meted out by the Court. This is the fact. It is therefore absolutely wrong for Members to say that a full stop should be put to the case since it has been dealt with by the Court.

Deputy President, I certainly agree that the definition of "misbehaviour" in Article 79(7) of the Basic Law is unclear. I am very grateful to Dr Priscilla LEUNG for introducing the entire report of the Investigation Committee. Actually, I have read the report from cover to cover and consider that the relevant issue has been dealt with seriously.

Deputy President, I also share the remarks made by Members including Mr Kenneth LEUNG that a discussion was already held in 1999 by the Committee on Rules of Procedure on the definition of "misbehaviour". The salient points of the discussion included two directions mentioned by Mr Kenneth LEUNG. Firstly, consideration should be given to what happened to a Member while he or she is discharging his or her duties. Secondly, the parliamentary assembly of other countries will criticize a Member or even disqualify him or her only when its reputation has been seriously compromised.

Except for Articles 79(6) and 79(7) of the Basic Law, there is no mechanism in Hong Kong to deal with the disqualification of a Member. Just now, Dr Junius HO explained the difficulties in doing so. I am grateful to Mr WU Chi-wai for suggesting the need to amend the Basic Law. I hope they
will not say that we will not amend the Basic Law when they consider it necessary to do so in future. Members seem to think that we are subject to restrictions because we cannot take a middle-of-the-road approach.

(The President resumed the Chair)

President, as time is running out, I would like to make one point only. On the one hand, the Court has handed down its judgment; and on the other, the Investigation Committee did go through a stringent and impartial procedure before drawing a conclusion on how to deal with the incident.

From my personal point of view, which I believe is correct, in deciding to vote for or against the motion, Members should make a political judgment in addition to studying the relevant report and the Court's judgment. Besides the opposing voices and views in society, the expectations of members of the community on us, and our own responsibilities, Members are absolutely free to make a judgment having regard to the conduct of Dr CHENG before, during and after the incident. In other words, Members should examine the entire incident from a macroscopic perspective before making a judgment, rather than focusing on the Court's judgment and merely considering if the precedent meets the liability requirements or, like the approach taken by schools, universities or professions, focusing on whether his conduct complies with the guidelines for his profession. The Legislative Council should examine this incident from the angle of society as a whole, including his conduct before, during and after the incident.

I thank the many Honourable colleagues who spoke earlier, including Ms Starry LEE, Mr Martin LIAO, Mr LAU Kwok-fan, Mr LUK Chung-hung, Dr CHIANG Lai-wan, Mr MA Fung-kwok and Mr WONG Ting-kwong, for expressing their views on the incident, including what was happening inside the Chamber at that time, particularly the events leading to the incident, the taking of oaths, the live broadcast of the national flags and oath-taking, and the repeated acts of the relevant Member despite numerous warnings. Since I have mentioned all these matters in the previous debate, there is no need for me to dwell on them further now.

The only thing Dr CHENG Chung-tai did after the incident was put the blame on someone and described the incident as a political struggle. What is more, he accused other Members of pledging allegiance to the Mainland and
trampled upon the dignity of the Legislative Council, saying a bad precedent would thus be set. When it comes to this point, President, I note that he cast a supportive vote in the motion debate pinpointing Dr Junius HO.

Second, what else did Dr CHENG Chung-tai do besides putting the blame on someone? He has done nothing at all, not to mention showing remorse or offering apologies. Although Mr HUI Chi-fung also appeared to be suffering from a mental condition, at least he did offer an apology. Dr CHENG Chung-tai has never explained the reasons for his act. CHEUNG Sin Ying, a participant of a students' movement, at least dared say on a public occasion discussing the enactment of a national anthem law that "hearing the national anthem made her want to throw up" and explain the reasons behind it. Mr LEE Kin-yun, who was accused of damaging the national flag, also dared speak out and acted. He explained that he was dissatisfied with many events taking place on the Mainland at that time, and he also found the country hypocritical. CHENG Chung-tai, on the contrary, has never told us the reasons for his act and we have to guess his motive. Just now, one of our Honourable colleagues made a deduction about his motive, and I very much share his view.

Third, insofar as this criminal case is concerned, CHENG Chung-tai has pleaded not guilty. Certainly, he is free to plead not guilty. Although he did not lodge an appeal, he kept arguing some technical issues. He has even used the words "daft" and "stupid" to describe Members from the pro-establishment and pan-democratic camps who criticized him for behaving in a ridiculous, meaningless and puerile manner. He was behaving like former Legislative Council Member WONG Yuk-man who repeatedly challenged other Members by claiming, "You can impeach me if you have the courage. Stop pretending to condemn me here. All of you from the pan-democratic camp have no spine."

Furthermore, in a letter issued on 4 May and addressed to all Members except me, he followed the example of his mentor and addressed himself repeatedly as "本席" in Chinese in a most arrogant manner. He then added that the matter should be decided by electors as he was not guilty of misbehaviour, though he dared not deny breaching the oath. Actually, I have explained why this guideline is no good.

President, I thank Honourable colleagues for supporting this motion.
PRESIDENT (in Cantonese): Before I put the question on the motion, I wish to remind Members that in accordance with Article 79(7) of the Basic Law and Rule 49B(3) of the Rules of Procedure, the passage of the motion shall require a two-thirds majority vote of the Members present.

I now put the question to you and that is: That the motion moved by Mr Paul TSE be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr CHU Hoi-dick rose to claim a division.

PRESIDENT (in Cantonese): Mr CHU Hoi-dick 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 Tommy CHEUNG, 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, Mr Paul TSE, Mr Michael TIEN, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr LEUNG Che-cheung, Ms Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr Martin LIAO, Mr POON Siu-ping, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan, Mr Jimmy NG, Dr Junius HO, Mr HO Kai-ming, Mr Holden CHOW, Mr SHIU Ka-fai, Mr Wilson OR,
Ms YUNG Hoi-yan, Mr CHAN Chun-ying, Mr CHEUNG Kwok-kwan, Mr LUK Chung-hung, Mr LAU Kwok-fan, Mr Kenneth LAU, Mr Vincent CHENG and Mr Tony TSE voted for the motion.

Mr James TO, Mr LEUNG Yiu-chung, Prof Joseph LEE, Ms Claudia MO, Mr WU Chi-wai, Mr Charles Peter MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Dr KWOK Ka-ki, Mr Dennis KWOK, Dr Fernando CHEUNG, Dr Helena WONG, Mr IP Kin-yuen, Mr Alvin YEUNG, Mr Andrew WAN, Mr CHU Hoi-dick, Mr LAM Cheuk-ting, Mr SHIU Ka-chun, Dr Pierre CHAN, Ms Tanya CHAN, Mr HUI Chi-fung, Mr KWONG Chun-yu, Mr Jeremy TAM, Mr Gary FAN and Mr AU Nok-hin voted against the motion.

THE PRESIDENT, Mr Andrew LEUNG, did not cast any vote.

THE PRESIDENT announced that there were 65 Members present, 39 were in favour of the motion and 25 against it. Since the question was not agreed by a two-thirds majority vote of the Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Regarding the motion on "Report of the Joint Subcommittee on Long-term Care Policy", after consulting Dr Fernando CHEUNG, I consider it more appropriate to debate the motion in one go in the next meeting.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11:00 am on Wednesday, 23 May 2018 for the holding of the Chief Executive's Question Time, which will be immediately followed by the regular meeting of the Legislative Council.

Adjourned accordingly at 5:33 pm.
Annex II

Employment (Amendment) Bill 2017

Committee Stage

Amendments moved by Dr the Honourable Fernando CHEUNG Chiu-hung

<table>
<thead>
<tr>
<th>Clause</th>
<th>Amendment Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>4(1)</td>
<td>In the proposed section 32N(3C)(b), by adding “subject to subsection (3CA),” before “must”.</td>
</tr>
<tr>
<td>4(1)</td>
<td>By adding—</td>
</tr>
<tr>
<td></td>
<td>“(3CA) If the employer has engaged a replacement for the employee, the court or Labour Tribunal must not take that fact into account in making a finding for the purposes of subsection (3B), unless—</td>
</tr>
<tr>
<td></td>
<td>(a) the employer shows that it was not practicable for the employer to arrange for the employee’s work to be done without engaging a replacement; or</td>
</tr>
<tr>
<td></td>
<td>(b) the employer shows that—</td>
</tr>
<tr>
<td></td>
<td>(i) the employer engaged the replacement after the lapse of a reasonable period, without having heard from the employee that the employee wished to be reinstated or re-engaged; and</td>
</tr>
<tr>
<td></td>
<td>(ii) when the employer engaged the replacement, it was no longer reasonable for the employer to arrange for the employee’s work to be done except by a replacement.”.</td>
</tr>
</tbody>
</table>
### Employment (Amendment) Bill 2017

#### Committee Stage

Amendments moved by Dr the Honourable Fernando CHEUNG Chiu-hung

<table>
<thead>
<tr>
<th>Clause</th>
<th>Amendment Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>In the proposed section 32NA(1)(b), by deleting everything after “that is” and substituting “6 times the employee’s average monthly wages as calculated in accordance with section 32NB.”.</td>
</tr>
<tr>
<td>5</td>
<td>By deleting the proposed section 32NA(3).</td>
</tr>
</tbody>
</table>
Employment (Amendment) Bill 2017

Committee Stage

Amendment moved by Dr the Honourable Fernando CHEUNG Chiu-hung

<table>
<thead>
<tr>
<th>Clause</th>
<th>Amendment Proposed</th>
</tr>
</thead>
</table>
| 5      | In the proposed section 32NA(3), by deleting “Commissioner may, by notice published in the Gazette,” and substituting “Legislative Council may by resolution”.

[NEGATIVED]