OFFICIAL RECORD OF PROCEEDINGS

Thursday, 29 November 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 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 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 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, B.B.S., 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 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

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

THE HONOURABLE HUI CHI-FUNG

THE HONOURABLE LUK CHUNG-HUNG, J.P.

THE HONOURABLE LAU KWOK-FAN, M.H.

DR THE HONOURABLE CHENG CHUNG-TAI

THE HONOURABLE KWONG CHUN-YU

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.

THE HONOURABLE CHAN HOI-YAN

MEMBERS ABSENT:

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

THE HONOURABLE WONG KWOK-KIN, S.B.S., J.P.

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

THE HONOURABLE KWOK WAI-KEUNG, J.P.

DR THE HONOURABLE ELIZABETH QUAT, B.B.S., J.P.

THE HONOURABLE TANYA CHAN

THE HONOURABLE CHEUNG KWOK-KWAN, J.P.

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

THE HONOURABLE JEREMY TAM MAN-HO

PUBLIC OFFICERS ATTENDING:

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

THE HONOURABLE EDWARD YAU TANG-WAH, G.B.S., J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

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

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

CLERKS IN ATTENDANCE:

MS ANITA SIT, ASSISTANT SECRETARY GENERAL

MISS FLORA TAI YIN-PING, ASSISTANT SECRETARY GENERAL

MS DORA WAI, ASSISTANT SECRETARY GENERAL

GOVERNMENT BILLS

Second Reading of Government Bills

Council became committee of the whole Council.

Consideration by Committee of the Whole Council

CHAIRMAN (in Cantonese): Good morning. Council now becomes committee of the whole Council to consider the Travel Industry Bill.

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

TRAVEL INDUSTRY BILL

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

CLERK (in Cantonese): Clauses 1, 3, 18, 20 to 31, 33, 34, 35, 40, 41, 45, 46, 48 to 55, 57, 61, 63, 65 to 69, 71 to 74, 76 to 88, 91 to 107, 109 to 114, 116, 118, 119, 123 to 127, 129 to 136, 138 to 152, 154 to 162, 166, 168 to 172, and Schedules 2, 3, 4, 6, 7 and 8.

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

MR YIU SI-WING (in Cantonese): Chairman, I am going to express my views on the clauses with no amendment standing part of the Travel Industry Bill ("the Bill"). First, I support the new requirement of appointing authorized representatives ("ARs") set out in the Bill. At present, the Travel Agents Ordinance (Cap. 218) ("TAO") stipulates that, in addition to a controller, one officer who meets the requirements concerned should act as the responsible

person. Whenever a travel agent is penalized, given demerit points or has its licence suspended, by the Travel Industry Council ("TIC"), for having any problems or contravening any regulations, such as engaging in coerced shopping and selling goods not matching the sale descriptions, its controller and responsible officer will shift the responsibility onto each other. Even if the complaint about the contravention is substantiated, given that no individual will incur any criminal liability, the responsible persons may simply settle the case by closing their business.

The current threshold for establishing a travel agent is relatively low, and the cost of investing in another company is not high. Since only $500,000 in registered capital is required for a business to be relocated, the deterrent effect is insignificant. To avoid heavy penalties for repeated non-compliance, some travel agencies with adequate capital will make investment to set up a number of travel agencies and engage tourist guides as the responsible persons of these companies.

To stamp out this situation, travel agents to be established in the future are required to deposit guarantee money of $500,000 with the Travel Industry Authority ("TIA") in advance, and each travel agent will also be required to appoint one AR. If a travel agent contravenes the requirements of the new Ordinance, not only may the licensee be held legally liable, its AR may also be held criminally liable. Hence, the new Ordinance will be conducive to enhancing the deterrent effect.

Under the Bill, each AR must meet the specific qualification requirement: completion of Form 5 education and possession of at least five years of management experience in the travel industry; or possession of at least 10 years of management experience in the travel industry. Since ARs are required to take more responsibilities, they will certainly operate the business carefully to ensure that their companies are operating legally under effective management and control. This will be conducive to enhancing the overall quality of Hong Kong's travel industry.

Secondly, on levy-related matters, the biggest difference between the Bill and the current TAO lies in the new requirement of levy payment. At present, TIC requires all receipts of tour groups, including tour packages, to be franked. Franking provides a proof of payment of the Travel Industry Compensation Fund levy, which will also be a proof for claiming compensation in the event of an

accident. Only franked receipts can be given protection under the Travel Industry Compensation Fund. At present, a tourist who concurrently purchases travel-related products (including any two of the following three items—transportation, accommodation and itinerary arrangement) is required to pay a levy. A consumer who purchases these products separately is not required to pay the levy because separate purchase of these products will not fall under the definition of tour group.

The Government has proposed under the Bill that, upon establishment of TIA, a consumer shall pay the levy even if he/she purchases the travel products for the same trip separately at different times provided that the products include any two of the following three items—transportation, accommodation and itinerary arrangement.

The trade understands the legislative intent of the Government. With the advancement of technology, the prices of air tickets and hotel products are transparent. Due to the growing popularity of online transactions, more and more people are inclined to book such travel products as transportation before they go on a trip. Subsequently, they will book the hotels, admission tickets and tours when prices are suitable. The trade is concerned about the difficulties in implementing the new Ordinance. If a traveller purchases travel products of the same trip separately through various channels, such as online platform, phone or different branches of travel agents, it will basically be impossible to track the time of the purchases. While the records in the computer system of large-scale travel agents are accessible, a majority of travel agents, which are micro, small and medium enterprises, are not equipped with computer system capable of retrieving the transaction information of travellers in a timely manner. In addition, most products, such as land travel tickets, ferry tickets and admission tickets for tourist attractions, are not purchased by way of real name registration. In some cases, hotels only keep the record of the persons who make a reservation, without keeping the information about accompanying persons. Therefore, the arrangement under which levies are imposed in respect of products separately purchased for the same trip will create enormous operational difficulties for the trade by increasing the pressure of frontline practitioners and the risks of companies being penalized for non-compliance.

According to the advice sought, the trade is generally of the view that there are difficulties in practical operations. In this connection, the Government has proposed adding a disclaimer in response to the demands of the trade. TIA will

clearly prescribe a standard sentence as an instruction. Travel agents are required to display the instruction clearly at their shops, online transaction platform and telephone system to remind customers that if they have purchased products for the same tour with the same travel agent, they should require the travel agent to frank the receipts. Provided that travel agents have displayed the instruction as required, even if they have failed to frank the receipts, the Government will absolve them of their liability. Of course, the Government also has the responsibility to step up promotion to and education of consumers. As the Government has already made the pledge, travel agents have no choice but to reluctantly accept this new arrangement.

Thirdly, on matters relating to the electronic levy system ("e-levy system"), the Government has originally planned to launch the e-levy system after TIA is established. However, I have learnt earlier that TIC has completed the development of this system, which can be rolled out anytime. Initially, the Government did not agree to put both the e-levy system and the traditional franking approach in place as a dual-track system. However, after my repeated insistence, and after seeking the advice of the Department of Justice, the Government has agreed to the dual-track approach. The e-levy system will be launched this June for voluntary use. Recently, the supplier of traditional franking machines has notified TIC that that its parent company had decided to terminate the maintenance service starting 30 June next year. In other words, from that day onwards, the 1 700-odd travel agents in Hong Kong can only use electronic franking. Fortunately, I had insisted on negotiating with the Government earlier, such that the crisis of travel agents having no franking system can be forestalled.

In addition, the closure of the Action Travel Services Limited ("Action Travel") has also shed light on the problems arising from the traditional franking practice. In the aforesaid incident, Action Travel had not franked the receipts after receiving payment from customers due to time difference. If the electronic franking system was used, immediate franking would be required, and the problem would have been resolved.

Fourthly, other levy-related issues. During the scrutiny of the Bill, the Government has clarified some concerns raised by the trade regarding the levy. The first question is: Are customers required to pay levies if they pay fares after the departure of tour groups? At present, some business tour groups require travel agents to make advance payments which will only be settled after their

trips. Based on the previous understanding of some members of the trade, levies will only be imposed on fare payment made before departure, whereas no levy will be required in respect of fare payment made after the completion of tours. The Government has taken the opportunity to clarify that levy payment is required no matter outbound tour fares are paid before or after the trip. The Government has advised customers to better pay part of tour fares before departure in order to get the franking. In the event of any accident during the trip, they will be given protection from the Compensation Fund by virtue of the franking.

The second question is, is levy payment required for taking part in self-paid activities or paying tips at destinations? The Government originally responded that levy payment was required for all activities organized by Hong Kong travel agents. However, I have subsequently explained to the Government that it has been a very common practice for overseas travel agents which receive outbound tours to directly charge travellers participation fees or tips, which will not be deposited into the accounts of Hong Kong travel agents at all. The imposition of levies in respect of such fees will incur unnecessary costs and expenses to Hong Kong travel agents, which will also be operationally infeasible. Thereafter, the Government has taken my suggestion on board. Travellers are not required to pay any levy in respect of fees paid to overseas receiving agents and tourist guides during outbound tours, and no franking is required. However, a levy is required in respect of all fees paid in Hong Kong, which should be regarded as part of tour fares.

Fifthly, the regulation of unlicensed travel agents. Currently, the Travel Agents Registry ("TAR") is responsible for issuing travel agent's licences, while TIC is responsible for regulating the activities of travel agents. However, when it comes to investigation, gathering of evidence and prosecution, TAR and TIC have to refer their cases to the Police for follow-up. According to the document submitted by the Government to the Bills Committee on Travel Industry Bill, between 2013 and 2016, a total of 240 suspected cases have been referred by TAR to the Police for investigation. Prosecution has only been instituted against 11 cases, representing a conviction rate of a mere 4.2%. In a majority of the convicted cases, penalties in the form of fines have been meted out, with the maximum fines being $5,000. Obviously, the deterrent effect has been insufficient.

In the past few years, TIC, TAR and I have received a number of complaints against travel agents suspected of unlicensed operation. We have unanimously agreed that the processing of complaint cases referred to the Police has been slow and prosecution work has been ineffective. In addition, given the lack of deterrent effect of the sentence, unlicensed operations of travel agents have taken place from time to time, which is extremely unfair to travel agents operating legally. In some complaints I had received from the trade, the complainants had provided the exact arrival and departure dates of a number of tour groups, and even the hotel names, and they had agreed to assist in police investigation with their names disclosed. After the referral of those complaints by TAR to the Police for follow-up, the tour groups involved had already departed Hong Kong before the Police formally contacted the complainants. For some of the complaint cases referred by me, it had taken as long as 20 months to have the investigation findings. I believe that this has to do with the large caseload to be handled by the Police and the lack of understanding of the relevant laws. These examples illustrate the spate of problems arising from TAR's lack of law enforcement power.

Upon implementation of the Bill, TIA will be vested with law enforcement power, which will be conducive to combating unlicensed travel agents, and unlicensed tourist guides and tour escorts. Under the new Ordinance, TIA may, based on reasonable suspicion, follow up on suspected offence cases or conduct investigation into cases where public interests have been violated or the reputation of the travel trade has been tarnished. Investigators appointed by TIA may apply for a warrant from the magistrate to enter and search any suspected premises, for the purpose of conducting an investigation. The new Ordinance also empowers investigators to gather evidence from suspected vehicles and vessels at any reasonable time, or even conduct targeted investigation by means of decoy operations. TIA's inspection officers may enforce the law based on their professional judgment. Under the new Ordinance, penalties will also be increased to significantly enhance the deterrent effect.

Since the commissioning of the Hong Kong-Zhuhai-Macao Bridge more than one month ago, the problems arising from unauthorized Mainland tour groups crossing the boundary and illegal Mainland tourist guides have drawn the attention of society and the travel trade. The grey areas in the current laws have apparently made law enforcement difficult. Thankfully, the authorities have notified the Guangdong Province Culture and Tourism Unit ("the Unit") of the situation. With the Unit's support and the cooperation of various parties, the

situation at the Hong Kong-Zhuhai-Macao Bridge have improved in the recent weeks. However, we cannot only rely on the help of others. The new Ordinance, when enforced in the future, will definitely help the Government stamp out or reduce unlicensed operations, and will also safeguard the reputation and image of Hong Kong's tourism industry.

Sixthly, regarding the implications of the Bill for the financial situation of the trade, there are 1 700-odd travel agents in Hong Kong, 90% of which are micro, small and medium enterprises ("MSMEs"). Facing competition from direct marketing of travel websites and airlines, these MSMEs are operating with increasing difficulty. Many employers of small and medium enterprises cannot even earn their wages, and they can barely maintain the operation of their company. Any cost-increasing approach will also put pressure on these companies. Under the new Ordinance, similar to other statutory bodies, TIA is financially independent of the Government and will run on a self-financing basis in the long run. After my repeated explanation, the Government has also understood the difficulties facing the trade and agreed to provide the newly established TIA with a one-off capital grant as seed money to cover part of TIA's daily expenses. The Government has guaranteed at the same time not to raise outbound levies and licence fees for the first five years after TIA's establishment. However, the trade has remained concerned that the Government will unexpectedly increase the levies significantly after five years due to excessive expenses. Hence, I strongly strive for an extension of the guarantee period to 10 years to relieve the pressure of the trade. As the Government upholds the principle of prudent financial management, I will continue to lobby the authorities to take my suggestions on board. As to the amount of seed money, following a study conducted by the Government and a consultant *(The buzzer sounded)* …

CHAIRMAN (in Cantonese): Mr YIU, please stop speaking.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr YIU Si-wing, you may continue to speak.

MR YIU SI-WING (in Cantonese): I have one more point to make. The Government has taken my view on board by planning to allocate $350 million as the seed money, the investment returns from which will finance the operation of TIA in future.

However, I am concerned that the government funding is insufficient for covering TIA's future operational expenses. For this reason, I hope that the Government will raise the funding to $500 million, so that increased investment returns will alleviate the pressure on TIA's expenses and costs, and will reduce the chances of increasing levies or licence fees in future. I urge the Government to consider our views.

Chairman, I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, yesterday I responded to most of the views raised by Mr YIU Si-wing in his capacity as the Chairman of the Bills Committee on the Travel Industry Bill. I might give a supplementary remark in the debate later, but I do not have anything further to add at this stage. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses and schedules read out by the Clerk stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): The committee now deals with the clauses and schedules with amendments as well as a new clause.

I now propose the question to you and that is: That the following clauses and schedules stand part of the Bill.

CLERK (in Cantonese): Clauses 2, 4 to 17 and 19, Division 8 of Part 2 (namely clause 32), clauses 36 to 39, 42, 43, 44, 47, 56, 58, 59, 60, 62, 64, 70, 75, 89, 90, 108, 115, 117, 120, 121, 122, 128, 137, 153, 163, 164, 165 and 167, and Schedules 1, 5, 9, 10 and 11.

CHAIRMAN (in Cantonese): The Secretary for Commerce and Economic Development will move two groups of amendments as set out in the Appendix to the Script: The first group of amendments cover all the clauses and schedules with amendments by the Secretary, including deletion of Division 8 of Part 2 (namely clause 32) and clause 90; the second group of amendment seeks to add new clause 91A to the Bill.

Besides, Mr LUK Chung-hung will propose his amendments to clauses 37, 38 and 39.

Members may refer to the Appendix to the Script for details of the amendments.

Members may now proceed to a joint debate on the original clauses and schedules as well as the amendments (including the new clause).

I will first call upon the Secretary to speak and move his first group of amendments. Then I will call upon Mr LUK Chung-hung to speak, but he may not move his amendments at this stage.

Upon the conclusion of the joint debate, the committee will first vote on the Secretary's first group of amendments, and then deal with the other amendments according to the arrangements set out in the Appendix to the Script.

Secretary, you may move your first group of amendments.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I move my first group of amendments to amend clauses 2, 4 to 17, 19, 36, 42, 43, 44, 47, 56, 58, 59, 60, 62, 64, 70, 75, 89, 108, 115, 117, 120, 121, 122, 128, 137, 153, 163, 164, 165 and 167 as well as Schedules 1, 5, 9, 10 and 11, and delete Division 8 of Part 2 (namely clause 32) and clause 90, as set out in the Appendix to the Script. These amendments have been set out in a paper circularized to Members.

Chairman, I will now briefly explain my major amendments which cover areas including: licensing regimes under the new regulatory framework; meaning of carrying on travel agent business; composition of the Travel Industry Authority ("TIA") and appeal board; functions of disciplinary committee; and relevant requirements on revocation or suspension of licence, publication of advertisements relating to the provision of travel services and service of summonses or notices.

Firstly, regarding the licensing regime for travel agents, the original text of the Travel Industry Bill ("the Bill") provides that a person who intends to carry on travel agent business must apply for a travel agent licence, and the licensing body must not issue such licence unless it is satisfied that the person will carry on travel agent business on suitable premises. A licensed travel agent who intends to carry on travel agent business on more than one premises must apply for a branch licence for each additional premises and meet the specified staffing and capital requirements for each and every additional premises.

With rapid technological advancement, consumers of travel products no longer stick to physical stores as the operation modes of travel agents are evolving. In view of this, we have proposed to amend the Bill so that having suitable premises (for the operation of physical stores) will no longer be a prerequisite for applying for travel agent licence, and the staffing and capital requirements for operating a physical store will be deleted accordingly. In other words, licensed travel agents will be allowed to carry on travel agent business solely through websites or other communication networks. To tie in with these amendments, we have proposed a new provision to the Bill to require all licensed travel agents using websites or other communication networks for carrying on travel agent business to clearly state their licence numbers on these platforms so that their customers can learn about their licensed online travel agent status. Other application requirements of travel agent licence, including those relating to capital, guarantee money, authorized representative and suitability, are

maintained in the amended Bill. If a licensed travel agent intends to run physical stores, he/she must apply for a business permit for each of his/her physical stores. Please see different clauses as well as Schedules 1, 5 and 10 of the Bill for the relevant amendments.

Secondly, as regards the meaning of travel agent business, the original text of the Bill has made reference to the Travel Agents Ordinance to provide that a person does not carry on travel agent business and is not required to obtain a travel agent licence if the accommodation that he/she obtains for the other person is intended to be occupied by that other person for 14 or more days. The Chairman of the Bills Committee has, however, pointed out to the Government that under the Hotel and Guesthouse Accommodation (Exclusion) Order, an existing subsidiary legislation, premises in which accommodation is exclusively provided on the basis of a minimum period of 28 continuous days for each letting are exempt from licensing. In order to dovetail the Bill with the stipulation in the Hotel and Guesthouse Accommodation (Exclusion) Order, we have proposed to amend the Bill by providing that a person does not carry on travel agent business and is not required to obtain a travel agent licence if the accommodation that he/she obtains for the other person is intended to be occupied by that other person for 28 or more days. Please see clause 4(4)(b)(ii) and (c)(ii) for the relevant amendments.

Besides, according to the original text of the Bill, "Mainland inbound tour group" is defined as a tour group consisting of two or more visitors from the Mainland. It is also provided in the original text of the Bill that a person who obtains services for a Mainland inbound tour group organized by a person in the Mainland carries on Mainland inbound tour group business and is thus subject to the regulation of TIA.

Yet, in the Mainland's regulatory regime, there is no lower limit on the number of participants to form a tour group. After making further clarification with the State's Ministry of Culture and Tourism, we have proposed a technical amendment to the relevant clause and deleted the aforesaid lower limit on the number of tour group members. We have also made a proposed amendment at the request of members to clarify that a person carries on Mainland inbound tour group business and is thus subject to the regulation of TIA if he/she obtains services for a Mainland inbound tour group organized by a Mainland travel agent. Please see clauses 2(1), 5, and 6(1A), (3) and (5) for the relevant amendments.

Thirdly, as for the composition of TIA, the original text of the Bill provides that TIA is to consist of one Chairperson (a non-trade member), one Vice-chairperson (the Commissioner for Tourism) and not more than 28 ordinary members (among whom not more than 15 are non-trade members and not more than 13 are trade members).

After listening to the views of the Bills Committee, we have proposed to amend the relevant clause by specifying that among the 28 ordinary members, at least 4 but not more than 13 should be trade members representing travel agents in different travel businesses and of different sizes as well as frontline practitioners. We have also proposed to add in the provisions stipulating that among the trade members who are appointed as ordinary members, at least one but not more than 3 are engaged in the outbound travel agent business; at least one but not more than 3 are engaged in the inbound travel agent business; at least one but not more than 3 are members of the Board of Directors of the Travel Industry Council of Hong Kong ("TIC"); and at least one but not more than 4 work as tourist guides or tour escorts.

We believe the composition mentioned above will allow TIA to have a comprehensive understanding of the overall operation of the trade. TIC, being a trade association experienced in practising trade regulation, can continue to act as a key bridge of communication between TIA and the trade, while the representatives of tourist guides and tour escorts can give views on the work conditions of frontline trade practitioners. Please see Schedule 9 for the relevant amendments.

Fourthly, regarding the composition of appeal board, the original text of the Bill provides that in appointing the members of the appeal board, the chairperson of the appeal panel must ensure that a majority of the members of the board are non-trade members. Some members suggested specifying in the relevant clause that the appeal board must include trade members to ensure that the trade's operations can be taken into account. In view of members' opinions, we have proposed to amend the relevant clause by providing that in appointing the members of the appeal board, the chairperson of the appeal panel must ensure that the chairperson of the board and at least half of the ordinary members are non-trade members; and at least one of the ordinary members is a trade member. Please see clause 122(3) for the relevant amendments.

Fifthly, with regard to the requirements on revocation or suspension of licence, the original text of the Bill provides that the revocation or suspension of a licensed travel agent's licence does not operate to avoid any obligation or liability under any agreement, transaction or arrangement relating to the provision of a travel service that is entered into by the travel agent with a customer at any time before the revocation or suspension. The travel agent should continue the arrangement of ongoing outbound tours, arrange outbound tours for customers, obtain travel services for customers or follow up as appropriate to avoid prejudicing consumer interests.

The aforesaid stipulation seeks to protect consumer interests. In order to clarify our policy intent, we have proposed to add the following provision into the Bill: when a licensed travel agent acts for the purpose of complying with his/her obligation or liability under any of the above mentioned agreement, transaction or arrangement after the revocation or during the period of suspension, the travel agent is not to be regarded as carrying on travel agent business without licence but is required to comply with the clauses applicable to a licensed travel agent, including the requirements of being liable to disciplinary actions and criminal sanctions. Please see clause 115 for the relevant amendments.

Sixthly, regarding the publication of advertisements, the original text of the Bill provides that a person must not publish an advertisement relating to the provision of a travel service unless the travel service mentioned in the advertisement is provided by a licensed travel agent; and the number of the licensed travel agent's licence is stated clearly in the advertisement. It is an offence to contravene either rule.

Some members pointed out that a person who published, or caused to be published, an advertisement might not have sufficient legal sense, knowledge or experience to judge whether it was lawful or not to publish a particular advertisement and might hence violate the law inadvertently. In this connection, the Government has proposed to amend the Bill by providing that it is an offence for a person to publish, or cause to be published, an advertisement which he knows is in breach of the rules mentioned above. It is also an offence for a person to be reckless as to whether the advertisement he publishes, or causes to be published, is in breach of the rules mentioned above. For this type of cases, the burden of proof falls on the prosecution and the defendant does not have to self-incriminate himself. Please see clause 165 for the relevant amendments.

Seventhly, as regards the service of summonses or notices, the original text of the Bill provides that a notice or summons should be served by delivering it to the person concerned personally, or by leaving it at, or sending it by post to, that person's correspondence address. To ensure that the Bill keeps up with the times, we have proposed to amend the relevant clause by providing that a TIA's summons or notice sent to a person by email is to be regarded as duly served if none of the person's addresses is known to TIA. Please see clause 167 for the relevant amendments.

Furthermore, we have proposed to delete clause 90 and add in new clause 91A to clarify the functions of disciplinary committee, stipulating that the disciplinary committee may give general written directions on specific matters instead of considering or deciding how a case should proceed.

Apart from the major amendments mentioned above, we have also proposed some textual or technical amendments to improve the drafting, ensure consistency and clarify the Government's policy intent.

Chairman and Members, I will now comment on Mr LUK Chung-hung's amendments. As I said in my reply yesterday, the Government opposes Mr LUK Chung-hung's amendments to clauses 38 and 39, which seek to impose a mandatory employer-employee relationship between travel agents and tourist guides/tour escorts by means of legislation. These amendments are neither necessary nor desirable, ignoring the actual operation of the trade nowadays. Many people in the travel trade, including trade unions, are also against Mr LUK's proposals; Mr YIU Si-wing has already spoken on behalf of the trade earlier on. The five major trade unions, i.e. TIC, The Hong Kong Association of Registered Tour Co-ordinators, the Hong Kong Tourism Association, the Hong Kong Tour Guides General Union and the Hong Kong (Chinese) Tour Guides General Union, have written to the Secretariat of the Legislative Council to give views that side with the Government. I cannot but highlight the point that Mr LUK's proposals will pose negative impact on all industries, labour relations across the territory and our overall business environment. That is why we consider his amendments unnecessary and undesirable and object to them.

Moreover, please especially note that, regardless of the intention of Mr LUK, the effect of passing his aforesaid amendments is that a person who is not employed by a licensed travel agent but is directed by one who is carrying on

travel agent business to provide tourist guide/tour escort services will not be caught by the definition of tourist guides/tour escorts; as a result, the person, though providing tourist guide/tour escort services, will not be required to apply for a licence from TIA and will not be subject to the regulation of TIA or the Bill. To put it another way, a self-employed person may lawfully provide tourist guide/tour escort services to travel agents without obtaining any licence from TIA. This will cause a big and obvious loophole to the new regulatory regime and go against the original intent of the Bill.

Given that Mr LUK Chung-hung has proposed his amendments without getting a general support from the trade, his move may force the Government, the travel trade, the insurance sector, tourist guides and tour escorts to drop the preliminary insurance arrangement that we have recently agreed on after negotiation and our efforts may hence be in vain. The Government finds this deeply regrettable.

Regarding Mr LUK's proposed amendment to clause 37, which requires a licensed travel agent to display, in the prescribed way, the prescribed information to the participants of an outbound tour group if no tour escort has been arranged to accompany the tour group, we agree with this regulatory rule as proposed by Mr LUK in principle. However, this rule does not have to be provided expressly in the primary and subsidiary legislation but can be introduced by TIA through administrative measures. The disciplinary actions taken by TIA against non-compliant licensees are believed to have sufficient deterrent effect. Therefore, we do not think that this proposed amendment of Mr LUK is necessary.

Chairman, owing to the aforesaid reasons, we oppose all proposed amendments of Mr LUK. If his amendments are passed, the Government will have no choice but to withdraw the Bill. It would mean that the earlier consensus among trade members will be overthrown, and the efforts and time put in by the Legislative Council, the Government, the travel trade and other stakeholders over the years to take forward the enactment of legislation will be in vain. On the other hand, frontline tourist guides and tour escorts cannot have any protection for their interests while the overall regulation of the travel trade cannot be enhanced or improved. Ultimately, our travel trade and its overall reputation will suffer.

Chairman, the Government had given full consideration to the views of the Bills Committee, the trade and the Legal Adviser of the Legislative Council during the drafting of relevant amendments. The Bills Committee raised no objection to any of the proposed amendments from the Government.

Chairman, I implore Members to support the passage of the Government's proposed amendments and oppose all of the amendments proposed by Mr LUK Chung-hung. Chairman, I so submit.

Proposed amendments

Clause 2 (see Annex II)

Clause 4 (see Annex II)

Clause 5 (see Annex II)

Clause 6 (see Annex II)

Clause 7 (see Annex II)

Clause 8 (see Annex II)

Clause 9 (see Annex II)

Clause 10 (see Annex II)

Clause 11 (see Annex II)

Clause 12 (see Annex II)

Clause 13 (see Annex II)

Clause 14 (see Annex II)

Clause 15 (see Annex II)

Clause 16 (see Annex II)

Clause 17 (see Annex II)

Clause 19 (see Annex II)

Clause 32 (see Annex II)

Clause 36 (see Annex II)

Clause 37 (see Annex II)

Clause 38 (see Annex II)

Clause 39 (see Annex II)

Clause 42 (see Annex II)

Clause 43 (see Annex II)

Clause 44 (see Annex II)

Clause 47 (see Annex II)

Clause 56 (see Annex II)

Clause 58 (see Annex II)

Clause 59 (see Annex II)

Clause 60 (see Annex II)

Clause 62 (see Annex II)

Clause 64 (see Annex II)

Clause 70 (see Annex II)

Clause 75 (see Annex II)

Clause 89 (see Annex II)

Clause 90 (see Annex II)

Clause 108 (see Annex II)

Clause 115 (see Annex II)

Clause 117 (see Annex II)

Clause 120 (see Annex II)

Clause 121 (see Annex II)

Clause 122 (see Annex II)

Clause 128 (see Annex II)

Clause 137 (see Annex II)

Clause 153 (see Annex II)

Clause 163 (see Annex II)

Clause 164 (see Annex II)

Clause 165 (see Annex II)

Clause 167 (see Annex II)

Schedule 1 (see Annex II)

Schedule 5 (see Annex II)

Schedule 9 (see Annex II)

Schedule 10 (see Annex II)

Schedule 11 (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the first group of amendments moved by the Secretary for Commerce and Economic Development be passed.

MR LUK CHUNG-HUNG (in Cantonese): Chairman, when I spoke in the Second Reading debate of the Travel Industry Bill ("the Bill") yesterday, I emphasized that the Bill was meant to protect consumers and the right to work of frontline staff. In case of work-related accident, frontline staff should get the necessary support and assistance. This is the main reason for me to propose the amendments.

Let me first respond to the Secretary's criticism that I have disregarded the operation of the trade. Who has actually disregarded the practice of the trade to accept what is wrong as right, the practice of "false self-employment", etc.? Wage earners are employed to work; they must therefore have an employer. However, it is now common for employers in different trades to deny their employees despite the existence of a clear employer-employee relationship. Should any accident happen to these employees, they will not get any protection and are not entitled to any rights. As the representatives of labour groups, we definitely cannot accept this phenomenon. Of course, the Secretary may say that this problem is not unique to the travel industry. That is true. This problem exists in many other industries, and that is why we will also fight for similar protection whenever relevant laws are made for different industries.

The Labour Department has prepared an easy guide which explains how to distinguish an employee from a contractor or self-employed person in a simple way. In this guide, the Labour Department has suggested a number of factors to be considered. Firstly, who is having control over work procedures, working time and method? As we all know, tourist guides and tour escorts are assigned with itineraries, routes and tourists by travel agents. Secondly, who owns or provides work equipment, tools and materials? For most of the tourist guides and tour escorts, the coaches they booked or even the flags in their hands are provided by travel agents. Thirdly, is the person carrying on business on his own account with investment and management responsibilities? I have never heard that tourist guides and tour escorts are required to shoulder investment responsibility or that they will have anything to do with the profits or losses of the business. Fourthly, is the person properly regarded as part of the employer's organization? If someone known as the boss denies that tourist guides and tour

escorts are his employees, I absolutely have no idea of his role. Fifthly, is the person free to hire helpers and other assistants? As far as I understand it, most of the tourist guides and tour escorts do not hire helpers and other assistants. There is no need for them to do so because if a tourist guide and a tour escort each perform their respective duties in a tour group, they do not need to have deputies. Do tourist guides and tour escorts have to bear financial risk over business responsibilities in tax and insurance? No, they do not.

From the above illustration, we can see that tourist guides and tour escorts are obviously employees. They do not have to meet all the criteria that I mentioned just now to be classified as employees because the final judgment rests with the court. In the past, when there were disputes in the trade over the protection available to employees in case of accident, such cases were eventually taken to the court. In fact, my proposed amendments do not mean to put the trade under unreasonable regulation and cause inconvenience. That is not my intention. All I want is to clarify a basic fact so that relevant rules are stipulated for compliance to minimize disputes. If employees are protected with employers providing them with sufficient insurance coverage and remuneration, there is not much for both parties to argue about.

The fact that tourist guides and tour escorts are not protected under the Employment Ordinance has already deprived them of many entitlements, including annual leave, statutory holidays, maternity leave, paternity leave and sickness allowance. At the same time, they are not protected under the Employees' Compensation Ordinance, and this point is very important. For example, an employee who suffers a work injury is entitled to an allowance equivalent to four fifths of his wage and a medical allowance of $300 each day; in case of permanent disability, the compensation payable will be calculated with reference to his age and percentage of disability; if an employee dies in the course of employment, the compensation for death can be up to more than 70 months of earnings. All these are important entitlements.

Moreover, as mentioned by Mr HO Kai-ming, why would tourist guides and tour escorts take the risk to coerce tourists into shopping and rip their clients off? While it is wrong for tourist guides and tour escorts to rip off clients, they do so partly because their wage is close to zero, even lower than the rate of minimum wage. They may therefore play dirty tricks to make money. I am not saying that I approve such behaviour, but this phenomenon does exist for tourist guides and tour escorts are not protected by the Minimum Wage

Ordinance. The Mandatory Provident Fund ("MPF") is also another key factor, and the Legislative Council is recently discussing the abolition of the MPF offsetting mechanism. Yet, even if the MPF offsetting mechanism is abolished, tourist guides and tour escorts will not be benefited because they do not have any MPF benefits. They do not have any of the aforesaid entitlements as they are not recognized as employees. Can we realize how little protection frontline tourist guides and tour escorts get? However, the trade has taken this wrong practice as right. Who is the one who has disregarded the operation of the trade? I hope members of the public watching the television broadcast can tell after listening to me.

Next is a logic question. According to the Secretary, if we amend clauses 38 and 39 of the Bill by adding the expression "is employed by" in the respective definitions of tourist guides and tour escorts, these two definitions will be narrowed to cover only tourist guides and tour escorts having an employer-employee relationship with travel agents. Any tourist guides and tour escorts who are not employed will then be excluded by the Bill. However, the Secretary should know that travel agents, the Bill and the guidelines to be issued by the future Travel Industry Authority require the presence of a tourist guide in every tour group. As long as there is a tourist guide in a tour group, this requirement can be met and the loophole stated by the Secretary will not arise.

As mentioned by some Members earlier, there are tourist guides who love to take several jobs at the same time. That is fine. They can work for Travel Agent A in the morning by taking a tour group to a certain tourist spot, and then work for Travel Agent B in the afternoon by taking another tour group to another tourist spot. I am talking about tourist guides because there is no way that tour escorts can receive two tour groups on the same day as their job requires them to work abroad. Their situation is similar to that of domestic helpers but domestic helpers are in an employment relationship. It is common for domestic helpers to work for several employers in a single day, and yet they will not be deprived of insurance coverage for this reason. In case employers find it troublesome to take out insurance, they may take out insurance for their employees on each occasion or in whatever way they like. The trade will be willing to discuss this issue; there is no problem at all.

Some may argue that the high turnover rate of tourist guides and tour escorts has made it difficult for employers to take out insurance for them, and that is why employees are required to take out insurance by themselves. Will tourist

guides and tour escorts have a higher turnover rate than construction workers? How do construction firms take out insurance for their employees? A company will take out insurance for their workers. For example, if a construction firm has employed a number of workers who are going to work for some time, it will just take out insurance for these workers. Why can't travel agents do the same? There are always more solutions than problems. Nevertheless, employers tend to use the problem, which can actually be solved, as a pretext to evade their due responsibility and ask their employees to solve the problem on their own. They even ask employees to be flexible and threaten to deprive them of jobs if they do not comply. That is the mentality of some employers. I am not saying that the Bill is completely useless; I actually agree that the Bill will bring some improvements to the trade. However, in respect of labour protection, I dare not say the Bill offers no protection, but the protection offered is minimal and limited. Therefore, in our view, clauses 38 and 39 of the Bill should highlight the employer-employee relationship between travel agents and tourist guides/tour escorts, indicating that the latter are employed by the former. That is what I want to clarify here.

Besides, regarding the "display of information about tour group" as provided in clause 37 of the Bill, while consumers should be protected, we also have to balance employees' right to work. How can consumers be protected? Participants of an outbound tour group should at least be informed of whether the group will be accompanied by an outbound tour escort, and that is the provision of clause 37(2) in my amendment: "If a licensed travel agent has not arranged a tour escort to accompany an outbound tour group, it must display, in the prescribed way, the prescribed information to the participants of the tour group." Currently, participants of many outbound tour groups are asked to meet and dismiss at places outside Hong Kong. Even if the meeting point is in Hong Kong, travel agents may at most assign a person to see the participants off at the airport or at the station rather than providing tour escort services. What is the problem with this arrangement? Let me illustrate by giving an example. Last year, a bridge collapsed in Jinggangshan, causing injuries to a number of Hong Kong people. After the incident, The Hong Kong Federation of Trade Unions (me included) has offered help to tour group members and the injured. This is a typical tour group not accompanied by a local tour escort. If there was a Hong Kong tour escort, could the accident be avoided? Of course not. However, if a tour escort was present, he could provide immediate assistance in respect of communication, contacting relevant parties in Hong Kong or representing Hong Kong consumers. As such, while tour group members would be better protected

and feel at ease, outbound or frontline tour escorts would have employment opportunities, creating a win-win situation for both consumers and frontline tour escorts.

Of course, we understand that in reality, some tour group members prefer to have a lower tour fare so they prefer cutting the costs on tour escorts. Although we have advised them that tour escorts are very important and necessary, we do not want to make it mandatory for tour groups to have tour escorts as we are well aware that some consumers want to pay less for their tours. Therefore, we have taken a middle-of-the-road approach to require travel agents to inform consumers, in the prescribed way, whether the tour group will or will not be accompanied by a tour escort, so that consumers can have think clearly and make an informed decision. This approach can at the same time indirectly safeguard job opportunities for outbound tour escorts for I believe that travel agents will arrange more tour groups with tour escorts, given that consumers have an unfavourable impression on tour groups without tour escorts. Hence, we have taken a middle-of-the-road approach, i.e. to inform participants of outbound tour groups in the prescribed way whether tour escorts have been arranged for their tour groups. As such, we will not be criticized for disregarding the reality and forcing a self-righteous requirement on the trade. As a matter of fact, our suggestion is very practical.

In the response of the Secretary—some Members might have mentioned earlier—he told us that regulatory guidelines would later be formulated by the Travel Industry Authority. However, I sometimes wonder why we do not make clear specifications during the law-making process if the definitions involved are neither too extensive nor too difficult to understand. As such, members of the public will have a clear idea. If the guidelines to be formulated are the so-called "self-disciplinary" codes of practice or administrative guidelines, I do not think they will be more powerful than legislation despite the inclusion of penalty provisions. Legislation is always of overriding importance. As law-making is the most important function of the Council, it is our duty to perfect the Bill.

Lastly, we very much hope that Honourable colleagues in this Council will support my amendments on clauses 37, 38 and 39 of the Bill. It is our wish to protect consumers and safeguard wage earners' right to work and their interests in case of accident. That is our goal. I do not mean to completely dismiss the liaison efforts made by the Secretary in improving employee insurance. However, the Secretary should understand that the insurance plan presented to us

by the trade is worse than "chicken ribs" and can hardly be unacceptable. For example, under the said plan, an employee who works from hand to mouth will only be given a daily wage of $200 for five days at most as compensation if he is unable to work after injury. In respect of the allowance for insurance premium, employees are required to first take out insurance policies by themselves, and then they will be granted an allowance on a daily basis during their work period. For a tour of three days, the allowance is only $15, which is less than a tip amount. I do not think such kind of insurance can protect employees or show respect to them. Therefore, as a responsible labour group, we cannot accept this "chicken rib" proposal without making any amendment or fighting for more.

I urge the Honourable colleagues to support my amendments on clauses 37, 38 and 39 of the Bill. Thank you.

MR YIU SI-WING (in Cantonese): I would like to give views on Mr LUK Chung-hung's amendments.

Regarding the employment issue of part-time tour escorts and tourist guides, I understand that Mr LUK Chung-hung is fighting for the rights and interests of our part-time tour escorts and tourist guides out of good intentions, hoping that they can be protected under an employment relationship even if they work for several travel agents at the same time. Mr LUK, however, does not seem to understand how the trade operates. Maybe that is because he has to deal with a wide range of labour issues every day. To me, the proposals made by Mr LUK in his amendments are unfeasible.

Presently, there are more than 17 000 tour escorts and 6 000 tourist guides in Hong Kong, most of them are part-timers. For those who work full time, especially full-time tour escorts, most of them are employees of large travel agents which will, on festive days and holidays, engage part-timers to complement their full-time staff. Yet, only a small portion of part-time tour escorts and tourist guides will work for large travel agents; a majority of them will instead collaborate with micro, small and medium travel agents ("small travel agents"). As these small travel agents only organize a handful of tours, probably 10-odd tours per year, they cannot afford to engage tour escorts and tourist guides under an employer-employee relationship but can only hire part-timers when necessary to reduce cost pressure.

If all travel agents are mandated statutorily to establish an employment relationship with part-time tour escorts and tourist guides, it is tantamount to forcing them to employ full-time staff. In this case, large travel agents will no longer engage part-time tour escorts and tourist guides because they will prefer full-timers to part-timers if they have the necessary financial resources.

The challenges brought to small travel agents will even be more daunting. In today's highly competitive business environment, small travel agents are plagued by operational difficulties and unstable income. If they are now required to employ full-time tour escorts or tourist guides, how can they afford the costs incurred in times of accident? They will then be forced to take risks, which, in the view of Mr LUK, is tantamount to breaking the law. If small travel agents dare not take risk, they have to engage part-time tour escorts and tourist guides under an employment relationship. In case of accidents, they will be required, as employers, to pay an injured tour escort/tourist guide 80% of his monthly earnings as compensation—as stated by Mr LUK just said—on top of his medical expenses. Worse still, these employers may have to face consequent litigation. How can small travel agents afford such expenses? Yet, if they dare not take the risk of breaking the law, they may end up in debts or closure. This proposal will put huge pressure on small travel agents, accounting for 90% of travel agents in the trade, and is unfavourable to the overall ecology of the travel industry as it will reduce the flexibility of the operations of travel agents.

From the perspective of part-time tour escorts and tourist guides, they are well aware that the proposal to establish an employment relationship by legislation will greatly reduce their opportunities to work part-time for large travel agents and limit their choices subsequently. They will then have to rely solely on small travel agents for job opportunities. However, as I just said, small travel agents are already under great operational pressure. In case this proposal is implemented, how can small travel agents survive? If these travel agents have difficulties, refuse to shoulder employer responsibilities, incur debts or close down, an employment relationship will not serve the intended purpose of securing compensation for part-time tour escorts and tourist guides. I do not think that is something that we wish to see.

There are different reasons for people to work as part-time tour escort or tourist guide. For some people, tour-escorting is their major source of income; some merely lead a few tours a year to stay in touch with the industry; some lead tours for interest's sake to enrich their personal experience; some work part-time

in their spare time to make ends meet despite having another major source of income; some are teachers leading study tours for school, and leading tours is never their major duty. As people have different reasons to work as part-time tour escort or tourist guide, they will certainly love to have work flexibility. In fact, they are not willing to be bound by an employment contract signed with a particular travel agent, and that is why a number of major trade unions, as pointed out by the Secretary just now, support providing protection by way of work insurance.

Part-time tour escorts and tourist guides prefer to have a more flexible employment relationship or a "collaboration" relationship for a better term. As a flexible collaboration relationship is in the interest of both travel agents and part-time tourist guides/tour escorts to meet their actual needs, I consider the arrangement now under the Travel Industry Bill ("the Bill") appropriate. It is unfeasible, in my view, to establish a mandatory employment relationship as proposed by Mr LUK Chung-hung; this proposal is also against the wish of most practitioners (particularly part-time tour escorts and tourist guides) in the trade.

As for the insurance issue, to my understanding, none of the travel agents in Hong Kong has the practice of taking out work insurance for part-time tour escorts and tourist guides. Instead, travel agents will take out travel insurance policies for their part-timers. I know that The Hong Kong Federation of Trade Unions has taken out insurance for its members at an annual premium of some $1,000 per person to provide coverage similar to that of travel insurance. However, insurance of this type is different from work insurance and cannot provide sufficient protection. As I said earlier, most of the part-time tour escorts and tourist guides will take out travel insurance policies by themselves or purchase life insurance or accident insurance for their own interests. For most part-time tour escorts and tourist guides, their prime concern is the availability of work insurance rather than the establishment of an employment relationship.

On the issue of work insurance, we have discussed with trade unions, insurance companies and the Travel Industry Council ("TIC"), hoping to provide work insurance before the enactment of the Bill, so as to convey a message that the trade really cares about the problems facing part-time tour escorts and tourist guides. We then came up with a relatively practicable insurance proposal. However, among the seven insurance companies invited to make quotations, only one provided us with a plan which could practicably meet the actual needs. According to the quotation of that insurance company, assuming that the

20 000-plus tour escorts and tourist guides in Hong Kong would all take out this insurance, the annual premium for each tour escort/tourist guide will be $690/$550. The overseas medical coverage under this insurance plan is not, as stated by Mr HO Kai-ming, limited to $100 or $200 per day, or some $1,000 for five days; instead, the medical coverage is as much as $500,000. As for emergency repatriation after accident, expenses on repatriating mortal remains or ashes to Hong Kong may be claimed on reimbursement basis, and a maximum of $39,000 of hospital deposit guarantee is also available. Regarding the cash benefit mentioned just now, it is a cash allowance that the insured is entitled to during the period of incapacity after returning to Hong Kong. The coverage of this insurance plan is different from that of labour insurance.

It is, however, impossible to provide labour insurance as requested by Mr LUK Chung-hung. As I said just now, his proposal will make employers undertaking a compensation equivalent to 80% of the total monthly earnings of a part-time tour escort/tourist guide. If an employer refuses to pay the compensation, the insurance company will have to shoulder the amount. During our previous discussion, there were views that a compensation of several hundred dollars failed to offer sufficient protection, and it was too mean for travel agents to offer a meagre amount of allowance to cover only part of the insurance premium. Yet, we should not overlook the coverage of the insurance plan in judging whether it meets the needs of part-time tour escorts and tourist guides. Why is the provision of work insurance supported by all five trade unions? That is because the trade unions think that work insurance can offer good protection to part-time tour escorts and tourist guides and address the problems that they encounter when working abroad. Why don't you people listen to the views of these trade unions but insist on forcing travel agents to take out labour insurance?

We had eventually asked insurance companies to comment on Mr LUK Chung-hung's proposal. The insurance companies, in response, said that they were unable to underwrite his proposed insurance. But how come insurance companies can underwrite labour insurance? That is because there are millions of local workers but only some 20 000 tour escorts and tourist guides in Hong Kong. How will insurance companies be willing to underwrite labour insurance of this kind? That is simply impracticable. I do not think the people making this proposal have a good understanding of the trade or the concerns of insurance companies. The insurance companies subsequently told us that they would rather forgo this business if we insisted on adopting this labour insurance proposal. The plan to provide work insurance was then dropped with much

regret. At first, we put our heads together to discuss the provision of work insurance, but why was this plan dropped in the end, leaving part-time tour escorts and tourist guides unprotected? Will the representatives of labour unions take this responsibility? On this point, labour representatives, including Mr LUK, should reflect on whether they are genuine helping workers or doing a disservice out of good intentions.

Now that there are problems with the existing mechanism, I hope that we will promote the provision of work insurance to fix the problems. Upon the passage of the Bill, I hope the labour sector, the travel trade and TIC will continue to examine the ways to provide appropriate work insurance to part-time tour escorts and tourist guides to safeguard their interests. This should be the right direction. I hope our negotiation will go on after the passage of the Bill rather than wasting time on unfeasible proposals. This is my response to Mr LUK Chung-hung.

I will later speak on the Government's amendments. Thank you, Chairman.

MR WU CHI-WAI (in Cantonese): Chairman, I have some doubts about the amendments proposed by Mr LUK Chung-hung. However, when hearing the Secretary say at the beginning of his speech that if Mr LUK Chung-hung's amendments were passed, the Government would withdraw the Travel Industry Bill ("the Bill"), I think this practice is highly inappropriate. I know that it is very difficult to reach an agreement but in the process of amending the Bill, Members are entitled to propose amendments as they think fit and they can, through debates, express their views on whether they support or oppose the amendments.

The incumbent Government has time and again employed the same tactic, telling Members that once a Bills Committee has completed its deliberation, Members cannot propose any other amendments at the debate of the Legislative Council. If so, do Members still have the power to amend a Bill in this Council? If Members do not even have the power to amend Bills and cannot hold discussions; or if the Government adopts a high-handed approach, making our discussions futile, this Council cannot perform its due functions. This is the point that I wish to respond to the comments of the Secretary.

Concerning Mr LUK Chung-hung's amendments, Mr YIU Si-wing has pointed out a host of problems concerning the industry. Of course I am not so familiar with the industry as Mr YIU, but I think Mr LUK's amendments will create certain uncertainties. Here I would like to seek Mr LUK's advice for a better understanding.

Mr LUK Chung-hung has proposed to amend the definition of tourist guide in clause 38 of the Bill. In his amendment, the definition of a "tourist guide" in the Bill is changed to "the person is employed by a licensed travel agent and accompanies a visitor to Hong Kong for the purpose of providing any guiding service to the visitor in accordance with the directions of another person who is carrying on the business of the travel agent". Mr LUK also makes a similar amendment to the definition of a tour escort.

By proposing these amendments, Mr LUK Chung-hung aims at establishing an employer-employee relationship between tourist guides/tour escorts and licensed travel agents. However, this may give rise to a problem that cannot be resolved, and I would like to seek his advice. According to the definitions in the amendments, if tourist guides or tour escorts can only be those who have an employer-employee relationship with travel agents, will those who provide similar service on a contract basis or in other forms not be regulated by the law?

According to the interpretation in clause 2 of the Bill, a licensed tourist guide or a licensed tour escort means the holder of a tourist guide licence or the holder of a tour escort licence, and these licences are issued in accordance with clause 43(1). The interpretation in clause 2 does not specify the definition of a tourist guide or a tour escort, that is, it does not specify how a person obtains the relevant licence to assume the relevant status.

In Mr LUK Chung-hung's amendments, the definitions of a tourist guide and a tour escort are only given in clauses 38 and 39 of the Bill. Hence, if his amendments are passed, people acting as a tourist guide or a tour escort must be employed by a licensed travel agent. In that case, can those who are now providing guiding services on a service contract basis be allowed to continue to engage in such work? Will they be regulated by the ordinance? These are the uncertainties. Why will it be so? Clause 40 of the Bill prohibits working without licence, and clauses 40(1) and 40(2) also stipulate that no person may, without a tourist guide licence or a tour escort licence, work as a tourist guide or a tour escort.

Problems will arise again. According to the definitions of a tourist guide and a tour escort in clauses 38 and 39, these persons must have an employer-employee relationship with travel agents. If they are employed on a contract basis, whose responsibility will that be? Should the contract holder be held responsible? For those tourist guides or tour escorts who are genuinely self-employed, how will the law impose regulations?

As we all know, protection of labour rights and interests is a very important subject. If people are willing to work as freelancers, in accordance with the original Bill, they will be regulated. But if Mr LUK Chung-hung's amendments are passed, problems will arise because the provision on regulation will then become unclear. If Mr LUK seriously wants to deal with the problem, he may need to add an element to the prohibition provision to eliminate the uncertainties concerned. In that case, we may need some advice from Mr Paul TSE regarding whether discrepancies among the provisions will arise as a result of the amendments. If Mr LUK Chung-hung's amendments are passed, tourist guides/tour escorts must have an employer-employee relationship with travel agents but what is the relationship between freelance tourist guides/tour escorts and travel agents? Will they be protected or regulated by the law? Will there be problems? I have no answer to these questions and I would like to hear from Mr LUK how he interprets the situation.

If Mr LUK thinks more carefully, will he add the relevant content to the prohibition provision so that the Bill can have a more comprehensive coverage? Without the addition, his amendments will create a loophole, resulting in the Bill running contrary to the original legislative intent. In this respect, the Law Draftsman of the Government may offer some help by telling us if the issue I raised just now is worth looking into.

We have to face a question when enacting legislation, i.e. what is the original legislative intent? The Bill certainly aims at regulating the operation of the travel industry in the hope that the present situation of monitoring by peers will be converted into a transparent system to facilitate the industry to move forward. That is the original legislative intent. Mr LUK lays great emphasis on employment relationship and employment protection, to which we all agree. But at this stage, the amendments run counter to the original legislative intent and also create a big loophole with regard to the original intent of regulation. The Government may ask us not to worry as amendment will soon be introduced, but we do not know when this can be done.

The Government said just now that if the amendments were passed, it would withdraw the Bill. I do not agree to this approach. This is not an attitude that the Government should adopt. However, I think we should, through debates, clarify the problems arising from the passage of the amendments, i.e. will they run counter to the original legislative intent and will they give rise to undesirable consequences and loopholes? Members should make a judgment from this perspective. I want to very briefly discuss whether the amendments to clauses 38, 39 and 40 will lead to the situations mentioned above.

Hence, I wish to ask again whether self-employed tourist guides and tour escorts can still be able to work as tourist guides or tour escorts legally if Mr LUK's amendments are passed. If not, why this is not stated clearly in the prohibition provisions, leaving such a loophole? Or should self-employed persons lodge a judicial review to find out if they are allowed to work as tourist guides or tour escorts according to the law? This is an issue concerning freedom to seek employment. If someone opts to work as a freelancer, it is unreasonable that the law only provides people with only one option. These are my supplementary remarks in this respect. Thank you, Chairman.

MR ALVIN YEUNG (in Cantonese): Chairman, in the first part of my speech, I will speak on the amendments proposed by the Secretary for Commerce and Economic Development to the Travel Industry Bill ("the Bill"), and in the second part, I will comment on the amendments of Mr LUK Chung-hung.

Chairman, among the amendments of the Secretary for Commerce and Economic Development, some are undoubtedly technical amendments that involve, for example, paraphrasing, and we certainly have no disagreement over them. That said, next I will briefly talk about amendments that will have actual policy implications.

The Bill itself provides for certain conditions for issuing and renewing travel agent licences, which can be summarized as the following five major requirements. First, the premises of travel agents must be within separate and independent commercial premises or buildings that are easily and directly accessible to the general public, rather than some concealed or inaccessible locations. Second, an applicant for a travel agent licence must comply with the basic capital requirement, namely, having capital of not less than $500,000 and, for each additional branch, additional capital of not less than $250,000. Third,

at each business premises, namely the headquarters or a branch, there must be at least one manager with experience in the industry and one full-time staff member. Fourth, an applicant for a travel agent licence is required to deposit guarantee money of $500,000 with a newly-established Travel Industry Authority ("TIA"). Fifth, an applicant is required to appoint an authorized representative to show its commitment to travel agent business.

Chairman, I believe that the five major requirements mentioned just now, particularly the basic capital requirement and the amount of guarantee money, are a bit stringent, resulting in higher entry threshold to the travel market. However, from the perspective of stepping up regulating the travel industry of Hong Kong, they are acceptable at this stage. Furthermore, the five major requirements are based on the premise that all travel agents shall operate on the basis of a traditional business model, namely, a face-to-face or person-to-person business model. Customers need to go to travel agencies in person to complete the formalities of a tour. That being the case, I believe the Secretary also agrees that given the rapid technological development nowadays, many travel agencies have new business models, such as conducting business on the Internet, and even launching new mobile applications that match tourists with local travel agencies. The SAR Government claims to remove barriers in the area of innovation, but if the new law restricts the future development of the industry, the two will undoubtedly be contradictory.

The amendments of the Secretary for Commerce and Economic Development seek to repeal the requirements imposed by the Bill on business premises, capital amount of a branch and manpower, and thus slightly lower the threshold for business expansion. We certainly welcome these amendments. However, the authorities have not made any concession in the amount of guarantee money for the reason of enhancing the professionalism of the travel industry. I find this highly regrettable. I understand that the authorities may probably hold that should anything happen in the future, members of the public will again blame the Government for ineffective monitoring, and thus they prefer a stringent requirement to a lenient one. In this regard, I accept the saying of the Government for the time being, but the Government must review whether the future development of the industry will thus be stifled.

In addition, an amendment of the Secretary for Commerce and Economic Development seeks to revise section 1 of Schedule 9 and make more detailed provisions on the composition of TIA. First, section 1(d) stipulates that

non-trade members are appointed because of their knowledge in various professions or general administration, thus ensuring that non-trade members are not laymen who are totally unrelated to the travel industry. We believe that the amendment is very reasonable and will effectively ensure the quality of non-trade members.

Second, section 1(e) provides that among the trade members who are appointed as ordinary members of TIA, some must be engaged in the outbound travel agent business, some must be engaged in the inbound travel agent business, some must be members of the Board of Directors of the Travel Industry Council of Hong Kong, and some must work as tourist guides or tour escorts. One point is particularly important, as tourist guides or tour escorts are frontline practitioners of the travel industry, they face overseas visitors to Hong Kong, and they truly understand problems with the travel industry of Hong Kong nowadays. Moreover, they are often practitioners who face maximum pressure but receive minimum protection. We believe that it is absolutely right for their voices to be effectively represented in TIA.

Speaking of practitioners, we must discuss Mr LUK Chung-hung's amendments, which seek to revise the definition of tourist guide and tour escort to cover only tourist guides and tour escorts employed by licensed travel agents. To put it simply, his amendments stipulate that the relationship between travel agents and tourist guides/tour escorts must be an employer-employee one. But does this really comply with the actual conditions of Hong Kong today? Chairman, we all clearly know that the collaborative relationship between tourist guides/tour escorts and travel agents may not necessarily be an employer-employee one. Some tourist guides and tour escorts are self-employed persons. If Mr LUK's amendments are passed, these self-employed tourist guides and tour escorts will be directly affected.

Chairman, we must hereby confirm one point. We believe that Mr LUK Chung-hung has good and pure intent in proposing the amendments. We believe that he hopes to eradicate false self-employment of tourist guides and tour escorts, and require travel agents to fulfil their obligations as the employers of tourist guides and tour escorts. Travel agents should not evade taking out insurance for their employees or offering work injury compensation to them. Nor should they shift all the responsibility onto tourist guides and tour escorts when disputes with customers have arisen. From the perspective of protecting

practitioners and seeking justice on behalf of workers, the Civic Party certainly respects this proposal. That said, is this the best way to protect workers? We believe that further discussion or consultation is needed.

Chairman, some people hold that the self-employment system is the root cause of coerced shopping tours, as self-employed tourist guides and tour escorts mostly earn a living by commission. They have to maintain their livelihood by coercing tourists into shopping. According to some travel agencies, coercing tourists into shopping is the behaviour of individual tourist guides and tour escorts, and this is particularly the case with self-employed tourist guides and tour escorts recruited temporarily during peak seasons. Given that this is the individual behaviour of self-employed tourist guides and tour escorts, travel agencies should not be held criminally liable. From the perspective of workers, this saying obviously aims at shifting responsibility. In fact, if travel agencies do not abuse the loopholes in self-employment and exploit tourist guides and tour escorts, why would tourist guides and tour escorts resort to coercing tourists into shopping? Travel agencies should not evade responsibility. According to this line of thinking, if the law totally bans self-employed tourist guides and tour escorts, the problem of tourist guides and tour escorts coercing tourists into shopping will be effectively resolved, thus enhancing the quality of inbound tour groups.

However, we are concerned about the appropriateness of adopting a one-size-fits-all approach to ban all self-employed tourist guides and tour escorts. Some self-employed tourist guides and tour escorts under the self-employment system enjoy freedoms that are not available to employees. If tourist guides and tour escorts do not wish to make contributions to a mandatory provident fund scheme or receive all tour groups, or they wish to work for various travel agencies rather one single travel agency, should they continue to enjoy the freedom of self-employment? Should the Legislative Council interfere with the mode of employment of these self-employed persons?

Chairman, we believe that it is indeed too early to ban all self-employed tourist guides and tour escorts at this stage, and this move will be a case of the Government interfering in the market. The Government has undertaken that following the passage of the Bill, it will urge TIA to introduce administrative measures to ban inappropriate practices of travel agents, such as delaying the payment of remuneration or requesting self-employed tourist guides and tour escorts to unreasonable advance any payment for a tour group received. I think

this is an acceptable resolution for the time being. I hope that following the establishment of TIA, the Government will keep its word and protect the rights and interests of practitioners of the travel industry, so that we will be convinced that measures adopted and laws enacted by the Government are indeed effective. If the Government can practically adopt the above mentioned measures and demonstrate its determination, we will not need to support the amendments of Mr LUK Chung-hung.

With the two points mentioned above, I so submit.

MR FRANKIE YICK (in Cantonese): Chairman, as in the past Mainland inbound tour groups were involved in a number of controversies surrounding tour escorts or tourist guides, and some even triggered conflicts between the Mainland and Hong Kong, the passage of the Travel Industry Bill ("the Bill") today will undoubtedly be a step forward. Although the Bill is unable to address all issues raised by Members these two days, the first right step has been taken at the very least. For this reason, the Liberal Party will support the Bill and the various amendments proposed by the authorities to enhance the regulatory regime concerning travel agents, tour escorts and tourist guides.

However, regarding the two amendments proposed by Mr LUK Chung-hung to specify the employer-employee relationship between travel agencies and tourist guides/tour escorts, and to take out insurance for tourist guides and tour escorts, it is difficult for the Liberal Party to render its support.

According to the information provided by the travel trade, there are now some 17 000 tour escorts and some 6 000 tourist guides in Hong Kong. The business of operating group tours is not a sunrise industry as over the recent 10 years or so, it has gradually been replaced by new modes of travel, such as the individual visits, self-drive tours and tailor-made tours. For this reason, quite a number of practitioners of the travel industry have undertaken tasks assigned by various travel agencies on a part-time basis.

In fact, as the travel business is subject to such factors as seasons and holidays, even large travel agencies cannot afford to employ many full-time tour escorts or tourist guides throughout the year, not to mention recruiting part-time practitioners as part-time staff on a long-term and regular basis. Many full-time tour escorts or tourist guides need to share certain tasks unrelated to their dedicated positions during low seasons, and thus a majority of travel agencies

only cooperate with part-time tour escorts or tourist guides during peak travel seasons. If Mr LUK's amendment is implemented to require that all frontline practitioners must be employees of travel agents, not only will there be a lack of flexibility, but the practice of only recruiting part-time tour escorts or tourist guides during peak seasons will also be undermined. The proposal is simply not feasible.

Nowadays many tour escorts or tourist guides are willing to work on a part-time basis, and this is certainly related to their way of working. Some of them are former practitioners of the trade industry and they hope to maintain their relationship with the industry by working on a part-time basis. Some are travel or food bloggers who attach more importance to the level of freedom in their work than to the amount of their remuneration. If they are restrained by the employment contract of one single travel agency, they will not be able to work for different travel agencies and even lose a large number of employment opportunities. As a result, most part-timers will scramble for employment opportunities at large travel agencies, and small travel agencies will be forced to go bankrupt as they can hardly offer high salaries and have fewer tours.

As for his second amendment, Mr LUK seems to forcibly apply the concept of labour insurance on tour escorts or tourist guides, whose work is highly flexible in nature. First, it is only when tour escorts and tourist guides lead tour groups outside Hong Kong that they need insurance protection higher than general labour insurance provided to wage earners who work at their workplaces for the whole day. For this reason, instead of taking out regular labour insurance for tour escorts and tourist guides, it is better for us to provide subsidies to them to take out appropriate insurance for practitioners of the travel industry in response to the risks of countries which the tour groups visit, otherwise in case of any unfortunate accidents, the amounts of compensation received by tour escorts or tourist guides will not be proportional to the risks they have taken.

Though the amendments proposed by Mr LUK aim at enhancing the protection and benefits provided to practitioners of the travel industry, his proposals are actually commercially unfeasible, and thus the Liberal Party will oppose the two amendments of Mr LUK.

Chairman, I so submit.

MR HO KAI-MING (in Cantonese): Chairman, people in the capitalist society of Hong Kong believe in the survival of the fittest in natural selection, but human beings are, after all, different from animals. Animals follow the rule of the jungle so that the better species remain, evolve and become even better. Yet, human beings behave strangely. They will not compete with each other to attract customers for survival. Instead, they like to adopt dirty tricks to defeat others and regard the failure of others as their victory. Dayo WONG once said that he would claim victory if other people performed poorer than him. I think it is very unsatisfactory for market operation. In theoretical terms, we can describe it as "bad money driving out good money".

At present, "bad money driving out good money" is very common in the travel industry, and we have noticed that tour escorts and tourist guides are facing an increasingly tough situation. From the speeches made earlier by some Members, their unfamiliarity with the basic labour legislation is well evident. In fact, Members are small employers too, and I do not understand why they are unfamiliar with labour legislation. Thus, I would like to explain some basic points first.

Many Members asked earlier whether people who like to undertake flexible and casual work, such as part-timers or freelancers, are protected by labour legislation. I would like to tell Members that these people are protected by labour legislation. In fact, insurance has been taken out for many part-timers, e.g. part-time domestic helpers employed by members of the public or reporters outside the Chamber. The procedures for taking out insurance for these people are very simple.

I have taken out this kind of insurance before. All I need to do is visit the online banking website, press a few buttons and acknowledge that a certain person will work at my home during a certain period of time, then I can take out insurance for a year. The insurance will not only cover one specified worker, but also other persons who will work for me. In fact, as Members will know, part-timer domestic helpers bear certain risks in their work. Accidents may happen when they are cleaning windows or using detergents, thus they must be protected accordingly.

Let me give another example. Workers in the construction industry may work at a site in Admiralty today and another at Shau Kei Wan tomorrow; will they not have insurance protection? No, they will be protected. Every

construction worker will be protected by insurance if he has obtained the relevant licence for the work. Thus, if accidents occur to these workers at these dangerous construction sites, they will be protected. Workers in the catering industry will likewise be protected. My father is a casual restaurant worker. He works as a part-time kitchen helper in different Chinese restaurants, will he not be protected by insurance? No, he will be protected. Another example is postnatal mentors. Ms YUNG Hoi-yan may have to employ a postnatal mentor later. These mentors will similarly be protected by insurance.

Chairman, I want to demonstrate with the above examples that many part-time and casual workers will be protected by relevant insurance at their place of work. I must point out that this is a protection to both the employers and the employees and not just a right for the employees. That is only the most basic requirement, so that employees of all trades will have the relevant and most basic protection at their place of work. If an accident occurs, they can obtain some basic compensation. They need not engage in a lawsuit with the employer and can only get money to pay for their basic medical expenses after they win the lawsuit. That is the protection which we and employees in Hong Kong hope to get.

I do not believe that the Travel Industry Bill ("the Bill") seeks to protect and promote the rights and interests of employees. The Bill only sets, at our insistence, a minimum requirement to provide the most basic protection to employees, be they work for big, medium, small or micro enterprises of Hong Kong.

In fact, at present, only some unscrupulous employers in the travel industry will completely shirk their responsibilities in taking out insurance for their employees. If Members think that today we are striving to protect tour escorts and tourist guides who, being self-employed persons, are not protected, they are actually insulting all the law-abiding good employers of medium, small and micro enterprises. There are many medium, small and micro enterprises in the catering industry; are Members saying that operators of these enterprises will not take out insurance for their employees? Chairman, those employers will do so. Thus, how can Members say that since the business environment has become worse and the trades are facing very strong competition, employers will not provide basic protection for their workers? Chairman, that is not a valid reason. If the argument stands, all business owners need not take out insurance. Major

economic incidents may occur around the world every year, such as Sino-United States trade war or economic recession in a certain place, should we remove all protection for employees for that reason?

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

Deputy Chairman, let me reiterate that the Bill does not only protect the rights and interests of employees, but also that of employers. Frankly speaking, Deputy Chairman, there will be no problem if no incident occurs. If an incident occurs, an employee is entitled to claim compensation from the employer. We have attended many court hearings dealing with labour legislation and we know clearly how an employment relationship is established. Very simply, factors for considerations include whether the employee has accepted orders from the employer and whether the employer has provided the employee with work equipment, etc. If these key elements are established, the employer cannot shirk his responsibilities. Even if it is argued that the employee is a self-employed person, the court will rule against the employer. Thus, Members need not argue that we are trying to help the self-employed. The undesirable situation is caused by "bad money driving out good money" in the free market. The Administration has not regulated the situation in the past; and self-regulation of the industry has been implemented by the Travel Industry Council of Hong Kong ("TIC") which is composed of business associations. That is inevitable because the Government has not dealt with the problem.

Nevertheless, now that a Travel Industry Authority ("TIA") will be established after the passage of the Bill, will the Government still allow these things to happen before its eyes? Mr Alvin YEUNG asked just now whether we wanted to intervene in the market. Deputy Chairman, that is the case, for we think the Government should intervene in the market so that practitioners of the industry will get some basic protection. If the Government is not willing to at least intervene, it simply does not need to present the Bill at all. We hope to see improvement in the industry as a whole, starting with tour escorts and tourist guides, and then Hong Kong people joining outbound tours and inbound visitors to Hong Kong will get more protection. If all practitioners in the industry are compelled to use dirty tricks—being the "bad money" so to speak—and continue to rip visitors off for their survival, how can inbound visitors to Hong Kong or Hong Kong people joining outbound tours get better protection?

Deputy Chairman, if Members say that we want to intervene in the market, we do admit. Since the Government has to regulate the industry, it should also give the practitioners their entitled protection. As legislators, we are seeking the same protection for all 3 million employees in Hong Kong. Let me reiterate, enacting labour legislation and establishing an employment relationship will not affect the situation of part-time and casual workers. I have given different examples earlier. Moreover, if Members remember the arrangement in the Mandatory Provident Fund ("MPF") scheme, contributions to MPF scheme can be made even in industries with many part-time and casual workers, such as the catering industry and the construction industry. Some Members' arguments seem to suggest that insurance cannot be taken out for practitioners of the travel industry. What are their justifications? I cannot understand why the moral standards of some Members have suddenly dropped to such a low level, arguing that the basic requirement can be withdrawn because of the law of survival of the fittest. Deputy Chairman, a poor economic environment is not a reason for us to withdraw all the basic requirements.

I understand that owing to the current situation of the travel industry, it may be difficult to make significant changes. But if we do not tackle the undesirable practices in the industry in this legislative exercise at the same time, these undesirable practices will be embedded in the new regime of the Government. Thus, I hope that the Secretary will seriously consider whether that is the situation he desires.

Let me add one point. I heard the Secretary say earlier that if the amendments of the Member were passed, the Government would withdraw the Bill. May I ask the Secretary for the reasons? Deputy Chairman, I believe the argument of the Secretary may be based on a logic related to the Labour Advisory Board ("LAB"). Since LAB is a statutory body of the Government comprising of representatives of the business sector and representatives elected by trade unions, any matters which have been finalized in this negotiating platform should not be suddenly amended by the Legislative Council. If there are any amendments, they should be referred back to LAB for discussion. I agree and understand this point. However, is there a statutory platform in the travel industry at present? We only have TIC, a self-regulatory platform which is composed of business associations. Is the Secretary telling me that the Government will accept everything said by the business associations? Thus, I do not think there is any logic in the Secretary's argument. May I ask Secretary Dr LAW Chi-kwong not to mix the two entirely different issues together?

If that is really the reasoning of the Government, I would like the Secretary to elucidate. I agree that should any changes be made to the results agreed by LAB, a statutory body, after discussions, there is a need to refer the changes back to LAB for discussion, but the existing results are obtained only from discussions of the business associations, how come the Government has totally accepted them? Has the Government colluded with the business associations? I hope the Secretary can elucidate in his later speech.

Furthermore, I wish to rectify some misunderstandings of Members. I hope Members will understand that employees should be protected under the law and some basic employees' insurance plans. That is a very basic requirement. We only hope that tour escorts and tourist guides can get the most basic protection and we are not striving for them extra benefits. Some Members said earlier that there was a need to provide people with self-employment opportunities. If we accept that argument, we may as well stop setting the minimum wage level. Today, the old lady cleaning the toilet may be earning an hourly wage of $10 to $20; we do not want this situation to continue in Hong Kong. As our society becomes more civilized and advanced, this kind of situation should be eradicated or at least alleviated.

If there are any issues which Members do not understand, they can make enquiries with us so as to understand Mr LUK Chung-hung's amendments. I hope that Members will support Mr LUK's amendments. Thank you, Deputy Chairman.

MR PAUL TSE (in Cantonese): Deputy Chairman, there is no doubt that Mr LUK Chung-hung, Mr HO Kai-ming and colleagues who support Mr LUK Chung-hung's amendment have spoken out of their passionate care for the rights and interests of workers. In particularly, when Mr HO Kai-ming spoke just now, he rarely gave such an impassioned speech, which was definitely not mumbling clichés or reading from a script. While I admire him, I would like to first answer his question. It should be the Secretary who gives a response, but since I also have a good understanding of the issue, I know that the arrangement made by the Labour Advisory Board, a statutory body, is only one of the possibilities.

For any agreement or major plan, especially important documents such as contracts, if there are critical or fundamental conditions that cannot be complied with, this will be a good reason for repudiating the entire agreement. Why do I

say so? Looking at the entire Travel Industry Bill ("the Bill") and the policy intent, it is hoped that opportunity will be taken to incorporate into the relevant law and policy important components of the travel industry that are previously not subject to any regulation, especially the component relating to tourist guides and tour escorts. The entire Part 3 is mainly built on this consideration and policy arrangement. Let me also respond in passing to the speech made by Mr WU Chi-wai earlier. I do think that if the amendment is passed, the entire Part 3 will be invalidated and then all tourist guides and tour escorts will not be regulated by any legislation, which will be a major setback from the perspective of legislative intent. Perhaps the tone of the Secretary was a bit too strong just now and his remarks are not pleasant to the ears of some colleagues, but so long as they appreciate the underlying rationale, I think it is worth our understanding and support.

Deputy Chairman, I would like to declare interest as I am the so-called controller of a small travel agency. This travel agency, however, does not have any business as it merely aims to show my support of and interest in the industry, so it does not have any labour problem. Strictly speaking, there should be no conflict of interest; a conflict of interest is, however, involved in the small law firm which I am the boss. I therefore fully understand the dire plights of bosses of micro, small and medium enterprises.

Why is there still a distinction between barristers and solicitors today? A colleague mentioned this point just now, but he did not cite any appropriate example. One of the major reasons why both barristers and solicitors have been retained so far is that barristers are more independent, but more importantly, the reason why law firms support this distinction is that more than 85% of law firms belong to micro, small and medium enterprises which may have only one solicitor as the boss. The solicitors are well versed in property transactions but not in litigation, in order to survive, they often seek help from barristers to handle the litigation cases for them. Therefore, without the division of solicitors and barristers to undertake different tasks separately, I am afraid that the room for business will be greatly reduced. Bosses, employees and self-employed persons all held that the room for business in the market will subsequently be retrained significantly. This is also a very important or distinctive feature of the travel industry.

As I said at the beginning of my speech, I respect the intent of Members of the trade union, but sometimes we cannot meddle in other people's affairs because perhaps some practitioners may still want to retain such kind of room for

business. Just now, colleagues and the Secretary also said that this has something to do with interest and time. It is trendy to speak about sharing economy, which is also applicable to practitioners in the travel industry. They take up jobs when they are free, or decline the offer when they are not free. Or, as pointed out by a colleague earlier on, they might take up jobs simply to maintain connections with the travel industry. Furthermore, the travel industry is characterized by its seasonal nature, i.e. more jobs during high season but fewer jobs during low season, hence practitioners have to look for other jobs. A high level of flexibility is involved. I find it regrettable and impractical to stifle the room for self-employment all of a sudden.

Deputy Chairman, I have heard the concept of false self-employment time and again, and as a lawyer, I fully understand the underlying principles and have dealt with these cases from time to time. The reason why we still retain the distinction between self-employment and non self-employment, and sometimes leave the decision to the court is that there are too many possibilities in real-life situations. If, as stated by some colleagues, a complete abolition of false self-employment can safeguard employees, we might as well legislate to abolish self-employment all together. As a matter of fact, the existing guidelines issued by the Labour Department ("LD") have already taken into consideration many aspects, including those mentioned by Mr LUK Chung-hung and other colleagues. However, they are just factors for considerations. What matters most is that the two sides have eventually reached an agreement. If it is only a superficial agreement reached by secretly deploying weird tactics or threats and inducements, people may be compelled to seek justice by bringing cases of genuine self-employment to LD or the court to decide whether the self-employment is genuine or false.

However, it is an undeniable fact that genuine self-employment may be found in the many cases of false self-employment. Therefore, I think it would be too arbitrary to conclude that all cases are false self-employment, and this is inconsistent with the travel industry which we are familiar with. Of course, there are bound to be black sheep in the industry and in the past there had been in the travel trade that drivers, tourist guides or tour escorts, etc. were forced to work as self-employed persons when they were actually not self-employed. The problem is particularly serious when it comes to taxation and other regulatory issues, and this situation is certainly worthy of our concern. However, precisely due to the fact that the travel industry enjoys great flexibility that the situation can be likened to "a general in the field" during wartime, and tour escort is indeed "a general in the field".

The problem of false self-employment does exist, but there is no need for us to go so far as to rule out the possibility of genuine self-employment in a broad-brush manner. More importantly, if genuine self-employment will be abolished after the passage of the Bill and all self-employed tourist guides and tour escorts will be excluded from the scope of the Bill, this will bring about a crucial, basic or fundamental change, as mentioned by me earlier on. The entire policy will not be adequately implemented. The Secretary has already mentioned this point in his earlier speech.

With regard to taking out insurance, I surely understand that all employed persons should have minimal protection, but since I have been following up on travel matters for many years, I am aware that not only employees, but also bosses, small travel agencies or even large travel agencies, if their scale is not so large as international agencies, are unable to take out insurance against personal injury and death etc.

As confirmed by many Privy Council cases, travel agencies (especially outbound travel agencies) cannot evade their responsibilities by claiming that they are not liable for any negligence because they have commissioned local travel agencies, local hotels and local operators to make transport arrangements. On the contrary, in the event of an accident, the travel agency concerned will have to bear a heavy responsibility if it has not taken out any insurance. As evident in a number of major accidents in the past, the situation has been very unsatisfactory. Given that travel agencies have explored with the insurance industry the possibility of providing a collective risk protection but to no avail, many travel agencies are currently not protected at all. In the event of any accident, such as the Bai Teng Hu incident or other major accidents, the travel agency concerned will certainly close down unless it is a large-scale agency.

I would like to reiterate that the travel industry is very special. It is flexible but highly risky, and even the employers themselves are not adequately protected. Therefore, a more pragmatic approach is to develop personalized or tailor-made insurance packages, as the Secretary and Mr YIU Si-wing mentioned just now, with a view to offering protection to the majority of practitioners in the travel industry. If we insist on providing minimal protection of personal injury and death compensation that is similar to the employees' compensation insurance, I am afraid this will only lead to great losses at the expense of small gains, or even do a disservice out of good intentions. I therefore have reservation about using this reason as the basis of the amendment.

Actually, I do not quite agree with clause 37 of the Bill on "Display of information about tour group" because I consider the mandatory requirement of vehicles transporting tour groups to display the prescribed information too stringent. Instead of dealing with such trivial arrangements through legislative means, the Government should address the matter through administrative measures or by requiring the existing TIC or the future TIA to formulate guidelines, as these are administrative arrangements after all. Regulation should not be so meticulous as to govern the routes of vehicles and the meals to be served, because if this is the case, the Government might as well prescribe that there must be "four dishes and one soup" for each meal. This would result in excessive interference to the operation of the industry and thereby undermining its flexibility.

I understand that the objective of legislation is to address the conflicts and unnecessary problems caused by previous failures of vehicles of inbound tour groups to display the prescribed information, which had prompted the Government to place more emphasis on this aspect. However, I think it is unnecessary to impose regulation on unnecessary information, unnecessary administrative arrangements or unnecessary operational details by legislative means and prescribe the provisions in the principal legislation, as this will pose additional difficulties to the operation of the industry.

To sum up, Deputy Chairman, I cannot accept the relevant amendments because the entire legislation will then do a disservice out of good intentions.

Thank you, Deputy Chairman.

MR DENNIS KWOK (in Cantonese): Deputy Chairman, before I discuss the Bureau's amendments, I would like to respond to Mr Paul TSE, who has just talked about issues concerning the legal profession or the structure of the profession. I very much agree with Mr Paul TSE regarding the reasons for the two distinct divisions of the legal profession, namely solicitors and barristers who specialize in court litigation. He mentioned one very important reason for the division. When a law firm needs the expertise of a barrister, it will engage a barrister from outside to offer help in handling the case. This practice indeed brings great convenience and flexibility to the legal profession.

Many people have asked about the focus of economic development in the 21st century. Someone has mentioned gig economy. What is gig economy? Many people, young people in particular, do not want to work exclusively for a company or an organization because they have certain special talents or skills and can work for as many as 10 different organizations at the same time. Hence, if one has certain skills, such as online design, legal consulting or even travel service now under discussion, as long as technical support, such as network support, is available, he can provide service for many different companies or organizations. This provides great stimulation to economic development, business start-ups by young people and upward mobility in society. Such an economic system, which is also called gig economy, is conducive to the development of all trades and industries.

How did the division in the profession of lawyers come about? That was certainly not because of gig economy, as the work of barristers first emerged in the 17th or 18th century. Of course, the concept of gig economy did not exist at that time. Why is there such a division? The reason is that during litigation, a barrister has to be totally independent and his responsibility to the court has to be given the first priority. Hence a barrister cannot follow the instruction given by a solicitor or a client if the instruction contravenes his responsibility to the court. It is of great importance for a barrister to maintain his independence. Deputy Chairman, I do not wish to stray too far. I just wish to respond to the points mentioned by Mr Paul TSE and point out that those points are right.

When it comes to the Travel Industry Bill ("the Bill"), Deputy Chairman, the Bill should reflect the Government's current policy, that is, in order to facilitate young people's pursuit of entrepreneurship, the entry threshold should be lowered, so as to be in line with the Government's general policy of giving young people greater room for development.

In this debate, I will first discuss the Secretary's amendments. As I said just now, after listening to the views of the Bills Committee, the Secretary has proposed a number of amendments. Of course, when compared to this voluminous Blue Bill, the Secretary's amendments are not that many, but there a few very important amendments. Also, in view of the advancement of e-commerce nowadays, the Secretary has taken on board Members' views and put forward some amendments I find to be quite right.

First of all, the Secretary proposes to delete the premises requirement, that is, clauses 8(2)(a)(ii) and 8(2)(a)(vii) in Part 2 Division 3 of the Bill, the branch capital requirement, that is, clause 19(3), and also the restriction on staffing, that is, Part 2 Division 8. I will explain why each of these amendments is necessary and why I support them.

Concerning the premises requirement, it is right for the Secretary to propose the deletion of the provisions I just mentioned. When I was practising as a barrister, I had advised on some legal provisions concerning the travel industry. Among these provisions, some were very complicated, such as a travel agent had to carry on travel agent business in the same premises. But if a travel agent had a logistic support office for handling paperwork, banking matters, hotel reservation, etc., it did not need to receive guests in the same premises.

At that time there was a legal problem. If a travel agent had a large office for receiving guests, signing contracts with consumers or promoting tourism services to them, was it allowed to handle all logistic work in another premises? That was indeed an issue. Nowadays, owing to high rent and development of e-commerce, it is highly unnecessary to provide for such rigid provisions, requiring an operator to have a physical store for its operation or restricting the operation at a certain place. I believe that the Secretary has heard the views of many Members. They have pointed out that many transactions can be completed online or via Apps. All that is needed is a computer. Hence today the requirement that the travel agent business must be conducted in Hong Kong or at a certain location is not only difficult to enforce, but also unnecessary. It is also not conducive to encouraging young people to start a business.

With the advance development of information technology, one can use a mobile phone or various kinds of Apps to reserve hotel rooms or other services. By means of an App, one can reserve hotel rooms, home-stay lodgings or sightseeing activities in foreign countries. Hence, in view of the current trend, it is an obsolete practice to rigidly require a travel agent to operate at a certain location. I am very grateful that the Secretary understands this prevailing trend, pays heed to the views of Members and is willing to make amendments in this area, so that barriers are removed and furthermore, we can keep up with the trend. The trend is that the law enacted should not rigidly hamper the development of young people. In particular, when certain work opportunities arise, the law should be able to help those capable persons to start their online business, instead of imposing an entry threshold by requiring them to set aside a sum of money to rent a premises. Such a requirement is very stupid.

Next, I would like to talk about relaxation of the capital requirement. The Government has deleted clause 19(3) of the Bill which requires the paid-up share capital of each licence to be $500,000, and for each branch, additional capital of $250,000. The repeal of the additional capital requirement for branch licences by the Government in its amendments will surely alleviate the difficulties faced by start-up enterprises. In particular, when the start-up enterprises are operated by a few entrepreneurs who work together like brothers, if the threshold of capital requirement is too high, it forms another obstacle to these young people in pursuit of entrepreneurship.

(THE CHAIRMAN resumed the Chair)

A high entry threshold, coupled with the requirement to rent a premises, deposit guarantee money and comply with the capital requirements, are not conducive to diversified competition, business start-up of young people or their upward mobility through starting their own business. These provisions are appropriate from the perspective of an old mindset. If the Government wants to regulate an industry, it certainly has to address some fundamental problems and this approach is suitable. However, on second thought, these are old mindset, and as we are now in the e-commerce era, the old mindset and old way of regulation must be discarded. It is not necessary to maintain these outdated modes of regulations in the new law.

I am glad to see that the Bureau has taken on board the good advice of Members and I believe that is why the Bill is supported by many Members with few Members raising objection. From this we can see that if the Executive Authorities are willing to pay heed to Members' views, willing to listen to and answer Members' questions at meetings of the Bills Committee, and willing to look at issues from the perspectives of Members, I believe we will have a better executive-legislative relationship in the future, or there will be fewer resistance when the Executive Authorities want to implement a certain law.

We also understand that the Government must adopt proper measures to protect the interests of the general consumers. Therefore, when someone sets up a new travel agent, it is necessary to provide some basic protection for consumers. We all agree to this requirement. Hence, all travel agents must comply with the capital requirement. In this connection, we recommend that a classification system be adopted to determine the paid-up share capital required in

the following year on the basis of the business turnover in the previous year. To put it simply, the higher the business turnover, the more capital is required because with more business transactions, more customers are involved, and hence the level of protection provided should also be higher. In fact, this requirement may not be necessary because if a company or an operator is required to report to the Government its business turnover of the previous year, it will be a redundant requirement in the system and incur higher operation cost. I thus raise this point in the hope that the Bureau will carefully consider if such a need is required in the industry.

I have only half a minute left and I cannot speak in detail. Perhaps I will speak more in the next part, which is Division 3 concerning the amendment on the staffing requirement of a company. It is divided into three parts concerning three types of applicants: a company, a partnership and a sole proprietor. It was stipulated in the original Bill that a travel agent and its branch had to adhere to certain staffing requirement and procedures when it applied for a licence or licence renewal. Chairman, I will discuss these issues in the next session.

DR KWOK KA-KI (in Cantonese): Chairman, we are now discussing the proposed amendments. Has the Government not heard the views of Members? It certainly has not, as stated by Mr Dennis KWOK just now. The Secretary has proposed many amendments, but to me, he merely responds to the voices of operators of the tourism industry, thus compelling Mr LUK Chung-hung to propose amendments. Mr LUK has mainly proposed to amend clause 37 of the Travel Industry Bill ("the Bill") on "Display of information about tour group"; and clause 39 on "Meaning of working as tour escort", in the hope that more protection can be provided to practitioners of the tourism industry (such as tourist guides).

Let us look at some facts, including the number of complaints against inbound Mainland tour groups received by the Travel Industry Council of Hong Kong ("TIC") in the past three years. In 2015, there were 121 complaints of coerced shopping by tourist guides; and 148 complaints against arrangements for visitors to shop at registered shops (i.e. unscrupulous sales practices and coerced shopping). Although such practices have been widely reported, before September 2017, there were still 108 cases in which visitors were arranged to shop at registered shops. I believe the number will definitely increase by the end of the year and break the record of 110 cases in 2016.

Why has the development of the tourism industry become so terrible and dirty? In fact, it relates to the practices of the trade. Members may have heard the "Madam Zhen" story …

CHAIRMAN (in Cantonese): Dr KWOK Ka-ki, please focus your speech on the amendments. This Council is not conducting a Second Reading debate; instead, it is dealing with proceedings of a committee of the whole Council. Members should focus their speeches on the relevant amendments.

DR KWOK KA-KI (in Cantonese): Chairman, my speech is relevant. I am explaining why I will consider supporting Mr LUK Chung-hung's amendments and my reasons are based on some painful experience.

Some travel agents operating inbound tours have adopted very bad practices. As tourist guides and tour escorts may not have basic salaries, they can only rely on certain malpractices to earn their income, including coerced shopping and bringing visitors to some specified shops (i.e. "rip-off" shops) for shopping. Will Mr LUK Chung-hung's amendment change this situation? Frankly speaking, it may not because Mr LUK's amendment only requires a tourist guide and a tour escort to clearly display information on the coach or in the information pamphlet that the tour group is accompanied by a specified tourist guide. As stated in Mr LUK's amendment, the relevant information is required to be displayed on the vehicle for participants of the tour group. I am worried that these measures may not be useful when dealing with the very clever (or cunning, to put it bluntly) travel agents. Members may have heard that tourist guide or tour escort having no salary is already a better situation. As Members may have heard, there are negative-fare tours too. With the latter arrangement, the tourist guides and tour escorts have nominal salaries, but in fact …

(There was interference with the broadcasting system in the Chamber)

CHAIRMAN (in Cantonese): Dr KWOK Ka-ki, please put your mobile phone away.

DR KWOK KA-KI (in Cantonese): Chairman, I have done so. The zero-fare tour is already a better arrangement. Negative-fare tours refer to tours in which the tourist guide or tour escort has to pay $300 or $500 for each participant of the tour, and then they rip the participants off. If the participants do not spend enough money on making purchases, the tourist guide or tour escort has to pay the costs for the participants. If the amount of purchase is very high, the practitioners will be regarded as receiving visitors in a clever way. That is the distorted practice adopted in the tourism industry, which was initially a reputable industry.

In the past, the tourism industry in Hong Kong had a good reputation and many people wished to join the industry. I remember in the old days when I graduated, many of my fellow students had thought of becoming tourist guides. Back then, the majority of the tourist guides would lead tour groups to Japan, Korea, Europe or the United States. But, circumstances have changed with the passage of time. Since the introduction of the Individual Visit Scheme in 2003, the tourism industry has become an object of public loathing, as reflected in the "Madam Zhen" story.

I think this situation is not caused by practitioners of the tourism industry. People work for getting paid, which is fully justified. Nevertheless, big problems have arisen in the tourism industry. In addition, some unscrupulous travel agents in the Mainland have joined hands in ripping visitors off in the most outrageous ways, such as organizing negative-fare tours, low-fare tours or super-low-fare tours. I was told that the China National Tourism Administration and the Ministry of Commerce had combatted such practices a few years ago, but the situation has relapsed now. That is the first point.

Second, regarding the recent situation, after the commissioning of the Hong Kong-Zhuhai-Macao Bridge ("HZMB"), tens of thousands of low-quality tours flooded Hong Kong. As no Hong Kong tour escort or Hong Kong receiving agent has been arranged for these tours, how can these tours possibly boost our economy and make Hong Kong a tourism city. These tour groups will only stay in Tung Chung and compete with the local residents in buying daily necessities …

CHAIRMAN (in Cantonese): Dr KWOK Ka-ki, please return to the subject of this debate.

DR KWOK KA-KI (in Cantonese): Returning to the subject, I will now state my reasons for considering supporting Mr LUK Chung-hung's amendments. Mr LUK has indicated his wish that his amendments will provide practitioners of the tourism industry with more protection; and I will talk about the justifications of this argument. For instance, Mr LUK proposes to include, in clause 39 of the Bill "A person works as a tour escort if the person is employed by a licensed travel agent and accompanies an outbound tour group on a journey for the purpose of taking care of the participants of the tour group during the journey in accordance with the directions of another person who is carrying on the business of the travel agent (whether or not that other person is a licensed travel agent)." That is exactly the situation witnessed by us after the commissioning of HZMB. Without any tour escort or Hong Kong receiving agents, these problematic tours will not promote the development of the tourism industry of Hong Kong.

We know that the Hong Kong Tourism Board wishes to promote quality tourism services, such as to attract overnight visitors to stay in Hong Kong or high-quality visitors with higher per capita spending, etc. Nevertheless, after the commissioning of HZMB, it is anticipated that more low quality visitors—I dare not say poor quality visitors—will flood Hong Kong. These visitors may bring a little benefit to the tourism industry of Hong Kong, but to put it bluntly, they will also bring side effects or disadvantages. As Members may know, residents of Tung Chung have now become victims of the situation and Members can understand why these residents detest tour groups.

Initially, residents of Tung Chung greatly welcomed visitors. As Members may know, each week many visitors visit Giant Buddha, or take a bus operated by the New Lantao Bus Company from Tung Chung to visit Tai O, Mui Wo or Cheung Sha, etc. The local residents used to live harmoniously with visitors. Some visitors even visited Hong Kong Disneyland or Ngong Ping 360 and no problem has arisen. Nevertheless, poor-quality tours have swarmed Hong Kong now. The influx of a large number of low-quality visitors will not be conducive to our tourism industry nor bring benefits to Hong Kong in whatever way.

Thus, I am worried that out of good intentions, Mr LUK has not done any disservice but has proposed a number of amendments. From the perspectives of the practitioners or the tourism industry, I think his amendments at least form a starting point. At present, there is a minimum wage level in every trade; but oddly, I understand that many travel agents have not provided minimum wage,

and very often, they even exploit the tactic of bogus outsourcing to disallow their employees from getting the minimum wage. We can say the employees are receiving "negative wage" because they have to pay for getting their customers. Therefore, according to my judgment, Mr LUK should not only require travel agents to display information of tour groups in his amendment. Travel agents will not have any problem in displaying information, but will visitors be informed which tour or shops will riff them off? Thus, I think it is most important to provide tour escorts with the most basic protection. For example, will the Government incorporate the protection under the Companies Ordinance into the Bill; or will it empower the tourism industry to combat the current marketing malpractices?

Chairman, here I would like to talk about the reasons for the current problems. The counterpart of the Secretary is Mr YIU Si-wing, representative of the tourism industry in the Legislative Council. As at 2018, the number of electors in Mr YIU's functional constituency is 1 350 …

CHAIRMAN (in Cantonese): Dr KWOK Ka-ki, please return to the subject of this debate. This Council is dealing with proceedings of a committee of the whole Council, not a Second Reading debate.

DR KWOK KA-KI (in Cantonese): I am returning to the subject of this debate. I am questioning why the Government has not adopted …

CHAIRMAN (in Cantonese): Dr KWOK Ka-ki, please return to the subject of this debate and state whether you support or oppose the relevant amendments.

DR KWOK KA-KI (in Cantonese): I am considering whether I should support the amendments of Mr LUK Chung-hung, Chairman, but I am worried that his proposals may not help. Let me give an example. Since the Secretary has actually adopted many proposals of Mr YIU Si-wing; why has he not taken on board Mr LUK Chung-hung's suggestions? Mr LUK Chung-hung is a representative of the trade unions, and there are tens of thousands of practitioners in the tourism industry. Yet, it is most outrageous that there are only 1 350 electors in the functional constituency of Tourism, most of whom are employers.

Under the circumstances, whose voices do we expect the Member to represent, and whose voices do we expect the Secretary to listen to? Please do not forget that those people are not only electors of the functional constituency, but also members of the Election Committee who will participate in the election of the Chief Executive. Thus, even high-ranking officials have to give them face in the hope that they will return favours in the future, thus creating a win-win situation.

Nonetheless, how will the voices of tens of thousands of practitioners in the tourism industry, including coach drivers, tour escorts or tourist guides be heard? Can Mr YIU Si-wing, the elected Member of the Legislative Council, help them? Certainly not. That also explains why the Government has double standards and only proposed amendments which are favourable to travel agents. These amendments include the proposal mentioned by Mr Dennis KWOK earlier that branches or back offices of travel agents need not comply with the same requirements as travel agents, including the requirements about guarantee money and other legal responsibilities. These measures will surely help the industry. However, the situation is lopsided. In other words, the Secretary has adopted the views of the tourism industry, the business sector or the 1 350 electors who are the employers. To put it bluntly, the Government only favours "the banker", i.e. business owners.

Nevertheless, problems are actually caused by these people. In the majority of complaint cases from 2015 to 2017, had tourist guides obtained the most benefits? All benefits were certainly obtained by shops which ripped visitors off and unscrupulous travel agents. As Members may know, crooked shops and crooked travel agents collaborate and they actually belong to one and the same gang. This group of people has the power to control the industry and they have asked the representative of their sector to propose amendments which will only benefit them.

Thus, if Mr LUK Chung-hung really intends to improve the Bill, he should reform it. If we think that the current system of functional constituencies is outrageous, we should not let it perpetuate. We should fight for an election in which every representative of the tourism industry will be returned by "one person, one vote" in the future. We shall see what the results will then be; we shall see whether the Government will only adopt the amendments of the employers but not the practitioners of the tourism industry, i.e. the exploited people whom Mr LUK Chung-hung says he want to represent.

I would like to tell Members that if this rotten system is to continue, no matter how loud we shout and how hard we work in the hope of helping grass-root practitioners of the tourism industry or tourist guides, we will not succeed because the Government and the Secretary will not listen to them. Nevertheless, if the future representative of the tourism industry will be elected from tens of thousands of grass-root practitioners of the tourism industry who may be employees of travel agents selling tour packages, tourist guides or tour escorts, and if these people are exploited by arrangements of negative-fare tours or zero-fare tours, then their voices will really be heard and the Secretary sitting opposite to me will respond to them. If this rotten constitutional system in Hong Kong is not changed, our future will surely be doomed. I so submit.

MR YIU SI-WING (in Cantonese): Chairman, my views on the Government's amendments are as follows:

First of all, I would like to present my views on changing the requirements relating to physical stores.

At present, Hong Kong travel agents must have fixed offices or branches before applying for licences. The Travel Industry Bill ("the Bill") proposes that licensed travel agents will not be required to have operating premises and branches in the future and they only need to have contact addresses, which is a rather substantial change.

With technological development, the transfer of travel agent business from physical stores to online operation is the development trend. Having the advantages of convenient transaction and multiple choices, many online travel agents in Hong Kong and overseas are increasingly welcomed by Hong Kong people. With the emergence of online travel agents, difficulties in regulation have been encountered in various places because many online travel agents have not been registered and do not have offices in Hong Kong and transactions are conducted outside the territory. If there are complaints, the existing mechanism basically cannot handle them. These online travel agents do not have operating costs in Hong Kong and the regulatory authorities cannot penalize them in case of violations. This is very unfair to licensed travel agents and there is a lack of protection for consumers. There are no channels for members of the public to lodge complaints against goods not matching the descriptions. For example, travellers purchased DIY tour packages but the receipts were not stamped, so they

would not be protected under the Travel Industry Compensation Fund in the event of accidents. In fact, many online travel agents promote products in Hong Kong through different publicity channels and it is difficult for the public to tell whether they are licenced travel agents in Hong Kong.

The regulation of online travel agents is a new challenge throughout the world. The new Bill also regulates online travel agents, requiring them to apply for licences, deposit guarantee money and appoint authorized representatives if they promote and sell travel products in Hong Kong. However, they do not need to have places of business and they only have to provide correspondence addresses. This amendment can also reduce operating costs and provide young people with opportunities to start a business.

An improvement in the Bill is the regulation of online travel agents, which is welcomed by the trade and the public, but another problem has arisen. The Administration must change the existing requirement for traditional travel agents to have fixed premises before applying for licences; otherwise, it will be unfair.

Finally, the Government has accepted the advice of the trade and Members. Just now, Dr KWOK Ka-ki said that the Government only listened to my views but the proposals on cancelling the requirement of having fixed premises and strengthening regulation of online travel agents are actually made by Mr WU Chi-wai and Mr Charles Peter MOK and they insisted that the Government should make the amendments. Thus, the Government has not only listened to my opinions but also listened to the opinions of various parties objectively. The authorities has decided to cancel the requirement of having fixed premises, i.e. travel agents only need to provide correspondence addresses when applying for licences in the future. This provision to remove the barriers can solve the regulation problems of online travel agents, and is thus welcomed by micro, small and medium travel agents.

Another issue is the composition of Travel Industry Authority ("TIA"). According to section 1 in Schedule 9 to the Bill, the Administration proposes that members of TIA should comprise one Chairperson (non-trade member), one Vice-chairperson (taken up by the Commissioner for Tourism) and not more than 28 ordinary members; and it must be ensured that the Chairperson and not more than 15 ordinary members are non-trade members and that not more than 13 ordinary members are trade members. In considering the proportion of non-trade members and trade members, the Government hopes that the

composition can ensure representation and the opinions of different stakeholders can be taken on board, so as to make TIA more credible and professional. As regards non-trade members, the Government proposes the appointment of individuals who have knowledge in law, accountancy, insurance, education, consumer affairs or general administration such that TIA can effectively tap different views from outside the trade to assist in discharging different functions.

Concerning trade representatives, the Government has further optimized the arrangements, so that trade representatives with different backgrounds can join TIA. The new proposal has a wider coverage with not more than three travel agents specialized in inbound tour group business and not more than three travel agents specialized in outbound tour group business. The Government has also accepted the proposal made by me and the trade to appoint not more than three representatives from the Travel Industry Council of Hong Kong ("TIC"). TIC is a trade association with rich experience in trade regulation. With more than 1 700 travel agents as its members, TIC has wide representation and can fully reflect the voices of the trade. If TIC representatives are members of the future TIA, they can facilitate TIA in collecting opinions from the trade while the trade can, through TIC, disseminate travel information of interest to TIA, the media and the public. As I said yesterday, TIC representatives can help the trade handle some crises and continue to contribute to the travel trade. Thus, we hope the Government can include TIC representatives in TIA. Finally, I would like to thank the Government for implementing this proposal and incorporating the relevant contents into the Bill. In addition, the Administration has appointed not more than four tourist guide representatives or tour escort representatives to be members of TIA. The trade welcomes this move as TIA can then have a better understanding of the situation and opinions of the travel trade, especially its frontline practitioners.

Chairman, the third issue is to revise the accommodation exemption from 14 days to 28 days. In the course of deliberation, I found that the exemption criterion under the Bill for the definition of accommodation arranged by travel agents is inconsistent with the existing Hotel and Guesthouse Accommodation Ordinance. The Bill originally stipulated that if any person who obtains for another visitor to Hong Kong accommodation for more than 14 days, he is not carrying on travel agent business. However, under the Hotel and Guesthouse Accommodation Ordinance, only property rentals for more than 28 consecutive days will be regarded as not carrying on hotel or guesthouse business. The inconsistency of these two provisions will create regulatory loopholes, i.e. if a

traveller rents accommodation for 15 to 27 days, this is not regarded as hotel reservation service, and property developers can openly arrange for 15 to 27 days of accommodation for travellers without having to get a travel agent licence. Such a reservation arrangement contravenes the provisions of the existing Hotel and Guesthouse Accommodation Ordinance and is also unfair to licensed travel agents. Finally, the Government has accepted my proposal. Initially, any person who obtained for another visitor to Hong Kong accommodation for more than 14 days would be exempted; the number of days has now been increased to 28 days so as to be in line with the Hotel and Guesthouse Accommodation Ordinance. I support the relevant amendments. Therefore, only those of us who are relatively more professional can make better proposals, and we do not only care about the interests of the travel trade as suggested by Dr KWOK Ka-ki.

The Government proposes to amend the definition of Mainland inbound tour groups and add the definition of Mainland travel agents to achieve the legislative intent of regulating unauthorized tour groups. The Bill originally defined a Mainland inbound tour group as a tour group consisting of two or more visitors from the Mainland; any person who obtains accommodation, transportation, sightseeing, shopping and other services for a Mainland tour group organized by a person on the Mainland are carrying on Mainland inbound tour groups business. We think there are problems with the definition. Although we understand that the legislative intent is to combat unauthorized travel agents and to state that cooperating with travel agents that have not been approved by the Mainland travel authorities is unlawful, the literal meanings may create problems and cause misunderstanding.

First, according to the above definition, two or more visitors will form a tour group. Yet, if Hong Kong travel agents receive families on private tours; or arrange two to three travellers to share a rental car on DIY tours without providing other services, they will still be included in the scope of regulation. The scope of regulation is too wide and not very reasonable. Second, the original provisions of the Bill stipulate Hong Kong travel agents can only receive Mainland inbound tours which are organized by agencies approved by the Mainland travel regulatory authorities (i.e. the Ministry of Culture and Tourism). In fact, many Mainland inbound tour groups may be organized by societies, government agencies, enterprises or schools for studies, training or exchange purposes. As such tours are not necessarily organized by Mainland travel agents, the requirement that they must be approved by the Ministry of Culture and Tourism is inappropriate.

In addition, there are also problems with the following original provision of the Bill: "a Mainland inbound tour group organized by a person on the Mainland". If a tour group is formed overseas and its members are mainly foreign travellers with two or more members being Mainland travellers holding Chinese passports, the tour will meet the definition of "person on the Mainland". Such tour groups are also included in the scope of regulation and this seems unreasonable and inappropriate.

I have made counter-proposals to the Government based on these views, hoping that adjustments will be made. Finally, the Government deleted the definition that a tour group consisting of two or more visitors and give a clearer definition of Mainland travel agents so as to comply with the legislative intent. Hence, I welcome the relevant provisions. Chairman, these are my explanations on the Government's proposed amendments.

Thank you, Chairman. I so submit.

MR LUK CHUNG-HUNG (in Cantonese): Chairman, we have a quality debate today. In particular, Members are interested in knowing how to tell the difference between genuine self-employment and false self-employment; the difference between employees and self-employed persons, as well as various rights and interests, pros and cons and the flexibility issue. Members have also spoken on the merits and demerits of the Travel Industry Bill ("the Bill"). Therefore, this discussion is very important in my view. Being labour representatives, we deal with numerous labour disputes and labour relation issues on the front line. What is genuine self-employment and what is false self-employment? Is working part-time or freelance tantamount to being self-employed? To explain, I would like to share my experience with all Members.

There are different approaches of work, as many people believe. A worker does not necessarily have to be an employee; he can be a business operator, a self-employed person or a freelancer. I do not see anything wrong with this view. Yet, I think a fair, lawful and reasonable definition is necessary to prevent employers from exploiting legal loopholes by engaging the so-called self-employed persons to deny employees' rights and interests and evade employers' responsibilities.

Before going into the issue of false self-employment, I will first explain what genuine self-employment is. People who engage in certain types of job are genuinely self-employed. Of course, the following job types can be taken up by self-employed persons or employees. Some jobs, such as graphic design, allow great flexibility and freedom. Of course, I am not talking about graphic designers employed to work in a design house. A self-employed graphic designer can, after getting a job from his client, work at home burning the midnight oil or work in the morning with a cup of tea and a piece of cake; he may even take his laptop to the seaside to do his work. As long as he hands in his job on time, his employer will not care about his work approach. When the job is done, he will get paid. This is an example of genuine self-employment.

The other type of job is creators or writers. As long as they submit their writing on time and their work are well-liked by publishers and readers, they will get paid. It is another kind of self-employment. The self-employed persons enjoy complete creative freedom; they may even work in the toilet. Some other examples of self-employment include more common types of work such as insurance agent. An insurance agent, acting as a bridge between clients and an insurance company, is responsible for selling insurance products. He has complete freedom to decide how and when to approach new clients and whom to approach. Some insurance agents may even have their own assistants. All these are clear examples of genuine self-employment.

There are still some other obvious examples. A self-employed person may hire a team to help him finish his task. For instance, a works contractor or service contractor who provides services to individual companies will hire a team of workers to work on a specific task and charge his client for the work done. This is another example of genuine self-employment. Any dispute between a genuinely self-employed person and the company hiring him is a business dispute rather than a labour dispute.

Some Members have pointed out that Mr WU Chi-wai mentioned the word "freelancer" for a few times. Freelancers enjoy much flexibility at work, but they may be engaged as a self-employed person at one time and as an employee at another.

When it comes to tourist guides and tour escorts, are they employees in nature? Just now, I cited some reference information from the Labour Department. I also pointed out in my earlier speech that the work arrangement,

itinerary, clients and equipment of a tour group are provided by the travel agent. In other words, a tourist guide cannot select which particular tour to lead or design his own itinerary without following the arrangement of the travel agent. He cannot, for the sake of pleasing his tour members, make a decision on his own to take them to the Peak or to Portland Street. He is not in the position to do so. The travel agent has its specific rules and meal arrangement; a tour escort cannot decide whether the tour should dine at dai pai dong or in a hotel restaurant. In fact, the travel agent has made all the arrangement in advance, including transportation arrangement. As such, how can we deny that there is a stable employer-employee relationship between travel agents and tourist guides/tour escorts?

Among different types of employment relationship, one is called continuous employment. Under such a relationship, an employee who fulfils the "4-1-18" requirement will be regarded as a permanent employee and hence have more entitlements. "4-1-18" means that a person has to work for the same employer for a continuous period of four weeks, with at least 18 working hours per week. Permanent employees can, of course, have better protection, such as the entitlement to annual leave, statutory holiday and sickness allowance. It should be noted that employees under continuous employment may include casual workers and workers paid on a piece rate basis or hourly basis. In the old days, many factories paid their workers based on the quantity of their finished products, but this wage payment system is less common today.

An employment relationship exists between piece rate workers and employers. Although this kind of relationship may not constitute continuous employment, these workers are at least protected by the Employees' Compensation Ordinance. Under this Ordinance, an employee is entitled to work injury sick leave; in case of death in the course of employment, young employees under the age of 40 can have a compensation of up to 84 months of earnings while elder employees will have a smaller amount of compensation. As for work-related disability, employees can have a compensation calculated with reference to the degree of disability and the percentage of loss of earning capacity after medical assessment. This Ordinance gives them very clear protection.

We have all along been fighting for the enactment of legislation to provide for the employee status of tourist guides and tour escorts. As I explained earlier, the trade has accustomed to the wrongful practice under which some employers

may use false self-employment as a means to save costs and evade responsibilities. In case of accident, as no labour insurance has been taken out by the travel agent for the tourist guides and the tour escorts concerned, the affected parties will have to turn to the Labour Department for assistance. As we all know, the Labour Department will not act as an arbitrator; therefore the dispute will eventually be taken to the court to undergo a time-consuming litigation. Although cases handled by the Labour Tribunal do not require legal representation and the legal costs involved are thus lower, it is always arduous to go through litigation. If the relationship between travel agents and tourist guides/tour escorts can be clarified beforehand, disputes can be avoided.

I would like to thank Mr Alvin YEUNG for appreciating our good legislative intent. Just now, he expressed his concern that the Bill might directly affect the job opportunities of some self-employed persons. We do not think this is going to happen. When tourist guides and tour escorts no longer work under false self-employment and become genuine employees of travel agents, they will continue to get jobs from travel agents as they did in the past. There will not be any implication. Frankly speaking, if frontline tourist guides and tour escorts learn that after they become genuine employees, they not only can still enjoy work flexibility and freedom, but are also protected by their employers and labour laws, I think they will be more than happy to become employees.

After tourist guides and tour escorts have become employees, they will not be subject to any restrictions. They may continue to receive commissions and work for different travel agents. Some Members claim that an employee can no longer be employed by different travel agents, this is indeed a false proposition and a trick repeatedly played by the trade to confuse the public. We have kept citing the classic example of domestic helpers. While domestic helpers may do cleaning work for different employers throughout the day, there is still an employee-employer relationship between them and their employers. The employee status will by no means undermine the work flexibility of frontline practitioners. Mr Alvin YEUNG can rest assured. The employee status will not affect work flexibility; meanwhile, frontline practitioners' work freedom will not be affected.

Of course, as advised by Mr HO Kai-ming, the Government should intervene whenever necessary to rectify the unhealthy phenomenon in the trade. With the casualization of employment, the problem of false self-employment will get worse or develop into a situation which, in my words, is "while the priest

climbs a post, the devil climbs ten". Employers are so smart that they will make use of the loophole to deny the employee status of their workers by asking them to sign a service contract. I believe this phenomenon will become increasingly common in different industries, in particular, the travel industry. As we now have a chance to amend the Bill, we should make things clear so as to protect workers and minimize unnecessary disputes.

Mr WU Chi-wai asked me whether provision of service by way of contract would be subject to the new legislation. In fact, the principle of our amendments is very simple. A tourist guide/tour escort must be engaged as an employee in order to have an employee-employer relationship with a travel agent. No one can provide tourist guide/tour escort services by way of contract, service contract or self-employed contract. This is the objective of our amendments. I clarify this point so that Mr WU Chi-wai can have a better understanding. If this loophole is plugged, travel agents will have to engage tourist guides and tour escorts by establishing an employment relationship with them, and inbound tour groups will then be required to engage tourist guides from local travel agents. All grey areas will be cleared. I hope Members present will see this point.

As for outbound tour escorts, the Bill may not be able to address some of their problems for the moment. While some outbound tour groups may have a tour escort, some may not. The respective meanings of working as tourist guide and working as tour escort are set out in Part 3 of the Bill. Clauses 38 and 39 in Division 1 are the interpretation provisions which clearly provide that tour escorts must work as an employee. It means that in future, all tour escorts arranged for outbound tour groups will have to be the employees of travel agents instead of being engaged by way of false self-employment or ambiguous collaboration, which is undesirable.

Just now, a number of Members pointed out that ambiguous collaboration relationship will impair not only labour interests but also consumer interests. Many unhealthy practices will come up if tourist guides/tour escorts cannot have a clear working relationship or connection with the companies engaging them or if obligations are missing between the two sides. Therefore, their employment relationship must be clarified.

Mr YIU Si-wing remarked that the trade had indeed put in much effort to draw up an insurance plan with the insurance sector. I know that Mr YIU Si-wing has put in dedicated efforts for the trade but he may not consider this

issue solely from the perspective of frontline staff. He said that it was hard to reach a consensus on work insurance and we may not find an insurance company willing to underwrite this insurance. The solution is simple, just take out labour insurance. There are surely insurance companies willing to underwrite labour insurance. Under an employment relationship, the employer is required to take out labour insurance policies for his employees and work insurance will then become unnecessary. While some people consider work insurance problematic, I would say that the current work insurance proposal seems like "chicken ribs". There is no way that work insurance can compare with labour insurance. Unless we can agree with the trade on a protection proposal better than the labour insurance and refer it back to the trade unions for further discussion, we will insist on establishing the said employment relationship.

The current insurance proposal is no different from "chicken ribs". It can neither provide sufficient protection nor establish a clear employment relationship to give tour escorts and tourist guides a proper status. Chairman, in this situation, it is important to clarify the statuses of employers and employees in their employment relationship.

Lastly, while Dr KWOK Ka-ki said that he shared my belief, he once again tried to take political advantage by linking this issue to constitutional affairs. He had actually digressed too far. If he had been concerned about matters relating to functional constituencies and the election of Chief Executive by universal suffrage, he should have supported the previous constitutional reform package to implement universal suffrage. In considering this issue, the Government should give more weight to the views of the labour sector. As regards the issue of functional constituencies, it can be left to the next-term Government. As I do not want to see Honourable colleagues digressing too far, I have no choice but to speak on this problem briefly.

To conclude, I hope I have clarified Members' doubts about employment relationship. Our amendments will not devoid tour escorts and tourist guides of work flexibility or freedom. Given that an actual employment relationship does exists *(The buzzer sounded)* … we must take this chance to clarify the relationship through the Bill.

CHAIRMAN (in Cantonese): Mr LUK, please stop speaking.

MR ALVIN YEUNG (in Cantonese): Chairman, at the Committee stage today, we have been debating the amendments proposed to the provisions of the Travel Industry Bill ("the Bill"). I have no intention to stir up any war of words. But I must extend my appreciation to Mr LUK Chung-hung, who has exerted himself to persuade Members of the Council to support his amendments. We should affirm his efforts.

In his speech that sought to prevail upon us, Mr LUK Chung-hung spoke very well, saying that even if his amendments are passed, the Government will probably not withdraw the Bill. But I want to make clear one point. Suppose Mr LUK has correctly presumed that the Government will not withdraw the Bill, and all tour escorts and tourist guides will work as employees in the future, will employers allow those self-employed tour escorts and tourist guides, who now enjoy a certain degree of freedom, to continue to enjoy such freedom? I believe even Mr LUK also agrees that this is impossible, for there are naturally certain restraints in an employment relationship. Second, I do not want our society to come to a state where there is only false self-employment but no genuine self-employment. I believe people who are present, including government officials and Mr LUK, will agree that there are naturally certain self-employed persons in society and in the sector, and their interests should be protected to some extent.

In my remaining time, I will say a few words on the definition of carrying on travel agent business at a place outside Hong Kong under clause 4(1)(b) on "Meaning of carrying on travel agent business" under "Division 1—Interpretation" of Part 2 of the Bill. Clause 4(1)(b) places under the Bill a company which provides the public of Hong Kong with transport or accommodation service at a place outside Hong Kong, or which actively markets, whether in Hong Kong or from a place outside Hong Kong, to the public of Hong Kong any of the specified business activities. Such a company is required to apply for a licence and be regulated.

Chairman, the provision is clearly intended to regulate companies which carry on related business on the Internet. The policy intent is certainly good. As more and more Hong Kong people choose to book air tickets and hotels online on their own, placing these online operators under regulation will certainly accord an additional layer of protection to Hong Kong consumers. This point is

indisputable. As I stressed at the Second Reading debate yesterday, regulating online travel agents is an important task of the Travel Industry Authority ("TIA"). But now I have two questions.

First, the registered addresses of these online operators are usually in other countries. Regardless of whether they have applied to TIA for licences, we have to ask to what extent TIA can exercise its power in case of accidents or disputes involving Hong Kong people who patronize these operators? If online operators have applied for the travel agent licences of Hong Kong, the severest punishment that can be meted out by TIA is revocation of licences. However, does revocation of licences mean that the operators can no longer operate online and solicit business from Hong Kong people? Can TIA arrest the operators and shut down their websites? I believe that if online operators have not applied for Hong Kong licences, there is even less that TIA can do. After all, the countries in which these companies are located already have their own travel regulatory systems, and it is indeed very difficult to urge the governments there to take law enforcement actions pursuant to the Travel Industry Ordinance of Hong Kong. As for what mechanism TIA will put in place in the future for liaising and communicating with overseas travel regulatory bodies to ensure the rights and interests of Hong Kong consumers, I will quietly wait for the reply of the Secretary in a moment.

Second, I would like to talk about "actively markets … to the public of Hong Kong" as referred to in clause 4(1)(b)(ii). Chairman, at the Bills Committee, colleagues have actively discussed the meaning of "actively markets", or on which media to place advertisements and the number of advertisement placed can meet the definition of "actively markets". We certainly know that this is like fishing in the air, because there are no clear yardsticks. Let me raise a phenomenon that everyone should have encountered, Chairman. If one searches online information about travelling in Japan, he will see, in the next minute, on his social media platform advertisements for booking air tickets to Tokyo and hotels or booking self-drive tours in Hokkaido. Why is that so? The mode of advertising on the Internet is now very advanced. As the social media platforms and search engines are closely related, business operators no longer unilaterally select the target audience of their advertisements. Instead, companies or platforms on the Internet will send advertisements to potential users, based on what he has searched through the search engine and what he has browsed on the Internet. This is a new business model that we need to face in the 21st century.

As the Internet is an open world, online companies, particularly companies selling tourism products, will certainly target at all people in the world. As regards whether an online travel agent actively markets to the public of Hong Kong in its advertisements, TIA will need to make considerable efforts to ascertain this fact and thus determine whether a company should be defined as a "travel agent". If the definition of "travel agent" is increasingly blurred, we will face problems with regulation and law enforcement in the future.

Another related phenomenon is that some travel magazines and travel websites promote or reproduce information on hotels, car rentals and one-day tours. If the agents that offer such services basically do not have any intention to enter the Hong Kong market and have never actively marketed such services to Hong Kong people, only that the related information is reproduced on Hong Kong magazines and websites, thus attracting the patronage of a large number of Hong Kong people, should TIA consider them to be travel agents in case of any accidents? Will magazines or websites that reproduce the related information contravene the law? Certainly, I believe this is unlikely. Regarding these queries, the Secretary is duty-bound to offer an explanation to the public in a moment.

Chairman, I understand that the enactment of the Bill and the establishment of TIA by the authorities do not primarily targeted at such overseas agents, but I still hope that the authorities will carefully examine the difficulties related to definition and law enforcement I mentioned just now, so as to, following the implementation of the Travel Industry Ordinance for a certain period, consider amending this law or enacting a separate law to target at anyone that may possibly slip through the net. I will quietly wait for the Secretary to give us a detailed explanation.

I so submit.

MR WU CHI-WAI (in Cantonese): Chairman, in my first speech, I raised some of my concerns about the legal ambiguities that may arise from the amendments of Mr LUK Chung-hung. However, Mr LUK has failed to indicate in his reply just now whether revising the definitions under clauses 38 and 39 of the Travel Industry Bill ("the Bill") will affect other related areas within the regulatory scope of Part 3 on "Tourist Guides and Tour Escorts", thus giving rise to uncertainties. I have failed to hear any reply from him in this regard.

In particular, following the revision of the definitions under clauses 38 and 39 of the Bill, those who act as tourist guides and tour escorts must have employment relationship with travel agencies, but this is not mentioned in other prohibition provisions. In that case, ambiguities will naturally arise from the text of the law.

I understand that Mr LUK Chung-hung hopes to do more for protecting the rights and interests of employees, but actually I still have to address problems relating to the amendment of the Bill. If the amendments cause ambiguities to the regulatory scope of the Bill, there will be certain repercussions. I think many Members agree that we need to enhance labour protection to employees, but based on my observation and the information I heard, there are still ambiguities when we compare the protection proposed in Mr LUK's amendments with the legislative intent of the Bill. I will no longer talk about the Secretary's remark about withdrawing the Bill. The amendments alone will possibly create loopholes in the Bill and this point is already worthy of our attention and concern. In fact, regarding the employment rights and interests of tourist guides and tour escorts, I think the Secretary should take further actions to address the fundamental problem of how to balance the regulatory scope of the Bill and the protection of employee rights and interests.

The next core issue is certainly about the licences of tour escorts and tourist guides. Nowadays if tour escorts and tourist guides want to obtain licences, they only need to enrol in some training courses and sit a licensing examination pursuant to the rules of the Travel Industry Council of Hong Kong. Since time immemorial, tour escorts and tourist guides are not required to become employees of travel agencies or travel agents before they can obtain the licence. However, the eligibility for licensing of tourist guides or tour escorts in the future will be made an unsettled issue by the amendments. Will one have to become an employee of a travel agency before being sponsored by his employer to obtain a licence? Or are there any other channels for dealing with the issue of licences? If an employee resigns from a travel agency after obtaining a licence, what will happen to his eligibility to work? What if a person who has been granted a licence by the Travel Industry Authority chooses a different way of working? We have heard that residents of many housing estates hold tourist guide licences, and they usually only undertake tasks on Saturdays and Sundays when travel agencies need more people to handle and manage certain tourism projects. As such, will the amendments reduce their employment opportunities? We need to be concerned about such issues that cannot be sorted out in the process of discussion.

I think the direction mentioned by Mr LUK Chung-hung is worthy of our thorough consideration. Even though casual workers are not in a long-term employment relationship, they should still be accorded corresponding labour protection and employee rights and interests. In fact, a similar phenomenon is found in many different jobs. Even casual workers should be accorded their entitled labour rights and interests. I think the premise is that we should ensure that the legislative intent of the Bill will not be undermined due to the specific contents set out in the amendments. It will not be desirable if the amendments undermine the most important legislative intent of the Bill despite bringing improvement in labour rights and interests. The Bill aims to regulate and regularize different aspects of the travel industry in a clear, transparent and careful manner, and with this as a starting point, progressively enhance the operating and service quality of the industry, thus safeguarding the reputation of Hong Kong as a tourism paradise.

I think this is essentially the most important legislative intent. If we are unclear or uncertain about the repercussions of the amendments before passing them, the effect of the Bill will be in doubt, and the disadvantages will, I believe, outweigh the advantages. As such, the Democratic Party will oppose Mr LUK Chung-hung's amendments on this basis.

Thank you, Chairman.

MR DENNIS KWOK (in Cantonese): Chairman, just now I explained why we should support the few amendments proposed by the Government, but due to time constraint, I was forced to suspend my speech. However, since the focus of the debate in the Chamber is now the pros and cons of the amendment proposed by Mr LUK Chung-hung, I would like to first deal with the amendment proposed by Mr LUK Chung-hung.

The amendment proposed by Mr LUK Chung-hung mainly seeks to delete a number of provisions, just as Mr WU Chi-wai has said earlier on. However, I would like to point out more clearly that clauses 38 and 39 of the Bill mainly deal with the circumstances under which a tourist guide and tour escort can be legally regarded as a tourist guide and a tour escort. Let me read out the English version of the provision: "A person works as a tourist guide if the person is employed by a licensed travel agent and accompanies a visitor to Hong Kong for the purpose of providing any guiding service to the visitor in accordance with the

directions of another person who is carrying on the business of the travel agent (whether or not that other person is a licensed travel agent)." The amendment proposed by Mr LUK Chung-hung seeks to delete this part. Although I have studied this provision, I cannot figure out why Mr LUK Chung-hung has to delete this part as it is very important, which has clearly defined how a person will be regarded as a tour escort or a tourist guide.

After listening to the 15-minute speech of Mr LUK Chung-hung, I noticed a very important issue, and that is, the meaning of employee or independent contractor. He said some people are "pseudo independent contractors" for they are actually employees, but have been turned into "pseudo independent contractors". I would like to point out that there are already many definitions of the terms "employee" and "independent contractor" in law, and there are also century-old precedents clearly setting out the approaches adopted by the courts in dealing with these legal issues. Therefore, I feel perplexed and hope that Mr LUK Chung-hung can explain what is meant by "pseudo outsourcing".

According to the precedents of the United Kingdom or Hong Kong, there are five factors for considerations when the court determines if a person is a genuine employee: first, the control test; second, the integration test; third, a combination of all other factors, which is the multiple factor test; fourth, the mutuality of obligation test. In fact, these principles have been clearly stated in many precedents.

First of all, let us discuss the principle of control, which has been very clearly stated in the following precedent (I quote): "[a]n employee is subjected to the orders of his employer as regards how the work ought to be carried out. The employer's control over the workers is not confined to what has to be carried out but also in which manner it has to be carried out. In the case of *Walker v Crystal Palace*, a football player as a skilled person was given more freedom as to how to perform his job but yet he was under the control of his master as he was under the direction of the football club and direction of his captain all the times. Also his method of play, discipline and training were all controlled under his master and hence he was an employee. There were some weakness in this test as it had become less effective because in the modern industrial set up there were several specialists who monopolize a particular skill and the degree of control has become loose. The degree of control on employee has become lessen and the test has found to be somewhat unsuitable in modern times." (End of quote)

If we use tour escorts or tourist guides under discussion as example, the principle of control still stands. When tourist guides carry out their work, they may have to make decisions on the touring day to which tourist attractions, restaurants or shops he will bring his tour members. While they certainly have the discretion to decide the duration of stay at each attraction or whether the Peak is worth visiting, their companies do have control over how they carry out the work of tourist guides and tour escorts, unless Mr LUK Chung-hung tells me that tourist guides can actually decide everything on their own and their companies have completely no control over how they carry out the work of tourist guides and tour escorts. If that is the case, I would very much like to hear an explanation from Mr LUK. However, as far as I understand it, tourist guides need to follow the orders of their companies. They do not have complete control over everything, and cannot do as they wish. On the contrary, their companies cannot only control the tourist guides, but can also make requests and the tourist guides are obliged to comply with the orders and requests of their companies. Judging from the principle of control, why would tourist guides be "pseudo independent contractors" rather than employees? Therefore, I think this point has been clearly illustrated in the precedent.

With regard to the second principle of integration, (I quote) "Also known as the organization test where it refers to employees being essential group of the organization. The question is how far an employee is integrated into the employer's business. If the employee is integrated full into the employer's business then he is an employee or is under the contract of service. It is clear that an independent contractor do not become part of the employer's business. Lord Denning in the case of *Jordon & Harrison v MacDonald & Evans* suggested that an individual is an employee if his work is an integral part of business even though the employer has no direct control on his employee." (End of quote)

On the question of how the principle of integration applies to the travel industry and whether tourist guides are employees or independent contractors, as far as the rationale that I know or the basic information about the relevant industry are concerned, tourist guides or tour escorts are definitely part of travel companies. It cannot be said that they are not an important component of any company or enterprise.

Just as Mr Paul TSE said earlier on, law firms do not normally hire barristers, but will hire an external barrister when required. I trust that the travel industry will not adopt the same approach, but will handle in a completely different way. This is because, according to members of the travel industry,

when tourist guides or tour escorts carry out their work, firstly, they must follow the orders of their company and cannot do whatever they like; secondly, they should be the component of their companies. It seems to me that on this matter, people tend to think that tour escorts or tourist guides are the component of their companies rather than "pseudo independent contractor". In this connection, I would like to hear if Mr LUK Chung-hung has any other justifications.

As for the third principle, it is a basket of factors for consideration. For example, is there any requirement on working hours, such as from 9:00 am to 5:00 pm? Is there any requirement on the place of work, that is, where to work? Has the company imposed any requirement on the skills or patterns of work, such as the services or performance required of tourist guides or tour escorts? All these are factors for consideration, and of course, the remuneration and contract terms will also be taken into consideration.

Turning to working hours, I believe it is very likely that tour escorts have to work overtime. And yet, the daily working hours have actually been fixed. For example, they have to pick up tour members at the hotel at 7:00 am, take them to restaurant and shopping places, then subsequently to Tung Chung. They will be off duty at around 6:00 pm after the tour members boarded the coach. I believe they have regular working hours, but of course, Mr LUK is more familiar with this industry than I do, so perhaps he can explain to us if tour escorts do have regular working hours. This is the first point. The second point is the place of work. Evidently, tourist guides or tour escorts do not have fixed working places as they will certainly bring the tour groups to different parts of Hong Kong, but this does not mean that they do not have a fixed location of work. Their location of work is assigned by their employers or companies, which may require them to bring the tour groups to a certain location by coaches. Therefore, the location of work is absolutely restricted and there are clear guidelines. Furthermore, I do not understand why Mr LUK proposed to delete the provision requiring the display of prescribed information on coaches. I do not quite understand his intent as this is what a responsible travel company is obliged to do for the visitors. Therefore, the location of work has been very clear.

As regards what kind of work ability tourist guides or tour escorts should demonstrate to perform their work, I believe there must be certain requirements. Instead of doing whatever they like, there are very clear requirements. As for the remuneration and employment contracts, I trust that there are also clear requirements and the situation of "pseudo outsourcing" should not exist.

The last principle is mutuality of obligation test. (I quote): "This test means both employer and employee are under obligation, for example, the employee is under an obligation to perform work and the employer is under obligation to provide work. There cannot be a contract of employment if there is no mutual obligation."

This explanation is very clear. If the two sides are employee and employer, the latter must provide work whereas the former has to perform work. There is a relationship and also a mutual obligation between the two parties. If we apply this principle to the travel industry, it means after hiring a tourist guide, the travel company must provide work to him, and upon receipt of any order, the tourist guide has no choice but to perform the work. This clearly demonstrates an employer-employee relationship, and shows that the industry itself is operating under a mode of employer-employee relationship. So, is it possible to have an independent contractor instead of an employer-employee relationship? If we look back at the few principles mentioned just now, they have been clearly reflected in the several provisions under discussion, that is, clauses 38 and 39 of the Bill which Mr LUK Chung-hung proposed to delete. I fail to see why these two provisions should be deleted because referring to the logic and principles mentioned by me earlier on, the work of tour escorts and tourist guides has truly reflected the meaning of the relevant provisions. All of them are relevant and have not gone beyond the scope of the provisions. Therefore, I do not understand why Mr LUK Chung-hung proposed to delete the relevant provisions, but I will be happy to listen to his explanation.

Chairman, the last part is concerned with the amendments to Part 3 proposed by the authorities. I do not have time to discuss the amendments in this session, so perhaps I will leave it to the next session. Thank you, Chairman.

MR SHIU KA-FAI (in Cantonese): Chairman, the subject of this debate is the Travel Industry Bill ("the Bill") and we can also discuss the amendments to the Bill later.

Under the Bill, the Government mainly seeks to establish a Travel Industry Authority ("TIA") to ensure and enhance the quality of services of travel agents, tourist guides and tour escorts. I always say that the Government will not enact legislation without a reason, so it must have certain reasons for the proposed legislation. Many years ago, we often learnt from the media or news reports

about zero-fare tours or negative-fare tours, and that some tourist guides or travel agents coerced Mainland visitors into shopping for the sake of making money, and they even used abusive language. The overall image of Hong Kong was tarnished by such behaviours.

The Liberal Party supports the Government in setting up TIA. In particular, in 2007, a similar incident happened on the second day when Mr James TIEN, Honorary Chairman of the Liberal Party, became the Chairman of the Hong Kong Tourism Board. Therefore, throughout the years, we have expected the Government to reasonably regulate travel agents or tourist guides because these frontline staff have great impacts on Hong Kong's image as a hospitable city …

CHAIRMAN (in Cantonese): Mr SHIU Ka-fai, I remind you that the Committee is now considering the relevant amendments. Please return to the subject of this debate.

MR SHIU KA-FAI (in Cantonese): Yes, I know, Chairman, I will return to the subject of this debate soon. We certainly support the establishment of TIA … as the Chairman urged me to discuss the amendments, I will make other comments later.

A number of Members, especially Mr LUK Chung-hung, have mentioned that tourist guides and tour escorts must be hired by travel agents in the future and they cannot be self-employed. I certainly respect and understand Mr LUK Chung-hung who have strived for workers' interests for a long time; but if all self-employed tourist guides and tour escorts are compelled to be employed rather than self-employed, will there be more advantages or disadvantages? I would like to share my views.

Concerning the operation of travel agents, Mainland inbound tour groups must be received by travel agents for the provision of tour-guiding service. For travel agents with a considerable scale, they can certainly arrange tourist guide A to receive one tour group and tourist guide B to receive another, that is, tourist guides will take turns to receive tour groups. I believe larger travel agents can receive more tour groups; but for smaller travel agents which only receive two to three tour groups a week, can they afford to hire tourist guides or tour escorts on a

permanent basis? If the travel agent only receives three tour groups a week, but hires a tourist guide or a tour escort on a permanent basis, will higher operating costs be incurred? With higher operating costs, the costs of receiving tour groups will naturally increase; how likely will the travel agent be patronized? I believe Hong Kong people can conclude that only large travel agents can sustain their operation, while micro, small and medium travel agents with only two to three employees may not be able to sustain operation, and may even be forced to close down. They must have greater flexibility in order to sustain operation.

Currently, many small and medium travel agents in Hong Kong may only have two to three employees, including the boss, a secretary and a clerk. There are also tourist guides and tour escorts who bring tour group members to places such as the Peak and the Golden Bauhinia Square for meals and sightseeing. I believe such mode of business operation increase the chances of survival of small and medium travel agents, as well as the job opportunities for tourist guides.

On the contrary, if travel agents are required to employ tourist guides, as I said earlier, the scale of the company will become larger while small companies will have fewer opportunities to survive. If a company gets bigger, the employees' room for bargaining … Friends of trade union often say that the bigger the company, the stronger power it has to handle staffing matters.

In the course of discussions, many people from travel agents, including tourist guides and tour escorts, asked us not to endorse the amendment; why did they consider the amendment undesirable? Before receiving a tour group, a tourist guide must arrange the itinerary and negotiate with his employer, i.e. the travel agent. In fact, the tourist guide is not an employee of the travel agent, but a partner. For example, if a tourist guide finds a restaurant serving good food at reasonable prices and highly appreciated by tour group members and his friends, he may recommend it to the travel agent. Another example is that if a tourist guide finds certain places selling products at good prices and well-liked by many people, he may make recommendations to the travel agents, and the travel agent will make the final decision. The tourist guide will have some say during the discussion process.

When tourist guides lead tour group members to certain places for food or shopping, will they have extra gains? I believe those who have joined tours to places abroad will know that this practice is nothing new, right? When we were young and joined tour groups to Thailand, the tourist guide took us to a very

remote place to buy honey. Why did we have to go to such a remote place? When the shop owner saw that the tourists bought 100 bottles of honey, he showed his appreciation of the tourist guide by giving him two bottles of honey for free. Another example is that a tourist guide who often brings tour group members to a certain restaurant will be rewarded with two chicken legs or some other benefits.

However, if a tourist guide is an employee and he leads the guests to a certain place, he cannot, without the authorization of the company, receive any benefit. Such a practice is illegal and he is collecting commissions illegally. Since he is an employee, he cannot have extra gains unless his boss has given approval. But if the two parties can reach an agreement, the situation will be different. I have just talked about extra gains, if the two parties can reach an agreement, the clients will also be happy. For example, if a chicken leg is sold at $30 in the market, but the chicken leg recommended by the tourist guide is sold at $25 or $28, tour group members who enjoy the food will not mind if the shop owner gives the tourist guide two chicken legs for free. As such, tourist guides and tour escorts will have room for survival. This is the first point.

Secondly, I believe that professional tourist guides have a good knowledge of tourist attractions and shopping spots and their eloquence is comparable to Members, they can speak non-stop at a fast speed. Yet, they will have difficulties in writing articles. My personal assistant writes articles five times faster than me; how can I compete with him? His expertise is in writing articles, at a speed mush faster than me, while my expertise is in delivering speeches. Similarly, tourist guides may have expertise in introducing tourist attractions and taking personal care of tourists. If a tourist guide works full time but he only needs to work as a tourist guide for three days a week, what are his duties on the two other days? Should he stay in the office to help with the cleaning work or to do typing work? He is not familiar with these tasks and is unwilling to take up the work; he would rather take care of his family or engage in other work. As the work of a tourist guide has more flexible working hours, he would rather spend time patronizing other shops or rating restaurants than sitting idly in the office. A tourist guide once asked us not to bundle him with the travel agent.

Thirdly, paying employees higher wages. As we all know, the current wage level in Hong Kong only meets the statutory minimum wage level. However, part-time employees are paid higher wages because employers know that they do not work every day as they may only work three days a week.

Naturally, they will have higher wages and their wages cannot be based on the normal wage level. Employers will also adjust their wages to reduce costs, and this is the genuine mode of operation in our society at present.

Mr LUK Chung-hung wants to assist tourist guides and tour escorts probably out of good intentions, but he may do a disservice out of good intentions, making them more worried. I mentioned earlier that doing business in Hong Kong seems very difficult but this is actually not the case. A business operator only needs to calculate how much business he will have and the costs incurred. If there are surpluses, he can continue with the operation but if there are frequent losses without any prospect, he should close down the business as soon as possible. This is simply the mode of business in Hong Kong.

I have just talked about costs. Apart from rents and wages, tourist guides made up the biggest costs of travel agents. Assuming that I run a travel agent and employ a few tourist guides to receive Mainland tour groups every day, if unfortunately, no tour groups come to Hong Kong owing to the harassment of visitors by some members of the public, how can I pay wages to these tourist guides? Should I ask them to take my family to visit the Golden Bauhinia Square? This will not work. Should I ask them to type? That is not their expertise. Why does the travel industry outsource so many services? This is the current mode of operation.

I really appreciate Mr LUK Chung-hung as he is hardworking and tries to help workers. However, I have reservations about his proposal and the Liberal Party cannot render support because his proposal will not bring changes to the travel industry. If some people do not quite understand the reasons involved, the practitioners of other industries may contact Mr LUK and request for changes to other industries as well.

Let me give an example. Currently, many tutors teach students individually and their hourly wages can be as high as $200, but how come tutors do not have insurance protection? If a tutor is injured and hospitalized because of excessive talking but he does not have insurance protection, who will pay the medical expenses? If tutorial centres are required to employ all tutors, I believe that tutors teaching piano or English will contact Mr LUK, querying why changes should be made for no reason to this well-established mode of operation.

Worst of all, if these tutors are not employed by tutorial centres after the enactment of the Bill, they cannot teach students on their own and will be unemployed. Similarly, if tourist guides cannot work as self-employed persons after the enactment of the Bill and travel agents dare not employ them, they will be unemployed. What should they do? Do they have to switch to other trades? We should thoroughly consider Mr LUK Chung-hung's amendment.

Mr LUK has also mentioned that he is really worried about the lack of insurance protection for self-employed tourist guides at present. Some tour escorts told us that Mr LUK was willing, after discussing with them, to offer assistance in respect of insurance. If Mr LUK's amendment is not passed but the Bill introduced by the Government is passed, self-employed tour escorts and tourist guides will have insurance protection early next year to safeguard their safety.

All in all, when assisting workers, I think that we must consider the actual mode of business operation in Hong Kong because this will not only affect individual industries but also our society as a whole.

Therefore, Chairman, regarding this amendment *(The buzzer sounded)* …

CHAIRMAN (in Cantonese): Mr SHIU, please stop speaking.

MR SHIU KA-FAI (in Cantonese): … I state my opposition. Thank you.

MR LUK CHUNG-HUNG (in Cantonese): First of all, I have to say a big thank you to Mr Dennis KWOK who, being the representative of the legal sector, is particularly professional in explaining legal issues. While the information that I cited earlier was written by the Labour Department in layman's terms, Mr KWOK explained who was and who was not an employee from a legal perspective by applying five relevant tests. I trust Mr Dennis KWOK's professional legal knowledge in this aspect; yet he may not understand why there is the problem of "false self-employment". He also may not understand why such disputes continue despite the existence of numerous case precedents and the five relevant tests, including the control test and the integration test.

The lack of clear understanding on the part of employees is the reason for the existence of "false self-employment", disputes and grey areas. To be honest, as labour representatives, we should work harder to publicize the definition of employee, and the Labour Department should in the meanwhile step up its educational efforts. Many employees know nothing about the definition of employee and simply believe in the words of their employers that they are not working in the capacity of employee. If employees are asked to sign a service contract with their employers, they will believe that they do not have the employee status, and this practice is common in the trade. This is why the wrong practice has been accepted as right.

Some companies may exploit the same legal loopholes to deceive their staff, denying the payment of severance payment in times of closure, termination of contract or abolition of post. These cases are actually very common. Wage earners are in a very disadvantageous position because not every one of them is as familiar with the law as Mr Dennis KWOK and some other Members or is as conversant with the labour legislation as trade unions. This is exactly why a large number of false self-employment cases have arisen. Many employers would cheat their employees and exploit their interests. This is what actually happens in real life, and my amendments are hence necessary. In the view of Mr Dennis KWOK, some relevant definitions are so clear that they do not have to be included in the law; however, I have my reasons to propose such amendments.

He also questioned why I proposed to delete certain provisions in the Bill. In fact, my proposal is not merely deletions but also substitutions. By proposing to delete and substitute the provisions concerning tourist guides and tour escorts in clauses 38 and 39, I want to highlight three words, i.e. "is employed by" in the phrase "is employed by a licensed travel agent". This is what I want to tell Mr Dennis KWOK specifically.

As for the views given by Mr SHIU Ka-fai, I think he is also a bit confused. I see his efforts in balancing the interests of employers and employees, but he may have mixed up some concepts. For example, when stating the difficulties facing small travel agents, he said that it would be unreasonable to require these agents to engage tourist guides and tour escorts as permanent employees, given that they might only have a handful of tours each week. Yet, I am not asking employers to engage tourist guides and tour escorts as permanent staff. The employers may continue to pay tourist guides and tour

escorts on a daily or tour basis. However, they must admit the employee status of tourist guides and tour escorts. I am not urging employers to turn employees into permanent staff. I must clarify this point.

On the point that tourist guides or tour escorts may sometimes suggest tourist attractions to travel agents, I do not think this is surprising for tourist guides or tour escorts to do so because it is common for employees will give suggestions to their employers. In the case of Members' assistants, they may suggest from time to time that we should use the service of a particular production house owing to its production quality. This point is not a problem either.

Regarding the receipt of commissions, as stated by Mr SHIU just now, tourist guides and tour escorts may continue to receive commissions with the consent of employers. For instance, it is natural for tourist guides or tour escorts to receive reasonable commissions after bringing tourists to make purchases at shops which charge reasonably and will not rip tourists off. After all, commission is part of the normal income of tourist guides and tour escorts. As a matter of fact, the employee status of tourist guides and tour escorts will not have any implications on their commission income, work flexibility or opportunities to make specific suggestions to their companies or travel agents.

I must emphasize that, on this issue, the establishment of employment relationship will not have any impact on the actual operation of the trade; instead, it will reduce unnecessary disputes between the two sides. Do you think that trade unions enjoy lodging claims to the Labour Department? Mr Dennis KWOK should see my point, though he may not take the perspective of ordinary wage earners. Chairman, it is troublesome to lodge claims to the Labour Department. First, we have to fill out a form. Second, we have to arrange a mediation meeting without knowing whether the employer concerned is going to show up and, worse still, we may have to attend more than one mediation meeting. If no consensus can be reached between the two sides, the dispute will be referred to the Labour Tribunal for follow-up. We will then have to wait for a mention hearing. For most of time, the judge will ask the two sides to settle their case in the mention hearing. While the amounts of claims are small in labour disputes of this kind, it may take years for a case to conclude, and not even the winning party will feel happy. This is the reason why we wish to minimize such disputes. In addition, these disputes can hurt labour relations. In order to

avoid disputes, it is best to provide statutorily that travel agents must admit the employee status of tourist guides and tour escorts, and I have highlighted in my amendments that tourist guides and tour escorts are "employed by" travel agents.

The last worry of Mr SHIU Ka-fai is that tourist guides and tour escorts may hence lose their job, but that is not going to happen. Unlike private tutors, painting teachers or piano teachers who get paid right after class, tourist guides and tour escorts are treated differently. Travel agents are required to obtain a license and hence subject to regulation. As for tourist guides and tour escorts, even if they provide services by way of false self-employment or the so-called collaboration, they still have to receive tour groups through travel agents. Nevertheless, we all agree that travel agents and tourist guides/tour escorts must have a clear status in their relationship, as Mr Dennis KWOK said just now. I have to thank him for explaining the five tests which explain what constitute an employment relationship between the two sides. Why can't this relationship be provided expressly in the legislation? Is it so hard to give wage earners a clear status?

By analogy—although this analogy may not be that appropriate—when a man and a woman live together as if a married couple, one of them may want to get married to establish a status for specific protection. However, the other party claims that cohabitation allows flexibility to both sides. Chairman, frankly speaking, the one who refuses to get married simply wants to evade responsibilities.

How come it is so difficult to clarify the employer-employee status in an industry? I am not asking for extending this proposal to all industries, although I do not rule out the possibility that some other industries may have such a need in the future. But why should the wrong practice be tolerated and regarded as right? The Government is clearly aware of this problem, but it threatens to withdraw the whole Bill if my amendments get passed. I know that the passage of my amendments may slightly distort the intent of the Bill; otherwise, the Government would have accepted my amendments. But how come the Secretary threatens to withdraw the Bill when I merely propose to amend three sentences in this lengthy Bill? This Bill is not the product of extensive consultation, and my amendments will not pose any adverse impacts on labour relations or leave no room for the two sides to cooperate or negotiate in the future. Even if the Bill is amended, it will not lead to any political consequences or other major problems.

So, why does the Government threaten me? The Secretary has accused me of stirring up trouble, saying the passage of my amendments will ruin the "chicken rib" insurance plan that has been agreed on. As we have all along considered this insurance plan as "chicken ribs", which is unappealing but a bit of a waste to throw away, we do not intend to give up. However, we must state clearly our arguments in the Council and fight for the most. I do not think my amendments will get passed; therefore there is no need for the Government to withdraw the "chicken rib" insurance plan. The responsibility falls on the Government but not on us. Secretary Edward YAU, please do not pass the buck to trade unions for that will be extremely unfair. If the Government regards us as work partners, please stop making such remarks.

I know that the Secretary, the Under Secretary and the Commissioner for Tourism have tried to mediate in this issue. We approve their efforts but the outcome cannot live up to our expectations in terms of providing protection and meeting the actual needs of trade practitioners. Therefore, we have to continue with our fight. Yet, the Government threatens me. I do not think it is right for partners to cooperate in this way. Of course, constitutionally speaking, the Government has every right to withdraw the Bill. Yet, the withdrawal will be, in my view, a disrespect for the Council as well as the long-established communication between us and the Government. I hope the Secretary will stop using his words to undermine the future cooperation among trade unions, the Government and the trade on this issue.

I will stop for the moment. I urge Members to support my amendments to those three clauses.

DR FERNANDO CHEUNG (in Cantonese): Chairman, I speak in support of Mr LUK Chung-hung's amendments. I have just heard Mr LUK Chung-hung say that the Government adopted a high-handed approach, indicating that if his amendments were passed, it would withdraw the Travel Industry Bill ("the Bill"). This is a threat to the Legislative Council and the Government has repeatedly adopted this approach. Just now some Members also mentioned that the same situation had happened in respect of my proposed amendments, including my amendments to the reinstatement order in the Employment Ordinance. However, there is a slight difference. At that time, The Hong Kong Federation of Trade Unions ("FTU") did not support me and Members of FTU even left the Chamber during the voting. However, I will not leave the Chamber today and

will vote in favour of FTU's amendments. I believe this is the difference between the Labour Party and FTU as we act on the basis of principles and the matter itself.

The greatest controversy about Mr LUK Chung-hung's amendments is the status of tourist guides and tour escorts as employees but not self-employed persons. This amendment is proposed to target the present malpractice of the industry. The Government implemented the statutory minimum wage in 2011. Owing to the unfavourable economic environment at that time, travel agents asked serving tourist guides and tour escorts to change their status from employees to self-employed persons. Using the analogy cited by Mr LUK Chung-hung just now, a man and a woman already have the physical relationship of a married couple and now they want to have a proper status. In fact, Mr LUK, the status had always existed, but it was only in 2011 that the ecology of the industry changed. Obviously, by taking such an approach, employers shift the financial risk of the business to tourist guides and tour escorts who used to be their employees. It is just that simple.

The Labour Department has clearly spelt out the three major differences in the protection provided by the law to employees and self-employed persons. First, employees are entitled to various benefits and protections under the Employment Ordinance, including wages, rest days, statutory leave, paid annual leave, sickness allowance, severance and long service payments; second, an employee can receive compensation in respect of injuries or death as a result of an accident arising out of the employment in accordance with the Employees' Compensation Ordinance, but self-employed person do not have such statutory protection; third, under the Mandatory Provident Fund Schemes Ordinance, the requirements for contributions made by employees and self-employed persons are different. Employers are duty-bound to make contributions for their employees while it is up to self-employed persons to participate in the Mandatory Provident Fund scheme and make contributions. The law has clearly laid down the differences in statutory protection provided for self-employed persons and employees. At present, travel agents have not, as employers, borne the responsibilities for their employees.

Are tourist guides and tour escorts employees, and can they be classified as self-employed persons or independent contractors? Mr Dennis KWOK quoted certain principles earlier. I have also drawn reference from local and overseas principles when considering if people engaging in these two work types are

considered as self-employed persons or the employee. There are three major definitions for an employee in the United States. First, in respect of behavioural control, are the working hours, tools and apparatus required by a worker and the work contents specified by the employer, or have a set of rules been set for the work and those rules are very often specified by the employer? To apply this definition to tourist guides or tour escorts, I think the answer is very clear. As stated by Mr Dennis KWOK, the rules are controlled by the employer rather than the employee. For example, when they will work, what kind of work they will undertake and the contents of the work are certainly specified by the employer. A tourist guide is responsible for taking tour group members to tourism spots and introducing the spots so that tour group members will have a pleasant travelling experience; they should also try to ensure that tour group members will get the services and reception pledged in the company's advertisement. If there are discrepancies, it is dereliction on the part of the tourist guide. The work contents of the tourist guide are decided by the employer. In respect of tools, a tourist guide may not need many tools. Basically he only needs to hold a flag when he conducts his tour-guiding work. I am not sure but I believe the flag is provided by the company and the tourist guide will not make it by himself. If a tourist guide is required to wear uniform or anything that bears the logo of the travel agent, they are provided by the employer. The tourist guide will not ask another company to produce a uniform or anything bearing the logo of the travel agent.

The second principle is about financial control. Can a worker work for different employers at the same time? For example, one may have a full-time job and 10 part-time jobs. As Mr SHIU said just now, a university student may work as a tutor. Can he tutor one student only or can he tutor two or three students at the same time? As regards tourist guides and tour escorts, especially full-time employees, how many travel agents do they work for? Obviously, they work for one travel agent only. Of course some say that some tourist guides and tour escorts are part-timers and they may work for more than one travel agent but will they work for many travel agents simultaneously? In the IT sector that Mr Charles Peter MOK represents, the technical personnel, such as consultants, can work for many companies at the same time. They may set up their own consultant companies and solicit business, providing information technology support services for more than one company. They are certainly self-employed persons and they may also have their own companies.

However, the situation of tourist guides and tour escorts in the travel industry is not quite the same. Are they entitled to share the profits of the company? If tour escorts or tourist guides hold shares of the company and are entitled to share the bonuses of the company when the company makes a profit, then they are not employees. If they play a part directly in the profit sharing mechanism of the company, their relationship with the company is not simply an employee-employer one. But the present situation is not like that. It is the employer who wants to minimize the risks. To what extent can they do so? Honestly, I am not familiar with this industry but I know there is the practice of "buying heads", that is, tourist guides have to pay money to travel agents. If there are many participants in a tour group, the tourist guide has to pay a sum of money first, and the problem of advance payment for a tour group received may be involved.

Under such circumstances, the travel agent will surely not lose money when it receives a tour group. As regards whether a tourist guide can make any money, it will depend on the amount of tips paid by tour group members or whether there are many tour group members willing to shop in those unscrupulous shops, hence providing sufficient commission to the tourist guide. The risk of incurring loss is borne by tour escorts and tourist guides, but can they share the profits of the company? No, they can't. Hence, in respect of financial control, how can they be defined as self-employed persons?

The third principle is whether the work of the people concerned is related to the core business of the company. For instance, is the work of a cleaning worker of an IT company related to the core business of the company? Probably not. Hence, this cleaning worker may not have an employee-employer relationship with the IT company. However, is the work of tourist guides and tour escorts related to the core business of a travel agent? This is obviously the case. It is impossible for a travel agent to organize a guided tour without a tourist guide or a tour escort. Similarly, the work taken up by a system engineer hired by an IT company is of course related to the core business of the company. The company has no justification to say that this engineer is a self-employed person. It is just that simple.

Applying the definitions of the United States, it is very clear that it does not make sense to say tourist guides and tour escorts are not employees of a travel agent. The Labour Department has set down a series of criteria on the calculation of wages and the scope of work, etc. I have already expounded on these areas and will not repeat. Second, the control of work process, which

Mr Dennis KWOK has also mentioned, is in the hands of the employer, rather than in the hands of tourist guides and tour escorts. I have also mentioned the ownership and provision of tools and materials—these requirements that I am now reading out are the criteria set down by the Labour Department of the HKSAR Government to distinguish an employee from a self-employed person. All tools are owned and provided by the employer.

Fourth, as regards whether a helper can be hired, can tour escorts and tourist guides hire helpers? I do not see why they would do that. If one opens a consultant company to provide services for several bosses, he may of course hire helpers but tourist guides and tour escorts will not hire helpers to assist them in their work as they are basically working for their employers. Fifth, concerning the liability of bearing financial risks, meaning the risks of making profits or incurring losses, it is very clear because these workers are not entitled to sharing the profits but they must bear the risk of incurring loss. Sixth, the responsibility of taking out insurance and paying tax is also spelt out in the definitions of self-employed persons and employees. Lastly, concerning the traditional structure and practice of the industry or profession, as I have said at the beginning of my speech, according to the traditional and practice of the industry before 2011, all tourist guides and tour escorts were employees but now owing to the change of the ecology of the industry, most of them have become self-employed persons. But are they under false self-employment? According to the above mentioned criteria, it is obvious that they are under false self-employment.

On the whole, to right the wrong, we are duty-bound to let these people resume their status as employees, so as to give them the statutory protection they rightly deserve. Someone has asked if it is impossible for some of these people to be self-employed if that is what they really want. It is possible. They can continue to work as casual workers. Many people mainly work as casual workers nowadays and there is no contradiction between the two and they are not exclusive of each other *(The buzzer sounded)* …

CHAIRMAN (in Cantonese): Dr CHEUNG, please stop speaking.

MR SHIU KA-FAI (in Cantonese): Chairman, concerning the arguments just made by Mr LUK Chung-hung, I would like to share my views. According to Mr LUK, even if the business of a travel agent is not very good with only two to

three tour groups each week, the travel agent can still sign an employment contract with its employees to hire them for only three days a week. From the company's perspective, assuming that an employee only receives tour groups for two and a half days each week, if a tourist guide or a tour escort is in cooperation with the company, the company can only share profits with him and he will not receive much money. However, Mr LUK has just said that maternity leave and labour holidays as stipulated in the labour legislation should not be included in the costs. Why then should these be included in the company's costs? So, I just mentioned that the costs of the company would increase. Assuming that the company really needs to hire dozens of employees to receive a number of tour groups, the costs can definitely be estimated but it may not be necessary to do so because there are not so many tour groups to be received.

From another perspective, if a tourist guide only works two or three days a week but he still has to sign an employment contract with the company, is this arrangement appropriate? Dr Fernando CHEUNG's analytical ability is really strong, he said that the tourist guide should not share profits with the company, and he should only receive profits on a pro rata basis. Dr CHEUNG should really communicate with the industry and understand their working patterns. In the case of hiring a cleaning worker, there is certainly no problem as she is only responsible for cleaning work and her wages are calculated on an hourly basis according to the number of hours she works each day. How come so many tour escorts and tourist guides have raised objections? It is because they do not want their wages to be calculated on the basis of working hours. Nowadays, we often prefer DIY tours, but we joined tour groups more than 20 years ago and visited many places led by tourist guides. For example, when we travelled to Thailand, we could not speak Thai while many local people could not speak English; did we dare tour around ourselves? As this did not work, we could only tour around led by tourist guides.

I mentioned in the last session that if a tourist guide often takes tour group members to a restaurant to eat braised shark fin with chicken, and he takes dozens of people to patronize that restaurant every day and for dozens of times a month, will the restaurant owner highly appreciate that tourist guide and give him braised shark fin with chicken for free or something else as a reward? Some people like to be tourist guides and tour escorts because they can have extra gains. If a tourist guide provides good services in receiving tourists, he will get tips at the end of the tour and some other benefits from restaurants or shops. The argument made by Dr CHEUNG a while ago is incorrect; the high profits and booming business of the company has no impact on tourist guides …

CHAIRMAN (in Cantonese): Mr SHIU Ka-fai, you should address your observations to the Chairman.

MR SHIU KA-FAI (in Cantonese): Sorry, Chairman. The argument made by Dr CHEUNG a while ago was that this did not apply to every industry, e.g. this was not the case with tourist guides and tour escorts. If they do a good job, they will have more income. So, we should figure that out.

Second, Mr LUK Chung-hung has just mentioned the itineraries. If tourist guides are employees of the company, they can also make suggestions on the itineraries. From another perspective, I understand that about 90% of the travel agents in Hong Kong will arrange tourist guides and tour escorts to lead tour groups after they have reached a business deal. Will tourist guides and tour escorts bring business to travel agents? They will. Why? If tour group members highly appreciate the good services of tourist guides and tour escorts for bringing them to enjoy quality food and buy inexpensive things, and even inquiring after them after their return to the homeland, these people will certainly patronize the same travel agent again next time. I believe many Hong Kong people become friends with tourist guides after their return to Hong Kong. So, tourist guides and tour escorts may have some familiar customers who will contact them before visiting Hong Kong, and the tourist guides and tour escorts will then lead these tour groups.

However, under the current system, tourist guides and tour escorts cannot directly lead tour groups and they must contact licensed travel agents, so they will introduce customers to travel agents. Is there any difference if they introduce customers to travel agent A, B or C? If the owner of travel agent A treats tourist guides and tour escorts better but the owner of travel agent B does not treat them well, which travel agent will they approach? If the owner of travel agent A treats tourist guides and tour escorts to chicken legs and braised shark fin with chicken but the owner of travel agent B has not done so, which travel agent will they approach? If the tourist guides and tour escorts have learnt, after discussing with travel agent A, that they will get more bonus and have more rights to make choices, which travel agent will they choose? If the tourist guide and tour escort introduces tour group members to a travel agent and proposes itineraries A, B, C and D, will the travel agent change their proposed itineraries? Will they have greater bargaining power? Just now I mentioned that self-employed people and employees have different bargaining powers, so tourist guides do not want to be

employees and be restricted. I also mentioned itineraries just now; if tourist guides are self-employed persons, they will definitely have more bargaining powers and can argue with their bosses. Eventually, the choice of itineraries, restaurants and shopping places will depend on the benefits to be provided to tourist guides and tour escorts by shop operators, such as giving them more chicken legs or treating them to meals. This is a matter of logic.

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

On the example of tutorial centres I just cited, a Member has pointed out that tutorial centres are different from travel agents as travel agents are licensed while tutorial centres do not have to be licensed. My argument is that since many tutors, piano teachers or singing teachers are self-employed persons, according to the same logic, asking tour escorts and tourist guides to work as instructed by travel agents is tantamount to asking tutors to work as instructed by tutorial centres. A Member argued that the two cases were different because travel agents have to be licensed. If travel agents do not have to be licensed, will the Member still say that tour escorts and tourist guides should be employees in order to be protected? I believe that the nature of tutorial centres and travel agents is the same and both of them must display business registration certificates inside their premises. This has nothing to do with the requirement of licensing. The Member said that his amendment to the Bill was not relating to the licensing of the travel agent, but the proposal that tour escorts and tourist guides must be employees. His logic does not work; in fact, the nature of the two is the same. If the Bill is passed today, the relevant provisions can cover other aspects. Under the current free economy, I think this is not a good direction.

Lastly, I would like to say a few words for the Secretary. Some Members said that the Secretary intimidated them by saying that the Bill would be withdrawn if the amendments were passed. Honestly, today we discuss how to regulate travel agents, tourist guides and tour escorts, hoping that we will no longer have zero-fare tours from the Mainland. The incidents of rouge tourist guides coercing visitors into shopping in the past have completely ruined the image of Hong Kong. This is the theme of the Bill but the Member has proposed this amendment for no reason. He wants to include the provisions relating to workers to be included in the Bill, hence changing the entire economic mode. The Member is actually making an unauthorized request. If his

amendments are passed, I believe all Hong Kong people will come out in protest because their longstanding request is merely to properly monitor travel agents, but a Member has now requested for the regulation of travel agents for no reason, forcing travel agents to employ tour escorts and tourist guides. This is an unauthorized request. Hence, even if the Bill is passed, I will not let them get off the hook.

The Government has indicated that it might withdraw the Bill. I think this is totally reasonable because the original intent of the Bill is not related to this matter at all. If the amendment of Mr LUK Chung-hung was passed and the Government withdrew the Bill, I think the Government has acted properly this is simply not the theme of the Bill.

Deputy Chairman, my response ends here. Since there is no limit to speaking time in this session, I will speak again and they can also speak again.

MR KENNETH LEUNG (in Cantonese): Deputy Chairman, in this speech, I will focus on discussing Mr LUK Chung-hung's amendments. Mr LUK has proposed to add the words of "is employed by a licensed travel agent" in clause 38 and clause 39 on "Meaning of working as tour escort" of the Bill. Mr LUK said he only added a few words, and Mr Dennis KWOK also explained to us how to determine under the common law whether an employment relationship has existed between two persons; and whether a person has been working on an independent self-employed basis by means of the services provided. In fact, the issue of relationship has existed since there are employers and employees.

I have heard views on this issue as expressed in the speeches of many Members, including those from the business sector, the labour sector and other professional sectors. Now, let me give some practical examples first. An employee works for a travel agent, not as a full-time staff since he only works on Fridays, Saturdays and Sundays. He is mainly responsible for accompanying one-day tours via the Hong Kong-Zhuhai-Macao Bridge. He uses, though not frequently, a very small desk in the travel agent's office because he often works outside the office, accompanying tours. He is responsible for accompanying tours assigned by his employer. He does not have a choice and he must do the work assigned by his employer on Fridays, Saturdays and Sundays. The employer does not care what this employee does on Mondays, Tuesdays,

Wednesdays and Thursdays; but on Fridays, Saturdays and Sundays, the employee must accompany all the tours assigned to him. This tourist guide must also give all the tips collected to the travel agent which will pay him a portion of the money, e.g. 80%, after a year. Under the circumstances, is the tourist guide an employee or a self-employed person?

Certainly, after performing a most basic legal analysis, I cannot see why the tourist guide is not an employee, which is also the view expressed earlier by Dr Fernando CHEUNG and even Mr Dennis KWOK. The tourist guide works on Fridays, Saturdays and Sundays; he has a desk; and he cannot refuse to accompany the tours assigned to him by the travel agent nor can he request a replacement. He works only for three days a week, and though he is not a full-time employee, he is still protected under our labour legislation. He is entitled to employees' insurance coverage and the employer has to pay Mandatory Provident Fund contributions for him. This is a very clear example. Under the circumstances, the employer cannot say the man is a self-employed person. In fact, the argument obviously cannot stand and any employer who puts forward such an argument will break my heart.

Deputy Chairman, let me give another example. A tourist guide may have to look after his family and cannot go to work frequently. He works for a travel agent in Hong Kong in March, April and November every year. He accompanies tours to Japan to see cherry blossoms in March and April and maple leaves in November. He does other jobs at other times and the travel agent will not interfere with his work schedule. The tourist guide is responsible for outbound tours and he participates in designing itineraries of tours, e.g. he suggests the tourist spots or monuments to visit. He needs not accept a travel agent's job assignment regarding tours; and he can choose to accept a job assignment of travel agent A or another of travel agent B. Anyway, he will accompany tours in March, April and November. Besides, the travel agent will not prescribe how much tips he gets. If he performs well and gets more tips, he earns more; if he gets less; he earns less. Surely, the tourist guide will bring his own tools for making money. For example, he will sell souvenirs and the travel agent allows him to do so. Members who have joined long-haul tours would know that tourist guides sell all sorts of souvenirs on the coach. That happens in tours to Japan. Tourist guides will get profits from selling those items. Under the circumstances, can such a tourist guide or a tour escort argue with the Labour Department that he is an employee instead of an independent self-employed person? I think under the circumstances, this person is an independent

self-employed person. Under this mode of operation, licensed travel agents will invite independent self-employed persons to work for them because of commercial considerations. One reason is that these people will only accompany tours to Japan to watch cherry blossoms and maple leaves and that is a very important point.

Certainly, Deputy Chairman, things in this world are often not that simple, and many cases fall between the two extremes. Very often, when the Labour Department is unable to handle a case, the Labour Tribunal will intervene. I personally think that it is totally unacceptable for a travel agent to demand its employees to pretend to be self-employed. However, if the words "is employed by a licensed travel agent" are added to the Bill, it will actually reduce the choices available to employees and employers (i.e. travel agents). As stated by Mr Alvin YEUNG earlier, in a free commercial society and on the premise of a free economy, the amendment will reduce the choices of self-employed persons (i.e. the employees) and licensed travel agents (i.e. the employers).

We must provide employees or false self-employed persons with legal protection and we must put in place a stringent process to punish offenders in cases of false self-employment. Unfortunately, if we incorporate the amended provisions in the Bill, they will actually contradict our major economic principles.

Secondly, if we require all practitioners working in travel agents to become employees, why is it not necessary to impose the same requirement in the insurance industry? As Members may know, insurance agents may not often work in their offices and instead, they frequently work outside their offices. Furthermore, an insurance agent can promote and sell insurance products for a maximum of four insurance companies. If the same requirement is imposed, will they lose their protection in becoming independent self-employed persons? Nevertheless, the insurance industry needs independent self-employed persons who are flexible enough to go to different places to sell various products, not just for one company, but many. Thus, if we propose to provide practitioners of the travel industry with the protection of employees, this model will actually not suit practitioners of the insurance industry and they may not welcome it.

After discussing for such a long time, I think we should give people choices. Certainly, a tourist guide or a tour escort may lodge a complaint at the Labour Department or the Labour Tribunal, claiming for instance, that a licensed travel agent has breached the Employment Ordinance. Suppose the person is

really an employee, but the company has treated him as an independent self-employed person; or the person thinks he is not an independent self-employed person, judging from his acts. I cannot comment or interfere with the cases or precedents of the Labour Tribunal, but I hope that the penalties in the Employment Ordinance can be increased. However, this proposal has nothing to do with the Bill, nor is it within the purview of the Secretary for Commerce and Economic Development. I hope the Secretary for Labour and Welfare can review the matter and in handling cases of false self-employment—I am not only referring to cases concerning the business of travel agents—consider how to deal with the cases more expeditiously and increase the penalties.

Another concern of ours is the insurance coverage for independent self-employed persons and what would happen if these people are injured or even seriously injured during the course of work and become unable to work as a result. I understand and the Secretary has also told me that the insurance industry has discussed about introducing some new insurance products to assist these self-employed persons of the travel industry to take out insurance. These products will protect them against loss while working for travel agents. I do not know if the products will also cover property loss. I certainly hope the insurance will cover property loss incurred by tourist guides as well as physical injuries, etc. so that these people can obtain compensation. I do not know about the amount of compensation and I hope the Secretary can tell us. If these products are available in the market, I certainly hope that the amount of compensation payable according to the formulas will not be less than that payable under employees' compensation. Certainly, we cannot compare these two types of compensation, but I hope the amount of employees' compensation will be similar to the amount of compensation for injuries incurred during the course of work.

Furthermore, if the premium of the insurance product can be paid by the travel agent, I hope there will be a variety of products for self-employed persons and travel agents to choose from. Certainly, a product may cover a one-off tour, but such an arrangement will be ineffective and a waste of time; and there may be other products which can provide protection covering tours in a whole year. In this regard, I would like the Government to explain to us; and I also hope to hear from … Mr CHAN Kin-por is not present at the moment. I would like to hear explanations from members of the trade whether this kind of insurance product is available in the market. I have been told me that there is, but I have not come across any and would like to know more about it.

Regarding the lack of entitlement for self-employed persons to statutory holidays, rest days and payment of four fifths of the average daily wages earned during a sick leave period provided by labour legislation, many people say that these people lose their protection, but many others think that they enjoy flexibility. For example, they can go to work at their chosen time, and they can choose not to go to work, etc. To them, flexibility is a big advantage. Members of the Legislative Council understand very clearly that we do not have any employment relationship with the Legislative Council Commission. We enjoy flexibility in our work. We can stand up and speak in the Chamber today, or meet the media, or do work related to the sector which we represent. No one requires us to stay in the Chamber to listen to the speeches of other Members. We are not in an employment relationship and that is very clear. Deputy Chairman, I have clearly pointed out at the Committee on Rules of Procedure that Members do not have an employment relationship with the Legislative Council Commission. In addition, we receive remuneration, not salary and thus, we do not have to pay Mandatory Provident Fund contributions. I believe Members clearly understand this point and I hope they have not mistakenly paid such contributions.

I hope the Bill can give people choices. Although I clearly and fully understand Mr LUK Chung-hung's amendments, unfortunately, I cannot support his (*The buzzer sounded*) … amendments.

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

DR FERNANDO CHEUNG (in Cantonese): Deputy Chairman, I wish to explain why I criticized Mr LUK Chung-hung's amendments, stating that it would lead to the lack of flexibility if all tourists guides and tour escorts were required to be employed by travel agents.

First of all, I think this criticism is justified. If all tourists guides and tour escorts are required to be employees, what about those who want to be self-employed? Some people prefer to be self-employed to enjoy some flexibility. As in the case just mentioned by Mr Kenneth LEUNG, some people only want to receive a few tour groups a year, or want to provide services for more than one travel agent. Will the requirement that all tourist guides and tour escorts must be employees deprive them of this kind of flexibility? I have doubts about this and think that this point is worth discussing.

First, under that present general environment, although the majority of, over 90%, tourist guides and tour escorts are working as self-employed persons, in reality, as I have already explained, according to the principles of overseas countries and the principles adopted by the Labour Department of the HKSAR Government, the majority of tourist guides or tour escorts are employees rather than self-employed persons. Hence, in general I think that the amendments proposed by Mr LUK Chung-hung are worth supporting.

Our current aim is to provide reasonable statutory protection for these workers, about which I have already spoken. How about those who need greater flexibility? I wish to point out that in many trades and industries, there are cases of casual employment, that is, people working as casual workers or part-timers. These workers are considered as employees rather than self-employed persons. Casual employment is very popular nowadays, covering jobs in restaurants, hotels and the travel industry. There are several online websites dedicated to recruitment of casual workers and there are even Apps for casual employment. It is really very convenient for members of the public to find this kind of work. Whenever one feels like working, he only needs to press a button and look for a job that meets his needs and then he will be employed.

How should casual workers be protected? It is now required that employers must take out labour insurance for his workers. What about the Mandatory Provident Fund ("MPF") schemes? Concerning the arrangements for insurance, there are presently the so-called industry schemes. If employees keep changing employers or take up short-term jobs, employers are also obliged to report and make MPF contributions for these employees. The website of the Mandatory Provident Fund Schemes Authority provides very detailed explanation of the industry schemes, hence I will not repeat. There are industry schemes for the construction and catering industries. Since these industries allow workers to engage in casual employment or part-time jobs, employees who constantly change employment and employers can work as employees, how come tour escorts and tourist guides, who engage in causal employment as mentioned by Mr Kenneth LEUNG, are not allowed to work as employees?

Talking about flexibility, will there be anyone being denied of job opportunities because the law stipulates that they must be employed by licensed travel agents. I fail to see such a situation. Some inconvenience may arise, for example in the relatively rare cases described by Mr Kenneth LEUNG, a tourist guide will also work as a tour escort, responsible for designing and controlling the

entire itinerary and is almost in charge of the whole tour group. All decisions concerning the tour are decided by him instead of by the employer. I must admit that according to Mr LUK Chung-hung's amendments, when a travel agent signs a contract with a tour escort, the contract is not an employment contract, and if the latter works under such a work relationship with the travel agent, conflicts may arise and the requirement is indeed inflexible. However, does it mean that the tour escort cannot work under such a circumstance? As I have just said, thousands of people are working in this mode, that is, in the capacity as employees nowadays.

As long as an employer has an agreement with tourist guides/tour escorts, and the latter work as employees, it is not a big deal to let them take charge of the whole itinerary. These employees may not meet the "4-18" requirement, that is, working for four consecutive weeks and over 18 hours each week for the entitlement to the protection and holidays provided under many labour laws. Such requirements are clearly stated in the Employment Ordinance. As regards the arrangements for other insurances and MPF, the present practice may be adopted. If this will increase the employer's burden, the employer and employee may negotiate for the remuneration package, right? Concerning the argument that the amendments will deprive these people of the chance to work even if they want to, I fail to see such a situation will arise.

Deputy Chairman, after all, to bring things back to order and eliminate the present unhealthy practice, that is, employers shift the financial risks of the travel industry to tourist guides and tour escorts, and tourist guides and tour escorts then shift these costs to tourists, resulting in low quality tour groups and coerced shopping, thereby tarnishing Hong Kong's reputation as a city of tourism. We must change this kind of ecology at present. If the industry is allowed to continue with the present mode of operation, the pressure will eventually be shifted back to consumers. While it is desirable to establish the Travel Industry Authority to set down some fundamental principles for monitoring, it is more important for us to change the entire ecology of the travel industry. Employers should not be allowed to shift the financial risks downward to the tour escorts and tourist guides, forcing them to … Employees should be given a stable working environment and steady pay. If they perform well, they can earn more. Such a job will be more stable and employees have no concerns and will not coerce visitors into shopping or doing other things to make up for their meagre income. I think we have all overlooked this point.

In respect of the ecology of the travel industry, I think that Mr LUK Chung-hung's amendments are worth supporting. I so submit.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): If not, I now call upon Mr LUK Chung-hung and the Secretary to speak again. Then, the debate will come to a close.

Mr LUK Chung-hung, do you wish to speak again?

(Mr LUK Chung-hung indicated that he did not wish to speak again)

DEPUTY CHAIRMAN (in Cantonese): Mr LUK Chung-hung has indicated that he needed not speak again.

Secretary, do you wish to speak again?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy Chairman, perhaps I shall briefly respond to Members' questions on the Government's stance in connection with my amendments or Mr LUK Chung-hung's amendments.

First, Mr Alvin YEUNG and Mr WU Chi-wai asked just now whether online travel agents would be regulated when the legislation was extended to cover them. Deputy Chairman, we all agree that with changes in market and advancement of technology, travellers use online services when purchasing travel services. Therefore, we also agreed and proposed at the Bills Committee on Travel Industry Bill ("the Bills Committee") to extend the scope of regulation to travel agents outside Hong Kong but actively market to the public of Hong Kong such business activities. We will consider the following factors to determine whether a travel agent is actively marketing; for example, does it have detailed promotion plans, has it directly placed advertisements in local newspapers, made

public announcements or made online promotion. If there is active marketing, the travel agent concerned may be regulated and we have to adduce evidence accordingly; if there is no active marketing, we do not have to regulate. As I also mentioned in my speech earlier, we will cooperate with relevant overseas agencies whenever necessary.

Most importantly, through this legal requirement, any travel agent operating in Hong Kong must be registered and display its registration licence. Through public education, we will let consumers understand clearly and differentiate whether the travel agent concerned, be it a physical shop or an online shop, is registered or not when purchasing travel services. If the agent concerned is registered, it is definitely under regulation, so the traveller is also protected by law. I hope this can answer the questions raised by the two Members just now.

Second, when Mr LUK Chung-hung raised his question and when individual Members spoke, they criticized the Government's stance on Mr LUK Chung-hung's amendments. As I pointed out in my speech earlier, the Government's stance is that Mr LUK Chung-hung's amendments are unnecessary, undesirable and unacceptable. If the amendments in question were passed by the Legislative Council, the Government might have to withdraw the Travel Industry Bill ("the Bill").

Deputy Chairman, I would like to clarify that this is the established stance of the Government. If a particular part of the legislation has an effect that involves a bigger issue, or has implications on governance or law enforcement, or is inconsistent with the legislative intent, the Government would have no choice but withdraw the bill concerned. As I pointed out very clearly in my preceding speech, we could not accept the amendments not only because of the trade's consent or otherwise, or the views of the majority or the minority, but because of the fact that if the Bill was amended according to Mr LUK Chung-hung's amendments, it would generate a legal loophole. I have also highlighted this point before. Please allow me to briefly repeat my words back then: "I would like to draw your special attention. Disregarding the original intent of Mr LUK Chung-hung's amendments, after the passage of these amendments, anyone providing tour-guiding and escorting services as directed by a person who is carrying on travel agent business will not meet the definitions of tourist guide and tour escort given in the Bill if he is not employed by a licensed travel agent. He will not be required to obtain a licence from the Travel Industry Authority, and is

thus not regulated by the Bill." In other words, if a person engages in such services as a self-employed person, he will fall out of the regulatory net. This precisely contravenes the policy intent that we have discussed during 19 meetings over the past 20 months or that was raised just now. The point is crystal clear.

I hereby urge Members not to say that the Government intimidates Members when it expresses its stance. What I have been saying is based on the requirements of facts, justifications and legal principles. If Members feel that they have been subject to unnecessary concerns, the reason is merely because this is the fact, and likewise the stance of the Government. If in future the same situation happens to other bills. The Government will also take the same action.

I think the disagreement between Mr LUK Chung-hung and us does not lie in the original intent of the Bill, but whether the entire design is reasonable, feasible and able to reflect the trade's operation. Just now, many Members have successively expressed different views on Mr LUK Chung-hung's amendments, which were agreed by the Government as well. Mr Dennis KWOK and Mr Paul TSE were both of the view that Mr LUK's amendments could not be established legally or there were difficulties in enforcement; Mr SHIU Ka-fai, Mr Frankie YICK, Mr YIU Si-wing and Mr Kenneth LEUNG raised diverse views on different operational aspects, and Mr WU Chi-wai has also expressed reservations.

As such, the trade disagrees to stipulate in the Bill the employer-employee relationship. This is not just the personal opinion of Mr YIU Si-wing who represents the tourism sector; the Government or members of the trade concerned, including practitioners of the industry such as tour escorts, tourist guides, etc., have also expressed the relevant views in the past months. I tried to quote five letters written by deputations to the Legislative Council Secretariat, hoping the trade can understand it is not that we are unwilling to help Mr LUK strive for the rights and benefits of trade members, but that the approach may not necessarily be the means to achieve the goal mentioned by Mr LUK.

Besides, I know that Mr LUK proposed the amendment for the sake of protecting the welfare of trade practitioners, and showing concern about the provision of insurance in case of accidents. I recall that when Mr LUK raised the issue in the Bills Committee in the middle of this year, government officials, Mr YIU Si-wing and representatives from both the Travel Industry Council of Hong Kong and trade unions had held a discussion. The insurance trade later

joined in the discussion to examine jointly the possibility of providing a new kind of product to the travel trade, given the absence of work insurance in the present situation. The new product could focus on the current situation to allow travel agents to reasonably provide insurance, not by means of employee insurance but through work insurance. As a start, trade practitioners would take out insurance policies on their own while the trade and travel agents would provide allowance to pay for the premiums. The insurance sector is willing to design products specifically for the travel trade, so as to solve the problem raised by Mr LUK, and at the same time bring benefits to the travel trade.

Just now, Mr LUK Chung-hung mentioned that the Government would withdraw the new insurance arrangement. As this is not the function of the Government, it is incapable to undertake the task. The Government acts as a coordinator and facilitator in this matter. We have to count on Mr YIU Si-wing to promote the idea in his capacity as the representative of the trade or the Chairman of the Bills Committee, and see if it is possible to introduce this new service to the trade. Certainly, whether this new service, i.e. work insurance, can be launched as wished by everyone requires the coordination in several aspects, and I believe that effort should continue be made in this area. I am also worried that Mr LUK Chung-hung's amendments would affect the goodwill expressed by various parties over the past few months, resulting in abandoning the idea. If so, I think that is regrettable to various parties.

Deputy Chairman, having consolidated the above views and responded to Mr LUK Chung hung's amendments, I implore Members to support the Government's motion and amendments, and oppose Mr LUK Chung-hung's amendments. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): The committee now votes on the Secretary for Commerce and Economic Development's first group of amendments moved earlier on.

Before I put to you the question on the Secretary's first group of amendments, I wish to remind Members that if the Secretary's first group of amendments is negatived, the Secretary may not move his second group of amendment.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the first group of amendments moved by the Secretary for Commerce and Economic Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): As the Secretary's first group of the amendments, which include the deletion of Division 8 of Part 2 and clause 90, have been passed, Division 8 of Part 2 (including the heading and clause 32) and clause 90 are deleted from the Bill.

CLERK (in Cantonese): Clauses 2, 4 to 17, 19, 36, 42, 43, 44, 47, 56, 58, 59, 60, 62, 64, 70, 75, 89, 108, 115, 117, 120, 121, 122, 128, 137, 153, 163, 164, 165 and 167, and Schedules 1, 5, 9, 10 and 11 as amended.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses and schedules as amended just read out by the Clerk stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): Mr LUK Chung-hung, you may move your amendments.

MR LUK CHUNG-HUNG (in Cantonese): Deputy Chairman, I move my amendments to amend clauses 37, 38 and 39, as set out in the Appendix to the Script.

Proposed amendments

Clause 37 (see Annex II)

Clause 38 (see Annex II)

Clause 39 (see Annex II)

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendments moved by Mr LUK Chung-hung be passed.

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

(Members raised their hands)

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

(Members raised their hands)

DEPUTY CHAIRMAN (in Cantonese): I think the question is not 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 amendments negatived.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 37, 38 and 39 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): The committee now deals with the Secretary's second group of amendment, that is the new clause.

CLERK (in Cantonese): New clause 91A Disciplinary committee may give general directions.

DEPUTY CHAIRMAN (in Cantonese): Secretary, you may move your second group of amendment to read the new clause the Second time.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy Chairman, I move my second group of amendment to read new clause 91A, as set out in the Appendix to the Script, the Second time.

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clause 91A be read the Second time.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 91A.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy Chairman, I move that the new clause 91A be added to the Bill.

Proposed addition

New clause 91A (See Annex II)

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clause 91A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): All the proceedings on the Travel Industry Bill have been concluded in committee of the whole Council. Council now resumes.

Council then resumed.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, I now report to the Council: That the

Travel Industry Bill

has been passed by committee of the whole Council with amendments. I move the motion that "This Council adopts the report".

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

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

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

(Members raised their hands)

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

(No hands raised)

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

Third Reading of Government Bill

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

TRAVEL INDUSTRY BILL

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, I move that the

Travel Industry Bill

be read the Third time and do pass.

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

Does any Member wish to speak?

MR YIU SI-WING (in Cantonese): Deputy President, the passage of the Travel Industry Bill ("the Bill") by the Legislative Council will mark the end of the era of the trade's two-tier self-regulatory regime. In the 2010 Policy Address, the incumbent Chief Executive proposed a comprehensive regulation of the operation and regulatory framework of the travel trade, and a public consultation was launched accordingly. At the end of 2011, the establishment of the Travel Industry Authority ("TIA") was announced. In recent years, the trade and I have maintained communication with the Government, and witnessed the birth of the Bill. The passage of the Bill by the Council today is an achievement reached by the concerted efforts of the trade, the Government and fellow Members.

The travel market has experienced many changes in a couple of years. The emergence of online travel agents has affected the ecology of the entire travel industry; the closure of some travel agents have affected consumers' rights and

benefits; incidents of coercing Mainland visitors into shopping cannot be eradicated despite repeated bans; and the non-cooperative movement launched by a small number of trade members to challenge the regulatory authority of the Travel Industry Council of Hong Kong ("TIC") had exposed TIC's embarrassment of having no enforcement power. If the Government could be open-minded to timely amend certain provisions during the scrutiny of the Bill, it would be conducive to making the ordinance better meet the actual situations.

I am concerned about the transitional period between the passage of the Bill and the formal operation of TIA, as well as the handover arrangements from TIC to TIA, particularly the arrangement of the relevant personnel. I hope TIA will give priority to employ staff with experience in trade regulation, so as to facilitate smooth transition. Currently, TIC has altogether 60 employees. If the employees are worried about uncertainty of work prospect and even the possibility of being dismissed during the two-year transitional period, they cannot work contentedly. Therefore, I hope the Government will consider the way out of these employees. Can TIA accord preference to these employees over other candidates of comparable suitability for appointment in its staff recruitment?

The formulation process of subsidiary legislation and administrative guidelines is relatively complicated, which involves some regulatory details. I hope the Government will listen more to trade's views, so as to enhance the feasibility and regulatory effectiveness of the relevant measures.

Lastly, I hope the future TIA will show more concern about the development of the travel industry and give more support to micro, small and medium travel agents in addition to performing its regulatory functions. The Bill empowers the Secretary for Commerce and Economic Development to set aside funds from the existing Travel Industry Compensation Fund for establishing the Travel Industry Development Fund ("the Fund") to subsidize the travel trade on training, application of information technology, etc. I hope the Fund can be used prudently to help the sustainable development of the travel industry and travel agents in Hong Kong, and enhance the competitiveness of Hong Kong's travel industry in the region.

I support the Third Reading and passage of the Bill, and wish for the smooth establishment of TIA and its coming into operation soon. Deputy President, I so submit.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): If not, Secretary, do you wish to speak?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, I would like to take this opportunity to thank all Members for their support to the Bill. In particular, I would like to thank Mr YIU Si-wing for the efforts that he made in his capacity as the Chairman of the Bills Committee. Thank you.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Travel Industry Bill be read the Third time and do pass. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Travel Industry Bill.

MEMBERS' MOTIONS

DEPUTY PRESIDENT (in Cantonese): Members' motions.

Mr James TO will move two proposed resolutions under section 34(2) of the Interpretation and General Clauses Ordinance:

First motion: To repeal the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order.

Second motion: To repeal the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order.

I have directed the Secretariat to inform Members in writing that as the two items of subsidiary legislation referred to in Mr James TO's two motions relate to the comprehensive avoidance of double taxation agreements and were scrutinized by the same subcommittee, this Council will proceed to a joint debate on the two motions.

After the joint debate has come to a close, this Council will first proceed to vote on Mr James TO's first motion. Irrespective of whether the first motion is passed or not, Mr James TO may move his second motion.

The joint debate now begins. Members who wish to speak on the two motions will please press the "Request to speak" button.

I will first call upon Mr James TO to speak on the two motions and move his first motion.

TWO PROPOSED RESOLUTIONS UNDER SECTION 34(2) OF THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR JAMES TO (in Cantonese): Deputy President, I move that my first motion, as printed on the Agenda, be passed.

Deputy President, some colleagues, journalists or members of the public are curious as to why I have requested, for no reason, to repeal the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order ("the Indian Order") and the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order ("the Finnish Order"), doubting if I have a grudge against India or Finland. This is nonetheless not the case. Given that the anomalies and precedents contained in

certain provisions of the two orders may give rise to some legal issues and issues of principle, I have to compel the Government to address such issues squarely and implement the two orders in a proper manner in the future, such that Hong Kong residents will not have to get benefit at the expense of the legal principles.

Given that my original speech is probably quite difficult for Members to understand, so before I talk about other issues, I will first discuss the problems arising from these two orders and get to the point right away. I want to start the discussion with these problems before looking into the background.

Deputy President, as we all know, tax information is very sensitive and the job of Deputy President is, by coincidence, related to taxation as well. Tax information is most valued in all places of the world; hence even for the investigation of ordinary offences, the relevant authorities may request information, but not those kept by the tax authorities as the information concerned falls under a special category.

The passage of the Indian Order and the Finnish Order will give rise to the following problems: The tax authorities of India and Finland can exchange information with the Inland Revenue Department ("IRD") of Hong Kong, but the information to be exchanged is subject to limitations and not all information can be exchanged. The exchange of information was originally intended to facilitate the investigation of taxation cases to avoid double taxation. Since it is necessary for the other party to ascertain if the tax relief provided by IRD of Hong Kong is appropriate, India or Finland may request tax information from IRD. This is an equitable arrangement and each party has its own request. However, information originally provided for tax purposes may be used by other law enforcement agencies of India or Finland, i.e. the police or customs other than the tax authorities, to investigate other serious crimes, such as terrorist activities, drugs trafficking or organized crimes. Hence, if IRD of Hong Kong is aware that the information originally provided for the prevention of tax evasion may be used for the investigation of terrorist activities, it may not approve the transfer of such information from the Finnish tax authority to its police and leave the tax information of Hong Kong people at their disposal. At present, so long as the Commissioner of Inland Revenue ("the Commissioner") thinks that there is no problem, the requesting party can use the relevant information and, of course, the Commissioner will be very cautious. Yet, should a decision on whether tax information of Hong Kong people can be transferred from the head of the Finnish

tax authority for use by its customs, anti-terrorism bodies or police be made by the Commissioner alone? Members should bear in mind that in this process, only approval of the Commissioner is required and there is no need for Finland or India to apply to the courts of Hong Kong for obtaining tax information. This is the first scenario.

The second scenario is that, if the Police or the Customs and Excise Department ("C&ED") of Hong Kong want to conduct an investigation of terrorists, they may need to obtain information from IRD to investigate a person's terrorist activity or a foreigner's tax activities in Hong Kong. What should they do in order to obtain tax information kept by IRD of Hong Kong? They should apply to the courts of Hong Kong. Members should bear in mind that Hong Kong's law enforcement agencies are also required to apply to the local courts in order to obtain information from IRD. While members of the public may think this is very reasonable because information from IRD is of great importance. Even if law enforcement agencies want to obtain information from banks, they are required to apply to the courts. Therefore, it is natural to require them to apply to the court for obtaining information from IRD.

However, if the offence being investigated by the law enforcement agencies is relatively minor, it would be impossible to apply to the courts as the latter will not approve such request for tax information. Only for the investigation of serious crimes such as terrorist acts, money laundering, serious crimes and drug trafficking can the Police or C&ED of Hong Kong apply to the local courts to request the Commissioner to provide tax information for investigation by the law enforcement agencies. In other words, law enforcement agencies of Hong Kong are also required to apply to the courts in order to obtain tax information for the investigation of terrorist crimes in Hong Kong. However, if the India Order and the Finnish Order are passed, then even if an investigation is not concerned with terrorist activities in Hong Kong but in Finland or India, they may obtain the relevant information only by seeking the approval of the Commissioner. Of course, the Commissioner may consult the Secretary for Justice, but as stated in the paper submitted by the Government, the police of Finland and India are, after all, not required to apply to the courts of Hong Kong for obtaining tax information.

In my opinion, it is surely more important for Hong Kong's law enforcement agencies to investigate terrorist activities in Hong Kong than the provision of information to another country for the investigation of their local

terrorist activities, because after all, we are obliged to protect our own safety, which is acceptable. Of course, we may say that based on the spirit of great love, we are equally concerned about terrorist activities in Finland or India. In that case, they might as well apply to the courts of Hong Kong when they need to obtain tax information.

Let me tell Members that if any foreign police need to investigate serious crimes, they may resort to our mutual legal assistance in criminal matters and request the Department of Justice of Hong Kong to provide the necessary files. This is indeed a general practice for Finland or India to apply to the courts of Hong Kong for information, as in the case of handling cases of money laundering or drug trafficking.

Many may query why there is such a strange rule. The introduction of such orders to prevent double taxation is indeed a good measure, and Hong Kong has passed a number of such orders in the past. As the global economic situation continues to change, the Organisation for Economic Co-operation and Development ("OECD") also needs to update from time to time. There may be more cooperation among countries, and probably more divisions. An example is the Sino-United States relationship, and the latter has even threatened to withdraw from the World Trade Organization. It is possible that OECD may disband in the future, but I think there is no need to worry too much because these kinds of things are unpredictable.

Hong Kong often attends meetings of the Group of Twenty Summit or the Asia-Pacific Economic Cooperation and signs international agreements, so we may have new measures from time to time to enhance cooperation on all fronts. This arrangement is perfectly fine. Therefore, OECD's requirement that tax information can be exchanged to prevent double taxation is a good measure as it can facilitate smoother trading and prevent local residents doing business elsewhere from double taxation. Nonetheless, OECD has a new idea. Given that various countries have been exchanging tax information, they might as well pass, where appropriate and allowed under the laws of the countries concerned, the tax information originally exchanged for the investigation of tax cases for use by other law enforcement agencies of India or Finland in criminal investigations, such as cases of terrorist activities or money laundering mentioned by me earlier, which are non-tax related purposes.

Providing the information exchanged for use by other law enforcement agencies is a reciprocal measure that is good for all parties. OECD believes this would facilitate cooperation in law enforcement in this regard, and that is, strengthening non-tax cooperation. While I support this principle, OECD has not specified how the contracting countries should implement the relevant agreements. The SAR Government chose to implement the agreements in a way that the Commissioner can decide on his own, and he has therefore entered into those agreements with India and Finland.

What I would like to point out today is that I have no objection to the implementation of OECD's requirements as Hong Kong is obliged to do so, or else we will be sanctioned. How can we challenge an international organization? Hong Kong is insignificant, even with backup support from our Motherland, we still have to implement the requirements in any case. What should we do then? Very simply, all we have to do is to amend the Organized and Serious Crimes Ordinance or the legislation relating to anti-terrorism or drug trafficking. Law enforcement agencies in Hong Kong are required to apply to the courts in order to obtain tax information for the investigation of local crimes. In my opinion, under the general framework laid down by OECD for the avoidance of double taxation, both parties can make use of the mutual legal assistance on criminal matters mentioned earlier, through which representatives of India or Finland have to apply to the courts of Hong Kong before passing tax information to other law enforcement agencies in their countries, and the decision should not lie in the hand of the Commissioner alone. This is a more proper way of using tax information and is fair to all.

While Hong Kong has to apply to the courts for investigation of local terrorist crimes, Finland or India may also apply to the courts, through Hong Kong Police as their representative, for obtaining Hong Kong's tax information to investigate terrorist crimes in their countries. This can achieve the same purpose. The advantage of this approach is that, be it investigation of local crimes by Hong Kong Police or investigation of Finnish crimes by Finnish police, all tax information would be protected by the courts of Hong Kong. The gate-keeper would be the courts, but not the Commissioner. Since the Commissioner is not the court, there is no reason for an executive official to provide such sensitive information. As for the investigation of tax cases, relevant requirements have already been set out under the original framework. Yet, the issue under discussion is not investigations of tax cases, but the requirements of the rest of the world to apply to their courts for obtaining tax information.

I now request to repeal the relevant orders firstly, not because I object to OECD's approach; and secondly, not because I object to the principle of joint defence adopted by countries around the world to guard against terrorism or money laundering by making use of tax information. Rather, I consider it necessary to, under the legal framework of Hong Kong, request for tax information by applying to the courts. Even the Police of Hong Kong have to obtain information by applying to the courts, so why would the Finnish police be provided with the relevant information by requesting IRD of Hong Kong, via the Finnish tax authority, and it can obtain the relevant information simply with the approval of the Commissioner? In that case, is the protection offered to Hong Kong Police even smaller than that of foreign governments? This is unreasonable.

I can only say that this is a technical approach. If I can successfully repeal the orders, I hope that the Government will be compelled to adopt a proper approach and make use of the courts to protect the rights and interests of the public.

Mr James TO moved the following motion:

"RESOLVED that the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order, published in the Gazette as Legal Notice No. 155 of 2018 and laid on the table of the Legislative Council on 10 October 2018, be repealed."

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I would like to thank Mr Kenneth LEUNG, Chairman of the Subcommittee, and all other members for their active participation, and also the Legislative Council Secretariat for their assistance, which have enabled the completion of the scrutiny of the two orders.

The introduction of the two orders by the Government seeks to implement the Comprehensive Avoidance of Double Taxation Agreements ("Comprehensive Agreements") which Hong Kong has entered into with India and Finland. I hope that Members will oppose the two motions proposed by Mr James TO so as to enable those two agreements to expeditiously come into effect in Hong Kong.

It has been the Government's policy to proactively enter into Comprehensive Agreements with Hong Kong's trading and investment partners so as to alleviate the tax burden of Hong Kong enterprises, while encouraging foreign enterprises to invest in Hong Kong and enhancing our economic and trade relations with other regions. With the inclusion of India and Finland, Hong Kong has now entered into Comprehensive Agreements with 40 tax jurisdictions. We will continue to actively identify potential negotiation partners, with a view to increasing the total number of Comprehensive Agreements to 50 over the next few years and further expanding the network.

India is Hong Kong's seventh largest trading partner, whereas Finland is Hong Kong's first comprehensive agreement partner in Northern Europe. Early implementation of those two comprehensive agreements would enable the business sector and society to benefit from the economic benefits to be brought about by the agreements. Both India and Finland have already completed the procedures for approving the agreements, so after the passage of the two orders in Hong Kong, the double taxation relief measures provided under those two agreements would take effect as early as the year of assessment commencing on 1 April 2019.

In negotiating the Comprehensive Agreements, Hong Kong had modeled on the 2012 version of the Model Tax Conventions of the Organisation for Economic Co-operation and Development ("OECD") and the United Nations, so as to meet the latest requirements of the international community. These Model Tax Conventions are also widely used in other tax jurisdictions.

The Comprehensive Agreements entered into with India and Finland are the first two Comprehensive Agreements signed by Hong Kong to allow the use of exchanged tax information for limited non-tax related purposes in accordance with the latest OECD requirements. The relevant provision was previously an optional provision in the OECD Model Tax Convention, but it has become an integral provision since 2012 to reflect the consensus reached by the international

community on the use of information exchanged under the tax conventions for non-tax related purposes. Hong Kong's signing of Comprehensive Agreements with India and Finland to allow such use of information is consistent with the current requirements of the international community.

The SAR Government has attached great importance to the confidentiality of information exchanged under the exchange of information mechanism and is committed to ensuring strict compliance with the relevant mechanism. Firstly, the exchange of information must be conducted for tax purposes and prevent fishing expedition by partners. The Inland Revenue Department ("IRD") of Hong Kong will never entertain any request for information made purely for non-tax related purposes.

If upon receipt of the information, the party requesting an exchange of information wished to further use the tax information exchanged for non-tax related purposes, it must first obtain the consent of the party providing the information. In Hong Kong, upon receipt of such a request, IRD will consult the relevant law enforcement agencies and the Department of Justice. It will accede to the request of the agreement partner only if there is no objection from the relevant government departments.

According to the laws of Hong Kong, tax information can only be used for limited non-tax related purposes in three areas, namely, the recovery of proceeds from drug trafficking, organized and serious crimes and terrorist acts. It is necessary for Hong Kong's Comprehensive Agreement partners to have similar laws allowing the use of tax information for the above mentioned specified non-tax related purposes before they can use the tax information exchanged with Hong Kong for the same purposes. Even if the laws of a Comprehensive Agreement partner allow the use of the tax information exchanged for other purposes, but if the usage falls outside the scope of the three areas permitted by the laws of Hong Kong that we have just mentioned, IRD of Hong Kong will not accede to such requests.

Mr TO is of the view that the Government should require its Comprehensive Agreement partners to seek assistance in criminal matters from Hong Kong via other existing channels, such as the agreements on mutual legal assistance ("MLA") in criminal matters. The Government has clearly explained on several occasions at the meetings of the Subcommittee that neither

Comprehensive Agreements nor MLA agreements in criminal matters would prevent any partner from providing assistance under other agreements, arrangements or practices. Therefore, Comprehensive Agreements and agreements on MLA in criminal matters are separate regimes independent of each other. Both operate in accordance with their legislation and mechanisms, that is, under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organized and Serious Crimes Ordinance (Cap. 455) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), they are only limited to the recovery of proceeds from drug trafficking, organized and serious crimes, and terrorist acts. This is a different regime from the exchange of information in accordance with the Inland Revenue Ordinance under the local legal system, and therefore should not be mixed up. Also, there is stringent requirement for the exchange of information under the Inland Revenue Ordinance.

Mr TO is of the view that if Hong Kong's Comprehensive Agreement partners wish to obtain information for non-tax purposes, their requests should be dealt with by the Judiciary. While I understand Mr TO's concern, I must point out that the provisions relating to exchange of information contained in the Comprehensive Agreements that Hong Kong signed with India and Finland are consistent with the latest OECD Model Tax Convention and in line with the consensus of the international community, and a stringent and effective implementation mechanism has been put in place. If Hong Kong turns down, in principle, any request for using the information exchanged under Comprehensive Agreements for limited non-tax related purposes, this is not only contrary to the prevailing international practices, but will also seriously undermine the incentives for other regions to sign and even negotiate Comprehensive Agreements with Hong Kong in the future, thereby hindering the work of Hong Kong to expand its network of Comprehensive Agreements and strengthen its external economic and trade ties.

Hong Kong had been negotiating with India and Finland for nearly 10 years and the outcome has not come by easily. If the motions moved by Mr James TO is passed so that the two agreements cannot come into effect in Hong Kong, we do not expect that India and Finland would willingly go back to the negotiations table with Hong Kong again, let alone accepting any arrangement that deviates from OECD's requirements. In that case, the hard-earned achievements of so many years and the economic benefits that would be brought by the two agreements to Hong Kong will go down the drain.

Therefore, I earnestly urge Members to oppose the two motions moved by Mr James TO so as to enable the Comprehensive Agreements that Hong Kong has entered into with India and Finland can come into effect as soon as possible.

Thank you, Deputy President.

MR KENNETH LEUNG: Deputy President, as Chairman of the Subcommittee on Two Orders Made under Section 49(1A) of the Inland Revenue Ordinance and Gazetted on 14 September 2018 ("the Subcommittee"), I would like to make a report in my capacity as Chairman and I would also reply to Mr James TO's concern. But I would like to make a brief report on the proceedings of the Subcommittee first.

The two Orders are made by the Chief Executive in Council to give effect to the Comprehensive Avoidance of Double Taxation Agreements ("CDTAs") signed by the Hong Kong Special Administration Region respectively with the Republic of India and the Republic of Finland to minimize double taxation.

The Subcommittee has held three meetings with the Administration to scrutinize the two Orders. In the course of deliberations, the Subcommittee has examined issues including the exchange of information ("EoI") arrangements and the claiming of treaty benefits under the two Agreements, as well as some drafting issues.

Noting that the two Agreements are the first two CDTAs signed by Hong Kong which will allow the use of the tax information exchanged under the relevant EoI arrangements in CDTAs for non-tax related purposes, the Subcommittee has sought explanations on the relevant details and safeguards.

The Administration has explained that the use of the exchanged information for non-tax related purposes has become an integral provision in the 2012 version of the EoI Article in the Model Tax Convention on Income and on Capital promulgated by the Organisation for Economic Co-operation and Development. Hence, the international community would expect such provision to be incorporated into the new CDTAs in line with the prevailing international requirement.

On the relevant safeguards, the Administration has advised that EoI must first be conducted for tax purposes in accordance with the relevant CDTA. If the receiving party subsequently intends to use the exchanged information for non-tax related purposes, this is permissible only where such use is allowed under the laws of both Contracting Parties and the competent authority of the supplying party authorizes such use. In the case of Hong Kong, tax information may only be used for limited non-tax related purposes, namely the recovery of proceeds from drug trafficking, organized and serious crimes and terrorist acts under the relevant ordinances. Upon receipt of such a request, the Inland Revenue Department ("IRD") will consult the relevant law enforcement agencies in Hong Kong and the Department of Justice ("DoJ") whether it is appropriate to accede to the request. IRD will reject such a request if the relevant law enforcement agencies or DoJ objects to the disclosure. In addition, IRD will also pay due regard to the relevant requirements under the Personal Data (Privacy) Ordinance.

Mr James TO has opined that if India or Finland intends to use information exchanged under the relevant CDTA for non-tax related purposes, it must resort to the means specifically provided under the relevant ordinances which are enacted for those specific purposes, such as through the mutual legal assistance ("MLA") arrangements with the relevant jurisdictions as implemented by the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525). Otherwise, the statutory protection for the subject persons concerned would be undermined.

In response, the Administration has indicated that the EoI arrangements under CDTAs and MLA arrangements are two separate regimes independent of each other. DoJ has further advised that provision of assistance under MLA arrangements pursuant to Cap. 525 is subject to the restrictions under section 3(3) of Cap. 525, which stipulates that the provisions of Cap. 525 shall not operate to prejudice the generality of section 4 of the Inland Revenue Ordinace regarding the preservation of secrecy of tax information kept by IRD. As such, Cap. 525 cannot be invoked to obtain tax information direct from IRD.

Taking note of the Administration's explanations, Mr James TO has remained seriously concerned over the arrangement under the two Orders of allowing the use of tax information exchanged for non-tax related purposes, and expressed his view that the Administration should make amendments to the relevant ordinances to provide for the means of handling requests from other jurisdictions for tax information for specified non-tax related purposes.

MR KENNETH LEUNG (in Cantonese): Deputy President, should my speaking time be counted afresh? I should have 15 minutes to speak, right? I would like to clarify this point.

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, you can only speak once and the time limit is 15 minutes, so please speak as concisely as possible.

MR KENNETH LEUNG (in Cantonese): So I can only speak once for 15 minutes. I do not have time to make explanations, can I … Oh, no! Only I only have seven minutes left. In fact, I would like to rectify Mr James TO's understanding of some legal provisions. According to section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance ("the Ordinance"), the dissemination of certain information must be approved by the court. Section 5 is about refusal of assistance. If the request for assistance is related to taxation, the court can just ignore it. Mr James TO has also asked if the approval of the court is needed if the Hong Kong Police require tax information. The answer is in the negative because the three existing ordinances, namely the Organized and Serious Crimes Ordinance, the Drug Trafficking (Recovery of Proceeds) Ordinance and the United Nations (Anti-Terrorism Measures) Ordinance have related provisions such as section 12(d) of the United Nations (Anti-Terrorism Measures) Ordinance and section 6(2) of the Organized and Serious Crimes Ordinance. I would like to point out that section 6(2) of the Organized and Serious Crimes Ordinance specifies that if the Inland Revenue Department ("IRD") has certain information and some departments, especially the Department of Justice, would like to obtain such information so as to bring offenders to justice, they can obtain such information directly from IRD for criminal prosecution or other related purposes without going through the court.

What are the reasons? The Ordinance has been implemented for some time and the information that IRD has is related to taxation and tax collection. The material as mentioned in section 4 of the Ordinance is not effectively owned by a certain person and it may only be suspected that it is owned by a certain person while tax information must be information effectively owned by IRD. Therefore, if foreign tax authorities want to obtain information that IRD does not own at the time, IRD is not obliged to obtain information that it does not own. This point is clear enough.

Tax information has always been subject to a different mechanism other than the Ordinance. Under section 4(3) of the Inland Revenue Ordinance, one of the provisions on official secrecy is that, even if the court orders the Commissioner of Inland Revenue to disclose tax information, the Commissioner of Inland Revenue shall not produce such information. Therefore, tax information and information related to criminal investigation under the Ordinance are basically subject to different systems and mechanisms. Mr TO can certainly disagree and ask why the two cannot be subject to the same mechanism; yet, this mechanism has always existed under the law. If the Hong Kong Police or the Department of Justice wants to obtain tax information, they do not need to go through the court. Mr TO can disagree but this is, at least, my interpretation of these ordinances.

As far as legal ethics is concerned, if Mr TO wants to make changes, we can certainly discuss and study further. However, under the present circumstances, I do not agree that the two orders should be repealed because Hong Kong's status as an international financial city has been questioned, Hong Kong has neither freedom of the press nor freedom of speech and business information is confusing. There have been incidents of expelling journalists and suppressing freedom of speech, and we have failed to implement the international agreements signed.

Deputy President, at the banquet held in the Dining Hall a few days ago, the Consulate General of Finland mentioned that the Parliament of Finland had entered into Comprehensive Double Taxation Agreements ("CDTAs") and asked when Hong Kong would enter into CDTAs. India and Finland are important countries; India is the most populous democratic country in the world while Finland is one of the Nordic countries that manifests democracy and freedom and attaches great importance to international commitments. I do not oppose Mr James TO's proposal about studying legal ethics and whether tax information should be dealt with uniformly. But if we have to wait another year or two to implement these two orders as local legislation has to be amended, I am really worried. What will be the impression of the countries or regions discussing the signing of CDTAs with us?

I would like to reiterate again why tax information will be given special treatment. Most of the information owned by IRD is financial information but there is currently no mechanism to allow the Commissioner of Inland Revenue to

assist others in obtaining other information. Moreover, the three ordinances above, namely the Organized and Serious Crimes Ordinance, the United Nations (Anti-Terrorism Measures) Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance, do have provisions requiring IRD or IRD employees to provide, under specific circumstances, information to foreign institutions that the Department of Justice, the Police or the Department of Justice considers to be equivalent to law enforcement agencies.

Therefore, I think that the Secretary's explanation is not comprehensive enough because he has not explained the relevant legal provisions. It is imperative that the Department of Justice should provide advice and the three ordinances above also require the Secretary for Justice's advice that these bodies are equal to Hong Kong law enforcement agencies. When the Commissioner of Inland Revenue draws up the guidelines, he must point out that the Secretary for Justice must provide advice as this is a statutory procedure. I hope that Mr TO will feel relieved. Of course, he can continue to promote improvements so that higher standards can be attained in terms of protecting personal privacy, information and ethics.

Deputy President, I so submit.

MS CLAUDIA MO (in Cantonese): It really sounds very sarcastic because if we simply listened to the criticisms made by Mr James TO and the official response made by the Secretary just now, we would surely think that the Government has been somewhat negligent. Shouldn't the Government give thorough consideration when it negotiated with Finland and India on the implementation of the relevant provisions in Hong Kong? In fact, it seems that due consideration has not been given. According to the Administration, the two orders should basically be passed, otherwise the efforts of negotiation with those foreign countries for so many years would go down the drain, and no other countries would sign the relevant agreement with Hong Kong in the future.

The remarks made by the Secretary were of little significance. Just now, Mr Kenneth LEUNG said that the Secretary should have explained in greater detail so that Mr TO could rest assured. Mr James TO said that the Commissioner of Inland Revenue ("the Commissioner") was neither part of the Judiciary nor a judge, so how could he authorize the transfer of tax information to

foreigners for non-tax related purposes simply because he considered that there was no problem? To be fair, the Secretary had given a couple of responses in this regard, saying that not only the Commissioner, but certain officials of the Inland Revenue Department ("IRD") may also seek advice and even approval from the Department of Justice.

However, the Secretary still evaded the issue that Mr James TO is most concerned about, and that is, the requirement of applying to the court. The Secretary evaded the issue probably because he thought that was legal advice and the issue was too complicated. And yet, before coming to the Legislative Council to give a detailed explanation, should he not obtain a lot of information from the Department of Justice for reading out at this Council meeting? I know that the Secretary is not a legal expert, but this issue involves some basic legal principles. As Mr James TO has stated time and again just now, the Government is, under the legal principles, obliged to protect members of the public.

Just now, the Secretary kept saying that this was a very comprehensive international agreement, and was also consistent with the consensus and trend of the international community. However, the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion wand Avoidance) (Republic of Finland) Order and the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order will set a precedent so that the Government will basically reproduce the relevant provisions in the future. Should the Government give more thorough considerations, think more clearly and draft the provisions in a better way? The Secretary just now asked us not to worry because the so-called permission to use tax information for non-tax related investigations was only confined to three areas. Although the Secretary has already described the three areas, I would like to repeat and they are drug trafficking, organized and serious crimes and terrorist acts. Will other matters such as the recovery of alimony in a foreign country be included? Members should listen clearly that it is not likely to be included.

Nonetheless, the Secretary said that the present agreements were the best, meaning that Members should not create complications. We must think twice as the Secretary has not responded to Mr James TO's question about the protection of information. Mr TO has raised his concern time and again, that is, if Hong

Kong Police want to obtain information from IRD for investigation of offences not relating to tax but fall within the above mentioned three areas of criminality, they must apply to the court before obtaining the necessary information. Why are Hong Kong people required to apply to the court for obtaining tax information whereas foreigners are not required to do so for obtaining the same information? Can the Secretary give a formal and clear explanation? The Commissioner is not a judge. Although the Secretary said that it was not a problem as the authorities would consult the Department of Justice, he has not explained why application to the court was not required. Can the Secretary give a more detailed explanation?

Nowadays, people often said that information is completely borderless and some countries (including Mainland China) even advocated "Internet sovereignty", which is certainly not an international consensus. However, as known to all, we believe that information is currently circulated without any boundary. Many people may think, since the officials have said that agreements have reached in the international arena, so why do we still have disputes in this respect? The request for free flow of information to investigate trafficking of drugs and human beings has been discussed for many years, not to mention terrorist acts, so why are we still arguing? It is precisely because we think the Government is in possession of all information about its people (the so-called big data), such as when did we take public transport, when did we have Set B meal in a fast food restaurant and when did we buy lozenges at convenience stores. Once we make payment, data would be collected and there is no protection of privacy at all. We must therefore protect our privacy.

Regarding the balance between collection of data and protection of privacy, after SNOWDEN disclosed the secret of the Government of the United States, he has to seek refuge in different parts of the world. There are two aspects of considerations regarding the flow of information, which is well known to all, and everyone is well aware of the contradictory and paradoxical issues involved. On the one hand, it is said that big data facilitates everyone and the Government, which collects all information, is the king of data. What facilitates us most is the latest update of information. For example, the latest update of traffic conditions in Tuen Mun and places where there are vehicle breakdowns or traffic accidents. Hence people can, after noting the update, avoid using the roads concerned when they are in Tuen Mun. This is good. On the other hand, however, people's personal data would immediately be captured into the big data. The usage of big data is another issue. Will anyone see a photo of your car on

the Internet, then write down your license plate number and reveal your whereabouts? It is obvious that the Hong Kong Government has not given any special consideration to this respect.

Is it necessary to strike a balance between people's right to know and personal privacy? The Secretary for Innovation and Technology has not openly discussed this issue with Members. Apart from medical records, tax and financial information is also personal data and I tend to agree with Mr James TO, who is arguing with the Government on the legal principles that people's personal data and tax information should basically be protected. Concerning the agreements that the Government has entered into with foreign countries on the exchange of tax information, there is no problem if the information exchanged is merely used for tax investigations. However, for cases other than tax investigations, I will listen to the views expressed by Mr James TO, who is a solicitor. He said that tax information can be used by people in other areas at any time. Though the usage of information has been confined to three areas that are apparently relating to the commission of offences, Mr TO still thinks that problems may arise.

I hope that the Secretary will clearly explain when he gives a response later, and I also hope that the documents on his desk include the advice given by the Department of Justice as this is not purely an issue concerning money. Firstly, it involves personal data and personal privacy. The authorities may say that this is an international practice, but checks and balances are warranted. Secondly, the Government is basically duty-bound to protect personal data and cannot say lightly that apart from the Commissioner, the Department of Justice will also give advice. I have no idea of the advice to be given by the Department of Justice, whether the data subject will be notified at that time and whether the data subject has an opportunity to defend. For example, the law enforcement agencies of Finland said that someone has committed a serious crime and has to conduct an investigation on him. Or, will I be notified or given an opportunity to defend before the Commissioner hands over my information to someone else? As far as I understand it, I will not be notified and worse still, I may be totally unaware of it. Does this sound very unfair?

Of course, there no need for the Secretary to worry too much, I am not saying that I absolutely oppose all agreements that the Government has negotiated and entered into with foreigners. No, I am not. I am still looking

forward to hearing a response to be given by the Secretary later. Can he convince me that comprehensive consideration has actually been given and the present two pieces of subsidiary legislation are free from loopholes, so that instead of having unnecessary worries, Members can completely rest assured? Thank you.

DR KWOK KA-KI (in Cantonese): Deputy President, it is exposed in the press today that information of a credit agency has been leaked. Although this incident is not directly related to the subject of our discussion, it can be seen that Hong Kong people attach great importance to sensitive information, be it financial information or tax information. This is the first point.

The second point is that I understand Mr James TO's worries. Honestly, "one country, two systems" has gone today, the rule of the law has been undermined and the level of our trust in the Government has become lower and lower. It is really difficult for us to unreservedly trust the Government as we did in the past. That is a fact.

However, the biggest problem is that the subject being discussed does not solely involve the SAR Government. As a contracting party to the Agreement on Trade and Economic Cooperation, Hong Kong has the responsibility to prevent double taxation and we therefore have to develop a somewhat voluntary collaborative programme and failure to do so would result in double taxation. What is the most important and controversial part? It is the empowerment of the Inland Revenue Department to act in accordance with three seemingly uncontroversial ordinances related to drug trafficking, terrorism and terrorist activities, as well as organized and serious crimes … To be honest, the Hong Kong judicial system has been hit in recent years and Mainland China has very often suppressed Hong Kong for reasons such as anti-terrorism and national security. For example, national security has overridden freedom of the press, as evident in the case that the Government refused the entry of Victor MALLET; for the sake of national security, Members were disqualified and some members of the public were even disqualified from standing for election. Excuses such as national security and "Hong Kong independence", etc. were used to disqualify members of public from standing for election; they were not even allowed to participate for village representative election. We said jokingly that for the sake

of national security, some people may even be disqualified from becoming civil servants, chairpersons of owners' corporations and directors in the future. National security is the most important reason.

Under this atmosphere, we are wary of terms such as terrorism and national security and we are also worried that people with ulterior motives … frankly speaking, in terms of world competitiveness, freedom of the press and sound democratic systems, Finland is among the best when compared with other Nordic countries. I also believe that if we adopt the same system as that of Finland of having the legislative assembly and the president being elected by the people, or if our education system or other systems advocate civil rights, the controversies will not be that big. I am not very familiar with India; some people say that it is the largest democratic country, but owing to its institution and other reasons, the level of governance is low and corruption is rampant. Will the exchange of tax information with some backward countries raise concerns? People may be worried when India is involved.

Let me give an example. We all know that Mainland China is very friendly with many other countries. Some people may not be able to look up Mr James TO's information but if they know that he is related to India in taxation, they will find out how he is related to that country. If they have a good relationship with Mainland China, they can ask Mainland China for help to find out the most important clues and information, i.e. doxxing, to see if they can find some bits and pieces of information to charge against him.

This is my inner fear but I believe that the business community will really be worried because they used to doing business in a fair and free society and under a sound legal system. If someone adopts other standards and even other means that Hong Kong people do not accept to punish other people, members of the public should not be blamed for being worried because these tax information exchange agreements may be used as a means of suppression.

I would like to discuss a real case. An avant-garde artist on the Mainland called AI Weiwei engages in unconventional behaviours in many areas and he uses artistic means to mock the regime of the Communist Party of China. How does Mainland China punish AI Weiwei? Mainland China uses taxation measures to silence AI Weiwei and even disallows him to leave the country.

We should not think that the Inland Revenue Ordinance is not malicious or harmful as it depends on the kind of government that has the taxation means. If the taxation means are in the hands of a good government, members of the public are allowed to own properties and the Government will not amass huge assets. However, if the taxation means are in the hands of a totalitarian government or a regime that colludes with a totalitarian government, such means will be used to punish or attack the enemy.

I have just listened to the Secretary's remarks but I think that his remarks are inappropriate. I think Mr Kenneth LEUNG's explanations are better and more precise, and he has also said that the most important thing is to comply with international agreements. Everyone knows that Hong Kong advocates compliance with the law and the foundation of the Hong Kong Special Administrative Region is the Basic Law for the implementation of the Sino-British Joint Declaration ("the Declaration"). However, the spokesman of the Ministry of Foreign Affairs said that the Declaration was a historical document that could be disregarded, and parties which signed the Declaration did not have the right to make enquiries, as such acts were interfering with the internal affairs of the country. Therefore, I understand why Mr Kenneth LEUNG is worried … the Declaration is an agreement that has been registered with the United Nations but they dare turn their back on …

DEPUTY PRESIDENT (in Cantonese): Dr KWOK Ka-ki, you have strayed too far.

DR KWOK KA-KI (in Cantonese): … Deputy President, I am now explaining why I support or oppose Mr James TO's proposed resolution … Deputy President, tax information exchange agreements are international agreements and the Declaration that I just mentioned is also an agreement between countries. I am not only worried about privacy and taxation but I also do not want Hong Kong to be degenerated and become a laughing stock. I also do not want Hong Kong to be accused by the international community of not abiding by the law or failing to abide by the law though it has pledged do so. I do not know if this critical problem can be solved.

Taking the current Sino-United States trade friction as an example, we all know that Hong Kong's status as a separate customs territory—this is an economic and trade issue and the Secretary should show prime concern—is given on the basis of the Hong Kong Policy Act of the United States, and the Hong Kong Policy Act is based on the Declaration as stated in the Basic Law. In fact, this is the foundation of the Basic Law, so Hong Kong continues to enjoy a unique status in respect of customs and trade. Nevertheless, we are worried that these agreements, which have been recognized by the international community, might be ignored unnoticed. This should not happen as the survival of Hong Kong and of the business sector are involved. Who will find the agreements helpful? The agreements are conducive to businessmen, professionals or those who engage in trading in more than one place. For example, they operate a factory or a company in Hong Kong and in another place, and the employment contracts in both places apply. Why should the Government make so much effort? If the Government makes so much effort, it should maintain Hong Kong's unique position to help Hong Kong face the international community. This is a very important point.

Therefore, I have to reconsider the arguments just made by Mr Kenneth LEUNG. I originally thought that the justifications put forward by Mr James TO were very important. I really do not want anyone to have the opportunity to divert information of members of the public to other countries without their knowledge—companies paying tax or people doing business may also be affected. As pointed out by Mr Kenneth LEUNG, we are most worried that Hong Kong may be excluded from the international community or international treaties if we fail to abide by the law.

The Hong Kong Policy Act clearly stipulates that "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" must be implemented in Hong Kong and Hong Kong must maintain its unique systems, which includes independence of the judicial, administrative and legislative powers. But how can the Legislative Council be independent? Anyone who is disliked by the authorities will be expelled or disallowed to stand for election; how then can independence be attained? This is a unique system in Hong Kong and the Government must tell the international community that Hong Kong is different because we abide by the law. We not only abide by the laws of Hong Kong but also comply with international agreements and international law. For example, human rights law is an international law and the decisions of

the United Nations had been taken in consideration when formulating the law. Can we disregard the provisions of the relevant agreements? Hong Kong has signed the International Covenant on Civil and Political Rights, can we ignore the relevant provisions? So, I vow to defend these agreements because we cannot …

DEPUTY PRESIDENT (in Cantonese): Dr KWOK Ka-ki, I think that you have strayed too far because you have spoken on other international conventions. Now that you have clearly stated your views on these conventions, please return to the subject of this debate and focus your discussion on the two related proposed resolutions.

DR KWOK KA-KI (in Cantonese): I am explaining why I may vote against or abstain from voting on Mr James TO's proposed resolution … members of the public who are watching television may wonder why Mr James TO has proposed such an important motion and why KWOK Ka-ki may not vote for it later … I just want to tell members of the public that we care about the international community and the status of Hong Kong, and we do not want Hong Kong to become a laughing stock or to be unacceptable to our trading partners. We also do not want our most important trading partners or competitors to say that "Hong Kong is dead", or that we fail to comply with "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", thus excluding Hong Kong. This is the biggest harm to Hong Kong and Hong Kong will be doomed. If Hong Kong is no different from other ordinary Chinese cities; if Hong Kong no longer implements "one country, two systems" or complies with international agreements, Hong Kong will no longer have any value. What other values can Hong Kong have? Shenzhen which is less than an hour's drive from Hong Kong has stronger economic power; why do Shenzhen people come to Hong Kong? Why do the children of Mainland senior officials come to Hong Kong? It is because Hong Kong is different. In addition to complying with these provisions, I hope the Government will comply with all provisions on human rights, freedom and civil rights in Hong Kong.

I so submit.

MR CHAN CHI-CHUEN (in Cantonese): Deputy President, initially, I found the proposed resolutions moved by Mr James TO today, which seek to repeal the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order ("the Indian Order") and the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order ("the Finnish Order"), somewhat incomprehensible and felt uncertain as to whether to support it or not. For on the one hand, I considered what the Government is doing, in respect of the agreement with India, beneficial to an ethnic group which members have been living and doing business in Hong Kong for generations and which businesses are related to India. But on the other hand, I found some of the provisions in the two agreements unreasonable, even superfluous, which would adversely affect the local companies and people while inviting worries about the setting of a bad precedent.

First, why is the Indian Order proposed now? Why is a Comprehensive Avoidance of Double Taxation Agreement ("CDTA") with India is signed now, delineating taxing rights between Hong Kong and India and the relief on tax rates on different types of income? As we all know, Hong Kong has a long-standing tie with India. Since the inception of Hong Kong as a port, the Indian community has been playing an important role in Hong Kong. Hong Kong owes no small measure of its development into an international trading centre to the backing of the Indian community which, apart from doing business in Hong Kong and extensively participating in charitable causes, has built a trading network between Hong Kong, Mainland China and India. With the Indian community's long-standing history of roaming among India, Hong Kong and Mainland China, many individuals and families in the community have businesses both in Hong Kong and India. In the absence of the relevant CDTAs, as noted in paragraph 5 of the Legislative Council Brief, the income earned by Indian or Finnish residents in Hong Kong is subject to tax in both Hong Kong and their home countries. Profits of Hong Kong companies carrying on business through a permanent establishment in India may be taxed in Hong Kong as well if the income is Hong Kong-sourced. Hence, if the Indian Order is repealed, the possibility of some companies with businesses both in India and Hong Kong—and owned by members of the local Indian community who have been contributing to Hong

Kong for years—being subject to double taxation cannot be ruled out, which would be most unfavourable to them.

(THE PRESIDENT resumed the Chair)

However, having read some of the views of Mr James TO in relation to the arrangements of the two Orders set out in the report of the relevant Subcommittee, I now fully appreciate the reason for Mr TO's call for repeal of the two Orders. Article 26(2) of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("the Indian Agreement") signed between the Hong Kong Special Administrative Region ("HKSAR") Government and the Government of the Republic of India on 19 March 2018 and Article 25(2) of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Finland for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance ("the Finnish Agreement") signed between the HKSAR Government and the Government of the Republic of Finland on 24 May 2018 respectively stipulate, among others, that information received by a contracting party under the relevant exchange of information arrangements may be used for other purposes (i.e. the so-called "non-tax related purposes"). According to the Administration, the Indian Agreement and the Finnish Agreement are the first two CDTAs signed by Hong Kong which will allow the use of the exchanged information for limited non-tax related purposes.

Since there are pre-existing arrangements for mutual legal assistance already made by HKSAR with India and Finland respectively under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), Mr James TO has expressed serious concerns over and opposition to permitting the use of the information exchanged through CDTAs by the requesting party for non-tax related purposes instead of resorting to the pre-existing regime under mutual legal

assistance. He considers that will be tantamount to undermining the statutory protection for the subject persons concerned under Cap. 525. The Government has so far failed to dispel Mr James TO's doubts. The Administration has repeatedly explained that there could be no CDTA without providing for the use of the information exchanged for non-tax related purposes. While pointing out that the exchange of information under CDTAs and the mutual legal assistance arrangement under the Mutual Legal Assistance Agreements are two separate regimes independent of each other, the Administration also pledged that the Inland Revenue Department ("IRD") will attach great importance to preventing abuse of the use of the information exchanged under CDTAs for non-tax related purposes.

Yet, I very much agree that the reply of the Government, which is not very specific and a bit vague, sounds hardly convincing to me that the Government will be able to prevent India or Finland from abusing the use of Hong Kong's tax information. More seriously, as Mr James TO has suggested, foreign law enforcement agencies with the intention of using the tax information obtained for non-tax related purposes need only advance their requests to IRD of Hong Kong. After consulting the relevant law enforcement agencies and the Department of Justice ("DoJ"), IRD of Hong Kong can decide on its own whether to accede to such requests of foreign law enforcement agencies. There will be no gatekeeping role for the Hong Kong Courts in the process.

While Mr James TO has indeed been incisive in analysing the potential risks of the two Agreements, there is one point I wish to add: the implementation of such agreements will set an extremely bad precedent, which impacts may continue to expand and extend.

Let us first take a look at Annex F of the Legislative Council Brief which lists the information of the countries and regions with which Hong Kong has entered into CDTAs. There are presently 40 regions or countries in total with which Hong Kong has entered into CDTAs, which means no provision regarding the use of the exchanged tax information for non-tax related purposes was made in the agreements with these 40 countries and regions—including Mainland China, which cannot use the exchanged tax information from the Government of Hong Kong for non-tax related purposes. What worries us, though, are the more

than 100 countries which have yet to enter into CDTAs with Hong Kong. What countries are they? A large number of them are countries with less than robust legal systems but being the prime targets of wooing under the Belt and Road Initiative, such as Bangladesh and Congo.

The authorities have indicated that the Indian Agreement and the Finnish Agreement are the first two CDTAs which will allow use of the exchanged information for limited non-tax related purposes. It means that in the years ahead, the Government of Hong Kong may, with over 100 countries, enter into CDTAs with provisions that allow circumvention of the provisions under the relevant mutual legal assistance in criminal matters orders so that the tax information exchanged with other governments can be used for non-tax related purposes with the public being deprived of right of appeal and in the absence of their consent being sought by the Government. Having seen the agreements made by the Government of Hong Kong with India and Finland today which provide for the use of the exchanged information for non-tax related purposes, other countries, particularly those China is keen to woo under the Belt and Road Initiative, may compel the Government of Hong Kong to enter into agreements with similar provisions. I do not know whether the Government will then feel obliged to sign such agreements with the provision for the use of the exchanged information for non-tax related purposes in order to accomplish some sort of missions.

What is wrong—one may argue—with including a provision on use of the exchanged information for non-tax related purposes in CDTAs if the gains from avoiding double taxation presumably outweigh the losses from exchanging information? Even if there are members of the public who have misgivings about the arrangement and wish to apply for judicial review against it on the ground of privacy infringement, they may have to lay down arguments that would satisfy the proportionality test—a criterion often adopted recently by the Court of Appeal and the Court of Final Appeal which involves the examination of several aspects of a certain policy in its implementation to see if it is rational in terms of both purpose and proportionality—Well, I actually do not wish to see this happen. I think, for Hong Kong and even for Mainland China, the impacts, losses and risks arising from such an arrangement of using the exchanged information for non-tax related purposes outweigh its gains.

I think the biggest risk probably lies in undermining the confidence of the business sector. What if, after entering into agreements which provide for the use of the exchanged information for non-tax related purposes with India and Finland today, we do the same with the 100 countries I mentioned just now—countries which governments will have access to and be able to use for non-tax related purposes tax information of Hong Kong handed over by the Government of Hong Kong without the consent of the persons concerned—and end up undermining Hong Kong people's interests and rights overseas as a result of those non-tax related purposes for which their information is used? Will foreign investors' confidence in Hong Kong be affected if some members of the Hong Kong public, having realized that their information was transferred without their consent, approach the international media and expose the issue?

Worse still, India is, as we all know, a developing country where corruption is rife and which legal system differs from that of Hong Kong. And the Government may in the future enter into agreements that provide for the use of the exchanged information for non-tax related purposes with the developing countries along the Belt and Road, countries with legal systems even less robust and corruption more rampant. Their governments may request information from the Hong Kong Government by citing perfectly legitimate grounds but end up misusing the information thus obtained. Even if a victim, having realized that his or her information was being misused, lodges a complaint and pursues the matter with the Hong Kong Government, what can the Government do, I wonder? Or, will the answer be "nothing"? If the worries of Members on this side become reality, will the Government tear up the relevant agreements given the abusive use of the information? As we are admittedly ignorant about the courts and legal system of each of these countries, how can we tell whether such issues will be handled fairly in the different jurisdictions?

At the end of the day, there is not a robust system to prevent abuse of the use of the exchanged information. I can therefore draw the following analogy: with such a provision on the use of the exchanged information for non-tax related purposes, India, Finland and other countries which may enter into such agreements with us in the future will be able to legally sneak into the database of Hong Kong like hackers, obtaining information of privacy without the consent of Hong Kong people. If the business community came to appreciate the gravity of such a provision, they might find the tax savings made from avoiding double taxation not worth the serious risk of losing their privacy.

In extreme cases, such a provision can harm the interest of Hong Kong, even that of the State. As we all know, India can get friendly with you today but get friendly with, and draw ever closer to, the United States tomorrow. Many state-owned enterprises and Chinese-funded enterprises have business dealings both in Hong Kong and India. With some handles against some state-owned enterprises and Chinese-funded enterprises with operations both in Hong Kong and India in hand, the United States may well ask India to request information of those state-owned enterprises and Chinese-funded enterprises in accordance with the provision on the use of the exchanged information for non-tax related purposes and pass it onto the United States. Will this happen? Or am I being excessively paranoid?

Hence, there is the risk of financial secrets pertinent to the interests of Hong Kong, and even those of the State, being revealed to other countries in such a provision. If the same provision appears in the CDTAs signed with other countries in future, these countries may also exchange the tax information of Hong Kong residents—especially that of state-owned enterprises and Chinese-funded enterprises operating in Hong Kong—with a third country. Is this conducive to China's general strategy of expanding its influence? Besides, even if Hong Kong has learnt that the exchanged information of Hong Kong people and companies has been passed onto a third country, it will run into the same problem: the inability to pursue the matter or prevent it. It is thus evident that this provision can open up a loophole.

Lastly, I find this provision on the use of the exchanged information for non-tax related purposes unnecessary and enormously risky, failing to protect the people of Hong Kong and posing potential risks to national security. Given that over 40 similar agreements signed in the past did not contain the relevant provision, I think the Government should rethink and discuss afresh whether the arrangement for the use of the exchanged information for non-tax related purposes can be cancelled. At this stage, I have no choice but to temporarily sacrifice the Indian community's interests in Hong Kong and India by subjecting them to double taxation. I support Mr James TO's proposed amendments to repeal the Orders.

MR HOLDEN CHOW (in Cantonese): President, insofar as the background is concerned, I believe the Government has been proactively pursuing the signing of Comprehensive Avoidance of Double Taxation Agreements ("CDTAs"). As mentioned by a number of Honourable colleagues just now, the conclusion of

CDTAs helps alleviate the tax burden on business operators, thus increasing the incentive for them to continue or expand their business in Hong Kong. Under the double taxation relief arrangement, they will become more willing to work or do business in Hong Kong as it is one of the factors contributing to their decision to make Hong Kong their commercial base. Therefore, I believe the Government should continue to proactively implement double taxation relief arrangements.

The proposed resolutions of Mr James TO seek to repeal the two orders as he does not entirely agree with the content, in particular the mechanism under which requests are dealt with, of CDTAs signed between Hong Kong and the Republic of India and the Republic of Finland respectively.

I would like to express my views here. Although I did not participate in the Subcommittee on these two pieces of subsidiary legislation, my initial view after listening to the speeches of Honourable colleagues and the Secretary is that, first, there seems to be a set of international standards in respect of CDTAs; second, the use of the exchanged information for non-tax related purposes, such as combating drug trafficking and terrorist acts, has become an integral provision since 2012 according to the Organisation for Economic Co-operation and Development ("OECD"). To put it simply, the use of the exchanged information for non-tax related purposes is integral to CDTAs. That is to say, if we were to enter into a CDTA, we must accept the use of the exchanged information for non-tax related purposes which are limited to combating crimes such as drug trafficking or terrorist acts. As the original intent of tax information exchange is to help combat certain crimes, rather than for other inappropriate purposes, I consider the arrangement reasonable and acceptable.

More importantly, President, as it seems that this arrangement has become an integral provision of CDTAs according to OECD, if Members are dissatisfied with the mechanism and support Mr James TO's proposal for repealing these two orders, I am afraid strong repercussions will be aroused in the international community which may mistakenly believe that Hong Kong has no intention of complying with international practices and implementing international standards, particularly in respect of combating drug trafficking or terrorist acts. President, to my understanding, many countries now attach great importance to the efforts to this end. As an international city, we have been flaunting our ability to keep up with international standards and cooperate with the international community in combating such crimes. Based on my personal observations, for some time in

the past, the Council has enacted a number of ordinances seeking to meet OECD requirements, whether on tax information exchange or on cooperation with the international community in combating terrorist acts. President, if these two orders were repealed today, I am afraid reactions would be aroused in the international community. They may misunderstand that Hong Kong no longer complies with international requirements against tax evasion. But even more seriously, they may misunderstand that we no longer cooperate with or deliberately refuse to complement efforts against terrorist acts, which, I think, may jeopardize Hong Kong's international status and reputation.

President, I would also like to point out that I noticed some Honourable colleagues, perhaps including Mr James TO, and the Secretary specifically mention the Mutual Legal Assistance in Criminal Matters Ordinance ("the Ordinance") which is also an effective mechanism of course. However, as Honourable colleagues and the Secretary have said, CDTAs and the Ordinance are two separate things. CDTAs should not be handled under the mechanism in the Ordinance.

Even if, hypothetically, we handle the requests according to the mechanism in the Ordinance, I wish to raise a point: I heard Mr James TO stress that the requests should be dealt with by the Court first and the exchange of information should be made only with a court order. However, under section 4 of the Ordinance, the execution of arrangements for mutual legal assistance in criminal matters actually requires the approval of the Chief Executive in Council who may refuse for various reasons.

Hence, the point I am trying to make is that, even under the mechanism of the Ordinance, it was not unprecedented for government agencies to make such decisions. So, back to the issue mentioned by Mr James TO, under CDTAs, when handling requests for exchange of tax information, the Inland Revenue Department ("IRD") will first consult the Department of Justice ("DoJ") before deciding whether such information should be provided to the requesting party for non-tax related purposes. It, therefore, appears that similar arrangements are not unprecedented.

More importantly, I wish to emphasize that IRD cannot make the decision by its sole discretion—the Secretary may wish to clarify this later on—IRD must consult DoJ before making the decision. This is very important because DoJ is the judicial authority of Hong Kong. It is crucial that IRD obtains the advice

from DoJ. Honestly, it is unlikely that DoJ will serve as a rubber stamp. When Finland requests tax information from IRD for combating local terrorist offences, it is unlikely that DoJ will stamp the chop with its eyes closed and let IRD hand the information over to Finland. This does not tally with the professional functions of DoJ and I do not believe DoJ will do so as it is indeed a professional authority which will be held accountable for its decisions.

We have now entered into CDTAs with Finland and India respectively and we will probably sign similar agreements with other countries. Will we also not trust the agreements signed with other countries? I think we have to trust the legal system in Hong Kong and trust that DoJ, as a professional judicial authority, will make professional judgements. For this reason, I think these two orders should be passed and should not be repealed.

Lastly and most importantly, these two CDTAs have actually been under negotiation for 10 years. I am concerned that if they could not be implemented after discussion, the two countries would not reopen negotiations with Hong Kong, which may deal a heavy blow to Hong Kong's international reputation.

Furthermore, I am not sure whether this will affect our cooperation with other countries because we need to continue to pursue the signing of CDTAs with other countries in order to enhance Hong Kong's competitiveness in the international arena. President, we should not forget that Hong Kong is not fighting a lone battle. We must work with other countries closely and be recognized by them as a highly internationalized city. If we do not do our part well, I am worried that we will lag behind other regions, including Singapore which has been very proactive in competing with Hong Kong for international capital inflow as commercial investment. We must forge ahead or we will lag behind others. If we do not do it, others will rush to do it. I do not want Hong Kong to lag behind others.

Therefore, I very much hope for the smooth passage of these two orders so as to send a message to the international community, that Hong Kong is a highly internationalized city which is absolutely prepared to complement international practices and follow international rules in respect of combating tax evasion, establishing a business-friendly environment or combating terrorism. I believe this approach will be more beneficial to Hong Kong.

President, I so submit.

MR AU NOK-HIN (in Cantonese): Mr LEUNG, we have listened to the speeches made by various Members earlier and honestly, I really have to tell the Secretary that I have not yet decided at this moment how I am going to vote. A simple reason is that, as Members have seen, even Members in the pro-democracy camp hold different views on this question under discussion today and that is, whether or not we should sign agreements with India and Finland respectively on avoidance of double taxation and prevention of tax evasion. I have listened to the speeches made by a number of Members in the debate. They have raised several questions which I am personally more concerned about, and I hope the Secretary will answer them in his reply later on. My decision on my voting preference will depend on the reply to be given by the Secretary later.

The first question is: Which is a better approach, the arrangement currently proposed by the Government whereby the Commissioner of Inland Revenue will be the gate-keeper and then the legal advice of the Department of Justice ("DoJ") will be sought, or the proposal initially made by Mr James TO that a determination should be made through the judicial system on whether to allow the requesting party to obtain the tax information? If the Government can explain to us later that there is no difference between these two arrangements as they both apply the same standards in determining whether to grant the request of India or Finland for tax information from us, our concern would be allayed and I would even say that more agreements of this sort should be signed in future because from the perspective of international relations, I would rather Hong Kong sign more similar agreements with different cities and countries, for this can save Hong Kong from being fully made subject to "one-country" control which would otherwise cause our due economic status to degenerate and even our human rights and freedoms to degenerate concurrently.

However, if the Secretary will tell us that no, they are different, then I would raise a similar query, for we cannot draw an equal sign between DoJ and the Court and this, I think, is the biggest difference between my view and that of Mr Holden CHOW. It is because if I did not catch it wrong, he said that we must trust the legal system, and actually I do. But he went further to conclude that we should trust DoJ altogether. But to me, DoJ is not equivalent to judicial independence. DoJ is a state machine. A state machine under no control can clamp down on the freedoms of the people. As we can see, in the "DQ" incidents in which Members were disqualified or various judicial review cases to which DoJ is a party representing the Government, DoJ can be the Government's

representative and since it can be the Government's legal representative, it can perform many roles of a state machine. If such being the case, which is a more reasonable approach? This is the first question.

I understand that under the existing laws of Hong Kong, despite the signing of these agreements, it does not mean that they are subject to no control. As the Government said during our deliberations on this piece of legislation, regulation will be imposed through three ordinances, namely, the Drug Trafficking (Recovery of Proceeds) Ordinance, the Organized and Serious Crimes Ordinance and the United Nations (Anti-Terrorism Measures) Ordinance. As also pointed out by the Secretary earlier on, the relevant arrangement cannot be made outside the ambit regulated by these three ordinances. I have read the regulatory provisions of these three ordinances and I understand that there are different provisions empowering the Commissioner of Inland Revenue or any officer of the Inland Revenue Department to issue an order with respect to information subject to an obligation of secrecy, in order for the relevant information to be referred for handling by the relevant judicial departments or officers.

Insofar as these three ordinances are concerned, I believe many Members will agree to the need of enforcement and the spirit of these ordinances because combatting drug trafficking as well as organized and serious crimes or even fighting terrorism are universal values and also consensuses that human beings must strive to forge. Having said that, I hope Members will understand that more often than not, while we need to enforce the law, we also have to consider whether the power given to the political regime or the state is too great. If it is given too great a power, there will often be cases of restrictions on personal freedoms.

For example, there are often cases of achieving certain benefits for the political regime under the pretext of fighting terrorism or combating a certain crime. In this respect, Dr KWOK Ka-ki has made comparatively more comments and they are not unfounded theoretically. For example, Larry DIAMOND, Marc PLATTNER and Christopher WALKER, who are scholars in politics, have written a book entitled *Authoritarianism Goes Global: The Challenge to Democracy*. We all know Larry DIAMOND, teacher of Mrs Regina IP. In this book, they are telling us that regarding the retreat of democracy and the challenges to democracy that emerged in the past decade or so, one of the causes was that very often, the state used such excuses as

eliminating a certain behaviour or achieving national safety or curbing terrorism to take actions actually aimed to suppress the freedoms to which society was entitled. This issue is very much worthy of debate. If we really accept this arrangement, the power conferred on the Government will often become irreversible.

Of course, coming back to these agreements signed with Finland and India, we can feel better assured, for India is, after all, a democratic country; so is Finland. Finland's press freedom index is among the top, and it is even a blessing to us to be able to sign agreements with these countries because as Members can see, the press freedom in Hong Kong has plummeted to almost hitting the bottom. However, we have to think about this: Despite India being a democratic country, when it comes to the quality of democracy in India, we have had a lot of discussion as they also have the problem of corruption. Having said that, I think the signing of agreements on tax arrangements with these two countries will set a precedent. If we do not raise any question and do not discuss whether it is more reasonable for the Court or for the Inland Revenue Department ("IRD") to be made responsible for granting an approval, I am worried that there would be adverse results when the Government signs relevant agreements with other countries in future. As Mr CHAN Chi-chuen also mentioned, a situation that may arise in future is that even though the relevant countries are on good terms with the Government today, they may take other positions in the light of other international developments tomorrow. This is simply unpredictable and in that event, there is no way for an appropriate judgment to be made through the judicial independence of the Court.

As Members can see, these two places also face the problem of terrorism. I have looked up some information in this connection. For instance, it is not the case that Finland is immune to terrorism, as there was a case in which a man stabbed at people with a knife everywhere on the street and this criminal was later alleged to be a terrorist. These crimes must be eliminated. There is also the same problem in different regions of India. Examples are terrorist activities in the inland area and cross-border terrorist activities in the state of Jammu and Kashmir. But there is no denying that sometimes the so-called domestic terrorism is connected with other countries. For instance, the poor relations between India and Pakistan have led to many military conflicts in the Kashmir region, and India has suppressed the riots there precisely under the pretext of fighting terrorism. What does this have to do these Orders? If a country, based

on its own opinions and interests, requests information from Hong Kong concerning a Hong Kong resident with background of other countries, its purpose may not purely be fighting crimes as it may actually use this as an excuse to obtain information about this person from IRD. Mr Kenneth LEUNG said just now that IRD keeps only tax records but these records can have an extensive coverage for they may include a person's annual fiscal income or a company's dealings in money or various other information. If it is said that such information may be requested for other purposes, I would say that I cannot entirely rule out this possibility and therefore, we have to be very careful when guarding the gate.

According to what the Secretary has said now, how do we guard the gate now? Other than the three ordinances discussed earlier, the Secretary also said just now that there would be no fishing expeditions and that it would be necessary to obtain the consent of the supplying party and these, coupled with the three ordinances, would be done to guard the gate. Apart from the first question that I asked just now, my second question is: How can we prevent the information requested under these three ordinances from being used for other purposes? How should a determination be made? And, how will the Government request other countries to furnish the reasons for requesting the information? How will the Government reply to them? I would like the Secretary to provide more detailed information in this regard and I also wish to know whether the Government has a mechanism in place to examine how these countries, after they have obtained the information, will use the relevant information ultimately. Will there be any monitoring, so that people will be convinced that the information cannot be used for other purposes? I believe these two questions are pivotal to our decision on whether it is more reasonable for the gate-keeping role to be taken up by the Commissioner of Inland Revenue and DoJ or by the Court.

Lastly, I would like to draw a brief conclusion. Why do we always stress that the court's position is important and that it is more reasonable for a determination to be made by the Court than government institutions? Recently, the *Ming Pao Daily News* has published several articles written by Nelson LEE and CHOI Chun-wai. In these articles, which are about Hong Kong in the world, they have discussed how the history of the rule of law was constructed in Hong Kong. They said that Hong Kong has been a place where people with different interests in the world can have the opportunity to come to engage in some sort of competition, and they come to Hong Kong to do different things in

the interest of their own countries or forces. How can this position of Hong Kong be maintained since the beginning of the colonial government? It is through the rule of law that the pros and cons are balanced on various fronts. When the rule of law is established, it means that different countries and forces can have access to justice that they deserve in Hong Kong, and this is what we have all long striven to uphold. But certainly, up to this point in 2018, Hong Kong has degenerated quite considerably, but Hong Kong's position in this regard should be continuously upheld. Of course, I have to reiterate that under the present circumstances in Hong Kong, it is beneficial to Hong Kong to maintain the signing of agreements with the international community or secure more international agreements. I hope that in doing so, we can strike a balance between the pros and cons and hence pre-empt an imbalance, so that the system of the rule of law in Hong Kong will not be compromised only for the signing of these agreements.

To end, I would like to thank Members who have spoken on this resolution, most of whom are colleagues from the pro-democracy camp. I believe working hard to strive for policy improvement is a way out for us in the face of the predicaments in the future democratic movement. President, I so submit.

MR WONG TING-KWONG (in Cantonese): President, the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") and I oppose the two proposed resolutions moved by Mr James TO that seek to repeal the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order and the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order (collectively referred to as "the two Orders").

The two Orders seek to implement the Comprehensive Avoidance of Double Taxation Agreements ("CDTAs") Hong Kong previously entered into with India and Finland. Mr James TO bases his request to have the two Orders repealed on one single reason: his aversion to the idea that the two Governments can use the tax information obtained from Hong Kong this way for such non-tax related purposes as combatting drug trafficking, organized and serious crimes and terrorist acts.

Mr TO holds that, since Hong Kong has already made arrangements for mutual legal assistance with India and Finland under the Mutual Legal Assistance in Criminal Matters Ordinance, the relevant information should be exchanged through such arrangements, rather than directly through the relevant CDTAs to the effect that the Governments of India and Finland can use the tax information obtained from Hong Kong for the non-tax related purposes of combatting drug trafficking, organized and serious crimes and terrorist acts. Mr TO believes such a practice will seriously undermine the protection afforded to the persons concerned under the Mutual Legal Assistance in Criminal Matters Ordinance. In scrutinizing the two Orders, the relevant Subcommittee also questioned the case for opening up another pathway by the Administration under CDTAs whereby the Governments of India and Finland can use the tax information obtained from Hong Kong for non-tax related purposes, when there were already arrangements for mutual legal assistance made by Hong Kong with India and Finland.

The Administration, however, explained that the current arrangements for mutual legal assistance made by Hong Kong with India and Finland were subject to section 4 of the Inland Revenue Ordinance (Cap. 112), which stipulates that the tax information gathered by the Inland Revenue Department ("IRD") of Hong Kong shall be preserved in secrecy and shall not be communicated to any person except the relevant officers of local government departments or organizations with authorization. Hence, under the current arrangements for mutual legal assistance, the Government of Hong Kong does not have any power to hand over any tax information to the enforcement authorities of India and Finland.

However, since 2012, the Organisation for Economic Co-operation and Development ("OECD") and the United Nations have permitted countries to use the exchanged tax information primarily for such limited non-tax related purposes as combatting drug trafficking, organized and serious crimes and terrorist acts. The relevant provision has been incorporated into the Model Tax Convention on Income and on Capital promulgated by OECD. In other words, any country or region which enter into a CDTA with another country or region shall allow its counterpart to use the tax information exchanged for limited non-tax related purposes. A refusal from Hong Kong to do so will run counter to the consensus of the international community and dampen the interest and incentives of other countries or regions in entering into CDTAs with Hong Kong, to the detriment of Hong Kong's future efforts in expanding its CDTA network and strengthening its commercial ties with the outside world.

After nearly 10 years of CDTA negotiations with Hong Kong, the Governments of India and Finland have respectively completed the approval processes for the relevant CDTAs. If the proposed resolutions of Mr James TO were passed, the relevant agreements would have no way of being implemented in Hong Kong. And the Governments of India and Finland would not reopen negotiations with Hong Kong.

Lastly, the Administration also stressed that after the implementation of the two Orders, tax information obtained from Hong Kong by the relevant authorities of India and Finland can only be used with the authorization of Hong Kong for the non-tax related purposes of recovery of proceeds from drug trafficking, organized and serious crimes and terrorist acts in order to combat the relevant crimes. IRD of Hong Kong will consult the Department of Justice ("DoJ") and the relevant law enforcement agencies before deciding on whether to authorize the use of the relevant information by India and Finland.

After listening to the explanation of the Administration, DAB and I both endorse the relevant arrangement. For one thing, it is necessary for Hong Kong to expand its CDTA network with other countries and regions in the world and to strengthen its position as an international financial centre. Since 2012, it has been the consensus and requirement of the international community to allow countries to use the exchanged tax information for limited non-tax purposes, such as combatting drug trafficking, organized and serious crimes and terrorist acts. In refusing to meet such a request, Hong Kong will only be isolated by the international community, wasting years of efforts of the Special Administrative Region Government.

Moreover, CDTAs facilitate the combat against drug trafficking, organized and serious crimes and terrorist acts, which would contribute to the maintenance of law and order in Hong Kong. This is illustrated by the recent case in which an Indian terrorist has committed crimes and raised funds in Hong Kong. Besides, as the gatekeepers of the relevant CDTAs, IRD, DoJ and the relevant law enforcement agencies will not sanction the indiscriminate use of tax information of Hong Kong people by the relevant authorities of India and Finland. Hence, DAB and I support the two Orders.

I so submit and oppose, along with DAB, Mr James TO's proposed resolutions to repeal the two Orders.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now first call upon the Secretary to speak again, and then Mr James TO will reply. Then, the debate will come to a close.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I would like to thank Members for giving their views just now. And I will now give a combined response.

At present, Hong Kong has entered into 40 Comprehensive Avoidance of Double Taxation Agreements ("CDTAs"), including the two CDTAs signed with India and Finland. If we adopt Mr James TO's views to repeal these two CDTAs, we will not be able to achieve the target of increasing the number of CDTAs to 50 over the next few years for the sake of promoting the economic and trade exchanges between Hong Kong and other places. All along, Hong Kong has been prudently handling the exchange of information under CDTAs in order to protect people's privacy and the confidentiality of information.

Allowing the use of information exchanged under CDTAs for limited non-tax purposes is an existing requirement of international taxation cooperation, not a request made by Hong Kong of its own accord or unilaterally. As an open economy, Hong Kong has the need to align with the international community, instead of formulating on its own local mechanisms and abandoning international practices, otherwise efforts in expanding Hong Kong's CDTA network and strengthening our external economic and trade ties will be seriously affected and even impeded.

We have noted Mr James TO's concern about the relevant procedures and mechanism. The Inland Revenue Department ("IRD") has been making serious efforts in gate-keeping to ensure that requests for exchange of information under CDTAs shall be made for tax purposes first. Any request for information for purely non-tax related purposes will all be rejected. IRD will handle the applications made by CDTA partners for the further use of exchanged tax information for non-tax related purposes in the same manner as per the stringent mechanism. I would like to emphasize once again that, under the laws of Hong

Kong, tax information exchanged under CDTAs may only be used for limited non-tax related purposes, i.e. the recovery of proceeds from three aspects, namely drug trafficking, organized and serious crimes and terrorist acts. I believe such a requirement enables Hong Kong to discharge its responsibility of international tax cooperation while afford full protection of people's privacy. It is a reasonable, feasible and appropriate approach.

Mr James TO and a number of Members have expressed concern just now about whether the procedures will be abused. As stated in my opening speech on these two resolutions, if the information requested is beyond the permitted use under the laws of Hong Kong, IRD of Hong Kong will not approve such requests. The Commissioner of Inland Revenue, in handling CDTA partners' requests for the use of tax information for non-tax related purposes, will definitely consult the Department of Justice. Such a practice has been set out in detail in the departmental guidelines of IRD. IRD has also confirmed relevant requests will be handled in adherence to such guidelines.

Moreover, Members have also raised questions about whether the authorities have performed gate-keeping—whether the authorities have monitored how CDTA partners use such tax information. We do not have extraterritorial powers to monitor how CDTA partners use such information. But the spirit of the agreement is to assume that partners will abide by the terms of the agreement and the usage of information. I wish to stress that if Hong Kong considers that the requesting party does not comply with its duties regarding the confidentiality of the information exchanged under the relevant Exchange of Information Article, Hong Kong may suspend assistance under the Exchange of Information Article of the relevant CDTA until such time as proper assurance is given by the requesting party that those duties will be honoured. In extreme cases, Hong Kong can terminate the relevant CDTA and bring the case to the Organisation for Economic Co-operation and Development.

In addition, Mr James TO has also presented some views on the relationship between the mutual legal assistance arrangements under the Mutual Legal Assistance in Criminal Matters Ordinance and the exchange of information arrangements under CDTAs. In the course of discussion by the Subcommittee, my colleagues in the Government, including those from the Department of Justice, have already clearly explained that the mutual legal assistance arrangements and the exchange of information arrangements under CDTAs are

two separate regimes independent of each other. And currently there is no legal grounds for the information in the possession of IRD to be handled under the mutual legal assistance arrangements. Therefore, IRD has no grounds to demand that India and Finland make requests for the use of tax information obtained from Hong Kong for non-tax related purposes through means other than CDTAs. Members have suggested in their speeches making amendments to the Mutual Legal Assistance in Criminal Matters Ordinance for the purpose of exchanging information in this respect. We will relay the views expressed by Members on the Ordinance and other relevant laws to the relevant Policy Bureaux and departments for consideration.

President, the Orders we have presented to the Legislative Council for scrutiny seek to implement the CDTAs Hong Kong has signed with India and Finland respectively. These two CDTAs comply with the tax cooperation arrangements generally adopted by the international community and will also bring economic benefits to Hong Kong. We implore Members to oppose the two resolutions proposed by James TO so that these two CDTAs can be implemented as soon as possible.

Thank you, President.

PRESIDENT (in Cantonese): I now call upon Mr James TO to reply.

MR JAMES TO (in Cantonese): President, over the past couple of days, a family member of mine has been hospitalized. I feel gloomy and tired. Yet, it cheered me up as I listened to the speeches from the Secretary and Honourable colleagues today. My passion in the enactment and detailed study of legislation, as well as the overall situation, has been revived.

President, perhaps I have to blow my own trumpet first, though I seldom do this. On issues relating to international cooperation, counter-terrorism and anti-money laundering, I believe, among the Members present, only Mrs Regina IP, who used to be the Secretary for Security, and I should be well versed in this area and we have the most profound feelings about this. In fact, we should be the two Members who are most experienced in this field. If someone charges me with not knowing the latest standards in international agreements, counter-terrorism and anti-money laundering, I will let them talk nonsense and I

will give no regard to them. Second, I will accept the invitation to attend an international conference in December, which will be attended by representatives from 46 countries and regions. The conference is about agreements involving crimes relating to counter-terrorism, anti-money laundering and counter-hackers' attacks, and so on.

I would say that the Organisation for Economic Co-operation and Development ("OECD") is not stupid, and I support this new direction of OECD. Yet, the problem is that the Government's mindset is confined to a single model. It will not change. It does not know how to do the right thing at the right time. At present, OECD proposes allowing the exchange of taxation information, and if other crimes are involved, the scope of the information exchanged will include tax-related purposes and non-tax related purposes, yet the bottom line is that the relevant arrangement must be allowed under the laws of the contracting parties. In fact, OECD respects all regions, countries and contracting jurisdictions. If the arrangement is not allowed by any one of the contracting parties, OECD will not force the contracting parties to enter into an agreement on exchange of information.

What is the meaning of being allowed under the laws? There are several possibilities. First, if the exchange of information is not allowed under the laws of one of the contracting parties yet the other party wishes to enter into an agreement with the other party, the former party has to amend its laws to allow the exchange of information. However, due to certain reasons, some jurisdictions consider the exchange of information should not be allowed. In these cases, OECD will respect the two places and they do not have to enter into an agreement.

Second, if the exchange of information is allowed, the exchange should be carried out according to the procedures allowed under the laws. In fact, in many places, including Hong Kong, the provision of tax-related information to local law enforcement agencies requires prior application to the Court. As for the provision of such information to law enforcement agencies of other countries, it is either disallowed or requires application to the Court for approval. Hence, it is neither the established practice nor an agreement in the international community, and OECD is not prohibiting us from requiring prior application to the Court. OECD has not made this requirement. Yet, despite a decade of discussion, the Government has failed to examine local laws carefully with a view to identifying an arrangement to the best interest of Hong Kong, and then make consequential

amendments to relevant laws based on other legal principles and the principle of maintaining the gate-keeping role of the Court, thereby facilitating Hong Kong in entering into agreements with other countries. Had the authorities done so, it would have been a smooth course.

Nonetheless, the Government has not done so, for it is always thinking about relaxing the existing requirement so that application to the Court will become unnecessary. By then, the Department of Justice ("DoJ") will perform the gate-keeping role. In reality, the gate-keeping role is performed by the Secretary, for DoJ will only be responsible for offering advice. In other words, in the implementation of the OECD agreement, the Government has chosen an approach which offers lesser protection to taxpayers in meeting the requirement of OECD. Had the Government conducted a detailed study in the past decade, would it have made the same arrangement? Of course, even if a detailed study has been conducted, the Government may still choose an approach that will undermine the rule of law of Hong Kong and the role of the Court on the one hand and increase the decision-making power of the Government or government officials on the other, particularly the power to make certain decisions which will affect the interests of the public. In fact, the Government has been adopting this approach in handling other issues.

Hence, OECD has not forced Hong Kong to adopt certain so-called international established practices which contravene our principle of resort the Court as the gate-keeper under the laws of Hong Kong. President, the point which prompts greater worry is that if colleagues consider the present arrangement for providing information at the request of overseas governments not problematic, that is, the provision of information is decided by the Commissioner of Inland Revenue ("the Commissioner") and does not require application to the Court, the arrangement will set a precedent and once this precedent is set, problems will arise. In future, Mr Holden CHOW and Mr WONG Ting-kwong, as well as other Members and I do not know if this will include Mr Kenneth LEUNG, may say that if overseas governments do not have to apply to the Court to request information, the Hong Kong Police Force should not be required to apply to the Court to request information on grounds of counter-terrorism. Subsequent to this precedent, people may conversely query the existing arrangement.

President, how could the Commissioner be comparable to the Court? Under the relevant arrangement, the decision will be made by the Commissioner and the Secretary for Justice who will be the adviser of the Commissioner. Yet,

the safeguard under such arrangement can in no way be comparable to the safeguard under the comprehensive procedures of the Court. If some colleagues consider it adequate for the Commissioner to make the decision in consultation with the Secretary for Justice, and that the trust of the public in this arrangement is comparable to the trust they have in the impartiality of the Court, I can only wish them all good luck. Members may stick to their choice of taking this path. Colleagues from the pro-establishment camp may choose this path, for they place great trust in the Government and they even believe that an autocratic government is worthy of support. However, from the perspectives of the public, the international community and international model, the Court is always an arbitration institution with higher credibility than the Government in striking a balance between the interests of two parties. If we set this precedent, we can hardly explain to other economies of OECD why we do not follow through the order in future. We can hardly explain our case.

President, we had signed many similar orders in the past. I have rendered my support to all those orders. Moreover, in the first few years, I was the Chairman for nearly all the committees responsible for the scrutiny of the relevant orders. After careful examination of the orders and when we considered that there was no problem, we passed all the orders. Yet, I must tell Members that the two Orders under discussion are different. I must blow the whistle. Once a precedent is set, orders in future will follow this arrangement whereby the request for information will not require application to the Court but only the approval of the Commissioner.

President, I would like to remind Members that law enforcement agencies of Hong Kong are required to apply to the Court to request tax information when they deal with activities relating to counter-terrorism, money laundering crimes and investigation of serious crimes. If so, why would we allow outsiders to be exempted from this requirement? This is really strange. President, I am really worried by what will happen in future once a precedent is set. Particularly in the case of colleagues from the democratic camp, I wonder how they will face such scenarios. In future, the Government will use the case to justify that application to the Court is no longer necessary.

President, some colleagues worry that if the Legislative Council does not pass the relevant Orders, it will convey the impression that Hong Kong has been ineffective in combating money laundering. President, I have been working in the legislature for over 20 years and I am the pioneer in promoting the work in this aspect. Honestly, I started promoting the work in this aspect earlier than

Mrs Regina IP. Back then, she was the Director of Immigration and I was a Member of the former Legislative Council. I have been promoting the work in this aspect since then. Hence, international conferences of all scales, as well as the international community, know of James TO from Hong Kong. I have also attended the global conference on anti-money laundering organized by FBI (Federal Bureau of Investigation) in Chiang Mai. The Government knows this full well all along. Yet, the Government has its role and Members have their roles. The Government should understand the latest trend, implementation approaches and procedures around the world, and it should confirm which approach can achieve the best balance, enabling Hong Kong to follow international practice while giving regard to local rights and interests, procedures and core values. In fact, 99% of the core values of Hong Kong are similar to the international core values. OECD has not forced Hong Kong to implement arrangements in violation of our core values, yet the authorities have chosen to set aside our core values. If the authorities are doing so intentionally, this motive of the authorities is execrable; if not, will the authorities please raise the standard.

President, it is even more ludicrous that some colleagues want to tell Mr TO, perhaps the Secretary also wants to do so, that we cannot provide taxation information under the Mutual Legal Assistance in Criminal Matters Ordinance ("the Ordinance"). I certainly know this, for I have taken part in the enactment of the Ordinance. I may be called an encyclopedia on it. Yet, I am telling the authorities that there are several approaches for dealing with this. For example, the authorities may amend the arrangement for MLA (Mutual Legal Assistance) to allow the exchange of such information. On the other hand, the authorities may amend the three ordinances relating to counter-terrorism, anti-money laundering and organized and serious crimes. Since these ordinances allow law enforcement agencies, such as the Police Force, to apply to the Court to request taxation information, the authorities may follow this mechanism. When the revenue agency of the requesting party makes enquiries with the Inland Revenue Department ("IRD") of Hong Kong, the Commissioner represented by DoJ will submit an application to the Court in respect of the request. After the Commissioner receives the information, the information will be provided to the requesting party via the Commissioner. The procedure is then completed. Do I need to instruct the authorities what to do? The Government has spent a decade addressing this issue. The authorities must compare the particulars carefully to ensure that the agreement is in compliance with the existing laws of Hong Kong.

Hence, I have to reiterate that I support the implementation of the avoidance of double taxation agreements which seeks to avoid the imposition of double taxation. I support that OECD should be allowed to use taxation information for non-tax related purposes under certain circumstances, particularly on counter-terrorism matters. Yet, the procedure for requesting information, where the Court acts as the gatekeeper, has been proven, so I will not support relaxing the requirement. In view of the existing relationship between Hong Kong and the Mainland, I wonder what will happen once the requirement is relaxed. By then, the next legislative amendment we have to deal with may not be proposed by the Secretary for Financial Services and the Treasury but by the Secretary for Security, querying the necessity for the Police Force to apply to the Court for request for taxation information. By then, how can we explain our case? Colleagues from the pro-establishment camp will state that it is unnecessary for the Court to handle such applications. If so, how can colleagues from the democratic camp explain their case? Will they only wake up by then and realize that they have erred in the beginning? By then, others will only point out that during the examination of the arrangement involving the avoidance of double taxation, we have already agreed that it is unnecessary for the Court to process these cases.

PRESIDENT (in Cantonese): Council now first votes on Mr James TO's first motion.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the first motion moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr AU Nok-hin rose to claim a division.

PRESIDENT (in Cantonese): Mr AU Nok-hin has claimed a division. The division bell will ring for five minutes.

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

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

Functional Constituencies:

Mr James TO, Mr LEUNG Yiu-chung, Mr IP Kin-yuen and Mr KWONG Chun-yu voted for the motion.

Mr Tommy CHEUNG, Mr WONG Ting-kwong, Mr CHAN Kin-por, Mr Steven HO, Mr Kenneth LEUNG, Mr Christopher CHEUNG, Mr POON Siu-ping, Ir Dr LO Wai-kwok, Mr HO Kai-ming, Mr Holden CHOW, Mr SHIU Ka-fai, Mr CHAN Chun-ying, Mr LUK Chung-hung, Mr LAU Kwok-fan and Mr Tony TSE voted against the motion.

Mr Dennis KWOK abstained.

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

Geographical Constituencies:

Ms Claudia MO, Mr WU Chi-wai, Mr CHAN Chi-chuen, Dr Fernando CHEUNG, Dr Helena WONG, Mr Andrew WAN, Mr CHU Hoi-dick, Mr LAM Cheuk-ting, Mr HUI Chi-fung, Dr CHENG Chung-tai, Mr Gary FAN and Mr AU Nok-hin voted for the motion.

Mr CHAN Hak-kan, Mrs Regina IP, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Ms Alice MAK, Dr Junius HO, Mr Wilson OR, Ms YUNG Hoi-yan, Mr Vincent CHENG and Ms CHAN Hoi-yan voted against the motion.

Mr Alvin YEUNG abstained.

THE PRESIDENT announced that among the Members returned by functional constituencies, 21 were present, 4 were in favour of the motion, 15 against it and 1 abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, 12 were in favour of the motion, 10 against it and 1 abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Mr James TO, you may move your second motion.

MR JAMES TO (in Cantonese): President, I move that my second motion, as printed on the Agenda, be passed.

Mr James TO moved the following motion:

"RESOLVED that the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order, published in the Gazette as Legal Notice No. 156 of 2018 and laid on the table of the Legislative Council on 10 October 2018, be repealed."

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

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

(Members raised their hands)

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

(Members raised their hands)

Mr AU Nok-hin rose to claim a division.

PRESIDENT (in Cantonese): Mr AU Nok-hin has claimed a division. The division bell will ring for five minutes.

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

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

Functional Constituencies:

Mr James TO, Mr LEUNG Yiu-chung, Mr IP Kin-yuen and Mr KWONG Chun-yu voted for the motion.

Mr Tommy CHEUNG, Prof Joseph LEE, Mr WONG Ting-kwong, Mr CHAN Kin-por, Mr Steven HO, Mr Kenneth LEUNG, Mr Christopher CHEUNG, Mr POON Siu-ping, Ir Dr LO Wai-kwok, Mr HO Kai-ming, Mr Holden CHOW, Mr SHIU Ka-fai, Mr CHAN Chun-ying, Mr LUK Chung-hung, Mr LAU Kwok-fan and Mr Tony TSE voted against the motion.

Mr Dennis KWOK abstained.

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

Geographical Constituencies:

Ms Claudia MO, Mr WU Chi-wai, Mr CHAN Chi-chuen, Dr Fernando CHEUNG, Dr Helena WONG, Mr Andrew WAN, Mr CHU Hoi-dick, Mr LAM Cheuk-ting, Mr HUI Chi-fung, Dr CHENG Chung-tai, Mr Gary FAN and Mr AU Nok-hin voted for the motion.

Mr CHAN Hak-kan, Mrs Regina IP, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Ms Alice MAK, Dr Junius HO, Mr Wilson OR, Ms YUNG Hoi-yan, Mr Vincent CHENG and Ms CHAN Hoi-yan voted against the motion.

Mr Alvin YEUNG abstained.

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, 4 were in favour of the motion, 16 against it and 1 abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, 12 were in favour of the motion, 10 against it and 1 abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

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

The motion debate on "Studying the enactment of an ordinance on regulating subdivided units".

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

I call upon Mrs Regina IP to speak and move the motion.

STUDYING THE ENACTMENT OF AN ORDINANCE ON REGULATING SUBDIVIDED UNITS

MRS REGINA IP (in Cantonese): Good afternoon, President and Secretary. President, you and I belong to the same generation. You may remember that when we were children, there were a lot of squatter areas in Hong Kong because after the war, there were many new arrivals, but there were not enough low-cost housing units to accommodate them. Hence, they had to live in wooden huts or squatter huts.

It was not until 1953 when a major fire had broken out in Shek Kip Mei that the Government started to construct low-cost housing estates. Then in the 1970s, the Government launched a 10-year public housing programme, extensively clearing squatter areas to help the grass roots and low-income people to move to public rental housing ("PRH"). However, since the construction of housing took time—President, I wonder if you have noticed—at that time some Temporary Housing Areas ("THAs") were set up in Hong Kong. I know there were quite a number of them in Kowloon. However, since members of the public had to wait for allocation of PRH, they had "temporarily" lived in these THAs for 10 to 20 years. Through continuous development of new towns and creation of land for housing construction with much hard effort, the Government arranged for these residents in wooden huts and squatter huts to move to PRH, thereby improving their living environment.

Yet regrettably, over the past decade, the work of the Government of the last two terms in land creation as well as construction of PRH and Home Ownership Scheme units has stopped. Consequently, today a large number of people are still waiting for PRH and forced to live in subdivided units. The figures on hand indicate that at present, over 150 000 families and 117 500 non-elderly singletons are waiting for PRH. The waiting time has reached 5.5 years, hitting a record high in nearly 19 years. These people waiting for PRH can only dwell in cramped subdivided units. According to the figures released by the Census and Statistics Department at the beginning of this year, there were nearly 210 000 people living in some 90 000 subdivided units in Hong Kong, and 30% of the residents were young people aged below 25. The severity of the problem of subdivided units is thus evident.

What problems do subdivided units have? First, the rents of subdivided units are exorbitant. Earlier on, an organization called Platform Concerning Subdivided Flats and Issues in Hong Kong interviewed 368 households and found that their average monthly rent was as much as $4,506. The average monthly income of these families was only $14,000. The rent accounted for 37% of their income. As shown by the figures, the monthly rent for a subdivided unit of 80 sq ft in the urban area offering a better location such as the Western District was $8,000. Those in Kwun Tong were not cheap either. The monthly rents ranged from $6,800 to $7,800. I know the Secretary is well versed in the issue of subdivided units. I am also grateful for his help. As reported by online media, profits from subdivided units are high. The return from investment in subdivided units is even more handsome than that from investment in luxury flats. A development company went so far as to convert luxury flats situated at

Shouson Hill and Stanley into subdivided units, where such properties worth $800 million were converted into 530 units. I am grateful that after receiving my complaint, the Secretary imposed an encumbrance, forcing it to restore the properties.

Subdivided units have caused many problems of hygiene, overcrowdedness and fire hazards. As pointed out by a group, the average living space per person in some subdivided units is only 49.6 sq ft, which is about the size of a table tennis table. Moreover, most subdivided units lack windows or ventilation systems. Beds are placed above toilets. Not only are the living conditions extremely terrible. Rents are costly, and tenancy agreements offer no protection. Tenants are often charged excessive water and electricity tariffs by landlords. Besides, President, tragedies occur frequently. As shown by the information on hand, last year i.e. 2017, there were nine cases of fire which broke out in subdivided units. In one of the cases, a singleton was found burnt to death on the bed. In July this year, living in the confined space of a subdivided unit in Yu Chau Street, Sham Shui Po a newlywed couple got into arguments with each other and became very unhappy. In the end, the husband committed suicide by hanging himself. In August this year, in a subdivided unit in a factory building in Kwai Chung—that subdivided unit was used as a studio rather than for residential purpose—three "post-90s" unexpectedly played with phosphorus powder. In the end, these three young people were burnt to death. How lamentable! In September, a fire broke out in a subdivided unit in Apliu Street, Sham Shui Po because of a short circuit. The dwellers in the subdivided flat had to evacuate in panic.

President, a most tragic case happened recently in October. An old man living in a subdivided unit in Tai Nan Street, Sham Shui Po often had quarrels with his neighbour because the living environment was too crowded. Eventually, he chopped his neighbour to death, set fire to the flat and then jumped off the building, ending his own life. Subdivided units are really uninhabitable.

When I stood for election in 2016, I visited some dwellers of subdivided units. I have visited such dwellers more than once. Mr HO Hei-wah has shown me around subdivided units many times. After visiting these dwellers of subdivided units in October 2016, I had some strong feelings. At that time I proposed that the Government might as well provide subdivided units itself. The Government could acquire an entire factory building. Be it vacant or converted, it would do if the ownership was unified. The Fire Services Department told me that a multi-purpose factory building was unfit for

conversion into housing, but a single-purpose one could be converted in whole into subdivided units. At that time I already proposed that the Government could acquire an entire factory building and provide subdivided units by itself to rehouse these grass roots leading a miserable life, as in the case of THAs back in those years.

I believe Chief Executive Carrie LAM has an experience similar to mine in visiting such dwellers of subdivided units. I am glad to see that in item (iii) of paragraph 72 of the Policy Address this year, she stated that the Government would "allow revitalization of industrial buildings to provide transitional housing. In practice, the Government will … charge a nil waiver fee … if owners provide transitional housing in portions or entire blocks of industrial buildings located in "C", "Comprehensive Development Area", "OU(B)" and "R" zones which have already undergone or will pursue wholesale conversion into non-industrial uses". I hope the Secretary will give a detailed account of the progress of this scheme later on.

I have asked Secretary Frank CHAN where the Government will identify such buildings for conversion into subdivided units. He said that some are vacant government buildings, whereas some are provided by kind-hearted owners—President, you also know who he is, but I had better not divulge his name —he is willing to pass to the Government his own factory building which has ceased to serve any industrial purpose. Secretary Frank CHAN told me that some non-governmental organizations ("NGOs") will assist in making the arrangements. After the completion of conversion and renovation, they will be leased to people waiting for PRH or living in subdivided units. This is certainly a benevolent policy. But even if the Government takes the lead in providing transitional housing, it is still insufficient because there are still 210 000 people living in some 90 000 subdivided units in the market. I wonder how many units the Government can provide. Maybe it will provide 1 000 units for the purpose of setting an example. I hope there will be more. And what about the other people?

In my opinion, the Government should really enact legislation to regulate subdivided units. I believe subdivided units will exist in Hong Kong for a long period like THAs back then. They will not disappear quickly because, as we all know, be it reclamation or development of brownfield sites and agricultural land, the Government's progress in creating land for housing construction is slow. Many people have to dwell in these cramped units, and many shrewd landlords are aware of the fat profits which can be brought by subdivided units.

For this reason, the Government should follow the practice of the United Kingdom, where there is also a serious problem of subdivided units. A friend of mine, a professional, told me that she knows the rate of return from subdivided units is high. This professional is a lawyer. Her husband is an accountant. She has bought an old flat in Sham Shui Po for use as subdivided units. She is a conscientious landlord, providing separate water and electricity meters with a pretty good environment. The rate of return is double-digit. She told me that there are also a lot of subdivided units in British cities such as Birmingham and Manchester. The residents are new immigrants to the United Kingdom from South Asia—I do not mean to be derogative with this reference.

President, a Member of the Legislative Council—he is not present today—once proposed implementation of tenancy control based on districts. But such implementation based on districts is infeasible because we cannot control all the rents in a district (for example, Sham Shui Po) across the board. Moreover, suppose it is specified that tenancy control shall be implemented in Yen Chow Street, so the tenants move to Yu Chau Street. What can we do then? For this reason, implementation of tenancy control cannot be based on districts, but it can be based on the types of buildings.

The United Kingdom has worked in this way. In 2004, it passed the Housing Act 2004, introducing a new type of housing called "Houses in Multiple Occupation" ("HMO") in English. I do not know what its Chinese rendition is. These are houses occupied by multiple tenants. According to its definition in English, "HMO means a house in multiple occupation as defined by sections 254 to 259". It defines which types of housing should be subject to regulation. It also puts in place a licensing regime to ensure fire and structural safety. Besides, it stipulates the provision of adequate lighting and hygiene facilities, as well as rent control.

Secretary—Prof Raymond SO is also present—please do not tell me that the Government will be interfering with the free market if it proposes tenancy control, since the Government has long implemented such control. We have an ordinance called the Landlord and Tenant (Consolidation) Ordinance. Tenancy control already existed in the past. Learned and knowledgeable as they are, if the Secretary and the Under Secretary have not read this book in my hand, they may as well find a copy and take a look. It was written by Judge CRUDEN, former President of the Lands Tribunal. There is a whole chapter which explains how tenancy control operates.

Back then, the Landlord and Tenant (Consolidation) Ordinance already introduced the concept of several types of rents. One is called "permitted rent" and another one, "prevailing market rent". There is one more type called "standard rent". Besides, it has put tenancy control in place, stating under what circumstances a tenancy agreement must be renewed to prevent the tenant from being exploited. Moreover, when there is any dispute, it may be referred to the Lands Tribunal. Hence, all these things can be done. They are not interference in the market.

If the Government imposes tenancy control over subdivided units now, controlling the level of and increase in rent and formulating a standard tenancy agreement for tenants of subdivided units, it will do immeasurable good. In this regard, Singapore has already achieved.

Early in 2012, Singapore announced new legislation to combat "shoe-box housing". Hearing that, we cannot but feel envious. In Singapore, "shoe-box housing" refers to a housing unit the area of which is less than 500 sq ft. The law stipulates that developers shall not construct any private housing unit with an area smaller than 915 sq ft outside the Central Business District (abbreviated as "CDB"). This really arouses the envy of Hongkongers. Although such areas cannot be compared because there is more flat land in Singapore than Hong Kong, the former cares a lot about its people, giving much attention and concern to their living environment. It already started to combat "shoe-box housing" in 2012. Hence, the Secretary can introduce legislation to impose regulation so long as he has the will to do so.

Besides, I hope the Secretary—today both the Secretary for Development and the Under Secretary for Transport and Housing are present—I hope they will tell us the present progress of transitional housing. How many units can be provided? Which NGOs will render assistance? What preferential treatment will owners enjoy?

I have told Secretary Frank CHAN—I wonder if he has relayed it to Under Secretary Prof Raymond SO—if the work is entrusted to NGOs, I hope it will not be commissioned only to those several ones acquainted with the Government, that means those several ones which are closest to the Government and often commended by the Government. I know that actually many NGOs wish to help. I would like to reserve some time for the Government to give its response.

President, may I move my motion now?

PRESIDENT (in Cantonese): Mrs IP, please move your motion.

MRS REGINA IP (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

Mrs Regina IP moved the following motion: (Translation)

"That at present, there are in Hong Kong over 150 000 families and elderly singletons waiting for public rental housing, with an average waiting time of 5.3 years, and quite a number of applicants live in units of flats subdivided into separate units (commonly known as 'subdivided units'); according to the estimate of the Government in 2017, there were about 91 800 households living in subdivided units across the territory; the Chief Executive has undertaken in the newly released Policy Address that the Government will actively facilitate various short-term community initiatives to increase the supply of transitional housing and allow wholesale conversion of industrial buildings for transitional housing; in the light of these new initiatives, it is believed that quite a number of transitional housing units leased out in the form of subdivided units will emerge in Hong Kong, but the existing Buildings Ordinance cannot comprehensively regulate the safety of flat subdivision works; in this connection, this Council urges the Government to study the enactment of an ordinance on regulating subdivided units, the contents of which include:

(1) by drawing reference from the Housing Act 2004 of the United Kingdom, establishing a licensing system for regulating the operation of subdivided units, and setting standards for the facilities, number of occupants and area of units, so as to ensure a comfortable and safe living environment for households;

(2) requiring the installation of separate water and electricity meters for each subdivided unit to prevent overcharging of water and electricity tariffs by landlords; and

(3) regulating the rate of rental increase for subdivided units to prevent the households from being heavily burdened by rental."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Regina IP be passed.

Four Members will move amendments to this motion. Council will conduct a joint debate on the motion and the amendments.

I will call upon Members who will move the amendments to speak in the following order: Ms Alice MAK, Mr Vincent CHENG, Mr LEUNG Yiu-chung and Mr Andrew WAN, but they may not move their amendments at this stage.

MS ALICE MAK (in Cantonese): President, Mrs Regina IP has already mentioned some figures just now, so I will not make repetitions. According to those figures, there are over 90 000 households living in subdivided units, meaning about 210 000 people in total are now living in such inadequate housing. Many people assume that inadequate housing is generally located in the old districts, such as Yau Tsim Mong or Sham Shui Po, where tenement buildings stand in great number. But I wish to point out that, due to the shortage of housing, subdivided units have now started to appear in middle-class districts, i.e. middle-class subdivided units. In other words, the grass roots have to compete with the middle-class for subdivided units. Mei Foo Sun Chuen and even a number of private housing estates in Tsuen Wan also face the problem of subdivided units. In the face of the emergence of such middle-class subdivided units, minority property owners of those buildings have never thought that flats in the buildings in which they are living would be converted into subdivided units. Also, because the flats above theirs have been converted into subdivided units, leakage problems and the like have arisen in their own flats, affecting the building structure and creating issues in terms of environment, law and order, etc. Therefore, the problem of subdivided units must be addressed squarely.

The current situation of subdivided units can be summed up as "pricey", "tiny" and "cramped". In terms of being "tiny" and "cramped", I believe it is clear that such descriptions refer to the per capita floor area of accommodation. The per capita floor area of accommodation of subdivided units now is 5.3 sq m, but the area for other types of housing, such as private housing, is 18 sq m. According to the figures in 2016, the per capita floor area of accommodation of public rental housing was 11.5 sq m, but that of subdivided units was only 5.3 sq m. In this connection, the Census and Statistics Department has conducted a survey on subdivided units to collect tenants' views on living

environment, etc. The results indicated that 38% of the respondents were dissatisfied or very dissatisfied with the living environment, whereas 44% of the respondents considered the environment average.

At present, there is no legislation targeted at regulation of subdivided units in Hong Kong. At most, the authorities can only, by virtue of the Buildings Ordinance, determine whether subdivided units have affected the building structure and impose regulation on some unauthorized building works. However, as regards the example I have just mentioned: flats in middle-class residential buildings have been converted into subdivided units which have then caused leakage problems and the like in flats below, the Buildings Ordinance has no way to impose regulation. Minority property owners living in flats below those subdivided units have been frequently subjected to nuisance. For example, problems such as leakage may appear in their flats but the source cannot be identified.

Moreover, currently the law that can regulate subdivided units and inadequate housing is the Bedspace Apartments Ordinance ("the Ordinance"). But the licensing requirements are so demanding as to stipulate that only flats with 12 or more bedspaces are eligible to be licensed. And now there are only about 10 bedspace apartments letting subdivided units licensed under the Ordinance, other sub-divisions of flat units are let as subdivided units or cubicle apartments, which are not required to be licensed. The environment in such subdivided units or cubicle apartments are markedly poor. Dwellers in many units or apartments have to share kitchens and bathrooms, where hygiene is undesirable. Moreover, this group of people living in subdivided units have absolutely no bargaining power. They have to face poor conditions. For example, when they make complaints to their landlords about water leakage of windows or roofs, the landlords will not tackle the problems but only ask them to move out. But what can this group of dwellers do? They have no bargaining power. I will later discuss their plight resulting from their lack of bargaining power.

Currently, the rental of subdivided units is high. In the 10 years between 2006 and 2016, the median monthly rental of subdivided units has soared by 148.4%, way higher than the 81.8% percentage of rate increase for private housing. And the median rental of subdivided units is $4,500, higher than the median monthly rental payment for all domestic households in the territory,

which is $2,180. The comprehensive rental index for subdivided units released by a community organization was 350.5 in 2015, which jumped to 411.3 this year, having increased by over 20% in three years. Now the per-square-foot rental of subdivided units is as high as $80 to $90, hence the per-square-foot rental of a subdivided unit may well be higher than that of a middle-class flat in Tseung Kwan O.

Due to shortage, landlords also take the opportunity to exploit subdivided unit dwellers. Tenants are generally not protected by tenancy agreements, and they even have to face problems such as being over-charged for the use of water and electricity and substantial rental increases. Moreover, once there is a new tenant who is prepared to pay a higher rental, the landlord will kick out the existing tenant. Last year, we received a request for assistance: a tenant of a subdivided unit had used 200 units of electricity. According to the tariff charged by the CLP Power Hong Kong Limited ("CLP"), which was $0.9 per unit, his electricity bill should be $180, but the landlord charged him $300 each month for the use of electricity. Honourable colleagues may think that there is only a difference of some $100 between $180 and $300, but the actual circumstance was not so. The landlord charged him $300 each month for electricity, but actually the electricity bill is paid every two months. It means that CLP would have charged $180 every two months but the landlord charged him $300 each month. The tenants of subdivided units have to face countless situations of such overcharging of fees. Many people think that the tenants of subdivided units can choose to move out when encountering such situations. As regards overcharging of rental and water and electricity fees by landlords of subdivided units, we have asked the Government if it is possible to impose regulation so as to eradicate the situation of "speculation on water and electricity".

In October last year, Mr LUK Chung-hung and I presented a private bill, which sought to eradicate the situation in which unscrupulous landlords resell water and electricity for profits. We hope that, with legislation enacted to impose regulation and through a multi-pronged approach, the plight of grass-roots families can be alleviated. However, on this subject, not only has the Government put no measure in place, but it also has rejected our suggestions, citing different reasons: at one point it said it is impossible to accurately measure the electricity consumption of each subdivided unit, but moments later it said it is impossible to install electricity meters, or enactment of legislation for this may affect other organizations, etc.

Concerning the problem of "speculation on water", during the discussion on it by the Panel on Development in July this year, the department maintained that the existing regulations already can impose regulation on overcharging for the use of water. Tenants need only provide proof of landlords' overcharging for their use of water and the department can then handle it. There is indeed no need for legislative amendment. On the other hand, the department has failed to enforce the laws but only asked tenants to provide information. I often say tenants have absolutely no bargaining power. Landlords can charge however much for water and electricity as they wish, and tenants will have to comply even if they increase the rental. What is the reason? There is only one: shortage of subdivided units in the market coupled with increasing rental. If such tenants do not continue to rent their current subdivided units and move to other subdivided units, they may have to pay a higher rental while the environment may be even more dilapidated.

The greatest problem faced by grass-roots families living in subdivided units is that they can barely make ends meet while having no savings. To move, they will have to first pay a deposit equivalent to two months' rental and a month of rental up front, i.e. a sum of three months' rental in total. Now the monthly rental of a subdivided unit is about $6,000 to $7,000. Such dwellers of subdivided units will have to pay several dozen thousand dollars in one go if they want to move. But such families have no savings. Moreover, even if they plan to move, the landlords will not immediately return the deposit to them. It is not going to happen. It is thus evident that grass-roots families have no bargaining power at all. They have no money for moving, and, even if they manage to find another affordable subdivided unit against all odds, the rental may be more expensive and the environment more dilapidated, so they can only accede to the landlords and pay however much rental extorted. They really cannot but comply and submit themselves to exploitation. Therefore, if we do not impose regulation through legislation, such a group of grass-roots tenants will have no choice but to be exploited: the landlords can increase however much rental and charge however much for water and electricity as they please.

On the other hand, I propose in my amendment the provision of a rental allowance to help the grass roots. Of course, the Government has repeatedly stressed that the introduction of a rental allowance will benefit not tenants, but only landlords. That being the case, the Government should then introduce tenancy control. Mrs Regina IP has pointed out that tenancy control is nothing new to Hongkongers, so why does the Government not dare implement it? The current situation is that a group of people need the Government's help. If the

Government says it does not wish to intervene in the market, then are the "curb measures" which aim at curbing property speculation not intervention in the market? As a matter of fact, the Government has introduced so many measures to intervene in the market, but why is it not willing to implement tenancy control to protect the grass roots' right to housing? The Government has actually used non-intervention in the market as a pretext, and then stated that the introduction of tenancy control cannot help the people. The Government cannot do anything. May I ask what it can do then, Secretary? If tenancy control and rental allowance are both unfeasible, then may I ask the Government what is? Do not answer that it is construction of housing. It is common knowledge that an increase in housing supply can solve people's housing problem, but how can the housing problem of the grass roots be solved in the short term?

We hope that, with the implementation of tenancy control, tenancy agreements are required for the lease of subdivided units. I do not know if the Secretary is aware that often no tenancy agreement is signed or stamped for the lease of subdivided units. The landlord can tell the tenant: the rental will be increased by $500 next month or two months later, are you still renting it or not? If not, then call it quits. It is already nice to increase the rental by $500. Some landlords may increase it by $1,000 and ask the tenant: are you renting it or not? If you are not renting it, many people are waiting to do so. If the subdivided unit is located in a building equipped with lifts and the decor is somewhat decent, more people will compete for it. Subdivided units in tenement buildings, if there are frequent leakage or tripping of circuit breakers, may not be too sought after.

In addition, my amendment also mentions transitional housing. Mrs Regina IP has also made brief mention of it. As regards this suggestion, the current-term Government has performed slightly better than the last-term one. The last-term Government was unwilling to consider it, whereas the current-term one has considered providing transitional housing. However, under the current approach, resources or identification of land sites, etc. are all left to planning by non-government organizations. For this reason, we propose the establishment of a dedicated fund for transitional housing. The Government should support the construction of transitional housing and allocate resources and manpower to this end. The most important thing is to help identify land. Only the large-scale development of transitional housing can ease the short-term housing needs of the grass roots. In the long term, the Government must increase housing supply—it is common knowledge. But in the short run, we need to help the grass roots solve their present difficulty. I reiterate our stance on this subject: the

Government should impose regulation on sub-division of flat units, provide a rental allowance, implement tenancy control, levy a property vacancy tax and develop transitional housing in large numbers *(The buzzer sounded)* … so as to help the people.

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

MR VINCENT CHENG (in Cantonese): President, I thank Mrs Regina IP, first of all, for proposing this Member's Motion, and also for repeatedly mentioning the actual situation in Kowloon West, particularly Sham Shui Po, just now.

President, today is the 29th. To many people, it seems to be nothing special. But to a large number of people living in subdivided units, they will again have to pay rent two days later, with more than half of their wages gone. But paying high rents every month is not the worst thing because they, at the very least, will still have a roof over their heads next month. The worst thing is, as Ms Alice MAK said, a sudden rental increase of $500, $1,000 or occasionally more than $1,000 for the coming month by landlords. If the tenants consider it too much, the landlords will tell them to quit and move out as soon as possible because many others are more than willing to rent the units vacated by them. These stories may sound ridiculous, but they are actually happening in the old districts every day.

While Members may consider them ridiculous, there are actually some cases which are even more ridiculous. I have received a case of serious seepage from an upper floor unit to a unit below, with water leaking like a waterfall. I, on behalf of the victim, relayed the matter to the landlord of the subdivided unit on the upper floor. He said he would not fix it, and suggested that the victim sell the flat to him for conversion into a subdivided flat. Sometimes we just cannot tell whether we should take offence at these things, but they do happen at times.

Hence, President, I very much welcome the motion proposed by Mrs Regina IP today because its content and direction can definitely assist grass-roots households, particularly tenants of subdivided units. We generally support the direction proposed in the original motion. But I think further thoughts may be given to a few aspects, and the relevant recommendations can be made more specific.

Tenement flats are actually a phenomenon not unique to Hong Kong. They are also found in such countries in Europe and America as the United Kingdom, Australia and Canada, where a set of laws and regulations are in place to regulate such rental housing. As the original motion has proposed that reference be drawn from overseas practice, we think we may as well draw reference from a few more places to study the operation and advantages of the licensing systems in other regions because they may have their respective merits and demerits.

I have initially drawn reference from the licensing systems of a few places, under which some measures may actually better protect tenants. For example, the authorities will stipulate the minimum living area, the signing of a written tenancy agreement in a specific format, the provision of eligible fire service installations, the designated locations of rented premises and even certain integrity checks on administrators.

My first perception of such licensing conditions is that they seem to be rather effective, which may be helpful to us. But I am also a bit worried at the same time. Like the United Kingdom as mentioned in the original motion, under its latest licensing condition, the minimum size requirement for a subleased room with single occupancy is 70 sq ft, and 110 sq ft for that with double occupancy. But let us look at the situation in Hong Kong. According to the survey on subdivided units released in 2018, the median area of subdivided units was just 100 sq ft, and the per capital area was only some 50 sq ft. If we draw reference from the practice of the United Kingdom, I am gravely concerned that most subdivided units are simply unable to secure a license. I wonder where those tenants of subdivided units can go then.

Nevertheless, President, I do not oppose a study on the establishment of a regulatory mechanism for subdivided units, including the licensing system stated in the original motion. The authorities conducted a public consultation exercise on the Long Term Housing Strategy in 2013, during which the licensing and landlord registration for subdivided units was discussed, but it was not the focus of the discussion on the relevant strategy back then. In fact, the existing problems with subdivided units do not just concern the rental levels. The overcrowding problem and poor living conditions have gone from bad to worse compared to 2013. For this reason, the authorities should proactively draw reference from overseas experience and conduct a study on the regulation of the operation mode of subdivided units, with the focus placed on the impact of

various regulatory approaches on our society, particularly tenants of subdivided units, thereby establishing a policy best suited to the actual situation in Hong Kong.

Certainly, I think in parallel with the study on regulation of subdivided units, some work may proceed first, including the three measures repeatedly mentioned by a few Members earlier, i.e. tenancy control, rental allowance and transitional housing.

I particularly recall the concept plan shown by the Chief Executive in her manifesto for rebuilding the home ownership ladder, and all along, I have seen no problem with the plan. I have also prepared a concept plan because I consider it more important to depict the housing ladder. In this plan, instead of starting with public housing, the ladder has two more rungs, one being transitional housing and the other inadequate housing. But it is only with rental allowance and tenancy control that such housing will mean something.

President, tenancy control is nothing new in Hong Kong, which includes, inter alia, rent control and security of tenure. We support the proposal in the original motion for regulating the rate of rental increase for subdivided units by way of rent control. But according to experience, dwellers of subdivided units are worried about not only rental increase, but also eviction. They are often forced to move out, and each removal will cost them money and bring them to a new environment. Hence, in addition to rent control, it is actually necessary to study ways to regulate tenancy agreements and tenure, so as to ensure that tenants will be offered a relatively stable and reasonable tenure.

According to an official survey on subdivided units, the rent for subdivided units currently accounts for more than 30% of the income of tenants on average. In comparison, the rent for public housing only accounts for 9% of the household income of tenants on average, i.e. 30% versus 9%. While both groups are grass-roots households, why are tenants of subdivided units the ones subject to such heavy rental pressure? In view of this, the introduction of rent control alone can hardly alleviate the pressure on tenants of subdivided units. Hence, the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") has been calling on the authorities to provide rental allowance for tenants of subdivided units who have been waitlisted for public rental housing for more than three years.

Secretary, the Government released the Hong Kong Poverty Situation Report 2017 last week. In citing the report this time around, I seek not to stress that the poor population has risen to 1.38 million. Certainly, among these 1.38 million people, many are living in subdivided units. Nevertheless, I would like to highlight the key role of public housing in poverty alleviation because it can help alleviate the housing burden on households in poverty. In cash terms, the welfare transfer relating to public housing amounts to $3,700. I appreciate that public housing is the ultimate answer to the problem of subdivided units. But that said, the current waiting time for public housing is as long as 5.5 years. It is actually not known how long they have to wait. Can the Government provide rental assistance to tide them over?

President, I have actually expressed my views on this subject many times, and I am sure the Secretary will again say that the provision of rental allowance by the Government will ultimately benefit landlords as they will increase rents. But I would like the Secretary to note that our proposal is to introduce tenancy control and rental allowance concurrently. I believe if the Government monitors the rate of rental increase as a gatekeeper, the authorities will not allow arbitrary rental increase by landlords to nibble away the rental allowance provided by the Government.

Lastly, we believe unless the status quo is maintained, the regulation of subdivided units is likely to reduce the number of subdivided units, which will eventually force some of the tenants to move out. For this reason, we stress that any regulatory action and measures must be complemented by corresponding rehousing arrangements. So, it is back to the provision of transitional housing as an interim measure of rehousing. DAB has three recommendations, which I have been put forward before. I hope the Secretary for Transport and Housing can take them forward expeditiously and in particular, proceed with setting a goal first. Based on our estimate, the goal is to supply 10 000 transitional housing units within three years.

Second, the Government should provide a list of land lots to keep us informed of the vacant units or places for the construction of transitional housing in the future.

Third, establishing a "dedicated fund for social housing" for application by various social welfare organizations. President, there are a number of ways to provide transitional housing, including the recent proposal for the conversion of

industrial buildings, and the Yen Chow Street project shown in this picture with me now. I hope they can be implemented as early as possible.

President, while the problem of subdivided units has been intensifying, I see no real solution to them. Ms Alice MAK's earlier remark has struck a chord with me. If we keep saying nothing can be done about it, what will be the way out? I hope the Government will be determined to come up with some feasible options, so as to offer actual assistance to those tenants of subdivided units in dire straits.

President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): President, the Government's ineffective housing policy has rendered the supply of public housing seriously lagging behind the demand, thereby leading to the surge in property prices and rents in the private market. The dwellings of the grass roots are getting more and more expensive but smaller and smaller.

Over the past decade, the Domestic Rental Indices in Hong Kong has risen sharply from 120.5 in 2008 to 196.3 over the same period of this year, representing an increase of 76 points. The rents of small flats with a usable area of less than 40 sq m have nearly doubled, whilst the increase in the wages of wage earners lags far behind it. According to the Government's estimate in 2017, there are currently over 90 000 households living in subdivided units in Hong Kong, and the environment in which they are living is extremely cramped and poor. They have to endure not only the high rents but also the poor conditions, so their aspiration is barely waiting to be allocated a public rental housing ("PRH") unit. Unfortunately, there is no definite date when such an aspiration will be realized, so they have to rely on the private market. However, as I mentioned earlier, the situation in the private market is most unsatisfactory. As a result, there are voices in society calling for the reintroduction of tenancy control and enactment of legislation for protection of tenancy rights, but the Government has refused to do so.

As a matter of fact, the Government is not really unwilling to take any action. A study was commissioned by it in 2014, and what were the conclusions drawn? The Government considered it not in the interest of the inadequately housed households and the general public to introduce tenancy control hastily given the situation of tight housing supply. To address the problem of rental

increase attributed to the imbalance in demand and supply, the fundamental solution remained to be a continued increase in housing supply. President, no one will oppose this, but the question is, can the Government really increase the housing supply to solve the problems of imbalance? Unfortunately, the answer is no.

As we can see, the production of PRH units has all along been in a lag over the past decade. According to the latest notice released by the Hong Kong Housing Authority, the production of PRH units in 2018-2019 to 2022-2023 as well as the number of PRH units and subsidized sale housing units in each year will fall short of the target in the next 10 years as set out in the Long Term Housing Strategy. The Strategy has proposed a housing production target of 28 000 units per year, but unfortunately there will only be 14 000 additional units in 2022-2023, failing to meet half of the target. At the same time, as we all know, the number of applications on the PRH Waiting List has exceeded 268 500 recently, and the latest average waiting time is more than five and a half years. This reflects how big the discrepancy is when compared with the pledge to offer a PRH unit in three years as made by the Government originally.

Under such circumstances, the grass roots not yet been allocated a PRH unit have to resort to the private rental market, suffering a lot. Chief Executive Carrie LAM has always posed herself as caring for the grass roots since her assumption of office, but her housing policy is rather disappointing. In this year's Policy Address, we can see that there are not many housing policies which can benefit the grass roots. Even if there are such policies, they are merely rehashes or transitional housing policies. In fact, the Chief Executive has already indicated in last year's policy address that strong efforts would be made in promoting transitional housing. But to date only the Community Housing Movement has been promoted under which the number of housing units is extremely limited, which can only offer little practical assistance to the grass roots. Modular housing and revitalization of industrial buildings are still under study and the progress is very slow. President, in fact I have repeatedly called for the Government, with its wealth and land on hand, to build temporary housing areas to provide housing units for the grass roots on the PRH Waiting List, just like what was done during the British-Hong Kong era. As members of the public will be allocated PRH units after living there for a certain period of time, high mobility can thus be achieved. The housing problems can then be solved with such continuous movement. Yet, the Government is reluctant to do so.

In parallel with the grave dysfunction of the housing policy, increasing PRH production and transitional housing cannot be implemented smoothly in the meantime. Given this, it has become all the more necessary for the Government to introduce specific short- and medium-term measures to address the problems of high rents and security of tenure not being protected currently faced by the grass roots. The Concerning Grassroots' Housing Rights Alliance, a community group, released an investigation report a few days ago, revealing that nearly 95% of the grass-roots households believe that the transitional housing currently implemented cannot alleviate their housing burden, and 70% of the respondents support the introduction of tenancy control. President, it can thus be seen that reintroducing tenancy control and protecting security of tenure are the most effective measures widely supported by society. It is really disappointing that the Government firmly refuses to do so whilst failing to offer any alternative.

The Government has repeatedly claimed that it is inappropriate to intervene in the private rental market. But Hong Kong has actually implemented tenancy control and introduced legislation on security of tenure time and again previously. The earliest example can be traced back to 1921, when Mainland refugees flocked into Hong Kong and caused a housing shortage. The Government enacted the Rents Ordinance to curb the soaring rents. The Government then removed the tenancy control due to an increase in the vacancy rate of housing units amidst the economic downturn in 1926. Yet, in view of the shortage of supply in various categories of housing units and soaring rents, the authorities enacted the Rent Increases (Domestic Premises) Control Ordinance again in 1970 to arrest the soaring rents. The two legislative exercises were carried out with this objective. The Government subsequently consolidated the relevant laws into the Landlord and Tenant (Consolidation) Ordinance, encompassing rent control, security of tenure and the establishment of an arbitration mechanism to protect tenants' tenure rights. Unfortunately, however, these laws were repealed in 1998 and 2004 respectively, mainly due to the slump in the property market at that time. The two ordinances were repealed since there were a large number of rental housing units in the market, and the Government also hoped to encourage the public to acquire their own flats through relaxing the tenancy control.

However, the current socio-economic environment in Hong Kong has already changed. The market situation is obviously the opposite when compared with that time. The excessive market demand and serious shortage in supply have led to the ever-spiralling property prices and rents, thereby bringing misery to the grass roots. The circumstances warranting the removal of tenancy control

at that time no longer exist nowadays. On the contrary, the private rental market is out of control with problems such as soaring rents and shortage of affordable housing emerging one after another. The circumstances warranting the reintroduction of tenancy control have again surfaced. However, the Government still does not reintroduce tenancy control, reflecting that the Government is only evading its responsibilities.

With the exorbitant property prices nowadays, the landlord-tenant relationship in the rental market is extremely unequal. There is no regulation on landlords' behaviour, for not only can they raise the rents at liberty, but also notify or order tenants to move out at very short notice. Tenants are frequently forced to move out and they have to accept it so long as they are not yet allocated a PRH unit. Some landlords are even more avaricious by requesting the tenants to enter into tenancy agreements lasting for only one year or even a shorter tenure. Why? This enables them to increase the rents conveniently, hence leading to the continuous surge in rents.

Unfortunately, whenever the reintroduction of tenancy control is mooted, the Government would indicate reluctantly that it is hard to be kind and it may do a disservice out of good intentions because a lot of side effects will be caused. These include the cherry-picking of tenants by landlords, overcharging for water and electricity, refusal to carry out repairs on their flats, etc., and the tenants will suffer in the end. That said, these so-called side effects already exist now, do they not? The unequal landlord-tenant relationship is precisely the root cause of the problems. For this reason, the Government should instead impose regulation and devise the principles of regulation through legislation as soon as possible. In addition, even if tenancy control would bring about a negative impact on the rental market, the Government can review and adjust the relevant details regularly, such as providing a rental allowance, stepping up enforcement against overcharging, etc. What is more, reference can be drawn from the tenancy control policies in overseas countries. For instance, if the landlords intend to refurbish their flats, they can raise with the Government a moderate increase in rents and arrangement for flexible handling, etc. We can in fact discuss these options, but the Government simply has no intention of doing so.

In this connection, the amendment proposed by me today is that the Government should consider afresh introducing tenancy control and consult the community to gauge opinions. Mrs Regina IP has in fact made a very good point earlier, that is, we may not necessarily impose regulation on all rental flats. Instead, we can only focus on residential flats for the grass roots. This is also

the case in overseas countries, among which the practice adopted by Germany is very successful in particular. Why does the Government not consider such an option? Therefore, I have proposed this amendment today in the hope that the Government will put forward a proposal as soon as possible and conduct extensive consultation, so that we can express our views on how tenancy control should be implemented and how best the security of tenure of the grass roots can be protected. President, I so submit.

MR ANDREW WAN (in Cantonese): President, the question of today's debate is the enactment of legislation on regulating subdivided units. First, I have to thank Mrs Regina IP for proposing this motion which gives Honourable colleagues an opportunity to put forth their amendments.

President, why do we have to discuss this question? Members will understand it by looking at the picture hold in my hand. This is the real life situation in Hong Kong. This is the daily living conditions faced by dwellers of subdivided units. What a heart-rending scene? Regarding the debate on this question today, I believe many colleagues who are concerned about housing and land policies would feel sad and confounding, President, for in this Chamber of the legislature of Hong Kong, an advanced cosmopolitan city, we are discussing such a question. What does the present question reflect? It reflects that over the past 20 years, the Government has made the Hong Kong community degenerate to this pass. This is disgraceful and regrettable to the people of Hong Kong and the Government. Due to the Government's inadequacies in housing policies, the people of Hong Kong have to suffer. Did the Government work seriously on housing issues in the past? I do not think it did. In terms of the land supply chain as a whole, as well as various housing policies, the authorities have been adopting an attitude of providing minimal resource and superficial remedies in addressing the problem.

For the motion this time around, I have already expressed my gratitude to Mrs Regina IP for her proposing the motion. Yet, I would like to explain the cardinal principle which prompts me to propose an amendment to her motion. I beg Mrs IP's pardon, for my amendment merely seeks to put forth certain constructive safeguards. At hearing her speech just now, I know she is also concerned about the content proposed in my amendment, only that she has not mentioned the issues in the original motion. I do not know her reasons for not doing so, yet I think issues proposed in my amendment are also important.

Certain organizations and joint meetings of the community often mention five areas of concern: first, the allocation of public rental housing ("PRH") flats; second, the lack of transitional housing; third, the need for introducing rent control on existing residential premises; and then the provision of rental allowance and standard tenancy agreement. Is it difficult to address these concerns? None of them is difficult to achieve if only the Government has the determination to do so. Regrettably, the performance of the Government in these areas has fallen short of our expectations all along.

A number of colleagues have pointed out the miserable situation just now. I will simply present some figures. Currently, there are 270 000 applications on the Waiting List for Public Rental Housing. Among these applications, 150 000 are family applications, and 117 500 are non-elderly one-person applications. In other words, there are around 500 000 to 600 000 people waiting for PRH. In the meantime, how many people are living in subdivided units? According to the figures of the Census and Statistics Department of the Government, there are 90 000 households, that is, 210 000 people, living in subdivided units, including 40 000-odd children. The figure does not include people living in subdivided units in factory buildings. If the subdivided units in factory buildings are also factored into this, there may be 300 000 people living in "inadequate housing". President, this is an alarming figure. How can they bear the misery of living in such extremely poor living conditions?

Hence, in terms of the general direction, I agree with Mrs Regina IP's motion. Yet, pardon me for being straightforward, there are some technical inadequacies in her motion regarding a number of important aspects. Perhaps the wording is less than comprehensive and thus it fails to reflect the salient points adequately. First, I know that Mrs IP considers it necessary to impose regulation. In my amendment, I introduce the prerequisite that regulation should be introduced in phases only when there is an adequate supply of public housing or at least transitional housing, such that residents of subdivided units can be helped. Why do I have to add this point? For we consider we should learn from experience, and I believe Mrs IP knows the situation concerned.

After the serious fire in Ngau Tau Kok, we met with several groups of dwellers of subdivided units in the Complaints Division. The Government always handles issues in this manner: If nothing happens, it will give no regard to the problem. Yet, in the wake of an avalanche of criticisms launched after the fire at Ngau Tau Kok, the authorities immediately resorted to sweeping actions,

causing many dwellers of subdivided units in factory buildings being expelled to the streets. But since the authorities have not put in place any rehousing policy, these tenants cannot seek accommodation at emergency shelters. President, they cannot but accept being expelled to the streets. How fossilized the laws are? How can these tenants gain access to emergency shelters? They are only eligible to apply for a place in emergency shelters after they have been expelled. The authorities had not made any prior arrangement when they ordered property owners to recover their premises lest they be prosecuted. What kind of approach is it? I believe this is not the original intention of Mrs IP. After listening to her speech just now, I think it may not be her reasons. Hence, we must state it clearly. I do not trust the Government. I worry that the Government will take advantage of this motion, claiming that the Legislative Council also agrees with the immediate introduction of regulation. In that case, it will be troublesome.

Second, it is the high rental. In the absence of rehousing arrangements, transitional housing and allocation of PRH, the practice of expelling tenants or imposing partial regulation will result in changes in demand and supply, which may cause tenants affected to be homeless or face exorbitant rental. This is one of the reasons for my proposing the amendment.

President, one of the items in my amendment is put forth in response to the reminders offered by a lot of organizations, and this is the item concerning water and electricity meters in the original motion. Several Members and I agree that the wording of the original motion in proposing the installation of separate water and electricity meters is inadequate. I have learnt from the wisdom of kaifongs that the installation of separate electricity meters is ineffective. Since landlords may subdivide a flat into eight small units each with an electricity meter registered under the name of the landlords, tenants cannot but take the tariff surcharges lying down. Hence, I consider that more stringent regulation must be imposed and I propose allowing tenants to register electricity accounts of their own. I know that other colleagues have proposed different approaches, and I will not oppose those approaches as they will achieve the same purpose. I just hope that a reasonable approach can be adopted to exercise regulation, so that tenants will not have to put up with the unauthorized water and electricity surcharges imposed by landlords. Otherwise, in addition to exorbitant rentals, these tenants will suffer another blow in water and electricity expenses.

President, the remaining part of my amendment includes rental allowance and rent control which have not been mentioned, or have merely been briefly mentioned, in the original motion. I trust Mrs IP means to introduce rent control. Yet, as I pointed out just now, this is one of the five major areas of concern of community groups. Moreover, Mr Vincent CHENG has also mentioned earlier that rental allowance and rent control are indispensable to each other like twins. The Government often says that rent control is impracticable and undesirable, which is definitely a slap in its own face, as a number of colleagues have stated the justifications. In fact, the Government did implement rent control in the past. Why would it be impracticable? Such regulation is necessary exactly in the prevailing market situation. Am I right?

As for rental allowance, the Government still wants to argue about this, claiming that the introduction of rental allowance will push up rental and fatten up property owners. In fact, we reminded the Government a long time ago that it only needed to adopt a standardized practice. In other words, it needs to standardize practices relating to social housing, transitional housing and modular social housing, as in the case of PRH where applicants waitlisted for three years will be eligible for rental allowance. Landlords cannot tell from the appearance of tenants that they are waiting for PRH. If the Government introduces this policy, I believe tenants will not tell the landlords that they have been waiting for PRH for three years and are eligible for application of rental allowance to invite owners to increase their rent. We are rational. This remark of the authorities is improbable, which aptly reflects the bureaucratic mindset of government officials who have their heads in the cloud. Since I consider rental allowance and rent control essential, I have put forth this proposal in my amendment.

Another point which Mrs IP has not mentioned is the standard tenancy agreement and this is the source of all evils. In the absence of a standard tenancy agreement, owners can do whatever they want basically. If a landlord requests the tenant to move out the following month, the tenant has to move out. President, there are cases where the landlord requests the tenant to move out the following week, and there are complaints of this kind. The increase in rental of subdivided units can be drastic. For a unit of dozens square feet, the landlord may increase the rental drastically from $4,500 to $8,000. If neither a standard tenancy agreement nor mandatory stamping of tenancy agreements is put in place, I worry that measures intended to provide protection to tenants of subdivided

units or inadequate housing will fail to live up to their name and become no more than empty talk eventually. Hence, I consider the standardized rental agreement essential.

President, lastly, my amendment intends to expand the scope of the motion, for I consider it necessary for the Legislative Council to follow up the issue in future. Initially, I intended to extend the coverage of the relevant measures to tenants other than subdivided unit tenants, including all grass-roots tenants living in inadequate housing, but due to the restriction of the Rules of Procedure, I cannot propose an amendment to that effect. No matter how, we have taken the first step. I thank Mrs IP for proposing this motion and I urge Honourable colleagues to support my amendment. I believe the content of my amendment is comprehensive, and I think the amendments proposed by several colleagues are not contradictory to one another. Hence, I hope Honourable colleagues will give regard to the needs of the grass roots and vote for our amendments and the original motion.

I so submit. Thank you, President.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Mrs Regina IP for moving the motion today and Ms Alice MAK, Mr Vincent CHENG, Mr LEUNG Yiu-chung and Mr Andrew WAN for proposing amendments.

Subdivision of a flat (commonly known as subdivided units) generally refers to the subdivision of a flat as shown on the original approved plan of a building into two or more individual rooms. Building works commonly associated with subdivided units include removal of the original non-structural partition walls, erection of new non-structural partition walls, installation of new toilets and kitchens, addition of internal water and drain pipes and thickening of floor screeding to accommodate the new or diverted water and drain pipes.

From the perspective of building regulation, the Government does not adopt a sweeping approach to prohibit subdivided units, but ensures that all works are in compliance with the requirements under the Buildings Ordinance ("BO"). The Government regulates building works associated with subdivided units by

including such works in the Minor Works Control System under BO. The Buildings Department ("BD") ensures compliance of the flats with BO through inspections and educates the public potential safety risks arising from subdivided units with irregularities.

Insofar as works regulation is concerned, the Government amended the Building (Minor Works) Regulation in October 2012. Before the amendment, building works commonly associated with subdivided units were mostly exempted. In order to enhance works safety, the works are now included in the Minor Works Control System of BD under which works must be carried out by registered contractors in accordance with the established mechanism. If the works in subdivided units involve larger-scale alternations exceeding the scope of minor works, the landlords must obtain approval and consent to commencement of works from BD in accordance with BO before the commencement of works.

To accommodate the implementation of transitional housing, BD issued a circular letter to the industry last month indicating that it may grant modification or exemption under BO for eligible transitional housing projects in old domestic buildings given their planning and design constraints. A prerequisite for modification or exemption on the application of BO is that the project must be supported by the Task Force on Transitional Housing under the Transport and Housing Bureau in order to ensure that its operation complies with the policy requirements. That said, project proponents must take compensatory measures to provide residents with a safe and reasonable living space. For instance, the Buildings (Planning) Regulations ("the Regulations") require a domestic flat to have windows for natural ventilation and lighting. If any eligible transitional housing project is unable to comply fully with this requirement due to building design constraints, BD may consider granting an exemption on the condition that the project proponents must provide artificial lighting and mechanical ventilation facilities to meet the natural ventilation and lighting requirements for shared living rooms. BD would also require the project proponents to appoint an authorized person to conduct an annual inspection to ensure effective operation of the compensatory measures. These also apply to projects supported by the task force under the Transport and Housing Bureau for providing transitional housing in portions or entire blocks of wholesale-converted industrial buildings.

President, the motion also proposes to legislate the installation of separate water and electricity meters for each subdivided unit. Having consulted the Environmental Bureau on matters relating to electricity meters, I will respond to that next.

Payment arrangement of water bill, electricity bill and other miscellaneous fees by subdivided unit tenants to landlords is an agreement between them. Tenants should first negotiate with landlords various terms, including the electricity tariff and calculation method, before drawing up the tenancy agreement.

Tenants currently living in subdivided units may apply to the Water Supplies Department ("WSD") and the two power companies for installing separate water and electricity meters. The applications must be approved by the flat owners so that necessary alteration works can be carried out. Certain preconditions and safety standards must be met. For instance, electrical installations must meet the safety standards under the Electricity Ordinance. In the case of water meters, the premises must have an individual access enabling WSD staff to enter directly to carry out water supply system inspection and other duties without using private access occupied by other parties. The system is required to connect to the communal area of the building to facilitate meter reading. Relevant information can be found on the websites of WSD and the two power companies.

Under the Waterworks Regulations, registered consumers of WSD may recover from occupiers of the premises the cost of water of an inside service, including water charges and other reasonable costs, such as maintenance fees. But they may not make profit out of it. According to the Supply Rules signed between the two power companies and their customers, customers may not resell electricity obtained from the power companies to a third party without prior written consent of the power companies. If tenants of subdivided units suspect that they have been overcharged for water and electricity, they may report to WSD or the two power companies for follow-up and investigation. Since the buildings in which subdivided units are situated were designed differently, for instance, an individual access for water supply system maintenance is unavailable; or the electricty loading in the building is insufficient for installing

separate electricity meters, the Government has not imposed a mandatory requirement that tenants of subdivided units must install separate water and electricity meters at this stage.

President, next, I will defer to the Under Secretary for Transport and Housing to respond to the motion and issues relating to housing policy. Thank you, President.

UNDER SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, first of all, I thank Mrs Regina IP for proposing the motion today and Ms Alice MAK, Mr Vincent CHENG, Mr LEUNG Yiu-chung and Mr Andrew WAN for proposing the amendments. Just now, Secretary Michael WONG has responded to matters relating to the regulation of building works associated with subdivided units under the current legislation and the installation of separate water and electricity meters. My speech will focus on issues in the motion relating to the housing policy.

The root of the housing problem in Hong Kong is the long-standing serious imbalance between supply and demand. This, coupled with the abundant global liquidity and persistent low interest rate in the past few years, has led to the high level of property prices and rents. The Government appreciates the heavy housing burden on low-income households and that some households may need to live in rental housing of poor conditions, such as subdivided units.

A continuous increase in land and housing supply remains a fundamental solution to the housing problem attributed to inadequate housing supply. Since the announcement on the Long Term Housing Strategy ("LTHS") in December 2014, the Government has been striving to rebuild the housing ladder by adopting a multi-pronged approach in increasing public and private housing supply based on the principles of "supply-led" and "flexible" under LTHS. Under LTHS, the Government updates the long-term housing demand projection annually and presents a rolling 10-year housing supply target to capture social, economic and market changes over time, and make timely adjustments where necessary. According to the housing demand projections published in December 2017, the total housing supply target for the 10-year period from 2018-2019 to 2027-2028

was 460 000 units. With a public/private split of 60:40, the supply targets for public and private housing were 280 000 units (including 200 000 public rental housing units and 80 000 subsidized sale flats) and 180 000 units respectively. The Government is now working on the housing demand projections for the next 10-year period (from 2019-2020 to 2028-2029) which will be released later this year.

The Long Term Housing Strategy Steering Committee ("the Steering Committee") conducted a public consultation on LTHS during which extensive and in-depth discussions had been held on the issue of subdivided units. The public generally agreed that higher priority should be accorded to addressing the housing needs of inadequately housed households (including subdivided unit households) and public housing is precisely the key and fundamental solution to addressing the housing needs of eligible households. To address the long-term housing needs of these households, we have covered the housing demand from the inadequately housed households in formulating the 10-year housing supply target. To this end, the Government will continue to adopt a multi-pronged approach to increase the housing land supply in the short, medium and long terms. In the meantime, the Housing Authority ("HA") and relevant departments will also continue to proactively examine how to better utilize identified and existing public housing sites and speed up the development process where possible in order to increase public housing supply.

During the LTHS public consultation exercise by the Steering Committee, the Government noted that the community had expressed considerable reservations about the introduction of a licensing or landlord registration system to regulate subdivided units. There were concerns, in particular from subdivided unit tenants and concern groups on the interests of the grass roots, that a licensing or landlord registration system would reduce the supply and drive up the rents of subdivided units, thus causing further financial hardship to subdivided unit tenants. There were also concerns that a loose licensing or landlord registration system would compromise the safety of subdivided unit tenants and residents living in the same buildings. Many were also worried that a licensing or registration system would be tantamount to legalizing subdivided units in dilapidated and appalling conditions.

In view of the concerns expressed by the community, the Government stated in LTHS that it will not introduce any licensing or landlord registration system for subdivided units. However, this does not mean the Government will ignore the risk facing subdivided units in terms of building safety. As Secretary WONG has just stated, the Government's policy is to ensure the safety of subdivided units. Building works associated with these units are now subject to the Minor Works Control System.

It has been suggested that the Government may assist subdivided unit tenants by implementing tenancy control (including rent control and tenure regulation) and providing rent subsidy.

Tenancy control is highly controversial. The Steering Committee has studied the issue during the public consultation, but no consensus has been reached in the community over the need of introducing tenancy control. To this end, the Government has also conducted a detailed study by looking into Hong Kong and overseas experience in implementing tenancy control measures, briefed the relevant Legislative Council Panel and heeded Members' and public views. The Government has stated its views on tenancy control in LTHS. It is concerned that tenancy control measures specific to a certain type of units will often lead to an array of unintended consequences, including those to the detriment of some of the tenants whom the measures seek to assist. Such unintended consequences include reducing the supply of rented accommodation; limiting the access to adequate housing by the socially disadvantaged as landlords are being more selective about tenants; and encouraging certain behaviour from landlords to offset the impact of the tenancy control measures.

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

Insofar as the proposal on rent subsidy is concerned, we are concerned that in the midst of the present tight housing supply, rent subsidy may prompt the landlords to increase rent, thereby indirectly turning the rent subsidy into

additional rent, leaving the tenants with no effective assistance. Furthermore, providing recurrent rent subsidy to a selected group of tenants may increase the demand for rented accommodation, thereby triggering a rise in rental level and increasing the burden of households who are unable to receive the subsidy due to various reasons.

As the introduction of tenancy control or rent subsidy may backfire, causing tenants in general to suffer before they can actually benefit from it, the Government believes it would not be in the overall interests of grass-roots tenants and society to implement these measures in Hong Kong.

The ultimate solution to address the housing problem is to increase supply. As pointed out in the Chief Executive's 2017 Policy Address, since it takes time to identify land for housing construction, the Government will support and facilitate the implementation of various short-term initiatives put forward and carried out by the community on top of the long-term housing policy and measures, so as to make good use of community resources to increase the supply of transitional housing and alleviate the hardship faced by families awaiting public housing and the inadequately housed. To this end, the Chief Executive announced on 29 June that a task force would be set up under the Transport and Housing Bureau to provide one-stop coordinated support to facilitate the implementation of more community initiatives on transitional housing initiatives put forward by the community. These transitional housing proposals may make use of the potential and resources in the community outside the Government, and offer flexible and multiple relief measures to the beneficiaries. The Government will provide appropriate assistance and facilitation according to the needs, including offering advice on administrative or statutory procedures and assisting application for funding support.

Deputy President, my response to the motion and matters relating to the housing policy ends here. I will make more comments and a further reply later on after listening to Members' remarks. Thank you, Deputy President.

MR TOMMY CHEUNG (in Cantonese): Deputy President, according to the figures released by the Census and Statistics Department in 2016, there were some 27 100 quarters with units of flats subdivided into separate units (commonly known as "subdivided units") in Hong Kong. The total number of subdivided units in these quarters was estimated to be as high as 92 700, with a total number of 91 800 households, and the resident population was estimated to be 209 700 persons. The median per capita floor area of subdivided units was 5.3 sq m, and the median monthly rental payment of households living in subdivided units was $4,500.

These figures have reflected the poor living conditions of some Hong Kong people. Some of the households have been suffering for nearly a decade, and they may still have to endure this for another decade to come. How many decades do we have in a lifetime?

Overall, there are currently three major problems with subdivided units: first, safety hazards; second, high rental, and third, overcrowded living conditions. The original motion has proposed the enactment of an ordinance on regulating subdivided units, which mainly seeks to resolve or alleviate the aforesaid problems by way of legislation. The Liberal Party holds that except the safety hazards which may be eliminated, the latter two problems can hardly be resolved, nor can they be eradicated through administrative measures.

It should be noted that under the existing legislation of Hong Kong, property owners of private buildings are not prohibited from renting out subdivided units. The so-called illegal subdivided units now just refer to some converted flats not in compliance with the Buildings Ordinance ("BO") (e.g. alterations to water and electricity pipes or the size or positioning of windows, or addition or removal of walls) and the Fire Safety (Buildings) Ordinance (e.g. narrowing of fire escapes or main doors, or occupation of public corridors or staircases). If the subdivided units do not contravene the aforesaid Ordinances, there is simply no way for the authorities to intervene.

For those subdivided units involving fire safety hazards with structure being affected, the Government ought to stamp them out rigorously and order the landlords to rectify such illegal structures. Nevertheless, the Liberal Party

understands the reality that there are as many as 210 000 persons living in subdivided units, accounting for 3% of the population of Hong Kong, and on a household basis, they even account for 6.7% of some 1 370 000 households living in private housing across the territory. With the shortage of both private and public rental housing ("PRH") units, the authorities simply cannot cope with the dire consequences ensuing from a ban on most subdivided units.

Hence, out of practical considerations, the Liberal Party cannot but admit that at this stage, there cannot and should not be a total ban on subdivided units. We even have to condone the continued existence of those illegal or converted subdivided units with no imminent structural danger but in contravention of BO, thereby giving the authorities more time to address the core issue of insufficient housing supply by reclamation of land.

Nevertheless, condoning subdivided units does not mean that we should introduce a licensing system to regulate them, which serves to rationalize and legalize their existence. A licensing system for regulating subdivided units introduced by the authorities will in essence give rise to serious moral hazard because after all, the perceptions on subdivided units, which have long been carrying exploitative and profiteering features, are terribly negative. The Special Administrative Region ("SAR") Government's endorsement of such less than welcome subdivided units will inevitably lead to queries as to whether the Government is taking the lead in promoting the operation of subdivided units. For this reason, the Liberal Party opposes in principle the introduction of a licencing system by the SAR Government to regulate the existing subdivided units, so as not to give landlords of such substandard subdivided units even greater impunity and aggravate the problems with subdivided units.

Meanwhile, most subdivided units do not have separate water and electricity meters installed because another important source of income of landlords is overcharging tenants of water and electricity tariffs. While we in principle support the installation of separate water and electricity meters for all households by landlords of subdivided units, we are also aware of the difficulties involved, and even more difficult is, in particular, the introduction of an across-the-board requirement for the existing subdivided units to install separate water and electricity meters. Moreover, the entire process of enactment and

enforcement of the regulation will definitely take years and meet with strong resistance. The Liberal Party expects the Government to give priority to enacting legislation to require the installation of separate water and electricity meters in new subdivided units to prevent households of those new units from being overcharged by landlords of water and electricity tariffs, before deciding on how the installation of separate water and electricity meters in the existing subdivided units should be prioritized by district or type of buildings, thereby implementing the requirement of installing separate water and electricity meters in phases.

Concerning the proposal for regulating the rent of subdivided units in the original motion, as the Liberal Party opposes rent control, by the same token, it also opposes such a de facto tenancy control system for the reason that rent control will only reduce the incentive for landlords to rent out their units, leading to a drop in the supply of rented accommodation, which will in turn push up the demand for subdivided units in society. In that case, with the shortage of subdivided units, there may even be a shift in the market of subdivided units to the provision of high-end accommodation as landlords may upgrade the subdivided units to ask for higher rents. This will indirectly make it harder for prospective tenants to find subdivided units that best meet their means and needs, and significantly undermine the role of subdivided units in providing grass-roots people or those waiting for public rental housing allocation with temporary accommodation. From this, it can be seen that the introduction of tenancy control will be a disservice done out of good intentions.

In the final analysis, the only solution to the problem of subdivided units is to increase housing supply. Hence, the Liberal Party fully supports the early implementation of the Lantau Tomorrow Vision and other plans to boost land supply by the Administration.

In view of the foregoing arguments, the Liberal Party will abstain on the original motion.

Deputy President, I so submit.

MR ALVIN YEUNG (in Cantonese): Deputy President, on behalf of the Civic Party, I speak in support of the motion proposed by Mrs Regina IP and the amendments proposed by the other four Members.

That we are here discussing the issue of subdivided units today is in itself extremely absurd and most unfortunate. But reality is, after all, reality. We must practically target the problems in reality and identify satisfactory solutions to them.

However, I must point out that the Civic Party does not support the legalization of subdivided units. We only wish to ensure that the people living in subdivided units can have quality and secure housing. This is essential.

Deputy President, in her Policy Address delivered in October 2018, the Chief Executive stated that the housing policy comprises four elements, one of which is that when new supply is not yet available, the existing housing resources will be optimized to help families that have long been on the Waiting List for Public Rental Housing ("PRH") and residents in poor living conditions. But if legal subdivided units were provided as a remedial measure, we would consider it unacceptable. In the final analysis, the most effective way is to increase the production of PRH. Only in this way can we effectively provide Hongkongers with adequate housing where they can live in peace.

Deputy President, recently there is this piece of news which has been worrying me or nagging at me. I think many people must have also noticed it. It is about a new residential property development in Tuen Mun being put up for sale, and I am talking about the layout plan of a unit measuring 128 sq ft in area, which is known as "dragon bed unit" in the market. Why? Because the developer said that even a Chinese emperor living in the Forbidden City ultimately just slept on a bed. The developer also called on the public to not be too resentful of these tiny units, and this is astonishing indeed.

Coming back to the layout of this "dragon bed unit", we can see that apart from the conversion of the balcony into a bathroom, the total area of the unit is less than 90 sq ft, which is more or less the same as a single prison cell in Stanley. From the perspective of meeting the public's demand for home ownership or rental housing, I think there is still a long way to go. In fact, according to the information published by the Census and Statistics Department ("C&SD"), and as

other Honourable colleagues have also mentioned today, there are at least about 210 000 people living in subdivided units in Hong Kong. Now, even people who have the means to buy a property are actually like living in subdivided units, and the less fortunate ones in society are certainly those dwelling in subdivided units. Hong Kong has indeed become a very sick society.

According to the statistics of C&SD, in 2016, the average rental payment of households living in subdivided units was $4,500 and the average area of accommodation was 57 sq ft, which means close to $79 per square foot on average. While $79 does not sound like a big amount, we may perhaps draw a comparison. According to a comparison made by the media, a subdivided unit of 40 sq ft on Lockhart Road on Hong Kong Island is rented at $3,600 monthly, which means $90 per square foot; whereas for a three-bedroom sea view apartment measuring 855 sq ft of saleable area on higher floors located not far away on Robinson Road in the Mid-Levels West, the rental is $51,000, or $60 per square foot. In comparison, we can see that for people living in rudimentary housing, especially those dwelling in subdivided units, the rental pressure faced by them is indeed in no way easier than anyone in the middle class and worse still, they may face even greater difficulties.

Another pressing issue is certainly the safety of these units. Under the Buildings Ordinance, some construction works that do not involve the structure of a building, such as the erection of a partition wall, can be carried out in existing buildings without having to seek prior approvals. But given that most of the works relating to subdivided units are exempted works, the owners have often neglected the basic safety standards, including those for the fire service installations and fire exits, and even problems relating to ventilation, hygiene and inadequate lighting. In this connection, item (1) of the original motion has precisely targeted these problems and prescribed the right cure for them.

Having said that, Deputy President, the problem is that the so-called "quality subdivided units" licensed and regulated by law are, after all, still subdivided units, and they can never address the fundamental or core need of "living in peace". What Hongkongers need is a home that lives up to the name of "Asia's world city", and the households living in subdivided units need a place with privacy protection and sufficient space for the next generation to grow up happily.

Of course, another problem that follows is given that quite a large number of households are living in subdivided units in Hong Kong, if licensing control were introduced for subdivided units, even though the rental will not rise because of rent control, the number of subdivided units may drop, and the problem the Government will have to address is actually the rehousing of these households. In the Policy Address the Chief Executive proposed to provide a premium waiver for industrial buildings, so that some of the sites can be converted for transitional housing which will be rented to families waitlisted for PRH for over three years at rents lower than the market level. But there is a question here and that is, when the industrial buildings are converted into subdivided units, it will constitute pressure on the existing tenants of industrial buildings, and as many of them may be creators, if they are driven out, certainly the local cultural industry would set to be affected. Furthermore, there is one point that we cannot neglect and that is, many industrial buildings are in an extremely dilapidated condition, and while a few hundred units may be provided under the proposal of the Chief Executive, how can we solve the problems faced by other households dwelling in subdivided units?

Having talked thus far, we must come back to the starting point of this issue and that is, subdivided units still exist and we still have to face them. Now we feel as if we have travelled back in time and returned to the 1960s or 1970s when people had to share a kitchen and a bathroom, the living space per person was less than 50 sq ft, and the environment was as crowded as that in a prison. This is exactly the concern that I raised at the outset of my speech. To tackle the problem at root, the solution lies in the supply of housing and the supply of land, including brownfield sites, sites for building small houses, etc, and these are precisely the roles currently required of Secretary Michael WONG who is in the Chamber now. This is what we wish to advocate. Regarding the shortage of housing supply, if the Government has laid emphasis on a new fiscal philosophy and the need to be proactive, it should not only hide behind the market and use the market as a shield, because the Government is duty-bound to enable members of the public to truly live in peace and work with contentment.

Therefore, Deputy President, through the discussion on this motion and its amendments proposed by a number of Members today, we hope to present a new mindset to stimulate the SAR Government, so that it will have the courage to tackle the problem through land supply and prescribe the right cure for this ill. I think it will not be too difficult for the motion and its several amendments to be passed today, but is the Government willing to accept the consensus reached in

this Council? This is already not purely a housing issue but also an issue about the dignity of Hong Kong people. If it is not resolved in the long run, it would be a political issue of the SAR Government.

I so submit.

MR GARY FAN (in Cantonese): Deputy President, according to the thematic report titled "Persons Living in Subdivided Units" published by the Census and Statistics Department in respect of the 2016 Population By-census, there are some 27 100 quarters in private domestic buildings aged 25 or above which have been subdivided into more units—that is, the so-called subdivided units that we are discussing today—in Hong Kong and the number of subdivided units is as many as 92 700, involving 91 800 households with a population of almost 210 000.

Among these some 90 000 subdivided units, the majority of them may violate the safety standards currently stipulated in the Buildings Ordinance ("BO"), thereby giving rise to poor environmental hygiene and posing safety hazards. The partitions of many subdivided units are not made of fire-resistant materials and the doors are not fireproof either. In addition, many subdivided units also lack ventilation windows, and waterproofing works have not been properly carried out for the toilets, some of them being even situated at the balcony, inflicting a great impact on building structure.

What is more, the subdivided units are too far away from the door of the flat, the corridors shared outside each subdivided unit are too narrow and the back doors are zealed. Therefore, it is difficult for the tenants to escape in the event of an accident. Unfortunately, the Government has adopted a "stalling tactic" in addressing the problem of subdivided units, which has led to a host of accidents involving such units in recent years. Fire is certainly the most serious one, and the collapse of the entire unauthorized building works (such as the balcony) has even occurred, causing casualties and loss of property.

If the Government enforces the law strictly in accordance with the standards currently stipulated in BO, the vast majority of the unlawful subdivided units should have been cracked down long ago. Yet, the Government simply does not dare tackle this issue. First of all, government officials have not acquitted themselves properly. In 2012, Paul CHAN, the then Secretary for

Development, was alleged to have purchased a number of flats in Tai Kok Tsui through a company in which he served as a director for letting out as subdivided units to make profits. While government officials themselves may have vested interests in letting out subdivided units, when they are tasked to formulate or amend legislation and rules for regulation, I really suspect they would not be concerned or care a bit about the well-being and safety of those dwellers of subdivided units.

Second, even if the Government takes law enforcement actions or introduces legislative amendments, regulating or banning subdivided units alone in the absence of other complementary policies may still lead to other unfair situations or bring about even more problems. The Government has stepped up enforcement actions and imposed bans against unlawful units in industrial buildings since 2012. The number of households affected by the Government's clearance operations has continuously been on the rise. For instance, the Buildings Department executed a closure order at Wing Fung Industrial Building, Tsuen Wan, in 2015, rendering dozens of people living in subdivided units in that industrial building homeless. The majority of the households forced to move out could only receive the relocation allowance provided by the Community Care Fund and there was no proper rehousing policy. Under the circumstances of "carrying out law enforcement without rehousing", households living in subdivided units in industrial buildings who have been forced to move out can only search for subdivided units in another industrial building in the end as it is impossible for them to rent subdivided units in private residential buildings. They will then live at a more concealed location which may be more dangerous. It is difficult for outsiders to reach them, making their safety even not protected.

After all, I think the housing problem in Hong Kong stems from the unfairness of the existing housing policy. The property prices and rents of public or private housing units have risen to a level exceeding the affordability of Hong Kong people nowadays due to investment as well as speculative activities and even overseas demand. If the Government simply legalizes subdivided units, this is definitely a mere piecemeal remedy.

We should not see the wood for the trees, and must start with the residential market and housing allocation system in a holistic manner. In the first place, the Government should eradicate the practice of treating housing as a tool of investment and speculative activities. A tenancy protection mechanism should also be established for the private market so that Hong Kong people can

find affordable homes no matter they are purchasing their own flats or renting flats, and regardless of the types of flats they are living in.

In respect of this year's Policy Address, the Neo Democrats has clearly advocated for the establishment of a tenancy protection mechanism for the private residential market which includes the following: reviewing the Landlord and Tenant (Consolidation) Ordinance; launching public consultation on the establishment of a tenancy protection mechanism; formulating a fixed term tenancy for tenancy agreements of private residential housing, during which landlords are not allowed to increase the rents and force tenants to move out, whilst tenants enjoy priority in renewing their tenancy; prohibiting landlords from overcharging for water, electricity and gas in that the fees charged by landlords should not exceed the actual amounts stated on the bills of the public utilities; capping the rate of rental increase upon renewal of tenancy (if any) at a certain limit; extending the notice period to at least three months in case landlords intend to terminate the tenancy; as well as establishing a tenancy arbitration mechanism to provide tenants with a channel to recover their losses and deal with tenancy disputes.

Certainly, the best solution is for the Government to provide sufficient public rental housing units to resettle households forced to move out of subdivided units. Even if transitional housing units are to be constructed, the Government should bear the responsibility of funding the construction costs and arranging for resettlement, instead of leaving such work to non-governmental organizations as in the approach currently adopted.

Lastly, I am worried that subdivided units will proliferate to private buildings newly-built nowadays. There are signs that property developers are offering first-hand properties which are smaller and smaller with subdivision into even smaller units. For instance, the area of the smallest flat at Mont Vert, Tai Po, which was put on sale in 2014, is just 165 sq ft. A recent example is that the area of the flats at T Plus, Tuen Mun, is as small as 128 sq ft. The public is so shocked that these flats are just slightly larger than a single cell at Stanley Prison, the area of which is 80 sq ft. If the Government promulgates the legalization of subdivided units, it is in fact indirectly condoning property developers to construct more "subdivided developments". If the Government does not stamp out speculative activities, the dwellings of Hong Kong people will only become smaller and smaller. *(The buzzer sounded)*

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

MR GARY FAN (in Cantonese): Deputy President, I so submit.

MR AU NOK-HIN (in Cantonese): Deputy President, why are there so many people living in subdivided units in Hong Kong? In fact, many residents of subdivided units are currently waiting for public rental housing ("PRH") allocation at the same time. As the waiting time for PRH allocation is way too long, without being allocated a PRH unit, they eventually have to turn to other accommodation and end up living in subdivided units.

I have lived in a subdivided unit twice in my life. Certainly, I deliberately chose to live in a subdivided unit, rather than being compelled to do so. On one of the occasions, I planned to move to the vicinity of the district where I was going to serve, and ended up dwelling in a subdivided unit together with my partner, LO Kin-hei, a District Council member of the neighbouring district. We both slept on the floor. On the other occasion, due to renovation works at home, I again had to rent a subdivided unit. I then found that I could not even sleep straight. We can see that it is by no means pleasant to dwell in subdivided units. It is not at all easy for me, who just had a temporary stay at a subdivided unit, let alone those residents who have long been dwelling there.

The original motion or amendments currently discussed by us can mainly be summarized as five proposals, which are respectively drawing reference from overseas legislation, establishing a licensing system, installing separate water and electricity meters, regulating the rate of rental increase, tenancy control and rental allowance. I believe not a few Members will discuss some of the proposals, and the Government may work with the Hong Kong Electric Company Limited and the China Light and Power Company Limited on certain proposals, such as the installation of electricity meters.

I wish to use my speaking time to focus on discussing regulation of the rate of rental increase and tenancy control. I personally support these two proposals. Why? It is primarily because, as we can see, tenants are often in an unequal position without any bargaining power when they rent a unit from landlords. In discussing tenancy and rent control, we are actually talking about security of tenure and reasonable rental levels. Take a flat measuring 500 sq ft as an

example. The current situation is astonishing. Why? A flat measuring 500 sq ft can be divided into seven units with a rent of $4,200 each, generating a monthly income of almost $30,000 for the landlord.

Let us look at the statistics of the 2016 Population By-census of the Government. The median monthly rental payment of private residential flats was $10,000, while the median rent to income ratio was 31%, which was 6% higher than the 25% recorded a decade ago, showing how hard life is for tenants. We therefore notice that one of the key initiatives of tenancy control is ensuring protection for tenants, and enabling the grass roots and the sandwich class to rent accommodation at a reasonable price.

According to the figures of the period from 2009 to 2018, the rate of rental increase has even almost doubled. If we still do not come up with a solution, I wonder how substantial rental hikes will be a decade later. I know that former Secretary for Transport and Housing Prof Anthony CHEUNG did look into the feasibility of reintroducing tenancy control during his tenure with the Transport and Housing Bureau. But regrettably, he eventually lacked the courage to implement it. In the current-term Government, I have heard that the Under Secretary has strong reservations about that. I am about to discuss some arguments similar to the views of the Under Secretary, but I am not going to make direct criticisms of him. As I am on speaking terms with the Under Secretary, I do not wish to be too harsh on him. So, I will use Prof Francis LUI as an example.

Prof Francis LUI certainly has a strong distaste for the proposed implementation of tenancy control. The first reason given by him is that the implementation of tenancy control will push up the rental level instead. Why will it push up the rental level? Because landlords will, knowing the Government's intention of implementing tenancy control, ask for higher rents in advance. First, I think it is a question of demand and supply, i.e. whether there are really such a large number of flats available for rent in the market at that point, and second, I admit that transient pain will come with the introduction of tenancy control. The market will definitely see some undesirable behaviour at the time of implementation. But if we refuse to consider every single policy measure just because of the momentary economic behaviour, many policies can actually be put aside. For example, the Government needs not deal with the abolition of the Mandatory Provident Fund ("MPF") offsetting mechanism because it will also come with transient pain. Initially, people were saying that the abolition of the MPF offsetting mechanism would spark layoffs, and we see

that the Labour and Welfare Bureau has addressed the issue with a 25-year transitional period. As regards tenancy control, can we come up with some ways to offset the impact of market behaviour? I think we may explore the provision of tax measures or subsidy.

His second criticism is the possible reduction in supply of rental flats caused by rent or tenancy control. But we cannot deny the fact that the use of many residential units in Hong Kong cannot be altered arbitrarily. For example, they cannot be turned into Airbnb without reasons as it is against the law, nor can they be turned into shops without reasons. But such a practice is nonetheless allowed in other places. Hence, it is unlikely that landlords will suddenly change the residential use because of rent or tenancy control. In that case, will there be a huge drop in supply? As for effectiveness, we can look at the figures again. In 2016, 172 866 persons owned more than three properties each. We have then come to know that many people in Hong Kong own a number of properties, and I do not believe all of them are for self-occupation. Many of them are surely for rent. If we compare rental properties with other output of the real economy in society, which of them can be regarded as real production?

Furthermore, I am sure that the Under Secretary knows a figure very well. From 1985 to 1998 when tenancy control was in place, the vacancy rate was 3% to 4.7%. But with the removal of rent control in 1998 and tenancy control finally in 2002, the vacancy rate was as high as 6.8% back then, indicating that the vacancy rate depends not solely on policies, and is susceptible to economic cycles. If the Government is worried that many people will simply leave the flats vacant without offering them for rent, it may as well introduce a vacancy tax.

Hence, regarding the various proposals we put forward in the discussion, I hope the Transport and Housing Bureau or the Development Bureau can explore the feasibility of partial implementation of certain policies. If they consider that there are difficulties, they actually need not take the whole package. But if they do not even take the first step to explore them, they will not be able to address the issue that concerns about 170 000 people *(The buzzer sounded)* …

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

MS CLAUDIA MO (in Cantonese): Deputy President, in the 1980s, I started to be engaged in local news coverage. One of my assignments was to interview dwellers of "caged homes". At that time there was really a cage because the dwellers needed to protect their chattels and prevent them from being stolen by neighbours. It was about the size of a bed, fitted with a metal gate. It was in the 1980s. Then in 2008, however, another problem known as "subdivided units" arose in Hong Kong. As regards the layout of subdivided units, it is meaningless for us to whitewash the situation here.

Concerning the issue of subdivided units, initially, many young people asked me—they were journalism students who needed to write news reports—what "劏房" (i.e. subdivided unit) was in English. I saw that the English newspapers in Hong Kong used the expression "subdivided flats". That means a flat is subdivided into smaller units. It sounds no big deal. It is merely subdivision. However, a learned person known as "To Kit" (whose true name is Chip TSAO) in Hong Kong said it had better be translated into "butchered flats", carrying the meaning of a genuine "rip-off".

Having listened to the public officers' speeches all the way, I find them most regrettable. What the Government said is rather negative. No matter whether we propose tenancy control or rental allowance, they always say it is infeasible, adding that it will bring disadvantages before any benefits can be felt. I have also heard Prof Anthony CHEUNG, the last Secretary, say that it is infeasible. He said if landlords are subject to regulation, they may raise the rent or refrain from leasing out their properties; if tenants are provided with a rental allowance, it will also only benefit landlords. They will think that since tenants have an allowance of $3,000, they can raise the rent by $3,000. Basically, this is just something said to fool Members. In fact, if the Government cares to give it some thought, it will know that a time limit can be set. Moreover, only those people who have waited for public rental housing ("PRH") for three or four years can apply for this kind of allowance. Furthermore, the Government needs not make a big fanfare about the provision of the allowance, prompting landlords to expeditiously raise the rent. It will not work in this way. The Government's attitude is so negative. It actually does not want to do anything at all. This is one extreme.

Yet there is another extreme. I was astounded by the remarks made by Members of the Liberal Party just now. They, on the contrary, hold that basically, this is a free market which cannot be regulated. Otherwise, it will

only be doing a disservice out of the good intention. After all, they consider that reclamation should be carried out to create land, and that the so-called East Lantau vision project should commence as soon as possible. No kidding! They have blatantly extended the discussion about subdivided units to that project costing nearly $1,000 billion—if that reclamation project of artificial islands commences in 2025, the latest estimate is $1,500 billion—Come to think about it. The emergence of such a totally different comment straying from one end to the other in Hong Kong makes us wonder what has happened. But actually, they just do not want to do anything in the end. That is the case. Let it be. In a free market, when there is demand, there will be supply. We can only do a bit of work here and there. Such a view is indeed inconceivable.

Some people ask whether Mrs Regina IP's present original motion intends to legalize subdivided units. I do not see how legal the current subdivided units are. Certainly, there are many problems relating to minor works. For example, no fire-resistant partition wall has been erected, or even if water and electricity pressure tests or that sort have been carried out, the calculations are still unclear, and the Buildings Ordinance has probably been violated. But how can the authorities conduct investigations? Can they possibly send officers of the Buildings Department to each and every subdivided unit to inspect everything? This is unimaginable. As a matter of fact, the people of Hong Kong are helpless. They need to move out, and they do not want to sleep in a park. But they have yet to be allocated any PRH unit, and they do not have the money to rent a decent flat. What other choice do they have? They cannot but rent a subdivided unit. However, what attitude was presented by the Government just now? Subdivided units are not even equipped with separate water and electricity meters. Regarding such a humble request, the Government just looked the other way and evaded the subject, saying that installation of separate electricity meters warrants the landlords' consent. Who does not know that? Hence, we request the Government to require landlords to install separate electricity meters, rather than allowing them to stall and reply after consideration. This is not how it works. The Government should require landlords to do this. The Government said that in respect of water meters, a more tricky part is that a common access is needed for the staff to take the water meter readings. If a single flat consists of six to seven subdivided units and each subdivided unit is to be installed with a separate water meter, I wonder how the officers of the Water Supplies Department can go into each subdivided unit to take the water meter readings. However, nowadays science and technology can even enable us to go to Mars. In the late 1960s, men could already land on the moon. I really do

not understand why it is necessary to personally take the readings at every turn. Is the Internet or new technology of no help at all?

Hence, I hope the Government will seriously think it over. There is a post-Umbrella group called "Fixing Hong Kong". I have followed its members to visit buildings with subdivided units in To Kwa Wan. It was 8 to 9 o'clock in the evening. Every unit was pitch-dark. No one dared turn on the light because if anyone used too much light, a short circuit would occur in the whole flat. For this reason, all the tenants would try not to do so. Speaking of the housing problem, the Government is totally duty-bound to help Hongkongers to live in peace.

Thank you.

IR DR LO WAI-KWOK (in Cantonese): Deputy President, the present housing conditions of many grass roots are quite deplorable. Some 91 800 households are living in subdivided units.

Paragraph 58 of the 2018 Policy Address stresses that the Administration will actively facilitate the implementation of various short-term community initiatives to increase the supply of transitional housing, including allowing wholesale conversion of industrial buildings in order to increase the supply of transitional housing. We also hope the Government will draw reference from the experience of other countries or regions to properly regulate subdivided units, so as to ensure a safer and more comfortable living environment for households living in subdivided units. However, when exploring feasible proposals for regulating subdivided units, due consideration should be given to the actual situation in Hong Kong and possible impacts of the proposals, rather than acting like a drowning man clutching at a straw.

The original motion contains the wording "regulating the rate of rental increase for subdivided units", while the amendments proposed by Ms Alice MAK, Mr Vincent CHENG, Mr LEUNG Yiu-chung and Mr Andrew WAN mention "enacting legislation to regulate the rental of subdivided units", "legislating for the introduction of tenancy control for subdivided units" and "putting in place a rental stabilization mechanism", etc. respectively. These are not pragmatic solutions and are likely to distort the free market operation. If the

regulated rents of subdivided units deviate too much from the open market rental, landlords may refuse to rent out their flats, thus reducing rental unit supply, in which case I am afraid we will see harms long before we can see the benefits.

Deputy President, regardless of how thorough are the proposals for regulating subdivided units, they can at best address the symptoms of the problem rather than solving the problem at root because the crux of the shortage of housing supply in Hong Kong lies in the serious shortage of land for housing construction. Earlier on, I put forward my proposal on the 2018 Policy Address to the Chief Executive as the Legislative Council Member representing the engineering sector, urging the Government to make a greater commitment to formulate and implement short-, medium- and long-term planning on land reserve by adopting a multi-pronged approach. This includes actively taking forward reclamation at suitable sites outside Victoria Harbour; speeding up the development of caverns and underground space; increasing the plot ratio and changing the land use under specified conditions; expediting land resumption and redevelopment; and advancing various new development areas and new town extension projects.

The Government announced the Lantau Tomorrow Vision in the 2018 Policy Address which proposed to commence expeditiously a study on phased reclamation near Kau Yi Chau and Hei Ling Chau for the construction of artificial islands with a total area of about 1 700 hectares for building 260 000 to 400 000 residential units of which 70% being public housing. Members of the Business and Professionals Alliance for Hong Kong ("BPA") and I welcome and approve of the Government's determination in strengthening efforts at expanding land resources.

What puzzles me tremendously is that some non-establishment Members in the Council who usually claim to strive for the welfare of the public, on the one hand, challenged the Government and asked why it did not expedite housing supply and shorten the waiting time for public housing, while on the other, did not support various initiatives proposed by the Government to actively develop land and new development areas. Worse still, they created hurdles for funding applications and even procrastinated the process by all kinds of filibustering tactics. On top of that, they used alarmist remarks to demonize the Lantau Tomorrow Vision, claiming that the project may cost as much as $1,000 billion,

thus hollowing out the coffers, and harm the ecological environment. They even went so far as to demand the Administration to shelve the reclamation programme of building artificial islands before all land resources in Hong Kong are fully utilized. In sum, they want nothing but knocking down the Lantau Tomorrow programme. I hope they can explain to the public, by paying mere lip-service and forbidding the Government to develop sufficient land, how can the housing supply target be reached in the next 10 years? Housing allocation will become nothing but a dream for the grass roots. Are they supposed to live in subdivided units permanently? What about 10 years, 20 years or 30 years later?

Deputy President, Honourable colleagues of BPA and I have put forward feasible proposals to the Administration through various channels for increasing the number of housing units. For instance, the Government may consider according priority to relaxing the plot ratio of some urban residential and commercial sites, in particular, aged public housing estates with a relatively low plot ratio. Their expeditious redevelopment at a higher plot ratio can instantly increase the supply of public housing units. Meanwhile, the Government may handle country park sites with greater flexibility according to actual needs. For instance, rezoning 3% of the green belts with relatively low ecological value for housing construction can hopefully provide 270 000 residential units.

Deputy President, in order to address the people's pressing needs by effectively increasing land and housing supply in Hong Kong, society has to pool collective wisdom and the Administration has to update obsolete practices with an innovative mindset. It should also allocate resources and optimize various complementary policies and measures. I expect the Financial Secretary and the new Budget can further respond to the aspirations of society in this regard.

Deputy President, I so submit.

DR HELENA WONG (in Cantonese): Deputy President, we thank Mrs Regina IP for proposing this motion. However, I wish first to respond to the repeated accusations heaped on the opposition by Ir Dr LO Wai-kwok, who questioned why we do not support the Chief Executive's Lantau Tomorrow Vision if we care about the housing problems of the grass roots.

We reiterate once again that it is unquestionably the hope of the Democratic Party that the Government will expeditiously identify land to meet the present housing needs of the grass roots. However, the Lantau Tomorrow Vision did not feature in the various land supply options recently put forward for public consultation by the Task Force on Land Supply established by the Government. Has any discussion been conducted on the Lantau Tomorrow Vision, saved for the proposal for reclaiming 1 000 hectares of land at East Lantua, which is one option among a dozen set out in the consultation document? Besides, the report on the relevant consultation has yet to be published. With the Lantua Tomorrow Vision floated out of the blue in the Policy Address by the Government in the absence of any prior consultation and without detailed explanation on the logic behind a reclamation area of 1 700 hectares, it is no wonder that the programme has drawn such fierce objections in the community. Why is there such a dramatic increase, from 1 000 hectares to 1 7000 hectares, in the area of reclamation?

There is also a lack of cost estimates for the relevant works. How much public funds will be expended on the construction of artificial islands by means of deep-sea reclamation, as opposed to other land supply options? How much will the relevant infrastructure works, such as the building of bridges and roads, cost? What is the budget of the entire programme? We have repeatedly asked the Secretary for Development for the information, who still cannot come up with a figure despite much weighing and pondering.

According to the estimates made by Dr YIU Chung-yim, a former Member of tis Council, the Lantau Tomorrow Vision will cost some $900 billion at the very least, and expected to reach nearly $1,000 billion with the costs of all the relevant infrastructure works included. Should we spend $1,000 billion to construct artificial islands? The Government has never consulted us or presented the details.

Besides, I am deeply sceptical about the Lantau Tomorrow Vision being the solution to the housing problems of the grass roots. Of the 1 700 hectares of reclaimed land proposed under the Lantau Tomorrow Vision, how many hectares will be devoted to the construction of public rental housing, subsidized housing and flats under the Home Ownership Scheme? How many of them will be used for commercial purposes or sold to developers for constructing luxurious units commanding a sea view? In respect of the programme's estimated costs running to $1,000 billion, government officials have been doling out assurances, stressing that money will be made from land sales following the reclamation and

construction of the artificial islands. At the end of the day, with the relevant sites in all certainty being sold at high prices, how will the housing there be affordable to the grass roots dwelling in subdivided units? The Government is essentially using the Lantau Tomorrow Vision as a pretext to implement a project devoid of all details, taking us for fools.

Is the Government guaranteeing that those people dwelling in subdivided units now can move to the public housing on the artificial islands? How many hectares of land will be set aside for them? These are all unknown. Moreover, such a distant remedy provides no relief for our pressing problems. People now dwelling in subdivided units have suffered immensely. They often come to me for assistance during my visits to the district, hoping that a Member will reflect their views to the Government and seeks its assistance. At a small restaurant in Jordan where I was having a meal the other day, a waiter told me that he rented a subdivided unit near the restaurant, living alone in a tiny abode that nonetheless costs a monthly rent of over $6 000. With a salary of perhaps just over $10 000 and half of it going to the rent of the subdivided unit, how much is left to meet his living expenses? His situation is grim indeed.

The pro-democracy camp stresses that the Government has in hand many sites, such as brownfield sites and private land, which are readily available for development in the short term. Why are they not being put to development …

DEPUTY PRESIDENT (in Cantonese): Dr Helena WONG, Council is not debating the issues concerning land supply.

DR HELENA WONG (in Cantonese): Since the issue of land supply was first brought up by Ir Dr LO Wai-kwok, why did you not stop him from speaking then? You would do well to rule with fairness, Deputy President.

Please do not interfere with my speech. If you have taken up my speaking time, please make up for my time lost.

DEPUTY PRESIDENT (in Cantonese): Dr Helena WONG, I will certainly give you time to speak. But I must state clearly that Mr Tommy CHEUNG discussed the issue of land supply only briefly just now, while you …

DR HELENA WONG (in Cantonese): I am referring to Ir Dr LO Wai-kwok.

DEPUTY PRESIDENT (in Cantonese): While you have already spoken for over three minutes so far, which makes it necessary for me, in observance of the long-standing principle in presiding over meetings, to start reminding you.

DR HELENA WONG (in Cantonese): Thank you. I must now continue with my speech.

DEPUTY PRESIDENT (in Cantonese): Please come back to the question under debate.

DR HELENA WONG (in Cantonese): Returning to the issue of subdivided units, we very much hope that the Development Bureau will expeditiously resume the sites of the Fanling Golf Course and those occupied by other private clubs, while swiftly developing brownfield sites, so as to secure the land necessary for the construction of public housing in the short term. Ultimately, the issue of subdivided units can only be resolved by constructing more public housing, so that households living in subdivided units can stop paying exorbitant rents and living in dreadful conditions.

Deputy President, Kowloon West is actually the district hardest hit by the problem of subdivided units, with Sham Shui Po, the district of Yau Tsim Mong, Kowloon City and To Kwa Wan each having more serious problems in subdivided units than any other area. As a Member representing Kowloon West, I certainly hope that the authorities will expeditiously resolve the problem. That said, I find Mrs Regina IP's proposal to legislate for the regulation of subdivided units as set out in her motion questionable. We are worried that if legislation takes place right away—as Mr Andrew WAN said just now—how many existing subdivided units in Kowloon West would meet the new requirements? The problems arising from this could be impossible to tackle.

So, legislation, even if adopted, must be phased. However, without the corresponding provision of transitional housing or public housing by the Government in the process, establishing a licensing system for regulating subdivided units by way of legislation—even undertaken in an orderly and

phased manner—will turn out the same way as that of the Government's attempt to address the problem of subdivided units in industrial buildings a few years ago: tenants being evicted as a result of the Government's enforcement action. Do we wish to see households of subdivided units ultimately driven to the street? Given the perennial deficiency in Hong Kong's policy on street sleepers and the large number of street sleepers particularly in Kowloon West, where else can these households find shelter?

Dwellers of subdivided units being driven out of any form of shelter, albeit in consequence of actions taken with the best intentions, is indeed the last thing we would wish to see. Hence, while we support the regulation of subdivided units, consideration must be given to whether the corresponding supply of transitional housing and public housing would be adequate so that a disservice will not be done out of good intentions.

As regards the overcharging of water and electricity tariffs, from the introductory remarks made by the Secretary for Development that I heard just now, he seemed to think that the problem has nothing to do with him, claiming that this issue should be brought to the attention of the CLP Power Hong Kong Limited, the Hong Kong Electric Company Limited and the Water Supplies Department instead. Do we need him to point out the obvious? At issue is now the complicated procedures involved in installing separate water and electricity meters where the consent of owners' corporations as well as that of individual owners must be obtained, which invariably leads to inaction. While I have no idea in what way the Secretary can intervene, the problem is by no means irrelevant to him. For there is indeed a problem with subdivided units where landlords are charging exorbitant fees at reselling water and electricity, which calls for the intervention of the Development Bureau.

Hence, the Democratic Party will propose its own amendment. We will *(The buzzer sounded)* … abstain on Mrs Regina IP's motion.

DEPUTY PRESIDENT (in Cantonese): Dr WONG, your speaking time is up.

MR CHAN KIN-POR (in Cantonese): Deputy President, according to government figures, there are some 92 000 subdivided units in Hong Kong with dwellers numbering at 210 000. They live in appalling conditions, enduring not

just serious overcrowdedness and poor hygiene, but also the major problem of fire safety. Apart from layouts of units that clearly contravene the Fire Safety (Buildings) Ordinance, the fire extinguishers placed at the fire exits of these premises may well have expired, as I have discovered in a recent visit to the subdivided units in Sham Shui Po with a television crew. What should the occupants do in the event of a fire?

Most of the people living in subdivided units are waitlisted for public housing, but the waiting time is growing longer and longer. As the number of public housing units constructed has fallen short of demand in recent years, it is estimated that the waiting time will extend further still. In other words, it is inevitable that subdivided units will continue to exist in the short term. Hence, I find it necessary to subject them to a certain degree of regulation, particularly in respect of hygiene and fire safety. For the consequence of a fire broke out in subdivided units could be dire indeed.

In fact, it really takes time to resolve the housing difficulties. In order to address the most urgent needs, the development of transitional housing should be undertaken without delay. In the Policy Address, the Chief Executive floated the idea of allowing the conversion of industrial buildings for transitional housing. I find such a proposal bold and groundbreaking. Such an initiative, if successfully implemented, would go some way towards easing the housing needs of grass-roots families, combat illegal subdivided units in industrial buildings and rein in the rental of subdivided units through an increase in supply. Regrettably, this Council, with its incessant obsession with political hype, has no time for a thorough discussion on such a measure that can truly help our people.

According to a study conducted by the Society for Community Organization, there are some 1 000 industrial buildings through out Hong Kong, and 124 of them are situated in the urban area and suitable for conversion into transitional housing. Assuming the conversion of each would yield 150 units, the potential supply would be around 20 000 units, accommodating over 70 000 persons. Given that the relevant units will be available for leasing after only a year or two of conversion works once granted government approval, this is indeed a very attractive proposition that offers quick, effective and efficient solutions. However, it would be a great pity if the initiative, for all its immense benefits to society, fails to attract the participation of industrial building owners and others.

Coming back to the government proposal, the Government will charge a nil waiver fee, exercise flexibility in the application of planning and building design requirements and encourage owners to collaborate with non-governmental organizations. Meanwhile, a task force under the Transport and Housing Bureau will provide one-stop, coordinated support. While the Government may consider such a proposal highly groundbreaking, implementing the initiative in such a passive manner is essentially no different from encouraging the community to take matters into their own hands. As this day and age, such a manner of implementation can hardly be a recipe for success, especially when there is not much economic incentive on offer. The conversion of industrial buildings nowadays requires substantial investments by owners, with potentially great difficulties in seeking approval and returns that are not necessarily lucrative. Under such circumstances, how can owners be incentivized to participate actively? There are times when we should really follow the example of Singapore, which government is always hands-on and proactive in its approach to all undertakings, be it economic stimulation, livelihood initiatives or investment promotion activities, invariably with good results.

Hence, for the initiative to succeed, the Government must be bold enough to break away from past frameworks, seizing the initiative by itself or by quasi-government organizations, negotiating directly with owners and providing tailored assistance. It is estimated that the conversion costs of a building range from tens of millions of dollars to over $100 million. By providing owners with subsidies or loans, assisting them in applying for approval and relaxing the time limit of waiver application from the initial five years to ten years, the Government should be able to attract more owners to participate.

With the Government's plan of allocating $1 billion to developing transitional housing, it should be a good time for conversion of industrial buildings. However, the Government must require owners to set reasonable rentals and provide transitional housing with more floor space than subdivided units, better hygiene and fire protection facilities. By doing so, nearly 20 000 units could be released to the market in the next few years, resolving the various problems set out in today's motion in one go. These are all good initiatives that will help solve public problems. I hope the Government will consider them seriously and press on despite difficulties.

Deputy President, our discussion today only focuses on short-term issues. To resolve the housing problem in the long term though, we ultimately need a dramatic increase in land. The Lantau Tomorrow Vision has provoked a heated debate in the community recently. As the saying "the more truth is debated, the clearer it becomes" goes, financial experts have made a compelling case time and again for the feasibility of the project. Past experiences also point to the insurmountable difficulties in developing brownfield sites and agricultural land, while the resumption of the Fanling Golf Course arouses many disputes which would require lengthy discussions. Hence, the Lautau Tomorrow Vision is the most effective way of resolving the housing problem in Hong Kong. I hope that the public can listen to the views from all quarters, which will help them to judge the rights and wrongs. Moreover, one reason behind the ineffectual development of brownfield sites and agricultural land in the past was that sites owners saw value in hoarding. Yet, with the implementation of the Lantua Tomorrow Vision, there will be an abundant supply of land in the future, making hoarding pointless. This will in turn improve the prospect of developing brownfield sites and agricultural land and provide greater assurance of land supply in the short and medium terms.

I so submit.

MR TONY TSE (in Cantonese): Deputy President, the latest waiting time for public rental housing ("PRH") has climbed to five and a half years. I believe it will not take long for it to rise to six years. Now it takes six years to complete secondary school education and primary school education also lasts for six years. In other words, for grass-roots children now living in subdivided units and waitlisted for PRH who are in the first year of primary school, their families will only have the opportunity to be allocated PRH until they start secondary school. And for Form 1 students, their families will likely be allocated PRH flats only after they have completed the Hong Kong Diploma of Secondary Education examinations and graduated from secondary schools. Such a situation is extremely undesirable.

To tackle the problems at root and solve them in the long run, the Government must substantially increase land and housing supply. The Lantau Tomorrow Vision programme of land formation by reclamation presented in the Policy Address this year can accomplish such a goal. Of course, some people would say land formation by reclamation is like distant water that cannot put out the immediate fire, thus the Government needs to identify land for housing

construction in the medium and short terms with an omnidirectional approach. I totally agree with this notion. The relevant measures can include conversion of suitable idle land sites, industrial buildings, vacant school campuses, storage rooms and rooftops in existing PRH estates, etc. into transitional housing, or construction of transitional housing in such spaces, for the accommodation of low-income families waitlisted for PRH until they are allocated PRH flats.

However, despite the Government's endeavours, it takes some time to identify land for housing construction. Therefore, there still exists a considerable demand for units in sub-division of flats, which were referred to as cubicle apartments in the past or subdivided units now. As regards such problems as the ever-increasing rental of subdivided units in recent years, the overly short tenancy tenures and even the lack of tenancy agreements, tenants being overcharged by landlords for use of water and electricity, some subdivided units possibly in violation of land lease and land use, as well as fire services and structural safety issues, Mrs Regina IP has requested the Government to study the enactment of legislation to impose regulation, drawing reference from the experience of the United Kingdom. I hold that the Government should follow it up.

I oppose the reintroduction of rental or tenancy control, for the reason that tenancy control will reduce landlords' incentive to let their flats. Therefore, I agree with the views presented by Under Secretary Dr Raymond SO just now in this respect. Tenancy control may cause some landlords to deliberately opt for another means to let their flats so as to circumvent tenancy control. Moreover, after the implementation of tenancy control, landlords will definitely be more picky when choosing tenants, eventually reducing the supply of rental units and thus pushing rental to rise further. The grass roots and disadvantaged families will, therefore, find it even harder to locate suitable dwellings. In addition, tenancy control will make landlords of the regulated properties unwilling to spend money on maintenance of their flats, worsening the quality of the properties and possibly the living environment of tenants as well.

The original motion proposes the establishment of a licensing system for regulating the operation of subdivided units and setting standards for the facilities, number of occupants and area of units. In fact, I already proposed a motion in the Legislative Council in 2013 to request the Government to formulate a standard for the average living space per person, with a view to setting a goal for the Government and society, so as to improve the living environment of all people in Hong Kong in the long run.

Nevertheless, to prescribe a requirement for the minimum living area of subdivided units by way of legislation or the establishment of a licensing system and set other restrictions, a large number of existing substandard subdivided units may have to be eradicated, possibly forcing a large group of subdivided unit tenants to move out. It is similar to the circumstance of Dr Fernando CHEUNG proposing an amendment to the Private Healthcare Facilities Bill previously to suggest an increase in the minimum area of per capita floor space in nursing homes. He had good intentions, but how should it be implemented? Would it become a disservice done out of good intentions? Certainly, I do not object to the Government studying how to improve and solve the problem of subdivided units and increase transitional housing.

Ms Alice MAK, Mr Vincent CHENG and Mr Andrew WAN's amendments all request the Government to, before completing the study on legislation for regulation of subdivided units, provide a rental allowance for grass-roots families waitlisted for PRH for over three years. Likewise well-intentioned, will their suggestions induce some unscrupulous landlords to further increase rentals? Then, subdivided units tenants not eligible for PRH may also be affected. They are not eligible for rental allowance and have to face rental increases demanded by landlords. Therefore, I find it hard to support their suggestions.

Mr Andrew WAN also has proposed conducting a territory-wide annual survey on households of subdivided units. I consider that a study can be carried out so that the Government can find out the realistic conditions of the problem of subdivided units in Hong Kong, including the number of subdivided units, number of households and number of occupants, as well as an overview of the rental levels and living environment of subdivided units, thereby drawing up relevant policies and assistance measures. But his proposal for an annual survey may waste too much manpower and money and run the risk of being impractical.

The requirements that stamped tenancy agreements must be signed for leasing subdivided units and that independent water and electricity meters must be installed also involve issues of execution. Whether they will create an opposite effect, and whether they will give landlords some other ways or excuses to further increase rentals, refuse tenancy requests or overcharge other fees are questions that all warrant careful examination.

As regards Mr LEUNG Yiu-chung's amendment, I do not see any new content. I find that he only proposes an amendment for the sake of it. I do not approve of such a practice.

Deputy President, I so submit.

MR WU CHI-WAI (in Cantonese): Deputy President, the core issue underlying the housing difficulty faced by grass-roots households certainly involves the shortage of rental units and the ever-rising rental resulting from excess demand in the market. Therefore, the core issue certainly involves how adequate housing units can be provided for grass-roots households to cope with their needs. But the problem we see right now is the lengthening Waiting List for Public Rental Housing ("PRH"). There are now in total 280 000 households waitlisted for PRH, while the accumulated shortfall in public housing supply under the Long Term Housing Strategy has exceeded 50 000 flats. It is the fundamental situation we are facing and the Government must address it squarely.

(THE PRESIDENT resumed the Chair)

However, I consider that another issue the Government must face up to squarely is that, in the supply of necessary housing for grass-roots households, one kind of enormous resistance comes from urban redevelopment. We all understand that, in view of the objective circumstances, many flats in old districts have helplessly become the dwellings for the mass grass roots. But the housing supply eliminated by each redevelopment project often amounts to 2 000 to 3 000 flats available for grass-roots households, rendering the housing supply for grass-roots households in the market even tighter. When the objective competitive conditions have worsened, we will see the size of some subdivided units getting smaller and smaller. And regarding the objective living conditions, given inadequate choices in the market, many people in dire need of accommodation are forced to move into units of poor conditions, including subdivided units located in industrial buildings or on rooftops.

As regards this core issue, indeed does the Development Bureau need to think carefully whether urban redevelopment has to be conducted so quickly and on such a large scale? How great exactly will the impact be generated by large scale redevelopments? Let me give an example, that is a construction site of the Urban Renewal Authority in the Kowloon City District, which is a grand project. In such a clearance project, 2 000 rental properties have to be dealt with, meaning families now renting those flats have to be dealt with. What should be done then? After they are forced to move out, if PRH flats supplied by the Hong Kong Housing Authority ("HA") are insufficient for them, how will their housing needs will addressed? Therefore, I consider the speed of urban redevelopment projects another fundamental factor that has considerable effect on the housing supply for grass-roots households.

Of course, we are now facing extremely defficient tenancy control, which the Government does need to seriously consider how to handle. Though I may not fully agree with the comprehensive rental control proposed by Mrs Regina IP, I consider that there is a way to adjust the rental distortion in the market arising from rental control while solving the rental problems at the same time. For example, three-year or five-year tenancy agreements are usually signed for tenancy of commercial buildings. In fact, through conclusion of longer-term tenancy agreements, both parties can then estimate the transaction cost. For the landlords who let and the tenants who rent, as the saying goes "relocation entails a considerable cost, even to a flat one floor below", both parties have a great transaction cost to bear in every tenancy deal process.

Therefore, can the Government make some efforts in this regard? For example, the mode of tenancy agreements signed on fixed terms of one year and on flexible terms the following year is prevalent, but actually can the tenancy tenure be longer, such as tenancy agreements signed on fixed terms of two or three years, so as to allow both leasing parties to achieve a reasonable tenancy mode through a bargaining process? In this way, it will obviate the need for us to make complicated statutory arrangements through the legislative process. And as shown in overseas experience of implementation of rental control, other issues will most likely arise. In my view, in terms of the protection of the tenancy agreement or the security of tenure, tenancy agreements of longer terms are generally signed for tenancy of private commercial buildings so that both parties can have the opportunity to bargain and the security of tenure for tenants is protected. Is it an approach that can satisfy both parties?

Lastly, I wish to point out that, as regards the problem of excess demand, indeed is there any way to provide a large number of rental units in the market within a short period of time? Frankly speaking, it is no easy task. I have taken note that the Letting Scheme for Subsidised Sale Developments with Premium Unpaid launched by the Hong Kong Housing Society as a pilot scheme has seemingly met with a very poor initial response. Nevertheless, I would like to tell the Secretary that the reason for the poor response is the problematic concept and idea of the policy, because there are two restrictions. The first one is the restriction on the tenants as only applicants on the waiting list are eligible. And the second one is they can only rent one room. Come to think about this: such a combination makes it difficult to do matching because there are restrictions in the scheme itself.

However, I wish to make the point that, if the Government allows property owners to let their flats with premium unpaid, including HA flats, and they probably only have to live in the flats for a fairly long period of time, such as over 20 years of occupancy, to qualify for doing so. According to this criterion, indeed there are now approximately 250 000 Home Ownership Scheme ("HOS") flats with premium unpaid of over 20 years of occupancy. If the leasing restrictions in the market on such types of flats can be reduced, the predicament in the entire rental market can be alleviated. Then the rentals might drop because tenants currently in the private market may change to rent HOS flats with premium unpaid, thereby gradually adjusting their demand. In this way, we will then have the opportunity to ameliorate the excess demand in the entire rental market through such a short-term, direct and effective way. It is indeed too far-off to rely on other measures, such as renal control or reclamation projects. Therefore, I hope the Secretary can consider the relevant problems of housing supply from such perspectives *(The buzzer sounded)* …

PRESIDENT (in Cantonese): Mr WU, please stop speaking.

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

MR WILSON OR (in Cantonese): President, the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") supports the motion moved by Mrs Regina IP and the amendments proposed by other Honourable colleagues on urging the Government to study the enactment of an ordinance on regulating subdivided units.

President, I wish to point out that it has been revealed in a document of the Census and Statistics Department ("C&SD") that according to the 2016 Population By-census, there are about 27 000 quarters with subdivided units in Hong Kong and the number of subdivided units is some 92 000. These subdivided units accommodate 209 700 residents and the median monthly rental payment for such units is $4,500 at present. These figures are really astonishing. Please bear in mind that they are the figures for 2016, and what was the situation at the time? The waiting time for public rental housing ("PRH") was only 4.1 years then, among which the average waiting time of general PRH applicants was 5.5 years while that for elderly applicants was only 2.9 years. It is year 2018 now. We can foresee that the PRH waiting time will soon exceed six years in the near future, and the number will continue to increase.

I believe all of us must be aware that many of those living in subdivided units are the grass roots on the PRH Waiting List, or elderly people without any income. It is indeed impossible for them to live in private buildings while waiting for PRH, so they can only live miserably in subdivided units. Quite a lot of organizations have conducted a host of surveys in the past. For instance, an organization interviewed about 200 households living in subdivided units in Sham Shui Po in late 2017, coming up with the findings that the median rental payment borne by these households was $4,062, but the average living space per person had decreased to 45 sq ft. Their living environment is extremely poor indeed.

Secretary, we can see from this picture—this is in fact a better living environment already, and I believe such an environment has disappeared now—the fact that subdivided units are getting smaller and smaller nowadays but rents are ever-rising. The poor living environment has led to the result that some families, especially those with children, might have to bear exorbitant rents throughout their primary and secondary schooling. Living in subdivided units

which are so cramped does not only result in a lack of privacy, the rents per square foot are even higher than that of luxurious residential units. I find the situation really helpless.

According to another survey conducted by C&SD, the downward trend in the age of people living in subdivided units is very serious as well. Seventy percent of the people living in subdivided units are aged under 44, and 30% of them are aged under 25, including some young families or young people who are unable to buy their homes. We find the current situation of subdivided units extremely unsatisfactory. In addition, many people have been forced to move out of their original dwellings as a result of government policies and they have to live in subdivided units afterwards. No matter PRH, the Sale of Green Form Subsidized Home Ownership Scheme, the Home Ownership Scheme or the Starter Homes Pilot Project are concerned, I consider that the crux of the problem lies in the proper handling of PRH supply, through which the problem of subdivided units can be alleviated at root.

Yet, honestly, the Government has submitted a paper to the Panel on Housing of the Legislative Council earlier on, giving an account of the Public Housing Construction Programme in the coming five years. However, except that the target for 2018-2019 can be barely met, the PRH supply in the next four years will "fall off a cliff". I believe the Secretary should know very well that there will be a shortage ranging from 5 600 to 8 700 units per annum. What does this imply? This proves once again that it is foreseeable that the waiting time for PRH in the coming four years will definitely be very long, and the average waiting time will exceed six years indeed. Therefore, we hope the Government can think up a solution.

Nevertheless, I have to give a "Like" to the Government here. In fact, in the policy agendas in the past or the Policy Address recently presented by the Chief Executive, the authorities have been strongly committed to handling the housing problem which is an enormous concern to the people. But I often think that while dealing with the problem is an issue, the authorities should consider employing some extraordinary tactics at extraordinary times to promote short-term housing policies earnestly and proactively. Apart from the transitional housing currently under discussion, I consider it the most expeditious and straightforward approach for the Government to streamline administrative

procedures and to enhance administrative efficiency, so that many tasks will not be undertaken in a way just like "beating about the bush". President, I believe this is also a core issue spotted by us.

Second, I think the Government should provide a rental allowance for the grass roots with regard to their housing needs. Secretary, we are not going overboard. We just hope that a rental allowance would be provided for members of the public who have been waiting for PRH for more than three years, so that they can heave a temporary sigh of relief. In addition, I think the Government should also consider introducing tenancy control on subdivided units rented by the grass roots. In the past, the Government often indicated its target to honour the pledge to offer a PRH flat in three years. It is alright if the pledge cannot be fulfilled. The crux is how the Government can actually assist the grass roots who are living in dire straits. The Secretary would get a clear idea by taking a look at this picture. The Chief Executive often says that money does not matter as long as policies are feasible. What are they worried about then? Is it really possible to give deep thoughts from this aspect to implementing the so-called rent control and rental allowance in respect of subdivided units rented by the grass roots? Public opinions are divergent, whilst some may fear that the implementation of these measures would further push up the rental levels, leading to problems in supply and demand. That said, I would like to point out that Secretary, please try what you should try and do not render the grass roots at a loss.

In addition, we have to uphold an important principle, that is, to protect the security of tenure of the grass-roots tenants. While it is only normal that there are different voices in society, I think the Government should take the responsibilities and observe more to make the measures feasible. DAB has always stressed that we are not advocating for the implementation of rent control across the board. Instead, rent control should be targeted at the grass-roots households. As regards the criteria for determining the relevant threshold, I think society can have further discussions on whether the rateable value, age of the buildings or way of sub-letting should be adopted. However, I reckon it is most imperative to strike a balance between respecting the free rental market and introducing tenancy control.

President, tackling the housing problem has been considered as the top priority task by the Government of the current term and the previous terms. I hope that through this debate, the Government will be able to remove red tape

and further liberate its mindset in order to devise better policies which are beneficial to the people's livelihood, and to rekindle the grass roots' hope on housing issues so that they can see a way out for the better.

President, I so submit.

MR SHIU KA-CHUN (in Cantonese): President, I now speak on Mrs Regina IP's motion on "Studying the enactment of an ordinance on regulating subdivided units".

Just now Mr Wilson OR mentioned the housing right or "right to housing", so to speak. Discussing the matter of rights with the Hong Kong Government actually feels like milking the ram, but I must go on talking about it. The housing right is recognized by many international human rights instruments. Article 25 of the Universal Declaration of Human Rights has enshrined the housing right as part of the right to an adequate standard of living. The whole text reads as follows: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

In 1991, the United Nations already proclaimed that housing is a basic human right, and it clearly set out the definition of safe, dignified and adequate housing. In 2013, the Hong Kong Government also stated at the outset in the consultation document on the Long Term Housing Strategy: "Our goal is to provide adequate and affordable housing for each and every Hong Kong family.". As it sounded pleasant and most correct, people could hardly not support it. However, over the years, has the Government ever given any definition or explanation of what is meant by "adequate" and "affordable"?

All along, "subdivided unit" has been regarded as a synonym for "illegal conversion". Since the Government failed to meet the people's housing needs, forcing the poor to squeeze into private housing, subdivided units emerged. As a matter of fact, over the past half century, the housing problem plaguing Hongkongers has never disappeared. It only exists in different forms. First, there were illegal squatter dwellings, huts and tin shacks. Then there were

rooftop structures, cubicle apartments, "caged homes" and bed spaces, and today there are subdivided units. All of them are a disgrace in Hong Kong's history.

Facing the housing problem, the British Hong Kong Government and the Hong Kong Government adopted two different approaches. To resolve the problem of squatter dwellings, the British Hong Kong Government legalized the squatter dwellings in the New Territories and vigorously developed new towns. In the urban areas, it built resettlement areas, temporary housing, and later, public rental housing ("PRH"). A special feature of the British Hong Kong Government in handling housing was that it would fully take the lead. It would not rely on the private market. It would neither protect nor sympathize with the private property market, separating public interests from private ones.

However, in recent years, the Special Administrative Region Government has allowed the development of subdivided units in private properties. Firstly, it creates a market for private properties. Property prices become increasingly high, causing a ripple effect. Secondly, it legalizes conversions which are originally illegal. Thirdly, it makes the unreasonable phenomenon of subdivided units everlasting, evading the reasonable housing needs of the poor. Such an act can be described as "drinking poison to quench thirst".

In recent years, every time we discuss the housing problem, we would tell jokes about "The House of 72 Tenants" in Hong Kong to amuse ourselves. No matter how long the cramped situation of subdivided units similar to "The House of 72 Tenants" has existed, such a remark is actually only used to whitewash the housing problem. Nevertheless, the policy impact is not as clear-cut as being either good or bad. Today this motion proposes studying the enactment of an ordinance on regulating subdivided units. Let me raise a few points worth studying: first of all, how small should we actually allow a subdivided unit to be? According to the statistics on subdivided units in Hong Kong released by the Census and Statistics Department this year, there are about 209 700 people living in subdivided units across the territory. The average living space per person is only 56.5 sq ft. Putting ourselves in their shoes, if there can be a choice, who wants to dwell in a unit in which the average living space per person is just slightly bigger than a table tennis table?

As indicated by the survey, there are currently about 90 270 subdivided units in Hong Kong. On average, each flat is subdivided into 3.4 subdivided units. Business is business. I certainly understand that landlords will

inevitably try to make each subdivided unit as small as possible. If they can subdivide their flats into more units, they will make more money from more units, seeking the greatest possible profit as long as they can meet the regulatory requirements of the Government.

Before we enact legislation on regulating subdivided units, a more important question I need to consider is our bottom line as to how small a subdivided unit can be. Do we really agree that an average living space of 56.5 sq ft per person is acceptable? Are we going to take the lead in legalizing, normalizing and rationalizing subdivided units?

In fact, if regulation is strictly enforced, the minimum standards under the Buildings Ordinance and the Fire Safety (Buildings) Ordinance are by no means easy to meet. For example, how many units should a flat of 500 sq ft to 600 sq ft be subdivided into in order to fully satisfy such fire safety requirements as light penetration and ventilation? I am afraid it can hardly be achieved under the law. By then, for the sake of clearing the name of subdivided units, will the Government relax the restrictions in law, regressing from the basic requirements again as a compromise?

The side effects and political implications of the policy of rationalizing subdivided units really cannot be neglected. In the past, "subdivided unit" was a relatively vague term used mainly to describe a room with a confined space in a gross environment. Society generally regards "subdivided unit" as a negative label. It is inadequate, unlivable, undesirable and unfit for long-term accommodation. However, Carrie LAM, who likes to play with words, said that "subdivided unit" is actually an adjective. If the Government proposes enacting legislation relating to subdivided units in a high profile, does it intend to make this term sound more reasonable, attempting to allay public grievances with such an approach of "changing the name but not the housing"?

I remember that during the discussion about the issue of subdivided units, Secretary Frank CHAN said, "One should not refrain from doing an act of kindness just because it is insignificant." I would like to add the second line: "The Government has failed to do an act of kindness even though it is most significant." In fact, before legalizing subdivided units, the Government can actually launch a lot of improvement proposals, only that it lacks the will rather than the ability to implement them. Examples are using the sites of the Urban Renewal Authority to construct public housing, building more transitional hostels on smaller sites, as well as buying back PRH, Home Ownership Scheme or

private housing units, providing a rental allowance *(The buzzer sounded)* … to those who have been waitlisted for allocation of PRH for more than three years …

PRESIDENT (in Cantonese): Mr SHIU, please stop speaking.

DR FERNANDO CHEUNG (in Cantonese): President, subdivided units are a blot on good name of Hong Kong. In such an affluent city as Hong Kong, people have to live in such crowded, unhygienic dwellings, or even such inhumane dwellings, as Mrs Regina IP has put it, and in other words, dwellings not for human habitation. That members of the public have to live in such an environment did not happen just yesterday, for this has been the case for many years and the situation is becoming increasingly serious. The community has been continuously putting forward a lot of solutions. For example, should we impose control in view of the deplorable environment? The conditions of some subdivided units have become unsafe, and in some cases, no electricity or water meter is installed, or there are other instances of non-compliance with rules and regulations, causing the situation to become messy. What is more, there is overcharging of water tariffs; the rent per square foot is even more expensive than that of luxurious residential apartments; children have to do their homework in bed; women face inconvenience when they go in and out of their units, and so on and so forth. We have talked about these situations ad nauseam, and we have spoken so much about them that our lips have worn out.

However, President, today we have a breakthrough. This motion is proposed by a pro-establishment Member, Mrs Regina IP, who is also a Member of the Executive Council. We also see that Members proposing amendments include Ms Alice MAK and Mr Vincent CHENG who come from the Hong Kong Federation of Trade Unions and the Democratic Alliance for the Betterment and Progress of Hong Kong respectively, both being major political parties, while you, President, are a member of the Business and Professionals Alliance for Hong Kong, and the Liberal Party also has a representative in the Executive Council. There is a chance for the original motion and the various amendments to be passed today, and this is a phenomenon that comes by most rarely. Some people said that we should not talk about politics and that we should talk about the people's livelihood. Let us now then come together to talk about the people's livelihood.

This time around, we have seen that Members, irrespective of their political affiliations, have raised concern over the same issue. In fact, this issue has been discussed for years. The introduction of rent control, which the Government considered to be extremely controversial in the first place, is proposed even by the pro-establishment Members today. Mrs Regina IP's original motion clearly stated that the rent of subdivided units should be regulated, and this is also mentioned in the amendments proposed by Mr Vincent CHENG and Ms Alice MAK. We proposed that a rental allowance be provided by the Government for people who have been waitlisted for public rental housing ("PRH") for nearly three years—the Government has pledged for a waiting time of three years for PRH—and who live in subdivided units, so as to provide them with some relief because as shown by the statistics provided earlier, their rental payment accounts for 37% of their income on average. Think about this: when over one third of the household income is spent on rental payment, they must face a lot of hardships in their living and it is necessary to provide a rental allowance for them. This is proposed not just by one Member or one political party, but by almost every political party. Just now I heard Mr Wilson OR use the word "condemn" in his speech. What has the Government done over the years? We called for the provision of a rental allowance but the Government said no, because this would push up the rent, benefiting only the landlords at the end of the day. We called for the implementation of rent control but the Government again said no, because the landlords would then recover all the units, thus making the rents even more expensive. Then we asked the Government what it could do. The Government said that it would focus on the supply of housing but the supply of housing has invariably fallen short of the targets over the years. The Government cannot even meet the target set by itself, but it can meet the target of land sale, and what is more, it can meet the target of every single year. But the production of public housing can never meet the target and worse still, more and more of the housing units developed are now for sale, not for rental.

Actually I need not do any more explaining, for these matters of principle have been expounded ad nauseam. The key point is that when the great majority of political parties and Members in this Council call on the Government to take forward these initiatives, be it the introduction of rent control, provision of a rental allowance or development of transitional housing, the Government should not only resort to lip service. It should set specific targets to tell us clearly how many units will be provided in how many years, and also how these households living in subdivided units can be provided with assistance immediately. The

Government should clearly explain these details one by one. It must not use words to substitute actions and then pass the buck to the community.

I think the key point is: If, after we have gone to great lengths in putting forward these views and proposals, the Government should again come to us and say, "Thank you for your views. Goodbye.", then what does it mean? We all expect this from the Government. The Government will then offer a host of explanations as if it has been wronged, telling us that this is not going to work and that is not going to work, and that we had better go back to the supply of housing, for that is the kernel of the problem. Then, it will be business as usual for us again; this Council will go on like this; hundreds of thousands of people will continue to live in these subdivided units and remain inadequately housed; these blots will continue to exist in Hong Kong; we will continue to get paid; the officials will continue to be haughty and domineering and they are always right in everything, while these political parties of ours are all wrong; all Hong Kong people are wrong and only they are right, and we can do nothing about it. Will that be the case? If so, what is the use of this Council? When this Council has reached a consensus, and when it involves an issue of significant public interest which is claimed to be the most important area of work by Carrie LAM, I call on her to go ahead and do something! What should she do? She should, as suggested by us, present to us a specific target and timetable for developing transitional housing and the details of the introduction of a rental allowance and implementation of rent control. Many political parties have now demanded the introduction of legislation by the Government. Will the Government do it? If the Government does not do it, will we just let it be?

We Members of the Legislative Council cannot introduce legislation; nor can we draw down the public coffers. These powers are all monopolized by the Government. But the only thing we can do is to negative the Budget. Members from the pro-establishment political parties, if you consider this the most important job, and if, after you have put forward these views, the Government simply turns its back on you—you all have your own people sitting on the Executive Council, the highest think tank of the Government—and when you have pointed out this problem, the Government nevertheless continues to engage in empty talk but no action, saying, "What can you do about me?", will we accept it and declare the case closed? Or do we have the guts to negative the Budget if the Government does not do anything, not even implementing the several basic proposals mentioned by us earlier? If we do, the Government will kneel down. We do have this power. Will we exercise it? *(The buzzer sounded)*

PRESIDENT (in Cantonese): Dr CHEUNG, please stop speaking.

MR CHAN HAN-PAN (in Cantonese): President, two years ago in this Council I spoke on the problem of subdivided units with a heavy heart because two fires had broken out successively in Tsuen Wan, resulting in fatalities. One of them happened at Yi Pei Square and the other happened at Heung Wo Street. I said at the time that I hoped the Government would explore the introduction of a licensing or registration system.

Today, Mrs Regina IP's motion proposes to put in place a licensing system which is supported by quite a number of Members. In fact, the introduction of a licensing system has aroused controversies because it may lead to other potential problems. For instance, the setting up of a licensing system may cause the rental to rise drastically and further drive up the rental, for a licensing system may enable the subdivided units to exist for ages to come as a result of them being operated legally. I believe there are controversies over this point in the community.

However, when I proposed the introduction of a registration system back then, my intention was that even though the subdivided units were intended to be a provisional housing option, they should meet the basic safety standards. For instance, they should at least be retrofitted with fire extinguishers. During an activity that I organized at Yi Pei Square to instill fire safety knowledge, some children asked why they did not have fire extinguishers at home. Even though I was teaching them how to use a fire extinguisher, it was practically useless to them, for they actually did not have any at home.

Besides, there were cases before that when a fire broke out, the firemen could not find the entrance when they arrived at the unit concerned because in order to reach the mezzanine floor of a shop, they had to use one of the entrances downstairs. As such, the firemen did not know how to reach the scene to put out the fire; nor could they find out about the conditions of the fire scene. For these reasons, I called for the setting up of a registration system at that time, so that at least we could know the floor plan of the unit, whether or not there is a fire extinguisher inside the unit, who the person in charge of the unit is, and so on. Particularly in respect of the fire at Yi Pei Square, even now we still do not know who the operator of that subdivided unit is. Even though I wanted to inquire about the identity of the deceased, there is no way to ascertain it. So, as it has been a long time since the incident happened, I think it will remain to be an

unresolved case. Nothing can be done about it, for the owner is staying abroad and has entrusted this unit to the care of some people, or some people have taken possession of his unit and then rented it out and so, this unit can continue to be rented out. This subdivided unit has now been restored as a subdivided unit again. After the fire, it has been renovated and continuously rented out as a subdivided unit.

On the other hand, the water leakage problem caused by subdivided units has drawn the most controversies over the years. It is probably because after the completion of conversion works upstairs, as the water pipes upstairs are connected randomly, the unit downstairs is thus affected by water leakage but no one knows who should be approached to fix the problem. This is why I hope to put in place a simple registration system. Is there a need for subdivided units to exist? Yes, they can exist and I agree that they can be spared elimination for the time being but registration is required of them first. It is necessary to provide the interior layout plan of the subdivided unit and in addition, fire extinguishers have to be retrofitted in the units and the persons-in-charge are required to report to the authorities on a regular basis the number of households as well as their names. It is just this simple, and these requirements would be easy to meet. I do not oppose the introduction of a licensing system but it will take a very long time for the discussions hence aroused in the community to reach a consensus. Therefore, I hope that before a consensus can be reached on the licensing system, the Government will first consider putting in place a registration system as proposed by me. We can require their registration as the first step and then try it out to ascertain its viability.

Before a licensing system is put in place, is it that nothing can be done in the interim? No. Actually I hope that the Government will take a gradual, orderly approach in addressing the issue of housing, especially transitional housing of this sort. First, the Government should increase the supply of transitional housing, especially as the Government has proposed to provide this type of housing in industrial buildings. So, has the Government identified suitable industrial buildings for the purpose? Currently some people have even suggested the use of giant water pipes to provide this type of housing. The Government should provide assistance by all means to enable increased supply. So long as there is supply, the market rent will naturally fall. When the rent comes down and as the landlords want to encourage more people to rent their units, they will be driven by the market to make improvements to the subdivided units.

In this connection, I hope the first step is to increase supply. The Government should increase supply in various districts or districts where there is a greater concentration of subdivided units. The next step is to implement rent control for subdivided units as proposed by the Democratic Alliance for the Betterment and Progress of Hong Kong. I have come across a case in which the rental of a subdivided unit was increased thrice a year, and therefore I approached the principal landlord for negotiations and requested him to put on hold one of the increases because the tenant could not afford it. But the landlord said sorry, for he really must increase the rent. Why? Because there is no control. Therefore, we hope that the Government can impose control on these situations that concern the most basic human right and the most basic need of the people.

Meanwhile, I have seen that the Lands Department has actually carried out quite a lot of enforcement actions targeting squatter huts. Some squatter huts were erected probably before 1 June 1982 but given complaints about, say, the erection of a canopy at the doorway, the entire squatter hut had to be pulled down. After its demolition, where can the occupants go for dwellings? They can only rent subdivided units. As a result, this has brought about more rigid demands for housing. For this reason, I hope that in respect of the policy on squatter huts, the Government will also consider the priorities of its measures.

I understand that newly erected squatter huts will be cleared by the Government immediately. This, I very much support, because we should not allow illegally erected squatter structures to increase considerably. But for squatter huts that have existed for a long time and for historical reasons, their removal should be suspended to allow the residents to live there temporarily, in order not to boost the demand for housing, especially the demand for subdivided units. I hope that government departments can hear these suggestions and before there is a way to develop sufficient housing units, short-term measures or administrative initiatives should be adopted to enable tenants of subdivided units to, firstly, pay lower rents, and secondly, have a safer dwelling place.

President, I so submit.

DR CHENG CHUNG-TAI (in Cantonese): On the issue of subdivided units, first, I have to state my position: I absolutely disapprove of the regulation of subdivided units, for the phenomenon of subdivided units should not exist in the first place. I hope Members would understand that the emergence of subdivided

units is, in nature, a problem of disparity between the rich and the poor. Given the disparity between the rich and the poor and the huge demand for housing, a group of people seize the niche to maximize their profit. Even the family members of the Financial Secretary are operating subdivided units.

This practice is not about a housing policy, and it may not be directly related to land development, for it is a problem of disparity between the rich and the poor in nature. Hence, I hope Members will see the issue in the correct light, that this is neither a matter of economic theory nor economic concept, and it is neither an issue concerning demand and supply nor sufficient land supply. The issue of subdivided units is created by man, it is a case of businesses ran by man and it is the product of the institution. Hence, I hope Members will know clearly where to start. The solution to the problem of subdivided units is fixing the problem of real estate hegemony. Although this suggestion seems to be slightly old school, and that it has been used by the previous Chief Executive as his election slogan to cheat the public, this is outdated nowadays.

Members should understand clearly that this is a problem of disparity between the rich and the poor in nature. I am not going to discuss theories and economic concepts, though I used to be a scholar in the university. I just hope to share one point with Members, and that is, how the Government is suffering from early psychosis in its administration.

In the summer recess the year before last, I received three cases from the Public Complains Office of the Legislative Council, and all the three cases were about the eviction of tenants of subdivided units. Why would tenants of subdivided units be evicted? This should be traced back to the fire that broke out in an industrial building with subdivided units in Kowloon Bay a couple of years ago. Back then, the Bureau and the Government came under tremendous pressure. To ensure safety, safety checks and eradication of subdivided units were sped up. In New Territories East, particularly in Tsuen Wan and Kwai Tsing districts, many flats in single private residential buildings or industrial buildings were used for operating subdivided units. I received three complaint cases in one summer. Dozens of tenants of subdivided units had been evicted as a result of the Government's administrative measures to eradicate subdivided units.

Which types of households were included in the dozens of cases involved? President, do not worry, I will not go into individual cases. In the first case, the father is a Hong Kong citizen, the mother is a Mainlander entering Hong Kong on

a two-way permit. They have two children and when they came to lodge the complaint, the mother was pregnant. They have no way to earn a living in Hong Kong. The second family seeking assistance is a Putonghua-speaking family. The father and the elder son have come to Hong Kong on one-way permits. The other child was born in Hong Kong as the mother managed to crash the gate to give birth in Hong Kong and the child is thus a permanent resident of Hong Kong. How can we help these families? The third family is the tragedy of a typical grass-roots family in Hong Kong. The father, unfortunately, was killed in a traffic accident, leaving behind his wife and two teenage daughters still studying at schools. These families were all living in subdivided units, and since the Government wanted to eradicate subdivided units, they were evicted.

These three complaint cases received by me involved dozens of families and I had to spend six months to process them. Why do I say that the logic of the authorities is confusing? For in the Policy Address this time around, the Government encourages the legalization of subdivided units and "Industrial Building Revitalization 2.0", so that these buildings can be used for operating subdivided units after conversion. It also encourages social enterprises, that is, NGOs (non-governmental organizations), non-profit-making organizations and SoCO (Society for Community Organization), to operate subdivided units. Yet, with proper fire safety measures put in place, it does not mean that the existence of subdivided units is justified.

This is a problem of disparity between the rich and the poor. The grass-roots families may not want to live in remote areas and they can only compromise to live in subdivided units in order to live near their place of work. Some people may have a public housing flat, but since they cannot find employment of other job types, they can only compromise to live in subdivided units. As for young people, they may compromise to settle in subdivided flats for the convenience of going to school. Regarding the two types of families which I mentioned just now, it is obviously the result of blunders in the population policy.

Has the Government done any calculation about the tenants living in 90 000-odd subdivided units? They may have come to Hong Kong on two-way permits or one-way permits, or that one of the parents or both parents in these families are not Hong Kong permanent residents. How many of them have found lives in Hong Kong not as they expected? How many of them have found lives here not like living in paradise as depicted in the dramas of TVB but

actually in the purgatory? They will only meet with people living in industrial buildings. They belong to industrial buildings and they can only settle in subdivided units. Despite that, they cannot return to the Mainland, for their household registrations in the Mainland have been cancelled.

Hence, on this problem of subdivided units, I urge the Government not to act indecisively, mandating the eradication of subdivided units at one time and legalizing subdivided units without justifications at another. The authorities should not act like it is suffering from early psychosis. First of all, the Government should face the problem of disparity between the rich and the poor squarely. If the Government faces the problem squarely, it should at least be bold to implement rent control and construct more public housing in the long term. As for ways to construct more public housing, it is open to discussion. If the authorities do not admit that it is a problem of disparity between the rich and the poor, none of the measures proposed will be correct. This problem cannot be solved by the Lantau Tomorrow programme. It is not a problem of insufficient land supply. At issue is that the authorities do not face squarely the fact that poverty is a problem in Hong Kong. The poverty problem may be attributed to blunders in the population policy, or it may simply because the authorities have condoned businessmen to exploit Hong Kong for the last bit of money in the coffers. I so sumbit.

DR PIERRE CHAN (in Cantonese): President, in respect of the motion on "Studying the enactment of an ordinance on regulating subdivided units" proposed by Mrs Regina IP and the amendments proposed by several Members, I wish to express my concerns and views on the housing problem in Hong Kong.

President, the focus of the Chief Executive's latest Policy Address is the construction of artificial islands measuring 1 700 hectares. As stated by the Government, massive construction and reclamation is necessary to resolve the housing problem. Whether it is indeed necessary to construct artificial islands to resolve the people's housing needs remains greatly controversial. However, I believe everyone will agree that the housing problem is most severe.

Although Hong Kong is an advanced economy, sometimes the people's quality of living is even poorer than that in developing regions. Among clothing, food, housing and transport, the one which attracts most criticisms is housing. The people's dwelling places are not only costly but also tiny. In

recent years, expensive micro flats have become increasingly preposterous, giving rise to the so-called "nano flats". A flat is only some 100 sq ft in area. A room in the foreign countries is even bigger than it. But its selling price is as much as $2 million to $3 million. No wonder last year, the "Demographia International Housing Affordability Survey" conducted by an American consultancy ranked Hong Kong as the world's most unaffordable city in terms of property price for seven consecutive years. On average, people have to refrain from spending money on food and other items for 18 years before they can afford to buy a home. It simply sounds unbelievable.

If those who can afford mortgage repayment have to live in such crowdedness, the situation of those grass roots who have yet to be allocated public housing is even more unimaginable. They live in either bedspaces in "caged homes" or subdivided units. According to the report on "Housing conditions of sub-divided units in Hong Kong" released by the Census and Statistics Department in 2016, there were nearly 200 000 people living in subdivided units in old buildings aged at least 25 years, not including those dwellers of subdivided units in industrial buildings and squatters.

The conditions in many subdivided units are practically so terrible that they are uninhabitable. I have visited cubicle apartments in Sham Shui Po with Honourable colleagues in the Panel on Welfare Services. Those cubicles were located in an old dilapidated building. Not only was it unbearably full of dirt and pitch-dark. Inside a shabby cubicle, there was only a tiny mixture of a toilet and a kitchen. Cooking, bathing and answering calls of the nature take place at the same spot. It is really hard to imagine that in Hong Kong, a well-known international metropolis, some people still have to live in such dwellings. Moreover, the per-square-foot rent is even higher than that of luxury flats. Neither can we imagine that the Government, with the Treasury inundated with cash, seems to be clueless in tackling this situation. It also looks hesitant about the proposals made by many Members for helping households of subdivided units to deal with the problems of such units.

The monthly rent of a subdivided unit of 40 sq ft in the urban area is at least $3,000 to $4,000. It is by no means cheap. Moreover, there is no protection for tenants. In 2016, the Concerning Grassroots' Housing Rights Alliance conducted a survey on 380 households in subdivided units. Among them, 30% of the tenants did not sign any tenancy agreement in written form; 35% paid water and electricity tariffs as verbally told by their landlords every

month; and 25% had been forced to move out in the past three years. More than half of such cases were caused by drastic increases in rent.

Be it the original motion or the amendments, there is a consensus on requiring every subdivided unit to be installed with separate water and electricity meters and controlling rental increases. It shows that Members of different political affiliations are very concerned about the housing problem of the grass roots. They wish to alleviate their burden and provide them with more protection. Is the Government willing to listen to these views? I remember that on 4 June this year, the Panel on Housing and the Panel on Welfare Services held a joint meeting on rental control. Groups and individuals concerned about the housing problem of the grass roots were also invited to present their views. But the paper submitted by the Government openly claimed beforehand that rental control was not an appropriate approach because if the market rent was pushed down artificially, it would reduce owners' incentive and desire to lease out their flats. I wonder whether, in response to this Member's motion on regulating subdivided units, the officials will repeat that if the market rent is pushed down artificially, it will affect owners' desire to lease out subdivided units.

More importantly still, most subdivided units in the lowest segment of the rental market are illegal—I have to say it three times. They are illegal, illegal, illegal—To regulate these subdivided units, the Government must proactively intervene by way of regulation, prescribing various standards and requirements for subdivided units. At the same time, proactive enforcement is also essential. Only then can these illegal subdivided units posing potential dangers be eliminated. Besides, to make subdivided units comply with the Buildings Ordinance and the Fire Safety (Buildings) Ordinance, with a view to attaining a comfortable and safe environment as mentioned by Members, owners' cost will definitely be increased. For this reason, the Government should have sufficient political will. Only then will it be able to regulate subdivided units for the ease and safety of tenants on the one hand, restrict increases in rent to alleviate the housing burden of the grass roots on the other. This is a tall challenge to the Government.

I very much agree with what Dr CHENG Chung-tai said just now. Subdivided units are actually illegal. It is unreasonable to find some justifications to clear their name. President, that the housing problem of the grass roots is severe has been discussed for years. Many hardworking Hongkongers have no way to experience a dignified life at all. This motion

simply reminds the Government that if it does not adopt any effective measures to relieve the housing needs of the grass roots, public discontents and social conflicts will only continue to accumulate. It is absolutely not a good thing for Hong Kong. As the saying goes, it is not until one can live in peace that one will work with contentment. I so submit.

MR HO KAI-MING (in Cantonese): President, I was born in a cubicle apartment when I was small. I am really saddened that we have to discuss this issue today. However, have subdivided units actually vanished in the world? I do not think so as there are still subdivided units elsewhere. Short-, medium- and long-term measures should definitely be adopted to tackle the problem of subdivided units. Regarding long-term measures, we would certainly support Lantau Tomorrow in the hope that land can be created for Hong Kong through reclamation to increase land supply. What can be done in the short term? The Hong Kong Federation of Trade Unions has advocated for years a three-pronged approach encompassing tenancy control, rental allowance and vacant property tax, which Ms Alice MAK has explained in detail earlier.

Notwithstanding this, I would like to share my experience gained overseas. My wife is now studying in Paris and she also lives in a subdivided unit. Never assume that university students would be allocated a hostel place as a matter of course. This is not the case, as she has to seek accommodation outside the campus. This year, I spent ten days there to accompany my wife during her studies and looked for another dwelling for her. Why? The rent of the hostel that she originally lived in is about HK$8,000 with an area of merely 14 sq m. I also hope to save a little bit of money given that the rent is so expensive. It seems that Under Secretary Dr Raymond SO does not believe the rent is so expensive there, but this is true, the fact.

Honestly, we have been keeping a keen eye on the property prices in Paris. I believe many members of the public would also notice the local property prices during their visit to the Mainland. The property price in Paris is about $10,000 per square foot at present, which is more or less the same as that in Hong Kong. A flat with an area of 800 sq ft would cost about HK$8 million, whilst the rent would be relatively cheaper. How does the local rental market operate there? I had accompanied my wife to view quite a number of dwellings during my stay there. In the end, she chose to live in a place known as Greater Paris located in the suburbs. As the area is not covered by the metro, one can only get

there by train. She is now living in a "subdivided villa" which is subdivided into seven units. She now stays in a 15-sq m unit for a rent of about HK$5,000. By comparing the rent in the Paris suburbs with that in Hong Kong, we can see that the rent there might be relatively lower, but it is not very cheap indeed.

How does the local rental market operate there? In fact, Paris does provide a rental allowance, known as CAF (Caisse d'Allocations Familiales), for overseas students and there is a means test upon application. My wife has especially applied for the allowance with a view to experiencing the local life. When I accompanied her to make an application, I did see a lot of people queuing to lodge applications although I did not understand what they were talking about in French.

The local government there offers a monthly rental allowance of about HK$2,000 to subsidize overseas students for their rents and heating costs. Are there any conditions for applying for the rental allowance? Of course there are. Apart from the means test, there are also requirements on the flat units rented. One will fail to meet the application criteria if there is no written tenancy agreement or if the area of the flat unit is less than 9 sq m. We have viewed a rental unit there which was sub-letted by the tenant. The rent was particularly lower as a written contract could not be provided, otherwise, the property prices in the urban area there are more or less the same under normal circumstances. Therefore, the area of the flat unit should be at least 9 sq m in order to be qualified for the rental allowance. What is more, there is also a requirement on the height of the flat unit that the ceiling should be no less than 2.2 m from the floor in order to meet the application criteria. Offering a rental allowance to overseas students or local residents is indeed a policy that helps stabilize the rents.

Apart from providing a rental allowance, rent control is also implemented there. Why do we advocate a three-pronged approach? Because landlords would increase the rents incessantly if a rental allowance is provided alone. What makes the rents in Paris so stable? It is due to the various control measures imposed on landlords there. For instance, from October to February each year, landlords cannot force tenants to move out even if they have rental payments in arrears lest they should freeze to death on the streets during the snowy weather at that time. This is a humane requirement. Even though it is a free market, the local government still prohibits landlords from forcing tenants with rental payment in arrears to move out, which would otherwise render them

homeless. It is indeed necessary for the Government to intervene in the market to ensure stability in tenancy.

Certainly, I have heard of the discontent of some landlords about the tenants seeming to have gained the upper hand, but I have never seen a rental unit being left vacant there. Whenever a rental notice is posted on an overseas students' forum, if one makes an enquiry call an hour later, someone would be viewing the flat unit already. I hence do not believe that there would be a lot of vacant flats not rented out. In addition, there is also a requirement that when determining new rents, the amount cannot exceed that of the flats in the suburbs by 20%. Even for flats in the city centre, the rents also must not exceed the level in the suburbs by 20%.

This is a real example. Both Paris and Hong Kong are international metropolises. The Small Paris which is directly accessible by the metro has an area of 600 sq km, which is similar to that of Hong Kong. After deducting the area of the country parks, the area of land available in Hong Kong is about 600 sq km as well. Why can Paris achieve this but not Hong Kong? Having said that, there is a major difference between the two places, that is, Hong Kong has a population of 7 million, whereas the population of Small Paris is only 2 million. This certainly makes a big difference. However, given that Hong Kong is an international metropolis, do we really have to tolerate the continual existence of these subdivided units of which the environment is relatively poor in Hong Kong? I cannot say that subdivided units do not exist in other parts of the world, which is an exaggeration. We really see subdivided units in Paris, but the local government provides a rental allowance as a form of incentive and imposes terms of tenancy control such that flats there are subdivided in a reasonable manner. Having moved from a subdivided unit in the city centre to another one in the suburbs, my wife now pays less in rent but stays in a larger space. Even though it is necessary to spend more time on commuting, this is a relatively reasonable approach to ensure that members of the public can live in peace and work with contentment in the city.

I hope the Secretary can come up with some new ideas by drawing reference from overseas experience so as to continue to do good to the people of Hong Kong.

President, I so submit.

MS STARRY LEE (in Cantonese): President, there is no need for me to recap how serious the problem of subdivided units is. Just now, many Members said that over 150 000 families live in subdivided units and if the situation remains unchanged, it is expected that there will be even more in the future. For this reason, I am also grateful to Mrs Regina IP for giving the Council the opportunity to have a discussion about subdivided units today because we have not had the opportunity to discuss Member's motions for a long time. Indeed, there are many issues worthy of discussion by us.

First of all, I invite Members to consider together why the number of subdivided units has increased so quickly. Of course, Members actually all have the answer to this question. Firstly, because there is a shortage in the supply of housing, so there is a market for them; secondly, the redevelopment of old buildings is slow and in fact, a large number of subdivided units are located in old areas because the units in old areas are larger. If landlords choose to let out an entire flat, compared to subdivided units, its rental value and even the chance of it being let out are lower. For these reasons, we find—this is particularly the case for Members serving the old districts—that with the slow pace of redevelopment of old areas and the demand for subdivided units in the market, there is an upsurge in the number of subdivided units. If the Secretary has ever conducted any survey, he will surely know that their number has multiplied by several times in the past decade. I can also tell the Secretary that I have hardly ever seen any flat that had been turned into subdivided units restored to its original state, so I can predict that in the future, there will only be more subdivided units but no subdivided flats will be restored to its original state.

Thirdly, of course, the Government has to do some self-examination. I believe this has to do with the Government's past attitude towards subdivided units. Simply put, it is one of neglect and lack of regulation. Certainly, I understand, and so would more rational members of the public, that as pointed out by many Members, due to the Government's inability to solve the housing problem, although the environment of subdivided units is poor, without them, where can those people live in? Therefore, it is possible that the Government also has this kind of thinking and it cannot come up with any solution. As a result, no regulation is imposed on subdivided units.

The Secretary may not agree with this point. According to the reply given by him just now, regulation is imposed on minor works and the people concerned must comply with the requirements for minor works. President, what actually are minor works? As far as I know, it is necessary for the people concerned to

only find a qualified person to carry out the works and there is no need to make any prior application to the Secretary. I have served the local communities for many years and received a large number of complaints related to subdivided units involving alleged unauthorized building works and irregularities. Complaints were made to the Buildings Department but ultimately, there was not any outcome. As far as I can remember, hardly has any complaint case against subdivided units led to any successful outcome. Simply put, so long as landlords are prepared to create subdivided units, the works process is actually very short and can be completed in just a few days. For this reason, if complaints are made to the Buildings Department, due to the constraints in law, its officers cannot enter any premises without a warrant of entry, and before you know it, people are already moving into these subdivided units. As a result, such instances happen all the time. Therefore, Secretary, if it is said that there is regulation now, judging from what I can see in my work at the community level, I really do not think there is any.

Therefore, what we should look at is: Although the Government is trying hard to promote the Lantau Tomorrow Vision, I can tell the Secretary with a great measure of assertion that in the next five years or 10 years, if all conditions remain the same—I think the Secretary should make an assessment and so should the community—this phenomenon of subdivided units will continue to grow, as in the past five or 10 years. Take the To Kwa Wan area, which I now serve, as an example. In a 50-year old building, about one third of its units have been turned into subdivided units, or one fourth or one fifth in the case of buildings with smaller floor areas. If all conditions remain unchanged, I expect the intensity of this phenomenon to go up by two notches—not to mention three—simply put, due to the slow pace of the redevelopment of old areas, in the future, buildings housing subdivided units will be found in them. I know that they can already be found now. In some areas, some buildings are made up entirely of subdivided units. Under the existing arrangement, the Government actually has no idea how many subdivided units there are in these buildings of sub-division and before the floor plans for subdivided units are submitted, the Government has no knowledge of the structural changes made to them either, so actually, it has no idea whatsoever of what is going on inside. I believe that in the future, these places would become powder kegs in the local communities.

Secretary, I do not know if you will agree with this but I have really thought about this problem. Landlords can even subdivide a flat into seven units if they like and they can install electricity meters if they like. The Government does not know if the electrical load is sufficient; nor does it know by how much

the floor screeding has been thickened and the Government is incapable of solving water seepage problems either, no matter how serious they are, nor can the public do so. If one day, the electrical load is really exceeded and a fire breaks out as a result, these places are really the most dangerous of all places. Therefore, I wish to tell Members that such is the situation at present.

Just now, many Members said that they do not want subdivided units to become legal and honestly, I do not want them to either. No one wants subdivided units to become legal but the reality is that they exist. If we turn a blind eye to the more than 100 000 families living in subdivided units now, in the next five years, if the Government does nothing, it is possible that 200 000 and even 300 000 families will live in subdivided units, so can the Government disregard them and let this situation continue? I think Honourable colleagues also have to understand this point. No one wants subdivided units to become legal and I believe Mrs IP also agrees very much with this, does she not? However, this is a social phenomenon.

Frankly, the past policies of the Government are also to blame for the emergence of such a social phenomenon. In fact, this social phenomenon is just similar to that of unauthorized building works. Why are there so many unauthorized building works in the old areas and throughout Hong Kong? The Secretary knows this very clearly. Because in the past, no timely actions were taken, and this phenomenon gradually emerged as a result. The same is true of subdivided units. The Government has not imposed any regulation and since there is a market for them and a return from them, the number continues to rise. If such a situation persists, how would it bode for the future? What I said just now may not necessarily turn out to be false five or 10 years later. In the future, the buildings in old areas will be buildings housing subdivided units and they are dangerous powder kegs.

Therefore, Secretary, I think you also have a hard time. These problems did not arise during your tenure but I can only say that at present, we can see that over 100 000 families live in subdivided units. But I reckon that in future, more families will live in subdivided units. Even though you are trying very hard to put in place transitional housing and promote the Lantau Tomorrow Vision, sorry, the problem of subdivided units will persist.

Are we going to continue in this way? I believe Mrs Regina IP's motion is worthy of consideration and the proposals put forward by Mr CHAN Han-pan just now are also quite good. I hope the Secretary can make an undertaking of

setting up a special team under your Policy Bureau. I am very concerned about safety. At present, the authorities do not impose any regulation and only approach this matter from the angle of minor works, thus leading to the problems mentioned by me earlier on. I call on you to consider how to ensure that basic safety facilities are provided to families dwelling in subdivided units. You can adopt the approach of dealing with unauthorized building works and columbaria by regulating only new ones and dealing with the old ones step by step. This is at any rate better than your present refusal to recognize the problem and consider our proposals, and only giving me a reply about regulating minor works.

Secretary, I hope you can really summon up the courage. I know this is very difficult and I also understand very well that no one wants to touch this hot potato. However, if we do not deal with the problem, we will really fail an increasing number of families that may live in subdivided units in future. In addition, residents living in buildings with subdivided units are also subjected to a great deal of nuisance but unfortunately, I have no opportunity to talk about this today.

Secretary, I hope you will respond proactively to this problem raised by me later on.

NEXT MEETING

PRESIDENT (in Cantonese): It is now past 7:30 pm. Since I think the Council will not be able to complete the handling of this motion this evening, I now adjourn the Council until 11:00 am on Wednesday, 5 December 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 7:33 pm.

Annex II

Travel Industry Bill

Committee Stage

Amendments moved by the Secretary for Commerce and Economic Development

Clause	Amendment Proposed
2(1)	By deleting the definition of ***branch licence***.
2(1)	By deleting the definition of ***company*** and substituting— "***company*** (公司) means— (a) a company formed and registered under the Companies Ordinance (Cap. 622); (b) a company formed and registered under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622); or (c) a body corporate established or incorporated outside Hong Kong;".
2(1)	By deleting the definition of ***Mainland inbound tour group*** and substituting— "***Mainland inbound tour group*** (內地入境旅行團) means a tour group to Hong Kong from the Mainland;".
2(1)	By adding in alphabetical order— "***business permit*** (業務許可證) means a business permit issued under section 10(1); ***local place of business*** (本地營業地點) means a place of business in Hong Kong to which the public ordinarily have physical access; ***Mainland travel agent*** (內地旅行代理商) means a person who carries on the business of organizing Mainland inbound tour groups in the Mainland;".
4(1)(b)(ii)	By adding "whether or not through another person and" after "markets,".

4(4)(b) By deleting everything after "if" and substituting—

"—

(i) the person is the operator of the relevant accommodation; or

(ii) (whether or not subparagraph (i) is applicable) the relevant accommodation obtained by the person for the other person is intended to be occupied by that other person for 28 or more days;".

4(4)(c) By deleting everything after "if" and substituting—

"—

(i) the person is the operator of the relevant accommodation; or

(ii) (whether or not subparagraph (i) is applicable) the relevant accommodation obtained by the person for the visitor is intended to be occupied by that visitor for 28 or more days; or".

5 By deleting "a person in the Mainland" and substituting "a Mainland travel agent".

6 By adding before subclause (1)—

"(1A) In this section—

approved Mainland travel agent (核准內地旅行代理商) means a Mainland travel agent that is approved to carry on the business of organizing Mainland inbound tour groups by a regulatory organization in the Mainland that regulates the travel industry of the Mainland.".

6(2) By deleting paragraph (a) and substituting—

"(a) at any local place of business in respect of which the travel agent does not have a business permit; or".

6(2)(b) By deleting "or any branch licence".

6 By deleting subclause (3) and substituting—

"(3) A licensed travel agent must not obtain any of the services described in section 5(a), (b), (c) and (d) for a Mainland

inbound tour group organized by a Mainland travel agent unless the Mainland travel agent is an approved Mainland travel agent.".

6(5) By deleting paragraphs (a) and (b) and substituting—

"(a) all practicable steps were taken by the defendant to determine whether the Mainland travel agent was an approved Mainland travel agent; and

(b) it was reasonable for the defendant to determine that the Mainland travel agent was an approved Mainland travel agent.".

6(6) By deleting "fact" (wherever appearing) and substituting "matter".

7 By deleting subclause (2) and substituting—

"(2) An application for a travel agent licence—

(a) must be made to the Authority in the specified form;

(b) must state the correspondence address and electronic mail address of the applicant; and

(c) must be accompanied by—

(i) the prescribed fee; and

(ii) any document the Authority may require.".

8(2)(a) By deleting subparagraph (ii).

8(2)(a)(v) By adding "and" after "6;".

8(2)(a) By deleting subparagraph (vii).

9 By deleting the clause and substituting—

"**9. Application for business permit**

(1) If a licensed travel agent intends to carry on travel agent business at a local place of business, the travel agent may apply for a business permit in respect of that place.

(2) An application for a business permit—

(a) must be made to the Authority in the specified form;

(b) must state the address of the local place of business

at which the applicant intends to carry on travel agent business; and

(c) must be accompanied by—

(i) the prescribed fee; and

(ii) any document the Authority may require.".

10 By deleting the clause and substituting—

"**10. Issue of business permit**

(1) The Authority may, on application, issue a business permit to a licensed travel agent in respect of the local place of business stated in the application.

(2) The Authority must not issue a business permit unless—

(a) the applicant holds a valid travel agent licence;

(b) the Authority is satisfied that the local place of business stated in the application, and the location of the place, are suitable for travel agent business; and

(c) the applicant has paid the prescribed fee.

(3) A business permit—

(a) must be in the specified form; and

(b) must specify the address of the local place of business at which the applicant is permitted to carry on travel agent business.

(4) A business permit is not transferable.

(5) The Authority may, when issuing a business permit to the applicant, do one or more of the following—

(a) amend or remove the existing conditions of the travel agent licence of the applicant;

(b) impose new conditions on the travel agent licence.

(6) The Authority must specify in a business permit the validity period of the permit.

(7) The period specified under subsection (6) must not be longer than the validity period of the travel agent licence of the applicant.".

11 By deleting the clause and substituting—

"**11. What travel agent licence or business permit permits**

(1) A travel agent licence permits the person named in the licence to carry on travel agent business.

(2) A business permit permits the person named in the permit to carry on travel agent business at the local place of business specified in the permit.".

12 In the heading, by deleting "**branch licence**" and substituting "**business permit**".

12(1), (2) and (3) By deleting "branch licence" and substituting "business permit".

13 In the heading, by deleting "**branch licence**" and substituting "**business permit**".

13(1) By deleting "branch licence" and substituting "business permit".

14 In the heading, by deleting "**branch licence**" and substituting "**business permit**".

14(1) By deleting "branch licence" and substituting "business permit".

14(2)(a) By deleting subparagraph (i).

14(2)(a)(iii) By adding "and" after "6;".

14(2)(a) By deleting subparagraph (v).

14(3) By deleting "branch licence" and substituting "business permit".

14(3) By deleting paragraph (b) and substituting—

"(b) the Authority is satisfied that the local place of business stated in the application, and the location of the place, are suitable for travel agent business; and".

14 By deleting subclauses (4), (5), (6), (7), (8) and (9) and substituting—

"(4) A renewed travel agent licence must be in the specified form.

(5) A renewed business permit—

(a) must be in the specified form; and

(b) must specify the address of the local place of business at which the applicant is permitted to carry on travel agent business.

(6) A renewed travel agent licence or renewed business permit is not transferable.

(7) The Authority may impose on a renewed travel agent licence the conditions, including prescribed conditions, that it considers appropriate.

(8) The Authority may, when renewing a business permit of the applicant, do one or more of the following—

(a) amend or remove the existing conditions of the travel agent licence of the applicant;

(b) impose new conditions on the travel agent licence.

(9) The Authority must specify—

(a) the validity period of a renewed travel agent licence in the licence; and

(b) the validity period of a renewed business permit in the permit.

(10) The period specified under subsection (9)—

(a) for a renewed travel agent licence, must not be longer than 12 months beginning on the date on which the licence is renewed; or

(b) for a renewed business permit, must not be longer than the validity period of the travel agent licence of the applicant.

(11) A travel agent licence or business permit may be renewed more than once.".

15 In the heading, by deleting "**branch licence**" and substituting "**business permit**".

15(1), (2) and (3) By deleting "branch licence" and substituting "business permit".

16(1), (2) and (3) By deleting "branch licence" (wherever appearing) and substituting "business permit".

17(1), (2) and (3) — By deleting "branch licence" and substituting "business permit".

19 — In the heading, by deleting "**and branch licence**".

19 — By deleting subclause (1) and substituting—

"(1) In this section—

specified capital amount (指明資本額) means the amount specified in Schedule 5.".

19(2)(a), (b) and (c) — By deleting "basic" and substituting "specified".

19 — By deleting subclause (3).

Part 2 — By deleting Division 8.

36 — By deleting the clause and substituting—

"**36. Display of business permit etc.**

(1) If a business permit has been issued to a licensed travel agent, the travel agent must display the permit at a conspicuous part of the local place of business specified in the permit.

(2) No person may display a business permit at a local place of business unless—

(a) the permit is valid;

(b) the permit is issued to the person; and

(c) the local place of business is specified in the permit.

(3) If a licensed travel agent carries on travel agent business by using a website or any other communication network, the travel agent must clearly state the number of the travel agent's licence on the website or communication network.

(4) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 3.".

42 — By deleting subclause (3) and substituting—

"(3) An application for a tourist guide licence or tour escort licence—

(a) must be made to the Authority in the specified form;

(b) must state the correspondence address and electronic mail address of the applicant; and

(c) must be accompanied by—

(i) the prescribed fee; and

(ii) any document the Authority may require.".

43(2)(a) In the Chinese text, by deleting subparagraph (iv) and substituting—

"(iv) 申請人持有有效的急救技能證書或其他類似證明書，而該證書或證明書是由該局指明的機構發出的；".

44 In the heading, by deleting "**authorizes**" and substituting "**permits**".

44(1) and (2) By deleting "authorizes" and substituting "permits".

47(2)(a) In the Chinese text, by deleting subparagraph (iii) and substituting—

"(iii) 申請人持有有效的急救技能證書或其他類似證明書，而該證書或證明書是由該局指明的機構發出的；".

56 By deleting the clause and substituting—

"**56. Correspondence address and electronic mail address of licensee**

(1) The correspondence address and electronic mail address of a licensee are the correspondence address and electronic mail address stated in the application for the licensee's licence until the licensee notifies the Authority of a new correspondence address or new electronic mail address under subsection (2).

(2) If the correspondence address or electronic mail address of a licensee is changed, the licensee must, within 14 days after the change, notify the Authority in writing of the new correspondence address or new electronic mail address.".

58 In the heading, by deleting "**branch licence**" and substituting "**business permit**".

58	By deleting subclause (1) and substituting— "(1) The Authority may, on application by the person to whom a licence or business permit is issued, amend any particulars contained in the licence or permit.".
59	In the heading, by deleting "**branch licence**" and substituting "**business permit**".
59	By deleting subclause (1) and substituting— "(1) The Authority may, on application by the person to whom a licence or business permit is issued, issue a duplicate of the licence or permit.".
59(2), (3) and (4)	By deleting "branch licence" (wherever appearing) and substituting "business permit".
60	In the heading, by deleting "**branch licence**" and substituting "**business permit**".
60(1)(a), (b), (c) and (d)	By deleting "branch licence" and substituting "business permit".
62	By adding "or business permit" after "person's licence".
62	By adding "or permit" after "the licence".
64(2)	By deleting "or branch licence".
64(2)(a)	By adding— "(ia) the number of the licence; (ib) the correspondence address and electronic mail address of the licensee; (ic) if a business permit has been issued to the licensee, the address of the local place of business specified in the permit; and".
64(2)(a)	By deleting subparagraph (iii).
64(3)(a)(i)	By deleting "and".

64(3)(a) By adding—

"(ia) the number of the licence; and".

70(2) By adding before paragraph (a)—

"(aa) enter and inspect any local place of business if the inspector reasonably suspects that travel agent business is being carried on at that place;".

70(2)(a) By deleting subparagraph (i).

70(2)(c) By deleting subparagraph (i) and substituting—

"(i) any person at the local place of business referred to in paragraph (aa) to produce the business permit in respect of that place for inspection;".

75(1) By deleting paragraph (c) and substituting—

"(c) require any person at the local place of business at which the investigator reasonably suspects that travel agent business is being carried on to produce the business permit in respect of that place for inspection;".

89 In the Chinese text, by deleting subclause (1) and substituting—

"(1) 旅監局如認為，罷免紀律委員會某成員，會有利於該委員會有效執行職能，則可罷免該成員。".

90 By deleting the clause.

New By adding—

"**91A. Disciplinary committee may give general directions**

(1) The disciplinary committee may give general written directions on matters relating to the performance of functions by—

(a) the chairperson of the committee;

(b) any person exercising the functions of the chairperson of the committee under section 98 or 99; and

(c) an inquiry committee.

(2) The chairperson of the disciplinary committee, the person

referred to in subsection (1)(b) and an inquiry committee must act in accordance with the directions.".

108(1)(g) and (h) By adding "or business permit" after "licence".

115 By deleting the clause and substituting—

"**115. Effect of revocation or suspension of travel agent licence**

(1) This section applies to a person whose travel agent licence is revoked or suspended under this Part.

(2) The revocation or suspension of the person's travel agent licence does not operate to avoid or affect any right, obligation or liability under any agreement, transaction or arrangement relating to the provision of a travel service—

(a) that is entered into by the person at any time before the revocation or suspension; and

(b) in relation to which a sum of money has been paid at any time before the revocation or suspension.

(3) Despite section 62, when the person acts for the purpose of complying with the person's obligation or liability under any agreement, transaction or arrangement mentioned in subsection (2) after the revocation or during the period of suspension, the person—

(a) is not to be regarded as contravening section 6(1) for carrying on travel agent business without licence; and

(b) must comply with the requirements of this Ordinance applicable to a licensed travel agent.".

117 By adding before subclause (1)—

"(1A) A legal adviser appointed under section 105(1)(f) may be present at any inquiry before an inquiry committee or deliberations of the committee to advise the committee.".

117(1) By deleting "a legal adviser appointed under section 105(1)(f) advises an" and substituting "the legal adviser advises the".

120 In the Chinese text, by deleting subclause (1) and substituting—

"(1) 局長如認為，罷免上訴委員團某成員，會有利於該委員團有效執行職能，則可罷免該成員。".

121(1)(a) By deleting "branch licence" and substituting "business permit".

121(1) By deleting paragraph (b) and substituting—

"(b) a decision to impose conditions on a licence or renewed licence;".

121(1)(c) By deleting "or branch licence".

121(1)(d) By adding "or business permit" after "licence".

121(1)(i) By deleting "107(2)" and substituting "107(1)".

121 By deleting subclause (3) and substituting—

"(3) The chairperson of the appeal panel may in a particular case extend the period specified in subsection (2) if the chairperson considers it appropriate to do so.".

122(2)(a) By deleting "the" and substituting "a".

122(3) By deleting paragraph (a) and substituting—

"(a) the chairperson of the board and at least half of the ordinary members are non-trade members;

(ab) at least one of the ordinary members is a trade member; and".

128(2) By deleting "determine the appeal without a hearing" and substituting "hear an appeal".

128(3) By deleting "summarily in favour of the appellant without a hearing" and substituting "in favour of the appellant".

137 By adding before subclause (1)—

"(1A) A legal adviser appointed under section 128(1)(f) may be present at any hearing before an appeal board or deliberations of the board to advise the board.".

137(1) By deleting "a legal adviser appointed under section 128(1)(f) advises an appeal" and substituting "the legal adviser advises the".

153(2)(g) In the Chinese text, by deleting "遊" and substituting "行".

163(6) By deleting "fact" (wherever appearing) and substituting "matter".

164(d)(i), (ii), (iii) and (iv) By deleting "branch licence" and substituting "business permit".

164(e)(i) By deleting "branch licence" and substituting "business permit".

164 By deleting paragraph (f) and substituting—

"(f) to prescribe the conditions that may be imposed on a licence or renewed licence;".

164(g) By deleting "branch licence" (wherever appearing) and substituting "business permit".

165 By deleting subclauses (2), (3) and (4) and substituting—

"(2) A person commits an offence if the person—

(a) publishes, or causes to be published, an advertisement (in whatever form) relating to the provision of a travel service by the person or another person who—

(i) under this Ordinance, is required to hold a travel agent licence; but

(ii) is not a licensed travel agent; and

(b) knows that the person or the other person is not a licensed travel agent, or is reckless as to whether the person or the other person is a licensed travel agent.

(3) A person commits an offence if the person—

(a) publishes, or causes to be published, an advertisement (in whatever form) that—

(i) relates to the provision of a travel service by a licensed travel agent; but

(ii) does not clearly state the number of the travel agent's licence; and

(b) knows that the advertisement does not clearly state the

number of a licensed travel agent's licence, or is reckless as to whether the advertisement clearly states the number of a licensed travel agent's licence.

(4) A person who commits an offence under subsection (2) or (3) is liable on conviction to a fine at level 1.".

165 By deleting subclause (5).

167 By deleting the clause and substituting—

"**167. Service of notices or summonses**

(1) A notice or summons required to be served on a licensee under this Ordinance is to be regarded as duly served if—

(a) it is delivered to the licensee personally; or

(b) it is—

(i) left at, or sent by post to, the licensee's correspondence address; and

(ii) sent by electronic means to the licensee's electronic mail address.

(2) A notice or summons required to be served on a person other than a licensee under this Ordinance is to be regarded as duly served if—

(a) it is delivered to the person personally; or

(b) it is—

(i) left at, or sent by post to, the person's last known address (if available); and

(ii) sent by electronic means to the person's last known electronic mail address (if available).".

Schedule 1 In the heading, by deleting "**Branch Licence**" and substituting "**Business Permit**".

Schedule 1 By deleting section 1(1) and substituting—

"(1) For the purposes of section 13(2)(a), an application for the renewal of a travel agent licence or business permit must be made not more than 2 months and not less than 1 month before the expiry of the licence or permit.".

Schedule 5 By deleting the Schedule and substituting—

"**Schedule 5**

[ss. 19 & 170]

Capital Requirement

$500,000".

Schedule 9 By deleting section 1(4)(b) and (c) and substituting—

"(b) the Chairperson and not more than 15 ordinary members are non-trade members;

(c) at least 4 but not more than 13 ordinary members are trade members;

(d) non-trade members are appointed either because of their knowledge in law, accountancy, finance, insurance, education, consumer affairs or general administration, or because of their professional or occupational experience; and

(e) among the trade members who are appointed as ordinary members—

(i) at least one but not more than 3 are engaged in the outbound travel agent business;

(ii) at least one but not more than 3 are engaged in the inbound travel agent business;

(iii) at least one but not more than 3 are members of the Board of Directors of the Travel Industry Council; and

(iv) at least one but not more than 4 work as tourist guides or tour escorts.".

Schedule 9 In the Chinese text, by deleting section 4(1) and substituting—

"(1) 行政長官如認為，罷免根據本附表第 1(2)條委任的旅監局某成員，會有利於該局有效執行職能，則可罷免該成員。".

Schedule 9, section 14(1) By deleting "A" and substituting "Subject to subsection (6), a".

Schedule 9 By deleting section 14(7) and substituting—

"(7) A request under subsection (6) must be made within the period specified in the notice given under subsection (1)(b).".

Schedule 9 By deleting section 16 and substituting—

"**16. Decisions not invalidated by defects in appointment etc.**

Decisions of the Authority are not invalidated solely by—

(a) a defect in the appointment of a member of the Authority;

(b) a vacancy among the members of the Authority;

(c) the absence of a member of the Authority from the meeting at which the decision was taken; or

(d) any omission, defect or irregularity in the procedures adopted by the Authority that does not affect the decision taken.".

Schedule 9 In the Chinese text, by deleting section 29(1) and substituting—

"(1) 旅監局如認為，罷免委員會某成員，會有利於該委員會有效執行職能，則可罷免該成員。".

Schedule 9, section 31(1) By deleting "A" and substituting "Subject to subsection (6), a".

Schedule 9 By deleting section 31(7) and substituting—

"(7) A request under subsection (6) must be made within the period specified in the notice given under subsection (1)(b).".

Schedule 10, section 1 By adding in alphabetical order—

"***duplicate licence*** (牌照複本) means a duplicate of a previous licence to permit the holder of the previous licence to carry on the business of a travel agent at an additional address;

pre-existing duplicate licence (原有牌照複本) means a duplicate licence that is valid immediately before the commencement date of Part 2 of this Schedule;".

Schedule 10 By deleting section 3(1) and substituting—

"(1) If a person holds a pre-existing licence—

(a) on and after the commencement date, the pre-existing licence is taken to be a travel agent licence combined with business permit and, accordingly, the person is taken to be a licensed travel agent until the expiry of—

(i) the pre-existing licence; or

(ii) 3 months after the commencement date,

whichever is the later; and

(b) if the person also holds a pre-existing duplicate licence, on and after the commencement date, the pre-existing duplicate licence is taken to be a business permit until the expiry of—

(i) the pre-existing duplicate licence; or

(ii) 3 months after the commencement date,

whichever is the later.".

Schedule 10, section 4(2) By adding "and a business permit" after "licence".

Schedule 10, section 5(2) By adding "and a business permit" after "licence".

Schedule 10 By deleting section 7(2) and substituting—

"(2) If, on the expiry of the suspension period, the previous licence is revived—

(a) the previous licence is taken to be a travel agent licence combined with business permit and, accordingly, the holder of the previous licence is taken to be a licensed travel agent until the expiry of—

(i) the previous licence; or

(ii) 3 months after the commencement date,

whichever is the later; and

(b) if the holder of the previous licence also holds a duplicate licence, the duplicate licence is taken to be a business permit until the expiry of—

(i) the duplicate licence; or

(ii) 3 months after the commencement date,

whichever is the later.".

Schedule 10, section 7(3) By deleting "the previous licence is resumed" and substituting "the licence is revived".

Schedule 10, section 11(2)(a)

By adding "and a business permit" after "licence".

Schedule 10

By deleting section 11(3) and substituting—

"(3) If a previous licence is revived under subsection (2)(d)—

(a) the previous licence is taken to be a travel agent licence combined with business permit and, accordingly, the holder of the previous licence is taken to be a licensed travel agent until the expiry of—

(i) the previous licence; or

(ii) 3 months after the commencement date,

whichever is the later; and

(b) if the holder of the previous licence also holds a duplicate licence, the duplicate licence is taken to be a business permit until the expiry of—

(i) the duplicate licence; or

(ii) 3 months after the commencement date,

whichever is the later.".

Schedule 10, section 11(4)

By deleting "a licence" and substituting "a previous licence".

Schedule 10, section 11(4)

In the English text, by deleting "resumed" and substituting "revived".

Schedule 10, section 12(1)(a)

By deleting "3(1), 7(2) or 11(3)" and substituting "3(1)(a), 7(2)(a) or 11(3)(a)".

Schedule 10, section 14(1)

In the English text, by deleting everything after "until" and substituting—

"the expiry of—

(a) the pass; or

(b) 3 months after the commencement date,

whichever is the later.".

Schedule 10, section 15(1)

In the English text, by deleting everything after "until" and substituting—

"the expiry of—

(a) the pass; or

(b) 3 months after the commencement date,

whichever is the later.".

Schedule 10, section 21(2) and (3)

In the English text, by deleting everything after "until" and substituting—

"the expiry of—

(a) the pass; or

(b) 3 months after the commencement date,

whichever is the later.".

Schedule 10, section 21(2), (3), (4) and (5)

In the English text, by deleting "resumed" and substituting "revived".

Schedule 10, section 21(4) and (5)

In the Chinese text, by deleting "在根據" and substituting "在".

Schedule 10

In the Chinese text, by deleting section 25(3)(c) and substituting—

"(c) 申請人持有有效的急救技能證書或其他類似證明書，而該證書或證明書是由該局指明的機構發出的；".

Schedule 10

In the Chinese text, by deleting section 26(3)(c) and substituting—

"(c) 申請人持有有效的急救技能證書或其他類似證明書，而該證書或證明書是由該局指明的機構發出的；及".

Schedule 10, section 32

By adding—

"(3) Without limiting subsection (2), if the Authority is satisfied that an application referred to in subsection (1)(c)(ii) for a duplicate licence complies with the repealed Ordinance, the Authority may issue a business permit to the applicant.".

Schedule 10, section

By adding "or duplicate licence" after "licence".

38(1)(b)(i)	
Schedule 10, section 38(1)(c)(i)	By deleting "3(1), 7(2) or 11(3)" and substituting "3(1)(a), 7(2)(a) or 11(3)(a)".
Schedule 11, section 3	By adding "**and subsidiary legislation made under the Ordinance**" after "the **Ordinance**".

Travel Industry Bill

Committee Stage

Amendments moved by the Honourable LUK Chung-hung

Clause	Amendment Proposed
37 NEGATIVED	By deleting the clause and substituting— "**37. Display of information about tour group** (1) If a licensed travel agent arranges a vehicle for transporting a tour group, it must display, in the prescribed way, the prescribed information about the tour group on the vehicle. (2) If a licensed travel agent has not arranged a tour escort to accompany an outbound tour group, it must display, in the prescribed way, the prescribed information to the participants of the tour group. (3) A licensed travel agent who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 1.".
38 NEGATIVED	By deleting subclause (2) and substituting— " (2) A person works as a tourist guide if the person is employed by a licensed travel agent and accompanies a visitor to Hong Kong for the purpose of providing any guiding service to the visitor in accordance with the directions of another person who is carrying on the business of the travel agent (whether or not that other person is a licensed travel agent).".
39 NEGATIVED	By deleting the clause and substituting— "**39. Meaning of working as tour escort** A person works as a tour escort if the person is

employed by a licensed travel agent and accompanies an outbound tour group on a journey for the purpose of taking care of the participants of the tour group during the journey in accordance with the directions of another person who is carrying on the business of the travel agent (whether or not that other person is a licensed travel agent).".