

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 3 March 2010

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S., S.B.ST.J.,
J.P.

THE HONOURABLE LEE CHEUK-YAN

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, S.B.S., J.P.

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, G.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

THE HONOURABLE LI FUNG-YING, B.B.S., J.P.

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

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING

THE HONOURABLE CHAN HAK-KAN

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

MEMBERS ABSENT:

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

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

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

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

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

THE HONOURABLE CHEUNG HOK-MING, G.B.S., J.P.

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE HENRY TANG YING-YEN, G.B.M., G.B.S., J.P.

THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE STEPHEN LAM SUI-LUNG, G.B.S., J.P.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

THE HONOURABLE AMBROSE LEE SIU-KWONG, G.B.S., I.D.S.M., J.P.

SECRETARY FOR SECURITY

DR THE HONOURABLE YORK CHOW YAT-NGOK, G.B.S., J.P.

SECRETARY FOR FOOD AND HEALTH

THE HONOURABLE TSANG TAK-SING, J.P.

SECRETARY FOR HOME AFFAIRS

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

SECRETARY FOR LABOUR AND WELFARE

PROF THE HONOURABLE K C CHAN, S.B.S., J.P.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

(am of 3.3.2010)

MS JULIA LEUNG FUNG-YEE, J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY
(pm of 3.3.2010)

THE HONOURABLE MRS CARRIE LAM CHENG YUET-NGOR, J.P.
SECRETARY FOR DEVELOPMENT

THE HONOURABLE EVA CHENG, J.P.
SECRETARY FOR TRANSPORT AND HOUSING

MISS ADELINE WONG CHING-MAN, J.P.
UNDER SECRETARY FOR CONSTITUTIONAL AND MAINLAND
AFFAIRS

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

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

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

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Public Revenue Protection Order 2010.....	18/2010
Rating (Exemption) Order 2010.....	19/2010
Revenue (Reduction of Business Registration Fees) Order 2010	20/2010
Dutiable Commodities (Amendment) Regulation 2010	21/2010
Designation of Libraries Order 2010	22/2010

Other Papers

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|--------|---|--|
| No. 74 | — | Hong Kong Council for Accreditation of Academic and Vocational Qualifications Annual Report 2008-2009 |
| No. 75 | — | Estimates
for the year ending 31 March 2011
General Revenue Account
- Consolidated Summary of Estimates
- Revenue Analysis by Head |

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Procedures for Voting on Motions and Bills in Legislative Council

1. **DR LEUNG KA-LAU** (in Cantonese): *According to Annex II to the Basic Law, the passage of bills introduced by the Government shall require at least a simple majority vote of the Members of the Legislative Council present. The passage of motions, bills or amendments to government bills introduced by individual Members of the Legislative Council shall require a simple majority vote of each of the two groups of Members present: Members returned by functional constituencies and those returned by geographical constituencies through direct elections (directly elected Members). In this connection, will the Government inform this Council:*

- (a) *whether it knows the justifications for the Basic Law stipulating different procedures for voting on bills introduced by the Government and by individual Members of the Legislative Council respectively;*
- (b) *of the following data in each of the past three legislative sessions:*
 - (i) *regarding voting on motions introduced by the Government under the positive vetting procedure, the respective numbers of those which were by division and those which were not; and among the motions on which a division had been held, the number of those that failed to obtain a majority vote of the directly elected Members present; and*
 - (ii) *regarding voting on government bills at different stages (including Second Reading, Committee stage and Third Reading), the respective numbers of those which were by division and those which were not, as well as those that failed to obtain a majority vote of the directly elected Members present; and*

- (c) *whether it will consider proposing that the Basic Law be amended to unify the procedures for voting on bills introduced by the Government and those by Members of the Legislative Council, so that the implementation of government policies can follow public opinions more closely?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President,

- (a) On 28 March 1990, Mr JI Pengfei, the Chairman of the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China, addressed the Third Session of the Seventh National People's Congress (NPC) when submitting the Basic Law (Draft) and related documents. Mr JI made the following explanations regarding the procedures for voting in the Legislative Council, as prescribed in Annex II to the Basic Law:

"Annex II also stipulates that different voting procedures shall be adopted by the Legislative Council in handling bills introduced by the Government and motions and bills introduced by individual Members of the Legislative Council. The passage of bills introduced by the Government requires a simple majority vote of the Members of the Legislative Council present. The passage of motions, bills or amendments to government bills introduced by individual Members of the Legislative Council requires at least a simple majority vote by each of the two groups of Members present, that is, Members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee. Such provisions take into consideration the interests of all social strata and will prevent endless debates over government bills, thus helping the Government work with efficiency."

- (b) The Administration does not keep any statistics on the Legislative Council's voting results on motions and bills introduced by the Government. In response to the question raised by Dr LEUNG Ka-lau, we have reviewed the minutes and voting results of a total of

110 Legislative Council meetings in the three legislative sessions of 2006-2007, 2007-2008 and 2008-2009, and compiled statistics on the voting results on government motions under the positive vetting procedure, as well as the voting results on the Second Reading and Third Reading of government bills. The relevant data are set out at Annex 1 and Annex 2 respectively for Members' reference. All these motions and bills have been passed.

As regards statistics on the Legislative Council's voting during the Committee stage, a bill may involve many occasions of voting during the Committee stage. Some individual bills had even involved as many as over 100 times of voting during the Committee stage. Compilation of the relevant data involves an extensive review of a large amount of information. We are, therefore, unable to provide the data required. We trust that the statistics on the voting results on the Second Reading and Third Reading of government bills as set out at Annex 2 would enable Members to have a general picture of the situation on the Legislative Council's voting results relating to government bills.

- (c) According to Article 68 of the Basic Law, the procedures for voting on bills and motions in the Legislative Council are prescribed in Annex II to the Basic Law. Annex II to the Basic Law has prescribed the relevant procedures. The Basic Law is the constitutional law of the HKSAR and should not be amended lightly. Moreover, the decision of the Standing Committee of the NPC on 29 December 2007 has made it clear that the procedures for voting on bills and motions in the Legislative Council shall remain unchanged for the Legislative Council formed in 2012. The HKSAR Government will not consider any change to the mechanism.

The HKSAR Government will continue to listen to the views of the public closely and give them careful consideration. The HKSAR Government will also consider carefully Legislative Council Members' suggestions when taking forward the legislative work, so that our governance can better meet the public's aspirations.

Annex 1

Statistics on voting by Legislative Council on government motions
under the positive vetting procedure

<i>Legislative session</i>	<i>Number of motions</i>	<i>Number of voting where no division was claimed</i>	<i>Number of voting where division was claimed</i>	<i>Number of voting where division was claimed and a majority vote of directly elected Members present was not obtained</i>
2006-2007	21	18	3	1
2007-2008	16	16	0	-
2008-2009	21	18	3	1

Annex 2

Statistics on Legislative Council's voting
on the Second Reading and Third Reading of government bills

<i>Legislative Session</i>	<i>Number of bills</i>	<i>Second Reading</i>			<i>Third Reading</i>		
		<i>Number of voting where no division was claimed</i>	<i>Number of voting where division was claimed</i>	<i>Number of voting where division was claimed and a majority vote of directly elected Members present was not obtained</i>	<i>Number of voting where no division was claimed</i>	<i>Number of voting where division was claimed</i>	<i>Number of voting where division was claimed and a majority vote of directly elected Members present was not obtained</i>
2006-2007	19	12	7	2	15	4	1
2007-2008	31	27	4	2	24	7	1
2008-2009	11	9	2	1	10	1	1

DR LEUNG KA-LAU (in Cantonese): *According to the Secretary's reply, the justification for the stipulation was put forth 20 years ago. According to the Annex provided by the Secretary in relation to part (b) of the question, there was only one motion in each of the three years where division was claimed and a majority vote of directly elected Members was not obtained. It appears that the "endless debates" were only a worry at the time that has never come true. The Government is now conducting consultation on constitutional reform, and the separate voting procedures of the Legislative Council are indeed one of the most frustrating issues. Although it is said that no amendment should be introduced lightly, it is high time to consider this issue. Thus, may I ask the Government whether consideration will be given to addressing the issue of separate voting? In fact, when it comes to unifying the procedures, two options can be considered. The first is abolishing the separate voting procedures. The second is requiring government bills and Members' bills to undergo the same procedure of separate voting. Will the Government consider this suggestion during the consultation on constitutional reform?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I appreciate the Member's question. Every few years or so, the issue of constitutional reform is brought up for discussions inside or outside this Council, and proposals for reviewing the stipulation on separate voting are raised. Regarding the method for forming the Legislative Council in 2012 and the related provisions, the Standing Committee of the NPC already made a decision on 29 December 2007. There shall be no change to the procedures for voting on motions and bills during the term of the Legislative Council formed in 2012. As far as this issue is concerned, we certainly respect Members' views, but a constitutional stipulation already exists.

MR LEE WING-TAT (in Cantonese): *President, separate voting is clearly in contravention of the principle of fairness. In the most extreme case, all it needs is 15 functional constituency representatives and despite their limited representativeness, all it needs is to have 15 functional constituency Members voting in opposition to a motion and the motion will be voted down even though it is supported by all the directly elected Members returned by over 1 million electors. Although this issue is not included in this round of consultation, may I*

ask Secretary Stephen LAM whether he, as a Bureau Director, thinks that we should now start discussing or reviewing this practice, which has long violated the principle of fairness?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, actually, I have explained to Members in the main reply the policy principles and constitutional rationale underlying the Basic Law promulgated in 1990. Chairman JI Pengfei made this clear when he submitted the report to the Standing Committee of the NPC. I saw two central and guiding concepts in his remark. The first is an executive-led system. According to the Basic Law, the executive and the legislature of Hong Kong shall co-ordinate with and regulate each other. Bills, budgets and motions introduced to the Legislative Council by the HKSAR Government have to be passed by a simple majority (over 50%) of the Members of this Council before they can be taken forward for implementation. This is an appropriate arrangement.

The second central concept is balanced participation. Because of these concepts, the legislature formed under the Basic Law is made up of Members returned by direct elections held in geographical constituencies as well as Members representing different functional constituencies. Hence, the passage of motions proposed by individual Members need to secure the support of Members representing geographical constituencies as well as those representing functional constituencies. This is meant to ensure that proposals in Members' motions can represent the wide consensus in society, and this will also facilitate the follow-up and implementation of proposals. Hence, the two concepts of an executive-led system and balanced participation are very important, and they still apply now.

MR LEUNG YIU-CHUNG (in Cantonese): *President, in reply to Mr LEE Wing-tat's question just now, the Secretary stated that one of the concepts is balanced participation. But the effect and outcome of balanced participation are neither fair, just, nor democratic. The Basic Law clearly sets out that the entire political structure or system of Hong Kong will move towards democracy. In part (c) of his main reply to Dr LEUNG Ka-lau's question, the Secretary said that the HKSAR Government will not consider any change to the mechanism. When he said the Government "will not consider", does it mean no consideration for the time being, or no consideration forever? If there will never be any*

consideration, why is the expression "will not consider" used? Why does he not say that it will not consider any change for the time being? If the Government will give consideration to it, which means that it will do so in the future, then when does "future" mean?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, before I answer Mr LEUNG's supplementary question, would Members please refer to the relevant paragraph of my main reply. Before the phrase "will not consider", I made it a point to explain the decision of the Standing Committee of the NPC made on 29 December 2007, which makes it clear that the procedures for voting on bills and motions in the Legislative Council should remain unchanged for the Legislative Council formed in 2012. Thus, my reply refers directly to the arrangements for forming the Legislative Council in 2012; and, I have also explained to Member on different occasions that what the third HKSAR Government is authorized to do is to formulate the methods for holding the two elections in 2012, that is, the election of the Chief Executive and that of the Legislative Council. And, what I explain to Members today is the decision of the Standing Committee of the NPC made in December 2007 concerning the forming of the Legislative Council in 2012.

PRESIDENT (in Cantonese): Mr LEUNG, which part of your supplementary question has not been answered?

MR LEUNG YIU-CHUNG (in Cantonese): *President, although the preceding part mentioned the forming of the Legislative Council, Members are well aware that in fact*

PRESIDENT (in Cantonese): Mr LEUNG, you can only state concisely the part of the supplementary question which has not been answered by the Secretary.

MR LEUNG YIU-CHUNG (in Cantonese): *The part the Secretary has not answered is: the mechanism for forming the Legislative Council aside, in respect*

of the voting mechanism, that is, the mechanism of separate voting by Members returned by functional constituencies and those by geographical constituencies.

PRESIDENT (in Cantonese): Which part has the Secretary failed to answer anyway?

MR LEUNG YIU-CHUNG (in Cantonese): *He has not answered me whether the case is no consideration for the time being, or whether there is going to be no consideration in the future either. If the latter is the case, when will the matter be considered? He has not answered this part of the question.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I thought I had already answered Mr LEUNG's supplementary question. Our present job is to formulate the method for forming the Legislative Council in 2012, and it is clearly set out in the decision of the Standing Committee of the NPC made in December 2007 that the constitutional arrangement and the principle for the voting procedures on bills and motions in the Legislative Council shall remain unchanged.

DR MARGARET NG (in Cantonese): *President, separate voting is obviously an unfair system, especially because functional constituency Members are now elected by some 200 000 electors — in other words, by a very small number of people. But in effect, they can reject the wishes of Members directly elected by over 3.3 million electors. Hence, this system is obviously unfair, and it will undermine the credibility of the voting results. If the credibility of voting results is undermined, the legitimacy of the government decisions passed is questionable. As this is such a serious problem, why have the authorities not considered making changes at all? Will you consider these problems? These are not our problems, but problems concerning the Government's credibility and legitimacy in society. Why do the authorities still maintain this system and refuse to do something to change it?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I wish to raise three points in my answer to Dr NG's supplementary question. First, in Hong Kong, the motions, bills and budgets introduced by the HKSAR Government are all considered, scrutinized and voted on by Members openly in this Council. The process is transparent and through the mass media, the details are explained to the public. This can help establish the credibility of decisions made by us in this Council. Second, the scrutiny and voting procedures of bills and motions are conducted according to Annex II to the Basic Law, and this is in itself a constitutional arrangement. On the whole, society and the people of Hong Kong accept that the provisions of the Basic Law should be based on for the implementation of "one country, two systems" with "a high degree of autonomy" in Hong Kong, and the same applies to the forming of the Legislative Council and the stipulations on the voting procedures. Third, we need to progressively take forward the democratic development in Hong Kong and we have proposed a direction for forming the Legislative Council in 2012. For the election of the Legislative Council in 2012, Members may consider Despite the fact that 50% of the Members of the Legislative Council will still be returned by geographical constituencies through direct elections and the other 50% by functional constituency elections, Members can see clearly from the public consultation we conducted in the past three months that the additional seats returned by functional constituencies as proposed by the Government shall be elected among directly-elected District Council members. Hence, we do earnestly hope to achieve progress in democratization.

PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered?

DR MARGARET NG (in Cantonese): *My question is very simple. Separate voting directly undermines the Government's credibility, but why has he not done anything about separate voting? I have not asked him whether the public accept the Basic Law, or what should be done to achieve progress in democratization.*

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, all I can add is that I think all bills, motions and budgets introduced to the Legislative Council by the Government are scrutinized by all Members of this Council and the public are able to see the entire scrutiny process and know the justifications for the decisions made. All this can help our policies and bills to win public acceptance and credibility.

DR RAYMOND HO (in Cantonese): *President, may I ask the Secretary whether he agrees that any political reform has to take account of the following: first, the Basic Law, which overrides all local legislation of the HKSAR; second, the decisions made by the Standing Committee of the NPC; third, the balanced participation and interests of all social strata; and the power to interpret the Basic Law in Article 158 rests with the Standing Committee of NPC, whereas the power to amend the Basic Law in Article 159 rests with the NPC? Regarding the consideration of public opinions, may I ask the Secretary whether he thinks that the public have a good understanding in this regard? If they do not, can he step up publicity and education in this regard?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, Dr Raymond HO's question is about the need for amendments to the constitutional system to be made according to the Basic Law. This is a must. We must follow three important stipulations and principles when handling issues relating to political development. First, we must observe the relevant provisions in the Basic Law. Second, according to Articles 45 and 68 of the Basic Law, we need to follow the principle of gradual and orderly progress and take into consideration the actual situation in Hong Kong, and handle matters in a way that is conducive to the continuous development of a capitalist system in Hong Kong and upholds the principle of balanced participation. Third, when universal suffrage is implemented in the future, it must comply with the principle of equal and universal suffrage.

When we introduce a proposal for each election to the Legislative Council for scrutiny, we have to secure the support of a two-thirds majority of all the Members for its passage. Apart from the views of the Legislative Council, those of different sectors of the community and the public are also very important. This is why in the public consultation conducted in the past three months we

attached great importance to the opinion polls conducted by various universities and research institutes. Moreover, different sectors of the community have also conducted their own opinion polls and Members returned by functional constituencies, including Dr HO and other Members, have also reflected the views of their constituencies to us.

However, regarding this main question today, I must say that the arrangement of separate voting in the Legislative Council will be maintained in 2012 as prescribed in the Annex II to the Basic Law and according to the decision made by the Standing Committee of the NPC in December 2007. This arrangement is a constitutional stipulation and Hong Kong must continue to carry out work on this basis.

PRESIDENT (in Cantonese): This Council has spent more than 21 minutes on this question. Second question.

Taking out Third Party Risks Insurance for Vehicles by Owners

2. **MR CHAN KIN-POR** (in Cantonese): *President, according to the statistics of the Motor Insurers' Bureau of Hong Kong (MIB), there were a total of 82 claims between 2004 and 2008 in which the vehicles concerned were not covered by third party risks insurance and the MIB was required to make compensations amounting to more than \$84 million to the victims. Some members of the trade have indicated that since the present source of the compensation fund is the levy on third party risks insurance premiums, this has resulted in vehicle owners who have taken out the said insurance subsidizing those who have not. They are also of the view that the number of uninsured vehicles uncovered by their involvement in traffic accidents only takes up a small proportion of that of uninsured vehicles at present. In this connection, will the Government inform this Council:*

- (a) *of the number of vehicle owners who were prosecuted in each of the past five years for using or permitting others to use their vehicles which had not been insured against third party risks as required by the existing legislation, as well as the penalty imposed on those who were convicted;*

- (b) *whether or not the police have, when investigating into traffic accidents involving uninsured vehicles, looked into the reasons for vehicle owners not taking out third party risks insurance and whether or not the authorities have, in the past two years, assessed if the penalty imposed on such owners by the existing legislation has sufficient deterrent effect; and*
- (c) *what new measures the Government has to ensure that vehicle owners will comply with the law and take out third party risks insurance?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):

President, my reply to the three parts of the question is as follows:

- (a) According to section 4 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (the Ordinance) (Cap. 272), it is unlawful for any person to use or permit any other person to use a motor vehicle on a road unless the vehicle concerned is covered by valid third party risks insurance. Offenders are liable to a fine of \$10,000 and an imprisonment of 12 months on conviction. In each of the past five years, the number of cases involving vehicle owners or drivers being prosecuted for related offences ranged from some 400 to some 600 and the figures for 2005, 2006, 2007, 2008 and 2009 are 691, 628, 653, 507 and 422 respectively. As regards penalty, fines ranged from \$300 to \$10,000, imprisonment terms from four weeks to six months and disqualification from driving from two to 24 months had been imposed in such cases.
- (b) As shown by number of prosecutions instituted over the past five years, the number of cases involving the failure to take out third party risks insurance shows a downward trend and it drops from 691 in 2005 to 422 in 2009. Compared to about 600 000 vehicles and 1.7 million licensed drivers in Hong Kong, the number of people prosecuted for offences relating to the failure to take out third party risks insurance is indeed extremely small. The relevant figures reveal that a large majority of vehicle owners have taken out third party risks insurance in accordance with the law. Some vehicle

owners may not have taken out third party risks insurance due to negligence and in this circumstance, their vehicle licences may normally have expired as well. Some vehicle owners may have been suspended from driving or do not possess a valid driving licence and at the same time, they have not taken out third party risks insurance. In addition, when the police investigate into traffic accidents, traffic offences not involving fixed-penalty tickets or other criminal offences (for example, theft of vehicle), they will also follow up the issue of whether or not the vehicles concerned are covered by third party risks insurance at the same time. If there is sufficient evidence, the police will institute prosecutions.

- (c) According to section 4 of the Ordinance, it is unlawful for any person to use or permit any other person to use a motor vehicle on a road unless the vehicle concerned is covered by valid third party risks insurance. Taking out third party risks insurance is the responsibility of vehicle owners. Offenders against this provision, apart from being sentenced to the abovementioned penalty, may be disqualified from holding or obtaining a driving licence by the Court. Furthermore, as stipulated in section 25(1) of the Road Traffic Ordinance (Cap. 374), the Commissioner for Transport may refuse to issue a licence to, or may cancel the licence of, a motor vehicle not covered by valid third party risks insurance. At present, when applying for vehicle licences and the renewal of the same, applicants must produce a valid insurance policy and provide information on any valid third party risks insurance, including the name of the insurance company, the name of the policy holder, as well as the number and expiry date of the insurance policy/cover note. All the above penalty and requirements have certain deterrent effect, ensuring that vehicle owners have taken out insurance.

Depending on the circumstances and needs of individual vehicle owners (for example, a change in insurance company, the vehicle concerned is registered for short-term ownership or trading purposes and so on), the validity period of the policy concerned may not completely tie in with that of the vehicle licence. In these circumstances, we will, in the course of processing applications for vehicle licences, remind applicants to renew their insurance policies

to ensure that their vehicles, when being used on a road, are covered by valid third party risks insurance.

In addition, we will maintain liaison and co-operate with the insurance sector from time to time, with a view to enhancing the publicity efforts regarding the requirements for third party risks insurance. We also understand that generally, insurance companies will remind vehicle owners to renew their insurance policies as appropriate.

MR CHAN KIN-POR (in Cantonese): *As mentioned in the main reply, several hundred prosecutions were brought against vehicle owners every year. I believe the number of cases in which no prosecution has been instituted is even higher and there may possibly be thousands of such cases. May I ask the Government whether or not it will try to gain a thorough understanding of the reasons for not taking out third party risks insurance by, for example, examining cases of claims lodged with the MIB, so as to understand what happened, then launch some target-specific measures?*

PRESIDENT (in Cantonese): Which Secretary will give an answer?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, perhaps I will give an answer first, and then I will see if Secretary Prof CHAN has anything to add.

We are willing to explore any effective measures. Certainly, as I said just now, according to the current procedure, applicants are already required to provide various kinds of information when applying for or renewing vehicle licences. As for giving reminders to vehicle owners, we are already doing this. In particular, when we find a discrepancy between the valid period of their insurance policies and that of their vehicle licences, we will remind them. Moreover, except for cases involving fixed-penalty tickets, the police will ascertain whether or not vehicle owners have taken out third party risks insurance in other circumstances, such as in traffic accidents or other relevant law-enforcement operations. On publicity and education, we are willing to

co-operate with the insurance sector. If further information comes to our attention, we are prepared to take further target-specific measures. Is there anything else that Secretary Prof CHAN would like to add?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, where necessary, the MIB may furnish information and figures on cases in which no third party risks insurance policies were taken out.

DR SAMSON TAM (in Cantonese): *May I ask the Government whether or not it knows the actual number of vehicles not covered by third party risks insurance at present? As indicated in the main reply given by the Secretary earlier, the number of prosecutions ranged from 400 to 600. However, what is the total number of traffic accidents or that of prosecutions each year? If we can work out the proportion, we may be able to estimate the number of vehicles not covered by third party risks insurance at present. Has the Government conducted any inspection or set up any database, so as to obtain the relevant figures? If the answer is in the negative, will the Government do this in the future?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we do not have figures in this regard because at present, we mainly base on the number of people who committed relevant offences. That said, the police will request owners to produce third party risks insurance policies for inspection when conducting investigation into traffic accidents or traffic offences not involving fixed penalty. Actually, the figure may not necessarily be much lower than the actual number. In addition, the figure provided by us pertains to the number of people rather than that of vehicles. This means that in some cases, prosecutions were instituted not only against drivers but also vehicle owners. For these reasons, we hold that the current situation cannot be regarded as a big problem. However, as I said just now, we are willing to examine various measures from various perspectives to see if more can be done.

MR ABRAHAM SHEK (in Cantonese): *My question is: Of the 400-odd cases involving vehicles not covered by third party risks insurance recorded in 2009,*

how many are related to commercial vehicles and private vehicles respectively? Does the Secretary have any information in this regard?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we do not have a detailed classification of cases by private vehicles and commercial vehicles. There is no such breakdown.

MR PAUL CHAN (in Cantonese): *President, according to the main reply, the penalties imposed on vehicle owners who have not taken out third party risks insurance for their vehicles can be classified into four categories, namely, fine, imprisonment, disqualification from driving and non-renewal of the vehicle licences of the vehicles concerned. Regarding those vehicle owners who have not taken out third party risks insurance for their vehicles, if their vehicles are involved in traffic accidents resulting in casualties, may I ask the authorities whether or not a claim can be made by the victim directly against the vehicle owner concerned and the MIB will pay the compensation only when the latter is unable to do so?*

PRESIDENT (in Cantonese): Which Secretary will give an answer? Secretary for Financial Services and the Treasury, please.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Regarding instances in which vehicle owners have not taken out third party risks insurance, the MIB has two funds. The first one is designed to make compensations in cases in which vehicles not covered by third party risks insurance are involved in accidents. In these cases, compensations are first made by the fund concerned. Subsequently, we will enter a claim against the persons concerned.

MR PAUL CHAN (in Cantonese): *President, I failed to catch him clearly. Does it mean that compensation will be paid out of the fund concerned in advance and subsequently, a claim will be made against the vehicle owner?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): That is correct.

MR PAUL CHAN (in Cantonese): *Thank you, President.*

MR PAUL TSE (in Cantonese): *It is said in the main question that there were 82 claims between 2004 and 2008 in which the vehicles concerned were not covered by third party risks insurance and the MIB was required to make compensations amounting to \$84 million in total. On calculation, the compensation awarded in each case amounted to some \$1 million. Has the Administration compiled any statistics on how many of these compensation cases involved compensation for casualties? Why is the amount of compensation so large? For what reason was over \$1 million in compensation awarded in each case?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): All these figures relate to compensation for casualties.

PRESIDENT (in Cantonese): Mr TSE, please repeat your supplementary question.

MR PAUL TSE (in Cantonese): *I wish to understand the components of compensation. Is there any difference between compensation for objects, casualties and properties?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Those figures are all related to compensation for casualties.

PRESIDENT (in Cantonese): Third question.

Severance Payments and Long Service Payments Paid from Accrued Benefits of MPF Schemes

3. **MR LEE CHEUK-YAN** (in Cantonese): *President, section 12A of the Mandatory Provident Fund Schemes Ordinance (the MPFS Ordinance) stipulates that certain amounts relating to severance payments and long service payments may be paid from accrued benefits of mandatory provident fund (MPF) schemes. In this connection, will the Government inform this Council:*

- (a) whether it knows the total amounts of payments made by approved trustees of MPF schemes to employers and employees respectively in accordance with the aforesaid provision in each of the past three years;*
- (b) whether it knows the total accumulative amount of payments made by approved trustees in accordance with the aforesaid provision from the implementation of MPF schemes to the end of 2009; and*
- (c) given that an employer may, at present, make an application under the aforesaid provision to the approved trustee of the MPF scheme to withdraw the part of accrued benefits attributable to contributions made by the employer from his employee's MPF account, and use the money to pay severance payment or long service payment to that employee, whether the Government will review afresh the relevant arrangement?*

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

(a) and (b)

According to the data collected from approved trustees by the Mandatory Provident Fund Schemes Authority (the MPFA), the total accumulative amount of severance payments or long service payments paid by approved trustees from MPF accrued benefits in accordance with section 12A of the MPFS Ordinance from 1 July 2001 to 30 September 2009 was \$12,073 million. The MPFA does

not have the breakdown of the amounts paid to employers and employees respectively by approved trustees.

- (c) Before the MPF System came into operation, the Employment Ordinance already allowed employers to use the accrued benefits derived from their contributions to retirement schemes for offsetting severance payments or long service payments. It was only after extensive consultations and careful balancing of all relevant considerations that this long-established offsetting arrangement was extended to cover MPF schemes. The offsetting arrangements involve considerations pertaining to overall employer-employee relationship. The Government has no plan to review the arrangements at present.

MR LEE CHEUK-YAN (in Cantonese): *President, I am very disappointed because the Government has stated that there is no plan to review the arrangements. Let us take a look at the situation. The information given in part (a) of the main reply is very alarming indeed. Within nine years, some \$12,000 million has been paid from MPF accrued benefits as severance payments, that is, the money was used as severance payments payable by employers. I clearly remember that when the Government proposed the injection of \$6,000 into MPF accounts, the Secretary has said hypocritically that he cared about the retirement life of workers very much. He also said that the \$6,000 could only be taken out when the workers reach 65 because the money is intended for their use after retirement. If that is the case, why then the employers can use their MPF contributions as severance payments?*

If an employee is laid off four times in his working life, he would have almost nothing left in his MPF account upon retirement. I would like to ask the Secretary whether he has reflected on the objective of establishing the MPF. Is it for taking care of the retired workers or paying severance payments on behalf of the employers? I would like the Secretary to clarify what the MPF really means to him. Is it just a severance payment fund and not intended to be used by workers after retirement? If the MPF is not intended to be used by workers after retirement, why did the Government establish it in the first place?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I would like to thank the Member for the supplementary question.

As I have just said, the amount of severance payments and long service payments paid from MPF accrued benefits was some \$12,000 million. As a comparison, the accumulated assets of MPF schemes amount to \$308.8 billion as at the end of 2009. I think we can see how those two figures compare.

As I have said in the main reply, the offsetting arrangement is in line with what has all along been allowed under the Employment Ordinance. As such, the relevant procedure was made then under section 12A of the MPFS Ordinance.

Allow me to say once again that if the arrangement is to be reviewed, it would involve considerations on the overall employer-employee relationship and it is not appropriate to review this implementation procedure under the MPFS Ordinance independently.

MR LEE CHEUK-YAN (in Cantonese): *President, the Secretary has not answered my question.*

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

MR LEE CHEUK-YAN (in Cantonese): *My question to the Secretary is whether the MPF is intended for taking care of the retired workers or paying severance payments? His reply seems to indicate that it does not matter either way, not even when the money is used as severance payments instead of taking care of the retired workers. I am really clueless about the purpose of establishing the MPF.*

PRESIDENT (in Cantonese): Mr LEE, you have already repeated your supplementary question. Let me see if the Secretary has anything to add.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I would like to add that the MPF is of course established for the purpose of retirement protection but at the same time, it is in line with the offsetting arrangement under the Employment Ordinance.

MS LI FUNG-YING (in Cantonese): *President, just now Mr LEE Cheuk-yan mentioned that if an employee was laid off or made redundant several times, he might have no MPF benefits at all upon retirement taking into account the offsetting arrangement. Saying that the MPF is offering retirement protection is nothing but fancy thinking.*

Towards the end of part (c) of the main reply, the Secretary indicated that there was no plan to review the arrangements at present. I would like to ask the Secretary whether the absence of a review at this stage suggests that a review will be conducted in future. Under what circumstances would a review be conducted?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I would like to thank the Honourable Member for the supplementary question. Actually I have nothing more to add. Let me repeat by saying that this is a long-standing arrangement under the Employment Ordinance, and it was made after a long discussion process. Moreover, it is similar to some other arrangements such as those under the Occupational Retirement Schemes Ordinance (the ORSO). Hence, I do not envisage the Government taking any steps to review this matter at this stage.

MS LI FUNG-YING (in Cantonese): *President, the Secretary has not answered my supplementary question. I am asking him specifically that while the Government has not considered a review now, will it consider a review in future? According to the Secretary, it seems that the Government's stance of not considering any review is not just temporary but forever. Is that what he meant?*

PRESIDENT (in Cantonese): Ms LI, you have repeated your supplementary question. Secretary, do you have anything to add?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I have nothing to add as far as the scope of MPF is concerned. I have nothing to add really. I do not know whether my colleague

MR IP WAI-MING (in Cantonese): *President, I think this is an issue the labour sector is gravely concerned about and hence, notwithstanding the questions raised by several colleagues just now, I still want to put this question to the Secretary again. We have reservation about the arrangement. I still remember that when the relevant legislation was passed then, everyone had voiced out their reservation because from a practical point of view, if the MPF contributions of a worker are taken out for several offsetting arrangements, he would have almost nothing left as regards the contributions under his MPF account. This in fact goes against the intent of establishing the MPF for retirement protection.*

I have the same question as that asked by some Honourable colleagues just now: When will the Government review the arrangement? While the Secretary has replied that this is a long-standing arrangement, the MPFA has written to us this year indicating that a review on the MPFS Ordinance is forthcoming as the MPF has been implemented for 10 years. I would like to ask the Secretary whether the Government intends to take this well, my question really is about under what conditions would the Government review the relevant provisions?

PRESIDENT (in Cantonese): Which Secretary will take the question? Secretary for Financial Services and the Treasury, please answer.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I would have to repeat what I have said just now and that is, if a review is to be conducted, it would involve the overall employer-employee relationship as well as many different laws and existing arrangements. I think this would entail a most thorough review on the employer-employee relationship.

As far as the MPFS Ordinance is concerned, we think that the current arrangement is made under a consensus reached after careful consideration and

years of discussion. If this consensus is to be altered, it would have to go through considerable discussion in the community.

MR IP WAI-MING (in Cantonese): *President, my question to the Secretary is under what conditions the Government would conduct the review. He has not answered the question.*

PRESIDENT (in Cantonese): I think the Secretary has already answered it.

MS CYD HO (in Cantonese): *President, regarding the discussions back then, it was because the employers would need a grace period to factor the costs of new labour rights fought by the workers such as severance payments and long service payments into their operating costs so that they did not have to fork out sums accumulated from some 30 years ago right away. That was why the arrangement was made as a compromise. But nowadays, labour rights such as MPF, long service payments and severance payments have been implemented for a very very long time and the employers have already factored the costs of these labour rights into their operating costs. I would like to ask the Secretary this: Is he waiting for certain people from certain trade to take actions before he is willing to conduct the review? Is he waiting for a proposal from the employers before he will conduct the review? Or is it that as long as the request for review comes from grass-roots workers, the answer will always be no?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Financial Services and the Treasury, please answer.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I do not know if Secretary CHEUNG has anything to supplement. But as far as my area of work is concerned, I have already said that the MPF arrangements are made after thorough consideration of the employer-employee relationship from then up to now. I do not know whether Secretary CHEUNG has anything to supplement.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I want to say a few words in response. Before the implementation of MPF, this subject has gone through a lot of discussions in the Labour Advisory Board (LAB) and the Legislative Council. The then consensus was that the previous practice should continue, that is, under the ORSO and the Employment Ordinance, the employers were allowed to, on their own accord, offset severance payments and long service payments from their contributions towards registered retirement schemes or the contract gratuities payable to the employees based on length of service. We have therefore implemented the current MPF Scheme on the basis of the previous practice. That was the then consensus.

If this practice is to be changed, there must be a consensus between the employers and the employees. As far as consensus is concerned, we all know that the LAB will review the matter periodically. However, I do not see that there is any consensus now. Therefore, we think we have to be practical at this stage. As the MPF has been implemented for some time, we should adopt a practical approach by allowing it to continue operation. That is what we meant.

MR WONG KWOK-HING (in Cantonese): *President, I have listened to Secretary Prof K C CHAN's replies to the questions from Honourable colleagues, which can be summed up by the word "No": no plan, no consideration, no study and no supplement. Four "Nos".*

President, I would like to put the question to Secretary Prof CHAN and Secretary Matthew CHEUNG from another angle: Can you have some discussions with the FTU and listen to our views? In relation to the proposal we put forward as early as in the last century about setting up a universal retirement protection system, can it be fine-tuned through negotiation so that it can make up for the deficiencies in the current MPF system? Can you talk to us and listen to our views? Given the four "Nos" and that you have no plan whatsoever, can you do that? Can you at least discuss the matter with us and listen to our views and our good plan?

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Labour and Welfare, please answer.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, regarding the proposal about the so-called universal retirement benefit system, I have met twice with community organizations including representatives of the trade unions. If the FTU wants to contact us, I think Secretary Prof CHAN and myself would be most delighted to have the opportunity to exchange views. Maybe Secretary Prof CHAN can supplement on this point.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Of course, it is our duty to communicate with the trade and I am happy to do so.

MR LEUNG YIU-CHUNG (in Cantonese): *President, the main objective of severance payments is that when workers are dismissed by reason of redundancy or are laid off, they can live off the severance payments until they find another job. However, if we take out some money from the MPF contributions for the said purposes, a part of the workers' MPF benefits would be reduced or lost. In that case, it will fail to achieve the original intent of establishing the MPF, that is, to enable workers to have a certain amount of money to support their living upon retirement at 65. Hence, I would like to ask the two Secretaries — I do not know who will take the question — how these workers can be assisted. What can these workers do if they reach 65 and have no money or not enough money to support their livelihood after retirement? At present, we do not have a universal retirement protection system. We hope that the problem could be resolved with the establishment of a universal retirement protection system but we do not have one yet. So what can be done? These workers have neither any MPF benefits, money nor a job. What can these workers do then?*

PRESIDENT (in Cantonese): Which Secretary will reply?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Maybe, let me briefly explain this. The overall retirement protection system of Hong Kong does not only concern MPF. We know that while the MPF is one of the three pillars of retirement protection, other social welfare benefits make up another pillar. In this regard, Secretary CHEUNG has

given us a lot of information. As for universal retirement protection, he has also mentioned a lot previously from the overall policy perspective. As far as my work is concerned, I am certainly aware of the functions of MPF, that is, to enable the people to make contributions for future retirement. The detailed arrangements, whether they are about how to make contributions or the relevant procedures, have gone through very thorough discussions before the current consensus is reached. Over the years, the MPF has been improved in many aspects such as giving the employees more options and choices of investment return. Work has been done in all these aspects.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I just want to add a few words. Secretary Prof CHAN has already stated clearly that there are three pillars of retirement protection, that is, our social security system plus MPF, and on top of that, voluntary private savings. The World Bank has also studied this approach and considered it a desirable and correct way forward. The Central Policy Unit (CPU) is now conducting studies on the sustainability of these three aspects. Hence, the Government is now studying the relevant issues.

PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered?

MR LEUNG YIU-CHUNG (in Cantonese): *The Secretary has not replied my question about what those workers should do. Is the Government asking them to apply for Comprehensive Social Security Assistance or do some other things? I have said so just now that they have already spent their severance payments and have no money. How can they retire then? Of course, they do not have any savings which have all been spent*

PRESIDENT (in Cantonese): Mr LEUNG, your follow-up question is very clear and I think the Secretary has already replied. If you are not satisfied with his reply, let me see whether the two Secretaries have anything to add.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): My reply is that if any Hong Kong citizen has any difficulties, that is, if he has any financial difficulties and meets the eligibility criteria, our social security system can offer him assistance.

MR WONG SING-CHI (in Cantonese): *President, Secretary Matthew CHEUNG just talked about the three pillars. Secretary Carrie LAM is also in the Chamber now. She would understand that when the pillars of that old building in Ma Tau Wai Road fell, the whole building would collapse. The problem now, as mentioned by many colleagues, is that there are some cracks in the MPF. If an employee's MPF benefits are all used to offset the severance payments, he would have no solid protection upon retirement. When one of three pillars is lost, and if things go as Secretary Matthew CHEUNG has said about the other two pillars are still there to give support, then Secretary Carrie LAM would need to do nothing at all. Obviously, we have our doubts as to whether the three pillars are enough to support the entire retirement protection regime. But what will happen if one pillar falls? I do not know which Secretary can answer Secretary Matthew CHEUNG said just now that it would need an overall review. But does he know how great the impact the offsetting arrangement under the MPF system has on the retirement life of the citizens? I would like to ask the two Secretaries whether they will study this. The current MPF system has cracks already. If the situation persists, that is, the MPF benefits are used to offset severance payments, will the retirement life of the employees be affected? Has the Government conducted any studies in this respect and whether it will conduct these studies?*

PRESIDENT (in Cantonese): Mr WONG Sing-chi, your supplementary question has already been raised by more than one Member just now.

MR WONG SING-CHI (in Cantonese): *President, I am sorry. But what I want to ask is whether the Secretaries will study the impact the current situation about the MPF has on the retirement life of the employees. The question goes beyond what other Members have asked just now about whether the MPF can offer retirement protection to the employees. I am hoping that the Government will study the matter. But Secretary Prof K C CHAN just said that there is no such study.*

PRESIDENT (in Cantonese): You are asking the same question with different wording. Let me see if the Secretaries have anything new to say in reply. Which Secretary will take the question?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): It is quite simple. I think from my earlier replies, it is evident that a substantial amount of assets has been accumulated under the entire MPF regime. The figures I mentioned just now also indicate that the amount of severance payments paid out from the MPF only accounts for a very low percentage of the total MPF assets. Nonetheless, since the implementation of the MPF, we have been reviewing every aspect of the retirement protection regime from time to time including matters relating to enforcement or allowing more choices for MPF members. We also have some new plans now and the MPFA will consider whether and how the current situation can be improved. Generally speaking, I think that the MPF has, to date, achieved the policy objective stated upon its establishment and is in line with the consensus reached then.

MR CHEUNG KWOK-CHE (in Cantonese): *I have just arrived in the Chamber and want to have a better understanding. I know some colleagues have talked about universal retirement protection. I think there are many contentions on how the Government is dealing with the MPF because it can hardly offer retirement protection for the employees. Many suggestions have been made in the community about establishing a universal retirement protection scheme with contributions from three parties. Friends from the FTU have also mentioned it just now. The Government has actually conducted some studies in this regard but nothing has been published yet. Is it because the studies show that the approach of tripartite contributions has a positive impact but the Government is unwilling to go down this path and hence, the findings of the studies are not published? Or is it because the studies were conducted a long time ago and the findings were not published because they have become obsolete? However, we are all keen to know the outcome of the studies because while we have put forward many views, there is no fundamental data for us to make reference to. We have suggested the direction*

PRESIDENT (in Cantonese): Please raise your supplementary question directly.

MR CHEUNG KWOK-CHE (in Cantonese): *I would like to ask the Government whether it will publish the series of studies conducted by the CPU previously in this regard.*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Labour and Welfare, please reply.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, let me try to answer it. First, I must clarify the supplementary question from Mr CHEUNG Kwok-che. He has talked about tripartite contributions. He has some misunderstanding and is confused. We were not talking about tripartite contributions. Instead, we mentioned that there were three pillars of retirement protection with the first one being social security, the second MPF and the third private savings. The CPU is studying the sustainability of this approach. This is the starting point of the CPU's studies. These studies are for internal use and when completed, the study reports will be presented to the relevant policy bureaux. When the studies are concluded, we will explain the findings in due course.

PRESIDENT (in Cantonese): Mr CHEUNG, has your supplementary question not been answered?

MR CHEUNG KWOK-CHE (in Cantonese): *No, the Secretary has not replied as to whether the studies will be published. He just said they will be published in due course but I do not know what is meant by "in due course". As far as I understand, the studies have been going on for three to five years. Are the studies going to be published in 10 years' time? The relevant information may have been outdated then*

PRESIDENT (in Cantonese): Do you want the Secretary to say when the findings will be published?

MR CHEUNG KWOK-CHE (in Cantonese): Yes.

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, we will of course convey to the CPU the Member's request for the study findings to be published. Instead of a specific study undertaken for individual bureau, the CPU's study is focused on macro policy issues because it needs to examine many different policies. I will certainly brief Members on this in due course.

PRESIDENT (in Cantonese): This Council has spent nearly 21 minutes on this question. Fourth question.

Felling of Trees Within Area of Maryknoll Convent School

4. **DR MARGARET NG** (in Cantonese): *President, Maryknoll Convent School (the School) was declared a monument in 2008. There was a Norfolk Island Pine on its campus which was over 70 years old and half of the roots of the tree were damaged as a result of the drainage works carried out in the school last year. The school had earlier removed the tree on grounds of safety. Regarding the conservation of trees within the site of a monument and the aforesaid incident of the Norfolk Island Pine being removed, will the Government inform this Council:*

- (a) *which existing legislation and provisions are related to the conservation of the trees within the site of a monument, especially those monuments located on private land; if there is no such legislation, whether the Government will consider commencing the work of enacting legislation to make up for the inadequacy of the existing legislation;*

- (b) *whether it knows the details of the aforesaid drainage works, including the implementation date, nature, scope, payer and contractor, and so on; which government department had issued the "general permit" to the school before the commencement of the drainage works, and under which legislation the permit was issued, as well as the content, issuance date and validity period of the permit, and provide a copy of the permit to this Council; whether the School had applied to the Secretary for Development for carrying out the above drainage works under section 6(1) of the Antiquities and Monuments Ordinance (the Ordinance); if not, whether it has assessed if the works were in breach of the law, and whether any follow-up action has been taken by the authorities; if the works were assessed to be in compliance with the law, of the justifications for that; and*
- (c) *whether it knows the number of trees on the campus of the School which had been felled since the school was declared a monument, as well as the details of all the tree-felling works, including the dates, particulars of the contractors and reasons for felling the trees; whether the school had obtained a permit under the Ordinance before each of the tree-felling works; if so, provide a copy of each of such permits; if not, whether it has assessed if the works were in breach of the law and what follow-up actions had been taken by the authorities; if the works were assessed to be in compliance with the law, of the justifications for that?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the school building cluster of the School was declared as a monument in May 2008. The School has played a facilitating role throughout the process, demonstrating the School's support to heritage conservation. Recently, over half of the major root system of a Norfolk Island Pine tree on campus was damaged as a result of the drainage repair works. In order to protect the safety of the public as well as the safety of students and teachers, the School decided to remove the tree. The Government understood and concurred with the decision of the School.

My replies to the three parts of the question are as follows:

- (a) Under section 6(1)(a) of the Ordinance, except with exemption granted by the Authority (that is, the Secretary for Development), any person who excavates, carries on building or other works, plants or fells trees or deposits earth or refuse on or in a proposed monument or monument must do so in accordance with a permit granted by the Authority. This provision applies to both government-owned and privately-owned monuments.

If the owner of a monument proposes to fell a tree within the monument boundary, he should submit details of the works to the Antiquities and Monuments Office (AMO) for consideration of the appropriateness of the tree removal proposal and the works arrangement. Tree removal may only be carried out after permission has been obtained. In addition, a "tree preservation clause" has been included in the land leases of some of the monuments on private land. The clause stipulates that the owner may only remove or interfere with a tree within the lot after making an application and having obtained the consent of the Director of Lands.

If the owner of a monument proposes to carry out construction or other works within the monument boundary, the owner has to submit the details and descriptions of the proposed works to the AMO. The AMO will pay heed to any impact of the construction works on the trees in the vicinity of the works area and follow up with the owner as appropriate. Except for emergency works, the relevant works may only commence after permission has been obtained.

Apart from the statutory requirements, in regard to government-owned monuments, relevant departments carrying out works within the monument boundary are required to follow the usual requirements for public works to ensure proper protection of the trees both within and in the vicinity of the construction sites. Contractors are required to set up a tree protection zone for trees listed in the Register of Old and Valuable Trees so as to ensure that the construction works would not cause any damage to the trees. At the same time, contractors are required to take appropriate

protective measures having regard to the site condition for other trees outside the Register of Old and Valuable Trees.

We consider that the existing statutory requirements and associated administrative measures are able to adequately protect the trees within the monument boundary, and hence there is no need to enact a new ordinance or amend existing laws at this stage. Nevertheless, we will enhance the monument owners' understanding of the existing control system. For instance, we will provide detailed guidelines and assistance with a view to encouraging owners of monuments, in particular owners of privately-owned monuments and their contractors, to preserve trees within the monument boundary and to take appropriate tree protective measures when carrying out works within the monument boundary.

- (b) The Buildings Department issued an advisory letter to the School on 9 December 2004, requesting the School to conduct investigation and renovation works for underground water pipes and drains in the vicinity of the slopes and the retaining walls. The School subsequently obtained approval under the subvention procedures for schools and carried out the related drainage renovation works between end 2009 and early 2010. The school campus is on private land and the School takes charge of the works. The School made an application to the Education Bureau for subsidy in accordance with the Education Bureau's arrangement for providing subsidy to aided schools for carrying out general maintenance works. The School obtained a subsidy of 50% of the cost of the drainage works, that is, \$1.1 million. The remaining half of the cost was borne by the School. The School employed James Lau & Associates Limited as the consultant for the works to co-ordinate the drainage investigation and renovation works, and Fine View Engineering Limited as the Contractor to carry out the drainage works. The Government did not participate in the design and management of the works.

Under section 6(1) of the Ordinance, the Authority issued a Block Permit (the Permit), with a validity period from 15 July 2009 to 14 July 2011, to the School. The Permit allows the Permit Holder

to carry out "Routine Maintenance", "Minor Repair and Improvement Works" and "Emergency Works" as specified in the Permit, subject to the conditions of the Permit. A copy of the Permit is attached to this reply at Annex (The Permit was issued only in English). The drainage works carried out in the School in recent months fell under the scope of "Minor Repair and Improvement Works" as specified in the Permit. However, the School had neither submitted the details and descriptions of the proposed works to the Executive Secretary of AMO and obtained the written notification from the Executive Secretary for the commencement of the works, nor informed the Executive Secretary subsequently of the commencement date and the estimated completion date of the works, as required by the Permit, before the commencement of the drainage works. The AMO has requested the School to provide detailed information on the matter for necessary follow-up action.

- (c) According to the information provided by the School to the AMO recently, Eurasian Garden Limited and Man Chung Fong Heung Garden, which were engaged by the School, removed a total of 18 trees (including 2 Bauhinia; 1 flame tree; 7 Eucalyptus; 4 horsetail trees; 1 Chinese hackberry; 2 sunshine trees and 1 Queen Crape Myrtle) within the monument boundary in December 2008. The School had not submitted the details of the tree removal works, the commencement date and the estimated completion date of the works in advance to the Executive Secretary of AMO in accordance with the requirements of the permit applicable to tree removal. The AMO has requested the School to provide detailed information on the matter for necessary follow-up action.

Separately, the School removed a Norfolk Island Pine tree on campus on 6 February 2010. The works fell within the scope of emergency works permitted under the Permit that has been issued to the School. The School had submitted notification to the AMO as required under the Permit and the AMO had indicated no objection to the School before the tree removal works commenced.

Annex

Annex

香港特別行政區政府
發展局局長辦公室



SECRETARY FOR
DEVELOPMENT'S OFFICE
Government of the Hong Kong Special
Administrative Region

本局檔號 OUR REF. : (25) in LCS AM 21/4/1 (PT.4)
來函檔號 YOUR REF.:
電話 TEL. NO. : 2721 1084
圖文傳真 FAXLINE : 2721 6216

**PERMIT UNDER SECTION 6 OF
ANTIQUITIES AND MONUMENTS ORDINANCE (CAP. 53)**

Pursuant to Section 6(1) of the *Antiquities and Monuments Ordinance* (Cap. 53) ("*the Ordinance*"), this Permit is issued by me, being the Authority under the Ordinance, to the Permit Holder as specified in *paragraph 3* below.

Purpose

2. The purpose of this Permit is to allow the Permit Holder, her staff, agents, contractors, and any person(s) who is/are duly authorized by the Permit Holder to carry out the works, as specified in this Permit to the Monument to carry out works, as specified in this Permit, to the Monument specified in *paragraph 3* below. For the above purpose, the Permit Holder, her staff, agents, contractors, and any person(s) who is/are duly authorized by the Permit Holder to carry out the works, as specified in this Permit, to the Monument shall strictly observe and comply with all terms and conditions of this Permit.

Details of Permit Holder and Monument

3. (a) Name of the Permit Holder:
Principal of Maryknoll Convent School
- (b) Name of the Monument:
Maryknoll Convent School
Address of the Monument:
130 Waterloo Road, Kowloon
Boundary/Area of the Monument:
As shown in red on the plan in *Appendix I* of this Permit

Permitted Works

4. *Routine Maintenance*

The Permit Holder, her staff, agents, contractors, and any person(s) who is/are duly authorized by the Permit Holder to carry out the routine maintenance works (as specified in this Permit) to the Monument is/are permitted to carry out routine maintenance to the Monument for the purpose of keeping the Monument in good and clean condition, including but not limited to daily cleaning and gardening works, termite and pest control and other non-evasive works relating to the management of the Monument, regular maintenance such as modern building services installations and their associated repair and like with like replacement of consumable fittings and elements. In any event, no routine maintenance should destruct, obstruct, deface, interfere or in any other way cause harm or damage of whatsoever nature to the Monument.

5. *Minor Repair and Improvement Works*

Subject to the conditions in *paragraphs 5.1 to 5.4* below, the Permit Holder, her staff, agents, contractors, and any person(s) who is/are duly authorized by the Permit Holder to carry out the “minor repair and improvement works” to the Monument (as defined hereunder) (while such authorization shall only be given by the Permit Holder upon due compliance of the conditions in *paragraphs 5.1 to 5.4* below) are permitted to carry out *minor repair works* (other than routine maintenance as specified in *paragraph 4* above) and *minor improvement works* (collectively referred to as “*minor repair and improvement works*”) to the Monument within the scope as specified in *Appendix II* of this Permit.

- 5.1 Within fifteen working days or such time as may be agreed and allowed by the *Executive Secretary of the Antiquities and Monuments Office* (“*the Executive Secretary*”) before commencing the minor repair and improvement works, the Permit Holder shall submit the details and

descriptions of the proposed works by means of plans, drawings, photos, specifications, method statements and/or other formats of presentation to the Executive Secretary.

- 5.2 In any event, if the Executive Secretary is in the opinion that any of the details and descriptions of the proposed works submitted by the Permit Holder does not comply with, substantially deviate from or does not fall within the permitted scope of minor repair and improvement works as specified in *Appendix II* of this Permit, or that the proposed works shall or may potentially cause any harm or damage to the Monument, the Permit Holder is not allowed to commence any of the proposed works to the Monument. The Permit Holder shall amend the details of the proposed works until the Executive Secretary agrees that they all in compliance with, in-principle the same as or fall within the permitted scope of minor repair and improvement works as specified in *Appendix II* of this Permit. In any event, the Permit Holder is not allowed to commence any of the proposed works unless and until the Executive Secretary gives written notification to the Permit Holder that he may do so.
- 5.3 Upon receiving written notification by the Executive Secretary for commencement of the works, the Permit Holder shall, at least ten working days or such time as may be agreed and allowed by the Executive Secretary before the commencement of the works, in writing inform the Executive Secretary of the actual commencement date and the estimated completion date of the works.
- 5.4 In the event that the Permit Holder, her staff, agents, and/or contractors, and/or any person(s) who is/are duly authorized by the Permit Holder to carry out the minor repair and improvement works to the Monument may wish to use any different types of materials, designs or structures for the works, or make any changes to the works details, the Permit Holder shall submit the details of changes to the Executive Secretary. Procedures specified in *paragraphs 5.2 and 5.3* would follow and the

above submission of changes to works details will be dealt with in the same manner as the submission of details and descriptions of the proposed works specified in *paragraphs 5.1 to 5.3*. In any event, the changes are not allowed to be implemented unless and until the Executive Secretary gives written notification to the Permit Holder that the changes could be implemented.

6. *Emergency Works*

Subject to the conditions in *paragraphs 6.1 to 6.7* below, the Permit Holder, her staff, agents, contractors, and any person(s) who is/are duly authorized by the Permit Holder to carry out the emergency works (as specified in this Permit) to the Monument are permitted to carry out emergency works to the Monument where any accident, emergency, or any other event renders it necessary to carry out the emergency works immediately for ensuring public safety and health, the structural stability of the Monument, and/or for making safe any existing building, land, pathway or other structures within the Monument. Definition and permitted scope of emergency works are specified in *Appendix III* of this Permit.

- 6.1 The Permit Holder, her staff, agents, and/or contractors, and/or any person(s) who is/are duly authorized by the Permit Holder to carry out the emergency works to the Monument who is/are engaged to supervise or carry out the emergency works shall give a written notice to the Executive Secretary in the specified form in *Appendix IV* of this Permit. Such written notice shall be given to the Executive Secretary before commencement of the emergency works, unless it is in the view of the Permit Holder in the light of the need for the emergency works that it is not practicable to provide such prior written notice to the Executive Secretary and in any such case, the written notice shall be given to the Executive Secretary within 48 hours of the commencement of the emergency works.

- 6.2 Within ten working days after the date of giving written notice in *paragraph 6.1* above or such time as may be agreed and allowed by the Executive Secretary, the Permit Holder shall submit the details and descriptions of the emergency works by means of plans, drawings, photos, specifications, method statements and/or other formats of presentation to the Executive Secretary if and when requested by the Executive Secretary.
- 6.3 After submission of written notice in *paragraph 6.1* by the Permit Holder, if the Executive Secretary is in the opinion that any of the emergency works or any of their details and descriptions submitted by the Permit Holder under *paragraph 6.2* above does not comply with, substantially deviate from or does not fall within the permitted scope of emergency works as specified in *Appendix III* of this Permit, or that the emergency works have caused or shall or may potentially cause any harm or damage to the Monument, the Permit Holder shall stop and/or cause to stop any of the emergency works upon notification given by the Executive Secretary and in accordance with the instructions as set out and specified in the notification. In any event, the Permit Holder is not allowed to continue with any of the emergency works unless and until the Executive Secretary gives written notification to the Permit Holder that he may do so.
- 6.4 For the reason of protecting public safety and health, protecting and/or preserving the Monument, or for any other reason, if the Executive Secretary considers necessary or appropriate to impose time limit within which the emergency works should be completed, the Permit Holder, his staff, agents, and/or contractors, and/or any person(s) who is/are duly authorized by the Permit Holder to carry out the emergency works to the Monument shall observe and comply with such time limit imposed on him/them.
- 6.5 In the event that the Permit Holder, her staff, agents, and/or contractors, and/or any person(s) who is/are duly authorized by the Permit Holder to

carry out the emergency works to the Monument may wish to use any different types of materials, designs or structures for the works, or make any changes to the emergency works details, the Permit Holder shall submit the details of changes to the Executive Secretary. Procedures specified in *paragraphs 6.3 and 6.4* would follow and the above submission of changes to emergency works details will be dealt with in the same manner as the submission of written notice, details and descriptions of the emergency works specified in *paragraphs 6.1 to 6.4*.

- 6.6 In any event, the Permit Holder, her staff, agents, contractors, and/or any person(s) who is/are duly authorized by the Permit Holder to carry out the emergency works to the Monument shall carry out the emergency works with due diligence and he/they should, at his/their best endeavors, ensure that appropriate and sufficient protective measures are provided such that no harm or damage would be caused to the Monument, and that future restoration or repair to the Monument would not be in any way obstructed after the emergency works. In the event that disturbance to the historic fabric or any other structure(s) or part(s) of the Monument is/are inevitable while carrying out the emergency works, the Permit Holder, her staff, agents, contractors, and/or any person(s) who is/are duly authorized by the Permit Holder to carry out the emergency works to the Monument shall keep such disturbance to the minimum.
- 6.7 When the Executive Secretary considers that the emergency no longer exists and/or the emergency works are no longer necessary, the Permit Holder, her staff, agents, contractors, and/or any person(s) who is/are duly authorized by the Permit Holder to carry out the emergency works to the Monument shall immediately stop the works upon notification given by the Executive Secretary and in accordance with the instructions as set out and specified in the notification, unless my written permission for continuance of the works is obtained.

Revocation

7. The Permit Holder has duty and obligation to ensure that all works carried out in the Monument are permitted by this Permit. The Permit Holder shall also carry out and/or cause to carry out the permitted works in accordance with all terms and conditions of this Permit. When the Executive Secretary finds that any works, procedures or other matters carried out by the Permit Holder, her staff, agents, contractors, and/or any person(s) who is/are duly authorized by the Permit Holder to carry out the works as specified in this Permit to the Monument are not in compliance with the terms and conditions of this Permit, and/or that harm or damage would be or would potentially be caused to the Monument, the Executive Secretary may notify the Permit Holder to stop the works. If and when considered appropriate, and for the preservation of the Monument, I may revoke this Permit when there are non-compliance, incompetence, wrong-doing and/or negligence on the Permit Holder's part. Upon notification to stop the works or revocation of this Permit, the Permit Holder shall immediately stop or cause to stop the works immediately or as required.

Executive Agent and Its Role

8. For the purposes of this Permit, my executive agent, namely the Executive Secretary, shall execute and carry out all administrative duties and/or other procedures as I consider appropriate for the operation and enforcement of this Permit. Such administrative duties and/or other procedures include, but are not limited to, those specified in this Permit. I shall, through the Executive Secretary, keep the Permit Holder informed on all such matters as may appear to the Executive Secretary to affect the rights, obligations and duties of the Permit Holder under this Permit. In the event that there are subsequent change(s) to my executive agent within the validity period of this Permit, I shall, through the new executive agent, in writing inform the Permit Holder of such change(s).

9. The Executive Secretary shall scrutinize all details and descriptions of the proposed works and the emergency works submitted by the Permit Holder under *paragraphs 5 and 6* of this Permit and check that they are all in compliance with, in-principle the same as or fall within the permitted scope of works as specified in *Appendix II* and *Appendix III* of this Permit.

10. The Executive Secretary shall arrange for inspection and monitoring of the works, if and when necessary.

Expiry

11. This Permit shall commence on 15 July 2009 and expire on 14 July 2011 (both dates inclusive).

Outstanding Works

12. If and only if there are any outstanding works authorized by this Permit at the expiry of this Permit which have commenced but not been completed by the Permit Holder, such outstanding works may be completed in terms and conditions of this Permit notwithstanding that it will be carried out by the Permit Holder after the expiry of this Permit, provided that the Permit Holder shall have notified in writing the Executive Secretary of the details of such outstanding works at least seven working days before the expiry, and provided also that no such outstanding works may be carried out after thirty calendar days beyond the expiry date of this Permit.

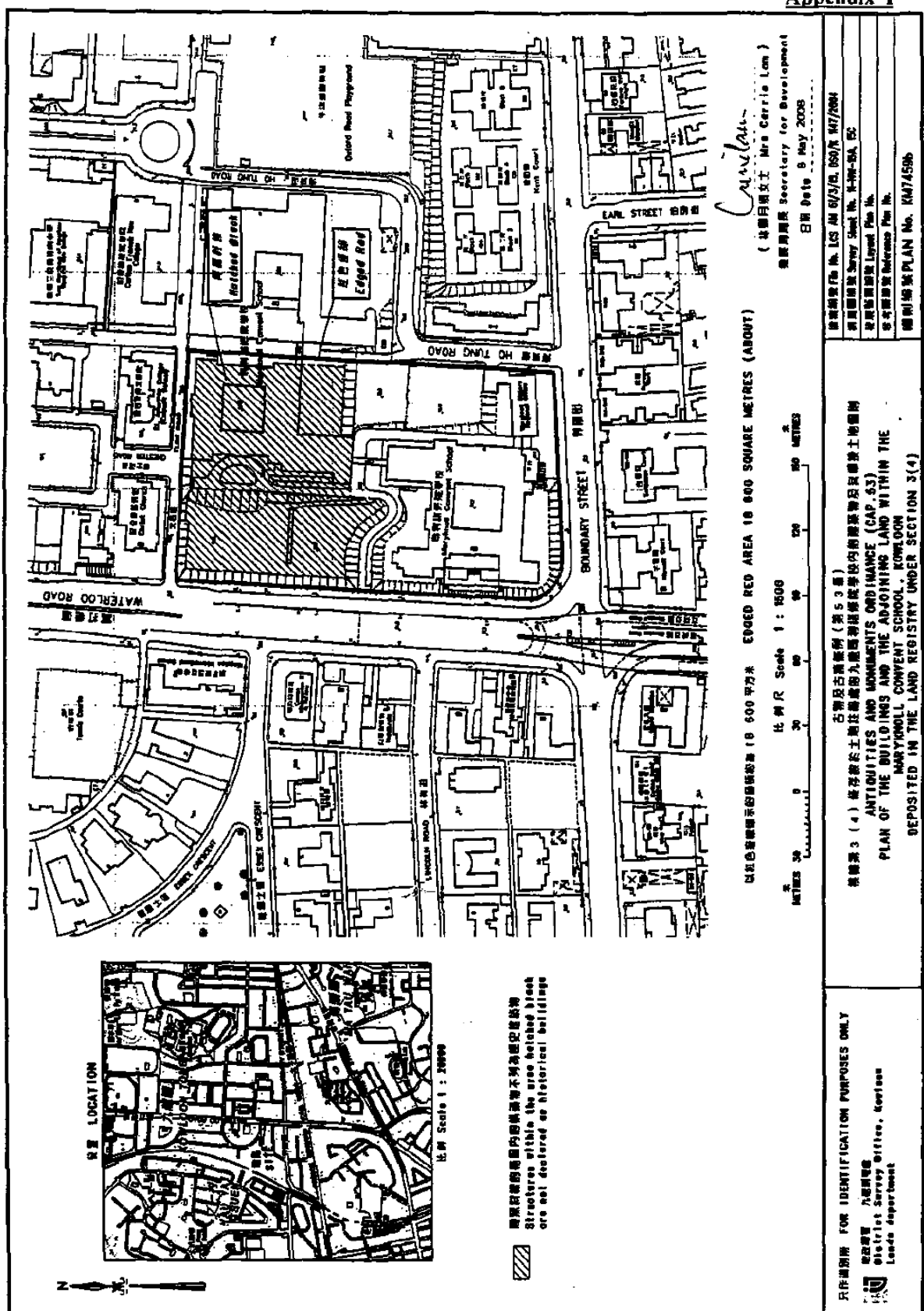


(Mrs Carrie LAM)

Secretary for Development,
The Authority under the Antiquities
and Monuments Ordinance (Cap. 53)

13 July 2009

Appendix I



Appendix II**Scope of Minor Repair and Improvement Works
Permitted within the Maryknoll Convent School**

- (1) Minor repair and replacement of damaged and deteriorated historic fabrics fittings and fixture.
- (2) External and internal redecoration, such as special cleaning of decorative elements and repainting of plastered areas.
- (3) Minor alteration and improvement works of building services installations and their associated. For examples, installing, laying electrical, plumbing, drainage, air-conditioning and ventilation, security and fire services systems.
- (4) Minor repair and improvement works to roof.
- (5) Minor repair and improvement works of fences, gates, signs and notice-boards.
- (6) Minor repair and improvement works of the open courtyard, external paving, slopes, retaining walls, paths, steps, paved road surfaces, ditches, manholes and outdoor drains.
- (7) Minor repair and improvement works to soft and hard landscaping.
- (8) Temporary supporting or strengthening works, such as scaffolding, shoring or any similar protective works, as well as the installation and removal of temporary fences, benches and notices.
- (9) Structural or site investigation works involving opening up and minor destructive testings in connection with the overall stability and maintenance of the building.

Appendix III**Definition of Emergency Works**

Emergency works generally embrace works that are rendered necessary to be carried out due to any accident, emergency, or any other event for the purposes of ensuring public safety and health, the structural stability of the Monument, and/or making safe any existing building, land, pathway or other structures within the Monument.

Scope of Emergency Works for the Maryknoll Convent School

1. Removal of unstable fixtures, building elements, vegetations which may cause damage to properties, occupants or public at large.
2. Emergency repair to defective plumbing, drainage, electrical and building services systems.
3. Temporary replacement of defective fixtures, building elements at the external of the building and compound which, if unfixed, will pose further damage to properties.
4. Emergency clearing of landslides, provision of temporary protection works and removal of dangerous vegetations on slopes after natural disasters.

Appendix IV

**Notice of emergency works required as
A result of accident or emergency**

To the Executive Secretary (Antiquities & Monuments)
(Fax: 2721 6216 / Email: amo@lcsd.gov.hk)

In accordance with the provisions of paragraph 6 of the Block Permit under section 6 of the Antiquities and Monuments Ordinance (Cap. 53),

*I/we (name in full) _____ (Chinese)

_____ hereby given
notice that *an accident/emergency, namely

_____ occurred/ arose at (here state the site where may or may not be within the monument boundary) _____

_____ on (date) _____.

*I/We, being *the Permit Holder/staff/agent/contractor of the Permit Holder/the person(s) duly authorized by the Permit Holder to carry out the emergency works to the Monument for the (monument)

_____ intend to *carry out/have carried out the following emergency work(s) which
*is/ are necessitated by the above *accident/emergency:

*I/We have engaged the following to carry out the above emergency work(s): -

Capacity	Name in full & Name in Chinese	Address	Tel. No. & Fax. No.
Staff			
Agent			
Contractor [#]			
Authorized person			

*The following has/have been engaged to supervise the above emergency work(s): -

Capacity	Name in full & Name in Chinese	Address	Tel. No. & Fax. No.
Staff			
Agent			

Date: _____ Signature: _____

Organization: _____

Address: _____

Post: _____ Tel.: _____

Fax: _____ Email: _____

* Delete whichever is inapplicable

Please specify if it is a registered specialist contractor in a particular category

(Form as at June 2009)

DR MARGARET NG (in Cantonese): *President, the incident is precisely a "fait accompli". In fact, it is too late for any action to be taken as it will be impossible to revive the tree. President, in the main reply, the Secretary has elaborated at great length how sound the system under the Ordinance is, denying any need for improvement. If that is really the case, it should have taken preventive measures and the pine tree would not be lost, right? Why did the Secretary maintain that the system was sound? Has the Government basically not done what is supposed to be done?*

President, in part (b) of the main reply in particular, the Secretary mentioned that the whole incident was due to the fact that the Buildings Department had issued a letter to the Maryknoll Convent School, requesting drainage works to be done. In fact, should the authorities have taken a more comprehensive approach at that stage because the works would take place within the monument boundary and in close vicinity of the tree? Therefore, should the authorities have involved in the discussion with the School on how to carry out the project at that stage, instead of requesting the School to do it on their own? Consequently, poor drainage works had immediately led to such an unexpected problem, and the Secretary then said that it was necessary to remove the tree for safety purposes. In the future, if other people want to remove some trees, is it that the best way to achieve the purpose is not to submit an application to the Secretary, but to do something to cause danger and then say that they are forced to fell the trees there, and the Secretary will then give her consent, saying that she "understood and concurred" with the decision? In that case, are these many protection provisions not worth the paper they are written on? President, the question that I most wish to be given an answer is: Should the authorities be responsible for the work mentioned in part (b) of the main reply? Because the authorities have not adopted any precaution before allowing the School to carry out the works on its own.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, Dr Margaret NG has asked a number of supplementary questions. But the question that she most wishes to have an answer from me is addressed in part (b) of my main reply. First of all, the Buildings Department, which is the monitoring authority, is empowered by the Buildings Ordinance to perform its functions. In 2004, the Buildings Department issued an advisory letter to the School on the ground of a possible underground drainage problem which might affect the building's safety in the future. In 2004 when the Buildings Department took such action, the

School had not yet been declared as a monument. As mentioned by Dr Margaret NG in her main question, the School was declared as a monument in mid-2008.

Secondly, I hope Dr Margaret NG can understand that the School's decision to fell the tree is for public safety and my indication of understanding and concurrence in the main reply is also based on considerations of public safety. But this is not tantamount to the existence of any shortcomings in the present mechanism and procedures. We only wish that through the detailed information submitted by the School at the AMO's request, we can follow up the question of whether both sides, that is, the AMO as the regulator and the holder of monument as a body under regulation, have adequate knowledge of the system. I agree that there is room for improvement regarding the consistency of their understanding, so that we will know whether enforcement is properly carried out to ensure compliance of the requirements under the Ordinance.

PRESIDENT (in Cantonese): Dr NG, has your supplementary question not been answered?

DR MARGARET NG (in Cantonese): *My question is whether there is any shortcoming in respect of the precautionary measures under the existing system. The Secretary has in particular mentioned that a lot of procedures are supposed to be complied with when a tree is to be felled, but all can be bypassed when a safety problem has been created. This is my supplementary question which has not been answered by the Secretary.*

SECRETARY FOR DEVELOPMENT (in Cantonese): I think I have answered the question. We have not bypassed the requirements and monitoring of the Ordinance. As Dr Margaret NG may also be aware, under the Block Permit issued by the Government, there are three types of works which are subject to different mechanisms and to be complied with by holder of monument. As I said in my main reply, we consider that the drainage renovation works fall under the second category, that is, Minor Repair and Improvement Works. If the works fall within the second category (Minor Repair and Improvement Works), even though the School is holding a Block Permit with a specified validity period, it still has to comply with many procedures to enable us to undertake some

precautionary work as mentioned by Dr NG. And as she has pointed out, if the drainage works have been carried out properly, the tree would not have been adversely affected. For instance, the holder of monument is required to submit details to the Executive Secretary of AMO 15 days in advance to seek his/her consent. Although a consent has been given, the applicant may be required to undertake some precautionary measures before a written consent is issued. The holder of monument is also required to notify the Executive Secretary the estimated commencement date and completion date 10 days before the commencement of the works. In this incident, the School, as holder of monument, has failed to comply with the procedural requirements. But I do not want to jump to any conclusion today, as we have not yet received any detailed information from the School to decide whether section 6(1) of the Ordinance has been breached.

PROF PATRICK LAU (in Cantonese): *President, I would like to ask the Secretary a question. As the Development Bureau has set up departments for the management and study of trees, hoping that improvement can be made, have they played any role in this incident? Besides, as it is pointed out in part (c) of the main reply that quite a lot of trees have been removed by the School, I hope that the School will replant the trees and would like to know the details.*

SECRETARY FOR DEVELOPMENT (in Cantonese): I thank Prof LAU for his supplementary question. We have been following up this issue in this direction. After completion of the review report by the Task Force on Tree Management led by the Chief Secretary for Administration, we will establish the Tree Management Office (TMO). Thereafter, the TMO will co-operate fully with the AMO in protecting the buildings as well as trees within the monument boundary. Regarding the Norfolk Island Pine in this incident, assessment has in fact been carried out by a number of tree experts and international arborists respectively who, however, have come to different views. So, Prof LAU may recall that the Chief Secretary for Administration, when taking forward the relevant work, said that the first priority of the TMO is to improve the work of risk assessment, so that it can be more refined and consistent and hence, people responsible for tree maintenance can have a better basis to decide whether trees be felled or preserved as far as possible.

In fact, the School has attached great importance to greening after felling the Norfolk Island Pine tree and some other trees at the end of 2008. After felling the Norfolk Island Pine tree, the School has published a notice in the press, saying that it will continue to replant some trees within the boundary of Maryknoll Convent School, that is, within the monument boundary.

MR KAM NAI-WAI (in Cantonese): *President, Dr Margaret NG just said that the incident was a fait accompli. In fact, I think this is a blatant murder of a Norfolk Island Pine tree, which is commonly known as the "ghost tree". Why did I say so? Why did I say that it was a blatant murder of the tree in broad daylight?*

As the Secretary has mentioned earlier, the Government, in its intensive publicity as early as six months ago, said that trees would be preserved and money would be spent for this purpose. But suddenly one day, we were told that the tree was damaged and removal was necessary. What I consider most infuriating is that I saw in the reply of the Secretary that the Government understood and concurred with the decision of the School. Is there something wrong? Has the Government acted as an accomplice? It is a blatant murder of the tree, but the Government said that it understood and concurred with the decision. The Government is an accomplice. Shame on the Secretary for saying this. May I ask the Government whether it will investigate into the reason why the tree was killed so as to find out who should be held responsible? Those who should be held responsible include the Contractor, the Consultant and the School. Of course, most importantly, various government departments such as the Lands Department and the AMO, should be held responsible. And of course, most importantly, Chief Secretary for Administration Henry TANG, who is also here today, should be held responsible. At that time, he denied any need for legislation, but now it has ended up in such a mess. Actually, no one is held responsible for felling or murder of the tree. Neither is penalty

PRESIDENT (in Cantonese): Mr KAM, please state your supplementary question clearly so that the Secretary can answer it.

MR KAM NAI-WAI (in Cantonese): *I ask the Government whether it will find out who should be held responsible. Will the Contractor, the School, various*

government departments, the Secretary and even the Chief Secretary for Administration, as I mentioned just now, be held responsible?

SECRETARY FOR DEVELOPMENT (in Cantonese): In my main reply, I have mentioned twice that the School is now being requested to provide information for our investigation and follow-up action. However, be it investigation into the matter for follow-up action or pursuing responsibilities as Mr KAM has put it, we will focus on whether there is any mistake in respect of compliance with the procedures stipulated by the law or even any breach of the law. I do not think I will hold the School responsible for its decision of putting students' safety above everything. The reason why I understand and concur with the decision of the School is that I agree that the School has the responsibility to protect the safety of students and the public. So, I have strong views on the words used by Mr KAM in his supplementary question such as murder, killer and accomplice. Let me first of all declare that I am not an old student of Maryknoll Convent School, but I also graduated from a convent school. If I remember it correctly, Dr Margaret NG also graduated from a convent school. Our education in a convent school tells us that our Sisters are most concerned about the well-being of students. So, the decision made jointly by Sister Jeanne HOULIHAN, the Principal of Maryknoll Convent School is entirely for the safety of the teachers, students and the public. This is precisely the basis of my concurrence and understanding.

MR CHAN HAK-KAN (in Cantonese): *President, we have also seen many cases of trees withered and died due to improper trimming. This time, the tree withered and died due to damaged roots caused by the Contractor's works. This is most unfortunate. Apart from providing lots of guidelines for tree preservation beforehand, in view of this incident where the tree must be removed as a result of the works, will the Government find out who should be held responsible? Has any penalty been laid down? What is the maximum penalty?*

SECRETARY FOR DEVELOPMENT (in Cantonese): In response to Mr CHAN Hak-kan's question, as I have mentioned in the reply, according to our understanding, we consider that the School has not complied with the requirements for "Minor Repair and Improvement Works" under the Block Permit. Regarding this type of works, details should be submitted in advance

for our consideration and consent. The applicant should also inform us of the estimated completion date before carrying out the works. Regarding this point, we will take follow-up action and the School is now being requested to provide relevant information. The penalty will be quite heavy if it is found that section 6(1) of the Ordinance has been breached. Thus, we have to give ample opportunity to the School to provide detailed information. A breach of section 6(1) of the Ordinance, including non-compliance of the licensing requirements by any person or holder of monument, is liable on conviction to a fine of \$100,000 and one year's imprisonment. Hence, relevant provisions have been set out in the law and we are taking follow-up actions.

PRESIDENT (in Cantonese): We have spent almost 23 minutes on this question. Fifth question.

Anti-smoking Measures

5. **MR CHAN HAK-KAN** (in Cantonese): *President, the Financial Secretary announced a 50% increase in tobacco duty in the budget for the last financial year. The Secretary for Food and Health later told the media that he hoped that the increase in tobacco duty would encourage smokers, particularly young smokers, to quit smoking, with the aim of reducing the number of smokers by 10% to 20%. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers and percentages, in the past three years, of the people in the groups listed below who smoke, and the average number of cigarettes smoked by each smoker per day, together with a breakdown of such figures by gender:*
 - (i) *the population in Hong Kong;*
 - (ii) *those aged 11 to 18 of the population; and*
 - (iii) *those aged 10 or below of the population;*
- (b) *whether it knows at which locations and through what channels underage smokers obtain cigarettes; what measures the Government*

will adopt to prevent them from obtaining cigarettes from those locations and channels, and whether it will increase the penalties for the offence of selling cigarettes to underage persons; and

- (c) *whether it has analysed the reasons why underage persons smoke; if it has, of the details, and how future anti-smoking promotional strategies will complement accordingly; if it has not, the reasons for that, and whether it will consider conducting such a study?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President,

- (a) According to the Thematic Household Survey conducted by the Census and Statistics Department between late 2007 and early 2008, the number of daily smokers aged 15 or above was 676 900 or 11.8% of the population in that age group (male: 20.5%, female: 3.6%). The number of daily smokers aged 15-19 was 10 500 or 2.4% of the population in that age group (male: 3.5%, female: 1.2%). The daily consumption of cigarettes by smokers aged 15-19 was 9 and 11 in 2005 and 2008 respectively. This Thematic Household Survey also interviewed children aged 10-14. However, due to the small-scale sample size of this age group, as well as problems such as the possibility of unreliable sources of information, and possible under-reporting by respondents, children of this age group were not included in the data analysis of this survey.

- (b) and (c)

International surveys and studies show that young people can obtain cigarettes through different channels, one of which is purchase from shops. They may also be given cigarettes by their elder family members or friends. Young people also take up smoking for various reasons, including the influence of family members, peers or their social environment. As pointed out by the World Health Organization (WHO), young people are also highly susceptible to the influence of tobacco promotion and advertising.

A study conducted by the Hong Kong Council on Smoking and Health (COSH) on the relationship between smoking experience of children and family smoking found that children with smoking family members were more likely to have smoked. Children living with one smoker were 79% more likely to have smoked than those living with non-smokers; and the chance would increase to 424% when there were three or more smokers at home.

According to WHO's advice on tobacco control policy formulation, a comprehensive and interactive strategy is necessary for any tobacco control policy targeting young people. Such a strategy must include banning all forms of tobacco advertising and promotions, implementing smoke-free workplaces and schools, public places, vehicles and homes, educating youngsters on the risks of nicotine addiction and tobacco use, addressing smoking cessation among all smokers, including youngsters and adults, as well as increasing tobacco prices through taxes and other means. Since young people can still obtain cigarettes from multiple channels including their friends and family, restricting access to cigarettes solely by way of legislation would not produce significant effects.

In view of the above, the Government has long been taking a multi-pronged, progressive approach to minimize the harmful effects of tobacco on young people. Measures adopted include publicity and education, provision of smoking cessation services, increase of tobacco duty to make smoking less affordable to youngsters, and enactment of legislation to ban tobacco advertisements and expand the statutory no smoking areas (to cover all indoor public places, schools, public pleasure grounds, beaches, stadia and restaurants, as well as karaoke clubs, cyber cafes and amusement game centres, and so on, where young people frequently visit). The enforcement of the legislative provisions that prohibit the sale of cigarettes to persons under the age of 18 is also part of the Government's tobacco control efforts targeting young people.

With regard to youth education and publicity, the Tobacco Control Office (TCO) under the Department of Health has produced tailor-made guidelines and display boards for the implementation of tobacco control measures at schools as well as promotional leaflets

for young people. The Government also provides funding to non-government organizations such as COSH and the Tung Wah Group of Hospitals to organize anti-smoking activities for children and adolescents. Such activities include smoke-free educational programmes organized in collaboration with primary and secondary school principals and parents, tobacco control education programme featuring "Health Talk" and "Education Theatre" for adolescents to educate students on the hazards of smoking as well as how to resist the temptation of smoking and support a smoke-free environment

The COSH from time to time organized territory-wide large scale education promotional programmes to spread the message of a smoke-free environment, and to educate children on how to protect themselves from the harmful effects of passive smoking. Children and adolescents are the major targets of all these programmes aimed at encouraging them to support a smoke-free environment and life-style. Such programmes include the "Smoke Free Hong Kong Starts with Teens" from 2005 to 2006, the "Smoke-free Environments — Create & Enjoy!" Photo Collection Campaign in 2007 and the "Smoke-free Family" Campaign in 2008.

Looking ahead, the Government and the COSH will continue to focus on raising the awareness of tobacco's harmful effects among children and adolescents when conducting education and promotional programmes for this target group. In particular, the promotional efforts will first aim at families by encouraging adults to set a good role model at home in order to reduce the accessibility of tobacco products to children and adolescents.

On the enforcement front, tobacco control inspectors conduct frequent inspections at cigarette retail outlets. During inspections, staff of the TCO would examine if a sign is displayed to indicate that the sale of cigarettes to young people under the age of 18 is prohibited. They would also explain the statutory requirements to the persons-in-charge and distribute no-smoking labels.

According to the survey conducted by the Census and Statistics Department, the percentage of smokers in the 15-19 age group in

Hong Kong dropped from 3.5% in 2005 to 2.4% in 2008. This shows that the tobacco control measures aimed at young people have been largely effective. However, we will not be complacent. Continuous and simultaneous efforts in education, law enforcement, levying of duty and smoking cessation are essential to preventing young people from smoking. The Government will continue to devote resources to promoting a smoke-free culture, with a view to raising awareness among the youths of the harmful effects of smoking and preventing them from picking up the habit of smoking.

MR CHAN HAK-KAN (in Cantonese): *President, though the Secretary said that tobacco control inspectors conduct frequent inspections at retail outlets like convenience stores and grocery stores, according to media reports and as we are told by many youth bodies, these convenience stores as well as grocery stores do sell cigarettes to young people aged below 18. What is even worse is that these shops sell cigarettes to young people who cannot afford to buy a pack of cigarettes at a price of two dollars per stick. There may not be enough tobacco control inspectors to deal with this. Even if such cases are reported to the police, they will not be treated as serious crime. Still, this problem is going to get worse. Is the Government of the view that their measures in this respect are not strong enough?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as I said just now, tobacco control cannot rely on any single measure. While we admit the existence of these facts, the situation is not worse than before. The Government has stepped up inspections at retail outlets. In 2009, our tobacco control inspectors carried out 2 228 inspections at retail outlets, received 55 complaints regarding selling cigarettes to persons aged below 18, conducted 68 investigations and prosecuted eight tobacco retailers that sold tobacco products to persons aged below 18, and a majority of these cases were imposed a fine upon completion of court proceedings. The Government will continue to enhance inspection and enforcement in this respect, but this should be matched with other tobacco control measures and policies.

MR WONG YUNG-KAN (in Cantonese): *President, I understand that the Government would like smokers to quit smoking. But I have a question for the Government: Some underage smokers seeking for smoking cessation services are worried that their parents may have strong views upon knowing that they smoke. Given this concern, if they seek help voluntarily, how will the Government help them? For underage smokers seeking for smoking cessation treatment, is it that their parents' consent must be obtained in advance?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, certainly parents' consent must be obtained before any necessary treatment. However, we have noticed that youngsters prefer smoking cessation services with protection of their privacy. The TCO therefore launched the Interactive Online Cessation Centre on its website in 2009. It is an interactive platform providing a virtual smoking cessation centre for the smokers. Instead of medication, resolution is the key for most young smokers to quit smoking as they have a relatively shorter history of smoking. A strong determination to quit smoking and resist the pressure or temptation from peers is most important. The Interactive Online Cessation Centre has recorded a hit rate of over 30 000 and over 300 online registrations for receiving messages via email. I would like to keep these efforts and other promotional works ongoing. Besides, we have allocated more resources to increase the number of smoking cessation centres in Hong Kong. This will help smokers accept smoking cessation more easily.

PRESIDENT (in Cantonese): Mr WONG Yung-kan, has your supplementary question not been answered?

MR WONG YUNG-KAN (in Cantonese): *President, I would like to ask*

PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered by the Secretary?

MR WONG YUNG-KAN (in Cantonese): *I am asking about parents' response when they know their children smoke, as some of them may be unaware of their children smoking beforehand. What will happen when they find out about it?*

PRESIDENT (in Cantonese): This seems to be different from the supplementary question you just raised. Please wait for your turn to raise another question.

MR LAU KONG-WAH (in Cantonese): *President, as you can see among the flock of smokers smoking around the Legislative Council Building, quite many of them are young people. The last paragraph of the Secretary's main answer pointed out that according to statistics, the percentage of smokers aged between 15 to 19 dropped from 3.5% to 2.4%. But these are not absolute figures indicating a real drop or increase in the number of smokers. Can the Secretary provide us with the related figures? Besides, the main question quoted the Secretary's remark about his aim to reduce the number of smokers by 10% to 20% when an increase in tobacco duty was announced last year. Has this aim been met after the Secretary making such remark?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, regarding the figures mentioned just now, as I already said in my main answer, the Thematic Household Survey conducted between 2007 and 2008 showed that the number of smokers aged 15 to 19 was 10 500 then. There is a slight drop based on these figures. As to sorry, what is the second question?

MR LAU KONG-WAH (in Cantonese): *It is about reducing the number of smokers by 10% to 20%.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): We are assessing the effects of a string of services and measures that we have launched by conducting different studies in three areas. The first study report should hopefully be released in May or June this year. Another Thematic Household Survey which is more in-depth will be conducted around end 2010 and so, its report will be released later. In addition, the COSH has commissioned the

University of Hong Kong to conduct a study on smoking habits of youngsters and the study report is going to be released by the end of this year. Hence we cannot provide exact figures to Members for the time being. But we expect that with the implementation of all these measures, certainly there will be some impact. For example, if we take a look at tobacco sales, the figure has dropped.

MR WONG KWOK-KIN (in Cantonese): *Indeed it is easy to find a lot of young people smoking in various public places, and it gives people a very bad feeling particularly, as many of them are in school uniforms. I believe that buying from shops, in particular convenience stores, is the major channel for youngsters to get their cigarettes. Just now the Secretary has mentioned the number of tobacco control inspectors in his answer. But as cigarettes are sold everywhere in Hong Kong, I believe it is impossible to have enough inspectors to cover them all. Moreover, media reports have revealed from time to time shops selling cigarettes to youngsters in breach of the law. For the purpose of achieving a deterrent effect, will the Government consider introducing a kind of licensing system similar to that of liquor licence under which shops, once being found of selling cigarettes to youngsters aged below 18, may be subject to suspension of licence?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, detailed discussions on the sale of cigarettes to youngsters or students aged below 18 had been conducted when we amended the legislation on smoking in 2006. Our view is that firstly, given that many pieces of legislation are already in place, the reduction of second-hand smoke and smoking areas with an adverse impact on the public is most important. Regarding the selling of tobacco, we will complement the enforcement of the existing legislation. Therefore, the existing legislation is, to a certain extent, practicable. As to whether or not to implement a licensing system, we had discussed this at that time and held that this was not the right moment to do so.

Secondly, as I mentioned just now, legislation should not be the only means adopted to reduce the number of young smokers. Instead, we should embark on educational and nurturing work. Mr WONG just mentioned that he saw young people smoke in the street, and this is in fact no longer regarded as fashionable behavior or something to be proud of. Nevertheless, young people

basically have rebellious behaviors. Thus we must teach or guide them to develop healthy living habits and that would be more effective.

PRESIDENT (in Cantonese): Last oral question.

Military Sites in Hong Kong

6. **MS CYD HO** (in Cantonese): *President, it has been learnt that the United Services Recreation Club (USRC), which is located within the Gun Club Hill Barracks, used to be a recreation club for the former British Garrison in Hong Kong and their family dependents. It was owned and administered by the British Garrison in Hong Kong before 1997, and its ownership was subsequently handed over to the People's Liberation Army Hong Kong Garrison (Hong Kong Garrison) after the handover of sovereignty in 1997. At present, the USRC is a private club which generates profits by collecting membership fees and monthly subscriptions, and it is administered by a private company with its membership open to application by the public. In this connection, will the Government inform this Council?*

- (a) *if it knows whether the site at which the aforesaid club is situated is a military site under the management of the Hong Kong Garrison with defence purposes; whether the authorities have collected from the USRC or the Hong Kong Garrison any fee, rent or rates, and so on;*
- (b) *if it knows whether the Hong Kong Garrison has participated in the management of the USRC and shared its profits; if it has assessed whether the Hong Kong Garrison has contravened the requirement under the Law of the People's Republic of China on Garrisoning the Hong Kong Special Administrative Region (the Garrison Law) that stationed forces are prohibited from engaging in profit-making operating activities in whatsoever manner; if an assessment has been conducted, of the outcome; and*
- (c) *if it knows whether there are military sites under the management of the Hong Kong Garrison which are currently used for purposes unrelated or not directly related to defence; if there are, whether the*

authorities have planned to acquire such sites and categorize them as "Government, Institution or Community" sites?

SECRETARY FOR SECURITY (in Cantonese): President,

- (a) The USRC is situated within the Gun Club Hill Barracks in Kowloon. Before July 1997, under the direction and control of the British Garrison, it mainly provided recreational facilities and services for its members with its membership open to the general public. The purpose of the operation of the USRC was not to earn profits. The facilities were run by the Club on its own which was financially independent and which was responsible for its own profits and losses;

The Exchange of Notes between the Government of the People's Republic of China and the Government of the United Kingdom in 1994 on the arrangements for the future use of the military sites in Hong Kong (the 1994 Exchange of Notes) provides that: "From 1 July 1997, the USRC will continue to enjoy the use of all facilities on the same terms as at present. Its membership will remain open to civilians. The commanding officer of the Chinese garrison or his representative will assume the responsibilities for the direction and control of the Club." Therefore, since 1 July 1997, in accordance with its past mode of operation, the USRC has continued to be run by the Club on its own to provide recreational facilities and services at the same location.

The USRC is required to pay to the Government an annual fee for a Certificate of Compliance under the Clubs (Safety of Premises) (Fees) Regulation (Cap. 376, subsidiary legislation B) and rates under the Rating Ordinance (Cap. 116).

- (b) According to our understanding, the People's Liberation Army Hong Kong Garrison of the Chinese, or the Hong Kong Garrison in short, neither takes part in the daily management of the USRC, nor shares any of the Club's income. Therefore, there is no question of the Hong Kong Garrison engaging in profit-making business activities.

In this regard, the Hong Kong Garrison has not contravened the relevant requirement under the Garrison Law.

- (c) Article 14 of the Basic Law provides that the Central People's Government shall be responsible for the defence of the Hong Kong Special Administrative Region (SAR). Article 5 of the Garrison Law provides that one of the defence functions and responsibilities of the Hong Kong Garrison is to control military facilities. The use of military sites is a defence matter for which the Central People's Government and the Hong Kong Garrison are entirely responsible.

Article 13 of the Garrison Law provides that if the Government of the Hong Kong SAR requires for public use any part of the land used for military purposes by the Hong Kong Garrison, it shall seek approval of the Central People's Government. The SAR Government shall in return provide land and military facilities for the Hong Kong Garrison at such sites as agreed to by the Central People's Government, and shall bear all the expenses and costs entailed. President, at this stage, the SAR Government does not see a need to invoke Article 13 of the Garrison Law to acquire any military facilities or military sites being controlled by the Hong Kong Garrison.

MS CYD HO (in Cantonese): *President, "sites owned by the military" is different from "military sites", and the biggest difference is whether they are used for defence purposes. Actually, the first paragraph of Article 13 of the Garrison Law prescribes that: "Any land used by the Hong Kong Garrison for military purposes, when approved by the Central People's Government to be no longer needed for defence purposes, shall be turned over without compensation to the Government of Hong Kong Special Administrative Region for disposal." The Secretary has only answered half of the question without answering the other half. If the site is used for military purposes, the SAR Government can swap it for other site with the approval of the Central People's Government, and the SAR Government shall bear all the costs. However, it is very obvious that the site is currently being used by a private club run by a limited company, which even generates profits every year. May I ask the Secretary why he has not declared*

to the Central People's Government that the site is no longer used for defence purposes, as there are so many facts at the moment and information available on the Internet, and an annual report is also published by the Club. Why has the Secretary not followed up the matter? Or does the Secretary think that the existing arrangements for the use of the site by members of the public who can subscribe for membership by paying \$50,000 or \$100,000 for playing ball games, lodging accommodation, holidaying, and so on, in the Club are to be regarded as defence purposes and therefore he has not followed up the matter?

SECRETARY FOR SECURITY (in Cantonese): President, the USRC has been operating at this site for many years. Given its unique historical background, the Government of the People's Republic of China and the Government of the United Kingdom then agreed that the USRC would continue to provide recreational facilities and services to its members at the existing site commencing from 1 July 1997, which is an international undertaking solemnly made by the two countries. On the other hand, Article 13 of the Garrison Law provides that if the SAR Government needs to use the military site for public purposes, it must obtain the approval of the Central People's Government, and at the same time, identify another site. Of course, if the Central People's Government considers that certain military sites can be released, it can hand over the sites, without compensation, to the SAR Government. However, at present, the Central People's Government has not indicated that any of the existing military sites can be handed over, without compensation, to the SAR Government.

PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered?

MS CYD HO (in Cantonese): *President, my supplementary question is: why has the Secretary not taken any follow-up actions on knowing that the site is currently not used for defence purposes? I am not asking him to wait for the direction of the Central People's Government but instead, I ask him to follow up the matter with the Central People's Government. Why has follow-up action not been taken yet?*

PRESIDENT (in Cantonese): I think the Secretary has answered the question as to the arrangements for the site. Let me see if the Secretary has anything to add.

SECRETARY FOR SECURITY (in Cantonese): President, I think I have already answered Ms Cyd HO's question just now. As to whether the site is used for defence purposes or for which kind of defence purposes, the Central People's Government has its considerations in order to comply with this international undertaking.

MR LAU KONG-WAH (in Cantonese): *President, the Secretary has mentioned in part (a) of his main reply that the site has actually been turned over to the public before the reunification for providing recreational facilities on membership basis instead of being used for defence purposes. I would like to ask this: when and for what reasons did such arrangement commence? Moreover, had any Legislative Council Member raised questions on this issue before the reunification?*

SECRETARY FOR SECURITY (in Cantonese): President, according to my understanding — as I can only refer to some literature for the historical facts before 1997, and it is difficult to ask people who were there about this — according to our records, the USRC was established early last century, and registered and incorporated in Hong Kong in accordance with the Companies Ordinance in October 1911. According to my knowledge, the British Garrison issued a licence to it in 1947 so that it could set up facilities at the existing site, that is, Gun Club Hill. That is to say, the Club has a history of more than 60 years. As for the other matters, as what I have just said in the main reply, the Club has all along been open to the British Garrison and their family dependents, and members of the public can use its facilities by becoming its members. The facilities are provided for its members. In 1994, when the Government of the People's Republic of China and the Government of the United Kingdom negotiated on the future use of the military sites, the British side specially requested to maintain the mode of operation of the Club, and also requested the Chinese side to undertake to allow it to continue with its operation at the existing site and on the same terms.

MR LAU KONG-WAH (in Cantonese): *The Secretary has not answered my question. As the Club has been operated in such mode for 60 years, he has not answered my question as to whether any Legislative Council Member had raised similar questions before the reunification.*

PRESIDENT (in Cantonese): Do you mean the then Legislative Council?

MR LAU KONG-WAH (in Cantonese): *Yes. I mean the then Legislative Council.*

PRESIDENT (in Cantonese): Secretary for Security, please reply.

SECRETARY FOR SECURITY (in Cantonese): President, I do not have information in this connection, and perhaps I can inquire about it when I am back to office. (Appendix I)

MR JAMES TO (in Cantonese): *President, it is pointed out in the main reply that the commanding officer of the People's Liberation Army (PLA) or his representative is responsible for the direction and control of the Club, as this is prescribed in the Exchange of Notes between the Chinese Government and the British Government. I would like to ask — as this is expressly stated in the 1994 Exchange of Notes as one of the provisions, meaning that it is quoted from the document — has the PLA commanding officer actually directed the operation of the Club? According to my understanding, many members of the Club, including some family dependents of the British Garrison and civilian members, joined the Club before the reunification. However, after the reunification, not many PLA officers or their family dependents joined the Club, and naturally some members of the public have joined the Club throughout the years. If this is the case, it seems that the "brand name" of PLA is used to claim that the site is used for defence purposes so as to ensure the continued operation of some clubs that were established long ago. Under such circumstances, the PLA is just like being*

made a scapegoat — this is what I must say. I would like to ask how the Government will respond to this comment and the question I raised just now.

SECRETARY FOR SECURITY (in Cantonese): President, according to my understanding, the PLA and their family dependents do not use the facilities of the USRC. Concerning whether it is the case that the PLA is "being made a scapegoat" as Mr James TO has said, I cannot give a comment, as the USRC can continue to operate the Club after 1997 on the same terms as those applicable before 1997 under the agreement between the two countries.

PRESIDENT (in Cantonese): Mr TO, has your supplementary question not been answered?

MR JAMES TO (in Cantonese): *Actually, is the PLA commanding officer really responsible for the direction and control of the Club in accordance with the provisions of the Exchange of Notes as stated in part (a) of the main reply?*

SECRETARY FOR SECURITY (in Cantonese): How the Hong Kong Garrison directs and controls the USRC is an internal affair of the Hong Kong Garrison, and the SAR Government has no authority or responsibility in this regard.

MR LEUNG YIU-CHUNG (in Cantonese): *President, though the use of this site is bound by an international undertaking, its current use is contradictory, and I wonder if the President agrees. It is because this site is for military purposes on the one hand, but it is a private club on the other which accepts membership from the public, so there is serious contradiction. So I would like to ask the Secretary whether the Government itself has the responsibility to clarify this point despite the fact that this is an international undertaking so that such serious contradiction will not continue to exist, and as there must be a better way to handle the matter, we should not just let this serious contradiction continue to exist.*

SECRETARY FOR SECURITY (in Cantonese): President, the Hong Kong Garrison needs to abide by the provisions of the Garrison Law and those of the agreement concluded between the Chinese Government and the British Government in 1994, and I think there is no contradiction between the two.

MS EMILY LAU (in Cantonese): *How possibly will there be no contradiction? There is contradiction. The Garrison Law states that the land is used for garrison and defence purposes, and the Club, however, is used by members of the public for recreation. Besides, it turns out that the PLA and their family dependents have not participated in it.*

President, on the one hand, though it is stipulated in 1994 that the commanding officer of the Hong Kong Garrison is responsible for the direction and control of it, the Secretary has told us that they have not directly participated in it. How does the Secretary know that? The webpage of the Club indicates that the Club's profits in 2008 amounted to \$28 million. So who is the owner of the Club? To whose pocket did this amount go? These are very complicated and confusing situations, and the public want to be clear about them. President, there is actually contradiction between the 1994 agreement and the Garrison Law, and things have come to such a pass now; if someone likes to operate the Club, the Government should look for another site for him to build a club. Speaking of garrison land, it should be used for defence purposes, which is an explicit consensus reached by the SAR Government and the Central People's Government. The question is how to straighten out the problems left over from history.

SECRETARY FOR SECURITY (in Cantonese): President, according to my understanding, the income of the Club must all be used for providing recreational facilities and services to its members, which is set out in the constitution of the Club drawn up before 1997, and the same still holds now. The Club is not allowed to distribute profits to its General Committee Board or any of its members in the form of bonus, dividends or earnings. Ms Emily LAU has just said that there is contradiction between the two, but I can reply to the Member's question that there is actually no contradiction. Before 1997, this was already a

military site offered to the Club by the British Garrison for providing recreational facilities for its members, including the soldiers and their family dependents at that time. Precisely because of this, when the governments of the two countries negotiated military land use back then, the British side was very concerned and hoped that the site would be preserved and continued to be used by members on the same terms, and the two governments agreed on this under a solemn agreement. As such, I think that there is no contradiction with the Garrison Law.

MR LEE CHEUK-YAN (in Cantonese): *President, it can hardly hold water to argue on this ground that there is no contradiction with the Garrison Law. The Garrison Law stipulates that the site is for military purposes and it is a military facility. As the Secretary has just said, even the PLA themselves and their family dependents have not used it, so how can it be regarded as a military facility or a facility for military purposes? The Secretary said that the British Garrison used to let their family members use the Club and this may barely be deemed as providing welfare for the soldiers, and hence it was a military facility. Mr James TO has just asked whether this is like making the PLA a scapegoat and putting all the blame on them — the worst is that they have not even used it — if they are to take all the blame, they should at least be able to use the facilities. But now, they "are made a scapegoat" indeed as they have not even used the facilities.*

In fact, there is contradiction which should be dealt with, so as to be fair to the PLA, as they simply have not used the facilities. Since they have not used the facilities, why do we still grudgingly designate it for military purposes? In this connection, do we need to have discussions to examine whether the site should be used for the right purposes or whether this so-called military site should be handed over to the Government for it to decide on its use and work out a more reasonable way to handle the matter instead of grudgingly designating it for military purposes? Of course, this is a problem left over from history. To be true, the current situation does not do the PLA any good. So, should there be a way to rationalize this issue?

SECRETARY FOR SECURITY (in Cantonese): President, it is not appropriate for me to guess why, up to now, the PLA personnel or their family members have still not used the facilities on that site, and I do not know when they will use the facilities. Of course, we will be very pleased if the Central People's Government considers that it is no longer necessary to keep the land for military purposes or for use by the USRC, and is willing to hand it over to the Government without compensation. However, if Members of the Legislative Council or the SAR Government thinks that as the site is not used for military purposes, relocation should be requested and the site should be taken back, we have to identify another site for the USRC in accordance with Article 13 of the Garrison Law. I think we do not have to take such a step now as land in Hong Kong is very valuable, and I think it will be impossible for us to identify a non-military site for the USRC if we are requested to do so.

MR WONG KWOK-KIN (in Cantonese): *The Secretary has just pointed out that the Government had no plan to relocate the Club from the military site because of the shortage of land. So it is just like "duping the PLA" by allowing facilities originally intended for civilian use to be situated on a military site, forcing the PLA to accept that they have the facility in name but not in reality. In fact, this site is of no use to them. Does this practice appear to be unfair to the PLA? Does the SAR Government have the authority to handle this issue? Is this under the scope of military and diplomatic affairs?*

SECRETARY FOR SECURITY (in Cantonese): President, it cannot be said that the PLA has been forced to accept that, as the matter was mutually agreed by the governments of the two countries after negotiations and discussions in 1994. Perhaps the British side at that time hoped that the Hong Kong Garrison could also have a place for their use in the future — Mr James TO is also laughing — so these facilities were made available to them. However, up to now, as I understand it, the Hong Kong Garrison and their family members have still not used these facilities. The Club has since 1997 accepted applications for membership from the public, and as such, it is also a service provided to the general public in Hong Kong. Now, there are no more British soldiers or Chinese soldiers serving in the British army in Hong Kong, and as Mr James TO

has said, the Club can be used by persons with a military background and is also open to the general public on membership basis.

PRESIDENT (in Cantonese): This Council has spent more than 21 minutes on this question. Oral question time ends here.

WRITTEN ANSWERS TO QUESTIONS

Development of Information Technology in Schools

7. **DR SAMSON TAM** (in Chinese): *President, regarding the promotion of the development of information technology (IT) in schools in Hong Kong, will the Government inform this Council:*

- (a) *of the respective numbers of school IT assistants employed by primary and secondary schools in Hong Kong in each of the past three years, with a breakdown by age, academic qualifications and remuneration groups;*
- (b) *of the respective average numbers of school IT assistant vacancies in primary and secondary schools in Hong Kong in each of the past three years, as well as their percentages in the total numbers of such posts;*
- (c) *whether it has assessed the remuneration, turnover rate, development and employment prospects of school IT assistants as well as their influence on IT education; if it has, of the details; if not, the reasons for that, and whether it will conduct such assessments in the future;*
- (d) *whether it will consider making school IT assistants permanent professional posts in primary and secondary schools; if it will, of the details; if not, the reasons for that;*
- (e) *given that some members of the education and IT sectors are not satisfied with the low remuneration and lack of employment*

prospects of school IT assistants, of the authorities' response and measures to address their dissatisfaction; and

- (f) *given that the Education Bureau has set up a central technical support team according to the recommendation in the Third Strategy on Information Technology in Education, to assist schools and teachers in overcoming the technical problems in implementing school-based IT in education development plans, whether it has assessed the effectiveness of the team's work since its inception; if it has, of the outcome?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) and (b)

The Education Bureau provides schools with annual recurrent grants for their operation, namely, the Operating Expenses Block Grant (OEBG) for schools yet to form an Incorporated Management Committee (IMC) and the Expanded Operating Expenses Block Grant (EOEBG) for those with IMCs. The Composite Information Technology Grant (CITG) is one of the constituent grants. Under the policy and principle of school-based management, schools enjoy flexibility in deploying their recurrent grants to suit their own needs. For instance, in the 2008-2009 school year, the OEBG received by a non-IMC secondary school operating 29 classes was about \$5.4 million, including a CITG of some \$340,000. Depending on their needs, schools may deploy their OEBG to procure IT technical support services from the IT sector or directly employ IT assistants. As such, the Education Bureau does not maintain statistics on the actual number and age of school-based IT assistants or the number of vacancies of such posts.

Notwithstanding the above, when reviewing the ambit and provision of the CITG in 2008, the Education Bureau conducted a sample survey on schools' expenditure of IT in education related activities, including information relating to the academic qualifications and remuneration of IT assistants. According to the survey, academic qualifications of school-based IT assistants were usually above

Secondary Seven, with at least one year's relevant working experience. Their monthly salaries were close to the market pay rates, ranging from about \$9,000 to \$12,000.

(c) to (e)

Regarding the remuneration, turnover rate and employment prospects of IT assistants, our assessment and view are that, to ensure that IT technical support services can effectively support school operation and would not adversely affect the implementation of IT in education, schools should use their grants flexibly to offer competitive remuneration in line with the market levels, taking into account their own needs and the market demand and supply.

In fact, subsequent to the review on the ambit and provision of the CITG in 2008, the Education Bureau increased the level of CITG by 8.3% with effect from the 2008-2009 school year, resulting in an increase of provision ranging from \$16,000 to \$25,000 for each school. The average amount of CITG for each primary and secondary school in the 2009-2010 school year were \$299,000 and \$362,000 respectively. If deemed appropriate, schools may use their resources flexibly to offer better pay and benefits to their IT assistants.

We do not consider the creation of permanent post for IT assistants the best way to provide effective IT technical support services for the implementation of IT in education. Under the current funding arrangement, schools are free to deploy their grants to adjust the remuneration of their IT assistants. The establishment of permanent posts will deprive schools of such flexibility. Moreover, many schools now hire services from IT companies instead of directly employing IT assistants. Such practice means that IT technical support services will not be affected by staff changes. Such flexibility will not be available if permanent posts are established.

(f) The "Central Technical Support" Pilot Scheme under the Third Strategy on Information Technology in Education has been implemented since December 2008, primarily providing schools

with hotline and on-site support services. As at the end of January 2010, the cumulative number of cases for the two support services was 153 and 122 respectively. Issues raised by schools usually concern network problems such as server management, virus or hacker attack, and network system interruption, and so on. For complicated problems, the central technical support team will arrange on-site support to give assistance and professional advice to school IT technicians so as to enhance their relevant knowledge and enable them to solve similar technical problems in schools more efficiently.

As schools generally lack the experience in network management and identifying potential network security risks, the central technical support team introduced two enhanced services in November 2009, namely, "School Network Performance Assessment" and "School Network Security Assessment". Since their introduction, the response from schools has been enthusiastic. As at the end of January 2010, about 85 schools have applied for the two services. Assessments have been completed for nine of them, and will be arranged for the remaining schools.

Inspection of Private Buildings

8. **DR RAYMOND HO** (in Chinese): *President, on 29 January this year, a 55 years old six-storey tenement building at 45J Ma Tau Wai Road suddenly collapsed while renovation works were being carried out in a shop on the ground floor of the building. In this connection, will the Government inform this Council:*

- (a) *of the date on which the Buildings Department (BD) last inspected the aforesaid building, the parts of the building inspected, the inspection result, the reasons for not listing the building as a dangerous building after inspection, and whether the professional structural engineer responsible for the inspection was present and participated in the inspection work; and*
- (b) *whether the Government will focus on the aforesaid incident and further enhance regulation of the procedure for carrying out*

renovation works in private buildings, so as to prevent the occurrence of similar tragedies; if so, of the details?

SECRETARY FOR DEVELOPMENT (in Chinese): President, as regards the causes of the building collapse at 45J Ma Tau Wai Road, the BD is conducting investigation in three directions: first, to study the record of maintenance, addition and alteration works of the building concerned; second, to examine the evidence gathered at the scene and analyse specimen collected; and third, to obtain information from eyewitnesses. The BD hopes to complete the investigation work within the coming few weeks.

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

- (a) The BD received a report of concrete spalling from the exterior wall of the building in question on 16 November 2009. In accordance with the established arrangement, a building surveyor responsible for the district concerned was assigned to inspect the aforesaid premises twice on 18 November and 30 December 2009 respectively. The staff mainly inspected the exterior and communal parts of the building. During the inspection conducted on 18 November, staff of the BD also entered the shop on the ground floor of the building for inspection. During both inspections, as described in the report, there was loose/defective reinforced concrete at the exterior wall of the building. However, no imminent danger or unauthorized building works in progress was found in the building.

The BD accordingly issued a repair order to the owner of the building on 13 January 2010, requiring the repair of the spalling reinforced concrete at the exterior wall of the building to be completed by July 2010.

- (b) According to the Buildings Ordinance (Cap. 123), with the exception of exempted building works which do not involve building structure, all private building works require the prior approval and consent of the Building Authority and the appointment of authorized persons, registered structural engineers and/or registered geotechnical engineers to design, co-ordinate and supervise the works as well as registered contractors to carry out the works. Persons who infringe

such requirements will be subject to disciplinary actions (in respect of registered professionals/contractors) and/or prosecution.

As mentioned in the first part of the reply, the causes of the building collapse at 45J Ma Tau Wai Road are still under investigation. At this stage it is not possible to confirm whether it was related to the damage to the building structure during the renovation works conducted by contractor or workers.

Maintenance of Old Buildings Acquired by URA

9. **MR WONG KWOK-KIN** (in Chinese): *President, some residents of Kwun Tong have relayed to me that due to a prolonged lack of maintenance of the buildings in Yue Man Square and its vicinity which have been acquired by the Urban Renewal Authority (URA), tin plates on the rooftop of the buildings were once blown away and fell down, and it was lucky that no one was hurt. Furthermore, some members of the public have pointed out that as the Kwun Tong Town Centre Project and Mong Kok's Sai Yee Street Project cover relatively large redevelopment areas, it will therefore take some time before demolition and redevelopment works formally commence; yet, in the meantime, the buildings acquired by the URA may become potential bombs in the city. In this connection, will the Government inform this Council whether it knows:*

- (a) *if there were accidents in the past five years which were caused by the lack of maintenance of old buildings already acquired by the URA but pending redevelopment; if so, the numbers and nature of such accidents;*
- (b) *if the URA will appropriately maintain the flats and buildings it has acquired but pending redevelopment, such as regularly inspecting them and removing the dangerous illegal structures therein, with a view to ensuring that such buildings are structurally safe and will not pose danger to the pedestrians nearby; if not, the reasons for that, and*
- (c) *the total amount of funding that the URA committed in the past five years to the maintenance and management of the flats and buildings it has acquired but pending redevelopment?*

SECRETARY FOR DEVELOPMENT (in Chinese): President,

- (a) According to the records of the URA, there was only one accident related to the buildings acquired by the URA pending redevelopment in the past five years (2005-2009). The accident involved the power transformer of a signboard which fell and hit the windscreen of the upper deck of a bus that was passing by. There were no injuries in the incident. The URA commissioned a contractor to remove the signboard right away and carried out inspection on all signboards within the project area to ensure public safety. As regards some Kwun Tong residents' allegation on the blowing off and falling down of tin plates from the rooftop of buildings acquired by the URA, the URA has no such records.
- (b) The URA attaches much importance to the conditions of the buildings it has acquired within its redevelopment projects. The URA has engaged building consultants to inspect the buildings regularly, and whenever necessary, so as to prevent these buildings from posing danger to the surrounding environment and to the public, and to take follow-up action as required. The inspections cover the external walls and the common areas of the buildings. If any potential danger is identified, the URA will take immediate action.
- (c) Over the past five years, the URA has spent about \$17 million on maintenance-related works for the acquired buildings pending redevelopment. The expenses covered the costs for commissioning of consultants and the actual maintenance works. About 550 buildings and 6 000 flats were involved.

The URA has also set up a designated team to deal with the management of the acquired buildings.

In addition, in view of security concerns arising from the gradual moving out of affected residents from the URA redevelopment project areas, the URA will employ security companies to carry out round-the-clock patrol at the buildings it has acquired, including the common areas of those buildings until the commencement of the

redevelopment work. The cost of employing security companies over the past five years amounted to about \$11 million.

Operation of a Kart Track

10. **MR WONG SING-CHI** (in Chinese): *President, it was reported that a British girl died in a fatal accident last month while karting at a kart track in Lung Kwu Tan in Tuen Mun (the kart track). It was also reported that the kart track commenced operation in 2006, with part of the track located on private land and other facilities such as the spectator stand built on the land leased from the Government under a short term tenancy (STT). In this connection, will the Government inform this Council:*

- (a) *of the respective land uses of the aforesaid government land and private land before they are used for the aforesaid purposes; whether the Government and the owner of the private land had submitted applications for changing the land uses to the Town Planning Board (TPB) regarding the construction of such facilities; if so, of the dates of applications, dates on which TPB deliberated on such applications as well as the concerns of TPB and the relevant government departments on the applications, and the conditions on approval of applications;*
- (b) *when the Lands Department started to grant the government land to the operator of the kart track through a STT for construction of facilities such as the spectator stand, together with the date on which the STT was first granted, the length and additional conditions of the tenancy, and the date of each application for STT renewal submitted by the operator of the kart track, as well as the length and additional conditions of each tenancy renewal;*
- (c) *given that it was reported that according to the land lease, the operator should submit a report to the authorities when an accident occurred at the kart track, of the number of accident reports submitted by the operator to date, together with the dates of submission and summary of the content, and whether the authorities have made recommendations for improvement in respect of such*

reports; if so, of details of the recommendations made on each occasion;

- (d) *given that it has been reported that the Home Affairs Bureau has indicated that the kart track currently operates karting activities in accordance with the code of practice for safety and guidelines issued by the Federation Internationale de L'automobile, with regular inspections conducted monthly by the Hong Kong Kart Club (the Kart Club), but the Kart Club has indicated that follow-up inspections will only be conducted when there are kart competitions at the kart track, whether it knows the number of regular inspections conducted and the items checked during each inspection by the Kart Club each year since the commencement of operation of the kart track; how the Government ensures that the Kart Club monitors the daily operation of the kart track (especially when no inspection is conducted on the site), as well as the compliance with the code of practice for safety and guidelines by the operator of the kart track; what penalty the Government may impose on the Kart Club if it is found negligent in monitoring the operation of the kart track; and*
- (e) *given that it was reported that funding had been granted by the Leisure and Cultural Services Department (LCSD) to the Kart Club for running training courses at the kart track, and the operator of the kart track commenced its operation under the monitoring of the Kart Club in 2006 with the consent of LCSD and under the permits and waivers issued by the relevant government departments, of the issuance dates, terms and conditions as well as the effective dates of such permits and waivers; of the scheme under which funding is granted by LCSD to the Kart Club for running training courses, together with the number of training courses provided, dates of such courses, the number of training places, the amount of funding granted, as well as details of the terms and conditions (including whether there is a requirement for submission of financial statements)?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, my reply to the above question is as follows:

- (a) According to government records, both the government land and the private land concerned were vacant as at 2 August 2005. The Planning Department advised that since the site in question is not situated in the boundary of any Outline Zoning Plan, the construction of a kart track thereon did not require permission from the TPB.
- (b) The kart track is built largely on private land, the tenancy of which does not prohibit such usage.

The District Lands Officer/Tuen Mun, in consultation with other relevant government departments, granted the government land adjacent to the karting track to the Hong Kong Kartingsport Association Limited on 27 November 2006 by way of a STT. The land covered by the STT is mainly used for accommodating an office, storage, repair and maintenance and fuelling facilities for the kart track.

The STT, which commenced with effect from 1 August 2006 with a fixed term of one year, has been renewed thereafter on a quarterly basis. The area of the site is about 4 709 sq m. Conditions of the STT include: the area of the site on which covered structures may be built is 180 sq m; the height of any structure thereon should not exceed 2.6 m; residential use is not allowed; entry and exit points for vehicles should be provided, and the tenant should obtain all licences and permissions required and comply with all relevant ordinances and regulations under the Laws of Hong Kong when operating a kart track.

In addition, in order to ensure that the operation of the kart track is in full compliance with the relevant sports codes and standing regulations, the tenancy also requires the tenant to appoint, at its own expense, a relevant sports governing body to monitor the condition of the kart track to the satisfaction of the Director of Leisure and Cultural Services and/or the Secretary for Home Affairs, and to take out valid insurance policies to cover the risks involved in the game to the satisfaction of the Director of Leisure and Cultural Services and/or the Secretary for Home Affairs.

- (c) The kart track has submitted four incident reports to the LCSD since opening in 2007. According to the reports, the first three incidents were minor ones. A summary of the reports is set out in the following table:

<i>Date of incident</i>	<i>Summary of event</i>	<i>Follow-up actions</i>
23 November 2007	Whilst practising, a driver lost control of his kart and drove towards the buffer area. Instead of stopping the kart immediately and signalling for help from the staff as instructed in the safety briefings, the driver drove the kart back onto the track in the opposite direction. Consequently, it collided with another kart. The two drivers were admitted to hospital.	The LCSD inspected the kart track with the Kart Club after the incident. The Kart Club considered that the operation of the kart track on the whole was normal and there was no need to make any operational changes.
7 May 2009	A driver failed to stop in time and veered off course when driving back to the closed area. A security guard was knocked down and admitted to hospital.	Ditto
16 May 2009	A driver lost control of his kart when practising on the track and veered out of the buffer area. He was injured and admitted to hospital.	Ditto
17 February 2010	A driver was found unconscious in a kart that has stopped on the track and was certified dead after being admitted to hospital.	On the day following the incident, officers from the Home Affairs Bureau, together with representatives from LCSD, the Lands Department, the Electrical and Mechanical Services Department, the police and the Tuen Mun District Office, carried out a site inspection of the kart track and its operation, and met officers of the Kart Club and the kart track operator. The Home Affairs Bureau has requested the

<i>Date of incident</i>	<i>Summary of event</i>	<i>Follow-up actions</i>
		Kart Club to submit a report on the incident and conduct a comprehensive review of the safety measures at the kart track. The police are conducting an investigation on the accident.

- (d) The Kart Club has advised that it conducts monthly inspections on the kart track as required and that the last inspection was carried out on 16 January 2010. As for daily operation, the kart track is monitored by the national sports association concerned (that is, the Kart Club) to ensure compliance with the relevant safety regulations and operational guidelines. The Kart Club submits an inspection report to the LCSD after each monthly inspection. Its check list covers the use of the kart track, operation and management of the track, performance of the karts, fire precautions, as well as administration and supervision of activities and training courses. The report of the Kart Club also assesses whether the operation of the entire kart track is in compliance with the code of practice and other requirements of the sport. If the LCSD finds that the Kart Club has failed to ensure that the kart track complies with the relevant safety regulations and operation guidelines, it may request the Lands Department to terminate the STT in accordance with the relevant provisions in the land lease.
- (e) In general, private roads are governed by Part XIII of the Road Traffic Ordinance (Cap. 374) (the Ordinance). The then Secretary for the Environment, Transport and Works, in exercise of the power conferred by section 116 of the Ordinance, approved the temporary exclusion of the private roads at the site concerned from Part XIII of the Ordinance from 18 May 2007 to 31 July 2008, but the provisions concerning the preservation of evidence of accidents as stated in section 57 of the Ordinance still applied. On 1 August 2008, the Secretary for Transport and Housing renewed the exclusion for the period up until 31 July 2011.

Through the Sports Subvention Scheme, the LCSD provides subvention to national sports associations to organize and develop

their respective sports. The Kart Club is one of the national sports associations subvented by the LCSD. For 2009-2010, the LCSD has provided a subvention of about \$0.5 million to the Kart Club for a number of initiatives, including four training courses for young people. Each of the courses offers 24 places and the total subvention involved is \$16,412. To date, the Kart Club has organized two training courses at the Diamond Coast International Kart Circuit (8 August 2009 and 1 November 2009). Under the Sports Subvention Scheme, the subvented national sports associations, including the Kart Club, have to enter into subvention agreements with the LCSD. These agreements stipulate that the associations have to observe the funding conditions and perform their obligations accordingly. They are required to submit to the LCSD periodic programme evaluation reports, quarterly reports and statements of accounts, and audited annual accounts prepared by certified public accountants.

Progress of Measures to Achieve Emission Reduction Targets in Hong Kong

11. **DR PAN PEY-CHYOU** (in Chinese): *President, the State Council announced last year that our country had decided to reduce the carbon dioxide emissions per unit of gross domestic product to 40% to 45% by 2020 as compared with that of the 2005 in terms of carbon intensity, and the aforesaid target had been submitted to the United Nations (UN) Framework Convention on Climate Change (the Convention). At the meeting of this Council on 2 December last year, the Secretary for the Environment indicated that the SAR Government would try to tie in with the country's efforts to achieve the goal of reducing carbon intensity and take this opportunity to review the Government's relevant policies and objectives. In this connection, will the Government inform this Council:*

- (a) *whether the emission reduction work being carried out currently in Hong Kong will be included in the country's targets for carbon intensity reduction; if so, when it will commence to report on such work; if not, the reasons for that;*
- (b) *whether the SAR Government will undertake that Hong Kong's target for carbon intensity reduction will not be lower than that set*

by the Central Government, so as to fulfil Hong Kong's responsibility as a developed city to address climate change issues; if not, of the reasons for that;

- (c) given that a consultant was engaged to conduct a consultancy study on climate change in 2008 by the authorities, whether the authorities will, in response to the outcome of the study, formulate various emission reduction plans for achieving different emission reduction targets; if not, of the reasons for that;*
- (d) given that the Chief Executive had earlier proposed to develop the six economic areas where Hong Kong has enjoyed clear advantages, which include the environmental industry, whether the authorities will take the opportunity of addressing climate change to discuss with the Central Government and seek mutual complement, with a view to developing the environmental industry and creating more employment opportunities for local workers; if they will, of the details; if not, the reasons for that; and*
- (e) of the latest progress and details of the efforts made by the Chief Secretary for Administration during the discussion at the Liaison and Co-ordinating Meeting of Hong Kong, Guangdong and Macao in Jointly Taking Forward the Implementation of "The Outline of the Plan for the Reform and Development of the Pearl River Delta (PRD)" (the Outline) to include a specific low-carbon development project in the 12th Five-Year Plan?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

- (a) According to the Convention, China (including Hong Kong Special Administrative Region) is obliged to submit to the UN its national communications on implementing the Convention. In accordance with UN's requirements, the Central People's Government (CPG) will submit its Second National Communications (SNC) in around 2012. For this purpose, the Administration will prepare the specifics about Hong Kong as input to the CPG document. On the voluntary national target announced by CPG on 26 November 2009 (that is, to reduce carbon intensity by 40%-45% by 2020 as

compared with 2005 level), we understand that the CPG has already reported it to UN in January 2010 in accordance with the Copenhagen Accord. Hong Kong, as part of China, will together with the Mainland follow the relevant requirements in the Copenhagen Accord and the Convention to report every two years to UN those mitigation actions that have been taken to achieve the voluntary national target, as well as their domestic measurement, reporting and verification results.

- (b) Vigorous actions are being pursued to reduce our greenhouse gas (GHG) emissions. Following CPG's announcement of the voluntary national target, the Administration has been studying how to enhance Hong Kong's mitigation options so that practical strategies to combat climate change could be developed. The Administration is in full agreement with the direction being taken by CPG in combating climate change. We will actively make efforts in support to achieving the voluntary national target in reducing carbon intensity.
- (c) The Climate Change Consultancy Study being commissioned by the Government shall assess the likely impacts of climate change on Hong Kong. The Study will explore additional strategies and measures on an objective scientific basis, and outline options to further reduce our GHG emissions as well as adapting to climate change.
- (d) To control local GHG emissions, the Administration is taking active actions to enhance Hong Kong's overall energy efficiency (in particular at buildings). Measures being implemented include providing \$450 million under the Environment and Conservation Fund (ECF) to roll out the "Buildings Energy Efficiency Funding Schemes" (the Schemes) in April 2009. The Schemes subsidize private building owners to conduct energy-cum-carbon audits and energy efficiency projects at their buildings. To date, 300 applications have been approved, and upon completion of the energy efficiency improvement projects, there shall be an annual reduction of 43 million kWh in electricity usage, that is, reduction of over 30 000 tonnes of carbon dioxide emissions. The projects and auditing work also present green business opportunities. In

addition, the Administration has secured CPG's agreement to lower the thresholds for Hong Kong enterprises' participation in clean development mechanism projects in the Mainland. Eligible Hong Kong enterprises may now invest in suitable energy efficiency projects, and participate in developing the new or renewable energy sectors, and so on. The relevant arrangements were announced in December last year.

- (e) The governments of Hong Kong, Guangdong and Macao are taking the opportunity under the Outline to further enhance co-operation. This includes formulating the Regional Co-operation Plan on Building a Quality Living Area (the Plan). The Plan aims at transforming the PRD region into a sustainable, green and quality living area. To improve the living environment in the PRD region, enhanced co-operation will be pursued in the areas of, *inter alia*, environment and conservation as well as low-carbon development. The three governments will continue to jointly take forward the strategies and objectives in the Outline under "the Liaison and Co-ordinating Meeting of Hong Kong, Guangdong and Macao in Jointly Taking Forward the Implementation of the Outline", which includes the preparation of the Plan. The compilation work is progressing well, and it is expected to be fully completed by the second quarter of 2010. We will propose for CPG's consideration to include the development strategy of transforming the PRD region into a green and quality living area in the National 12th Five Year Plan and to provide relevant policy support, with a view to bringing the forward-looking and exemplary roles of the strategy into full play.

Regulation of "Dark Pool" Trading

12. **MRS REGINA IP** (in Chinese): *President, it has been reported that Singapore Exchange and an international electronic stock trading centre has jointly set up a "dark pool" trading platform for institutional investors to conduct block trading of stocks listed in the Asia-Pacific region, including Australia, Hong Kong and Japan, by way of offshore trading. Regarding the development of "dark pool" trading in Hong Kong, will the Government inform this Council:*

- (a) *whether it knows the average turnover of Hong Kong stocks (HK stocks) transacted on "dark pool" trading platforms in Hong Kong in each of the past 12 months, as well as the respective percentages in the total turnover of HK stocks;*
- (b) *whether trading activities on "dark pool" trading platforms are currently monitored by the Securities and Futures Commission (SFC) under the Securities and Futures Ordinance (SFO) (Cap. 571); whether it knows if operators of "dark pool" trading platforms are required to apply to the SFC for the relevant licences; if so, of the necessary application requirements, approval procedure and scope of monitoring by the SFC;*
- (c) *given that "dark pool" is a platform for matching anonymous block orders of stocks between buyers and sellers and such transactions are made mainly by institutional investors, whether it has assessed the unfair situation caused by "dark pool" trading to ordinary investors; if it has, of the details; if not, the reasons for that;*
- (d) *given that it has been reported that the United States (US) passed a bill in October last year to strengthen the monitoring of "dark pool" trading and enhance the transparency in the trading of financial products, whether the authorities will follow the practice of the US and review the relevant monitoring mechanism, so as to regulate "dark pool" trading activities;*
- (e) *given that it has been reported that some operators of "dark pool" trading have indicated that the turnover of HK stocks transacted on their trading platforms might reach 5% to 10% of the total turnover of HK stocks, thus directly affecting the turnover of stocks transacted through the Hong Kong Exchanges and Clearing Limited (HKEx) in Hong Kong, of the counter-measures put in place by the authorities and whether it knows those by the HKEx; and*
- (f) *whether it has assessed the merits and demerits of developing alternative trading (such as "dark pool" trading) platforms for Hong Kong to maintain its position as an international financial centre in the long run; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, "dark pool" is a major category of alternative trading venues, which are facilities that allow securities transactions to take place outside traditional exchanges. As implied by the name, dark pools are opaque due to the lack of pre-trade transparency (that is, bid/ask prices and the identity of the parties quoting those prices are not displayed) and post-trade transparency (that is, the details of executed trades are not disclosed to the public). This is to cater for the need of institutional investors and others that seek to execute large trading interest in a manner that will minimize impact to market price.

My replies to the sub-questions are as follows:

- (a) Currently there are ten dark pools operating in Hong Kong offering trading of Hong Kong securities. They are mainly brokers/banks' internal crossing engine whereby their customers' orders would be channelled to the internal pool for matching (that is, internalization) before they are routed to the exchange market. It is estimated that transactions executed in these dark pools represent less than 3% of the total market turnover.
- (b) The brokers/banks which operate internalization pools in Hong Kong have obtained a Type 1 (dealing in securities) and Type 7 (providing automated trading services) licence from the SFC under Part V of the SFO.

The requirements which have to be met by applicants are stipulated in the SFO and elaborated in the SFC's Fit and Proper Guidelines. In summary, the applicant must:

- (i) be a corporation;
- (ii) satisfy the SFC that it is fit and proper to be licensed, has an appropriate organizational structure, good internal control systems and suitably qualified personnel to enable it to meet its regulatory obligations, and appropriate infrastructure and internal control systems to effectively manage risks, avoid conflict of interest and create proper audit trails;

- (iii) have at least two responsible officers to directly supervise the conduct of each regulated activity;
 - (iv) have substantial shareholders whose status as such would not impugn its fitness and properness to be, and to remain, licensed; and
 - (v) satisfy the prescribed financial and solvency requirements.
- (c) Dark pools operated by brokers/banks currently account for only a small percentage of market turnover. At this stage, there has not been any adverse implication for retail investors in terms of fair access.
- (d) We understand that no new regulatory requirements have been introduced in the United States or Europe yet. The United States Securities and Exchange Commission has just completed the public consultation on its proposals intending to enhance transparency of dark pools. The European Commission has initiated a review of the regulation of dark pools in its overall review of the implementation of the Markets in Financial Instruments Directive. The International Organization of Securities Commission has also commenced a new project to examine potential regulatory issues in view of the proliferation of dark pools. The SFC is a member of this project team. Together with the SFC, we are monitoring the global developments and review our own regulations as appropriate.
- (e) Currently all transactions in HK stocks by SFC-licensed ATS providers are reported to HKEx. The SFC and the HKEx would continue to monitor the development of dark pools locally and in the region.
- (f) In general, dark pools are not a new phenomenon. Market participants that need to trade in large size, such as institutional investors, always seek ways to minimize their transaction costs by completing their trades without prematurely revealing the full extent of their trading interest to the broader market. Dark pools have the benefit of bringing down trading costs, improving efficiency of trade execution and providing significant innovation in terms of trading

services offered. On the other hand, we note that the emergence of dark pools has raised concerns over the lack of transparency which could create a two-tiered market that deprives the public of information about stock prices and liquidity. Together with the SFC, we are monitoring the development of dark pools in Hong Kong and other major markets. We would consider and take any necessary measures to ensure that the markets function in an orderly and fair manner.

Capital Investment Entrant Scheme and Quality Migrant Admission Scheme

13. **DR DAVID LI:** *President, at the meeting of the Legislative Council Panel on Security on 5 January 2010, the Government presented a paper on the latest position of the Capital Investment Entrant Scheme (CIES) and Quality Migrant Admission Scheme (QMAS). Information on the contributions made by the successful applicants after their resettlement in Hong Kong was not provided in the paper. In this connection, will the Government inform this Council:*

- (a) *whether it collects statistical data on the new immigrants approved under the aforesaid two schemes relating to the years after their resettlement in Hong Kong; if so, of the nature of such data;*
- (b) *for those applications approved prior to 2009 under each of the two schemes, of the respective average number of days the principal applicants spent in Hong Kong in 2009, and the respective number of principal applicants who were absent from Hong Kong for all of 2009;*
- (c) *of the breakdown by age at the time of approval of the principal applicants in the applications approved under the CIES in 2008 and 2009 (set out in the table below); and*

Age	Total number of principal applicants	
	Number	Percentage
18-24		
25-29		

<i>Age</i>	<i>Total number of principal applicants</i>	
	<i>Number</i>	<i>Percentage</i>
<i>30-34</i>		
<i>35-39</i>		
<i>40-44</i>		
<i>45-50</i>		
<i>51 or above</i>		
<i>Total</i>		

- (d) *of the respective value of the total investment in local real estate made by applicants approved under the CIES in 2008 and 2009, broken down by type of real estate (commercial, industrial or residential), and their respective share in the value of the total transactions of such type in that year?*

SECRETARY FOR SECURITY: President, our reply to the question raised by the Member is as follows:

- (a) The QMAS was launched in June 2006. Successful applicants started to come to Hong Kong in end-2006. We will conduct a questionnaire survey on their adapting to life in Hong Kong when they apply for extension of stay after one year. The relevant survey result is at Annex.

The CIES was launched in October 2003. The Immigration Department (ImmD) has not conducted relevant survey on the successful applicants under the scheme.

- (b) Prior to 2009, there were 886 successful principal applicants under the QMAS quota. During the same period, 3 347 principal applicants came to Hong Kong through the CIES. In general, entrants under the two schemes are allowed to remain in Hong Kong for one year and two years respectively. They have to fulfil the approving criteria under the relevant scheme, such as securing gainful employments, continuing to hold the relevant investments, and so on, when applying for extension of stay.

The ImmD does not compile statistics on the actual number of days the principal applicants under the QMAS and the CIES spend in Hong Kong in a particular year.

- (c) The ImmD does not possess detailed statistics on the age of the principal applicants under the CIES. However, based on the analysis of the cases approved in December 2009 (see table below), over 70% of the principal applicants are between the age of 35 and 50:

<i>Age</i>	<i>Number of persons</i>	<i>Percentage</i>
18-24	10	3.6%
25-29	15	5.4%
30-34	23	8.3%
35-39	70	25.3%
40-44	75	27.1%
45-50	54	19.5%
51 or above	30	10.8%
Total	277	100%

- (d) The total value of the investment in local real estate made by persons admitted under the CIES in 2008 and 2009, and the respective percentage share in the total value of all transactions are as follows:

		<i>Total value (in million Hong Kong dollars)</i>	
		<i>2008</i>	<i>2009</i>
Residential properties		\$3,030 [0.9%]	\$5,256 [1.2%]
Non-residential properties	Commercial	\$132	\$273
	Industrial	\$42	\$89
	Total	\$174 [0.3%]	\$362 [0.4%]
Total		\$3,204 [0.8%]	\$5,618 [1.1%]

Annex

The QMAS Questionnaire Survey

Survey Format

Persons admitted into Hong Kong under the QMAS need to apply for extension of stay within one year. We have been conducting a questionnaire survey on these persons. As at June 2009, we issued questionnaires to the first batch of around 300 applicants. The response rate is approximately 70%. An analysis was completed last month with the main findings as follows:

- *Industry sector engaged in*

Financial and accounting services	26%
Commerce and trade	19%
Information technology and telecommunications	14%
Academic research and education	11%

(84% are working in the same sector as originally planned before coming to Hong Kong)

- *Satisfaction of career development in Hong Kong*

Extremely satisfied	33%
Quite satisfied	51%
Average	14%
Dissatisfied/Extremely dissatisfied	2%

- *Type of housing in Hong Kong*

Rented by their own	48%
Purchased by their own	24%

Housing benefits provided by employer	8%
Others	20%
- <i>Difficulties in adapting to life in Hong Kong</i>	
None	66%
Language	12%
Living environment	11%
Children's education	7%

Assistance for Children with Special Educational Needs

14. **MS STARRY LEE** (in Chinese): *President, focusing on the situation of special pre-primary education (learner diversity education) in Hong Kong, a political party invited academics to conduct a questionnaire survey with kindergarten teachers in 2009. The outcome indicated that there might be as high as 70% of the kindergartens in Hong Kong which had children with various types of special needs and about 50% of the teachers surveyed considered that there might be as many as 10 children or more with learner diversity needs (children with learner diversity) in their school, reflecting the keen demand for special pre-primary education. The survey also found that recognition and acceptance of the teaching staff towards children with learner diversity were merely of medium level, which reflected that the actual number of children with learner diversity was larger than that indicated in the survey; and parents in Hong Kong generally knew very little about children with learner diversity, which warrants concern. In this connection, will the Government inform this Council:*

- (a) *of the current number of school children in Hong Kong with problems of learner diversity;*
- (b) *in order to facilitate early identification of and assist children with learner diversity so as to reduce their difficulties in learning at primary levels, whether the authorities will review the present practice of systematic identification of children with learner diversity needs starting only from the primary levels, including*

whether they will advance the screening process to pre-primary stage; if they will conduct such a review, of the details; if not, the reasons for that;

- (c) what support is provided by the authorities at present to kindergarten teachers to assist them in early identification of children with learner diversity problems and in helping such children, including what designs of teaching kits and guidelines on teaching method have been provided; of the basis on which such guidelines were formulated by the authorities, and whether they have assessed if such guidelines are sufficiently specific and adequate, and how they monitor whether the mainstream kindergartens have provided assistance to children with learner diversity and their parents in accordance with such guidelines;*
- (d) focusing on parents' inadequate awareness of children with learner diversity, and the situation where some parents are aware of their children's difficulties but do not know how to help them, what assistance is provided by the Government at present; and*
- (e) of the measures/strategies adopted by the Government on public education to make the public understand and accept the situation and needs of children with learner diversity, and provide a positive environment for these children to grow up in?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) Early identification and early support are the Government's fundamental strategies in taking care of children with special needs. Through the Developmental Surveillance Scheme, Maternal and Child Health Centres (MCHCs) of the Department of Health (DH) conduct interviews with parents at specific ages of their children and observe the children's development in various aspects. If necessary, referrals to the Child Assessment Service (CAS) for follow-up and assessment will be arranged. According to the needs of individual children and the situation of their families, rehabilitation services, as well as services for pre-school disabled children subsidized by the

Social Welfare Department (SWD), will be arranged and co-ordinated by the CAS, thereby improving their opportunities for admission to ordinary schools and participating in daily life activities and helping their families meet their special needs. Under these support strategies, about 8 900 children had been assessed as needing services for pre-school disabled children as at the end of 2009. For kindergarten children in general, the speed of their development varies, and differences in their interests and capabilities are normally expected. Although these children sometimes encounter difficulties in learning, the problems may be transitory. We believe that it is neither necessary nor desirable to label these children at so early a stage as having special education needs. Therefore, the Education Bureau does not collect the statistics in question from kindergartens. Pre-primary education emphasizes the balanced and comprehensive development of children in ethical, intellectual, physical, social and aesthetic aspects. Kindergartens should set learning objectives in line with the development process and learning needs of children, and design for them a variety of games and learning activities. Kindergartens should also adjust their learning and teaching strategies and provide suitable guidance and support for their students in the light of their interests and capabilities. For children showing slower development in individual aspects, most of them are able to gradually develop the capabilities at their own pace through personal growth and development under proper guidance. Over-emphasizing or expecting standard performance in all aspects from all children in early childhood is prone to produce the negative effect of resistance to learning. Quality pre-primary education should be child-centred. Under the major premise of understanding and respecting children, we should help them develop their potential and lead them to a healthy life. By developing good habits and interest in learning, children will be well prepared for life-long learning. For those less capable, we should be reasonable in our demands and expectations so as to give them suitable and enough room to achieve healthy physical and mental development in all aspects.

- (b) Part (a) of this reply has explained that the Government has in place a proven mechanism for medical professionals to work in partnership

with parents to monitor the development of children from birth to the age of five. The aim is to identify possible developmental problems and provide pre-school training for children in need. To further enhance such service, the Comprehensive Child Development Service has been launched to enable pre-primary educators, with the consent of the parents, to directly refer kindergarten children to the MCHCs of their respective districts for initial assessment. Where necessary, the children will be subsequently referred to the CAS or specialist units for follow-up to ensure that they receive timely intervention and support. Comprehensive and integrated support is also provided for parents in need. When these children having been assessed as with special education needs reach the age to go to Primary One, the relevant information on their assessment will be sent to their primary schools, subject to the consent of their parents, so as to arrange for timely and suitable learning support services for them. Moreover, each year, the Education Bureau operates the Early Identification and Intervention of Learning Difficulties Programme for Primary One Pupils in all public sector primary schools to facilitate early identification and intervention by teachers for Primary One pupils with learning difficulties or language and speech problems. Those making unsatisfactory progress in learning despite extra help or having severe difficulties will be referred to educational psychologists for assessment. The existing mechanism works well in facilitating early identification of students with special education needs for timely and appropriate support.

- (c) The Guide to the Pre-primary Curriculum (2006) prepared by the Education Bureau provides information on the developmental characteristics of children aged between two to six to enable kindergarten teachers to gain a better understanding of the major development stages of children in physical, cognitive, language, affective and social aspects. It also gives advice and guidance on how to cater for learner diversity, including how to identify initially children with special needs, seek professional support, make timely referral and formulate strategies to handle learning differences. Currently, all recognized training courses for kindergarten teachers cover basic knowledge and skills for identifying, catering for and

dealing with children with special needs. Since 2006, the Education Bureau has commissioned tertiary institutions to run "Curriculum Leaders" training programmes to help schools implement quality pre-primary education curriculum effectively and facilitate the development and learning of children. In addition to helping curriculum leaders handle individual differences in learning and teaching, these programmes also encourage them to formulate appropriate teaching strategies to meet the development needs of children. In late 2008, the DH, Education Bureau and SWD jointly produced a Pre-primary Children Development and Behaviour Management — Teacher Resource Kit, consisting of textual and visual information, to familiarize teachers with the operation of the Comprehensive Child Development Service and the referral mechanism, and raise their awareness of common developmental and learning problems of pre-primary children, so as to facilitate early identification and referral of children in need for assessment and treatment. Furthermore, every year the Education Bureau runs a series of professional development courses on curriculum development for principals and teachers to enhance their awareness and understanding of overall curriculum development and implementation. Catering for learner diversity has always been one of our concerns. A crucial component of the quality review is the assessment of the support provided for children and links with parents. During the quality review inspection to schools, the Education Bureau will examine how a pre-primary education institution caters for learning differences of children and provides opportunities for their healthy development according to their needs and capabilities.

- (d) The government departments concerned have been actively promoting parent education and family health services, including setting up parent resource libraries or kiosks in the MCHCs and Child Assessment Centres and regularly organizing parenting talks, workshops and training courses to enhance parents' awareness and understanding of child development and, through practical and effective training, empower parents to help their children overcome difficulties. In the Guide to the Pre-primary Curriculum — Parent Booklet published in 2007, the Education Bureau has included a table of "children's behaviours that require concern" to give parents a better understanding of how children learn and how they can help in

their children's development. The DH also published a booklet "Understanding Your Child's Development — For Parents of Preschool Children" in late 2008 to help parents understand the characteristics of child development and seek appropriate assistance when necessary. The Education Bureau also collaborates with tertiary institutions and professional bodies to improve and develop assessment tools and teaching resources for teachers and other professionals. An example is the project for dyslexic students entitled "READ & WRITE: A Jockey Club Learning Support Network", which is sponsored by the Hong Kong Jockey Club Charities Trust. These efforts have proved to be effective in enhancing the understanding of special education among parents and members of the public and facilitating early identification of students with special education needs by various stakeholders for timely and appropriate support. Regarding children assessed as having special needs (including specific learning difficulties), the SWD assists their parents to accept and take care of the disabled children and provides parents with services at Parents/Relatives Resource Centres. Through individual counselling, group discussions, community education and other activities, the SWD aims to enable families with disabled members to care for themselves and help each other, and enhance the understanding and acceptance of persons with disabilities by their parents and other family members with a view to providing better care for them.

- (e) The Government has been collaborating with different service providers, including the media, schools, non-profit making organizations and tertiary institutions, to enhance the public's understanding of child development and correct myths. The CAS of the DH also engages parents to participate in self-help groups to share experience on the frustrations and difficulties faced by families with children with special needs. In addition, the Government helps children overcome development difficulties through healthcare, child care, education and other services. The relevant support services have been mentioned in part (a) of this reply. The Government will continue to organize public education and publicity activities to promote social inclusion and encourage all sectors of the community to accept people with disabilities, including children with special needs.

Use of Reusable Food Containers in Schools

15. **MR LEE WING-TAT** (in Chinese): *President, regarding the use of disposable and reusable food containers by schools, will the Government inform this Council:*

- (a) *of the total number of food containers used by primary and secondary schools in Hong Kong in the past three years and the respective percentages of disposable and reusable food containers; and among such disposable food containers, the percentage of the recyclable ones;*
- (b) *of the current number of recyclers which recover disposable food containers in Hong Kong; the percentage of recovered food containers in the total number of disposable food containers in the past three years; and how the Government deals with those disposable food containers which have not been recovered; and*
- (c) *as the Secretary for the Environment, in replying to a question from a Member of this Council on 13 January 2010, pointed out, "The Environment and Conservation Fund (ECF) has reserved \$50 million to support existing schools to conduct retrofitting works and install facilities necessary for implementing 'on-site meal portioning'. Each school will be subsidized for the actual expenditure incurred. We have now already started receiving applications for such subsidies", whether the Government has set a target for the number of applications; if it has, of the details; and how the Government will meet this target?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

- (a) The Environmental Protection Department conducted a questionnaire survey covering all schools in Hong Kong in 2008. The findings showed that about 550 000 students lunched in schools each day. A breakdown of their lunch practices is tabulated below:

<i>Lunch Practices</i>	<i>Proportion (by meal units)</i>
Reusable vessels (such as lunch provided by parents, students bringing their own lunch, "on-site meal portioning" and reusable containers)	51%
Recyclable containers (polypropylene (PP) containers)	30%
Other disposable containers (such as paper, tin foil and polyfoam)	19%

Relevant data for 2007 and 2009 are not available.

- (b) Based on the above findings for 2008, students throughout Hong Kong used about 160 000 recyclable PP containers each day. Such containers can be sold as plastic waste after undergoing cleaning and shredding. We understand that there are currently five recyclers in Hong Kong who can recover PP containers, and they handle a total of about 100 000 PP containers daily. Disposable containers which are not recovered will be delivered to landfills for disposal.
- (c) The provision of lunch with disposable containers at schools will result in wastage and run counter to green living education. In view of this, since October 2009 the Environment Bureau and the Education Bureau have jointly promoted a Green Lunch Charter (the Charter) to encourage schools to use reusable cutlery and containers and adopt "on-site meal portioning" where possible. The portion can be adjusted according to students' needs to reduce food wastage, and this in turn can instill the value of resource conservation in students. 270 schools signed the Charter when the launching ceremony was held on 26 February 2010.

In tandem with the launch of the Charter, the ECF has earmarked \$50 million to subsidize basic conversion works and the installation

of necessary facilities at schools to implement on-site meal portioning. This new subsidy is open to application starting from 7 December 2009 and the response has been satisfactory. As at 19 February 2010, about 180 schools have expressed their interest in applying for the subsidy and submitted to the ECF Secretariat the "Request for Site Visit to School to Assess Feasibility of Implementing On-site Meal Portioning" form.

The Secretariat is making arrangements for its works agent to visit these schools and provide full project management services to those schools suitable for implementing on-site meal portioning by helping them with applications for funding, conversion works and the installation of facilities. We estimate that in normal cases, works can commence during the summer holiday in 2010 for completion before the new school term to enable schools to discontinue the use of disposable containers as early as possible.

On-site meal portioning facilities have also become standard facilities of newly built schools. Seven schools under construction, which are due for completion between February 2011 and February 2012, will be installed with such facilities.

We will continue to implement the above measures to encourage more schools to adopt more environmentally-friendly lunch practices.

Training Opportunities Provided for Nurses

16. **DR JOSEPH LEE** (in Chinese): *President, at present, the Hospital Authority (HA) makes an annual allocation for staff training and development, a part of which was used for training nurses. In this connection, will the Government inform this Council whether it knows, in each of the past three years:*

- (a) *the amount of expenditure incurred by the HA on training nurses, the percentage of such amount in the total allocation for training and development, and the number of nurses who received training, together with a breakdown by hospital cluster, rank and training hour;*
- (b) *the number of training courses for nurses which were subsidized by the HA, together with a breakdown by course type and number of places; whether the authorities will consider subsidizing more training courses of different types as well as increasing the number of subsidized places, so as to enable more nurses to upgrade themselves and enhance the quality of healthcare services in a sustainable manner; and*
- (c) *the number of applications for study leave submitted by nurses of public hospitals under the HA for receiving training and, among such applications, the respective numbers of those approved and rejected, and the reasons for rejecting some applications; how the authorities deploy its manpower to facilitate nurses' participation in different training courses?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President,

- (a) In 2007-2008, 2008-2009 and 2009-2010 (the first six months as at 30 September 2009), the total expenditures of the HA on providing subsidies directly to its staff for participating in trainings or seminars organized by external organizations (excluding external training courses centrally co-ordinated and arranged by the HA Head Office and training courses organized internally by the HA mentioned in part (b) of the reply) as well as the amount and percentage of the expenditure used to subsidize nurses are as follows:

	2007-2008	2008-2009	2009-2010 (the first six months as at 30 September 2009)
Total expenditure of HA on providing subsidies directly to its staff for participating in trainings or seminars (\$ million)	21.02	32.97	7.08
The amount of expenditure used to subsidize nurses (\$ million)	6.86	9.20	1.53
The percentage of expenditure used to subsidize nurses	33%	28%	22%

In these three years, the number of nurse attendances participating in these trainings with subsidies were 6 218, 7 066 and 1 075 respectively. A detailed breakdown of the figures by cluster and rank is at Annex. The HA does not have information on the training hours.

- (b) The HA has all along attached importance to the training of nurses and encouraged them to pursue continuous learning with a view to enhancing their professional knowledge and competence on a continuous basis. The HA has been providing training to nurses through various channels. Each year, the HA Head Office provides subsidies to servicing registered nurses for taking bachelor or master degree programmes in nursing provided by local or overseas institutions. Subsidies are also provided to enrolled nurses for attending programmes for conversion of enrolled nurse to registered nurse. In 2007-2008 and 2008-2009, the HA subsidized about 340 nurses to take these courses each year with an annual expenditure of about \$1.72 million. In 2009-2010, the number of nurses subsidized to take these courses increases to 390 with an estimated expenditure of about \$1.97 million.

Moreover, to enhance the quality of its nursing services and promote the professional development of nurses, the HA has sponsored 44 nurses to attend specialist training courses overseas in 2009-2010 with an expenditure of \$2.55 million. In the meantime, to strengthen the clinical skills of newly graduated nurses, the HA has also set up a new simulation laboratory on emergency clinical situation in 2009-2010 to provide training to 342 newly graduated nurses with an expenditure of \$1.5 million.

Furthermore, the Institute of Advanced Nursing Studies of the HA also provides professional competence courses and specialty nursing certificate courses to nurses. This is to encourage nurses to pursue continuous learning and enhance the quality of nursing care. The number of nurse attendances participating in these training courses in 2007-2008 and 2008-2009 were 8 089 and 9 584 respectively. In 2009-2010, in the light of the manpower deployment arrangements made in response to the human swine influenza epidemic, the HA has ceased providing most of the training courses in May and June 2009. The number of nurse attendances participating in these training courses for the full year of 2009-2010 is estimated at 9 000.

The HA Head Office and hospitals also organize various in-service non-clinical training courses (such as management courses) for their staff. In 2007-2008 and 2008-2009, the number of nurse attendances participating in these courses were 8 554 and 12 320 respectively. In 2009-2010, in the light of the manpower deployment arrangements made in response to the human swine influenza epidemic, the HA has ceased providing most of the training courses in May and June 2009. The number of nurse attendances participating in these training courses for the full year of 2009-2010 is estimated at 9 500.

The HA will continue to keep in view the training needs of nurses and review from time to time the content of the training programmes and the number of subsidy places, and make appropriate adjustments in the light of the circumstances.

- (c) In 2007-2008, 2008-2009 and 2009-2010 (as at 31 December 2009), the number of days of study leave approved for nurses of the HA were 51 755, 43 842 and 30 456 respectively. The HA does not have the information on the applications for study leave by nurses which were not approved. To facilitate the arrangements for nurses to receive training, various departments and wards of the HA make appropriate arrangements in advance in drawing up the duty rosters so as to facilitate the participation of nurses in trainings as far as possible.

Annex

Nurses participating in trainings with subsidies (by cluster and rank)

<i>Year</i>	<i>Cluster</i>	<i>Senior Nursing Officer or above</i>	<i>Ward Manager/ Advanced Practice Nurse / Nurse Specialist/ Nursing Officer</i>	<i>Registered Nurse</i>	<i>Enrolled Nurse or others</i>	<i>Total</i>
2007-2008	Hong Kong East Cluster	26	176	379	97	678
	Hong Kong West Cluster	2	29	10	0	41
	Kowloon Central Cluster	17	158	491	80	746
	Kowloon East Cluster	58	332	751	134	1 275
	Kowloon West Cluster	71	486	1 124	144	1 825
	New Territories East Cluster	46	312	754	116	1 228
	New Territories West Cluster	5	114	281	24	424
	Head Office	0	1	0	0	1
	Total	225	1 608	3 790	595	6 218

<i>Year</i>	<i>Cluster</i>	<i>Senior Nursing Officer or above</i>	<i>Ward Manager/ Advanced Practice Nurse / Nurse Specialist/ Nursing Officer</i>	<i>Registered Nurse</i>	<i>Enrolled Nurse or others</i>	<i>Total</i>
2008-2009	Hong Kong East Cluster	22	178	318	49	567
	Hong Kong West Cluster	18	131	414	49	612
	Kowloon Central Cluster	9	234	597	64	904
	Kowloon East Cluster	30	294	894	120	1 338
	Kowloon West Cluster	78	485	1 009	103	1 675
	New Territories East Cluster	28	288	851	89	1 256
	New Territories West Cluster	11	182	482	31	706
	Head Office	1	5	2	0	8
	Total	197	1 797	4 567	505	7 066
2009-2010 (the first six months as at 30 September 2009)	Hong Kong East Cluster	0	13	29	4	46
	Hong Kong West Cluster	4	13	40	5	62
	Kowloon Central Cluster	5	104	224	9	342
	Kowloon East Cluster	4	22	22	7	55
	Kowloon West Cluster	17	146	266	32	461
	New Territories East Cluster	0	18	20	4	42
	New Territories West Cluster	1	21	38	2	62
	Head Office	2	1	2	0	5
	Total	33	338	641	63	1 075

Weather Forecast by Hong Kong Observatory

17. **MR FREDERICK FUNG** (in Chinese): *President, some members of the public have relayed to me that the forecast time of the southward migration of a cold front, the seven-day weather forecasts and weather forecasts for even shorter periods made by the Hong Kong Observatory (HKO) during the Chinese New Year holiday this year (from 11 to 20 February) significantly deviated from the actual situations, and that the temperature forecasts had been amended time and again, while the actual temperatures on several days were significantly lower than those forecasted. In this connection, will the Government inform this Council:*

- (a) during the aforesaid period, how the forecasts for the arrival time of cold front, and the maximum and minimum temperatures (including seven-day weather forecasts and local weather forecasts) compare with the actual situations, and of the time when cold weather warnings were issued;*
- (b) of the absolute accuracy scores (out of a maximum of 100) for the daily forecasts made by the HKO during the aforesaid period, and of the reasons for the significant deviations of the aforesaid forecasts and actual situations in respect of the cold front; and*
- (c) of the method currently adopted by the HKO for forecasting the arrival time of cold fronts and subsequent temperature falls; whether the authorities will review the current method of forecasting in view of the aforesaid deviations of the forecasts from actual situations, and assess afresh the impact of such large-scale weather systems (for example, winter monsoon) on local temperatures, as well as making corresponding improvements in hardware and software, so as to avoid the occurrence of similar situations as far as practicable?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): *President, the seven-day weather forecast of the HKO seeks to provide the public with an overview of the weather conditions for the coming week, in terms of general trend. The HKO will update the projections in their shorter term forecasts in the light of the latest weather conditions.*

Due to the inherent nature of changing weather conditions and the limitations of prevailing technology, the phenomenon that the projected

temperatures in the seven-day forecast differ from the actual measurements is almost inevitable. Such a phenomenon is not unique to Hong Kong. In the winter months, Hong Kong's temperature is affected by factors including the strength of the cold air heading south, cloud density, humidity and rainfall. As these factors are erratic in nature, it is not easy to accurately predict their interactions several days ahead.

With reference to the questions raised by the Mr Fung, our detailed reply is as follows:

- (a) On 5 February 2010, the HKO projected that a cold front would pass through Hong Kong during the Lunar New Year holidays. Accordingly, the HKO mentioned in its forecast on that day that there would be a significant temperature drop on 12 February. As forecast, the HKO issued the Cold Weather Warning at 4:20 pm on 12 February. The warning was cancelled at 4:20 pm on 13 February.

On 11 February, the HKO forecast that the northerlies would strengthen and announced in the forecast on that day that the temperature would drop further within a few days. The HKO issued, as forecast, the Cold Weather Warning again at 4:20 pm on 14 February. It was cancelled at noon on 20 February.

Tables comparing the minimum and maximum temperature forecasts (ranging from seven-day to one-day forecast) with the actual measurements recorded at HKO's Headquarters during the period between 11 and 20 February are at Annexes A and B respectively. As shown in Annex A, the minimum temperature shown in the Local Weather Forecast issued one day before was the same as the actual measurement on some days. On some other days, it was higher or lower than the actual measurement but the margin did not exceed one degree on any occasion.

- (b) The HKO assesses the accuracy of its weather forecasts by comparing the differences between the forecasts and the actual outturn in terms of a basket of factors, including temperature, wind speed, cloud cover, visibility and precipitation. The HKO does not produce accuracy scores for temperature forecasts alone.
- (c) In making seven-day weather forecasts, the HKO needs to take into account the weather conditions in neighbouring areas far beyond

Hong Kong. The HKO mainly relies on the mathematical output of the global weather change projections generated by the computers of overseas meteorological centres (including Europe and Japan). The Department also makes reference to the data provided by nearby meteorological authorities.

Since the shorter term forecasts are of greater relevance to the daily lives of the general public, the HKO attaches more importance to such forecasts. In making these forecasts, the HKO draws reference from the above data and would also make use of the readings from its own equipment and the mathematical algorithms developed by departmental colleagues on the basis of the experience acquired over the years.

The HKO will continue to keep abreast of advances in technology relating to temperature forecasts. Where appropriate, the Department would consider upgrading its hardware/software for the purpose of enhancing its forecasting service.

Annex A

The minimum temperature shown in 7-day and short-term weather forecasts, as compared with the actual measurements
(11 to 20 February 2010)

<i>Date</i>	<i>Minimum Temperature (degree Celsius)</i>							<i>Actual Measurements⁽²⁾</i>
	<i>7-Day forecast</i>	<i>6-Day forecast</i>	<i>5-Day forecast</i>	<i>4-Day forecast</i>	<i>3-Day forecast</i>	<i>2-Day forecast</i>	<i>1-Day forecast⁽¹⁾</i>	
11 Feb	19	21	22	22	21	22	23	24
12 Feb	16	17	15	15	16	15	13	12
13 Feb	15	14	14	14	14	13	11	12
14 Feb	15	15	16	15	14	14	14	15
15 Feb	14	14	15	14	15	15	12	11
16 Feb	13	13	13	14	14	12	10	9
17 Feb	12	12	13	13	12	11	9	9
18 Feb	11	12	11	11	11	10	9	8
19 Feb	11	11	11	11	10	10	8	8
20 Feb	13	14	13	12	12	11	10	11

Notes:

- (1) The "1-Day forecast" refers to the Local Weather Forecast issued at 11:15 pm one day before. The other forecasts refer to the "7-day weather forecast" issued at 11:30 am seven to two days before.
- (2) They refer to the temperatures recorded at HKO's Headquarters.

Annex B

The maximum temperature shown in 7-day and short-term weather forecasts, as compared with the actual measurements
(11 to 20 February 2010)

Date	Maximum Temperature (degree Celsius)							Actual Measurements ⁽²⁾
	7-Day forecast	6-Day forecast	5-Day forecast	4-Day forecast	3-Day forecast	2-Day forecast	1-Day forecast ⁽¹⁾	
11 Feb	24	25	25	25	25	26	26	27
12 Feb	22	22	22	22	23	23	25	25
13 Feb	18	17	17	17	17	16	15	15
14 Feb	18	18	19	18	18	18	17	16
15 Feb	17	17	18	17	18	18	14	15
16 Feb	16	16	16	16	16	14	14	11
17 Feb	15	15	15	15	14	13	11	11
18 Feb	14	14	14	13	13	13	12	11
19 Feb	13	14	15	15	14	13	11	11
20 Feb	16	17	17	16	16	14	14	16

Notes:

- (1) The "1-Day forecast" refers to the Local Weather Forecast issued at 11:15 pm one day before. The other forecasts refer to the "7-day weather forecast" issued at 11:30 am seven to two days before.
- (2) They refer to the temperatures recorded at HKO's Headquarters.

Traffic Congestion on Three Road Harbour Crossings

18. **DR LAM TAI-FAI** (in Chinese): *President, in its paper submitted to the Panel on Transport of this Council in November 2008, the Government has indicated that the traffic distribution among the three road harbour crossings (RHCs) is uneven, and there is room for improvement. One of the major causes of uneven distribution is the difference in toll levels of the three RHCs. Moreover, quite a number of members of the public have relayed to me that congestion occurs in north bound and south bound traffic at the Cross-Harbour Tunnel (CHT) every morning and evening, and it has not only resulted in longer journey time but has also aggravated air pollution as it has increased vehicle emissions. In this connection, will the Government inform this Council:*

- (a) *of the respective average daily vehicular flows, as well as the maximum and minimum traffic flows of the CHT, Western Harbour Crossing (WHC) and Eastern Harbour Crossing (EHC) in each of the past five years, together with a breakdown by vehicle type;*

- (b) *since the implementation of the Journey Time Indication System (JTIS) at the end of 2003, whether the authorities have reviewed the effectiveness of the JTIS, including the accuracy in its estimation of journey time; if they have, of the details; if not, the reasons for that;*
- (c) *whether the Transport Department (TD) has received complaints about journey time being wrongly estimated by the JTIS; if it has, of the total number of complaints received since the implementation of JTIS and, among such complaints, the maximum and minimum differences in the estimated and actual journey times involved;*
- (d) *whether the TD has assessed if the traffic congestion problem at the CHT is serious at present, and whether it has studied ways to solve the problem, including formulating time indicator for cross-harbour journeys or other vehicle divergent measures (for example, increasing the number of autotoll lanes); if it has, of the details; if not, the reasons for that;*
- (e) *whether it had, in the past three years, assessed the impact of the traffic congestion problem at the three RHCs on the journey time to work and to school of members of the public, as well as on air pollution, and whether it had assessed the resultant economic losses to Hong Kong (including the impact on the gross value of production of relevant industries and the development of the tourist industry in Hong Kong); if it had, of the details; if not, the reasons for that;*
- (f) *whether it has assessed the impact of the Central-Wanchai Bypass (CWB) Project, West Kowloon Cultural District Project and the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link Project on the traffic at the CHT during their construction; whether it will aggravate the traffic congestion problem at the CHT; if it has, of the details, and how such problems are to be solved;*
- (g) *whether it has assessed if the traffic congestion problem at the three RHCs can be alleviated after the commissioning of the Shatin to Central Link (SCL); if it has, of the details; if not, the reasons for that;*
- (h) *given that the Government indicated in November 2008 that it had commissioned a 12-month consultancy study on the improvement in traffic distribution among the three RHCs, when the consultancy*

study will be completed, and whether it will make public the outcome of the study; and

- (i) *given that the franchises of the EHC and the WHC will expire in 2016 and 2023 respectively, what factors the Government will consider in deciding whether it will propose buying out or extending their franchises; how the outcome of the consultancy study will affect the Government's decision?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President,

- (a) A breakdown by vehicle type of the average daily vehicular flow, maximum vehicular flow and minimum vehicular flow of CHT, WHC and EHC for the past five years is set out in the Annex.
- (b) to (e)

According to the data of the TD, currently the average daily vehicular flow of the CHT is about 121 000 vehicle trips, which is higher than its design capacity of 78 000. During peak hours, the hourly vehicular flow of the CHT reaches its saturation point, resulting in relatively long queues at both entrances of the tunnel.

To alleviate congestion at the three RHCs, the TD installed the JTIS on Hong Kong Island in 2003 to assist motorists to choose a better cross-harbour route and therefore diverting traffic flow. Since August 2005, information collated from the JTIS has been disseminated to the public through an Internet Traffic Speed Map on the TD's website. A before-and-after survey conducted by the TD reveals that the average vehicle speed along the approach roads of RHCs on Hong Kong Island has generally increased by 4% after the implementation of the JTIS. The TD carried out an opinion survey on the JTIS in 2006 and found that out of the 2 760 motorists who had made cross-harbour trips within one month prior to the survey, over 87% of the interviewees noticed the JTIS, and among them 64% considered that the system helped them choose a cross-harbour route, and over 61% considered that the system also helped them in other aspects, such as estimating the arrival time and the level of congestion. On the whole, the JTIS operates satisfactorily, and makes it more convenient for motorists, facilitates traffic diversion and alleviates traffic congestion.

To ensure normal operation of the JTIS, the TD monitors the system regularly by conducting bi-weekly sample surveys with the data stored in the system and quarterly journey surveys on relevant routes. Since the launch of the JTIS in 2003, the TD has received 25 complaints about inaccurate estimated journey time displayed by the system (two complaints in 2003, five in 2004, five in 2005, three in 2006, three in 2007, five in 2008 and two in 2009). Among these complaints, the maximum deviation from the actual journey time was 11 minutes and the minimum three minutes. Investigations reveal that most deviations were caused by abrupt changes in traffic conditions.

The number of autotoll lanes is generally determined by the utilization rate of such lanes at the tunnel concerned. According to the TD's study, the existing autotoll lanes can meet the traffic demand, and the stop-to-pay arrangement basically poses no negative effect on the traffic flow of the tunnel. As the vehicular flow of the CHT tubes has already reached the maximum capacity during peak hours, additional autotoll lanes would not allow more vehicles to use the CHT concurrently. As regards assessments of time loss, air pollution, economic implications, and so on, caused by congestion, these involve many assumptions and should be premised on alternative options of traffic distribution for comparison.

(f) and (g)

The consultant of the CWB project has carried out a traffic impact assessment and formulated measures to alleviate traffic impact during construction. The additional traffic generated from the project will be mainly caused by the transportation of concrete and other construction materials. To reduce the impact on land traffic and nuisance to the public, we will arrange marine transport of some project materials as far as possible. Separately, we have assessed the traffic impact during construction of the West Kowloon Cultural District and Guangzhou-Shenzhen-Hong Kong Express Rail Link in the context of the West Kowloon Reclamation Traffic Study which has been completed recently. Likewise, to reduce the impact on land traffic, some project materials will be transported by sea. We expect that these projects will not create pressure on the traffic flow of the CHT.

In fact, the CWB, upon completion, should have a positive effect on alleviating traffic congestion of the road network on the northern shore of Hong Kong Island and increasing the capacity of the connecting road network of the WHC, thereby contributing to the improvement of traffic distribution among the RHCs.

The SCL will become the fourth rail harbour crossing in Hong Kong. It will help alleviate the traffic of the existing cross-harbour Tsuen Wan Line, Tseung Kwan O Line and Tung Chung Line. Some cross-harbour passengers currently using road-base transport will be attracted to the relatively fast and direct railway line. Therefore, we expect that the cross-harbour section of the SCL will have a positive effect on alleviating traffic congestion of the three RHCs.

(h) and (i)

The Government is very concerned about the traffic impact of the heavy utilization of the CHT and has commissioned consultants to study how the traffic distribution among the RHCs can be improved, with a view to identifying an option feasible in transport, financial and legal terms. The recommended option should minimize the impact on public expenditure. We expect that the consultancy study will be completed in the first half of 2010.

Having examined in detail the traffic distribution among the three RHCs and analysed the problem, the consultants are of the view that the reasonable toll levels for the three RHCs should be considered carefully. Excessively low tolls will attract heavier vehicular traffic and create pressure on other road networks, while excessively high tolls will not be acceptable to the public. The consultants have also pointed out that given the limited capacity of the existing connecting road networks, if the existing cross-harbour vehicular traffic is substantially diverted to the EHC and WHC, the congestion problem in the vicinity of the CHT during peak hours may be partially shifted to other areas. The consultants will analyse what would be the reasonable toll levels of the RHCs, how to enhance the Government's capability in adjusting tolls of three RHCs, the cost and benefit of such measures, and will make recommendations on these issues to the Government.

The Government will keep an open mind in considering various options that would enable the Government to implement more reasonable toll levels, including buy-back and franchise extension as mentioned in this question. Upon receipt of the consultancy report, we will consider carefully from different perspectives the findings of the study and feasibility of the recommendations. We will share with the public the consultant's recommendations and the Government's considerations, and listen to their views.

Annex

A. A breakdown by vehicle type of the average daily vehicular flow of the three RHCs for the past five years

<i>Year</i>		<i>Private car</i>	<i>Motorcycle</i>	<i>Private/public light bus</i>	<i>Private/public single-decked bus</i>	<i>Private/public double-decked bus</i>	<i>Goods vehicle <5.5 tonnes</i>	<i>Goods vehicle 5.5-24 tonnes</i>	<i>Goods vehicle >24 tonnes</i>	<i>Taxi</i>	<i>Average daily vehicle trip</i>
2005	CHT	44 592	5 429	3 264	3 926	6 140	22 640	3 891	837	32 135	122 854
	EHC	35 225	2 291	1 129	464	2 270	9 824	2 363	282	10 017	63 865
	WHC	21 906	389	2 417	1 151	3 184	3 660	706	84	7 690	41 188
2006	CHT	43 953	5 543	3 318	4 273	6 007	23 243	4 007	814	32 708	123 866
	EHC	33 437	2 052	1 074	457	2 208	8 637	2 116	229	10 800	61 010
	WHC	23 043	430	2 387	1 265	3 179	4 000	762	109	9 200	44 373
2007	CHT	42 960	5 557	3 266	4 154	5 948	23 207	4 064	829	32 943	122 926
	EHC	34 592	2 170	1 084	503	2 217	8 904	2 278	199	12 058	64 005
	WHC	25 021	464	2 407	1 266	3 193	4 282	856	132	11 195	48 816
2008	CHT	43 108	5 296	3 124	3 916	5 889	22 460	4 093	890	32 469	121 245
	EHC	34 016	2 117	1 025	557	2 200	8 590	2 244	190	12 279	63 218
	WHC	24 079	470	2 245	1 263	3 163	4 352	912	148	11 109	47 742
2009	CHT	43 623	5 235	3 058	3 974	5 900	22 122	4 218	959	32 333	121 422
	EHC	34 439	2 079	997	578	2 178	7 943	2 077	291	12 404	62 987
	WHC	24 494	502	2 164	1 305	3 167	4 204	931	174	11 280	48 222

Legend:

CHT — Cross Harbour Tunnel

EHC — Eastern Harbour Crossing

WHC — Western Harbour Crossing

B. A breakdown by vehicle type of the maximum and minimum vehicular flow of the Cross Harbour Tunnel

<i>Year</i>	<i>Cross Harbour Tunnel</i>	<i>Month</i>	<i>Private car</i>	<i>Motorcycle</i>	<i>Private/public light bus</i>	<i>Private/public single-decked bus</i>	<i>Private/public double-decked bus</i>	<i>Goods vehicle <5.5 tonnes</i>	<i>Goods vehicle 5.5-24 tonnes</i>	<i>Goods vehicle >24 tonnes</i>	<i>Taxi</i>	<i>Average daily vehicle trip</i>
2005	Maximum vehicular flow	11	44 025	6 308	3 390	4 954	6 160	24 392	4 370	844	31 412	125 853
	Minimum vehicular flow	2	46 859	4 506	3 269	3 684	6 192	18 252	2 890	673	34 099	120 426
2006	Maximum vehicular flow	3	44 127	5 693	3 376	4 605	6 058	24 124	4 193	759	33 282	126 218
	Minimum vehicular flow	8	41 838	5 467	3 196	4 334	6 003	24 001	4 205	887	31 325	121 256
2007	Maximum vehicular flow	3	43 693	5 834	3 408	4 312	6 030	23 890	4 140	885	34 663	126 855
	Minimum vehicular flow	8	40 861	4 927	3 017	4 352	5 942	23 656	4 259	794	30 959	118 765
2008	Maximum vehicular flow	11	44 088	5 910	3 301	4 588	5 915	22 737	4 263	937	32 848	124 586
	Minimum vehicular flow	8	41 133	5 058	2 967	3 663	5 654	21 840	4 008	871	31 313	116 507
2009	Maximum vehicular flow	11	42 962	5 512	3 150	4 996	5 867	22 684	4 487	1 028	32 985	123 671
	Minimum vehicular flow	9	42 419	5 080	2 960	3 718	5 839	22 912	4 532	956	31 227	119 644

C. A breakdown by vehicle type of the maximum and minimum vehicular flow of the Eastern Harbour Crossing

	<i>Eastern Harbour Crossing</i>	<i>Month</i>	<i>Private car</i>	<i>Motorcycle</i>	<i>Private/public light bus</i>	<i>Private/public single-decked bus</i>	<i>Private/public double-decked bus</i>	<i>Goods vehicle <5.5 tonnes</i>	<i>Goods vehicle 5.5-24 tonnes</i>	<i>Goods vehicle >24 tonnes</i>	<i>Taxi</i>	<i>Average daily vehicle trip</i>
2005	Maximum vehicular flow	1	40 778	2 919	1 154	540	2 368	11 957	2 779	357	10 522	73 375
	Minimum vehicular flow	5	31 171	1 789	1 119	435	2 231	8 463	2 056	215	8 590	56 069
2006	Maximum vehicular flow	11	34 614	2 271	1 108	605	2 229	9 328	2 334	292	11 632	64 413
	Minimum vehicular flow	4	31 963	1 952	1 035	370	2 163	7 976	1 953	218	10 060	57 690
2007	Maximum vehicular flow	11	36 030	2 418	1 107	674	2 249	9 620	2 464	192	12 947	67 702
	Minimum vehicular flow	4	32 237	1 934	1 069	436	2 157	8 150	2 124	200	11 093	59 399
2008	Maximum vehicular flow	1	35 466	2 129	1 084	569	2 233	9 402	2 409	235	12 647	66 173
	Minimum vehicular flow	8	31 880	2 092	930	441	2 104	8 461	2 201	149	11 654	59 913
2009	Maximum vehicular flow	11	36 796	2 270	1 014	696	2 194	8 639	2 251	410	13 405	67 675
	Minimum vehicular flow	4	32 283	1 946	996	562	2 154	7 368	2 000	202	11 711	59 221

D. A breakdown by vehicle type of the maximum and minimum vehicular flow of the Western Harbour Crossing

<i>Year</i>	<i>Western Harbour Crossing</i>	<i>Month</i>	<i>Private car</i>	<i>Motorcycle</i>	<i>Private/public light bus</i>	<i>Private/public single-decked bus</i>	<i>Private/public double-decked bus</i>	<i>Goods vehicle <5.5 tonnes</i>	<i>Goods vehicle 5.5-24 tonnes</i>	<i>Goods vehicle >24 tonnes</i>	<i>Taxi</i>	<i>Average daily vehicle trip</i>
2005	Maximum vehicular flow	11	23 914	478	2 525	1 318	3 214	4 136	779	106	8 839	45 309
	Minimum vehicular flow	2	19 875	309	2 355	970	3 134	2 737	528	58	6 426	36 391
2006	Maximum vehicular flow	12	25 306	473	2 398	1 324	3 201	4 331	839	136	10 563	48 569
	Minimum vehicular flow	2	21 470	379	2 441	1 115	3 176	3 334	631	87	8 032	40 664
2007	Maximum vehicular flow	11	27 305	528	2 516	1 382	3 192	4 720	947	152	12 611	53 354
	Minimum vehicular flow	4	23 226	394	2 335	1 221	3 170	3 787	771	104	10 487	45 495
2008	Maximum vehicular flow	12	25 637	527	2 274	1 322	3 181	4 578	983	175	11 224	49 901
	Minimum vehicular flow	2	22 588	380	2 288	1 132	3 145	3 533	715	99	10 483	44 362
2009	Maximum vehicular flow	12	27 550	541	2 202	1 424	3 170	4 898	1 089	200	13 082	54 156
	Minimum vehicular flow	5	22 715	458	2 066	1 206	3 152	3 739	825	120	9 807	44 087

Regulating Angling Activities at Waterfronts of Victoria Harbour

19. **MR KAM NAI-WAI** (in Chinese): *President, in recent years, quite a number of members of the public have engaged in angling at the waterfronts of the Victoria Harbour. In this connection, will the Government inform this Council:*

- (a) whether there is legislation in place to regulate the angling activities at the waterfronts of the Victoria Harbour; if so, of the details;*
- (b) whether it knows the number of people engaged in angling at the waterfronts of the Victoria Harbour in the past three years;*
- (c) whether it knows if the catches of angling by members of the public at the waterfronts of the Victoria Harbour are suitable for consumption, and whether it has assessed if the catches of angling at these waterfronts will be suitable for consumption upon completion of the Harbour Area Treatment Scheme (HATS) Stage 2A in around 2014; and*
- (d) given that a number of waterfront promenades along the Victoria Harbour will be open for use in the next few years, whether the Government has considered making these promenades available for the angling activities of members of the public?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President,

- (a) Currently, leisure angling activities could be carried out in most waters in Hong Kong. Angling activities are only regulated in special zones of ecologically sensitive waters, including marine reserves, marine parks, marine fish culture zones and reservoirs to ensure the fisheries resources and marine ecosystem in these waters are protected. As angling activities at the waterfronts of the Victoria Harbour will not impose too much pressure on the fisheries resources, and they will not damage the seabed under normal circumstances, the Administration does not plan to regulate leisure angling activities at the waterfronts of the Victoria Harbour.

- (b) The Administration does not have statistics on the number of people engaged in angling at the waterfronts of the Victoria Harbour in the past three years.
- (c) Under the food surveillance programme of the Centre for Food Safety (CFS), samples of food items (including capture marine products) are taken at different sales levels in the market for testing, and no data is available on the catches of angling by members of the public at the waterfronts of the Victoria Harbour.

According to the Environmental Protection Department, the water quality of the Victoria Harbour has improved considerably since the completion of Stage 1 of the HATS in 2001. The commissioning of HATS Stage 2A is anticipated to bring further improvement to the harbour water quality by further increasing the overall levels of dissolved oxygen in the waters around the Victoria Harbour by 5%, and further reducing the overall levels of major pollutants such as inorganic nitrogen, ammonia, phosphorus and E. coli by about 5%, 10%, 8% and 90% respectively. Nevertheless, given the dense population on both sides of the Victoria Harbour, the water quality near the waterfronts may continue to be affected by surface run-offs and other contamination from urban areas from time to time. From the food safety angle, the Administration does not encourage members of the public to consume fish angled at the waterfronts of the Victoria Harbour.

- (d) A number of waterfront promenades along the Victoria Harbour will be open for use in the next few years. The Administration will consider making them available for angling by members of the public.

Requirement for Renewal of Travel Agents Licence

20. **MR PAUL TSE** (in Chinese): *President, quite a number of licensed travel agents have relayed to me that, in applying for renewal of licences, other than having to submit audited financial statements to the Travel Agents Registry (the Registry), they are also required to submit their annual management accounts and, among such travel agents, many of them are even required to submit three or*

four quarters of quarterly management accounts; yet, companies are only required to submit returns to the Inland Revenue Department once a year, even those operating as limited companies in other industries. In this connection, will the Government inform this Council:

- (a) of the respective numbers of licensed travel agencies which had closed down or newly registered and established in each of the past three years; whether it has assessed the causes of their closing down; if it has, of the assessment outcome; if not, whether it will make such an assessment expeditiously;*
- (b) in view of the number of travel agencies which have closed down in recent years, the general financial situation of the medium-to-small travel agencies and the difficulties faced by them, as well as the principle of fairness for all industries, whether the authorities had, in the past three years, assessed if the measure of requiring licensed travel agents to submit annual or quarterly management accounts when applying for renewal of licences is practically necessary and reasonable; what legal basis the authorities have to require licensed travel agents to submit the aforesaid documents when applying for renewal of licences, and that such documents are more than those required for submission by other commercial organizations, when applying for renewal of Business Registration Certificates; and*
- (c) whether the authorities had, in the past three years, considered relaxing the aforesaid requirement for renewal of licences, so as to permit medium-to-small licensed travel agencies with lower turnover to submit only audited financial statements, without having to submit their management accounts, when applying for renewal of their licences, thereby alleviating the operational burden of such travel agencies?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President,

- (a) Under the Travel Agents Ordinance (the Ordinance) (Cap. 218), all travel agents in Hong Kong are required to apply to the Registry for new licences or licence renewal. The numbers of travel agents that

have started or closed down business over the past three years are as follows:

	<i>No. of travel agents that started business</i>	<i>No. of travel agents that closed down</i>
2007	102	95
2008	105	61
2009	92	83

Travel agents are not required to inform the Registry of the reasons for closing down their business when the licence is still in force or explain why they decide not to renew their licences. Nevertheless, according to the Registry's understanding, in general travel agents choose not to continue their business because of personal reasons, commercial decisions, conflicting views on business strategies among partners, or unfavourable external economic environment, and so on.

(b) and (c)

A huge number of visitors come to Hong Kong every year. On the other hand, Hong Kong people usually pay in advance when they join outbound tours or purchase outbound travel packages. Therefore, monitoring the financial situation of travel agents is an important part of our regulatory regime for the travel agents trade.

In considering applications for licence renewal, the Registrar of Travel Agents will examine the latest financial situation of the agents concerned. Under section 11(1) of the Ordinance, the Registrar may impose conditions to protect the interests of travellers. The conditions include requiring travel agents to submit audited statements of accounts annually and the latest statements of accounts of their business before the expiry of their licence. The licence conditions also stipulate that the Registrar may require individual agents to submit the statements of accounts for a specific period within a specified timeline. These statements of accounts need not be audited by auditors. They can be prepared by accounting staff and verified and signed by the responsible officers of the travel agents concerned.

Before implementing the above measures, we have consulted the Advisory Committee of Travel Agents, on which the travel agents trade is represented. We believe that these measures are effective and have struck a reasonable balance between protecting travellers' interests and avoiding unnecessary burden on travel agents.

MOTIONS

PRESIDENT (in Cantonese): Motion. Proposed resolution under the Inland Revenue Ordinance to approve the Inland Revenue (Disclosure of Information) Rules.

PRESIDENT (in Cantonese): I now call upon the Secretary for Financial Services and the Treasury to speak and move her motion.

PROPOSED RESOLUTION UNDER THE INLAND REVENUE ORDINANCE

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I move that the motion on formulating the Inland Revenue (Disclosure of Information) Rules (the Rules), as printed on the Agenda, be passed.

This Council passed the Inland Revenue (Amendment) (No. 3) Bill 2009 (the Bill) in January this year, which enables the Inland Revenue Department (IRD) to collect and transfer a person's information as legitimately requested by our comprehensive avoidance of double taxation agreement (CDTA) partners, even if the IRD has no domestic tax interest in such information. The Amendment Ordinance enables Hong Kong to adopt the latest international standard for the exchange of information (EoI) in CDTAs. This helps expand our CDTA network and enhance our tax transparency. Members of this Council and the business and professional sectors supported the change concerned in general, but they requested the Government to provide safeguards in addition to those provided in individual CDTAs, so as to protect taxpayers' privacy and the confidentiality of the information exchanged. In response to these suggestions,

the Chief Executive in Council has formulated the Rules pursuant to the Inland Revenue Ordinance.

We presented the major provisions of the draft Rules to the Bills Committee during the scrutiny of the Bill. The business and professional sectors were also given an opportunity to express their views on these provisions. Both members of the Bills Committee and the stakeholders supported the Rules. We have taken into account their views when finalizing the Rules.

Key provisions of the Rules are as follows:

- (a) the decision on whether or not to accede to an EoI request has to be made by an IRD officer at the directorate rank or above in accordance with established criteria;
- (b) establishing a mechanism for notifying taxpayers before the information has been exchanged;
- (c) establishing a system that enables taxpayers to request a review of the factual accuracy of the information by the Commissioner of Inland Revenue and the Financial Secretary;

The Secretary for Financial Services and the Treasury pointed out in his speech for the resumption of the Second Reading debate of the Bill that the notification and review system was not found in most countries and was an additional protection we formulated in response to social concern. In response to the suggestions of the Bills Committee, we have also undertaken that the Government will report to the Panel on Financial Affairs on the effectiveness of the notification and review system within 18 months after its implementation;

- (d) the Rules stipulate that the EoI does not have retrospective effect. Any information that relates to a period before the relevant CDTA has come into operation shall not be disclosed; and
- (e) to ensure that the EoI requests are foreseeably relevant in order to prevent fishing expeditions, the Rules set out the particulars that an individual EoI request must contain.

In response to the suggestions of the Bills Committee, we will arrange major provisions of the Bill and the Rules to commence at the same time. Meanwhile, we have seized the time and started more CDTA negotiations with other countries. These negotiations have achieved good progress. Upon the commencement of the new law, we will sign CDTAs with the latest standard on the EoI with several trading partners as soon as possible. We will also conduct negotiations with other countries at full speed, aiming to make significant progress. I implore Members to support this motion and approve the formulation of the Rules.

President, I beg to move.

The Secretary for Financial Services and the Treasury moved the following motion: (Translation)

"RESOLVED that the Inland Revenue (Disclosure of Information) Rules, made by the Chief Executive in Council on 26 January 2010, be approved."

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

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

MR JAMES TO (in Cantonese): President, I support the formulation of subsidiary legislation because we had been informed of the framework and basic details of this piece of subsidiary legislation when the primary legislation was being scrutinized. At that time, the Government also pledged that the primary legislation would be subject to positive vetting. Certainly, our work this time is not particularly difficult as we have already read the relevant details. At least, the so-called negative vetting procedure can be avoided. If the Council is to call for a cancellation, it will be difficult to get enough votes.

Therefore, the Government will fulfil its pledge: firstly, the Rules will be formulated procedurally; secondly, the Democratic Party has also expressed its support after reading the details. But, regarding practical operation, everything will proceed in the dark. For example, the Secretary explained just now ways to prevent taxation authorities in other countries from "fishing" — that is, whether there is substantial basis for requesting taxation information or, whether the advance notification mechanism, campaigned by the Democratic Party should be utilized. However, there is one exception: If advance notification will create difficulties for the taxation authority requesting for information or produce counterproductive results, advance notification can be waived.

President, all these — the disputes between the taxpayers and the Inland Revenue Department (IRD) of Hong Kong — will proceed in the dark. Another point concerns how retrospective effect should be implemented. I hope Hong Kong people, including the taxpayers at large, can inform Members of this Council when they really have disputes with the IRD and there are concrete cases showing incompatibility with this piece of legislation, which is enacted by the Legislative Council, and in particular, the implementation model understood and undertaken by the Government in earlier deliberations and open meetings with the Government and, if possible, even disclose the matter, given the great sensitivity of taxation information. In my opinion, only through Members' follow-up on this can we ensure that the IRD fulfils its pledge to the Bills Committee of the Legislative Council and its understanding of the relevant model when the Rules are implemented.

President, I urge the taxpayers concerned, if they really encounter these situations, to report to the Legislative Council 18 months later. It will certainly help if disputes between taxpayers and the IRD on this front can be reported in confidence to Members of this Council so that they can learn more about and follow up on the disputes and, on behalf of the public, follow up on the implementation issues 18 months later. Therefore, I now urge all taxpayers to lodge a complaint and take follow-up actions whenever they encounter these situations.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, Secretary for Financial Services and the Treasury, do you need to reply?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I am very grateful to Mr TO for his speech. The Bills Committee has held a total of eight meetings. In fact, I have personally led my colleagues in participating in the work of the Bills Committee this time, and I am deeply impressed by the issues raised by Mr TO. I am also grateful to Ms LAU for advancing her valuable views on many issues brought up by Mr TO just now, including the issues of retrospective effect and fishing expeditions, as well as the circumstances in which a simultaneous notification or no notification can be given under the notification mechanism, as pointed out by Mr TO just now.

During the discussion, we accepted the views put forward by many Honourable Members. I think the most important point is that we have agreed with a problem pointed out by Mr TO just now, that is, a lot of undertakings can be made but not all of them can be honoured in the course of implementation. For this reason, we have enhanced and reinforced these undertakings. As Members can see that each and every provision of the Rules clearly states under what circumstances the other party is required to provide sufficient justifications before a reply will be given on whether a simultaneous notification or no notification should be given. All these are designed to enhance protection.

After listening to Mr TO's views, we have adopted the positive vetting approach, so that if Members wish to make whatever amendments in today's meeting or in the future, such amendments will have to undergo scrutiny in meetings held by this Council before they can be formulated. I also agree very much with the views put forward by the Member concerned just now. In the future, if a professional body or any taxpayer holds that in the course of implementation, something might fail, or is suspected to have failed, to live up to the undertakings made by us today or made in the Rules, we will greatly welcome monitoring by the Legislative Council and Members.

In this connection, I implore Members to support this motion and approve the formulation of the Rules. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Financial Services and the Treasury be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the four items of subsidiary legislation relating to transfer of management of the Castle Peak Bay Immigration Centre, which were laid on the table of this Council on 24 February 2010.

PRESIDENT (in Cantonese): I now call upon Ms Miriam LAU to speak and move her motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MS MIRIAM LAU (in Cantonese): President, at a meeting of the House Committee on 26 February 2010, Members made a decision to form a Subcommittee to study the four items of subsidiary legislation relating to transfer of management of the Castle Peak Bay Immigration Centre, which are set out in the motion.

To allow the Subcommittee ample time for scrutiny, Members also agreed that I move a motion in my capacity as Chairman of the House Committee to extend the scrutiny period of the four items of subsidiary legislation to 14 April 2010.

President, details of the motion are set out on the Agenda. I implore Members to support the motion.

Ms Miriam LAU moved the following motion:

"RESOLVED that in relation to the –

- (a) Prisons (Amendment) Order 2010, published in the Gazette as Legal Notice No. 13 of 2010;
- (b) Immigration (Places of Detention) (Amendment) Order 2010, published in the Gazette as Legal Notice No. 14 of 2010;
- (c) Immigration (Treatment of Detainees) (Amendment) Order 2010, published in the Gazette as Legal Notice No. 15 of 2010; and
- (d) Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2010, published in the Gazette as Legal Notice No. 16 of 2010,

and laid on the table of the Legislative Council on 24 February 2010, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 14 April 2010."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of the motions each may speak, including reply, for up to 15 minutes; the mover of the second motion may have another five minutes to speak on the amendment; the mover of amendment may speak for up to 10 minutes; and other Members each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

PRESIDENT (in Cantonese): First motion: Actively participating in the by-elections to implement genuine universal suffrage.

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

I now call upon Ms Audrey EU to speak and move her motion.

ACTIVELY PARTICIPATING IN THE BY-ELECTIONS TO IMPLEMENT GENUINE UNIVERSAL SUFFRAGE

MS AUDREY EU (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

On 16 May, the Government of the Hong Kong Special Administrative Region (SAR) will hold by-elections in the five geographical constituencies in accordance with the law. However, the "May 16" elections are not only by-elections, but also a platform created by a reasonable, lawful, constitutional and non-violent approach, by five people, who were originally incumbent Members of the Legislative Council, after overcoming many hurdles in defiance of suppression, in order to achieve the effect of a referendum with the aim of canvassing public opinion and quantifying the strength of the community to compel the people in power to face squarely the proper aspiration of the civil society to strive for the expeditious implementation of genuine universal suffrage and abolition of functional constituencies (FCs).

People who disagree with the political views of the Civic Party may well be open and aboveboard in fighting this battle of elections to let the electors decide through their votes. However, over the past month, the pro-establishment faction has been employing a tactic of boycott to avoid fighting a fair battle against candidates from the pro-democracy camp in the elections for fear of failure, of facing the wishes of electors and of losing the privileges brought by FCs.

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

More outrageously, our Chief Executive even acted in contrary to normal practice and indicated in a media interview that he might not vote in the by-elections. The Secretary for Constitutional and Mainland Affairs also got the hint and implied that government officials of the HKSAR should also follow the political attitude of the Chief Executive and consider whether or not to vote in the by-elections. In reality, government officials were pressurized at multiple levels, setting a very bad precedent.

Therefore, by moving this motion today, I seek to counteract this practice of campaigning against democratic elections and of avoiding, refusing to face and distrusting electors.

The "May 16" elections are legitimate and constitutional because Articles 45 and 68 of the Basic Law set out two principles for attaining universal suffrage, namely "gradual and orderly progress" and "the actual situation" in society. A *de facto* referendum precisely seeks to peacefully quantify, on the basis of "one person, one vote", the actual situation of support for genuine universal suffrage in Hong Kong.

Why is it called a *de facto* referendum? This is actually the only option available because if the Government had legislation on referendum and really listened to public opinion, we, as Members, could have rightly and legitimately requested the Government to conduct a referendum. However, as Members may recall, the motion moved by Dr Fernando CHEUNG on 18 October 2004 proposing the conduct of a referendum on the constitutional reform proposals triggered strong written and verbal criticisms from XIAO Weiyun and the pro-establishment faction and was ultimately negated. The Referendum Bill, a private Member's Bill, and a motion on implementing a referendum, both moved by Mr LEUNG Kwok-hung in 2004 and on 17 June 2009 respectively, also faced opposition from the pro-establishment fraction and the Government. Therefore, we could only consider launching a civil or social referendum.

There are criticisms based on the query as to why public funds should be used to finance a social referendum, doubting whether it would be a waste of money. First of all, we have to look at the significance of a *de facto* referendum. Even if the electoral arrangements for the two elections in 2012 may not attain dual elections by universal suffrage in 2012, they should ensure that in 2012, there will be a midway point for attaining genuine universal suffrage in accordance with the principle of gradual and orderly progress rather than a backtracking or deviation from democracy. Therefore, the Government is obliged to provide a roadmap and undertake that the destination is attaining genuine universal suffrage, which is the lowest possible bottomline. Unfortunately, the Government has been avoiding its responsibility by only proposing an increase of FC seats half way without mentioning a word about how these seats would be abolished in the future. A referendum can quantify public opinion more clearly than a constitutional reform consultation and it can chuck

out FCs by way of "one person, one vote", and is thus much worthy of the public funds.

I have to tell WONG Kwok-hing specifically — although he is not in the Chamber now — that the money, instead of going down the drain, will create considerable employment opportunities. In every election, the Government has to employ many temporary workers, including workers from sheltered workshops operated by non-governmental organizations (NGOs) to open letters, insert letters into envelopes, undertake binding duties, and so on. Certainly, the funds will also be spent on advertising, printing, renting of venues, and so on. The whole sum of money will be spent in Hong Kong and put into the local economy.

The subject of this *de facto* referendum is to expedite the implementation of genuine universal suffrage and the abolition of FC seats. First of all, what constitutes genuine universal suffrage? Universal suffrage requires that no screening should be involved in the Chief Executive election, all Legislative Council seats should be returned in accordance with the principles of universal and equal suffrage, FCs should be abolished, every elector should enjoy equal right to vote and stand in election and every vote should carry more or less the same weight. From the legal point of view, it has been repeatedly pointed out, by the Bar Association, the Law Society or members of the Election Committee (EC) from the legal sector alike, that the very nature of FCs, with whatever changes made, will never conform with the definition of universal suffrage.

Paragraph 5.12 of the constitutional reform consultation document states that reform in relation to existing FC seats would involve the interests of many sectors and individuals and reaching consensus on this matter would be out of the question. Actually, reforms always involve lots of vested interests. If the Government cannot do so today, on what basis does it convince the public to believe it is confident of abolishing such an unjust system in ten years' time, that is, in 2020?

The Government has avoided mentioning that these changes have to be endorsed by a two-thirds majority of all the Legislative Council Members. However, it is actually impossible to ask FC Members, who take up half the seats of this Council, to give up their privileges, and that is also why the Civic Party

has to promote a *de facto* referendum, for we cannot rely solely on this Council. We have to rely on the power of the people exercised through their expression of support for genuine universal suffrage. We also hope this campaign will take root in the community and become a new democratic campaign which allows the direct participation of and promotion by the community, so that more members of the public will understand that an unfair constitutional system will directly impact on the people's livelihood. Although many motion debates conducted in this Council on people's livelihood, such as those on buying back of The LINK, introducing legislation to regulate the sale of first-hand private residential properties and competition law were supported by over half of the Members present, they were negated in the end, because of the existence of FCs and the separate voting mechanism.

Actually, referendums are not fearsome, and neither will they lead to social upheavals. Just take a look at various European countries, Canada, California in the United States and Taiwan where referendums are allowed, no social upheaval has ever taken place in these places. Regina IP — she is not present today — once wrote a newspaper article criticizing referendums as the source of chaos in California. However, the problem there is attributed to too many referendums, while this is definitely not the case in Hong Kong. Quite the contrary, the authorities are unwilling to conduct even one referendum. I would like to point out that in the second draft of the Basic Law passed in January 1989, a referendum mechanism was provided for deciding on the methods for electing the Chief Executive and forming the Legislative Council in 2012. This shows referendum was regarded as a feasible ultimate solution back then for resolving controversies over constitutional reforms. However, due to the occurrence of the June 4 incident in 1989, most Hong Kong deputies to the National People's Congress (NPC) hoped to implement dual universal suffrage expeditiously in 2007 and 2008 without going through a referendum, and the part on referendum was therefore deleted. Subsequently, both the Liberal Party and the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) expressed support in their political platforms for implementing dual universal suffrage in 2007 and 2008. It was until the interpretation of the Basic Law by the NPC in 2004 that changes began to emerge.

The subject of the democratic reform of the constitutional system has been discussed for a quarter of a century. In ten years' time, that is, in 2020, it would have been 23 years after the reunification of Hong Kong with China. If it is said that Hong Kong should remain unchanged for 50 years after the reunification,

then 23 years is almost half the time. Therefore, we have to make it clear right now that FC seats must be abolished to attain genuine universal suffrage, and the constitutional system must stop tilting towards people with vested interests without any constraints, or else public distrust in the existing system will further grow, society will become further divided and deep-rooted conflicts will not be resolved. This will also make it very difficult for the Government to implement its policies, resulting in an all-lose situation for the Government, the Legislative Council and the public.

Recently, Rita FAN, former President of the Legislative Council, said that it would be impossible to get an undertaking from the Central Authorities for implementing genuine universal suffrage. This shows members of the public have to brace up and come forth to fight for genuine democracy for themselves and the next generation. This calls for the effort of each and every member of the Hong Kong community.

Thank you, Deputy President.

Ms Audrey EU moved the following motion: (Translation)

"That this Council appeals to all electors in Hong Kong to actively participate in the forthcoming by-elections in the five geographical constituencies to peacefully quantify public opinion through voting, so as to achieve the social effect of a *de facto* referendum, and strive for the expeditious implementation of genuine universal suffrage and abolition of functional constituencies."

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, the motion today is about the forthcoming by-elections to fill the five vacant/seats of the Legislative Council. In this regard, I would like to talk about the relationship between the by-elections and the so-called "referendum" first.

The position of the Government of the Hong Kong Special Administrative Region (SAR) is very clear and consistent. Regarding the 2010 Legislative

Council by-elections for the five geographical constituencies (GCs), arrangements to fill these vacancies must be made in accordance with the law and the relevant local legislation. The Basic Law *per se* does not provide for any system of "referendum", and therefore the conduct of a so-called "referendum" is inconsistent with the procedure of handling constitutional reform as stipulated in the Basic Law. The by-elections, regardless of their outcome, will not affect the Government's procedure of dealing with the constitutional development in 2012. The so-called "referendum" does not have any legal effect, and neither will it be recognized by the SAR Government.

We have noticed recently that the community and the public basically do not agree with the "resignation of Members returned from five GCs". The so-called "referendum" will only polarize the Hong Kong community and will not help the Government in handling the views on constitutional development in 2012 and forge a consensus on the proposals put forward. Therefore, it has been the position of the SAR Government that the "resignation of Members returned from five GCs" is neither necessary nor in line with public expectation, because the public expected the 60 Members returned in September 2008, either by GCs through direct elections or by FCs, to serve the public in this Council for four years and handle matters of varying magnitude, including the constitutional development in 2012, the Budget, which is now being scrutinized, and a host of issues relating to society, the economy and the people's livelihood, in their four-year tenure.

Deputy President, our most important consideration in arranging these by-elections is not to yield to the two political parties which initiated the resignations or the five former Members. Rather, the SAR Government has the duty to ensure that the seven million people of Hong Kong including 3.3 million-odd electors, are adequately and fully represented in this Council — through a total of 60 Members — who will serve the people and the community of Hong Kong.

The Electoral Affairs Commission (EAC) has announced on 22 February that the by-elections would be held on 16 May. The EAC will arrange these open, fair and just by-elections in accordance with the law and electoral guidelines. As for how each registered elector will participate in the by-elections or whether or not they will go to cast their votes, the decision lies with individual registered electors themselves.

Next, I would like to talk about the subject of constitutional development because the motion today also mentions the implementation of universal suffrage. Regarding constitutional development, the decision of the Standing Committee of the National People's Congress (NPCSC) in December 2007 has made it clear that the Chief Executive may be elected by universal suffrage in 2017 and all members of the Legislative Council may subsequently be elected by universal suffrage in 2020. The decision made by the NPCSC in 2007 also stated that appropriate amendments conforming to the principle of gradual and orderly progress may be made to the methods for selecting the Chief Executive and for forming the Legislative Council in 2012.

On 18 November last year, the SAR Government published a consultation paper on the two electoral methods in 2012 and the three-month public consultation has just ended on 19 February. We are now working very hard on analyzing and consolidating the views collected. Besides listening to the views expressed by different political parties/groupings and Members in hearings held by this Council, we also conducted 18 meetings with District Councils. During the meetings, a motion supporting the constitutional system to move forward in 2012 was also passed by different District Councils. Besides, over 40 000 submissions have been received by the Bureau. We are now consolidating these views and we hope amendments to Annexes I and II to the Basic law and the proposal on the two electoral methods in 2012 can be tabled in this Council for Members' scrutiny, and we also hope the proposed amendments to Annexes I and II can be put to vote before the end of the current Legislative Session.

After that, we hope the bills to amend the Chief Executive Election Ordinance and the Legislative Council Ordinance can be introduced to this Council when Council meeting resume in the autumn of 2010. We hope appropriate amendments to these two ordinances will be introduced expeditiously in 2010-2011 so that we will be able to arrange the relevant elections between 2011 and 2012.

However, when it comes to constitutional reform, the most important task for us now is to adopt a pragmatic approach in promoting the further development of the constitutional system of Hong Kong in accordance with the Basic Law and the decision of the NPCSC in 2007.

According to the Basic Law, we must seek a consensus on three fronts: after the scrutiny by the Legislative Council of the proposals put forth by the SAR Government, we have to seek the endorsement of a two-thirds majority of all the Members of this Council. We also have to seek the consent of the Chief Executive for presenting the proposals to the NPCSC for approval or for the record.

Hong Kong by itself is not a sovereign entity. We have to handle issues, including the issue of constitutional development, in full compliance with the Basic Law. As the "referendum" arrangement is not provided for under the Basic Law *per se*, the Hong Kong SAR shall not create its own "referendum" mechanism. As Ms Audrey EU said just now, in order to change the composition of the Legislative Council, the endorsement of a two-thirds majority of all the Members of the Legislative Council is required under the Basic Law. However, she considers this out of the question, which I do not agree.

Although half of the Members, that is, 30 Members, of the Legislative Council are returned by GCs through direct elections, while the remaining half are returned by FCs, my observation over the years indicates that an overall consensus is taking shape among different political parties/groupings, independent Members and representatives of different sectors in the Chamber on the ability the constitutional system of Hong Kong to move forward by introducing further democratic elements in 2012 and attaining universal suffrage in 2017 and 2020. Deputy President, there were precedents of a motion or a package of proposal being passed by a two-thirds majority of the Members of this Council. For example, I witnessed the support of over 40 Members for the Budgets over the past few years.

Deputy President, Ms Audrey EU mentioned in particular that the legislature of Hong Kong had had elections and started discussing how democratic development could be promoted in Hong Kong since 1985. Now, two decades have gone by, and we hope universal suffrage will be implemented by 2020 for the election of not only the Chief Executive but also the formation of the Legislative Council. By then, it would have been 35 years from 1985, which is about one-third of a century. Some people may consider it a long time while others may think otherwise, but I think in promoting democracy in Hong Kong, what counts is not the time it began but the time democracy is attained. As we now have a clear timetable for implementing universal suffrage for selecting the Chief Executive in 2017 and for forming the Legislative Council in 2020, we

should work together bearing this timetable in mind and promote the development of the constitutional system of Hong Kong to enable it to take a step forward in 2012.

Deputy President, this is end of my opening remarks. I will give a further response after listening to Members' views later. Thank you, Deputy President.

DR RAYMOND HO (in Cantonese): Deputy President, five colleagues of this Council resigned from their office last month in order to compel the holding of by-elections in all the five geographical constituencies (GCs) over the territory to achieve the so-called "*de facto* referendum", so that members of the public who vote in the by-elections will be able to indirectly indicate their positions on the issue of "implementing dual universal suffrage in 2012". I absolutely disagree with their approach, and I consider it neither in compliance with the Basic Law nor responsible and sensible.

To start with, the Standing Committee of the National People's Congress (NPCSC) made a decision in December 2007 and drew up a clear timetable for selecting the Chief Executive and for forming the Legislative Council of the Hong Kong Special Administrative Region (HKSAR) by universal suffrage. The decision of the NPCSC clearly spelt out that universal suffrage may be implemented for selecting the Chief Executive of Hong Kong in 2017. Besides, it also clearly stated that after the Chief Executive is selected by universal suffrage, universal suffrage may be implemented for electing all members of the Legislative Council in 2020. In other words, after the Chief Executive is selected by universal suffrage in 2017, universal suffrage may be implemented for electing all members of the Legislative Council in 2020 at the earliest. Therefore, their request for "implementing dual universal suffrage in 2012" shows complete contempt of the NPCSC's decision and disregard of the requirements of "actual situation and gradual and orderly progress", as set out in the Basic Law, the "mini constitution", in relation to the relevant arrangements.

Second, their resignation is irresponsible. The Basic Law has made no reference to the tendering of resignations by Members, and Article 79 of the Basic Law sets out seven circumstances under which the President of the Legislative Council shall declare that a Member of the Council is no longer qualified for the office. However, none of these circumstances applies to Members who tender resignations. By tendering their resignations, they are

taking advantage of this loophole. As they have chosen to resign from their office, why would they run in the by-elections right away? At least, they should wait until the election of a new term of the Legislative Council before they stand in elections again. I think this shows that they are absolutely irresponsible. Certainly, other people have to foot the bill for their irresponsible act. First of all, the SAR Government has to spend \$159 million in public money to finance the by-elections. Besides, corresponding arrangements have to be made to fill the positions left vacant in various committees of the Legislative Council as a result of their resignations. What is more, a by-election has to be arranged to fill the vacant positions of the Council members of The Chinese University of Hong Kong elected from among Members of this Council.

Third, their behaviour is inconsistent with the oath they took upon joining this Council. According to the oath, they must uphold the Basic Law of the HKSAR of the People's Republic of China, bear allegiance to the HKSAR of the People's Republic of China with the highest sense of duty, abide by the law, demonstrate integrity, respect justice, and serve the HKSAR. Unfortunately, neither they have upheld the Basic Law nor demonstrating the highest sense of duty. Instead, they have chosen to resign from their office. Considering that Members have abused resignations to compel the holding of by-elections, the SAR Government should amend the relevant legislation expeditiously to plug the loophole so that the relevant legislation can become more rationalized and regulated.

Besides, the so called "resignation *en masse* of Members returned from five GCs as a *de facto* referendum" is neither legitimate nor sensible. Neither the Constitution of the People's Republic of China nor the law of Hong Kong provides justifications for this arrangement. The HKSAR is not a country, and neither is it a sovereign entity. As a referendum is a very solemn matter and cannot be taken lightly, we cannot let only a few people to come up with its definition and rules. Therefore, it is not difficult to understand why public response to the referendum has been lukewarm. As for the slogan of "staging people's uprising" to publicize the referendum, it is all the more meaningless and is a display of a negative and irrational attitude.

During the past 13 years since the reunification, the HKSAR has faced many serious challenges, including the Asian financial turmoil, the SARS epidemic and the global financial tsunami. At the same time, it also faced

constantly changing global conditions and an ever-changing macro environment. As part of Hong Kong, we should forge solidarity, strive for more room for development, capitalize on the opportunities arising from the rapid economic development of China and strive to enable Hong Kong to play an active role in the economic integration of the Greater Pearl River Delta Region, thereby facilitating the further development of Hong Kong and allowing all members of the public greater room for development, so that they can join hands to create a harmonious and proactive society and enjoy a brighter future.

With these remarks, Deputy President, I oppose the motion.

MR ALBERT HO (in Cantonese): Deputy President, regarding the campaign of "resignation *en masse* of Members returned from five geographical constituencies (GCs) as a *de facto* referendum" advocated by the Civic Party and the League of Social Democrats (the League), the Democratic Party already clearly stated its stance when WONG Yuk-man moved a relevant motion debate in November last year, and I am not going to repeat it. Although the Democratic Party has not participated in this resignation campaign, we think Members should support the motion moved by Ms Audrey EU today.

I would like to raise the following points: First, the Government has the duty to hold by-elections in accordance with the law and support the relevant fundings. Any move to veto the fundings will hinder the Government's discharge of its legal responsibilities. Unless Honourable colleagues consider the legislation relating to by-elections unfair and put up civil disobedience, any move to hinder the holding of by-elections by the Government is a display of reckless disregard for the rule of law.

Second, as citizens of Hong Kong, we think we have the civic responsibility to vote whenever elections and by-elections are held. If the Chief Executive or any senior official takes the lead to discourage voting, I would consider this very bad civic education which warrants severe criticism.

Third, we hope members of the pan-democratic camp can return to this Council through the upcoming by-elections to exercise the right conferred on them by the Basic Law to monitor this constitutional reform, participate in the

relevant debates and, when necessary, exercise the right of veto conferred on us by the Basic Law.

As Members are aware, the National People's Congress (NPC), after rejecting twice the implementation of dual universal suffrage in Hong Kong in 2007, 2008 and 2012, has further required that the number of Members to be returned by GCs and functional constituencies (FCs) respectively should remain unchanged in these two constitutional reforms. These decisions have made the further development of the constitutional reform of Hong Kong impossible, thereby contravening Articles 45 and 68 of the Basic Law, which require that the constitutional system of Hong Kong should proceed in a gradual and orderly manner. To date, the public of Hong Kong still enthusiastically hope that dual universal suffrage will be implemented expeditiously. It is already too late for dual universal suffrage to be implemented in 2012, as it should have been implemented in Hong Kong as early as in 2007 and 2008.

The Government or the Secretary has reiterated today that we should be satisfied with the so-called timetable proposed by the NPC. I believe I can also reiterate on behalf of many people from the pan-democratic camp that this so-called timetable is actually unclear and full of uncertainties in many ways. We need clarifications or assurances before we can resolve to support the proposals on constitutional reform in 2012. What we are asking for is that genuine universal suffrage be implemented in 2017 and 2020. This means that the nomination procedure for selecting the Chief Executive by universal suffrage in 2017 should not be subject to any unjustified screening; and secondly, we hope to point out clearly that FCs should be abolished by 2020. If these ultimate goals of development in 2017 and 2020 can be ascertained, we will then be able to devise the transitional proposals for 2016 and even 2012 to ensure a smooth transition and avoid consequences arising from incompatibility.

Deputy President, controversies over the constitutional system in the past have not only caused many policy blunders arising from deep-rooted social conflicts in Hong Kong but have even made it difficult for Hong Kong to unite the people to face various challenges. We hope that at this critical moment of constitutional reform, the Central Government and the SAR Government can address the aspirations of Hong Kong people and make clear decisions to ensure that 2017 and 2020 are the timetables for achieving the ultimate goal of genuine universal suffrage.

Deputy President, I would like to reiterate that the debate on FCs should no longer be allowed to hinder the development towards the ultimate goal of universal suffrage, and FCs should have been abolished a long time ago. Actually, the report submitted by the Hong Kong Government to the United Nations in 1998 in the light of the International Covenant on Civil and Political Rights clearly pointed out that, and I quote from paragraph 461(b): "(Functional constituencies) are transitional. The ultimate aim, as provided for in Article 68 of the Basic Law, is the election of all members of the Legislative Council by universal suffrage."

Deputy President, this is clearly stated in the report submitted by the Hong Kong Government to the United Nations. As this report constituted part of the report submitted by the People's Republic of China to the United Nations, it should be recognized by the Central Government. Now, by telling us that FCs should be retained forever, the Government has actually gone back on its own words. Secretary, will you please provide a response later on whether or not you now intend to reject or withdraw this part of the report submitted to the United Nations in 1998? Thank you.

MR IP KWOK-HIM (in Cantonese): Deputy President, the three-month public consultation on the constitutional reform proposals came to an end on 19 February, and the Government has received a total of over 40 000 submissions and 1.6 million signatures which represent the voices of many members of the public. The majority of these submissions are in support of the proposals put forward by the Government. These concrete statistics are adequate for assessing public opinion in a scientific manner.

The Basic Law does not provide for any referendum mechanism, and yet the two political parties have resorted to hoisting the banner of "referendum" as a blatant act of confrontation. It is an unconstitutional farce which has caused great harm to society. Not only is it a waste of public funds, but the radical and extreme approach adopted will only further undermine social stability, intensify social conflicts, polarize social groups, hinder the further development of the constitutional system and damage the relationship between the Central Authorities and the Hong Kong Special Administrative Region (SAR).

I really cannot think of any reason for urging the Legislative Council to appeal for electors' active participation in such an unconstitutional "*de facto* referendum". Ms Audrey EU has insisted that the so-called "referendum campaign" launched by the Civic Party and the League of Social Democrats (the League) is not unconstitutional. I am not too surprised by her lame argument, just as her phrasing "returning uncontested" as "victory without a fight", Ms EU always has her own sense of logic.

The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) opposes and reproaches this political farce, and has clearly indicated that it will not participate in the "by-elections". Audrey EU has also insisted on distorting the DAB's refusal to participate as "not having the courage to face the challenge" and "being afraid of public opinion". Actually, justice is in the hearts of the people, and the people of Hong Kong have long had a clear conclusion. In view of the nature of the incident, the DAB has given up the opportunity to run in the by-elections for the sake of upholding social justice and under the premise of ensuring that the constitutional system must not deviate from the rule of law. We know this decision will bring about countless malicious criticisms and attack from referendum advocates, and as a matter of fact, this is what is happening now. However, as a political party with commitment to Hong Kong, the DAB must uphold its stance and principles and be accountable to the whole society of Hong Kong and all members of the community. The decision of the DAB has proved to be in tune with public sentiment and opinion. A number of opinion polls have shown that most members of the public oppose this "resignation *en masse*" and the so-called by-elections, and the mainstream public opinion is already very clear. The DAB urges the Civic Party and the League to make repentance and get back to the right track rather than keep moving stealthily towards the wrong direction to their own suffering.

Striving for the expeditious implementation of universal suffrage is the wish of most members of the public as well as the ultimate goal of the DAB. Actually, the Basic Law has long provided that the Chief Executive and Members of the Legislative Council should ultimately be elected by universal suffrage, and the Standing Committee of the National People's Congress (NPCSC) has also drawn up a timetable for the implementation of universal suffrage in Hong Kong, which has actually answered the demand of individuals, such as the former

Chairman of the Democratic Party, Mr Martin LEE, and the relevant political parties. What we should do now is to seek consensus on the form of universal suffrage in accordance with a host of guiding principles, having regard to realistic feasibility considerations, and then examine how universal suffrage can be implemented step by step. This is a pragmatic and feasible approach of bringing the constitutional system towards democratization.

The DAB considers that universal suffrage must be of high quality and sustainable. Therefore, it must comply with the Basic Law, be compatible with social developments and agreed by the greatest majority of the people in the community and the Central Government. Therefore, universal suffrage will only come into being when the broadest consensus is obtained through rational discussions in society and under the framework of the Basic Law and the decision of the NPCSC. Moreover, universal suffrage can only be developed and improved continuously in a gradual and orderly manner.

The DAB sincerely hopes more political parties and Members will heed public opinion and refrain from taking an abusive approach of rebuke and defamation by resuming a rational dialogue based on facts and reasoning and respect for history, in order to jointly promote the further development of the constitutional system of Hong Kong.

As for the issue of whether or not functional constituencies (FCs) should be retained, the DAB has reiterated that existing FC elections do not comply with the principles of universal and equal suffrage, and this has to do with the electoral arrangements. Now, an academic from the pan-democratic camp has begun examining how FC elections can be conducted in a way consistent with the principles of universal and equal suffrage and has put forward some concrete views. I read from the newspaper today that she has further expressed her concrete opinions. The DAB welcomes such an open attitude.

The DAB thinks there is ample time in the coming decade for formulating, through extensive consultation and discussion, a proposal for universal suffrage which can not only give regard to balanced participation but can also be consistent with the principles of universal and equal suffrage and widely accepted in society. Therefore, the DAB opposes Audrey EU's motion. What is more,

we would also like to urge the people of Hong Kong to boycott this unconstitutional farce which will waste \$159 million of public funds.

Deputy President, I so submit.

MS EMILY LAU (in Cantonese): Deputy President, I speak in support of Ms Audrey EU's motion. As pointed out by the Chairman of the Democratic Party, Mr Albert HO, our stance is very clear. We also hope colleagues from the pro-democracy camp can return to this Council through the by-elections so that we can continue to fight together for democracy.

As for the issue of resignation, Deputy President, I believe you may also have noticed that, at its general meeting on 19 December last year, the Democratic Party put to vote the motion that "the Democratic Party takes part in the resignation of Members returned from five geographical constituencies in order to fight for dual universal suffrage in 2012". 229 members were against the motion, 58 in favour of it and one abstained. The stance of our political party is very clear, but we very much hope the Honourable colleagues can return to this Council after the elections in May, and we also hope members of the public will participate.

Deputy President, the Democratic Party hopes universal suffrage will be implemented expeditiously. I myself have been fighting for universal suffrage for too long, and so have the people of Hong Kong. Mr Albert HO has just put it well, the Government of the Hong Kong Special Administrative Region (SAR) already stated this back in 1998, and it even said so on the international stage. Now that it is 2010, no progress has been made yet, which is very infuriating.

Regarding this consultation paper prepared by the Secretary, Annex V is really embarrassing. I spread this around in schools, let me read it out Deputy President, sorry, this also has something to do with you. Among the 28 functional constituencies, the number of those with less than 1 000 electors, Deputy President, amounts to 11; and the number of those with less than 10 000 electors amounts to nine; just counting those with corporate votes but not individual votes, there are 18 out of the 28 functional constituencies. What are

these? I believe no one in the whole world can defend them, but Stephen LAM has been defending them here for so many years, and he has even said although they are not consistent with the principles for the time being, they will be consistent in future after packaging, Deputy President. Therefore, we are really — as WOO Kwok-hing put it — really very furious. We are not putting on a show now, but we are really very furious, and we have been furious for a long time. Therefore, I can say on behalf of many people that we are "as furious as a raging bull". Over three million Hong Kong people only have one vote each while those 220 000 people have an additional vote each. However, that is not exactly the case, Deputy President, those people who own many companies actually have a few dozen votes each. How can there be such a system?

Recently, I have frequently given talks to students in schools. No matter how hard they wracked their brains, they were unable to understand why the SAR Government and the Central Government insisted on forcing this system on Hong Kong and insisted that we accept it and refused to make changes no matter what. Originally, the political party to which the President belongs, that is, the DAB, also supported implementing universal suffrage in 2007 and 2008, but it gave it up later and now nothing has been heard about it. It is said that universal suffrage will be implemented in 2017 and 2020, but who knows if it is for real? When requested to explain it more clearly, he refused to do so. Deputy President, when requested to explain clearly and state expressly that functional constituencies will be abolished in 2017 and 2020 and elections with low thresholds will be held, he also refused to do so. How much longer do we have to fight? How many decades more do we have, Deputy President? How many five years do we have in a lifetime?

Therefore, I believe many members of the public very much hope we greatly support a referendum. It would be best if there is a law on referendum. We believe the public very much hope that before long I also hope the President and the individuals concerned will, after listening to these views this evening, ask the Beijing authorities after they have flown there why the decision made in 2007 cannot be altered. If public opinion is heard today, Deputy President, I do not know what the results of the by-elections will be. I believe no one will come forth after the by-elections and say that the people of Hong Kong do not want dual universal suffrage in 2012. Why? Because in the 2008 election in the 2004 election and all other elections, the public have all along been asking for the expeditious implementation of universal suffrage, and

all of us campaigned for the implementation of dual universal suffrage in 2012 when we ran in the 2008 election, and the public have never changed. Even the report on the survey conducted by The Chinese University of Hong Kong last month showed that over half of the respondents asked that we should campaign for dual universal suffrage in 2012. Therefore, I do not care what kind of voting there will be, the people of Hong Kong have made it very clear that they want to have dual universal suffrage in 2012, and I do not hope that Secretary Stephen LAM or any person will come forward and say in future that the people of Hong Kong do not want dual universal suffrage in 2012; and the SAR Government cannot shirk its responsibility to relay the public's demand for universal suffrage — besides, the President can also not shirk his responsibility, and there are a few Members present who are concurrently NPC deputies and representatives of the Chinese People's Political Consultative Conference. All of them have the duties to tell the Central Authorities that this is the wish of most Hong Kong people.

Now, everyone talks about harmony. The issue of mediation we discussed in the Panel on Administration of Justice and Legal Services was also about harmony, and harmony was emphasized at the outset; the minimum wage under discussion now is also about harmony. If the people of Hong Kong are not given the right to elect their own government, Deputy President, I believe there will hardly be harmony. However, it is absolutely understandable why the people of Hong Kong are in disharmony because the issue has been discussed for so many years. People often say that a consensus is not reached in Hong Kong, but the consensus in Hong Kong is actually very clear, that is, an absolute majority of Hong Kong people ask for universal suffrage in the form of "one person, one vote", rather "one person, multiple votes", as such a system is a great shame and disgrace to the people of Hong Kong. Therefore, I hope that the President and those Members who will have a chance to talk to the representatives of the Beijing Government will convey our wish clearly. I will continue to fight for dual universal suffrage in 2012.

MR WONG TING-KWONG (in Cantonese): Deputy President, regarding the by-elections in the five geographical constituencies (GCs) plotted and initiated by the Civic Party and the League of Social Democrats (the League), a number of opinion polls conducted in the community have shown the vast majority of the public do not support it, and there are comments that they are only a political

show put up by the two political parties to curry favour with electors. By using subversive expressions such as "uprising" and "liberate Hong Kong" in their publicity, the two political parties have even pushed Hong Kong towards a precarious political situation. It would be extremely irresponsible and hazardous for the Legislative Council, which plays an important role in the constitution of Hong Kong, to support this controversial political show.

Regarding striving for "genuine universal suffrage" referred to in the original motion, the Basic Law requires that the pace of carrying out constitutional reform in Hong Kong should be gradual and orderly, and in 2007 the Standing Committee of the National People's Congress (NPCSC) also provided the roadmap for universal suffrage for Hong Kong. I think we should focus on dealing with the two electoral methods in 2012 first so that Hong Kong can move forward towards democracy before dealing with the subsequent electoral methods so that Hong Kong can ultimately attain "genuine universal suffrage". Therefore, I think whether or not "genuine universal suffrage" can be implemented in Hong Kong expeditiously hinges on the details of the constitutional reform proposals to be put forward by the Government in the end and how the Government can make this Council to endorse these upcoming constitutional reform proposals.

As for the abolition or otherwise of functional constituencies (FCs), a discussion was held in this Council three months ago. I already said back then that "since the various social sectors have not yet reached a consensus, it will be much too hasty to decide to abolish all FC seats. As the National People's Congress (NPC) has already made it clear that the election of all Legislative Council Members by universal suffrage may be implemented in 2020 at the earliest, there is still sufficient time for discussions. I think the discussions on this matter can be deferred until a later time." Up till now, I would still like to reiterate this viewpoint.

Deputy President, I think FC Members have made important contribution in balancing the interests of various sectors in Hong Kong and upholding "one country, two systems". In the first place, as party politics is yet to mature in Hong Kong, if all Members are to be returned directly by GCs through direct elections, Hong Kong will become a votes-driven society. It can be envisaged that Members will definitely fight for different social benefits in this Council in order to solicit votes, and this will subsequently make Hong Kong a welfare-led

city. Under these circumstances, public expenditures on social welfare will increase substantially. However, where does the money come from?

Actually, FC Members have been playing an important part in the economic development of Hong Kong. As I said here three months ago, "precisely because industry representatives are able to make their voices heard both inside and outside the legislature and also because Members can explain the conditions of different industries to the Government and the various social sectors, Hong Kong has been able to maintain a sound business environment conducive to our economic development." Therefore, one of the major functions of FC Members is to maintain a stable business environment in Hong Kong, thereby "making money" for Hong Kong and the Government. May I ask how the Treasury can afford the additional expenditures on social welfare if no one knows how to "make money"? Therefore, FC Members can help balance the interests of various sectors in Hong Kong.

Besides, as can be seen from the campaign of the "resignation of Members returned from five GCs as a *de facto* referendum", there is only the concept of "two systems" but not "one country" in the minds of some politicians and Members in Hong Kong, which is inconsistent with the principle of "one country, two systems" in the Basic Law. As a Special Administrative Region of the People's Republic of China, Hong Kong is not mandated to conduct a referendum. Earlier, the Hong Kong and Macao Affairs Office has also indicated in a statement that "conducting such so called 'referendum' in any form in respect of its future constitutional development does not conform with the legal status of the Hong Kong Special Administrative Region (HKSAR). It is also a fundamental contravention of the Basic Law of HKSAR and the relevant decision of the Standing Committee of the National People's Congress." The expressions of "uprising" and "liberate Hong Kong" used by them also show that someone attempts to drive Hong Kong towards independence, which is a complete violation of the principle of "one country, two systems" in the Basic Law. I think not only should we not support this political show but we should also censure it. On the contrary, most FC Members support the SAR Government to govern in accordance with the Basic Law. They often take "one country, two systems" and "Hong Kong people ruling Hong Kong" as the primary principles in making important decisions, and this is vital to maintaining the social stability of Hong Kong.

Now, the only reasons for opposing FCs are: the existing method of electing FC Members is not democratic enough or FC Members only enjoy political free lunches but have not made any contribution to this Council and Hong Kong. Some people have even "demonized" FCs. Although I agree the existing FC electoral system has room for improvement and can be made more democratic, I have to reiterate that FC Members' contribution to Hong Kong is beyond doubt.

Besides, I think these reasons are only superficial ones. There are two more deep-rooted reasons for opposing FCs. First, a relatively large number of FC Members love the country and Hong Kong. They can counterbalance radical decisions at critical moments; and second, the separate voting mechanism provided for in Annex II to the Basic Law is not conducive to Members who do not have too many FC seats and put up an opposition simply for the sake of opposition. Therefore, I think some of the people who are dissatisfied with FCs oppose not the value and functions of FCs but the methods of electing FC Members. I think one of the directions for the Government in handling the issue of FCs in the future is to focus on how to make it more democratic, so that more people can participate fairly in different FC elections.

With these remarks, I oppose the original motion.

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

DR MARGARET NG (in Cantonese): Deputy President, after listening to Mr WONG Ting-kwong's remarks, I only think those who are "absurd" are probably functional constituency (FC) Members and Members who support FCs rather than Members engaging in a referendum. He described those engaging in a referendum as putting on a political show for the sake of soliciting votes. I have never heard of anyone who would file a resignation while still serving as a Member in order to solicit votes and be returned as a Member again in the subsequent term. He also said FC Members play a major role in maintaining the existing business environment of Hong Kong. However, as members of the general public may well notice, the problem of the disparity between the rich and the poor is very serious now, and so is the problem of monopolization by large consortia, which has made the operation of small businesses extremely difficult.

If Mr WONG Ting-kwong thinks this is the business environment Hong Kong people want, he will find out simply by visiting districts and communicating with the people in the neighbourhood that this is precisely what they detest most. Besides, he also compared a referendum to a move towards independence, which is a point that does not deserve any response at all. I believe this point is addressed not to us but to some other people who, instead of wishing to listen to reasons, only hopes to hear someone make such a remark.

Deputy President, at long last, Dr Raymond HO said just now a *de facto* referendum is inconsistent with the Basic Law. Why, according to him, is a *de facto* referendum inconsistent with the Basic Law — we have been waiting for someone to tell us in what way it is inconsistent with the Basic Law — he said in the first place, we have contravened the decision of the National People's Congress (NPC). Never have I heard that contravening the NPC's decision is tantamount to contravening the Basic Law. Besides, it has not contravened the NPC's decision. He said the subject of the referendum is implementing dual universal suffrage in 2012. As the NPC has already made it clear that the years involved are different, may I ask how it has contravened the Basic Law?

Second, one who intends to launch a rebuke and criticism against someone else had better ascertain the fundamental subject of that person. The fundamental subject is not dual universal suffrage in 2012 but a call for genuine universal suffrage, the abolition of FCs and a roadmap for universal suffrage. Dr Raymond HO said it is inconsistent with the Basic Law because resignation is not allowed under the Basic Law. However, resignation is allowed under section 14 of the Legislative Council Ordinance, which is not in breach of the Basic Law. The Legislative Council Ordinance provides for by-elections and disqualification arrangements, and there is nothing about disqualifying a Member for running in a by-election after resignation, and this is the law. Will Dr Raymond HO please find out whether or not our act is legitimate before making his criticisms? He said we have failed to keep our oath because by filing our own resignation, we have not upheld the Basic Law. If he had ascertained what the legislation and the Basic Law are really about, he would not have made such a remark about someone's failure to uphold the Basic Law.

Dr Raymond HO has precisely pointed out the reasons why the existence of FCs in the Legislative Council has aroused discontent among the public and

caused the Government of the Hong Kong Special Administrative Region (SAR) to lose its credibility. This can be seen from the anti-Express Rail Link (XRL) incident. Since organizations in the community pointed out that Dr Raymond HO had a potential conflict of interest in the matter, he had to withdraw from that particular meeting of the Public Works Subcommittee and refrain from taking the role of the chairman and chairing the meeting, and his place was taken up by Mr Alan LEONG. Such incidents are commonly found in FCs. In particular, many FC candidates have to declare during their election campaigns that they will fight for the interests of their industry and, in order to do so, they will accord top priority to the industry's interests instead of public interests.

There is indeed a direct conflict between FCs and a fair society. Why, according to Mr IP Kwok-him, is our act unconstitutional? He said the Basic Law does not provide for a mechanism for conducting a referendum, and by taking the by-elections as a *de facto* referendum, we will be displaying a gesture of confrontation. So it follows that it is unconstitutional to display a gesture of confrontation, no wonder LIU Xiaobo has been put to jail. If displaying a gesture of confrontation would constitute a breach of the constitution, sorry, the law is still being advocated in our society. We do not regard it as unconstitutional to stand up against something we are dissatisfied with and to fight against unfair systems within the legal framework.

Actually, does the DAB refuse to take part in the by-elections because universal suffrage and referendums are unconstitutional or because they have received orders from above that they should not do so? We can see that this situation has occurred for some time. The DAB urges us to turn back before it is too late, and we, on the contrary, urge them to do the same. As pointed out by Ms Emily LAU just now, the DAB has actually expressed support for the implementation of universal suffrage in 2007 and 2008. If it goes on to support genuine universal suffrage and the abolition of FCs, which they have also talked about, and takes concrete actions, it will not be so difficult for this Council to abolish FCs.

Deputy President, the FC system is actually an unfair system which has given rise to unfair policies to maintain an unfair society indefinitely. Its abolition is already a consensus of the vast majority of members in society, which is even supported by many people in this Council. The question is how to fight for it. Should we only wait for some FC Members to give up their seats or the

Beijing Authorities to take the initiative to abolish FCs, or should we take other actions? Actually, the most effective way to achieve this is to express the wish of Hong Kong people to abolish FCs through "one person, one vote". Therefore, this can only be achieved by the resignation of five Members. For this reason, the by-elections are worthwhile and we would also like to call on members of the public to participate enthusiastically by casting their votes on 16 May. Thank you, Deputy President.

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

MS CYD HO (in Cantonese): Deputy President, constitutional reform is closely related to the livelihood problems that need to be solved right now. The next motion debate is on the housing problem, in which 17 main points are proposed, but they are only minor issues. Why do I say so? For the keys to solving the grave housing difficulties of the people of Hong Kong hinge on the land supply policy, the handling of the inflow of hot money and the supply of subsidized housing. I wonder why this Council will be satisfied with the discussion of only these minor issues. Why did we make relatively mild criticisms but dared not fundamentally solve the problems? Shortly, we will see there is no problem that this motion would be supported. This Council will support such motions with no legislative effect. However, there will later be a legislative proposal on compulsory sale, which is tantamount to the seizure of private property. We can see from these issues that add plights to people's livelihood how the political privileged try to maintain their economic privilege. We may as well wait one more month, and we will then see the voting directions of Members from the functional constituencies and those returned by direct election.

Deputy President, I know that not every Member from the functional constituency acts this way. You are one of them. Some other Members from the functional constituencies are also concerned about the livelihood issues, and they have the courage to support the abolition of the functional constituency system. But what we said is not directed at any individual but the system. It is the system itself that compels elected Members to assume responsibilities for the interests of constituencies that they belonged to, and vote for the interests of those

constituencies. Hence, insofar as the housing problem is concerned, how can we expect Mr Abraham SHEK to oppose the proposal on compulsory sale? How can we expect him to propose the resumption of the construction of Home Ownership Scheme flats and increase the supply of public housing? So, Deputy President, the constitutional reform is proposed not only in response to the Basic Law and the decision made by the National People's Congress (NPC). Rather, there is a practical need and it is the practical of the 7 million people in Hong Kong. The functional constituencies should be abolished expeditiously and before 2012. The political parties whose members have resigned to actualize a *de facto* referendum, have indeed compromised. They have not written down the exact year but have only said that they fight for the implementation of universal suffrage in 2017 and 2020.

Deputy President, we fought for the implementation of dual universal suffrage in 2007 and 2008 before. During the election in 2008, all candidates from the pan-democratic camp included the fight for dual universal suffrage in 2012 in their platform. That is not the case now. We now have the lower-level objectives of fighting for the implementation of genuine universal suffrage in 2017 and 2020. Hence, Deputy President, on the subject of *de facto* referendum, I hope that the two political parties concerned can soon give unequivocal statements on when functional constituencies should be abolished. At the same time, I support provoking discussion of the issue in society, so that more people will come forward to vote. It is not knowledge-based and fact-based to say that *de facto* referendum is striving for independence and to escalate the action to the level of violating the constitution. I consider it acceptable that people may hold different views emotionally, but we who have gone into politics should base on provisions, data and facts. I disagree with the view of certain political parties, particularly those which participated in direct elections, that Hong Kong will become a welfare state after direct elections. If they do not trust the electors, why did they stand for elections? Why is it a correct decision that electors elected them to the Legislative Council, but a wrong one to elect others? How did they treat their electors? This attitude shows no respect to electors.

Deputy President, I would also like to discuss the role of the Government. We know full well that the authorities resort to procrastination in the implementation of universal suffrage. However, the SAR Government is

obliged to carry out an election in compliance with the legal procedures, and the principles of justice, fairness and impartiality. Regrettably, the Chief Executive and certain officials have come forward to indicate that they may not cast their votes. It is an issue of great import. In general elections, we hear a lot of people complaining that they are put under great pressure in certain business organizations. It is particularly so for those working in large-scale Chinese-funded organizations. Someone will call to urge them to cast their votes or ask whether or not they have voted. There are many similar examples. But it does not matter for the voting is carried out by secret ballot. Electors cast their votes at polling stations and no one knows how they voted. Though some people once said that they were required to take photos of their ballot papers with cameras or portable phones, the Registration and Electoral Office took immediate measures to safeguard the secret ballot system.

However, the present situation is miserable. If certain organizations and the Government do not encourage the public to cast their votes, the secret ballot system will be put under threat. Why? For any member of the public entering the polling station, his identity will be revealed, no matter whether he votes for or against any candidate, or that he just casts a blank or invalid vote, he will be recognized. In other words, he will be subject to such pressure once he enters the polling station. Hence, in this connection, I urge the Secretary to treat the issue seriously and put in more effort to solve the problem. The secret ballot system is the corner stone of democratic elections. The authorities should immediately withdraw its remark urging people not to vote. On the contrary, it should provide public education as soon as possible to tell the public where they should lodge their complaints if they are subject to pressure in any form after voting. These complaints should be followed up seriously, so that impartiality and fairness can be upheld in the democratic elections in Hong Kong. Thank you, Deputy President.

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

MR CHIM PUI-CHUNG (in Cantonese): Deputy President, I once said at a meeting of this Council that if five Members resigned, I would be the sixth. I did, in all seriousness, indicate that I would resign. However, Deputy President, I will now explain why I should not be regarded as reneging on my promise. I

am after all the representative of the financial service sector. Since I am the representative, I will not criticize my colleagues and I respect them. Some of them are performing their duties but they make criticisms. They take what they want but they also chastise others. Of course, people may say that they are schizoid and comment about their ideology, but it does not really matter. But it is important that they should not only regard themselves as correct and others incorrect. In this world, if something is correct, for example, supporting direct elections and referenda, it will secure 100% support, and all the people in Hong Kong will support it, and there is no need to argue. Thus, there are arguments and disputes indeed.

Deputy President, after I announced that I would be the sixth Member who intended to resign, many members of the sector I represent surely asked me to stay. I never I represent my electors and my electors respect my representativeness, and I do not use this as an excuse. Therefore, at a gathering on 8 February, at which 17 friends from the media attended, I told them that I would respect their decisions. I decided to resign earlier but I later identified five problems.

First, it is about the "*de facto* referendum" we discuss today. "Referendum" is referendum, what makes it necessary to use the term "*de facto*" referendum? When something is described as "*de facto*", it means that it is somewhat different and is a bit incorrect. Otherwise, there is no need to be used the term "*de facto*". It will suffice to use the original term. Under this circumstance, the term "*de facto*" suggests a cover-up, an intention to alter the facts.

Second, it is about the term "uprising", though I have not heard this term being used today. Members should understand: who dares to ask the people of Hong Kong to stage an uprising? If anyone dares to do so, he should have taken part in other uprisings, particularly when our living environment and social environment really need to be changed and improved. But, will we do so?

Third, we have to understand that if a genuine by-election will be held after these members have resigned, it means that the resigned Members will not return to this Council again. But if it is not a genuine by-election, how can they claim that to be a resignation *en masse*? They are indeed abusing public opinions by

making the claim. In the election in 2008, I projected at the time that the pan-democratic camp would secure about 16 seats, but they eventually got 19 seats. Evidently, this has basically confirmed the aspiration of the younger generation, particularly electors of the younger generation, for democracy. This is crystal clear.

Another reason is that their resignation this time around will result in a waste of public money, as frequently mentioned.

The fifth reason is that a majority of the public oppose this approach. The present approach is just like telling the public that what they did in the 2008 election was meaningless.

For these reasons, on that day, I asked friends of the media to vote in light of these views and I had their assistance. As a result, there was one vote for my resignation, seven votes against it, six abstained and three invalid votes. Surely, in retrospect, I have to admit that the number of invalid votes and abstention votes was relatively large at that time. I am not using this as an excuse to stay in this Council. But it is obvious that we can do nothing in this Council. On political issues, Members may have different views and arguments. It is not a matter of concern for we may have different political views. Politics is about the expression of political views. Members are here to debate issues. However, even on certain livelihood issues on which various parties have similar views, this Council still fails to reach a consensus on a lot of issues so as to urge or pressurize the Government to take actions. For this reason, I have no sense of achievement at all.

I have indicated long ago in the Legislative Council that Members should unite to urge the Government to do something. The Government resorts to procrastination and acts irresponsibly in respect of many unfair issues, such as traffic problems and the high oil price policy that allows quick increases and slow reductions in prices. We should unite to fight for improvement. We should use our collective power to pressurize the Government to take actions but we fail to do so.

Deputy President, we should understand that there is a force directed at the rapid development of China, and some people are deeply influenced by the so-called Western ideology, culture and education; they consider that the moon

overseas is brighter and everything there is right. Thus, they take every opportunity to direct at the Chinese Government. I am not in a position or obliged to defend the existence of the Central Government, nor am I qualified to do so. However, I made some blunt criticisms before. But to date, 12 years have lapsed since the reunification, the above situation still prevails, and the SAR Government can in no way deny its responsibility.

Hence, may I advise my colleagues and the people of Hong Kong that, under the present circumstances, staging oppositions against the Central Authorities will not bring desirable outcomes — I am only referring to the present circumstances, Deputy President, for the affairs of human lives are not perpetual. If there is room for dialogue, the Central Government will after all listen to views. But if we resist it — as I said before, the Communist Party obtained its political power by military force and revolution. If we want it to hand over the political power to us, we have to stage uprisings and revolutions before we can achieve our targets and objectives. However, do those of you who dare to talk about this have the courage to do so? Hence, I strongly believe that universal suffrage will be implemented in Hong Kong sooner or later. But on the model of universal suffrage, we may have to wait and see (*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up. Does any other Member wish to speak?

DR PRISCILLA LEUNG (in Cantonese): Deputy President, with the reunification of Hong Kong with China, the principle of "one country, two systems" is put into practice. China is a unitary state and on constitution matters, in fact, the SAR Government does not have any so-called residual powers. The Basic Law was passed by the NPC and is an enabling legislation relating to the SAR under national laws. Today, I have heard many comments about a referendum and, at an early stage, a lot of people even said that since the Basic Law did not prohibit referendums, in fact, a referendum could be held. I also remember that, in the discussion on the last occasion, it seemed that Ms Audrey EU also held this view. Here, I wish to point out that a referendum is a constitutional matter and it is entirely about the powers of the Government rather than what is claimed by some people, that is, since there are no relevant

stipulations in the Basic Law at present, would brushing teeth and washing face also be disallowed? Such matters belong to the domain of personal and judicial matters but what we are talking about now is the relationship of constitutional power between the Central Government and the SAR Government. Unless we really do not accept the reunification, the "one country, two systems" principle and the fact that the Basic Law was not passed by the Legislative Council of Hong Kong, in that case that it was passed by the NPC, if you do not accept all these, in that case, anything can be done.

I think this is a very fundamental question, that is, do you accept that on 1 July 1997, Hong Kong reunified with China? The Basic Law was not passed by a local legislature, nor is it an ordinary piece of legislation in Hong Kong. It contains many provisions on the constitutional power relationship between the Central Authorities and the local Government. Even in other countries, insofar as referendums are concerned, they must be explicitly allowed in the constitution. For this reason, I have also heard many people say that they actually hope that we have referendums in Hong Kong and some friends of the pan-democratic camp also say that we may as well introduce a referendum law in Hong Kong. Why do they say so? Because they are well aware that, if Hong Kong does not have its own referendum law, in fact, a referendum does not fall within the scope of matters permitted under the laws of Hong Kong. I firmly believe that Ms Audrey EU, who comes from the legal profession, or many Members from other political parties are also very clear about this point. Thus, they have to add the word "*de facto*" to the term "referendum" to avoid giving people the impression that it is a real referendum.

Concerning a "*de facto* referendum", I have also heard many remarks, for example, "an uprising of the whole people" or "the liberation of Hong Kong" as further radicalized by some people at a later stage. Insofar as the subsequent explanations proffered for the term "an uprising of the whole people" is concerned, there are also some new interpretations. This is because those people know that Hong Kong people are not too radical, so they proffered some new explanations and describe it as all people rising to campaign for justice. I believe that the more one explains, the more confusing and disgusting it is. Let me give a simple example. If an ordinary person boards an airplane and shouts aloud, "I have a bomb on me", then denies it by saying that he only has "fish balls" on him in fact, we really should not go on talking this way. Rather,

maybe we should just base the discussion on what Members say, that is, tactically, this is a *de facto* referendum and that we all know that no referendum is allowed in Hong Kong. If we can have discussions on the same basis, this is surely better than making misleading remarks as what we are doing now. This is also like a bank robbery that happened in Hong Kong in the past. I remember that the robber wrote on his palm that it was a robbery (he knew the teller concerned), but after the teller really pressed the alarm, he knew that he was in trouble and had committed an offence, so he argued that it was only a joke and he did not really mean to commit a robbery. We can all understand a lot of things we heard and know what others are talking about. Therefore, are we really talking about whether or not under the principle of "one country, two systems" at present, a referendum can be held in Hong Kong? The answer is very definite, that is, it cannot, unless you do not accept "one country, two systems".

On this premise, I believe just now, Ms Cyd HO said that they were just encouraging discussions in Hong Kong in a different way and that this was acceptable. In fact, if we want to encourage healthy discussions in Hong Kong, there are many other even more effective ways but they have chosen this particular one alone. According to my experience and observation, this will cause further deterioration in the relationship between the Central Authorities and Hong Kong and I would even say that the door to discussions would be shut at any time, which is just the opposite to what is expected. For this reason, their move brings harms more than benefits to the campaign for democracy in Hong Kong and, politically, this is probably a very naive move which made it necessary for explanations to be given. They explained that they did not want to liberate Hong Kong and that this was only the language used in electioneering. Why all this trouble? This would not be effective and would also adversely affect the train of constitutional reform. Some people think that this train is moving too slow. This is correct, so we should knock heads together and consider how to make it move faster. However, while the train is moving, some people have jumped from it, trying to explain it away by saying that they just like to do so and asking why they should be chided for this. Some people queried why Members had to be criticized for resigning. This is not how the situation is like. If some people have jumped from the train, we have to stop the train to let an ambulance save them. We have just received notice that all the banners put up by District Council members and Legislative Council Members have to be removed in April and the matters that we want to give publicity to between April and June will also

be affected. We feel very helpless and resentful. Have they ever sought our agreement? Now, all District Council members are all complaining bitterly as it turns out that their banners have to be removed too. How possibly can the actions of these people not affect other people? Is this a genuine democratic game?

Let me talk about a referendum again because I said just now that we have no referendum in Hong Kong, sounding as though Hong Kong is an extremely totalitarian place. I will again quote the remarks made by Chris PATTEN back in 2004, when he was interviewed by the BBC. I believe many Members of the pan-democratic camp like Chris PATTEN very much. At that time, he described referendums as "awful" in a straightforward manner, saying that he should by no means be associated with topics advocating referendums. He believed that was an anti-democratic system. This is only intended to serve as reference. In fact, a referendum is quite controversial. Is it beneficial to the development of democracy? Many people in the world do not favour referendums. Therefore, under these circumstances, they have paid a heavy price and placed their bets but this is not beneficial to the development of democracy in Hong Kong. If they want to campaign for the abolition of functional constituencies, they can do so in many ways and they should not adopt such an approach.

Finally, I wish to respond to the speech given by Mr Albert HO. He said that people like us, who oppose the funding application, is staging civil disobedience. Such a remark generates adverse sentiments. In the future, whenever the Government makes funding applications, will they always vote in favour? I call on them not to vote against the Budget in the future and not to vote against the funding application for the construction of the Express Rail Link, otherwise, all such moves would amount to staging civil disobedience. He has simply deprived us of our power as Members of the Legislative Council to vote against the funding applications of the Government. Therefore, *(The buzzer sounded)*

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

DR PRISCILLA LEUNG (in Cantonese): I hope he will withdraw the comment made by him just now, that is, his remark that any Member advocating objections to the funding applications is staging civil disobedience.

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

DR PRISCILLA LEUNG (in Cantonese): Thank you, Deputy President.

MR WONG KWOK-KIN (in Cantonese): The subject today is "Actively participating in the by-elections to implement genuine universal suffrage". When reading it out, I found that it did not sound very smooth and of course, it does not read smoothly either and I am just baffled, not knowing how participation in by-elections can be associated with the implementation of genuine universal suffrage. As citizens, we should all fulfil our civic duties by voting in elections to express our wishes because this is a civic responsibility. However, this by-election actually has a special meaning, that is, a group of people have scripted, directed and staged a show. As it is, they have already been given their mandate by voters to join the Legislative Council to express their views, and they can express their views in this Council using the votes in their hands but they have given up. Instead, they have left this Council and are calling on voters to give them the mandate again.

On this farce which is scripted, directed and staged by these people, calling on the public to show their support again, I think there are many problems. Not only have they squandered the good will shown by voters in the last election, the by-election this time is also a waste of public funds amounting to over \$150 million. If we look at the Budget of the Financial Secretary, \$150 million can actually do a lot of things. A lot can be done in respect of people's livelihood and helping socially disadvantaged groups, but unfortunately, a group of people have staged a farce and wasted a lot of public money and they even call on the public to give them their strong support, all for the sake of implementing something indefinite, something that cannot be clearly described and what I cannot figure out even after looking at the subject. On this, I really do not know what to say.

Of course, we also have to fulfil our civic responsibility here, so we will not call on the public not to vote but we believe that the public's eyes are discerning. In the face of this kind of since this farce is not regulated by the law at present, naturally, members of the public have their own ideas and they naturally have their choices. I hope very much that this farce in the Legislative Council would only happen once and would not be repeated because the legislature should enact legislation and have discussions solemnly and seriously instead of wrangling over such topics.

In fact, the NPC has already stated clearly what is meant by genuine universal suffrage in the decision it made in 2007. The Chief Executive can be elected by universal suffrage in Hong Kong in 2017 and, subsequently, the Legislative Council can also be elected by universal suffrage. After going through this procedure of the NPC, the next thing will be for Hong Kong to go through its own procedure, that is, securing the endorsement by a two-thirds majority of all Legislative Council Members and the consent of the Chief Executive, and then reported to the NPCSC for the record. However, before the procedure in Hong Kong has been activated, someone is already alleging that this is not genuine universal suffrage. I find this really strange and I cannot understand even after thorough consideration how they can campaign for genuine universal suffrage. How can they campaign for genuine universal suffrage through resignations and by-elections? The more I speak, the more confused I become. Deputy President, I will not say anything further.

MR LEE WING-TAT (in Cantonese): Deputy President, Mr WONG Kwok-kin debated the definition of genuine universal suffrage. A debate on the issue is necessary. Members all know that the Democratic Party does not agree to striving for genuine universal suffrage through resignation. But it is true that the public is looking forward to it for the issue of universal suffrage has approximately been discussed in society for three decades. Starting from the negotiation between the Chinese and British Government to the enactment of the Basic Law, and from the reunification till now, the community has been wrangling over one issue, that is, when will "one man, one vote" equal suffrage be truly realized in Hong Kong. When the NPCSC made the decision in 2007, some people really thought that the problem of timing had been settled and our arguments would come to an end for it seemed that it was unnecessary to argue

anymore about the selection of the Chief Executive by universal suffrage in 2017 and the formation of the Legislative Council by universal suffrage in 2020.

Regrettably, this year — actually, it should be last year, the Government started another round of consultation. We asked the Government whether there would be genuine universal suffrage in 2017. In fact, "genuine" universal suffrage as we have mentioned is unlike universal suffrage in Western societies where few restrictions are imposed on candidates standing for election. The Democratic Party accepts that the candidates must comply with certain conditions to become eligible. As in the by-election of the Chief Executive in 2005, we did not argue about the 1% nomination threshold. Had we imposed a stricter approach, we would have challenged why the candidates were nominated by the Election Committee but not 1 000 or 10 000 citizens. We had not engaged in arguments about these issues and regarded the election as "genuine".

In 2020, will functional constituencies be completely abolished? There is no answer about this. The Government, the Central Government and some others, such as Mr WONG Kwok-kin who has spoken just now, say that the time has yet to come and discussion should not be carried out for the time being. But the question is that the public wants an unequivocal account on this. They want to know whether functional constituencies will be abolished by then as we expect. Or, will the abolition be regarded as unnecessary as some people have said in the present discussions. It is because though the present form of functional constituencies does not comply with the principles of universality and equality, there can be other forms. However, the Government refuses to say what forms can comply with the principles of universality and equality. It may not be completely identical. It may be one man-one vote, or one man-two votes, or as Dr Priscilla LEUNG said, one man-31 votes, but the votes are accorded equal values in general. The Government cannot ever tell us the principles, which will inevitably prompt worries that it will again be "fake". Though the functional constituencies will be reformed in 2020, it will fall short of our expectation that the electorate size of each functional constituency should at least include several hundred thousand electors as under the "new nine functional constituencies" approach.

Recently, I read from the newspapers that certain colleagues of the Legislative Council and the Deputy President said that the shipping and transport sector has 150 or 160 votes — I forget the exact number, but there were less than 200 votes, only 100-odd votes — which were too few and they asked whether the directors of the organizations concerned could be allowed to vote. Surely, it is possible, but the chance is slim. This morning, I heard a member of the catering industry, not Tommy CHEUNG but Mr David NG, interviewed by the host of a radio programme. The host asked whether all members of the catering industry could be given the rights to vote in the future, and Mr NG replied in the affirmative. The two approaches are completely different. In the future, if owners and company directors in the catering industry are given the rights to vote, the electorate size will increase several times. As mentioned by the Deputy President earlier, if company directors of the shipping and transport sector are given the rights to vote, the number of votes will increase from 100-odd to between 1 000-odd and 2 000 votes. I am not sure if there will be so many votes. However, this approach is completely different from the approach of giving all members of the catering industry and transport industry the rights to vote, so that bus captains and taxi drivers can also vote. If the Government refuses to state its stance on this issue, no one, including the Central Government, will believe that the universal suffrage referred to by the Government tallies with our expectations.

(THE PRESIDENT resumed the Chair)

President, I think this debate is held at the right time. Though the period for collecting views is over, I think that the chasm of trust between the public and the SAR Government and the Central Government has not become narrower. I even heard some people say that universal suffrage would be implemented in 2020, but no one ever said that it would be the end of universal suffrage as universal suffrage should start then. It is too bad that our expression of ideas in Chinese is getting ambiguous. We all know the definition of universal suffrage, which is indisputable. But it turns out that universal suffrage is quite a long process. Probably, a few terms after the election in 2020, universal suffrage may have progressed from the initial stage to the intermediate stage, and then to

the ultimate stage. Similarly, a leader of the State mentioned in the past the initial stage of socialism, but socialism had yet to be realized for there were several stages in the process. Is this the present case? The Government has said nothing about it. Is the implementation of universal suffrage divided into various stages and cannot be completed in one go and the election in 2020 is just the beginning?

President, if these problems are not settled as soon as possible, I think it can hardly dispel the doubts of the Democratic Party. I have made a remark frequently in the newspaper: Though the Democratic Party does not participate in the by-election of the five geographical constituencies, we hope that the Central Government and the SAR Government will not take it wrongly that we will support its proposal unconditionally. I tell them loud and clear that if they fail to give a clear account in response to the views we expressed, including issues related to the 2017 and 2020 arrangements, there will be a chance, and a very good chance, that the Democratic Party will vote against the constitutional reform proposal. Thank you, President.

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

MR PAUL TSE (in Cantonese): President, first of all, I would like to make my standpoint clear. Regarding values like supporting universal suffrage, gearing towards universal suffrage and striving for maximum democratization in Hong Kong, I believe an overwhelming majority of members of the public, including I myself, support them. But I am afraid that the motion today is not about these ideals because democracy, rule of law and justice may just be some ideals. We have to strain forward incessantly towards the goal, but no one knows when we will achieve it.

The motion debate today is simply a means to express dissatisfaction with the existing constitutional development, and to cite the two definitions proposed in the motion: "to strive for the expeditious implementation of genuine universal suffrage and abolition of functional constituencies." Is it right to use such a tactic, President?

On 4 October 2008, 26 taxi drivers used their taxis to block the roads to the airport for three hours, causing traffic gridlock in Hong Kong. President, is it right to use such a tactic? Say if someone mobilizes 100 people to call 100 ambulances, he will not be regarded as violating the law, for these people only need to pretend to feel dizzy. But such action will bring our ambulance service to a standstill and also makes it necessary for the Government to spend more money and resources to handle the situation. President, is it right to do so?

Dr Margaret NG asked earlier whether it was right for the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) to indicate their intention of not participating in the so-called by-election. Certainly, different political parties have different views. I would like to ask a rhetorical question: Why does the Democratic Party not participate in it? Why does Mr Ronny TONG, a veteran barrister and a veteran member of the Civic Party, not participate? Why do they not make public their standpoint, stating that such behaviours will disrupt the establishment? I consider that such behaviours would disrupt the establishment and I made this remark both inside and outside this Council.

President, I would like to discuss five points. Regarding the resignation *en masse* of Members from five geographical constituencies or the *de facto* referendum in five geographical constituencies proposed by some people now, I would say that such actions can basically be described as "five divisions".

President, the first division is that Ms Audrey EU's motion uses the term "*de facto* referendum" but she does not even have the courage to properly name the referendum. What kind of campaign is this?

Earlier on, a Member, it should be Dr Margaret NG, criticized that Members should not get it wrong, for the subject was not about dual universal suffrage in 2012. However, Members should bear in mind what the initiator of the referendum campaign, Mr WONG Yuk-man, said when he made the call for participation. At the motion debate a few weeks ago, he made it crystal clear that the target was to strive for dual universal suffrage in 2012. At the motion debate of this Council on 9 December 2009, he said clearly that he would strive for dual universal suffrage in 2012. However, since some members from the legal sector, including myself, are better at playing with words, they try to

circumvent the issue when they notice something amiss. It is definitely a dissension of thoughts, a dissension of thought on the part of Ms Audrey EU. Why does she not make it clear what it is all about? Members should never call a stag a horse. The referendum in question is about a certain subject, and the by-elections are about candidates running for election. They should not confuse and mislead the people of Hong Kong.

President, the second division is the division of the Civic Party. The Civil Party, being a major and righteous political party in Hong Kong with a lot of barrister and solicitor members, should play a leading role in educating and leading the public instead of acting stealthily. It is definitely not proper for a political party to do so. In the context of modern politics, a political party serves as a machine or an engine that takes Hong Kong towards a democratic system, and it should not take such meaningless actions.

President, the third division is the division of the pan-democratic camp. It is clear that the Civic Party, the League of Social Democrats and other so-called pan-democratic Members have sharply divided views on this issue. We wish to express our opposition in a mature and healthy manner, striving for the due interests of the public within and outside the establishment, questioning the Government and safeguarding the interests of the public. We should not resort to such a tactic to get the pan-democratic camp into a mess with members finding fault with one another and calling a stag a horse.

President, the fourth division is the division of our society. For historical reason, fear of and anxiety about the Beijing Government have been instilled in Hong Kong, and further intensifying the conflicts in ideologies is not conducive to the development of our society. Insofar as certain issues are concerned, we should actually handle them in a more rational manner and at a steady pace. Nevertheless, such a campaign, which calls a stag a horse, and messes up everything is now launched. The Chinese term "變相" is barely acceptable, but the English term "*de facto* referendum" is used. In the international community, "*de facto*" means in actuality. Hence, the international community does not understand what we are doing and may as well think that a referendum will really be held. If a referendum is not provided in the laws of the State, it is not

allowed. It is just that simple. We cannot have "*de facto* death sentence" as there is no legal provision on that.

President, the fifth division is the division between Hong Kong and the Mainland. The NPCSC has expressed its views on the incident, and the Hong Kong and Macao Affairs Office has also determined the nature of this activity. For the successful implementation of "one country, two systems", I think we must hold fast on three aspects, which involve three "mutual" acts: mutual respect, mutual trust and mutual co-operation. What they have said and done is not at all conducive to making progress in these three aspects and maintaining harmony.

President, Ms Audrey EU mentioned earlier that such a system has been adopted in Taiwan and California, and it is very common. President, the system has either been put in place or not. Let us consider the United Kingdom, even in the case on *habeas corpus*, which is such an important principle of justice and freedom, only one member staged a show. Other political parties had not participated and even extensively boycotted him. The political party he belonged to even refused to sponsor him for contesting in election, and the Speaker disallowed him to give his resignation speech in the Parliament.

President, we have to look at the facts and compare like with like. The United Kingdom, a sovereign state that we are familiar with, does not have such a practice, so, Hong Kong should not do so.

Thank you, President.

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

MR WONG KWOK-HING (in Cantonese): President, Ms Audrey EU proposed "by-elections in the five geographical constituencies to achieve a *de facto* referendum" and I think it is a farce which is not righteous and devoid of morality and justice. This farce causes a waste of public money totalling \$159 million, and the money that the public earned by hard toil just goes down the drain for no reason. Ms Audrey EU says that this will create a lot of job opportunities. But

let me tell Ms EU that yesterday evening, I held a residents' meeting in the district represented by a District Council Member from the Civic Party, and 100-odd residents attended the meeting. When I asked whether they agreed spending \$1.59 million to conduct a referendum and asked for a show of hands, no one indicated their support. Nevertheless, when I asked whether they opposed it, they all put up their hands to express opposition. This is the fact, Ms EU.

The five of them will each cost the taxpayers some \$30 millions. They are staging a show but the taxpayers have to pay — "the public is made to play into their hands", "the Legislative Council is made to play into their hands", "the Government is made to play into their hands". This will cause outcry in heaven and on earth, and they will lose the support of the public. This is such an unrighteous approach and a shameless farce. How dare they "make the Legislative Council to play into their hands" and call upon all Hong Kong people to actively participate? I think they are downright shameless. I seldom use this expression, but since it is often used by them, I am now using this expression to describe them in return. They call upon people to participate but they have problems. Facts speak louder than words. Their beautiful lies, though pleasant to listen to, cannot cover up the fact that there are divisions.

One of the facts is that the three present Members of the Legislative Council from the Civic Party do not share the same standpoint. If they cannot convince their comrades, how can they win the trust of the public?

The second fact is that the Civic Party and the League of Social Democrats (LSD) fail to secure the support of the entire pan-democratic camp for they basically do not support the approach. Ms Emily LAU read out the voting result at a general meeting of the Democratic Party earlier. The veteran member of the Democratic Party, Mr SZETO Wah, has done a good deed. He let the cat out of the bag, revealing that the closed-door politics of the "new gang of four" in the 21st century in Hong Kong produced the so-called referendum in the five geographical constituencies and the resignation *en masse* of Members returned from five geographical constituencies. I once told Mr CHEUNG Man-kwong that "Uncle SZETO Wah" said that "the Democratic Party would not do anything that is incorrect", and I considered this an apt and correct remark. May I ask the

Civic Party and the LSD one question? Since they cannot get the support of the pan-democratic camp, why had they not settled their differences first?

The third fact is that the Civic Party and the LSD are actually manipulating the referendum and universal suffrage. Different people have different standards of right and wrong, and different views. They are moving the goalpost of the standards arbitrarily. They sometimes said that it was a referendum and they said it was an uprising other times. They sometimes said that it was a revolution and they said that Hong Kong should be liberalized other times. They just carried it to the extreme. If they do not give radical remarks, they take radical actions. All the people of Hong Kong may ask what they are doing. No matter what they are after, they should not spend our money. If they do so at their own cost, I do not bother about what they are going to do.

Yesterday evening, some residents requested me to state in the Council meeting today that "we do not bother about what they are going to do, provided that they do not spend our money." But, they are now going to spend their money, the money of the public and the money of taxpayers. And, have they consulted those people? Have the five Members told the electors at the time they were elected that they would resign if universal suffrage had not been achieved and functional constituencies had not been abolished on a certain date? Had they told the electors beforehand, it would be a different story. Yet, they had not done so. People are now made to play into their hands, and they are going to spend people's money.

To sum up the above remarks, I think that the Civic Party and the LSD should go back and settle their internal problems first. The public should not be made to play into their hands. They should come forward to give their comments after they have settled all their problems.

President, I would like to display two banners which have been hung in the urban areas for quite a long time. I do not see any signature on them, but they are hung near the banners of certain Members from the pan-democratic camp. I think the expressions on them can fully reflect the views of the public.

On the first one, it is written in Chinese: "五區" (five geographical constituencies) — followed by a Chinese character composed of three Chinese

word "春", and I do not know how to pronounce this character though I have looked up the Chinese dictionary *Ciyuan* (辭源) and all dictionaries. I assume that its pronunciation is the same as the Chinese character "蠢", and the expression is: "五區'蠢'辭", meaning "stupid resignation of Members returned by five geographical constituencies". It goes on: "the public does not want to watch a show, but every member of the public has to pay some \$20 for the show they are going to stage! Is it worth the while?" Will they answer this question: Is it worth the while?

On another banner, President, is written: "Referendum, Uprising, Revolution and Liberalization of Hong Kong! Oh My God, the Cultural Revolution is really endless!"

I believe these two banners reflect the rage, grievances and views in the hearts of the overwhelming majority of the people of Hong Kong. Honestly, the two political parties should reflect on themselves. Why their popularity rating was so low in several opinion polls? I implore them to think about this! Indeed, I think they have failed to keep close tabs on the public pulse, and there is a longer and longer distance between their views and the views of the people of Hong Kong. If they continue to act this way, it will do no good to the entire society. It is most amusing that they claim that it will be a victory if they are elected uncontested. I admire them for their Ah Q spirit in the 21st century.

President, what is Ah Q spirit? It is a way to secure spiritual victory. But I also hope that they would adopt this spiritual victory approach. For if they are elected uncontested, Secretary Stephen LAM may tell me later that less would have to be spent, not as much as some \$100 million. From this perspective, I support that they might as well be elected uncontested, which will swiftly bring down the curtain of this farce and bring to an end the whole incident. They should stop spending taxpayers' money.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, your speaking time is up. Does any other Member wish to speak?

MS MIRIAM LAU (in Cantonese): President, about three months ago, this Council negated a motion which content was similar to that of the motion today. That motion was proposed by Mr WONG Yuk-man, who has not yet resigned at the time, calling upon the public to support the campaign of "resignation *en masse* of Members returned from five geographical constituencies as a referendum".

As I said last time, the so-called "referendum" completely lacks legal backing for a "referendum" system is not provided under the Basic Law, nor is there any mention of this in the constitutional development procedures of Hong Kong formulated by the Standing Committee of the National People's Congress. Besides. There is no "referendum" or "referendum law" in Hong Kong. Even they try to invent every pretext in the motion and claim that a "*de facto* referendum" will be held, they are just deceiving themselves and the public, and it is just their wishful thinking.

As the initiators upgraded their slogan from "a *de facto* referendum" at the beginning to "a territory-wide uprising", and they then said that they intended to liberalize Hong Kong, the people of Hong Kong see more clearly their actual intentions. They obviously know that they intend not only to provoke the sentiments of the people of Hong Kong, but also to challenge the principle of "one country, two systems". They are essentially running counter to the mainstream public opinion of achieving harmony and stability.

President, a number of opinion polls indicate that the majority of the public do not support this so-called "by-election", which is indeed pointless. The Liberal Party conducted an opinion poll last year between 24 and 27 November. It was found that more than half of the respondents (51.1%) opposed the pan-democratic camp's using the "resignation *en masse* of Members returned from five geographical constituencies" to achieve "a *de facto* referendum". Early this year, the opinion polls indicated that the percentage of respondents opposing the "referendum" increased to 60%.

The Hong Kong Institute of Asia-Pacific Studies of The Chinese University of Hong Kong conducted an opinion poll between 28 January and 4 February, which indicated that 59.5% of the respondents disagreed with the expression of views on a constitutional reform in the form of a "referendum", and only 28.8% agreed. Moreover, according to an opinion poll conducted by the HKU POP

Site between 29 January and 2 February, it was found that a high percentage of 58% of the respondents opposed the "resignation *en masse* of Members returned from five geographical constituencies as a referendum" — these people opposed it — only 27% of the respondents supported it.

The five Members concerned indicate their intention to resign on the one hand, but fly the flag of "referendum" on the other in the hope of returning to the legislature via the "by-election". In other words, the taxpayers will waste \$159 million. Many people have reflected to the Liberal Party that such a practice is a serious waste of public money and they oppose it.

President, last Sunday, I attended the City Forum. Once I arrived, an old man approached me and held my hand. He said he was aged over 80 and he only hoped that Miriam LAU and the Liberal Party could do him a favour by not approving the \$159 million grant. That was the only thing he wanted us to do. He is an old man aged over 80, and I did not know how to respond. I wanted to tell him that it was the responsibility of the Government, but, he persistently asked me to do so. Thus, I could only tell him that I heard his opinion. Actually, this sincere remark made by the old man speaks the mind of most people; they also hope that we will not approve the grant of \$159 million.

Back to the topic today, other Members from the pan-democratic camp take exception to this "*de facto* referendum". Take Mr Ronny TONG as an example — he is not present today. At the previous debate, he expressed markedly different views, or divergent views, on the "resignation of Members returned from five geographical constituencies", stating that it was completely contrary to the ideas behind his participation in politics. The ideas behind his participation in politics, at least on this issue, were completely different from those of the political party he belonged to. If Ms Audrey EU even fails to persuade her fellow party member, how can she persuade and convince other people? In view of the intention of certain people of using this unnecessary "by-election" to deliberately provoke conflicts and create dissention between Hong Kong and China, what reasons does the Legislative Council as the legislature have to call upon electors to participate actively?

Regarding the retention or abolition of functional constituencies as mentioned in the original motion, many people have divergent views on the retention and abolition of the traditional functional constituencies. Many consider that functional constituencies should be retained after being reformed, rather than adopting a "broad-brush" approach to abolish them in one go. Actually, many Members from functional constituencies, including me, have made contributions to society. I dare not say that I have contributed much, but I can say for sure that my concerns are not only restricted to the functional constituency I represent. The contributions made by many Members from the functional constituencies are obvious to all. They contribute their professional expertise and experience to this Council, which have made the formulation of policies more comprehensive and professional. The major problem is that the electorate base of functional constituencies is not sufficiently broad.

The Liberal Party considers that the Government should take the opportunity of the constitutional reform in 2012 to broaden the electorate base of the functional constituencies. Regarding the relevant aspiration, the Liberal Party started asking the Government to take it into consideration a few years ago and we have incessantly requested it to do so, and now, we still ask the Government to consider broadening the electorate base of the functional constituencies, and it is gearing towards the ultimate goal of implementing universal suffrage as stipulated in the Basic Law.

President, the Liberal Party and an overwhelming majority of members of society hope that the constitution reform this time around can really take one step forward. We do not want to repeat the mistake in 2005, as a result of which we were marking time. We have to hold rational discussions to examine carefully how the selection of the Chief Executive and the formation of the Legislative Council by universal suffrage in 2017 and 2020 respectively can be implemented. This cannot be achieved through resistance and opposition. Rather, we should adopt a pragmatic approach by discussing the issue together in a rational manner, accommodating and understanding one another. Only by doing so can we come up with a proposal acceptable to all. Participating in the "*de facto* referendum" will only pull us farther and farther away from the goal, which will not help to solve the whole problem.

With these remarks, President, I oppose the motion of Ms Audrey EU.

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

(No Member indicated a wish to speak)

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I have to thank many Members who have expressed various views on constitutional development and by-election, which are everybody's concerns. I will give any response focusing on several areas.

First, Ms Audrey EU mentions in the original motion the request for expeditious implementation of universal suffrage and abolition of functional constituencies. With respect to the implementation of universal suffrage, there are actually two important aspects. First, I reiterate again that in December 2007, the Standing Committee of the National People's Congress (NPCSC) made the "Decision on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage" (the Decision) and made it clear that the Chief Executive of Hong Kong would be selected by universal suffrage in 2017 and all Members of the Legislative Council could subsequently be elected by universal suffrage in 2020. Over the years, Members have voiced concern about the issue, held extensive discussions and made joint efforts to strive for a timetable for implementing universal suffrage, and this timetable is the fruit so borne, which is also a milestone in the constitutional development in Hong Kong. Having achieved the milestone, Hong Kong people naturally continued to discuss issues regarding universal suffrage and constitutional development in the past few years, but relatively speaking, the political tension in the discussions held during the period had eased on the surface while there is a clearer timeslot and direction for the democratic development of Hong Kong in future. Hence, in comparison with the situation in 2002, when I first took office as the then Secretary for Constitutional Affairs, the situation has now become clearer.

I would now come to another point, that is, at present, there are clearer principles for the handling of issues related to constitutional development and the implementation of universal suffrage. First, we must act in accordance with the Basic Law. Second, there are unequivocal provisions and principles in the Basic

Law: We must promote democratic development in light of the actual situation in Hong Kong; we must act in accordance with the principle of gradual and orderly progress; and we must ensure that the proposals we made are conducive to the capitalistic development in Hong Kong, and that the principle of balanced participation can be upheld. Thirdly, the last principle is that the implementation of universal suffrage must comply with the principle of "universality" and "equality". Hence, in respect of the timetable, the provisions of the Basic Law and the principles concerned, the situation is extremely clear at present.

Second, I would like to respond to the issue related to functional constituencies. I understand full well that many Members from the pan-democratic camp support the abolition of functional constituencies. But at the same time, as I have explained repeatedly, there are indeed various views within and outside the Legislative Council regarding the retention and abolition of functional constituencies. Members still have divergent views and a consensus cannot be reached yet, nor can a decision be made at once. As mentioned by Mr IP Kwok-him, there are 10 years to go from now till the formation of the Legislative Council by universal suffrage in 2020. In the years to come, we may examine the issue from all fronts and strive for gradual progress. If we can take a step forward in 2012 in respect of our constitutional system, we will move closer to achieving the selection of the Chief Executive by universal suffrage in 2017 and the formation of the Legislative Council by universal suffrage in 2020. With such progress, there will be greater room for actions to be taken by us in the future. We strive for progress in 2012 and further advancement in 2012, so that we can be drawn closer to the formation of the Legislative Council by universal suffrage in 2020.

Mr LEE Wing-tat asked us: What proposals can be considered? Though the SAR Government has not come up with a final proposal on how the formation of the Legislative Council by universal suffrage can be implemented, we collected opinions in various aspects in the past few years; on the whole, there are two directions. First, it is the "one man, one vote" approach, which is the abolition of all functional constituencies as advocated by the pan-democratic camp and Members, so that all seats of the Legislative Council will be returned by geographical constituencies through direct elections. The second direction is the "one man, two votes" approach, that is, each of all registered electors can have one vote in his geographical constituency and another vote in his functional constituency. In comparison with the present situation where only 230 000

people have votes in functional constituencies, the proposal is more "universal" and "equal".

However, Members from the pan-democratic camp will consider that even if the approaches of "one man, two votes" or "one man, several votes" are adopted, if the right to nominate candidates for the functional constituency seats is retained by functional constituencies, the right cannot be regarded as "equal" yet. For this reason, Mr Albert HO asked whether the 28 existing functional constituencies with 30 seats would be retained forever. And, as pointed out by Mr WONG Ting-kwong, in the Legislative Council today, will there be adequate support for the abolition of all functional constituencies?

President, I would like to tell Members that, as I perceive it, it is neither possible for the present proposal advocating the abolition of all functional constituencies in 2020, nor the proposal suggesting the long-term retention of functional constituencies in 2020, to secure the support of a two-thirds majority of the Legislative Council given its existing composition. Since the pan-democratic camp holds more than one third of all votes to negative the proposal, and the pro-establishment camp too holds one third of all votes to negative the proposal. In other words, if anyone proposes the abolition of all functional constituencies in 2020, or the long-term retention of functional constituencies in 2020, both these motions will not be passed. Hence, over the years, I have explained this repeatedly to Members and implored Members to face up to and look squarely at this constitutional and political reality. This is exactly the case.

At present, there are disputes and divergent views on the retention or abolition of functional constituencies within and outside the Legislative Council. Hence, under this circumstance, there is one thing we should and may most likely be able to do: we should strive for progress for the two electoral methods in 2012 in Hong Kong, particularly on the composition of the Legislative Council, with a view to striving for democratic progress in Hong Kong. We now propose in the consultation paper the increase of the seats in the Legislative Council from 60 to 70, of which 35 seats will be returned by geographical elections, six seats will be returned by functional constituencies through election by elected District Council members from among themselves. The proposal includes concrete democratic elements. Some political parties and groupings may consider the progress not concrete or inadequate, but other political parties and groupings may consider that

the progress is not bad. Irrespective of the views held, Members cannot rule out the fact that if we can implement the proposal on 70 seats in 2012, there will already be democratic progress in Hong Kong, which will be conducive to dealing with the formation of the Legislative Council in 2016 and even its formation by universal suffrage in 2012.

President, we now harbour the greatest hope on the implementation of the selection of the Chief Executive by universal suffrage in 2017. If the proposal can be implemented in 2017, the Chief Executive returned by universal suffrage will be extensively representative, as well as widely supported in our society. I believe the different political parties and groupings in and the Members of the Legislative Council to be formed in 2016 will have discussions with the Chief Executive about how the proposal on the formation of the Legislative Council by universal suffrage in 2020 can be properly made. The proposal will then be put to vote, scrutinized and implemented. I hope that progress would be made in 2012, and that the selection of the Chief Executive by universal suffrage could be implemented in 2017. This is the most pragmatic approach.

I will then talk about the third aspect. Though Ms Emily LAU is not present now, she reiterated earlier that she considered it necessary to continue striving for dual universal suffrage in 2012. She also mentioned the opinion polls conducted in the past few years at different stages, and that in the Legislative Council election in September 2008, the public opinion expressed was clear, for 60% of the electors voted for the candidates of the pan-democratic camp to join the Legislative Council. It was evident that more than half, or even 60%, of the members of the public looked forward to the early implementation of dual universal suffrage in 2012.

President, we are well aware of such opinions. Over the years, we have been paying attention to the outcome of opinion polls and elections, and have a grasp of the pulse of society. And, by means of several consultations on constitutional development, we have grasped the opinions of society. We have given a full account of those views to the public and conveyed them to the legislature, as well as reported them to the Central Government.

Since Ms Emily LAU mentioned the latest opinion poll conducted by The Chinese University of Hong Kong (CUHK), I would also like to say that, actually, the CUHK has conducted a number of opinion polls. Regarding the

opinion poll in December 2009, there is one point: "The NPCSC has decided that dual universal suffrage would not be implemented in 2012, but the Chief Executive can be selected by universal suffrage in 2017, and all Members of the Legislative Council can be returned by universal suffrage in 2020." In December 2009, 57.7% of respondents indicated that they accepted or very much accepted the decision. Between January and February this year, 63.6% of respondents indicated their acceptance. Hence, my response to Ms Emily LAU and Honourable Members is that we know full well that the people of Hong Kong look forward to the early implementation of dual universal suffrage, but they also respect this constitutional decision and accept it.

The issue now under discussion involves the difference of a term of office of the Chief Executive, which is five years. Now that we have been discussing this issue for many years, and that a final decision at the constitution level on the timetable for universal suffrage has been made, we should take this as the basis and promote the democratic development in Hong Kong along this track. The selection of the Chief Executive by universal suffrage will be achieved within seven years and the formation of the Legislative Council by universal suffrage will be achieved within 10 years. Why not go ahead with it?

Fourthly, I would like to respond in relation to the funding provision for arranging this by-election. President, Mr WONG Kwok-hing and other Members have repeatedly indicated their reservation about or opposition in this connection in the last couple of months, and they have specifically reflected the views of the community to Honourable Members and the Government in this Chamber. Although I respect and understand their views, regarding spending \$150 million public money on conducting the by-election this time, I have actually emphasized a number of times that the SAR Government disagrees that the two political parties and the five former Members should quit midway. They have reneged on the promises they made to their electors to serve Hong Kong society in the legislature for four years. Moreover, we disagree with their move to make use of the by-election to engineer a so-called "referendum". However, the SAR Government must act in accordance with the law and ensure that the public is fully represented in the legislature — a total of 30 Members returned by direct election and 30 Members by functional constituencies. We must ensure that the Legislative Council is formed in compliance with the provisions of the Basic Law. Whether the public has representation is our major concern, and we

are not making compromises for the sake of the two political parties and the five former Members.

As for the \$150 million public money to be spent, and the money fleeced from the public to be spent unnecessarily, it hurts for us to see it happen. Hence, Dr Priscilla LEUNG and Dr Raymond HO have indicated on different occasions whether the SAR Government should consider a review on the existing Legislative Council Ordinance and plugging the loophole in the future to prevent Members or political parties and groupings from resorting to resignation at different stages as a means to deal with public agendas that they considered worthwhile. We think that among the responses to the public consultation paper on the 2012 proposal, we will naturally receive requests for us to deal with the problem with legislative proposals. President, I can tell Honourable Members clearly that we will examine these opinions carefully to ensure that any proposals we made will be in compliance with the Basic Law, any new restrictions we proposed will be reasonable, and any new provisions will be practically feasible.

President, fifthly, I would like to talk about how the SAR Government will face this by-election.

Ms Audrey EU and other Members mentioned a number of times the remarks made by the Chief Executive a few weeks ago. I hope that no Member, neither Ms Audrey EU nor other Members, will distort the remarks made by the Chief Executive, for he only pointed out that the by-election this time around was very different from the previous elections. This by-election is "artificial", meaning that "there is no genuine need to conduct the by-election". This by-election can in no way be put on a par with the by-election carried out a few years ago, when a vacancy arose in the Legislative Council as a result of the unfortunate death of Mr MA Lik. Nor is this comparable with the by-elections we arranged at the District Council level, where vacancies arise as a result of the conviction and imprisonment of certain District Council Members. Since the by-election is an "artificial" and non-authentic one, we surely have to look at the problem squarely. But, the SAR Government has to adhere to its principles and act in accordance with the law. Hence, the attitudes adopted by the Chief Executive, the Secretaries of Departments and the Directors of Bureaux are very explicit: As the by-election draws near, each of us will decide on our own whether or not we will participate in this by-election and vote. By the same

token, we absolutely respect the some 3.3 million registered electors, including my colleagues in the Civil Service, and will let them decide on their own whether or not to cast their votes in the by-elections. Their rights to vote are definitely protected by the Basic Law, and this is a statutory arrangement. Hence, promotion activities will be carried out according to the established practice, and the some 3.3 million registered electors will be notified of the by-elections to be held on 16 May.

President, finally, I would like to say a few words to Mr CHIM Pui-chung via you, though he is not present now. Mr CHIM said more than once that, during gatherings with his friends from the media, he conducted some opinion polls to find out whether or not they supported his resignation.

I would just like to convey some facts about public opinions to Mr CHIM. According to the opinion poll conducted by the CUHK, which we mentioned earlier, in the first opinion poll conducted last year, 56.7% of the respondents indicated that they disagreed or very much disagreed with the act of the five Members of the Legislative Council in engineering a "*de facto* referendum" through resignation. Hence, my response to Mr CHIM is simple. Insofar as his present decision of not tendering resignation is concerned, I believe it is consistent with the public's views. And I believe he has assessed clearly that the views of the sector he represents are in line with the views of the public at large. Since Mr CHIM Pui-chung is acting in line with public opinion, I think he has nothing to worry about. I very much appreciate that, in the next two years, I will continue to listen to his rather interesting speeches with characteristic quality in the Legislative Council.

President, in conclusion, I very much agree with Ms Miriam LAU's view that the Basic Law does not provide for any "referendum" system. Though Ms Audrey EU indicated repeatedly on different occasions that the original draft of the Basic Law mentioned considering the option of a "referendum", however, in the Basic Law passed in April 1990, there is no mentioning of any "referendum" arrangement in its Annex I and Annex II. Any amendment to the electoral methods of the Chief Executive and the Legislative Council must secure consensus in three aspects: it must be introduced by the SAR Government, endorsed by a two-thirds majority of all Members of the Legislative Council and have the consent of the Chief Executive, and it shall then be reported to the NPCSC for approval and the record.

President, now we are discussing universal suffrage and constitutional development here, which are topics of grave concern to Hong Kong people, and at every stage, there will surely be very controversial issues. Today, the discussions on how to deal with the resignation of Members from five geographical constituencies and the arrangement for 2012 after the resignation or by-election, are extremely crucial to the continual democratic development in our society in future. I believe that after Honourable Members' examination and discussion of the issue from various aspects in the past few months, the situation is now very clear. First, our society does not support the resignation of Members from the five geographical constituencies, with an aim to kick off a by-election to engineer a so-called "referendum". Our society strongly supports the Government's acting in accordance with the Decision made by the NPCSC in 2007, which will take democracy in Hong Kong one step forward in 2012. As for what proposals or methods can secure the support of a two-thirds majority of all Members of the Legislative Council, we will continue to discuss this issue next time.

Today, I hope Members would not support the motion moved by Ms Audrey EU. Thank you, President.

PRESIDENT (in Cantonese): Ms Audrey EU, you may now reply and you have six minutes six seconds.

MS AUDREY EU (in Cantonese): President, although the Secretary said a number of times that the Government would hold by-elections in accordance with the law, he then said that they would be artificial, that is, not genuine by-elections. President, he is being self-contradictory and this shows that the Government is often, a bad loser, that is, it has stated clearly that even if we win and no matter how many people show their support, it would never admit that. This is the Government's position.

President, the funniest thing is that, for no apparent reason, the Secretary suddenly used the expression "using the money fleeced from the public". I have never heard the Government describe the use of public funds as fleecing the public. Usually, it is the money amassed by tyrants or through corruption that

would be described as the money fleeced from the public, so I do not know why Secretary Stephen LAM used such a term.

President, I am grateful to a number of Members who have spoken, sometimes with great agitation. In fact, their criticisms can be summarized into the following points, to which I will respond one by one.

The first point is that some Members maintain that this is unconstitutional and Mr WONG Ting-kwong even said that this was tantamount to advocating Hong Kong's independence. Dr Priscilla LEUNG said that there was no residual power and some said that this would violate the Basic Law. President, of course, Hong Kong is a place practising the rule of law and if we have violated any law, Secretary Stephen LAM would not hold any by-election in accordance with the law and the first thing he would do is to arrest us. Some Honourable colleagues said that the law had to be amended, this proves that we have not violated any existing law. Of course, Members can say that this procedure of a referendum — no matter if it is called a referendum or a *de facto* referendum — is not one of the five steps for amending the Basic Law. For this reason, Members can say that it is not part of those steps with legal effects but I have already said in my main speech that one of the major principles in Articles 45 and 68 of the Basic Law is to have regard to the actual situation in Hong Kong. This move would have the social effect of giving the Hong Kong public an opportunity to express their stance towards campaigning for genuine universal suffrage through "one person, one vote", which is the actual situation in Hong Kong.

President, the second point is: Some people query if this move is very radical. Just now, some Members said that this would affect the relationship between Hong Kong and the Central Authorities, querying if this amounted to a struggle or confrontation. Is this a riot? Will such terms as uprising and liberation make Hong Kong people feel resentful? President, Members should reflect calmly on what the nature of this *de facto* referendum is. It is to ask the public to cast a vote anonymously in nearby polling stations. The ballot boxes have neither sharp teeth nor sharp knives to harm anyone, still less would they truss people up and make them cast their votes. Even if a person does not want to vote or wants to cast a blank vote and no matter whether a person is for or against it, he is entirely free to act as he chooses. Therefore, I cannot see what is so radical about this.

In addition, today, some Honourable colleagues also said that this move is not in line with public opinion. They even cited the results of many public opinion polls, saying that those polls did not support us. However, President, public opinion polls are different from voting. Public opinion polls are conducted on the telephone and sometimes, people have little choice. For example, in the survey on the sector represented by Prof Patrick LAU, one of the questions was: The Government proposes to increase the number of members in the Election Committee from 800 to 1 200, do you support or oppose this? I found that there were people for and against this proposal but there were also many other responses. Some people chided the people who designed this public opinion poll for not giving people choices, that is, if they think that increasing the number of people from 800 to 1 200 is still not enough, should they say they support or oppose the proposal? If they say they oppose it, they would be misunderstood as wanting to keep the number at 800 but they may actually think that this proposal is too conservative.

Therefore, President, public opinion polls are conducted only on the telephone and they only solicit one of the responses to a number of questions. Moreover, they are conducted through random sampling. However, they are a far cry from actual voting by all members of the public and even electioneering involving all members of the public. President, this is also the reason why, after trying various means for more than two decades, the democrats believe that holding a *de facto* referendum is absolutely necessary and this is a more scientific way for the public to express their opinions. President, the most paradoxical thing is that those who are willing to take part in this *de facto* referendum are actually those who are the most willing to face up to public opinion. Either they lose or they win but no one can hold only the cards to his advantage because everything will be clear when we look at the election results. If Members think that this campaign does not have public support, they should just take part in it directly. We should allow those concerned to lobby for the support or endorsement of the public through a fair and open election. For this reason, this is definitely a choice showing their willingness to face up to public opinion.

The most interesting thing is that some who opposed said that this would split up the democrats and they gave the example of Mr Ronny TONG in particular, querying how we can convince other people if we cannot even convince Mr Ronny TONG. President, of course, Mr Ronny TONG is a member of the Civic Party and also a Legislative Council Member but the Civic

Party has its own democratic procedures. In a general meeting of our party, 80% of members supported this move. In a democratic society, of course, it is not possible to secure the agreement of all people on a particular matter, unless it is a totalitarian society. This argument is somewhat like that presented by the Government for its unwillingness to abolish functional constituencies, that is, there is no consensus. All in all, so long as someone objects, nothing can be done. In that case, we can only mark time forever.

The query raised by the largest number of people is whether or not it is worth wasting public funds. However, none of those who have spoken has responded to what I said, that is, it is necessary to secure the support of a two-thirds majority of Members in the legislature before a constitutional reform can be carried out but, having campaigned for democracy for so many years, it has not been possible for us to secure the support of two thirds of Members in this Council. I remember that some time ago, the Secretary once pointed at Members returned through functional constituencies in this Council and said that it was necessary to secure their support. When he spoke just now, he also said that this was the political reality. For this reason, President, due to this political reality, we have to turn to the public, hoping that there would be a campaign rooted in the community. We are also promoting a new campaign for democracy, so that members of the public can campaign for an approach that allows them to truly express their views on genuine universal suffrage by means of "one person, one vote".

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Audrey EU 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)

Ms Audrey EU rose to claim a division.

PRESIDENT (in Cantonese): Ms Audrey EU has claimed a division. The division bell will ring for three 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:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the motion.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM voted against the motion.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO and Mr WONG Sing-chi voted for the motion.

Mr LAU Kong-wah, Mr WONG Kwok-hing, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin and Mrs Regina IP voted against the motion.

Mr Frederick FUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, four were in favour of the motion and 18 against it; while among the Members returned by geographical constituencies through direct elections, 20 were present, 11 were in favour of the motion, seven against it and one 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): Second motion: Improving the living environment in old districts.

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

I will call upon Ms Starry LEE to speak and move her motion.

IMPROVING THE LIVING ENVIRONMENT IN OLD DISTRICTS

MS STARRY LEE (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed. After the collapse of a building on Ma Tau Wai Road, President, I moved a motion for the adjournment of the Council at once on "how to enhance the safety of old buildings immediately to prevent the recurrence of similar tragedies". Honourable Members expressed a lot of insightful opinions on the building safety problem on that day. Today, I have moved another motion on improving the living environment in old districts to put forth concrete suggestions on four aspects, namely building maintenance, building management, urban renewal and planning of old districts, with a view to urging the authorities, apart from paying attention to building safety, to improve the overall living environment of residents in old districts in the context of the aspects mentioned.

First of all, I wish to express my gratitude to the Financial Secretary for allocating an additional funding of \$500 million to the Operation Building Bright (OBB) in the budget. This campaign will certainly provide incentives for owners of old buildings to carry out repair works. With the allocation of \$500 million this time, together with the two previous allocations amounting to \$2 billion, \$2.5 billion will be injected into the market of building repair works in total.

President, with this money, can we guarantee a success in carrying out repair works? Definitely, the answer is in the negative. Money is only the first step, which can enable owners to more easily forge a consensus for commencement of repair works. However, we should rely on authorized persons (APs) to monitor the quality of repair works. Once the Buildings Department (BD) issues a require order, it will require owners to appoint APs concurrently to co-ordinate the works concerned. After appointment, APs will conduct a comprehensive investigation of the building and then submit a report to the owners' corporation (OC) and owners. If owners agree to carry out repair works, APs will invite tenders for the building and monitor the quality of the works as a whole. Upon completion of the works, they will submit a report of completion to the BD. The BD also relies on APs to monitor the works to ensure its completion. The BD seldom carries out site supervision to inspect the enforcement of the repair order and the quality of building repair works. In view of this, the BD merely relies on APs to co-ordinate and supervise the works. Therefore, APs play a very important role in whether or not repair works are carried out successfully. However, I wonder if Members know that through open tendering, the fee charged by APs is extremely low in general, which ranges from several thousand dollars to several ten thousand dollars at most, depending on the number of units in the building. As pointed out by members of the trade, some APs even charge only one tenth of the fee of similar contracts signed with the Government. Residents always wonder why APs would charge such a low fee and their professional expertise is so worthless. In fact, residents of old buildings know this very well and many of them understand that there is tender rigging in most of the repair works. They also criticize directly that there are black sheep in the construction sector and their integrity is not reliable at all. Regrettably, residents have no choice but rely on these APs for gate-keeping. In fact, owners do not know whether these APs act as their gate-keepers wholeheartedly, or simply collude with maintenance companies and fail to undertake their supervisory role.

The current situation has become very serious. As repair works will be commenced soon, it is not uncommon to see some people deliberately joining the OCs of those buildings for which repair works is about to be commenced, so as to get ready to set dirty deals with their partners for tender rigging in future. Certainly, the authorities are aware of this. Therefore, in the OBB, there are additional requirements, including that when appointing APs and contractors, owners should invite tenders from a certain number of professionals recognized by the Government, so as to reduce the chances of tender rigging.

According to the figures provided by the Government, during the period from January to September 2009, the Independent Commission Against Corruption (ICAC) received a total of 672 reports of corruption involving building management. 39% of these cases are related to building repairs. Moreover, there is also evidence that such works involves syndicated corruption activities.

President, in view of the ageing problem of buildings, coupled with the fact that the Government is about to implement the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme, a lot of works will be commenced soon. Who will be responsible for supervising the conduct of such works on behalf of owners? Although the Government has allocated resources while owners have paid the repair fees, can they receive quality repair works in return? I think they may not necessarily be able to do so. When I pass by some old housing estates, I always think that although they are already 30 to 40 years old, they have taken on an entirely new look after carrying out repair works. But why do many residents living in old districts fail to see any genuine improvement in the condition of their buildings after paying the repair fees? Why do many buildings receive repair orders again three to four years later?

Some members of the trade have told me that the sky of building maintenance is completely dark, as there are too many "maintenance rats". They even think that there will be no light ahead because the Government simply allows these "rats" on a free rampage. Even though owners are willing to carry out repair works, the quality of such works is not guaranteed.

Yesterday, the Home Affairs Bureau launched the Building Management Expert Volunteer Service Scheme. This is a good attempt, showing that the

Government has made efforts to think out of the box. The public have been longing for a reliable works supervisor, only that they fail to identify one. In my opinion, apart from allocating resources to the OBB or providing subsidies to owners for inspection of their windows, can the Secretary consider allowing some non-profit-making organizations, such as independent APs appointed by the Housing Society, to co-ordinate and supervise repair works for owners on a trial basis? These services are not free of charge. I think a cost recovery fee can be charged, so as to offer another option to the public.

Moreover, discussions should also be maintained with the ICAC on how best to combat these "maintenance rats", so that repair works can be carried out properly. In order to make it a success, apart from APs mentioned just now, I also wish to talk about the procedures for handling unauthorized building works (UBWs).

At present, the BD only deals with UBWs with immediate dangers, without complementing the repair works on a full scale. As advised by the Secretary at a panel meeting earlier on, the relevant policies would be reviewed. I hope that the authorities can commence the review expeditiously and make support for building maintenance one of the considerations in this review. Given that building safety entails repair works of an appropriate scale, the proper disposal of UBWs is one of the important issues in sound repairs.

After talking about repairs, let us turn to maintenance, that is, building management. At present, the Building Management Ordinance (Cap. 344, Laws of Hong Kong), is a piece of legislation on building management in operation. Broadly speaking, the relevant policies are under the purview of the Home Affairs Bureau. In case any OC fails to comply with the Ordinance, the owners concerned can only institute litigation at the Lands Tribunal or the Small Claims Tribunal to require the OC to perform its duties. As a matter of fact, there are as many as 800 to 900 reports of corruption involving building management each year, representing 40% of the total number of reported cases against private organizations received by the ICAC each year. Most of them are related to the operation and management of OCs, evident that it is very common for owners to have complaints and dissatisfaction against OCs. With the increasing number of problems arising from building management, owners are very often not willing to resolve their problems through the Lands Tribunal as the cost is too high. On the other hand, the Small Claims Tribunal does not have the relevant expertise to handle matters relating to buildings. Therefore, the DAB made a proposal some

time ago that the Government should set up a "building affairs tribunal". Similar to the Labour Tribunal, this tribunal, being a simple, quick and convenient avenue to the public as a matter of principle, will expedite the handling of numerous disputes involving building management through judges and a special court with relevant expertise.

Although the proposal of setting up a "building affairs tribunal" was raised a long time ago, it has simply been ignored by the Government. If the Government refuses to consider setting up another tribunal, can it set up a simple tribunal, which is similar to the Small Claims Tribunal, under the Lands Tribunal instead? This tribunal is still operated by the Lands Tribunal, only that no legal representative is required. The main objective is to resolve these disputes expeditiously through its operation on the principle of simplicity and inexpensive costs.

Regarding the references to "one building with multiple OCs" or "multiple buildings with one OC" in my motion, they involve modifications of the deeds of mutual covenant. The present question is that in order to make such modifications, consent should be obtained from 100% of the ownership shares. This threshold is sufficient to hinder the implementation of any proposal which aims at rectifying any unreasonable situation.

Similar to the compulsory auction threshold, in order to promote redevelopment of old districts and resume lands, it is almost impossible if consent from 100% of the ownership shares should be obtained. In case it is agreed by the majority of owners, it is in fact quite desirable and reasonable to modify the deed of mutual covenant after obtaining the consent of a certain percentage of ownership shares. Of course, as private ownership is involved, it should be handled cautiously. We agree that other safeguards should be introduced. As for the specific approach, we can have further discussions. But the premise is that there should be a practicable method to modify the unreasonable provisions in the deeds of mutual covenant. Once this point is agreed, many problems will be readily solved. For instance, problems relating to "one building with multiple OCs" or "multiple buildings with one OC" can be solved by splitting up or merging OCs. We consider that the Administration should, on the premise of public interest, examine how to deal with the unreasonable provisions in the deeds of mutual covenant currently faced by small property owners at their wits'

end, thereby assisting them to manage their buildings more effectively. I hope the Secretary for Home Affairs can give us a response in this regard later, as this is also a request made by small property owners over the years.

As for expediting redevelopment of old districts, President, I am very delighted to see that the Financial Secretary has announced in the budget that a redevelopment project will be commenced immediately on the lot where a building has collapsed. All along, I have been endeavouring to expedite the redevelopment of old districts. I understand that if we merely rely on the Urban Renewal Authority (URA) to take forward the redevelopment of old districts, the vigour may not be strong enough. Thus, we have to draw on the force of the private market as well. This explains why recently, we have been embroiled in a heated discussion on whether or not the compulsory auction threshold should be lowered, that is, obtaining the consent of 80% (instead of 90%) of the owners.

Lowering the threshold from 90% to 80% can definitely achieve the purpose of expediting urban renewal. However, I also wish to take this opportunity to urge the Secretary once again to consider reviewing the legislation concerned. It is because during the process of scrutiny, I notice that even though I fully support urban renewal and very much hope to promote it, we fail to offer more options to small property owners because of the imperfect legislation currently in place, including allowing their participation in redevelopment.

Moreover, I also urge the Government to announce the mechanism of conciliation as soon as possible. It is because at present, there is another issue in the lack of a proper mechanism to protect the interests of small property owners. If the Secretary can accept these suggestions, I, being a Member of this Council and a member of the public who is determined to promote redevelopment of old districts and encourage its expeditious implementation, also very much hope that the compulsory auction threshold can be lowered.

President, lastly, I must talk about the planning of old districts. In the past, the Government failed to tie in the planning of old districts with conservation, so as to enable their sustainable development. With the rapid ageing of residential buildings in Hong Kong, the Government must increase the vigour of carrying out the revitalization and conservation of local communities.

Taking Kowloon West as an example, there are a lot of treasures. The West Kowloon District aside, I think many old and historical districts also have a lot of treasures. For example, in the Yau Tsim Mong District, there are a lot of characteristic markets, including the Jade Market, Temple Street, Women's Street and Flower Market, which are highly worthy of utilization and revitalization.

Sham Shui Po also has many characteristics. We should not only think that the district is relatively poor. Cheung Sha Wan Road, where a lot of garment wholesalers are located, has become a landmark of that district. Moreover, Apliu Street, which I like visiting very much, has a lot of novelty products. Although the place is a little bit untidy, if you wish to find novel items, you will never be disappointed by paying a visit there.

As for Kowloon City, I personally find that it carries a long history. Although the pace of conservation has been lagging behind the general trend, with the discovery of the remnants of Lung Tsun Stone Bridge recently, the Government has indicated that it will, in a bid to tie in with the development of the old airport, link up these heritage spots and develop them into a cultural and leisure district. Regrettably, a concrete and detailed plan has yet been announced.

In fact, so long as there is conservation and revitalization, I am sure that old districts can take on an entirely new look. This will not only improve the living environment of residents in old districts, but also retain more memories for the younger generation and enhance their sense of belonging to the community. Insofar as conservation and revitalization at the district level is concerned, the Government cannot shift all of its responsibilities to the District Councils. Rather, it should make a greater commitment and start with the overall planning. Apart from linking up some sightseeing spots with historical value, it should also consider afresh the plot ratio of buildings as well as the theme of each district. Perhaps, streets can be painted in different colours, with a view to bringing the theme of each district into better play with its own characteristics, thereby promoting local community economy more effectively and creating more employment opportunities.

With these remarks, President, I hope Members can support the motion.

Ms Starry LEE moved the following motion: (Translation)

"That, old buildings abound in Hong Kong and those of 30 years or above amount to as many as 16 000 and will increase to 26 000 in 10 years' time; many of the old buildings are dilapidated, have poor environment and are not properly managed, giving rise to various building safety and law and order problems; as such, this Council urges the Government to take action regarding the aspects of maintenance of old buildings, building management as well as redevelopment and planning of old districts, etc., so as to improve the existing living environment of residents in old districts, and the proposed measures include:

on building maintenance,

- (a) to allocate additional funding to "Operation Building Bright", and co-ordinate the various subsidy and loan schemes to provide one-stop services and perfect the relevant schemes, so as to assist more owners with financial difficulties;
- (b) to enhance regulation of renovation works which involve structural alterations;
- (c) focusing on water seepage problems of ceilings of old buildings, to review the existing practice of using colour dyes as the main testing tool and improve the relevant follow-up procedures of government departments, so as to enhance processing efficiency;
- (d) to expedite the clearance procedures for handling unauthorized building works;

on improving building management,

- (e) to actively assist owners of old buildings in organizing owners' corporations or hiring management companies, including exploring the engagement of the Hong Kong Housing Society or other non-government organizations to act as agents and let these organizations take over the management work or hire management companies, so as to assist the residents in resolving management and maintenance problems;

- (f) to review the existing Building Management Ordinance, so as to alleviate the problem of inefficiency in building management of "one building with multiple owners' corporations" and "multiple buildings with one owners' corporation";
- (g) to set up a "building affairs tribunal" to resolve the existing problems of lengthy building management disputes, expensive legal costs, etc.;
- (h) to actively examine the creation of a commissioner for management of old buildings to co-ordinate the existing work of various departments, so as to avoid fragmented administration of such departments;
- (i) to implement a licensing scheme for property management companies to improve the quality of such management companies;

on expediting redevelopment of old districts,

- (j) when launching urban renewal projects, the Urban Renewal Authority (URA) should preferably adopt a "bottom-up" approach, and let owners of old buildings take the lead in that they may take the initiative to invite URA to carry out redevelopment after obtaining a certain number of ownership shares;
- (k) in order to promote urban renewal, the development mode of renewal should be diversified in that apart from financial compensations, URA may consider other compensation options, including providing flat-for-flat exchange, for owners of old buildings to choose;

on planning of old districts and enhancement of cityscape,

- (l) to improve greenery, supporting community facilities and conservation work in old districts and enhance river channels and harbourfront areas, so as to revitalize old districts and improve the quality of life of the residents;
- (m) to allocate additional resources to the Food and Environmental Hygiene Department to eradicate environmental hygiene black spots in old districts; and

- (n) to actively explore feasible ways to properly deal with the management problem of private streets, so as to improve the street environment in the places concerned."

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

PRESIDENT (in Cantonese): Mr James TO will move an amendment to this motion. This Council will now proceed to a joint debate on the motion and the amendment.

PRESIDENT (in Cantonese): I now call upon Mr James TO to speak and move his amendment to the motion.

MR JAMES TO (in Cantonese): President, I move that Ms Starry LEE's motion be amended. I have raised seven points in my amendment today. I think I cannot elaborate on them in detail here. I will focus my discussion on some salient points and then defer to my partisans from the Democratic Party for further elaboration of the details.

Old districts are very often districts with heavy people flow. Improving the environment of old districts can not only benefit residents living there, but also enhance the safety of those doing business or shopping there as a more comfortable environment can be provided.

President, the first aspect I wish to discuss is building maintenance. The OBB has currently been given an additional funding of \$500 million. However, we hope that the Government can also relax other restrictions because this \$500 million does not mean the end of the problem. After allocating an additional funding of \$500 million, there is still a lot of work to do. For example, the Government and the URA should introduce loan schemes respectively. I hope that the terms for various schemes can be relaxed, so that more people can be benefited in future. Regarding this aspect, my colleagues will make detailed elaborations later on.

Secondly, the regulation of structural alterations should be enhanced. In the building collapse incident on Ma Tau Wai Road this time, there is a doubt — at least many professionals have doubts about it — that alterations have been made to the beams and columns of the building. Of course, we have yet come up with any conclusion on this point. But it is not easy to identify such structural alterations because, very often, they are internal alterations. And it is not at all easy to ask the staff of the BD to enter the units of these buildings to conduct inspections. However, if the Government can carry out extensive publicity to enhance public awareness of this, the number of reports may be increased. Obviously, these alterations are carried out in units of private residential buildings. Why will the number of reported cases increase?

I have said openly that there are at least several methods to increase the number of reports. First of all, such cases should be reported by construction workers, provided that they are prepared to do so; secondly, very often, building attendants will be more familiar with the situation of the building than owners; thirdly, many people, such as tenants who move in and out, can notice alterations made to the building or damages of some beams and columns more easily. Some tenants who are moving out may report such cases with the mentality of "fearing the dark after seeing ghosts". Therefore, only if more people have such awareness and preparedness to report the cases can there be a chance for the situation to improve. We should not merely rely on the staff of the BD to enter the units of these buildings to conduct inspections.

Of course, I do not mean that the staff of the BD should do nothing as they need not enter the units of these buildings to conduct inspections. Sometimes, if it is obvious that a building looks very dilapidated, they should take actions. For example, after the building collapse incident, the Secretary instructed the BD in all good intentions to conduct emergency inspections of all buildings of 50 years within a month. However, according to my understanding (the authorities have yet provided the relevant information upon my request), insofar as these several thousand buildings are concerned, there are only a few cases in which the staff of the BD have invoked the power conferred on the Director of Buildings to enter the units of these buildings to inspect if any structural alterations have been made. Therefore, if we do not have such cases and seldom invoke the power to enter the units of these buildings for inspection even though they look obviously dilapidated, can the safety of the public be protected? Therefore, some people

feel concerned that even if their buildings were inspected by the Director of Buildings during these months, would it guarantee that they will have no problem in the next few months? We are also worried about this, because even if they have conducted many so-called inspections, if they merely rely on visual inspection and focus on the appearance of buildings, their efforts are still not vigorous enough in many cases.

Moreover, it is very important to assist residents of old buildings in organizing OCs — Secretary for Home Affairs is also present here — I remember that I had suggested to Ms Shelley LEE, who had been acting as the Director of Home Affairs for many years at that time (she had also worked as the Secretary General of the Legislative Council) whether she could request Liaison Officers of the authorities to set an indicator in respect of the number of OCs to be assisted each year. However, very often, they only give assistance to those buildings of a smaller scale, that is, those with fewer households, or tenants who find it relatively difficult to form OCs. Frankly speaking, I think we can learn from the incidents in the past that those cases which have great difficulties in forming OCs are in fact the targets that we should offer assistance. If the Secretary for Home Affairs or the Department finds that some cases are very difficult to deal with, there may be a need for them to consider, say, asking social worker teams to provide assistance. It is because the attitude of social workers may be different from that of public officers. Can some cases be outsourced, so that social worker teams can assist them in organizing OCs?

Some Honourable colleagues have proposed if buildings can be grouped together to facilitate management. I also stated during the debate on the last occasion that this seemed to be quite difficult to do so. Of course, if the authorities can come up with a proposal under which the Government need not pay any money while the management organization concerned can be self-financing, then we can go ahead with it, granting a sufficient number of old buildings. Is such a proposal viable? Will there be any organization prepared to operate with such little profits? Will there be any non-governmental organization prepared to take up such a responsibility? These all warrant our consideration.

Talking about modifying unfair provisions in the deeds of mutual covenant, the Democratic Party has been striving for it for many years, only that many other

so-called royalists have all along been objecting to it. Why? The unfairness of provisions in the deeds of mutual covenant is very often attributed to the arrangement made by developers. Originally, they wanted to hold many shops or other facilities of the buildings for rentals. As such, the apportionment ratio in the deeds of mutual covenant is most unreasonable. The unfair apportionment system will hinder owners from sharing the maintenance costs for their old buildings. If unfair provisions in the deeds of mutual covenant can be modified without obtaining consent from 100% of the owners, it will obviously help encourage and promote building management and maintenance.

When launching urban renewal projects, the URA should adopt a "bottom-up" approach. President, from the era of the Land Development Corporation (LDC) to that of the URA now, I have been acting as a director and advocating this approach inside and outside of this Council. As far as I can remember, during the first phase of urban renewal from 1991 to 1994 or 1995, the LDC aroused the discontent of everybody no matter where its urban renewal projects were launched. I had also taken the lead to oppose some of its projects. Why? It is because at that time, many systems, including the compensation system, were extremely unreasonable. However, as these buildings have become very dilapidated now, added to the fact that there has been substantial improvement in many systems, such as taking the price of a building aged seven years as the standard of compensation, and many systems have been rationalized. Over the past few years, some provisions have also been improved. Therefore, more and more residents living in old districts are crying for redevelopment now. Some residents living in old districts have collected over a hundred signatures and given them to me. They asked me to submit these signatures to the URA, so as to urge the authorities to demolish their old buildings. Moreover, they do not request taking the price of a building aged seven years as compensation. Rather, they would accept taking the price of a building aged 10 years as compensation. Therefore, I also make fun of them, asking them not to "offer dirt cheap prices". It is because if someone asks for taking the price of a building aged seven years as reference for compensation, whilst others accept taking 10 years and 15 years as reference instead, they are simply "offering dirt cheap prices". This may not be favourable to them as some very complicated issues will arise.

However, now, it is obvious and certain that the Government has required many owners living in old buildings to inspect various kinds of installations of

their buildings. Although the Government has also provided subsidies to them, the cost of building repairs and management has, after all, increased. And as some of these buildings are really very dilapidated, owners even take the initiative to request redevelopment. Certainly, reducing compulsory auction is not the subject of today's debate, and therefore, I am not going to talk about it in detail. However, if the public consider that the URA has higher credibility (of course, the URA has not been spared criticisms either), when they wish to find someone to act as an agent for building construction, they will at least think of the Housing Society and the URA sometimes. They may consider that they are relatively reliable, impartial and have higher transparency because all of their information is accessible by the public. If the Government is willing to carry out redevelopment, it is really good.

As the Secretary said at the last meeting, we should never use public money to subsidize other people and make them millionaires. I subscribe to this principle. However, I also hope that the authorities can be more cautious when drawing this line. It is because, given an owner of a flat in a building aged 50 years, if the URA offers him compensation by taking the price of a building unit aged seven years as reference, his living environment has indeed been improved to a certain extent. However, he may not become a millionaire, for, he only gets a unit for residential purpose in return. Under such a situation, is there any loss in public money? There may be a little bit loss. Taking the redevelopment project on Ma Tau Wai Road as an example, there has already been a loss of \$700 million. Assuming that the redevelopment project is conducted with a "bottom-up" approach and all owners of the row of buildings in the vicinity of the building collapse incident on Ma Tau Wai Road request the URA to carry out redevelopment, are we using public money to make them millionaires? Should we interpret the principle in this way? Therefore, I hope the Government can handle this issue cautiously.

Regarding compensation measures, many people have pointed out that after the URA has conducted the freezing survey for residents of buildings, there are still cases in which tenants are forced away by their owners. Although sometimes we may not quite understand the mentality of these owners — even they force their tenants away, they still cannot get any compensation for self-occupation. It is because when the freezing survey was conducted, there were tenants living in them — however, if owners still insist on doing so, they have only done harm to others without doing themselves any good, and

eventually, some tenants may suffer damages in their interests. Therefore, we should review the system to see how to help them protect their rights and interests.

President, as for other issues that cover a wide spectrum, colleagues from the Democratic Party will discuss them in detail later. With these remarks, I beg to move.

Mr James TO moved the following amendment: (Translation)

"To add "the dilapidation of buildings and their lack of management not only pose potential danger to their residents and the public, but also hinder the sustainable development of the society;" after "That,"; to add "relax the restrictions on application and terms of funding support for various subsidy and loan schemes, and" after "'Operation Building Bright', and"; to add ", and carry out extensive publicity and education work to enhance public awareness of the effect of structural alteration to units on building safety, and encourage the public to provide information on works involving structural alterations to facilitate the Government in early detection of illegal structural alteration works, so as to avoid the building structure being affected" after "structural alterations"; to add ", and enhance the exercising of powers conferred on the Building Authority under section 22 of the Buildings Ordinance, in particular focusing on old and notably dilapidated buildings, to enter into units of such buildings to inspect whether there are unauthorized building works that may affect the building structure, so as to ensure building safety; and should serious cases of inter-linked unauthorized building works be detected, the Government should take the initiative to assist the affected owners in carrying out rehabilitation works together and then share the costs among the owners, so as to avoid continuous potential hazards in the building structure and safeguard building safety" after "building works"; to add "(j) to establish a mechanism for modifying unreasonable provisions in the deeds of mutual covenant, so as to assist owners in managing the buildings more effectively; (k) to actively consider establishing an approval mechanism to assist small property owners under sub-deeds of mutual covenant in obtaining the right to deal with building management problems covered by sub-deeds of mutual covenant;" after "management companies"; to delete the original "(j)" and substitute with "(l)"; to delete the original "(k)" and substitute with "(m)"; to add "and options for joint

development with owners" after "flat-for-flat exchange"; to add "(n)" to review the existing compensation measures of URA to ensure that tenants affected by the freezing survey will have reasonable compensation or rehousing arrangement;" after "choose;"; to delete the original "(l)" and substitute with "(o)"; to delete the original "(m)" and substitute with "(p)"; and to delete the original "(n)" and substitute with "(q)".

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

SECRETARY FOR DEVELOPMENT (in Cantonese): President, first of all, I wish to express my gratitude to Ms Starry LEE for moving a motion on improving the living environment in old districts at today's meeting again after moving an adjournment debate on 3 February, so as to explore viable options jointly with Honourable Members. In fact, the improvement of the living environment in old districts is not only a very complicated subject, but also an important subject that we can no longer evade. I have shared with Honourable Members time and again that the ageing problem of old buildings is very serious. We will face the dilapidation of more and more old buildings in future. As I had spoken for nearly an hour during the adjournment debate on 3 February to give a detailed account on our work in four aspects (namely legislation, enforcement, complementary support and public education) and some new thinking, I am not going to repeat them in my speech in this session.

President, by sheer coincidence, three agenda items of the meeting of the Panel on Development on 23 February were exactly related to our question today, including the latest progress of the Urban Renewal Strategy Review, the enforcement, implementation and latest update of the 10-year programme for demolishing UBWs which will soon complete, as well as building safety concerns arising from the building collapse incident on Ma Tau Wai Road on 29 January. All this has provided a lot of information papers for Honourable Members.

Regarding the 14 points raised by Ms LEE in the three aspects presented in the motion today, I will respond to them in collaboration with the Secretary for Home Affairs. According to my rough estimation, among the three aspects

mentioned by Ms LEE, including building maintenance, redevelopment of old districts and planning of old districts, exactly half of them (that is seven points) is under the purview of the Development Bureau. As for the other three points added by Mr James TO, they are related to the compensation arrangements of the Urban Renewal Authority (URA), which is also under the purview of the Development Bureau. I am very happy to listen to the opinions expressed by Honourable Members and will respond to them jointly later. As today's question starts with the dilapidation of old buildings, the Secretary for Development will speak first. However, I believe many Honourable Members will agree that if buildings do not have sound management and if each time we have to resort to some means to conduct building maintenance, the building dilapidation problem can hardly be resolved for good, nor is it the best method to improve the living environment of residents in old districts.

In this session, I will report on the latest developments of a number of issues first. The first one is, of course, the handling of problems arising from the building collapse incident on Ma Tau Wai Road. After the Buildings Department (BD) had conducted detailed inspections, we announced a few days ago that the two buildings at 45G and 45H on Ma Tau Wai Road should be demolished completely for public safety reasons. The demolition works have been commenced this Monday. We anticipate that it will take two weeks to complete the demolition works at 45G and 45H. During this period, the two buildings at 45E and 45F should be closed temporarily pending completion of the demolition works.

Meanwhile, in the budget released last Wednesday, we also announced our consent for the URA to commence the redevelopment of the building collapsed on Ma Tau Wai Road and those old buildings in the vicinity immediately. Moreover, the staff of the URA also conducted the freezing survey during the period from 24 to 26 of February. We believe the URA will announce its preliminary views on this survey soon. I note that Mr James TO has mentioned one point that after conducting the freezing survey, we should also give tenants certain protection. Mr TO, being a member of the URA Board, also knows that we have dealt with special tasks with special means this time. Only if tenants covered by the freezing survey are willing to accept rehousing, we will provide rehousing and compensation measures for those people affected even planning has yet been completed or acquisition has yet been commenced. The present

situation is that we hope the acquisition offer can be made in early May. However, this should certainly be subject to the condition that no objection is received within two months after gazettal. If any opposing views are received, we have to wait for some more time before this project can be commenced.

The second aspect on which I wish to report is also related to something mentioned by Mr James TO. On the date of occurrence of the building collapse incident, we decided immediately that the BD should conduct a territory-wide inspection of about 4 000 buildings aged 50 or above. The BD set up 40 special teams on 1 February to inspect all these buildings. It is hoped that through such inspections, these buildings can be classified broadly into four categories: the first category are buildings which have a genuine need for conduct of emergency works; the second category are buildings which do not need emergency works in view of their condition, but orders of repairs or inspection should be issued on them; the third category are buildings which level of dilapidation is not serious and there is no need for issue of orders of repairs or inspection, but the BD will issue advisory letters to owners; and the fourth category are buildings which condition is acceptable and there is no need for further actions.

I wish to report to Honourable Members here that the inspection of 4 000 old buildings was completed at the end of February. As shown in the results of this inspection, these buildings are structurally safe in general. During the inspection, two buildings were found to be under the first category among the four categories I have mentioned just now, that is, they require emergency works by government contractors. One of the buildings has to conduct such works as its windows and concrete on its external walls are loose and should be demolished immediately, while the other one requires the erection of a metal support at its balcony as a protection measure. Moreover, some 900 buildings are found to be in a certain degree of disrepair. However, I have to reiterate here that some of these buildings have in fact received orders of repairs or inspection as a result of previous enforcement taken by the BD. Therefore, some of the cases are duplicated. The BD is following up these cases now, so as to issue orders of repairs or inspection to owners of these 900 dilapidated buildings who have not received such orders from it before.

The latest update on the third aspect, as mentioned by the two Honourable Members just now, is about the Operation Building Bright (OBB). During the

adjournment debate on 3 February, many Honourable Members remarked that they hoped additional funding could be allocated to this campaign. At that time, I could not let the cat out of the bag, and I could only say that we would endeavour to expedite building repair works under the OBB. But it was quite difficult to find additional funding. But eventually, the Financial Secretary accepted the views of Honourable Members and announced in the budget that \$500 million would be injected into the OBB. I also agree with Ms LEE that, given so many buildings requiring repair works, coupled with the dilapidation of old buildings, it is not enough to have money only. Indeed, President, if money is not utilized properly, it will give rise to adverse effects or sequelae. Therefore, in utilizing this \$500 million to implement the OBB, we should exercise extreme caution.

So far, with the funding of \$2 billion, some 1 000 buildings — to be exact, 1 015 buildings with OCs — have been classified as category one under the OBB and can receive subsidies for repair works. Category two is buildings without OCs or buildings having difficulties in co-ordinating repair works. There are 615 old buildings in total in this category under the OBB. The latest progress is that 57 old buildings have completed their repair works while 210 old buildings are carrying out such works now. Just as I reported at the meeting of the Panel of Development of the Legislative Council earlier on, we still hope that in the middle of this year, that is, before this Council rises in summer, we can give a detailed account on how to plan the next stage of the OBB with the remaining funds of the \$2 billion, together with the additional funding of \$500 million. Anyway, I can assert to Honourable Members with greater confidence today that with the additional funding of \$500 million, we are definitely capable of inviting buildings of category one to apply for subsidies during the second round of the OBB.

I hereby wish to call upon owners of old buildings which meet the basic criteria at present, such as buildings aged 30 years — however, as for the restriction of 400 units, I have listened to the opinions expressed by Honourable Members and will certainly take them into serious consideration in the next stage — if they have not yet set up OCs, they should strive to do so in the next few months so as to lodge their applications when the OBB invites applications from buildings of category one in the next round. In particular, if they need professional support in setting up their OCs, they can seek assistance from the Building Management Expert Volunteer Service Scheme announced by the

Secretary for Home Affairs yesterday. I believe this \$500 million must be utilized more properly.

Regarding the brief introductions made by the two Honourable Members who have moved the motion and the amendment, I wish to comment on a couple of points. In fact, Mr James TO has said, and Mr KAM Nai-wai has reminded me time and again, that some support measures can be improved or relaxed. Now, what we have to do is consolidation. We should integrate various subsidy schemes and evaluate which ones have better features than others. I will endeavour to handle them in the best and most lenient manner. However, I hereby wish to stress once again that after all, owners should be responsible for carrying out repairs of their old buildings. It is not advisable to rely on our injection of funding into various financial support systems on a long-term basis to support all owners to carry out repair works. Of course, as for those owners who have such need and are eligible under the simple means test, especially the elderly, we will definitely continue to support them.

Secondly, it is really worthwhile to allocate additional funding for publicity and enhancement of awareness of building safety. In the context of the Urban Renewal Strategy Review, we have mentioned many recommendations recently, such as adopting a "bottom-up" approach and a district-based strategy. We will implement these recommendations seriously. Today may not be the most appropriate occasion to discuss the work related to the Urban Renewal Strategy Review. However, many Honourable Members and members of the public have put forth their views over the past 10-odd months. We will definitely take them into serious consideration when forging a consensus at the third stage, including the reminder tendered by Mr TO just now, that we should be very cautious in utilizing public money to subsidize owners of old buildings to carry out redevelopment, and a reasonable balance must be struck by all means.

Lastly, I wish to comment on a point made by Ms LEE, that is, the revitalization of old districts cannot merely rely on the District Councils (DCs). I agree with her in this regard as the DCs, after all, are subject to great restriction in respect of their ability in implementation. However, as for revitalization schemes of old districts which adopt a "bottom-up" approach and a district-based strategy, we do need the DCs to take the lead and bring their leadership into play.

Last Sunday, I attended the completion ceremony for the Tsuen Wan Chung On Street Revitalizing Programme. It is a very good example. Thanks to the leadership of the Tsuen Wan District Council, coupled with collaboration among various departments, Chung On Street in Tsuen Wan has been revitalized by two public organizations (including the Hong Kong Housing Society and the URA) and made a tourist spot as a jewellery and goldsmith cluster. We will continue to follow this direction and put more efforts in the revitalization of various districts and local communities. Thank you, President.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, the motion on "Improving the living environment in old districts" moved by Ms Starry LEE has a wide coverage, including more than 10 points. Among them, I particularly wish to exchange views with Honourable Members on the improvement of building management.

Private buildings are owners' properties and it follows that it is their responsibility to carry out management and maintenance of private buildings. The Building Management Ordinance has provided a legal framework to facilitate incorporation of owners to manage their buildings jointly. At present, there are about 40 000 private buildings in Hong Kong, and some 16 000 of them have formed OCs according to the Ordinance. Moreover, some building owners have set up other residents' organizations, such as owners' committees, or appointed property management companies to assist them in handling the daily management and maintenance of their buildings.

At present, there are about 800 property management companies in Hong Kong. They take on various scales to meet the market demand and their services and charges are different. Among them, about 10% are larger in scale and they provide property management services for more than 50 buildings in a relatively systematic manner. On the other hand, about 40% are small-scale property management companies serving single-block buildings, and they only provide some basic services such as cleaning and security in general. Individual owners have varied criteria in selecting property management companies and evaluating their service standard. There may also be different opinions and even disputes regarding the acceptable level of management fee.

Building management involves complicated issues, such as management of public areas in the buildings, maintenance of sewers and public facilities and handling of UBWs. Very often, expertise in various fields is required. However, members of the management committees of OCs or residents' organizations mainly work on a voluntary basis. If they lack knowledge and experience in handling the problems concerned, their decisions will sometimes be challenged by other owners or tenants.

In the old districts, the owners of many single-block old buildings are mainly elderly people or grassroots who have limited financial means and power of organization. Moreover, some owners, embroiled in the notion of waiting for acquisition and redevelopment, are not willing to spend money on management and maintenance. Worse still, it is common to find unclear titles in these buildings. Also, as some owners lease their flats and collect rentals through agents, it is difficult to contact them. Therefore, it is very difficult to form OCs, rendering these buildings in lack of management and maintenance.

Buildings and multi-storeyed tenement buildings are dwellings for the people of Hong Kong. In fact, they are communities of various sizes. As there are many different stakeholders among them, such as owners, tenants, OCs or other forms of residents' organizations and property management companies, they will have considerations about their own interests and different points of view. If all this is not handled properly, there are bound to be disputes. However, we should note that in communities where members of the public are living together, the basic interests of the majority should be the same in general. In our opinion, promoting building management and management of multi-storeyed tenement buildings is an important element in community building. This can promote the development of neighbourhood relations in the new era, foster social cohesion and enhance sense of belonging of the public. So long as we can deal with building management in a proactive manner, solutions will always be more than problems.

Take the Building Management Expert Volunteer Service Scheme announced by us yesterday as an example, it represents an attempt to rally social forces to support building management and maintenance, which is aimed at assisting owners to gain a better understanding of the effectiveness of sustained management and regular maintenance, thereby improving the living conditions in private buildings. We will pool the forces of various sectors in society to

implement schemes to promote building management in various districts, with a view to accumulating experience and promoting it further.

All along, the Home Affairs Department has provided assistance to owners and OCs on various fronts. Liaison Officers of the District Offices (DOs) will visit all private buildings in Hong Kong regularly to encourage them to set up OCs. Also, they will provide assistance to owners on the procedures of forming OCs. After OCs have been set up, the staff of the DOs will attend their meetings upon request and advise owners on the operation of OCs. They will also handle enquiries and complaints relating to building management and help resolve disputes between owners, OCs and management companies.

Moreover, in order to promote good and effective practices of building management, various DOs will organize education and publicity activities on a regular basis, including training courses, workshops and seminars. They will invite various government departments and relevant professionals, such as housing managers, surveyors, accountants and practitioners from the insurance sector, to share with the public their expertise on building management.

The DOs also work closely with the 10 Property Management Advisory Centres under the Hong Kong Housing Society and will refer owners to these centres for free appointment services with professionals as and when necessary.

Building management and maintenance involves many complicated issues. I will listen to the suggestions of Honourable Members carefully and then respond to them later. Thank you, President.

MR TOMMY CHEUNG (in Cantonese): President, the repairs and maintenance, management and redevelopment of old districts have always been an "old, big and difficult" problem. The Government has worked on this for a number of years but still, it cannot give us a satisfactory report card. The tragic building collapse that happened on Ma Tau Wai Road in Hung Hom in January this year tells us that there can be no further delay in dealing with this major thorny issue relating to society and people's living. The original motion puts forward a number of proposals and many of them merit consideration by the Government. And among them, I believe several points call for special attention by the Government.

In fact, one of the major reasons that make the problem of old buildings in disrepair so difficult to solve over the years is that the owners are mainly elderly people or low-income earners. For this reason, it is difficult to organize OCs to manage their buildings, still less is any management company appointed for the purpose.

At present, among the 39 000 or so private residential buildings in Hong Kong, almost one third of them do not have any OC and they are located mainly in districts developed at the early stage of Hong Kong's development.

For this reason, the Government should examine the establishment of a body responsible for co-ordinating the management of old buildings to provide full assistance to old buildings of a certain age, say, 30 years or more, in improving their management. The principal function of this body is to supervise these buildings in forming OCs and appointing qualified management companies to carry out building management. If the owners of a building refuse or are unable to establish an OCs for various reasons, the authorities can consider empowering this body to hire a management company for them, then recover the expenses from the owners, so as to deal with the problem of managing and carrying out repairs and maintenance on old buildings properly.

Of course, the sole reliance on patchwork may not be enough to solve the problems relating to old buildings completely. Sometimes, it is necessary to demolish and redevelop them. In this context, the role of the Urban Renewal Authority (URA) is actually very important. Unfortunately, in the process of urban redevelopment, there is a tendency for the URA to choose only the juiciest pieces of meat. Recently, it has chosen many sites with enormous commercial value to carry out redevelopment and these redevelopment projects are packaged as luxury properties for sale. For example, early this year, a URA project, the luxury residential skyscraper called "The Masterpiece" on Hanoi Road, Tsim Sha Tsui, commanded a price of as high as \$42,000 per sq ft. One cannot help but wonder if the nature of the URA has changed to that of yet another property developer.

The URA has just announced that it will carry out the redevelopment project at the site of the building collapse on Ma Tau Wai Road on its own and will strive to provide affordable small and medium flats to residents in the area.

Perhaps this practice may set a precedent for a new redevelopment strategy. We hope that this will be an ongoing policy that sees consistent enforcement by the authorities, so that there will not be any deviation from the objective of establishing the URA.

In order to facilitate the redevelopment of old districts, the Government has proposed that the application threshold for compulsory sale of land be lowered from 90% to 80% of the title and recently, this proposal has aroused widespread concern in society. However, I have to stress that the Liberal Party attaches great importance to the private assets ownership and would by no means agree to the forced acquisition of properties. Under the proposal of the Government, the lower application threshold for compulsory sale of land is applicable to buildings aged 50 years or more or to industrial buildings aged 30 years or more located in non-industrial areas, with each owner holding more than 10% of the title. After auction, the owners are entitled to compensation.

The Liberal Party believes that lowering the application threshold for compulsory land sale should serve the objective of speeding up the redevelopment of old districts and avoiding the threats posed by old buildings in disrepair to residents and passers-by, that is, public interest should be the foremost consideration. For this reason, apart from considering the age of a building, the Liberal Party has requested the Government to take into consideration the disrepairs of a building before holding an auction for compulsory land sale, so as to avoid any abuse of the mechanism. In addition, in the great majority of cases of auctions for compulsory land sale in the past, only low transaction prices were recorded, so it seems competition could not be introduced successfully to bring more reasonable benefits to the affected residents. For this reason, the Government should conduct a review in this respect and propose improvement measures.

As regards the mooted compensation method of "flat for flat, shop for shop", I believe this can offer more options to the affected residents because over time, many residents have established themselves in their communities and they absolutely have the right to play a part in the development, so that they can continue to live the original districts after development.

President, the Government while providing assistance in redevelopment cannot neglect the issue of the repairs and maintenance of buildings. I believe the Government should enhance the OBB as a start. Although the Financial Secretary has just announced an additional allocation of \$500 million, the Government should also be prepared to examine the progress of the scheme, continues to allocate additional resources in view of the demand and even extends the scheme by three or four years.

In addition, we also believe that the authorities should strictly regulate renovation works involving structural changes. In this regard, we basically agree with the proposal in one of the amendments to enhance the exercise of powers conferred on the Building Authority under section 22 of the Buildings Ordinance to enter buildings to inspect whether or not there are UBWs that may affect the building structure. However, we believe this power should be exercised only with adequate justifications and grounds and in adherence to the principle of respecting the private property rights of owners. Moreover, a balance has to be struck between these two aspects.

President, I so submit.

MR LEE WING-TAT (in Cantonese): President, we have in fact discussed the maintenance and management of old buildings for many times recently. The Democratic Party held an internal seminar last Sunday. I wish to thank Mr YUEN Man-chung from the Development Bureau for joining our discussion. Although only a few partisans were present on that day, four of us, including Albert HO, LAW Chi-kwong, James TO and I had attended the seminar. We have followed up and studied this issue closely and, on that day, we had quite an in-depth discussion on it. I am not going to talk about the details. However, I wish to share a few main points with the Secretary today.

First of all, according to the statistics, there are about 4 000 to 5 000 buildings aged 40 to 50 years, and currently, only a few hundred buildings can be demolished each year. By calculation, if we continue at this pace, we may still have to discuss this issue two or three decades from now. In other words, the overall strategy of demolition does not suffice to tackle this problem. For this reason, the first thing we discussed on that day is whether the role of the Urban Renewal Authority (URA) can be expanded further, that is, facilitating or

enabling private property owners, after securing a certain percentage of ownership, to negotiate with private developers to see if they can participate in the redevelopment. We had a long discussion on this issue and considered this role useful. However, we think that the URA has all along given people an impression that it simply stands on the side of developers. If this role is to be expanded, the most important thing is that the URA, in defining its role, can really stand on the side of minority owners. Developers may not welcome this, but it does not matter, for as long as the URA can facilitate or promote acquisition, developers will stand to benefit actually. Assuming that the URA has secured 50% of the ownership shares from minority owners, and through negotiation or discussion, the URA or developers can then acquire 80% of the ownership shares, this would as a result expedite the pace. Therefore, if this role can be defined and its stands on the side of minority owners, this practice does merit our consideration. This is the first point.

The second point is about the financial arrangement of the URA. I have mentioned time and again that the Urban Renewal Authority Ordinance was enacted during the era of Gordon SIU. In fact, I told the Secretary two years ago that it was already outdated to formulate a financial model. The financial assessment made upon the establishment of the URA 10-odd years ago should be substantially different from that of today. And the greatest difference is that it is increasingly difficult to reap proceeds from the districts, that is, the difference in the plot ratio of each redevelopment district is becoming smaller. It is because the number of low-rise buildings to be demolished is decreasing. Moreover, we are now more concerned about conservation and endeavour to avoid demolishing certain kinds of buildings. In other words, we can hardly obtain any benefits from each lot. Therefore, the Government should consider altering the overall financial mode. I seemed to have heard from Mr YUEN that they were considering it. I hope the Government can abolish the self-financing arrangement first. If it continues with this practice, little result can be achieved.

Thirdly, regarding the financial arrangement, if the URA is smart, it should request the Government to beef up its financial capacity for land acquisition when the property market is in the trough. What I mean is of course not the mandatory resumption of land. As we all know, in negotiations with minority owners, the higher the property price, the higher their asking price. When will owners be willing to sell their properties without hesitation? This is not unique

to the URA. It is the same with private properties in general. That is to say, once the property price drops, owners will want to sell their properties. The URA was most stupid during the period from 2003 to 2004. I do not know why the Government did not inject any money into it. I did mention this at that time. Secretary, you were not responsible for this portfolio then. I cannot recall to which public officer who was responsible for this portfolio I gave this reminder. When the property price is on the low side, it is time for assembly of land, a golden opportunity for the Government to take actions. In order to conclude a deal, the Government can make a little bit higher offer. However, as far as I know, it did not resume more lands intentionally at that time. In other words, if the Government can allow more flexibility in its financial arrangement, so as to enable the URA or other similar organizations to have more money when the property market is in the trough, the whole job can be made a lot easier. I wonder if the Financial Secretary will consider this in future. However, I think that this is a most appropriate practice. There is no reason for it to acquire more land when the property price is high. It should acquire land when the property price is low. The Government itself is neither a "loan shark" nor a speculator. It can consider resuming land when the property price is low and building flats when the property price is high. Although the money will be frozen for a period of time, it does not matter unless a huge amount of money is involved. This is my third point.

The fourth point is related to Secretary TSANG. The Government should examine how to contain (that is, not to aggravate) the ageing problem of buildings. If the ageing is fast while the pace of demolition or maintenance is slow, the problem will exist forever and can in no way be resolved. How can this problem be contained? One of the solutions is to require that new buildings must set up maintenance funds and appoint management companies to carry out maintenance works on a mandatory basis. Otherwise, it is really very difficult to prevent the problem from deteriorating, unless new buildings have sound management and maintenance. But I really do not know if each new building can achieve it or not. Therefore, the Home Affairs Bureau should consider how best this problem can be prevented from deteriorating under its purview; otherwise, it will only continue to grow in proportions.

President, I wish to comment on one more point, and that is, how the two bureaux can co-operate with each other, so as to achieve collaboration and

co-ordination more effectively. This is very important. Of course, Starry LEE has talked about the concept of creating a commissioner. However, the two bureaux are both so large. Which one should be the commissioner? In fact, the Chief Secretary for Administration is responsible for co-ordinating the two bureaux. But I have no reason to ask him to take charge of this issue because he can hardly establish another office after setting up the Tree Management Office. However, if I have to choose between the Tree Management Office and an office for management of old buildings, I will definitely choose the latter. This comes from the bottom of my heart. Resources are limited in this world. Although trees are very important, old buildings are even more important. However, Chief Secretary Henry TANG has chosen to deal with tree management and ignore this problem. What can I do then? The only solution is to come up with a mechanism — which will be a question for the two Secretaries to consider — for better co-ordination in the management and maintenance of old buildings. Thank you, President.

MR KAM NAI-WAI (in Cantonese): President, for more than 20 years, the greater part of my work at the district level has been helping owners and tenants to handle their problems relating to management of old buildings. The two Secretaries, Secretary TSANG in particular, mentioned earlier that the management of old buildings is very complicated. I have browsed the homepage of the Home Affairs Department just now, noticing that there are issues relating to building management, slope maintenance and private streets, as well as some recent issues relating to public space in private areas, new legislation on fire safety, periodic electrical testing, mandatory third party risks insurance to be implemented soon and mandatory building inspection in future. The most recent discussion is about compulsory auction of buildings not properly dealt with, that is, compulsory sale of such buildings. In all of these issues, the Government has stressed time and again that building maintenance is owners' responsibility. On this premise, in introducing the Operation Building Bright, the Government said at the very beginning that it would allocate a funding of \$1 billion, which was then increased to \$2 billion and even \$2.5 billion. The Government simply cannot get out of it. Even though the Government keeps on saying that maintenance is owners' responsibility, it can never get out of it. Where does the problem lie? Why does it fail to take any early precaution properly? I notice that according to Secretary TSANG, the Government has made a lot of efforts and kept on launching new measures. I have just read a

press release on the Building Management Expert Volunteer Service Scheme released yesterday. In fact, insofar as this kind of scheme is concerned, it is inappropriate to provide volunteer service. Building management is a most specialized service that entails professional advice. Today, Secretary TSANG tells us that the authorities will provide volunteer service for some buildings. Is there anything wrong? Building management should be a professional service. Earlier on, an Honourable Member even proposed that an office for management of old buildings, similar to the Tree Management Office, should be set up.

Working at the front line, we do not need a Tree Management Office or an office for management of old buildings. Rather, I hope that we can provide one-stop services, so as to visit those old buildings and help the owners there. Do you know what my office is doing now? I simply provide one-stop services, helping residents of those buildings to do clerical work and issue minutes and agendas of their meetings. Secretaries, why owners of old buildings do not handle such work themselves? Because they do not have such knowledge. Therefore, we have to provide these services to them. According to the Government, it will help them to form OCs and appoint Liaison Officers to visit them regularly. Secretaries, Liaison Officers do not visit them even once a year. Those who have visited them are the so-called TCOs, that is, temporary community organizers. They are part-time workers only, who just sit there like a log and dare not answer any questions. I do not mean they are incompetent, only that they always behave like that during such visits. Therefore, I hope the Government can by all means increase the manpower for this and provide one-stop services. I have put forth a concrete proposal of adopting the mode of case manager. This case manager may be a social worker, who is tasked to contact various professions to provide services on a regular basis. Should the Government levy a charge on these services or provide them free of charge? We should leave it to the Government for consideration. Owners have never requested the Government to provide volunteer service. Certainly, there will be no objection if the Government does so, only that this is not a major service.

Secondly, we have been discussing whether various loan schemes can be integrated. Earlier I heard Mrs LAM say that the Government would consider introducing a means test. Secretary, in my opinion, the Government should never do so. Rather, it is most desirable if an interest-free loan with a repayment term of up to 60 months can be provided, just like the arrangement currently

offered by the URA. If the Government has to implement a means test or charge owners interest, they will flinch at the very sight of it. Even it wishes to help them Certainly, this is their responsibility. However, since the Government can never get out of it, it had better provide them with loans of a long repayment tenure. After all, such loans should be recoverable. Of course, there may be some bad debts. But according to past experience, I believe there will not be too many bad debts. I hope the Government can introduce more incentives to enable owners to carry out maintenance works for their old buildings. More efforts can be made in this regard.

Moreover, I also wish to talk about the building collapse incident on Ma Tau Wai Road this time. According to the URA, in order to deal with special tasks with special means, it will make an offer in May. But I am so scared at hearing something just now. The URA will make an offer in May, and after the Government has published it in the Gazette, if there is any objection during these two months, the plan will be shelved. In that event, it will really be very troublesome. If the Government is people-oriented, it should neither say nor do so, but should resume the land first. After resuming the land, as a usual practice, it will put it aside first. If it thinks that the land cannot be redeveloped, it can then consider other options. This is people-oriented. If the Government is money-oriented, after making the offer and publishing it in the Gazette, it is right to put the plan on the shelf in case there is objection. In resuming the land, the Government has already suffered a loss of \$700 million. If it cannot be sold by that time, what can the Government do? It may suffer a loss of \$1.4 billion. This is money-oriented. If the Government is people-oriented, it should go ahead with the project after announcing it. But these people are fighting desperately with each other like cornered beasts. Both the owners and tenants have no idea about the right way to deal with it. Therefore, regarding such an approach of dealing with special tasks with special means, if the Government really wishes to help owners of old buildings, I hope that it should rather handle it with its usual and long-established practice.

Lastly, I wish to comment on one more point. As far as urban renewal is concerned, is the demolition of buildings in urban districts an important task in the future? Or is the revitalization of old buildings a major strategy? Given that the overall review of urban renewal has yet to be completed, I think it inappropriate to change the mechanism of compulsory auction so hastily.

During the overall review, I believe there will be a lot of discussions in society on how to help revitalizing old districts. This is even more important. Thank you, President.

DR PRISCILLA LEUNG (in Cantonese): President, the incident of the collapse of a building on Ma Tau Wai Road can be likened to a pebble thrown into a placid lake, sending off splashing waves. However, I would think that the waves are a good thing, for they remind us of the need to review the existing building monitoring mechanism, redevelopment of old urban areas and even the quality of decoration workers.

On the building collapse incident on Ma Tau Wai Road at the end of this January, I think that the tragedy was caused by human factors. The incident shows that there are still many pre-war buildings in Hong Kong and many of them are the so-called "three-no's" buildings, that is, they have no OC, no management and no maintenance. So the motion moved by Ms Starry LEE today merits discussion in many aspects.

With respect to this building collapse incident on Ma Tau Wai Road, I think that some of the responses made by the Government have been quite swift, and they include taking on board the suggestion on implementing a four-grade building inspection system, licensing of decoration workers, and quick arrangements for relocation of the residents of 45J under compassionate rehousing or allocation of housing. In this regard, the Housing Department has made very prompt responses. Given that they have done well or put in the best of their efforts, we should give them a big hand here.

In fact, old buildings in Hong Kong are found not only on Ma Tau Wai Road. There are at least some 4 000 old buildings in Hong Kong built more than 50 years ago. Many of them are found in Tai Kok Tsui, Yau Ma Tei, Tsim Sha Tsui and Mong Kok, as well as Sham Shui Po. Some of them are older than 45J of Ma Tau Wai Road which collapsed. So I hope that the Government can proactively learn a lesson from this building collapse incident, that is, what we call the "45J lesson", and refrain from waiting until the occurrence of similar fatal incidents before dealing with the problem seriously.

On the issue of repair and maintenance of old buildings which has been discussed many times in this Council, we would say that with respect to the building which collapsed, the charge order issued related to illegal structures and fire protection. Moreover, many people would say that the incident was caused by decoration workers removing the load-bearing wall by mistake and they suggest that a licensing system be considered and a punitive penalty be imposed. In future, if any professional acts in an irresponsible manner and states that a certain building is fine after making an inspection, but the building is later found to have problems, then this professional may be prosecuted. I think that all these suggestions are work to be done after the incident and what the people would like to see is prevention, which is better than cure.

Therefore, I think that we should not overlook the question of decoration workers. As a matter of fact, licensing cannot possibly solve the problems. Can the Government consider requiring the owners of old buildings to inform the Buildings Department in advance when they are about to undertake some major decoration works, especially those involving building structure? And decoration workers can only commence the works after approval is granted. But will the decoration workers check everything first every time they begin some works? We all know that these decoration workers work from hand to mouth and though they may work today, it is never sure that they will have work the next day. Some of them are even illegal workers. So old buildings are always found in this kind of dangerous situation.

Therefore, I would think that the Government should consider how this mechanism can be reviewed in a comprehensive manner, not just in relation to licensing. This is because workers can work without any licence and there is no way we can stop them. This also involves the responsibility of tenants and owners. Some say that this is the responsibility of owners while residents, tenants and commercial tenants do not have to care a dime. This is not true. I would think that in any major decoration works, all the people concerned should be subject to the same mandatory measures. In this way, we would have some guidelines for preventive purposes.

In addition, part (g) of the original motion mentions setting up a building affairs tribunal to improve building management. I welcome the direction of this suggestion, but I have some reservations about specific contents of that suggestion.

In the motion debates held last year, I always talked about the middle class being denied legal aid and as I see it, these cases were not just commercial disputes but in most cases, disputes concerning buildings. I have personally handled some six to seven such cases. In these cases, some ordinary members of the public, and even civil servants, were involved in lawsuits with OCs. There was this man who had to sell his flat, and his wife left him. He developed some mental problems and subsequently lost his job. I have information concerning five or six such cases at hand and all began as the result of some disputes with OCs.

I agree very much that a mediation centre should be set up for this kind of building disputes. Or alternatively, such disputes may be resolved by way of arbitration. Why do I have reservations about this kind of tribunal? This is because a decision made by a tribunal is still subject to appeals by the parties concerned. The party with means can apply for leave to make an appeal. Why do such lawsuits become like this? Because it is very easy to submit a case to a tribunal. But if the other side is making appeals all the time, then a huge sum of lawyers' fees that we often talk about would be incurred. This is more often than not not anticipated by an ordinary household, but the fact is, they cannot swallow the unfairness.

When considering the methods that can be employed to adjudicate a building dispute, I think that mediation and arbitration are the proper direction. This is because arbitration is final and if this method is chosen, at least both parties can have some control over their expenses.

Mediation is good but it is not binding. However, there are professionals and people whom these parties would consider as unbiased to provide mediation. In this way, there is no need to spend a great deal of money. For many an ordinary man, he may have to spend all of his fortune but not getting any redress in justice. I have seen some people who still need to see the psychiatrist, and all just began from some proceedings concerning some minor building disputes for which they just cannot bear the injustice. I see Secretary TSANG Tak-sing here. In this connection, I hope he can consider the eligibility of the middle class for legal aid.

Lastly, with respect to part (e) of the original motion, I do not know if Starry LEE's proposal is the same as the idea often espoused by Mr Frederick

FUNG, namely, small community management. Of course, I always hold that redevelopment is better than repairs. However, I think the direction of small community management should merit consideration and support. I believe many owners of old buildings, who do not have the ability to handle safety problems in their buildings or handle them properly, will welcome the suggestion made in this direction. I hope the two Directors of Bureaux can hear our voices.

Thank you, President.

MR WONG KWOK-HING (in Cantonese): President, I support both the original motion and the amendment. Now, I wish to raise several points concerning the safety of old buildings, in the hope that the Government can consider my proposals and requests. Since the original motion and the amendment have made as many as 20 proposals altogether, I would only talk about several major ones.

The first is related to the safety of existing old buildings. To solve the safety issue, one very important element is the legislative amendment being scrutinized by the Legislative Council at present to lower the threshold for application for compulsory sale from 90% to 80% of the title. This is set out in a notice published by the Government. This amendment will affect the development prospects of old buildings and how repairs and maintenance on buildings in disrepair would be carried out. On this issue, I hope the Government can consider my proposal on introducing a mediation mechanism before a compulsory auction is referred to the Lands Tribunal. If there is a formal mediation mechanism, so that various stakeholders can achieve a win-win situation through mediation and discussion and even reach a consensus with concessions made by various parties, it will be possible to identify a proposal beneficial to all parties. In fact, the point is not whether the threshold should be 80% or 90% but that there must be a mediation mechanism before a case is referred to the Lands Tribunal. This is just like the case with labour disputes handled by the Labour Department and the Labour Tribunal. There is also a mediation mechanism before a case is referred to the Court or the Labour Tribunal, with a view to encouraging various parties to strive to reach a consensus and solve a problem. Even if a problem cannot be solved, the mediation process also enables a judge or Tribunal Officer to understand what the interests of various parties are, their positions and bottomlines and the truth of the matter, so

as to assist them in making fair, objective and impartial decisions. Therefore, I hope the Government can respond to this and indicate whether or not it will consider accepting this proposal of mine.

Second, I wish to raise the issue of how the management problem of old buildings without OCs, management companies or other resident groups can be solved. There are indeed difficulties in this area. President, I had been an elected District Council member for 17 years, having personally assisted in the establishment of OCs or owners' committees of many buildings. I also once served as the chairmen of the OCs or owners' committees of 17 buildings with a total of 1 450 households, so I fully understand the complexities and difficulties involved. The trouble is that it is indeed very difficult to organize OCs or owners' committees for some buildings in a short time, so how can the management of these buildings be improved? I hope the Government will consider creating zones on the basis of streets or districts and take the lead in introducing measures that are to some extent mandatory in nature, for the purposes of carrying out management and repairs and maintenance. If consideration is not given to this direction, I believe it is indeed difficult for some buildings to secure the sufficient statutory percentage of undivided shares for the purpose of establishing OCs or owners' committees. So far, I have not heard of any government proposal on resolving this difficulty. Although the organization of volunteer teams is mentioned in a proposal, this is really a problem that volunteer teams may not be able to solve.

Third, I hope the standards adopted by the Government in inspecting the safety of buildings will keep up with the times, so that they can serve as a basis for the issue of early warnings and monitoring the state of existing buildings. In the incident of building collapse on Ma Tau Wai Road, the whole building collapsed all of a sudden in a matter of tens of seconds, just like the eruption of an earthquake of intensity VII. Nevertheless, prior to this, the Buildings Department (BD) had inspected the building concerned and required that repairs and maintenance be carried out. However, it did not detect any danger of imminent collapse. Of course, during the interim, a repairs and maintenance project was also being carried out. The Government is still carrying out an investigation on this and no report is yet available. I do not wish to discuss this as an individual case, but I wish to point out that although the BD has carried out a round of inspections on 4 000 buildings expeditiously, the question is how an early warning mechanism can be put in place. This involves the standards

adopted in inspecting building safety and even after safety standards have been set, how can they help the Government receive early warnings before a crisis occurs? This is just like the monitoring of dangerous slopes by the Government — I am not a professional in this field and I only want to use this as an example — the authorities concerned can detect the dangers of landslides or debris flow from signs of soil movement on slopes. In this regard, should the Government not conduct reviews to examine if any new method is available to assist it in detecting dangers in building safety, so that it can receive early warnings before the outbreak of any danger?

Due to the time limit, I can only raise these three proposals and I wish to hear positive responses from the Administration, particularly on the proposal of introducing a mediation mechanism for compulsory auction, so as to solve this problem. Thank you, President.

DR RAYMOND HO (in Cantonese): President, many cities in the world which have a long history also face the problem of urban decay. Some buildings constructed a long time ago, due to lack of repairs and maintenance over a long period of time, have caused the gradual worsening of the living conditions of residents and become time bombs in the bustling city. Problems related to these old buildings normally boil down to a lack of management and maintenance. The tragedy of the collapse of a building on Ma Tau Wai Road has aroused concern about the problem of urban decay. The four main points espoused in the motion today are precisely addressing the various problems faced by the old urban areas now.

After the building collapse incident had taken place, the BD sent 40 teams all over Hong Kong to inspect the structural safety of all buildings with an age of 50 or above, the number of which totalled about 4 000. Last week the Government reported to the Development Panel that the inspection of some 2 900 buildings had completed. They were found to be structurally safe and some 680 of them were found to be in need of repair. Earlier on the Secretary already reported that the entire inspection exercise had been successful. I welcome and praise the bold, decisive and highly efficient actions taken by the authorities. In recent years, the Government has launched various initiatives such as the Operation Building Bright and the Building Maintenance Grant Scheme for Elderly Owners. They help owners fulfil their responsibilities and undertake

proper maintenance of their buildings. The objectives of these schemes are commendable, for they can help owners reduce their burden of paying for building repairs and maintenance. Unfortunately, the public does not understand government policies too well and the progress of these schemes has been slowed down as a result. The Government should step up its publicity efforts so that eligible members of the public can realize the importance of building repairs and maintenance and benefit from these schemes.

In some cases, owners in a bid to increase the income from rentals would partition their flats into small units for lease to different tenants. At times, the owners would overlook the importance of the overall structure of the building and decoration workers are casually hired to carry out works in the flat to make alterations or adding illegal structures. Certain parts of the flat which carry structural loadings are removed, greatly undermining the structural safety of the building concerned. The Government should undertake a speedy review of the situation and enforce the relevant law, so as to eliminate this kind of acts which jeopardize human lives. In the face of the great demand for this kind of units with bathroom en suite, the Government should proactively review the sufficiency or otherwise of small residential units in the market.

Sound building management can effectively protect the interest of owners and residents. When taking forward work on building renovation, building management should play a very important part. Just imagine if a building lacks effective management, and when the title is scattered among more than 10 or even dozens of owners, it would be very difficult to co-ordinate building repairs and maintenance. I have been a member of a mutual aid committee and an OC for 20 years. I understand that this kind of work is very difficult. At times it is difficult to find people willing to undertake voluntary work. Many owners say that they are very busy and hence they are not enthusiastic about it. The Government announced yesterday that the Building Management Expert Volunteer Service Scheme would be launched next month to offer free professional property management advice and follow-up service to owners of old buildings, in a bid to improve the management of old buildings. It is hoped that this Scheme will enhance owners' awareness of and concern about building management.

The lack of management in old buildings is also an indirect cause of public order problems in the old urban areas. Over the past year, there were many cases of the throwing of corrosive acid from height in various districts. This causes public concern for security problems in old buildings or buildings not under any management. In cases where no OCs have been formed, owners will encounter obstacles if they want to hire a management company or security company for their building. Addressing the property management problem in old buildings will not only improve the living conditions of the buildings concerned but also prevent crime and hence make public order in the district concerned better.

With respect to the Urban Renewal Authority (URA) which adopts a policy of dealing with special tasks with special measures, after the building collapse incident on Ma Tau Wai Road, the URA commenced an urban redevelopment project on the site. This can be considered as good news for the people affected. In discussing acquisition and compensation with the residents, the URA should look into the practical needs of the residents. It should take into account that in general, people living in these districts are elderly people and life in their twilight years is heavily dependent on links with neighbours and the district. If they have to be rehoused to a district other than that of their long-time neighbours and friends, and if they have to adapt to a new life in a strange community, this will not be an easy thing for them. Besides, there are reports about some residents and commercial tenants being not satisfied with the terms and conditions of the compensation and that they do not rule out the possibility of objecting to the redevelopment. I hope that the Government can sympathize with the residents and exercise discretion in some special cases to facilitate small owners, tenants and commercial tenants of small businesses in getting a proper amount of compensation. This will help forge a consensus with the people and also help the URA launch more redevelopment projects to address the problem of urban decay.

Apart from rolling out redevelopment projects, revitalizing the industrial buildings is also helpful to improving the environment and economic conditions in the old urban areas. During the past few years, some people started businesses in some vacant industrial buildings in various districts and after giving the premises a facelift, they offer a wide range of services associated with creative and cultural industries. These include drama groups, recording studios, interest classes, and so on. All this serves to instil new life into factory areas

which have become desolated after the relocation of factories to the Mainland, thus increasing people inflow in these areas. There are numerous stories of success overseas on projects to redevelop and revitalize existing buildings, such as Tate Modern which is situated on the banks of the Thames in London, a power station converted into an art museum. The piers of the Manhattan district in New York, namely Chelsea Piers, are converted from piers into movie studios and sports facilities. All these are good reference for those interested in promoting the cultural and creative industry which is one of the six industries with a clear advantage as identified by the Government. It is hoped that after the revitalization of industrial buildings, land which is so scarce in Hong Kong can be put to their best use to tie in with the development of these six industries with a clear advantage in Hong Kong.

I have said on various (*The buzzer sounded*) occasions that this proposal merits recommendation.

PRESIDENT (in Cantonese): Dr HO, time is up.

MS AUDREY EU (in Cantonese): Last year, a 13-storey building in Shanghai collapsed and the news caused quite a stir. People on the Internet, the netizens, called the building a fragile building that crumbled. When Hong Kong people learnt about the incident, they thought that this kind of thing could only happen on the Mainland and it is beyond their wildest imagination that they would see one in Hong Kong. So the collapse of a building on Ma Tau Wai Road in Hung Hom is a big wake-up call for Hong Kong.

If we look at the story behind this event, we will find that it is not very much different from that of many other old buildings in Hong Kong. The building is 55 years old, a tenement building built before the War. It has no OC and lacks in repairs and maintenance and so is infested with a myriad of problems. According to reports, over the past four years, the building had received a total of seven repair orders. The owner is a sole owner, waiting for the sale of her property. Someone had offered \$22 million but she made a counter-offer of \$28 million and so it fell through. During the time when the building was put up for sale, many unauthorized works were carried out to alter

the partition of the flats, which were divided into suites for lease to the low-income people. It is suspected that the event was caused by an ongoing works project and the whole building collapsed. Such a scenario is also applicable to many other buildings in Hong Kong and similar things may also happen.

President, I would like to say first that the original motion moved by Ms Starry LEE mentions that old buildings abound in Hong Kong and she is talking about buildings aged 30 years or more. First of all, I wish to say that building age is in itself not a problem. Come to think about this, buildings with an age of 30 years are considered baby buildings in foreign countries and there are buildings which are a few hundred years old and they are forbidden to be torn down. When we go to many places in foreign countries, we will find that the buildings on the entire street may look a bit tilted, but actually, they are to be kept as they are and no facades of these buildings can be pulled down. And in many other buildings, even the back portions cannot be pulled down as well. And so centuries-old buildings are kept.

So President, it is not a question of when a building should be demolished when it reaches a certain age. Buildings are unlike humans. As people age, they will die when they reach a certain age. But it is not necessarily the case with buildings. So the question lies with maintenance and management. If precautions are taken, buildings can be preserved for a very long time. Just think, this Legislative Council Building is more than 100 years old. Do we have to pull it down just because it is old? Of course not. President, to address the problem, we must examine how precautions can be taken. Actually, both the original motion and the amendment have mentioned many views. I think they are worth discussing. For example, with respect to building repair, the motion says: "to enhance regulation of renovation works which involve structural alterations". This is obviously a big problem in Hong Kong. As I said, the building on Ma Tau Wai Road had received seven repair orders within a period of four years. We can often see that many repair orders have been issued to a certain building, but things remain as they were even after a number of years. This is also the case with the Maryknoll Convent School mentioned earlier. Its drainage works order was issued in 2004, but works are still in progress in 2010. This shows that when the Government and society as a whole face such repair orders, they would often brush them aside and delay handling them. Obviously, this mindset must be changed. On the one hand, educational and publicity

efforts should be stepped up and on the other, enforcement action should be beefed up as well. For if not, people will think that these are not major problems that can be handled slowly later. Hence repairs and maintenance will become a low priority item.

Members can also find that in the absence of regulation, especially in respect of structural alterations, the load exerted on buildings with illegal structures is increased and many problems of structural safety are caused. These problems may not be obvious to the laymen and so the gravity of these problems has grown. For this reason, we must look at the issue from the perspectives of building management, professional management and law enforcement and study how these renovation works which involve structural alterations will not be carried out without any prior approval or professional advice given. This will prevent the appearance of these works without anyone's knowledge.

President, with respect to building management, Mr KAM Nai-wai mentioned a point in his speech earlier, and in fact my office has also received this kind of complaints very often, and that is, there are not just many disputes arising from building management but complaints are often caused by the Government not playing its part at all. I think the Government should rethink its mindset. It is because it always says that the management and repair of buildings is the responsibility of owners. President, this I totally agree. But it does not mean that the Government has got no role to play. It will never work if the Government just sits back and does nothing. And this is an area which often causes problems. Members of the public would expect the Government to play the role of someone who administer justice and a mediator or someone who provides assistance. I agree with some Honourable colleagues who said that what the people need is not as simple as volunteers, and even if that is so, they would need professionals as volunteers. What the people need are professional management and mediation services and they want professional assistance in dealing with such issues as law, structural safety and repairs. In this regard, the Government should play the role of a co-ordinator and it must never say that this is not its responsibility. As long as the Government does not change this mindset, the management and quality of buildings can never hope to improve.

I think on this occasion when the Government suggests redeveloping Ma Tau Wai Road, it actually came as a big inspiration for us. This is because in the past, both the URA and developers chose the most lucrative and profitable

sites for redevelopment. I hope the Government can give consideration to turning the prevailing mindset of the URA, namely dealing with special tasks with special measures, into its guiding philosophy so that it can focus its attention on certain clearly dilapidated buildings in some districts and carry out redevelopment. A two-pronged approach can therefore be developed, that is, apart from preventive work, focused efforts can be made in redevelopment. Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, after the collapse of the building on 45J Ma Tau Wai Road, I heard some residents in old urban areas talk about the problems they faced living in old buildings. A concern of most people and one which they dread most is typhoon. Whenever Typhoon Signal No. 8 or 10 is hoisted, the building in which they live would seem to be shaking in the thunderstorm and heavy rain. The doors, windows and walls cannot provide them any shelter from the rain and water can be seen leaking all over the place. They cannot sleep all night. It reminds me of two lines from a poem called *Song of My Cottage Unroofed by Autumn Gales* by the great Chinese poet DU Fu which read like this: "The roof leaks over the bed — there's nowhere dry/The rain falls thick as hemp, and without end."⁽¹⁾ These are vivid descriptions of how people in the old buildings who cannot sleep well because of wind and rain. And on other days, the walls, windows and doors in their flats would shake when some heavy vehicles pass by.

This tenement building at 45J collapsed into rumbles and debris in a blink of an eye. This real-life case tells us that the kind of conditions and experience which these residents have undergone are no fabrication. Most of us live in large housing estates and new apartments and it is hard for us to sense the hardships of these people.

People who live in old buildings have to climb flights of stairs for five or six storeys before they can reach home. When I was small, I lived in a tenement building. I recall there was no lift and for the old people who returned from the market with the groceries and provisions, the kind of excruciating experience they had climbing these stairs could hardly be known by other people. For the well-off, they might say, order deliveries from the supermarket. But first, the goods sold at the supermarkets are normally more expensive and the old people would not want to spend the extra money; second, the supermarkets will only

(1) Watson B. (2002) *The Selected Poems of Du Fu*. New York, Columbia University Press

deliver the goods when the amount of purchase reaches a certain amount, say, \$400. People who live in old buildings cannot afford buying that much worth of food and home supplies at one time.

I once heard a tenant of an old building say that one day when he was sitting at home and as he was about to rise from the sofa, a concrete slab of about one foot long fell from the ceiling and crashed onto the floor. He was lucky, for he had just risen from the sofa and he was not hit. After he had informed the owner, the owner only told some workers to make some repairs and the flat was left as worn out as before. I have also seen that in some old buildings, there are severe spillings of the plaster on the walls and ceilings. The walls and the floor are mouldy and there is rubbish everywhere. In some of the backstairs, they are filled with dirty cast-away articles. The hygiene is terrible. This description is not unique to some old buildings; it is a rather common sense.

Then there are those partitioned flats for lease which have been divided into cubicles and the hygiene there is even worse. It is because when a flat is partitioned into a number of cubicles, most of them do not have any window and during the summertime, it is very stuffy and hot. And there are insect pests. Children living there would have insect bites, red and swollen all over their bodies. This is indeed horrible. A home should be a cosy and warm place, where members of a family can gather together and enjoy life. But for those people living in the old urban areas, when they have a home like this and such terrible living conditions, and with dangers lurking everywhere, how can they possibly work in contentment and live happily?

All the problems raised by me are no new ones at all. The Government has certainly done much work on that, for example, in launching the Operation Building Bright, and the assistance given by the Home Affairs Department in forming OCs, and so on. But these problems have been around for too long and we know that we cannot expect to solve them overnight.

People living in the old buildings are mostly the poorest people from the lowest stratum of society. Most of them are tenants and the owners seldom care about repairs and maintenance. Even if some of them are owners, they cannot afford the repair expenses because they are too old or they are too poor. I think the Government should speed up the progress of the exercise on building

renovation. This is because human lives are the most precious of all and we cannot afford to delay any more. When a similar incident like the one in 45J happens, it would be too late and human lives once lost can never be saved. The Government must work extra hard on that and for those old buildings without any OC and in disrepair, it must assist the owners to carry out repairs and maintenance as soon as possible.

With respect to the inspection buildings, what is being done now is only visual inspection. No inspection is done on building structure, alterations made in the interior, effects of the alterations on the building structure, and so on. The Buildings Department stated earlier that it would lay off some 700 non-civil service contract staff, many of them being structural engineers and technicians. They are responsible for inspections and removal of illegal structures, and so on. The Government had better continue to employ these well-experienced staff instead of dismissing them. And they can be tasked with building inspection work. In this way they can stay in employment and the monitoring of the repairs and maintenance situation of old buildings can be enhanced. Hence it is killing two birds with one stone.

As for hygiene matters, since there are lots of tenants in these old buildings, it would be hard to maintain the hygiene of such places. The Government should enhance publicity and education in this regard. Some private streets are hygiene black spots and the Government must solve the problems related to these private streets in order to improve environmental hygiene.

We can find some aspirations in the poems by DU Fu, such as when he said, "If a thousand, ten thousand mansions could be built/That shelter all the poor scholars, together in joy./Solid as a mountain, the elements could not move them."⁽²⁾ But centuries after DU Fu, our demands are no different from his, it is still the most minimal. In this place where the per capita income is as high as \$230,000 a year, how can we not feel ashamed when we see such a deplorable situation?

With these remarks, I support the motion.

(2) Watson B. (2002) *The Selected Poems of Du Fu*. New York, Columbia University Press

MR CHEUNG KWOK-CHE (in Cantonese): President, at the beginning of last month, a building on Ma Tau Wai Road which was more than 50 years old collapsed. When I saw this on the TV, I thought it was a report on the earthquake in Haiti. I was shocked to find that this tragedy happened in Hong Kong. This incident sparked off once again public concern about the repairs and maintenance of old buildings. In an unprecedented move, the Government announced in the budget that a redevelopment project for old buildings in that district would be launched at once.

The problem of old buildings in disrepair in Hong Kong is not new at all. We should know that a dangerous building will not only cause danger to people living in it, and it may also affect other people like those living nearby, the pedestrians or the buildings close to it. It is unfortunate that the Government has not done enough to defuse this time bomb. All it has done is to procrastinate. Last year, the Government introduced the Operation Building Bright. It is thought that the main reason for rolling out this plan is only to ease the impact of the financial tsunami on the lower class and create more jobs. Building renovation is very important, but obviously, the Government badly lacks a sense of crisis. It will never shed a tear until it sees people killed. Now a building had collapsed and some people got killed, and so the Government is trying to remedy things in a great haste. It injects an additional \$500 million to enhance the building renovation exercise and claims that the redevelopment of old urban areas will be expedited. And many measures have been rolled out. But all these cannot raise a dead person to life. The Government should seriously do some soul-searching and raise its sense of crisis to prevent the recurrence of similar incidents.

After the building collapse incident, the Government has set up 40 building structural safety inspection teams and claims that they can inspect 4 000 old buildings within a month for the purpose of carrying out repair and consolidation works. But how can 4 000 old buildings be all inspected within a month? Suppose the teams could really achieve their target, when inspections are done in such great haste, can the structure of buildings be accurately assessed to see if they pose any danger? I think the Development Bureau should be realistic and inspect seriously the structure of all buildings in Hong Kong aged 50 years or more.

On the other hand, many old buildings are vacant and the owners are only speculators. Many of them have bought these flats at low prices and their only

aim is to wait for buyers who can offer them a good price. How will these owners who are waiting for buyers want to contribute money to renovate the buildings? So once the Government has identified some dangerous buildings, it must take actions to compel owners to undertake repairs. Law-enforcement action should be stepped up. For if not, an incident like the one on Ma Tau Wai Road will happen again.

Moreover, society is also concerned about helping owners of buildings under the age of 50 and which are single-block buildings with six storeys or less form owners' corporations (OCs), in order that the owners can be enabled to undertake repair works. Actually, the sector concerned has suggested that the Government may set up community network social worker teams in these old urban areas and tap the expertise of the social workers to convince the owners and tenants of these old buildings of the grave importance of undertaking repairs. These social workers may also help owners form an OC, and they can be encouraged to work together to solve the thorny issue of repairs of old buildings in a spirit of self-help and mutual assistance.

Lastly, I have to mention that ever since the Urban Renewal Authority (URA) taking over the work of the Land Development Corporation in 2001, most of the redevelopment projects in the urban areas are packaged as revitalization of old urban areas, but they are carried out with the core value of furthering the interest of developers. This approach has never changed. More importantly, there is insufficient consultation with the residents in the district. As a result, the redevelopment projects have become neither fish nor fowl, and the aim of revitalization is defeated. For this reason, we suggest that the URA should listen more to the views of the public and only by doing so can the old urban areas be really revitalized.

President, I so submit.

PROF PATRICK LAU (in Cantonese): President, the motion "Improving the living environment in old districts" moved by Ms Starry LEE strikes a chord with me. I know that the Secretary for Development is keenly concerned about the problems posed by old buildings and I thank her for proposing to the Financial Secretary that an additional funding of \$500 million be made to Operation Building Bright (OBB), so as to focus on assisting owners of old buildings

without organizational power in carrying out repairs and maintenance and provide greater assistance to owners who need to renovate their old buildings.

In fact, there are currently 10 Property Management Advisory Centres providing support in building repairs and maintenance and offering advice on building management, repairs and maintenance to building owners, and the OBB implemented by the Hong Kong Housing Society and the Urban Renewal Authority (URA) also provides financial assistance for building repairs and maintenance. Apart from providing support, I think an even more important task for the Government is to help owners set up OCs. Many Members said that owners have the responsibility to carry out repairs and maintenance on their own buildings and this is the reason why the Secretary also talked about how the assistance provided to owners in setting up OCs can be strengthened just now.

Apart from forming OCs, sometimes owners will also have a lot of disputes over building management, for example, the problem of water seepage from an upper floor or to a lower floor. However, it is difficult for the Government to carry out mediation given its role and I have also received quite a lot of complaints in this regard. In fact, the Government should actively put in place the mediation mechanism proposed by surveyors, that is, by my sector, so that professionals can play the role of an intermediary in resolving the disputes among owners. This will also help ameliorate the problem of building repairs and maintenance.

On the redevelopment of old districts, in the case of many buildings in old districts in Hong Kong, even if repairs and maintenance or improvement works are carried out, these buildings will actually still be unable to meet the standards of habitation, so it is really necessary to carry out redevelopment. However, due to various problems, even redevelopment will not be cost-effective. This may be due to the fact that the building was built to a very high plot ratio, so no higher plot ratio is possible for further development. As a result, no property developer is interested in making acquisitions and carrying out redevelopment, so in that case, how can the Government make any commitment? This is a major problem. In view of this, I think that the URA can conversely bring its functions into play.

Currently, the URA acquires the properties of members of the public at the market price of seven-year old flats in the same district, but it has not taken into account such potential factors as development rights and the extra plot ratio available. This approach in making acquisitions is not necessarily fair, so I think a review is called for. Take the development project called Island Crest in First Street and Second Street of Sai Ying Pun as an example, the acquisition price offered to owners of old buildings then was just \$3,137 per sq ft. It can be said that this is the land price of the site, but development at a higher plot ratio than the one at that time can be adopted. As we all know, the price of the development there has now risen to \$12,000 per sq ft, so it is evident that a great profit will be reaped by the URA. Moreover, after redevelopment, the market value will continue to rise, and former owners may not be able to buy these units after redevelopment, so even if they are given priority in choosing these units, they simply cannot afford them. Mr James TO once demanded in some other meeting that the URA gave "red packets" to the former owners. In fact, I really wish to know how much the red packet ought to be before it is considered appropriate. I believe the Government has to review the self-financing mode of operation adopted by the URA and study what method of redevelopment should be employed, so that it would not vie for profits with the public. I consider it necessary to increase the transparency of its finance and make it clearly define its role in the "4Rs" strategy, rather than carrying out redevelopment for Hong Kong society only for the sake of making money.

I know that when redevelopment is proposed, many members of the public demand that the "flat for flat" and "shop for shop" approach be adopted, but I think that in the market, it is difficult to find any flats with prices that are more or less the same as the market price. I think that when carrying out urban renewal, the URA should have a mechanism to enable owners to take part in the development and give the public the right to choose. If the owners can take the initiative, then after securing a certain number of shares of the title, they can take the initiative to invite the URA to carry out redevelopment and play a role in the redevelopment programme for their old buildings together, so that they can have the opportunity to acquire properties in the same district in the future.

In fact, there are many old districts in Hong Kong in need of redevelopment. I once proposed to the Government that it carried out overall planning for the 18 districts in Hong Kong. I suggest that a 3D model of each district be made and exhibited in the district concerned for viewing by local

residents, so that the public can understand the development characteristics of their own districts. Only in this way can consultation of the public be truly carried out. The Government can also empower the District Councils to perform the function of carrying out planning for their communities as, given their good understanding of their own communities, they are in a position to propose appropriate planning. This will be conducive to the overall development of Hong Kong.

Finally, I hope very much that an architectural museum can be established in Hong Kong. Why? Because the buildings constructed in each era all have their respective characteristics and it is very difficult for the public to tell (*The buzzer sounded*)

PRESIDENT (in Cantonese): Prof LAU, your speaking time is up.

MR CHAN HAK-KAN (in Cantonese): President, I speak in support of the motion moved by Ms Starry LEE. As the motion touches on many areas, I would focus on planning of the old urban areas and beautifying the urban landscape.

When the Government undertook planning more than a decade ago, it could be that the population at that time was large and the housing demand was therefore enormous, so it was hoped that some buildings could be built in a denser layout in order to house more people. But facilities in the community would then have to be less than adequate. And these buildings become taller and taller and they are more and more packed, giving people a claustrophobic feeling. If we can find the time to go to Tseung Kwan O for a look, we will certainly have this feeling. We can even use a rod for drying linen to close the window of the flat next to us. I know it is no easy job to improve the living conditions in old urban areas within a short time, but there are simpler solutions such as carrying out more greening work. Greening is indeed a low-cost and highly productive method. If we look at the lush greenery of a building, we will feel refreshed and comfortable. And the plants can also help improve the polluted air.

Some people have a misconception about greenery and plantation taking up a lot of space. Actually, if we spend some time thinking, we can come up with

ways to use space well. In the case of a redevelopment project in Tsuen Wan a few years ago, a large shopping mall was erected in the place where vertical greening was employed. Some creeper plants were planted there and they formed patch after patch of green wall, which is much better looking and refreshing than the external walls we often see made of concrete or glass curtains.

President, another place where greening can be employed is the rooftops of buildings. As I have just said, there is no good planning in the old urban areas and there are even no parks. But if we can green our rooftops, we can actually promote greening in the community. I recall a visit to the Electrical and Mechanical Services Department about half a year ago. The Department was then carrying out greening work at the rooftop. During lunchtime, many colleagues would take their lunch boxes and gather at the rooftop where they would chat and eat, or take a brief rest. The place became a good meeting point for the colleagues. So if we can put some time and resources to green the rooftops in the old urban areas, they can serve as places for people to take a rest or to escape from the summer heat. Also, another advantage of greening the rooftop is reducing the room temperature of the buildings, such that there will be a reduced need to turn on air-conditioning. This will indirectly reduce carbon emission and also help solve the problem of illegal structures on rooftops.

President, talking about the promotion of greening, I recall Secretary Mrs Carrie LAM once said that the Greening and Landscape Office under her purview would probably be set up in the first half of this year. Greening work in Hong Kong used to be fragmented and carried out by a number of departments, each playing their respective parts. I hope that once the Office is set up, the Government may play a role in organizing and co-ordinating greening work in Hong Kong at the central level.

Last year the Development Bureau announced that greening work would be carried out in many places in the city and a greening outline plan was released. Such work would be implemented gradually this year and it is hoped that the green areas in the city would increase. However, it is unfortunate that these efforts would not be implemented in the New Territories, especially in places like Tseung Kwan O and Sha Tin. I do not know if the green areas in these places are enough. What I wish to say is that if we go to Tseung Kwan O, Ma On Shan

or Tsuen Wan, we will see that greening in these places should certainly be improved.

President, the next thing I wish to mention is screen-like buildings. We notice that in many old urban areas, blocks after blocks of screen-like buildings would rise after redevelopment. These buildings block air circulation in the inner streets, and also sun rays. This is never the kind of result which residents of old urban areas would like to see after redevelopment. We can see that there is no government policy in respect of screen-like buildings. What the Government has been doing is just to require the developers to lower the building density in certain projects or to reduce the size of the development. Of course, I know that the Development Bureau has done some work, but I still think that improvements can be made. In old urban areas like North Point and Kowloon City, or even in newly developed districts like Tseung Kwan O, and so on, we cannot see the Government working actively and requiring developers to lower the building density. So I hope the Secretary can face up to public aspirations in this respect.

President, apart from screen-like buildings, there are many large river courses in many of the communities in Hong Kong, for example, Shing Mun River, Lam Chuen River, Ng Tung River in Sheung Shui, Tuen Mun River, and so on. There is no river training plans for such watercourses, nor are there improvement works. As a result, the water quality in these rivers is poor and the ecology in these places is affected. We often read in the newspapers about many dead fish being found in a certain river. I would like to sing praises of the work done at Shing Mun River which is situated in my constituency of Sha Tin. Over the past 10 years, much good work has been done by the Sha Tin District Council and government departments. Although the water quality in Shing Mun River now is still not very satisfactory, we can hold many activities on it. The river banks there are a good place for people to jog, stroll, row boats and hold dragon boat competitions. Therefore, the experience of training at Shing Mun River is an example from which other districts may draw reference.

With these remarks, President, I support the original motion and the amendment.

MR IP WAI-MING (in Cantonese): President, I am very grateful to Ms Starry LEE for proposing this motion debate. The collapse of a building on Ma Tau

Wai Road earlier had killed four people and many homes were destroyed. Apart from causing grief to Hong Kong people, we have all learned a painful lesson from it. The Secretary talked about what she felt at that time and her feelings were shared by many people in Hong Kong.

After all the grief and mourning, we can still see many old buildings in Hong Kong and they are countless in number. Many people have cited the relevant figures. But I wish to reiterate that the number of buildings aged 30 years or more alone is as high as more than 16 000, of which 4 000 are more than 50 years old. According to the authorities, it is estimated that 10 years from now, the number of buildings which are more than 30 years old will increase drastically to 28 000. Therefore, it is of great urgency that the problem of building safety be tackled. This is especially the case when many old buildings in Hong Kong are single block in design, and it may be due to the lack of management that these buildings have become dilapidated and are plagued by problems such as spalling on the external walls and exposure of electric wires. All these pose a hazard to safety.

With respect to improving the living environment of the old urban areas, I agree with the view expressed by other Honourable colleagues that the Government should render assistance to those owners who face difficulties in organizing and carrying out building repair works. The Government can offer support in financial and technical aspects, as well as in co-ordination. This will protect the safety of both the residents and the pedestrians and prevent the recurrence of similar accidents.

President, there are still many old buildings in Hong Kong which do not have an owners' corporation, and it is indeed difficult for them to organize building repair works on their own. So we hope that the authorities concerned can help owners of these old buildings form an owners' corporation and even appoint a management company, so as to reach a long-term solution to the problems of building management and repair. We understand that it is particularly difficult for some buildings to set up an owners' corporation. But as some Honourable colleagues have pointed out, if organization work is carried out by the district or street concerned, this approach may work. We hope that the Government can consider this idea.

The Financial Secretary suggests in the budget just released that an additional funding of \$500 million will be injected to Operation Building Bright

to help owners of old buildings who are unable to organize repair works to undertake such works. We agree to that suggestion. But we think that the Government must provide enough funding for the above exercise. Only by doing so that the problems encountered by small owners in building repair can be solved.

At the beginning of last month, there were reports that a crevice measuring one foot wide appeared in between the Oak Building in Oak Street, Tai Kok Tsui and the buildings next to it. Some residents reported the case to the police after seeing it. This shows that after the incident of a collapsed building on Ma Tau Wai Road, there has been a heightened awareness of building safety in the public. Assistance is sought immediately after problems are found. I would think that building safety should depend on the co-operation from the public and when people join hands in monitoring the situation, the greatest effect can be produced.

President, besides suggesting that the Government should help owners improve the management of their buildings, I also urge the authorities to speed up the clearance of illegal structures. Although as early as in 2001, the Buildings Department has launched a large-scale exercise to remove illegal structures, as at last year, we can still see illegal structures everywhere. As far as we know, at present the Department has only demolished 380 000 of these illegal structures. There are still 420 000 which remain to be handled. Many of these illegal structures are iron cages attached to the external wall, abandoned frames for air-conditioners, advertising signboards and flower racks. All these may endanger the personal safety of the public.

Furthermore, although the Department has estimated that the number of illegal structures demolished may reach more than 400 000 by the end of March 2011, when estimated according to the current work progress, the Department would still need 10 more years before the problem of illegal structures can be solved completely. So we suggest that the Secretary for Development should let these some 700 contract staff of the Buildings Department stay on their present posts and tackle the problem of the rapid growth of illegal structures as soon as possible, hence fostering a safe and comfortable living environment for the people of Hong Kong.

President, I so submit.

MR FREDERICK FUNG (in Cantonese): President, I have talked with the two Directors of Bureau about the management of old urban areas, but owing to time constraints, I may not have enough time to express the entirety of my views on the issue once again. What I wish to do is to start from the micro perspective and I wish to draw the attention of the two Directors of Bureau to some fine details and explain how come old urban areas are like that.

The first case is, I believe, one which Secretary Mrs LAM is well aware of and that is the redevelopment of the old urban area of K20 in Sham Shui Po. During the two or three months after the Urban Renewal Authority (URA) has finished with the registration work and approval from the Development Bureau is pending, as no work is in progress, even if people are registered as formally recognized tenants, nothing is done and so owners evict the tenants during that period. They even resort to obtaining court orders to evict them. Now two tenants have been evicted and seven other tenants are about to be evicted. I have asked the URA and also Secretary Mrs LAM about this, and since they are recognized tenants of buildings scheduled for redevelopment and the purpose of which is precisely for the good of these people, then why should the authorities recognize them as formal tenants on the one hand but on the other they are allowed to be evicted without any rehousing arrangements made for them? After a lot of hassle, these tenants are finally given some \$10,000 to \$20,000 as removal fees.

The second case is about Yee Kuk Street. Yesterday the URA asked the Sham Shui Po District Council to support the invocation of the Land Resumption Ordinance to resume the entire Yee Kuk Street. This is because there are still about 15% of the owners, most of whom are shop owners, who do not want to sell the shop premises to the URA. I asked members of the URA yesterday as to why such things happened. Why is it that it is always the owners of the floors above in a building who want to sell their premises whereas owners of shops below do not? This happens not only in this redevelopment project but in all such projects it is the ground level shop owners who refuse to sell their premises. I do not want to recount the reasons now because I am short of time, but the Bureau should know it because I have talked about that before.

As for Ma Tau Wai Road, the URA announced immediately that Ma Tau Wai Road was to be redeveloped. But I find that ground level shops scheduled for redevelopment all oppose it. And owners of the street opposite ask why they are not included in the redevelopment project. In other words, the situation is

people affected by the clearance operation are voicing their strong opposition and so are those who are not affected by it. Just what kind of a world is this? Should the officials, or the public or the owners be blamed? Since the operation is to their benefit, why should they oppose it? And why do owners not affected by the demolition ask for demolition? This is confusing and self-contradictory. We must approach things as they are and find out why such things happen. This state of affairs shows that government policies are at fault.

First, is the entire process of redeveloping the old urban areas, relocation and management, all done with the people in mind? That is, are they all done with the local residents in mind? For the cases which I have just cited, it is clear that they are not. If the Government's policies are not people-oriented from the outset, then there are bound to be flaws. We must do our best to plug these loopholes as soon as possible. Those who have been registered as formal tenants, should they not be rehoused? Even if owners sell their properties to the URA a couple of years later, these tenants should have the right to be rehoused. This is because when the buildings in which they live are demolished, they are proven tenants.

Second, why do the shops oppose? The Government buys these shops at market price. A shop with an area of 400 sq ft will be paid \$4 million. With that amount of money, the owner cannot buy a shop in the vicinity with an area of 400 sq ft. In other words, what the Government is doing is not buying their shops but killing them. They cannot get on with their business and they cannot make a living. And they cannot support their families. This is where the crux of the problem lies. How should we enable these shopowners to use their original business network and do their business after their shops are acquired? I have once suggested to the URA that an arrangement similar to the Home Ownership Scheme (HOS) flats could be adopted, that is, if the market value of a shop is \$4 million and a shop premises with the same size would fetch \$10 million after redevelopment, then the owner will have to pay for the \$6 million difference, and he will have a shop with an area of 400 sq ft after the redevelopment. If the owner does not pay for the shortfall, the situation will be like an HOS flat and that means they can only have 40% of the title of that shop premises. Should they close their business and sell the shop premises, they will be able to get 40% of the proceeds, whereas the Government will get 60% of the proceeds. Will this not enable shopowners to do business in the original district? Should this method not be considered?

In my opinion, redeveloping the old urban areas does not only touch on questions in buildings and their repair, there is also the human factor to that. It is about how to continue to make a living and whether people will live in the way to which they are accustomed and in the way which they like and are happy with. If these questions are not considered and efforts are just made to pull down a four-storey building and turn it into a 40-storey building and turning things old into new, or turning things from dirty to clean, or even putting glass panels and so on, it is true that the environment is better, but the people will have their hearts broken. They will get unhappy and their grievances will pile up and they will keep on blaming the Government. They will do so no matter if the buildings concerned are to be pulled down or not.

President, previously I could discuss this problem with a cool head, but now the problem has been talked about for 10 years. I do have emotions. If redeveloping the old urban areas is for the good of people, the human factor should be considered when it comes to rehousing and settlement arrangements following redevelopment. What should be considered are not just buildings. Now the consultation exercise on the redevelopment of old urban areas is finished and findings will be released at the end of this year. I hope that with these findings we can see something which will fit in our demands for a decent life. I would also like to tell the President that the University of Hong Kong has done a survey and Sham Shui Po is used as a case in point. Sham Shui Po is the poorest place in Hong Kong and it is where most elderly people are living. Seen from a health care perspective, it is the second worst place in Hong Kong. But in terms of happiness and contentment, it ranks the second best in Hong Kong. Why is it that in such an old and poor place, and with such mediocre health care facilities, the residents can be so happy? The reason is that these residents have been living there for a very long time. They are old-time neighbours and they know each other. They will lend a helping hand to people in need. They will treat neighbours with soup or dessert. This kind of relationship cannot hope to be addressed by any redevelopment attempt.

As for managing the old urban areas, as I have talked about it, I am not going to repeat it. I just want to say briefly that the approach of small community management, which I have demanded, could be very hard to implement considering the existing laws. I have told the Secretary many times that laws should be amended when we face problems. We must start from the

basics. We should never proceed to enact a new law when problems appear in the windows and doors, and enact another piece of law when problems with lifts appear. Or we will enact a piece of law when there are problems with electricity, fire service, toilets or drainage pipes. Then even if we have 100 pieces of law, repair and maintenance problems in the old urban areas will never get solved. This is because the buildings there have no owners' corporations and no one knows building management, and even if they are to take up the job, they would have no idea how work can be done. If small community management is to take place, then we must find some full-time and professional management companies to help the owners. As to what methods are to be used, I have suggested that if there are problems with this, then we must consider how legislation can be made. We must start from the root, the origin and not from the outward appearance. I hope the Secretary can hear what I say. As for the contents of the motion and amendment today, I will lend my support to them all. Lastly, I wish to emphasize that (*The buzzer sounded*)

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

MR FREDERICK FUNG (in Cantonese): redevelopment is a human issue. Thank you, President.

MR IP KWOK-HIM (in Cantonese): President, the Central and Western district is an old area and there are many old buildings in it. I have served in the Central and Western district for more than 20 years. I am also a member of the District Council there and I have handled many complaint cases concerning the repair and management of old buildings. As a matter of fact, age is not a problem for buildings. Provided that there is good management and regular inspection and repair, old buildings can stay in good shape and provide a good environment for people to live. In the case of the Sincere Building in Kennedy Town, although it is 45 years old, it is well-managed and both the interior and exterior of the building are fine. That building has its own owners' corporation which manages the building and it does not hire any management company. In other words, provided that the work of the owners' corporation is pertinent, even if no management company is hired, a building can be managed well. This shows that it is people's hard work and dedication that count.

There are many problems related to building management and buildings with more problems are undoubtedly those tenement buildings which just have a few storeys. Most of these tenement buildings have no more than six flats, at most there are only a dozen of them. Most owners do not live in the flats concerned as some of them may have died or emigrated. There are only a handful of flats in the building and some owners cannot be located and repair and maintenance fees have to be shared by all flats. The amount may be some tens of thousands dollars. And when owners are asked to share out the fees payable by those owners who cannot be located, just think under such circumstances, will these owners be willing to undertake repair works? If the Government does not step up its effort to provide actual financial assistance by say, paying for the repair works first, then the small owners will have to share out the expenses. This is very unfair to the small owners and it will render repair works impossible.

Actually, the Home Affairs Department began to form District Building Management Liaison Teams in all of the 18 districts of Hong Kong since 2001. These teams are specifically tasked with helping flat owners form their corporations. But these teams are very passive in the sense that they would give advice on the formation of owners' corporations and on problems related to building management only at the request of the flat owners. These teams will never approach owners without a corporation and encourage them to form a corporation. The reason is simple. It is not that they do not want to do it; it is just that their resources are not enough. In every district, there are only a few Liaison Officers for these Liaison Teams. Each Liaison Officer will be in charge of many blocks of buildings and the sheer workload has prevented them from making a pre-emptive move.

The authorities should therefore increase the funding for these Liaison Teams in order to strengthen their work in providing outreaching support services to the owners and owners' corporations. These Liaison Teams can take the initiative to arrange for visits and provide assistance in the formation of owners' corporations as well as give expert advice to owners on building management.

It is true that after forming an owners' corporation, it does not mean that everything will be fine. That is definitely not going to happen. We cannot say that problems related to the repair and management of a building are then solved. This is not the case at all. In the Central and Western district which I am

familiar with, there are many cases where there are two owners' corporations in a place where residents share the same flight of stairs. In such cases, problems concerning repair and maintenance of public space will arise when one of the owners' corporations adopts a couldn't-care-less attitude while another owners' corporation is eager to carry out repair works. If no agreement is reached, there will often be a postponement of the repair works. Moreover, the work of the management committee of an owners' corporation in the old buildings is often taken up by some retirees. Although they are enthusiastic about building affairs, they are not familiar with the legal requirements. So colleagues from my district office would often need to act in response to the requests made by the owners of buildings in the district in matters like convening a meeting, drafting circulars and minutes of meeting, inviting tenders for repair works and when needed, also giving legal advice. My district office has recently got a case about a serious blockage of underground drainage pipes which affects two blocks of buildings and four blocks of tenement buildings in the Western District. As this section of the drainage pipes is located in a private street, the government department concerned wrote to these six blocks of buildings and ordered that the drainage pipes be repaired. Among these six blocks of buildings, two have got their owners' corporation whereas the other four do not. As a result, the six blocks of buildings just mind their own business and no one is willing to organize the residents to undertake the repair works. The owners do not take the repair order issued by the Government seriously. When faced with this kind of repair works which involves many blocks of buildings, the authorities should take the lead and organize the residents to undertake such repair works. When the works is finished, the authorities can demand the costs from the owners. If it is found that there are elderly owners who cannot afford to pay for the costs, then the authorities should apply for the relevant repair subsidy scheme on behalf of these elderly people. If the owners do not care about it and so is the Government, then the repair works will be subject to endless delays. The living environment of the residents will only go from bad to worse.

President, I so submit to support the motion.

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

DR MARGARET NG (in Cantonese): President, the building collapse on Ma Tau Wai Road has aroused the concern of society and also made the authorities more determined to tackle the issues of old district renewal and building safety improvement. I see that the Secretary has hastened to put forward the redevelopment project on Ma Tau Wai Road and Chun Tin Street. I am indeed very delighted. I understand that there are many difficulties, and extra efforts are required. I therefore wish that things will run smoothly with the Secretary. I also wish that things will similarly run smoothly with the residents and business operators there, and the redevelopment project can really offer them a wholesome and safe living environment. I know that this is not supposed to set any precedent and is simply meant as a special measure to tackle a special situation, but we will emerge from every incident wiser than before. If the project works, it will certainly provide us with very useful reference.

President, Mr James TO I am sorry. Ms Starry LEE's original motion and Mr James TO's amendment today both contain many recommendations, most of which I do strongly support. Today, I wish to concentrate on a point which may also have been raised by other Members, the point that we should grasp the opportunity and press on with full-scale redevelopment without any letup, because this is an extremely important issue to Hong Kong. We are of the view that we must accord priority to this task. I maintain that building safety and redevelopment must depend on two factors, namely stepping up the enforcement of the Buildings Ordinance (Cap. 123) and enhancing property owners' sense of responsibility. An owner simply must not think that after purchasing a property, he or she does not have to bear any responsibilities. As a matter of fact, we must step up the enhancement of owners' sense of responsibility at the community level. This is especially true in the case of old buildings, the owners of which may simply disappear after letting their properties to the impoverished. To tackle this problem the authorities must strictly enhance the provisions of Cap. 123 on building inspections, examinations and penalties, so as to let owners know that if their buildings are structurally unsafe, the Government will carry out repairs and demolition on their behalf and bill them afterwards. In this way, property owners' awareness can be raised. This is the work of supervision.

At the same time, redevelopment must be encouraged. We are currently scrutinizing another piece of legislation, Cap. 545. We are in the process of drafting a Notice. Redevelopment will involve the Urban Renewal Authority on the one hand and private property developers on the other. And, property

developers aside, the authorities also encourage redevelopment by property owners themselves. However, compulsory sale should not be encouraged. President, the present incident must not be used as a means to encourage compulsory sale because it actually amounts to coercion. In Hong Kong, we must attach the greatest importance to property ownership, because it forms the basis of all other rights. The fact that the owners of eight units out of the 10 units concerned have agreed to the sale offer must not be used as a reason for forcing the owners of the remaining two units to also sell their properties. This is unacceptable, for it amounts to robbery.

Why was the existing legislation passed? All was founded on the three essential conditions under the rule of law where a basic right of any person is affected: first, the legitimacy of objectives; second, the rationality of means (The two are directly linked, in the sense that any legitimate objectives must be achieved through rational means); and, third, proportionality, meaning that no undue force should be applied. As far as I can remember, during the discussions on the existing legislation, it was noted that in many cases, the whereabouts of some owners were not known, or there were estate problems. As the project cannot get stuck indefinitely, it was proposed that the consent of 90% of the owners concerned be adopted as the threshold of compulsory sale to facilitate private property development. But the point is that if the threshold is lowered to the extent of compromising property rights, any regard for private property developers will be insufficient to justify a claim of public interests. Without the involvement of public interests as a justification, we must not do so.

Regarding improvements to this Notice, I have raised my points many times in the discussions of the Subcommittee, so I shall make no repetition here. But if the Secretary is really prepared to improve the Notice by, for example, doing something with lowering the threshold, she should select a particular district for the purpose. Now that building inspection is being conducted, it should be possible to know which districts are in more urgent need. An urgent need for redevelopment in areas such as Ma Tau Wai Road and Chun Tin Street is a very good justification for the involvement of public interests, and efforts should not be withheld until a building collapses. If the Secretary thinks that the buildings in a certain district really face very great potential danger, or if she thinks that the conditions there are more suitable, then she can actually select this particular district and provide more incentives, such as making "flat-for-flat" and "shop-for-shop" arrangements or the introduction of a mediation mechanism. It is only in this way that redevelopment can be encouraged.

President, I believe that the majority of the public would like to improve their living environment. An owner living in an ageing building will certainly be very happy if a new one can be constructed and he is allowed to live in the new building, or if value can be added to the building. Why are there so many problems now? This is because people are practically sent into exile and forced to leave. The compensation that an owner receives is often insufficient to enable him to live in the original district, with the result that he is forced to live in a district he does not like. This amounts to sending people into exile. As already mentioned by Mr Frederick FUNG, in cases where a shop is rendered unable to continue operation, there will be stronger resistance. However, if there are benefits and there is still a say, I believe that most property owners and members of the public will render their support.

I very much hope that the Secretary can consider all these factors and help us fully implement the project. Thank you, President.

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

MR RONNY TONG (in Cantonese): President, the tragic building collapse that happened on Ma Tau Wai Road on 29 January has aroused many people's concern about old buildings or the living environment. President, the incident that day is just the tip of the iceberg, one of the many problems in Hong Kong. The term "old district" reminds us not only of Tai Kok Tsui or Sham Shui Po. In some cases, what we consider as new development areas are also classified as old districts. Even in New Territories East, there are many such problems.

President, in simple terms, such communities, including the new development areas or New Territories East that I have mentioned, all face the problem of "Three Ageings and Two Impoverishments". What I mean is that the ageing of population, buildings and communities have led to the impoverishment of residents and communities. Such is a vicious cycle that can actually be foreseen. Why couldn't the Government detect the problems until this recent case of "fatal building collapse" occurred? This is indeed baffling.

In my constituency, New Territories East, for example, the oldest housing estate is Lek Yuen Estate in Sha Tin. Many Members have been following up

the ageing problems of Lek Yuen Estate for many years. Many units in this old and dilapidated housing estate are in disrepair. But despite the urgent need for redevelopment, the residents must still wait more than a decade under the Government's redevelopment programme. The Government does not seem to be unaware of such problems, but it still adopts a very passive approach, that is, the authorities will take actions only when accidents happen.

President, dilapidated buildings in old districts are not only about structural dangers that need rectification. They also produce very negative impacts on the community environment in which people live. The most notable example is about owners of old buildings or tenement buildings aged 30 years or more. What will such owners do when they find that their buildings have developed problems or cannot be redeveloped? President, they cannot possibly be expected to spend a huge sum of money on any large-scale repairs. But many such owners will grasp the opportunity to convert their housing units into "self-contained small suites" for renting to grass-roots people.

President, such "self-contained small suites" are not only found in the old buildings of Sham Shui Po or Tsim Sha Tsui, such as Chung King Mansions, as we used to point out. Nowadays, they can even be found in some old buildings located in new development areas such as New Territories East. What is the greatest problem with "self-contained small suites"? Well, their small sizes are beyond our imagination. And, each tiny suite is fitted with a toilet. The authorities do not impose any regulation on such alteration of designs, thus resulting in messy connections of water pipes and causing serious nuisance to nearby residents. Besides, "self-contained small suites" have also led to the emergence of mobile population, or even undesirable elements, in the communities. Once there are "self-contained small suites" in a tenement building, the environment there will worsen continuously.

President, the Government should be aware that all such problems have been in existence for many years, but why has it never worked out any solution to tackle the situation? There are basically two reasons. First, the Government is reluctant to invest resources in improving its work of community redevelopment. Second, in respect of community redevelopment, it is biased towards the interests of property developers, rather than considering the problems faced by the grassroots and even individual property owners.

President, the new piece of legislation on compulsory sale put forward by the Government recently, which proposes to lower the threshold from 90% to 80%, is the best example. President, the most common subject of complaint we have received from individual property owners is that they purchased their properties several decades ago, and their properties are their homes. If there are no major problems, and if their lives are not endangered, they do not actually want to move out. They say that before moving out, they must consider how they can find other places which can serve as their new homes.

The valuation mechanism under the existing legislation has failed completely. The valuation of a unit is based on the current market price. But after the Government has given the sum of money to the owner, where can he find a similar unit? First, he may fail to find any. Second, even if he can find a similar unit, it may be situated in a very remote area. Third, if an owner's unit is 50 years old, then after receiving the sum of money, he will only be able to purchase a unit of the same age, and he cannot purchase a new one. Suppose he moves to a 50-year-old unit in Tin Shui Wai or Tuen Mun, he may face the same problem of compulsory sale again one or two years later.

Such owners do not want to move. The units owned by individual property owners are their homes. It is grossly unfair to offer them the prevailing market values and then force them to leave their homes. Should this be adopted as a means of old district redevelopment? President, if you ask me to answer this question, I will certainly say no. We must appreciate and respect the difficulties faced by those affected. Therefore, old district redevelopment is not merely about the construction of new buildings. The Government must formulate an integrated plan for tackling all associated problems.

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

MR CHIM PUI-CHUNG (in Cantonese): President, our discussions on this issue can aptly reflect what I have just mentioned — Legislative Council Members are different from one another in terms of political advocacy, positions, backgrounds, interests and aspirations. Consequently, Members frequently argue heatedly and even clash with one another. This is only natural. Well, when it comes to this present issue, Members' positions are consistent and they

are in agreement, and what they fight for in common is the formulation of a government policy. They all think that the Government should have the courage to create a better environment for members of the public. Therefore, whether they are discussing any legislation or any other issues, if Members can unite and pressure the Government into entertaining people's requests more seriously, they will have discharged their duty. Members should all fight for people's interests.

President, I wish to remind the Government of several points. First, I wish to talk about the Urban Renewal Authority (URA). Members all know that it was formerly known as the Land Development Corporation (LDC). I think it is not necessary for me to make any declaration of interest here. A decade or so ago, I was involved in a lawsuit with it, and I suffered. I told the then Chief Executive of the LDC, who is sitting behind me now, that if they did not deprive me of my property in Central, my building would continue to stand there. Now, 20 years later, I still want my building back. It is indeed true that they paid me compensation at that time. But after receiving the compensation, I got only money, and I lost my headquarters, because my building was "dismantled". Several years ago, I mentioned this to Mr Abraham SHEK, but he was reluctant to help me. He said sorry to me. It was pointless to say sorry, because I really lost my headquarters. President, this incident can show that most people whose properties are located inside redevelopment zones are faced with such a situation. The Government must therefore pay particular attention to the acts of the URA and the relevant legislation.

There are four justifications for invoking the Lands Resumption Ordinance (Cap. 124). The first justification is about war. There is no war at present. The second justification is about sanitary conditions. In most places now, there is no such problem. The third justification is about a building interfering with the conditions in other buildings. This is not so much a problem either. But the fourth justification is about public interests. In this connection, I hope the Government can have a clearer understanding of public interests. What are public interests? They take people's lands away and then invite consortiums to bid for them — admittedly, there is the procedure of bidding — but after bidding, the lands will still go to consortiums all the same. And, the consortiums concerned will then make use of the lands to further their own interests.

I therefore strongly urge the Government of the Hong Kong Special Administrative Region (SAR) to pay special attention to this problem. There are

so many employees in the Government. Why have they still failed to consider all those affected residents and property owners? Why have they instead tried to funnel benefits unnoticeably to those property developers and consortiums that are "already too fat to be able to put on their socks"? Can they review the relevant legislation? All these issues have been discussed for so many years already. A decade or so ago, I was a victim. Now, I must once again complain to the Government. But it is of course not my intention to foment any conflicts of interests here.

President, the second point is about compulsory sale, which some Members have already mentioned. The problem is actually of a similar nature. Members must realize that whether the threshold for compulsory sale is set at 80% or 90%, it may still be impossible to tackle a dozen or so units in the end because the affected owners purchased the flats individually. However, if someone purchases all these units, the rest of the individual owners will be deprived of any bargaining power. Why does the Government refuse to make the ordinance or the law fairer? Doing so can prevent the public from pushing all responsibility to the Government, in which case its policies, credibility and so on will be subjected to immense pressure. I hope that the Government can pay more attention to these two points and do a better job in the course of enacting and amending the relevant legislation.

The Government must of course pay attention to the problem of transport. This is of very great importance to improving an area. If there is satisfactory transport and other support in an area, its environment will naturally be good, and its value and popularity will also be enhanced. President, one must of course realize the world's increasing concern about environmentalism. In this regard, Hong Kong should catch up with other places as much as possible. Such efforts should be encouraged. At the same time, apart from educating property owners on the establishment of owners' corporations, we must seek to understand the environments of their neighbourhoods, so as to cater for their needs of development. The Government must also pay special attention to sewage and other ancillary facilities because an old district in a state of dilapidation will surely be impacted by various objective factors one day, and the living environment and other conditions there will also be severely affected.

Finally, President, we must note that circumstances are ever changing. The legislation is after all "rigid". But the relevant government departments and

the Legislative Council are capable of exercising flexibility. We must therefore "tackle rigidity with flexibility". If the Government wants to introduce any legislation in this regard, it should proactively submit the legislation to the Legislative Council for enactment. As I have always maintained, no government is made up of saints. If the Government has committed any blunders, or if it faces any problems, it must always face up to them. In the special case of old districts, special treatment is necessary. In a word, whatever problems there may be, the matter should be brought before the Legislative Council immediately for prompt rectification, so as to let the public know that both the Legislative Council and the Government are very concerned about their property ownership rights; living environments, and so on. In this way, the Government will naturally win public support in all other areas of its work. And, the Legislative Council will also be able to serve its function despite the existence of divergent political views. Although I personally do not mind how the public appraise us, I must nonetheless admit that it is our duty to win the support of the community.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Ms Starry LEE, you may now speak on Mr James TO's amendment. You may speak for up to five minutes.

MS STARRY LEE (in Cantonese): President, first of all, I wish to thank all the 17 Members who have spoken on the motion I put forward today. I am also grateful to Mr James TO for his amendment. I support what he mentions in the amendment because it can perfect my original motion. Here, I wish to raise several points. The first point is about "Operation Building Bright". Mr James TO proposes to add "relax the restrictions on application and terms of funding support for various subsidy and loan schemes". This is, I believe, what we have always been championing. As the Secretary also knows, I have been liaising closely with her all along. Even before the Financial Secretary announced the additional funding of \$500 million, we already requested her to confirm that in the second round of applications, the building age of 30 years, 400 units and rateable values would not be the only three conditions. I even made it a point to

request her to relax the restriction relating to 400 property owners because this is a fact that no property owner can change, while building age and rateable values are objective conditions accepted by individual property owners in the same district. I am very thankful to the Secretary for confirming on various public occasions that if there is a second round of applications, thoughts will be given to introducing the proposed changes.

Next, I wish to talk about point (d) in my original motion, which reads, "to expedite the clearance procedures for handling unauthorized building works". Mr James TO makes a special point that staff of the Buildings Department should be authorized to enter units of buildings to inspect whether there are unauthorized building works that may affect the building structure. I think this is also what the public expect to see, and I hope that when conducting inspections in the future, staff of the Buildings Department can really abandon their past practice, which makes people think that they are only concerned about the external walls and common areas of buildings, rather than whether there are any internal alterations.

As for improving building management, the new points (j) and (k) both involve amending deeds of mutual covenant. As I pointed out when moving my motion, the key issue concerning "one building with multiple owners' corporations" and "multiple buildings with one owners' corporation", which I also mentioned in point (f) of my motion, is the amendment of deeds of mutual covenant. I think the amendment of deeds of mutual covenant will involve two scenarios, and it is easier to deal with the first. As I mentioned just now, for cases where there is basically no major dispute, where there is already the consent of a majority of property owners, and where there is not yet the consent of all property owners, the Government should put in place a simple mechanism allowing property owners to proceed with tackling the problems first. Points (j) and (k) are about issues that the Government must seek to tackle in the medium run because as we all know, when purchasing properties, especially units in old buildings, individual buyers do not have any choices and must sign the deeds of mutual covenant presented to them. The deeds of mutual covenant prepared by property developers are naturally for the protection of their own interests. But how are we going to deal with the unfair provisions of such deeds of mutual covenant? I hope the Secretary for Home Affairs can give a reply later and treat these two points as his medium-term objectives.

Next, I wish to discuss urban redevelopment. Mr TO proposes to add points (m) and (n), allowing joint development with property owners. This is also a proposal which I already put forward in the Panel on Development or on other occasions. Honestly, the ideas of "flat for flat" and "shop for shop" are very good. But I do not think that it is easy to put such ideas into practice. We of course want to see the implementation of "flat for flat" and "shop for shop", but in reality, what will occur in the end will be joint development with property owners, because property owners who take part cannot talk only about benefits without bearing any risks. I reckon that if the future urban redevelopment strategy review is to allow the participation of property owners, it should be more feasible to give shares to property owners.

As for point (n), it is likewise intended as a compensatory measure to perfect the present urban redevelopment strategy. As mentioned by Members, the aim is to make urban redevelopment people-based and reduce disputes in the community.

President, the above points are my additional comments on Mr TO's amendment. I hope Members will support my original motion and Mr TO's amendment.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the motion topic today is very wide in scope. Including the proposals in Mr James TO's amendment, there are totally 17 proposals on improving the living environment in old districts. Owing to time constraint, every Member has chosen to speak on the issues which he or she is most concerned about. I am afraid that rather than replying to the remarks of all the Members who have spoken, I can only focus on several major points. I hope Members can understand. However, I am also convinced that there will be many more occasions in the future on which we can discuss the various issues connected with the living environment in old districts. I can remember that Prof Patrick LAU has proposed to set up a special working group to bring all relevant policy bureaux and departments together for tackling such issues.

It is only understandable that following the fatal building collapse on 29 January, the community as a whole has shown greater concern about the living

environment and dilapidated buildings in old districts. Some Members have criticized the Government for not taking any actions until someone has died. And, Mr Ronny TONG has also questioned why the problem was not detected until the building collapse in Ma Tau Wai. I do not think that such criticisms are at all fair. On 3 February, that is, just days after the building collapse, Ms LEE already obtained the President's approval for the conduct of an adjournment debate. As I already mentioned when I spoke for the first time in this debate, I spoke for as long as an hour that day. And, when I spoke for the first time that day, I provided Members with a detailed annex containing 14 lists that set out our work in the past 10 years on improving building safety, law enforcement and the provision of assistance. In my concluding remarks, I also responded in particular to Dr Margret NG's question on whether there was any relevant policy. I gave an account of our policy in relation to four aspects, namely, the enactment of legislation, enforcement, ancillary and support measures and public education. I must of course add that a responsible government will have to amend and update its policy as well as enhance its measures in response to changing public aspirations and social conditions. This is what we must do. However, as I already mentioned just now, it is not quite so fair for anyone to ignore the efforts of my colleagues over the years and say simplistically that they have started to pay attention to the problem only after such a serious incident.

Honestly, I must say that Members have also explored the respective roles to be played by the various stakeholders in bettering the living environment in old districts. Secretary TSANG Tak-sing and I, of course, emphasize that building repairs should be the responsibility of property owners. I have also heard some Members express their agreement to this principle. But this does not mean that the Government does not have to shoulder any responsibility. Neither Secretary TSANG Tak-sing nor I have ever said so. The Government does have a very important role to play, and as I mentioned just now, the efforts we have made in different areas can aptly highlight the Government's responsibility. The Government will never try to "get away". That is why Mr KAM Nai-wai needs not fear that we may try to "get away" and refrain from continuing to tackle the problems relating to the living environment and dilapidated buildings in old districts. Our commitment can be highlighted by our efforts in the four aspects mentioned above. These four aspects of work are mostly related to the portfolio of the Development Bureau, and I believe that Secretary TSANG Tak-sing will also give a further account of the present role played by the Government in the areas of home affairs and building management. But when it comes to these

four aspects, we must still balance a number of factors. Mr KAM Nai-wai has questioned why the provision of financial assistance must be preceded by means-testing. The answer is that while providing financial assistance, we must also ensure the proper use of public money. For some underprivileged property owners, especially elderly property owners, we implemented a subsidy scheme in 2008. In other words, through this scheme, the Government will hand over the money from taxpayers to some needy property owners. The assistance is of course meant for needy property owners only, so the introduction of a simple means test should be perfectly understandable. Actually, in the case of many other forms of financial assistance currently provided by the Government of the Hong Kong Special Administrative Region (SAR), Members do accept a certain degree of means-testing. But I must add that in the case of lending that aims to encourage certain activities, we may waive a means test. However, even so, there may still be some further distinction here. We may request those who have the ability to pay loan interests. But in the case of those who do not have the ability, such as Comprehensive Social Security Assistance recipients and the elderly, we will waive the means test. Anyway, I have undertaken to consolidate the various forms of financial assistance provided by the SAR Government, the Urban Renewal Authority (URA) and the Hong Kong Housing Society (HS), so as to see whether there is any possible sharing of successful experience that can make the schemes better able to provide needy property owners with the right kind of assistance they require.

Two or three Members have mentioned the role of the URA. The URA's role will be explored very seriously in the urban redevelopment strategy review launched recently. Undeniably, I do have some expectations in regard to the URA. My co-operation with the URA in the past two years or so can highlight my hope that the URA can play the role of an organization strongly committed to a social mission. This is something that Members should be able to notice. However, as I mentioned just now, when exploring the future role of the URA, when exploring the Government's role, we must balance many other factors. The reason is that the URA is after all also engaged in using public money to help property owners in undergoing redevelopment or repairs. Concerning property owners' responsibility, as I mentioned just now, we really need to (as suggested by several Members such as Dr Margaret NG and others) enhance our knowledge and awareness of our respective responsibility. We must not try to evade the responsibility we are supposed to discharge.

One last point in this connection is that professionals can actually play a very significant role in urban renewal. That is why I am very delighted to learn that the Home Affairs Bureau may join hands with the HS and several professional bodies to enhance our assistance for property owners through a professional voluntary work scheme.

Several Members agree to the special arrangement we made for this special case by launching the redevelopment project for Ma Tau Wai. I am very grateful to them for this. This project can certainly give us some sort of enlightenment. At the initial stage of this project, I put forward three requirements to the URA, and they were all accepted by it. First, the units to be constructed must be of small sizes. The provision of small units in the urban areas of Hung Hom is intended to show our concern about property prices and the supply of small- and medium-sized units as stated in the Financial Secretary's Budget this year. Second, the project must manifest our new mindset of district-based redevelopment. That is why we have lost no time to inform the Kowloon City District Council that while we have formulated a draft redevelopment plan, it is just a conceptual framework, and we will be happy to consult the Kowloon City District Council to find out how the project should be taken forward from the district-based perspective. Actually, even at this initial stage, we have already heard some people express their welcome to the provision of small units and their hope of retaining the features of street-level shops in the vicinity of Chun Tin Street, Ma Tau Wai Road and Hok Yuen Street. They also welcome the provision of two significant public facilities under this relatively small-sized project, that is, the provision of a street-level open space measuring 500 sq m and a floor area of 1 000 sq m on the first-floor podium for government, organization and institutional uses. Third, I have for the first time requested the URA to undertake this project all on its own without inviting any private developers to bid for joint development. And, apart from its ready acceptance of my three requirements, the URA has even introduced some other special measures in the course of discussions, much to my unexpected delight. Such measures include immediately making resettlement arrangements for affected tenants and shop operators before everything else. The principle of resettlement and compensation preceding project approval and planning, which Members have been fighting for, has been realized in the Ma Tau Wai redevelopment project. As for whether such special arrangements and other proposals supported by Members can also be adopted in the URA's other projects, it is still necessary to conduct more discussions. That is why we have said that these are special

arrangements adopted to deal with a special case, to address the anxieties and worries of the residents living near the collapsed building this time around. This is a special arrangement for a special case under the people-based principle. In the course of the urban redevelopment strategy review, we will certainly incorporate any proposals proven to be good by actual practice into the new urban redevelopment strategy.

Another lesson we can learn from the Ma Tau Wai incident is that however much we care for a community and want to preserve the existing social networks there, redevelopment is actually an inevitable means of urban renewal. Admittedly, the present urban redevelopment strategy is featured by the "4Rs", meaning that apart from redevelopment, there are also rehabilitation, preservation and revitalization, but redevelopment is in the final analysis a highly necessary means because of the ageing of buildings, and as many Members have already mentioned this, it is not necessary for me to repeat this point here. Therefore, in reply to Mr KAM Nai-wai's question on the future role of redevelopment, I must say that redevelopment will remain a major method. However, as mentioned by the Financial Secretary in last year's budget, it looks like redevelopment will not be the one and only means. We must seek to balance the "4Rs" in different districts and also take account of their respective features.

Several Members have mentioned the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice. Since several Members have discussed this in detail and some Members, including Mr WONG Kwok-hing, have asked me to give a reply, I would like to spend some time on this issue. Another reason is, of course, that the discussions on the Notice in this Council are already in the final stage. Since it is a Legal Notice subject to the negative vetting procedure, it will become law on 17 March if there is no objection from Members. I know very well that there will be voting and I am psychologically prepared for that, as I think some Members will raise objection to the Notice.

Speaking of the relevant discussions, I would like to respond to three points today. First, the targets of this Notice on compulsory sale are the buildings on three classes of lots. Will the lowering of the threshold for compulsory sale from 90% to 80% amount to the forcible deprivation of people's properties? Second, have we been proceeding with the task in too great a hurry? Third,

what more can we do on the basis of our existing efforts to allay the anxieties of some Members? Let me now reply to these three questions.

To begin with, the Notice is a piece of subsidiary legislation. We have not made any changes to the primary ordinance. Therefore, the most effective way to ascertain the original legislative intent of the legislation should be the making of references to what were said at the time when the primary ordinance was enacted. During the resumption of Second Reading debate on the relevant Bill that day, the Chairman of the Bills Committee remarked that the title of the Bill could already explain its objective clearly. Let me repeat the title of the Bill here — the Land (Compulsory Sale for Redevelopment) Bill. The Bills Committee was in full support of the Bill's policy objective. While agreeing that private-sector participation should be facilitated to expedite urban redevelopment to improve the living environment and satisfy people's keen demand for housing, the Bills Committee was equally concerned about the establishment of a mechanism for appropriately and fairly dealing with the compensation paid to those whose properties were resumed under the law. Therefore, inevitably, the legislation will involve private properties. The Bills Committee understood this point at that time. But most importantly, it also thought that it was necessary to establish a mechanism for appropriately and fairly dealing with all those problems arising from the resumption of private properties under the law.

How can this major legislative provision ensure a fair and appropriate mechanism? First, there is the Lands Tribunal, an institution upholding the rule of law as the gate-keeper. The proposed lowering of the threshold is only about lowering the threshold for applying to the Lands Tribunal for compulsory sale. And, every time when the Lands Tribunal processes a case of compulsory sale, there will be the participation of an experienced surveyor as a member of the Lands Tribunal. The surveyor will work alongside the Tribunal Judge to process every case. Therefore, when processing all such cases, the Lands Tribunal is provided with strong professional assistance, both from the legal and surveying sectors. Besides, from the provisions of the ordinance and the relevant judgments, we can also see clearly that the mechanism is well-established and its operation is very satisfactory.

The provisions of the ordinance provide small property owners with protection in several respects. First, there are stringent requirements on issuing notices of compulsory sale to minority owners. Second. The ordinance

requires that before making a determination on an application for compulsory sale, the Lands Tribunal must first conduct hearings on and determine the disputes filed by any minority owner regarding the value of the property as assessed in the application. Third, the ordinance requires that in the course of deliberation, the Lands Tribunal must, after exercising due diligence, satisfy itself that the redevelopment of the lot is justified on the basis of the prescribed factors, otherwise it shall not make any order for sale. Such prescribed factors include the age or state of repair of the existing development on the lot and the majority owner having taken reasonable steps to acquire all the undivided shares in the lot. Fourth, the ordinance requires that after the Lands Tribunal has made an order for sale, the lot must be sold in a public auction in accordance with the prescribed conditions, including a reserve price which takes into account the redevelopment potential of the lot on its own and approved by the Lands Tribunal. On average, the reserve price in each of the past 20 cases was 2.5 times the prevailing market price of the property. Hence, there was nothing like the worry expressed by Mr Ronny TONG about the reserve price for 50-year-old properties being set at the market price of properties of the same age, thus rendering property owners unable to buy a unit later. There was never any such situation. Fifth, under the ordinance, the proceeds of the sale of a lot shall be apportioned on a pro rata basis in accordance with the values of the respective properties of each majority owner and each minority owner of the lot as assessed in the application concerned.

From the 11 cases with written judgments determined by the Lands Tribunal under the ordinance Although the Lands Tribunal handled 20 applications (or, precisely, 21 applications, because there was no need for compulsory sale in one case at the end) and a written judgment was given for 11 cases only, we can still observe that in the course of enforcing the relevant legislative provisions, all the judgments were written with great care and attention. At the second meeting of the Subcommittee, my colleagues submitted an analysis of the relevant case judgments. At the Subcommittee meeting last week, members were presented with the gist of the judgments, and through the gist, members gained a further understanding of the factors considered by the Lands Tribunal when studying the expert assessment reports submitted by both sides as well as how it deliberated the cases and made independent judgments.

I also wish to raise a special point here. Many people say that since society is not concerned about the business of the Legislative Council, no one is

interested in its discussions. I can testify that this is not the case with the legislation on compulsory sale. Over the past few weeks, Members' discussions on the compulsory sale legislation have induced many people to send in their letters. Some of these letters are sent to the Legislative Council, and I only have copies of them. All such letters are in support of the Government. Many small property owners have themselves written their letters. There are many wrong characters. I can actually read out several of these letters to prove that rather than robbing people of their properties, the legislation will protect small owners' interests and actually answer their aspirations. And, as Secretary for Development, when I deal with the legislation on compulsory sale, what I have in mind are only small owners' aspiration and a concern for their interests.

One individual property owner wrote, "I live in Building X." (An address is given, so verification is possible) He continued, "All of us living on different floors have known each other for many years. We are no longer young, and we cannot get about easily. We do not have any other requests. We only wish to move to a new place where we can get about more easily. Two years ago, a property developer visited us and proposed to buy our properties. The prices were reasonable, and several owners on different floors and I all agreed to sell our units. But since the shop owners downstairs asked for very high prices, the scheme eventually fell flat. We therefore hope that the Secretary can lower the threshold from 90% to 80%, so that our aspiration to selling our units for redevelopment can be answered. We hope that the Secretary can help us poor people to make the Legislative Council amend the legislation. In this way, through a new scheme for redevelopment, we may improve our living environment."

Seeing that I was faced with Members' challenges, and that I might fail to obtain Members' support, another individual property owner even tried to boost my morale by writing, "Secretary, you can ignore the newspaper headline 'Carrie LAM, stop funnelling benefits to property developers'." He said that resorting to inflammatory expressions, the news article dismissed lowering the threshold for compulsory sale to 80% as a means of funnelling benefits, and that he felt deeply sorry for those hardworking government officials who were often misunderstood and slandered. At the end of the letter, he expressed the hope that I could do my very best. He said that although he knew that I might not succeed, he still wanted me to do my very best to lobby for the Legislative Council's support.

I must therefore ask Members with all sincerity of purpose whether they can believe, just for once, that this time around, we are truly working for public interests and the protection of individual property owners, rather than funnelling any benefits. I only implore them to believe, just for once, that this time around we are doing something for public interests and the protection of individual property owners; that we really wish to allay some individual property owners' anxieties as expressed in the letter I read aloud just now and improve their living environment.

The second point I must reply to is about the allegation made in the Subcommittee's meetings and on the radio by many Members who disagree with us. These Members criticize us for working hastily. They say that the Notice was only submitted on 22 January, so they question why we should set the commencement date on 1 April in such a hurried manner and why we do not wait and conduct consultation after the completion of the urban redevelopment strategy review. Here, I must ask the President to bear with me for spending some time on giving an account of the consultation on lowering the threshold and our work.

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

Since the ordinance took effect in 1999, only 20 applications for compulsory sale have been approved. In other words, the Lands Tribunal handled only a very small number of applications between 1999 and 2006. However, we have heard many individual property owners complain about the ineffectiveness of the ordinance, saying that the threshold of 90% is much too high. For this reason, from April to May in 2006 (It was still the term of the last Government and I was not the Secretary in charge), a public consultation exercise on lowering the application threshold for specified classes of lots was launched. The public consultation exercise launched in 2006 included public forums, discussion sessions for owners' organizations, group discussions and consultation with the relevant Legislative Council Panels and District Councils. In April 2006, we conducted a telephone opinion poll, and on 11 May the same year we consulted the then Legislative Council Panel on Planning, Lands and Works. At that time, we proposed to lower the threshold to 80% for three classes of lots: first, a lot with "all units but one" acquired; second, a lot with all buildings aged

40 years or above; and, third, a lot with missing or untraceable owners. Therefore, Dr Margaret NG must note that the existing threshold of 90% is not meant to tackle the problem of missing or untraceable owners. Actually, missing or untraceable owners were the reason for our proposal on lowering the threshold to 80% at that time. However, during the discussions at that time, and in our opinion polls, consultation and discussions with the Legislative Council, reservation about the idea was invariably expressed, especially in respect of missing or untraceable owners. People thought that there was something not quite safe because some owners might just be temporarily untraceable. They said that if the threshold was to be lowered due to failure to contact owners, they might not support the proposal. They therefore requested us to do some more thinking.

After taking over the post, I continued with the consultation. Then, in January 2008, I submitted to the Panel on Development another proposal on lowering the threshold to 80%. In this proposal, the third class of lots, that is, the class of lots with missing or untraceable owners, was deleted. We only wanted to lower the threshold to 80% for two classes of lots: first, a lot with "all units but one" acquired; and, second, a lot with all buildings aged 40 years or above. As usual, the Legislative Council conducted public hearings to listen to the views of the public and various deputations. As indicated by the consultation outcome, members of the Panel on Development generally considered the proposal on "a lot with 'all units but one' acquired" acceptable. However, there were divergent views on the proposal of lowering the threshold for compulsory sale in the case of a lot with all buildings aged 40 years or above. Some members supported this proposal, thinking that it could facilitate private-sector redevelopment of old and dilapidated buildings. Other members, however, argued that the proposal could not offer sufficient protection to minority owners. In view of this, I undertook once again that I would prudently study the views and suggestions of members and deputations.

The tasks we have undertaken since early 2008 include a study on the implementation of compulsory sale in other Asian cities as part of the urban redevelopment strategy review. We have also encouraged various professional bodies to discuss this topic and conduct public education. As a result, the Hong Kong Institute of Surveyors conducted a seminar in 2009 and also published a booklet on compulsory sale. In 2009, we conducted another telephone opinion poll which covered 1 000 respondents. And, we also held discussions on this

topic with the Chairmen and Vice-Chairmen of District Councils. One especially enlightening observation was that in the opinion poll conducted in 2009, the majority of the respondents were clearly in support of lowering the threshold for a lot with "all but one unit" acquired. However, in respect of building age, the lowering of the threshold for a lot with buildings aged 40 years could only command a 42% support, and 34% of the respondents were against the proposal. However, when the building age was raised to 50 years for lowering the threshold, the rate in support rose to 60%, and only 17% of the respondents expressed their opposition. For this reason, in June 2009, we once again discussed with the Panel on Development, proposing to publish a notice in the Gazette on lowering the threshold to not less 80% for three specified classes of lots. This time around, we heeded good advice and raised the building age to 50 years or above for entitlement to the lowered threshold of 80%. The other two classes of lots were all along supported by the public. One was a lot with "all but one unit" acquired, and the other was a lot with industrial buildings, and this seemed to be less controversial. This means that the threshold can also be lowered for a lot with all industrial buildings aged 30 years or above not located within an industrial zone. The next step would of course be the drafting of the Notice and the seeking of the Chief Executive-in-Council's approval for its gazettal. I am sorry that I have indeed spent quite some time on all this. But it is very important for me to do so because everybody can thus realize that this matter has not been handled in haste, and that we have undergone a process of thorough consideration and taken account of the views expressed by Members and society. I am sorry to say that Members will be irresolute as they only hold discussion without making any decision if they want me to withdraw this Notice or if they do not want to vote on it.

Having said that, I must admit Since I have been working in the Government for 30 years, I know that when it comes to our discussions on bills with the legislature, very often, even though something is not going to be included in the legislation, we must still do something to allay Members' anxieties. It is with such an attitude that I have been working with the legislature, because I attach very great importance to the relationship between the legislature and the executive. Sometimes, due to a lack of mutual trust, even some legislation supported by both sides in principle cannot be passed. I have instructed my colleagues that they should adopt such an attitude to explore in the Subcommittee what undertakings we can make or what we can do to allay Members' anxieties.

I understand that Members want us to consider three things. First, they want to know whether it is possible to add one more condition to the specified class of lots with buildings aged 50 years or above, that is, the lowered threshold can be applied on condition that such buildings are unsafe, posing danger. I am afraid that we are unable to comply. I must say that even if we are able to comply, the result will not be desirable. The reason is that if we must wait until a building reaches a state of disrepair, develops safety problems or turns into a dangerous building before we can invoke the compulsory sale legislation, then as what Mr James TO said when discussing section 40C of the Building Management Ordinance, the whole legislation will be reduced to something like a "distant source of water that cannot put out the nearby fire". We cannot possibly rely on the compulsory sale legislation as a means of tackling the problem of dilapidated buildings. Safety problems connected with buildings must be tackled under the Buildings Ordinance with the Buildings Department as the enforcement authority. Besides, if we are to require that a building aged 50 years or above can satisfy the statutory requirement on compulsory sale only when it is confirmed as a dangerous building, I am afraid that most owners wishing to have their units put to auction under the compulsory sale legislation will only be encouraged to let their buildings age and turn dilapidated in order to satisfy the statutory requirement. I do not think that this is something Members wish to see. I am afraid that this is a case of doing a disservice despite a good intention, an allegation that Members sometimes bring against the Government.

The second request is put forward by the Deputy President, Ms Miriam LAU. She hopes that in addition to the "50-year-old" requirement, the state of repair of such a building can also be added as a condition. In other words, she hopes that the Lands tribunal can also consider the state of repair. The reason for this proposal is that the Honourable Member has some worries about how the existing legislation is worded. Currently, it is provided that the Lands Tribunal shall consider the age of the building or its state of repair, rather than the age of the building and its state of repair. The Honourable Member is worried that once the subsidiary legislation comes into force, the Lands Tribunal may rely on building age as the sole criterion of satisfying itself that the redevelopment of a site is justified and an order for compulsory sale shall be made. I must emphasize once again that from the judgments of past cases, we can see that although the word "or" is used in the ordinance, that is, although it refers to "due to the age or state of repair", the Lands Tribunal has all along taken both factors into account. Therefore, the Deputy President does not need to have any

worries. The lowering of the threshold to 80% will not supersede the other requirements in the ordinance. I therefore do not think that it is necessary to repeat the state of repair as a condition. But I do appreciate the Honourable Member's concern about the wording of the provision, and I have actually told my colleagues that they may tell Members in the Subcommittee (And, I also wish to reiterate today) that I undertake to consider amending the wording concerned when we need to review the implementation of the primary legislation after gaining some practical experience in the future. It is because I believe that basically, Members, the Lands tribunal and I actually do not have any disagreement on this issue. All of us think that before approving an application for compulsory sale, we must look at the overall conditions of the building concerned. But the conditions of a building and whether it is a dangerous building are two different matters. That is why I cannot accept the former, that is, the condition relating to a dangerous building. However, regarding the reference to the state of repair, I suppose we can do something when an opportunity of reviewing the primary legislation arises.

Lastly, I wish to give my reply on mediation. Mediation is a very beneficial process as far as building disputes are concerned. I note that the Subcommittee has proposed to set up a mediation mechanism for resolving disputes before compulsory sale. Mr WONG Kwok-hing has repeated his view that majority owners and minority owners should be allowed to decide to undergo mediation before bringing their disputes before the Lands Tribunal. I am pleased to point out or report to Members that I have established initial contacts with the Secretary for Justice and the Judiciary Administrator, and they have both responded positively to our proposal. We will join hands with the Secretary for Justice and the Judiciary as early as possible to conduct a thorough study on how the Report of the Working Group on Mediation, compiled under the leadership of Secretary for Justice WONG Yan-lung Recommendation 9 of this report is precisely intended to put in place a mediation mechanism to address problems relating to buildings, proposing the implementation of a pilot mediation scheme for disputes arising from redevelopment and building areas. I will report to the Panel on Development at an appropriate time. Frankly speaking, my support for mediation has far exceeded my scope of responsibilities. Noting that the Working Group on Mediation is looking for premises to set up community mediation centres in the various districts, I have volunteered to look for such venues for Secretary for Justice WONG Yan-lung. And, as I mentioned just now, under the Ma Tau Wai redevelopment project, there will be a conveniently

located venue with a floor area of 1 000 sq m. If there is support from the Kowloon City District Council, the URA and I intend to use the venue for setting up a model building management resources centre providing integrated and one-stop services. In that case, it will be very easy for us to set aside several rooms as a community mediation centre, providing a conveniently located venue for the locals to conduct mediation on building-related disputes, including the water seepage problem, a grave concern of Prof Patrick LAU, which may also need a lot of mediation before it can be resolved. Anyway, the implementation of a mediation mechanism and lowering the threshold for compulsory sale from 90% to 80% should proceed in parallel. Actually, mediation will be most effective when a person is aware that in case mediation fails, there will be a next step. For instance, very often, when the URA applies to me for invoking the Lands Resumption Ordinance, it is actually unable to attain the threshold of 90%. It may just be able to attain some 80%. But if those who do not agree to any acquisition offer is aware of the "Imperial Sword of Sanction", the Lands Resumption Ordinance, which the URA can use when there is no agreement, it may be possible to bring forth a greater number of agreements. The ultimate benefit is that the whole redevelopment project will be able to proceed as scheduled, and the affected owners can improve their living environment through redevelopment.

Deputy President and Honourable Members, as I mentioned just now, improving the living environment of residents in old districts is an ongoing task. The Development Bureau and our various departments will certainly do their very best to improve the conditions in old districts. Thank you, Deputy President.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, I thank Members for their speeches, which cover ways to enhance building management and repairs and maintenance. I will talk about several points in response to them.

In the wake of the building collapse in To Kwa Wan, both Members and the public have had in-depth discussions on building management. Be it in the adjournment debate held in the Legislative Council on 3 February or the commentaries published in the mass media, mainstream opinion still considers that the management and repairs and maintenance of private buildings are the responsibilities of property owners and that owners should not be subsidized with taxpayers' money. Otherwise, the risk of moral hazard may arise and it would

be very unfair to members of the public who pay management fees out of their own pockets.

However, as I said when speaking for the first time, the promotion of building management is an important element in community building as it can promote mutual aid among neighbours and enhance social cohesion. Therefore, from the perspective of community building and the enhancement of social cohesion, insofar as home affairs are concerned, we would actively encourage owners and residents to organize themselves, promote the spirit of mutual aid among neighbours and carry out building management properly in the light of the circumstances and needs. Moreover, in the situations pointed out by Dr Raymond HO, the Government will, with public safety and hygiene as its foremost consideration, provide appropriate support to owners who are truly in difficulty. This approach does not change our fundamental view that building management and repairs and maintenance are the responsibilities of property owners.

(THE PRESIDENT resumed the Chair)

For instance, to address the problem of some owners of old buildings having limited means and organization abilities, yesterday, we announced the "Building Management Expert Volunteer Service Scheme" (the Scheme) to offer a series of free professional services in building management for a period of one year to owners of about 1 000 units in 50 old buildings. I regret to hear some Members dichotomize volunteer service and professional service and consider volunteer service to be unprofessional. In fact, this is a misconception. The Home Affairs Bureau has made efforts in co-ordination and organization by joining hands with the Hong Kong Housing Society (HKHS) and four professional property management bodies, namely, the Hong Kong Institute of Housing, the Housing Managers Registration Board, the Asian Pacific Branch of the Chartered Institute of Housing and the Hong Kong Association of Property Management Companies in launching the Scheme. The special feature of the Scheme is precisely the participation by the property management industry in providing free professional advice and specific and elaborate follow-up services to property owners. These volunteer services are also entirely professional.

We hope that this Scheme will serve as an example for property owners and after 12 months of operation, property owners of old buildings can take over the responsibilities for the proper management of their own properties.

We will make appropriate adjustments in view of the effectiveness of the Scheme. We will also discuss with professional bodies viable models of partnership models in the future. In this process of formulating our future strategy, we will consider the model of small-district administration as mentioned by Mr WONG Kwok-hing and other Members and the views of various sectors of society.

As Members said, to effectively solve the problems in the repairs and maintenance and management of old buildings, it is not enough for a single policy bureau or department to do it alone, rather, the full collaboration of all the policy bureaux and departments concerned is needed. In the wake of the building collapse in To Kwa Wan, the Chief Secretary for Administration has already started to co-ordinate efforts in improving the safety of old buildings and appointed the Development Bureau as the leading policy bureaux in setting up an inter-departmental Task Force to examine with the relevant policy bureaux and departments the improvement measures to tackle the problem of buildings in disrepair. The Home Affairs Bureau will continue to give its full support, as it did in the past. Ms Starry LEE mentioned the problem of inefficiency in building management due to the problem of "one building with multiple owners' corporations" and "multiple buildings with one owners' corporation". An owners' corporation is established under the legal requirement of one owners' corporation under one deed of mutual covenant (DMC). The problem of "one building with multiple owners' corporations" is mainly attributable to the fact that old buildings have more than one DMC. Regarding these buildings, the owners' corporations concerned can appoint their representatives to form a joint management committee to manage the common parts of the building. Building management hinges on the concerted efforts and participation by owners. If individual owners' corporations, that is, some owners, are not willing to form a joint management committee, even if we make this mandatory, they will still raise their objections or refuse to co-operate in building management, thus making it impossible to manage the common parts of the building properly. Therefore, the most appropriate way is to encourage owners to co-operate sincerely and have discussions actively, so as to form a joint management committee for the benefit of the entire building. The Home Affairs Department (HAD) will continue to provide assistance in resolving their differences by mediation.

As for "multiple buildings with one owners' corporation", it is currently a common phenomenon in building management, particularly when the buildings share common facilities such as carpark or club house. We do not consider it realistic or in line with the present modes of building management to stipulate that an owners' corporation can only manage one building. As regards amendments to DMCs, it must be pointed out that a DMC is a private contractual agreement among the owners, manager and developer of a building stipulating the rights and obligations of the parties to the agreement. Therefore, as in the case of any other private contracts, no party to a DMC shall unilaterally modify any provisions of the DMC without the consent of all the other parties. This is an important principle of contract. The Government is also aware that the drafting of certain old DMCs may not have given full consideration to the rights of all parties. There are provisions which have an overriding effect on the DMC in the Building Management Ordinance (BMO). When amending the BMO in 2007, amendments were made in relation to such matters as the determination of the total expenditure of the building, keeping of accounts and termination of manager's appointment, in order to strengthen the protection of the interests of property owners. The Government has no objection in principle to amending any provisions of DMCs or introducing a mechanism for doing so by legislative means. Of course, any amendment made to the provisions of a DMC will inevitably have an impact on the rights and responsibilities of the parties to the agreement. We must be careful in considering the impact of such a mechanism on property rights and how to ensure proper protection of those owners who are affected by or opposed to such changes to DMCs.

On the question of whether or not to introduce a licensing regime for property management companies, with rising public concern about building management, the public have become ever more exacting of the service standards of property management companies and their staff. There are suggestions that the Government should establish a licensing regime for the purpose of regulating property management companies and personnel in order to upgrade overall building management standards. However, there are also views that the introduction of a licensing regime may lead to huge increases in management fees, thus adding to the burden of owners. Some smaller property management companies may even fail to survive under a licensing regime.

In order to gather more relevant information, we embarked on a study on the regulation of property management companies. In the first phase, we collected and analysed information on three major areas, namely, the mode of operation and market conditions of Hong Kong's property management industry, the ways in which overseas authorities and Mainland authorities regulate the property management industry and Hong Kong's experience of regulating other types of industries. In July 2008, we briefed the Panel on Home Affairs of the outcome of the study. In the light of the findings and Members' views, the HAD is carrying out further studies on the pros and cons of various models of regulation and the relevant operational arrangements. We expect to complete these studies this year and the Legislative Council will be informed of the outcome and Members' views will be sought.

To conclude, I wish to stress that to achieve in proper building management, it is most important to secure sincere the co-operation of all owners in order to narrow differences and enhance mutual trust. From our experience, most of the disputes in relation to building management can be resolved through communication and mediation. The focus of our work is to forge harmonious relationships among neighbours and to maintain a safe and hygienic living environment. We will continue to use various channels to spread the message of good building management and encourage all property owners to assume their due responsibilities for the management and repairs and maintenance of their buildings. Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Ms Starry LEE, you may now reply and you have one minute 15 seconds.

MS STARRY LEE (in Cantonese): President, I received an email after putting forward this motion. The email was sent to me by a kaifong. He says that this is a tenement building in Temple Street in Yau Ma Tei, and it is described by its tenants as the ugliest building in Hong Kong. Members can see from the photograph that it is in an appalling state of disrepair, totally unsuitable for human habitation. However, the owners cannot reach a consensus, so it is impossible to carry out any repairs.

I have been serving as a District Council member in To Kwa Wan for nearly 10 years. I have been serving mainly the underprivileged in society, such as the elderly, new immigrants and ethnic minorities. They are mostly tenants, and they do not have the knowledge, ability and financial means to handle the problems with their buildings completely on their own. I strongly hope that through these two motion debates, we can urge the Government, either the Development Bureau or the Home Affairs Bureau, to treat building safety and management as one of their major tasks. I know very well that an organization must be put in charge of overall co-ordination. A Member questioned just now whether we should choose a trees management office or an old buildings management office if we were really required to choose between the two. I myself will choose an old buildings management office, and I already mentioned this to Chief Secretary for Administration Henry TANG at the Lunar New Year Reception. *(The buzzer sounded)*

PRESIDENT (in Cantonese): Ms LEE, time is up.

MS STARRY LEE (in Cantonese): I know that the Government has already convened meetings. I hope we can work together.

PRESIDENT (in Cantonese): Ms LEE, time is up.

PRESIDENT (in Cantonese): I now put the question to you and that is: That Ms Starry LEE's motion as amended by Mr James TO be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 10 March 2010.

Adjourned accordingly at three minutes past Seven o'clock.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Security to Mr LAU Kong-wah's supplementary question to Question 6**

As regards whether before the reunification, any Members of the Legislative Council had raised any questions about the United Services Recreation Club opening its membership to the general public, we have checked records and have not found any information about Members of the Legislative Council ever raising such questions before the reunification.