

LCQ3: Statutory bodies

Following is a question by Dr the Hon Cheng Chung-tai and a reply by the Secretary for Home Affairs, Mr Caspar Tsui, in the Legislative Council today (June 3):

Question:

Recently, the work and decisions of the Hong Kong Examinations and Assessment Authority, the Communications Authority and the Independent Police Complaints Council have given rise to controversies across various sectors of society. Some members of the public have queried that such statutory bodies are only subordinates of the Executive Authorities which are not subject to public monitoring, and that they have not placed the overall interests of Hong Kong above all else in the course of their actions. In this connection, will the Government inform this Council:

(1) whether it will enact legislation to transfer the functions of certain statutory bodies to those bodies with their members elected by members of the public (e.g. District Councils), so that members of the public will have more opportunities to participate in public affairs;

(2) as there are comments that given the resources for operating the statutory bodies being mainly provided by the Government, coupled with the fact that a majority of their members are appointed by the Government, the independency of these statutory bodies is prone to be questioned, how the Government will improve this situation; and

(3) of the ways to avoid controversies being caused in society again by statutory bodies when they discharge their statutory functions?

Reply:

President,

My consolidated reply to Dr the Hon Cheng Chung-tai's question is as follows:

As a key component in public administration, advisory and statutory bodies (ASBs) play an important role of helping the Government in the consultation with stakeholders, formulation of policy objectives and performance of statutory functions. The relevant bureaux/departments (B/Ds) are responsible for the establishment, composition (including the appointment of non-official members) and actual operation of individual ASBs.

At present, there are about 500 ASBs in Hong Kong. Of them, 270 are statutory bodies established in accordance with various ordinances. Given the difference in legislative purposes, the nature and functions of these statutory bodies vary considerably, including:

- (a) advisory boards and committees that advise on policies and public services;
- (b) public bodies that provide services to members of the public;
- (c) appeal boards that resolve disputes between members of the public and the Government / public bodies; and
- (d) regulatory bodies that regulate specific trades.

Statutory bodies perform various statutory functions in accordance with the relevant legislation. In general, these functions involve the handling of territory-wide policies or public affairs. District Councils mentioned in the question, established under the District Councils Ordinance (Cap. 547), are also statutory bodies but their functions target at handling matters in the respective districts. These include advising the Government on district administration affairs and undertaking community activities and environmental improvements within the district. Under the current system, if district-specific matters (such as construction of public facilities in the district) are involved in a bureau's policy formulation or a statutory body's performance of statutory functions, the bureau and/or statutory body concerned will also consult the relevant District Council.

The appointments of individuals by the Government as non-official members to ASBs are based on merits. When making an appointment, the relevant B/D takes into account the candidate's ability, expertise, experience, integrity and commitment to public service, with due regard to the functions and nature of business of the ASB. As for the Hong Kong Examinations and Assessment Authority, the Communications Authority and the Independent Police Complaints Council mentioned in the preamble of the question raised by Dr the Hon Cheng Chung-tai, we have consulted relevant bureaux. We understand that as these statutory bodies are responsible for handling more specialised matters, when making an appointment, the Government needs to consider whether the professional knowledge and experience possessed by the candidate are compatible with the statutory body's performance of its functions. To gauge a wide range of public views, the Government will consider appointing people of various background and experience, such as professionals, academics, businessmen as well as representatives from districts and related sectors. Apart from those appointed directly by the Government, some ASB members are identified through nomination, recommendation, appointment or election by the relevant institutions and professional organisations.

There is no lack of people in the community who have enthusiasm to participate in public services and have the necessary ability and experience. As such, under the principle of appointment by merits, the Government has established internal guidelines to make sure that individuals from various sectors of the community have the opportunity to participate in public services. According to the guidelines, B/Ds, as a general rule, shall not recommend appointment of a member to serve on more than six ASBs at the same time or to serve on the same body for more than six years in the same capacity. This is to ensure a reasonable distribution of workload and a healthy turnover of members. Moreover, the Government has set a gender benchmark target of 35 per cent to enhance the participation of women in

relevant work. To provide more opportunities for young people to participate in policy discussion and debate, the Government has set a target of increasing, within the current-term Government, the overall ratio of appointed youth members aged between 18 and 35 to 15 per cent.

The Government has all along been encouraging the public to participate in the work of ASBs so as to enhance public participation in public affairs. Those who are interested to join ASBs may provide us with basic personal particulars and indicate the policy area(s) which he/she is interested in through a form downloadable from the Home Affairs Bureau (HAB)'s webpage. HAB will put the information received in a centralised database from which B/Ds may draw reference when making appointments. In fact, the Government creates, through various initiatives, a favourable environment for the public (in particular young people) to join different ASBs, which include regularising the Member Self-recommendation Scheme for Youth launched by the current-term Government to regularly recruit young people who aspire to serve the community to join more ASBs involving different policy areas.

The Government has always attached importance to the composition and operation of ASBs, and encourages ASBs to take appropriate measures to enhance transparency and commitment to the public. To this end, ASBs have, in light of their respective functions and nature of business, issued press releases, made available meeting agendas or documents for public access or uploaded suitable information onto the internet, with a view to enhancing transparency as far as practicable.

B/Ds will continue to closely monitor the operation of ASBs under their purview and keep in close view the composition to make sure that it meets the operation need and keeps up with the current situation of society. This is to ensure that ASBs can effectively perform their statutory functions, make decisions that meet the overall interests of Hong Kong, and provide quality public services. HAB will continue to encourage B/Ds to keep identifying more talent from different fields to participate in ASBs, allowing them to give full play to their strengths while helping the Government to have a better grasp of social conditions and public views so as to achieve effective governance.

LCQ6: Protection of consumers' rights of online shoppers

Following is a question by the Hon Andrew Wan and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (June 3):

Question:

Regarding the protection of the consumers' rights and interests of people who purchase goods and services online (online shopping), will the Government inform this Council:

(1) of the respective numbers of complaints about online shopping received by the Consumer Council and the Customs and Excise Department (C&ED) in each of the past five years and between January and May this year, with a breakdown by spending category (i.e. goods and services) and traders' place of registration;

(2) of the number of pursuable cases among the complaints mentioned in (1), with a breakdown by spending category and the action taken by the authorities (e.g. conciliation and institution of prosecutions);

(3) as the Government indicated in May 2018 that the Police, when handling online fraud cases involving places outside Hong Kong, would seek co-operation with the relevant law enforcement agencies outside Hong Kong as necessary, and C&ED might demand those websites found to have committed contraventions to remove the relevant contents or hyperlinks, and conduct joint operations with the law enforcement agencies outside Hong Kong, whether the Government has assessed the effectiveness of such actions, and of the new measures in place to combat online fraud cases;

(4) whether it will, by making reference to the practices adopted by economies such as Canada, the United Kingdom, the European Union and the South Korea, enact legislation to regulate online shopping by stipulating that traders must prepare contracts and provide a cooling-off period for transactions, and provide consumers with accurate descriptions of services and goods as well as contact methods;

(5) whether it will study the enactment of legislation to introduce connected lender liability, i.e. based on the principle that in case of a breach of contract of a trader, the party who co-operates with the trader by offering lending is required to bear the legal liability jointly, thus allowing all consumers who have paid by credit cards to, in the event of closing down of business of a trader, lodge claims to the card issuers directly without the need of resorting to the winding-up process which has a little chance of success; and

(6) as the Government indicated in April 2019 that a cross-sector Working Group established by the Department of Justice carried on studying and considering the Report on Class Actions published by the Law Reform Commission in May 2012, and that the content of the Working Group's study at this stage mainly focused on considering the Report's recommendation on introducing class action in Hong Kong starting with consumer cases, of the progress of the relevant study?

Reply:

President,

Having consulted the Department of Justice (DoJ), the Customs and Excise Department (C&ED), and the Consumer Council (the Council), our reply to the six parts of the question is as follows:

(1) The number of online shopping complaints related to suspected violation of the Trade Descriptions Ordinance (Cap. 362) received by C&ED in the past five years and the first four months of this year is as follows:

	2015	2016	2017	2018	2019	2020 (January to April)
Goods	255	544	1 115	1 250	775	1 191
Services	41	42	112	311	224	283
Total	296	586	1 227	1 561	999	1 474

The number of online shopping complaints received by the Council in the past five years and the first four months of this year is as follows:

	2015	2016	2017	2018	2019	2020 (January to April)
Goods	1 392	1 586	1 815	2 439	2 231	2 005
Services	2 076	1 622	2 125	2 544	2 333	2 649
Total	3 468	3 208	3 940	4 983	4 564	4 654

Due to time constraints, the complaint statistics of May 2020 are not yet available. In addition, C&ED and the Council do not maintain separate statistics on the place of registration of traders.

(2) The breakdown of online shopping complaints related to suspected violation of the Trade Descriptions Ordinance received by C&ED is as follows:

	2015	2016	2017	2018	2019	2020 (January to April)
Goods						
Number of Investigation	3	12	5	8	8	0

Number of Warning/ Advisory Letter	0	0	0	2	1	0
Number of Prosecution	1	9	4	2	3	0
Number of Undertaking Secured	0	1	0	0	0	0
Services						
Number of Investigation	0	2	1	1	0	0
Number of Prosecution	0	0	0	1	0	0

The breakdown of online shopping complaints received by the Council is as follows:

	2015	2016	2017	2018	2019	2020 (January to April)
Goods						
Number of Pursuable Case	758	905	1 051	1 365	1 347	1 681
Successfully Resolved	582	691	696	947	797	938
Services						
Number of Pursuable Case	1 482	1 031	1 453	1 498	1 573	2 017
Successfully Resolved	1 202	792	1 089	980	1 045	1 282

(3) C&ED is committed to combating online unfair trade practices. If local or overseas websites are found to be conducting illegal activities, C&ED may demand such websites to remove the relevant contents or links. Depending on the circumstances, joint operations with overseas enforcement agencies will also be mounted as and when required. C&ED will review the effectiveness of its enforcement actions from time to time, and will continue to monitor different types of illegal online activities by using advanced tools for evidence collection and investigation, and initiate follow-up actions and prosecutions where appropriate.

(4) The rights of online shoppers are currently protected by various laws in Hong Kong. The Sale of Goods Ordinance (Cap. 26), Control of Exemption

Clauses Ordinance (Cap. 71), the Supply of Services (Implied Terms) Ordinance (Cap. 457) and the Unconscionable Contracts Ordinance (Cap. 458) all regulate contracts related to transactions, for example by stipulating implied conditions in the contract of sale of goods, including that the goods supplied are of merchantable quality and that a buyer has the right to reject defective goods unless he or she has a reasonable opportunity to examine the goods; a supplier of a service is obliged to carry out the service with reasonable care and skill and within a reasonable time; and the courts are empowered to refuse to enforce, or to revise unconscionable terms in consumer contracts for the sale of goods or supply of services etc.

In addition, the Trade Descriptions Ordinance prohibits common unfair trade practices, including false trade descriptions and misleading omissions, and is applicable to both online and physical traders. The Government will continue to keep a close watch on the development of online platforms and review the relevant laws as necessary for the protection of consumer rights.

As for the provision of cooling-off period, the Government considers that priority should be accorded to stipulating a statutory cooling-off period for sectors that give rise to more complaints involving large amount of payment and deployment of aggressive sales tactics. Comparatively, it is unlikely for online shopping to involve aggressive sales tactics. In fact, in territories where e-commerce is booming, such as the United States, Australia and Singapore, there is no legislation requiring traders to provide cooling-off periods to online shoppers. Moreover, the use of online transactions is increasingly common in various sectors. Implementing an online shopping cooling-off period will have a comprehensive impact on the business operation of various sectors. As such, the Government has no plan to implement a statutory cooling-off period for online shopping contracts.

(5) In general, in the event that a merchant goes out of business and is unable to provide services or goods, consumers who made credit card payments may request card-issuing institutions to assist in making application for refund of the payments through the chargeback protection mechanism of credit card associations. As for connected lender liability, given its complex nature and involvement of stakeholders in many various sectors and different policy areas, caution is required in its consideration.

(6) The cross-sector Working Group established by DoJ to study and consider the recommendations set out in the Law Reform Commission's Report on Class Actions has, since its inception in December 2012 to date, held 29 meetings. In the meantime, the sub-committee set up to assist the Working Group in resolving the technical issues arising from its discussions has held 33 meetings since its formation in April 2014. The most recent Working Group meeting was just held in May 2020. The Working Group's study involves technical issues in law and policy considerations, etc. Given that the issues being studied by the Working Group are wide-ranging and interrelated, more time is required to sort them out. Upon completion of the study, the Working Group will put forward its recommendations for the Government to consider and map out the way forward.

Second School Allocation Exercise 2020 invites applications for allocation of one primary school premises and two secondary school premises in two districts for reprovisioning use

The Education Bureau (EDB) announced today (June 3) that in the Second School Allocation Exercise (SAE) 2020, a new primary school premises under planning in Sai Kung District and two new secondary school premises under planning in Sai Kung and Kwun Tong Districts are open for application by eligible school sponsoring bodies (SSBs) for reprovisioning of existing aided and Direct Subsidy Scheme (DSS) primary/secondary schools.

The new primary school premises under planning is located at Site E-2, Development of Anderson Road Quarry (ARQ) Site, Sai Kung, while the new secondary school premises under planning are located at Site E-3, Development of ARQ Site, Sai Kung, and Wang Chiu Road, Kwun Tong. Details of the three premises are set out in the Annex.

"Infrastructure improvements to existing schools built to previous planning standards and designs may be infeasible due to the lack of space and other physical constraints. In this light, the EDB has identified a primary school premises under planning in Sai Kung District and two secondary school premises under planning in Sai Kung and Kwun Tong Districts for allocation for reprovisioning of existing primary/secondary schools. This exercise is open to applications by existing aided and DSS primary/secondary schools which are in need of infrastructure upgrades," an EDB spokesman said.

"Allocation of the school premises will be conducted on a competitive basis. Quality of education will be the prime consideration in assessing the applications. Factors to be considered include the operation track record of the school proposed to be reprovisioned, the quality of the school plan after reprovisioning and the physical condition of the school's existing premises. In general, we believe that schools with a site area of less than 3 000 square metres and premises over 30 years old which have not benefited or have only marginally benefited from the School Improvement Programme would warrant our serious consideration. However, this is not a prerequisite for the submission of applications. Each case has to be assessed on its own merits.

"In line with the established arrangement for reprovisioning, the successful SSB will be required, upon allocation of the new premises for reprovisioning, to return its existing school premises. For those schools currently located within a private lot under the ownership of the SSB, the

school or a third party related to the SSB/school, the relevant private land owner will be required to surrender the existing school premises and site to the Government," he added.

All applications will be considered by the School Allocation Committee comprising official and non-official members. SSBs are required to complete an application form and submit it together with the required supporting documents, a proposed school plan (of not more than 10 pages including all annexes plus a two-page executive summary) and a list of operating school(s). The proposed school plan should cover the vision and mission, management and organisation, learning and teaching, school ethos and support for students, students' performance targets, self-evaluation indicators, and more. The SSB may also make reference to the school(s) that it is operating and their respective performance to substantiate its case.

In line with the EDB's established policy for school allocation, when submitting the application, the SSB should be exempt from tax under Section 88 of the Inland Revenue Ordinance, and be:

(1) incorporated under the Companies Ordinance (the successful SSB would be required to ensure that its articles of association contain all the standard clauses and articles required for allocation of a school premises); or

(2) incorporated under other ordinances, with its constitution satisfying the Permanent Secretary for Education as being fit to be considered for allocation of a school premises.

In addition, the SSB must be running one or more aided or DSS primary school (for application for reprovisioning of primary school(s))/secondary school (for application for reprovisioning of secondary school(s)) in Hong Kong and must be the registered SSB of the applicant school.

The application form for the Second SAE 2020 and other reference materials can be downloaded from the EDB homepage (www.edb.gov.hk/en/sch-admin/sch-premises-info/allocation-of-sch/index.html). More information on this SAE can also be found on the homepage.

The duly completed application form and supporting documents, together with 22 copies of the proposed school plan with executive summary and the list of operating schools, if any, should reach the Infrastructure and Research Support Division of the EDB (6/F, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong) by 5pm on July 15, 2020. Late or incomplete applications, as well as applications via email, will not be processed.

For enquiries, please call 3509 8413 or 3509 8411.

LCQ16: Provision of assistance for people not covered by relief measures

Following is a question by the Hon Elizabeth Quat and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (Jun 3):

Question:

The coronavirus disease 2019 epidemic has caused a substantial drop in the income of quite a number of industries and their practitioners, and pushed up the unemployment rate to a record high in 10 years. Although the Government has implemented two rounds of relief measures, quite a number of employers and employees affected by the epidemic have relayed that they are unable to benefit from such measures. In this connection, will the Government inform this Council:

(1) given that taxi drivers have to hold a valid taxi driver identity card any time during the period between January 1 and March 31 this year for them to be eligible for applying for a subsidy under the relief measures, but it is learnt that currently more than 10 000 taxi drivers are ineligible for making application as their taxi driver identity cards have expired, whether the Government will relax the eligibility requirements so that such drivers may apply for the subsidy as long as they are able to produce (i) a valid rental agreement and proof of work in respect of the aforesaid period and (ii) a valid taxi driver identity card replaced after April this year;

(2) as the trade of rental/hire of pleasure vessels, whose business has been hard hit by the epidemic, is unable to benefit from the relief measures, whether the Government will provide a subsidy for this trade;

(3) given that the amounts of subsidy that beauty parlours may receive under the relief measures are divided into three tiers according to the number of employees, but quite a number of beauticians are self-employed persons instead of the employees of beauty parlours, resulting in many relatively large-scale beauty parlours being eligible for applying for a subsidy of a lower amount only, whether the Government will determine the levels of subsidy for which beauty parlours are eligible by the floor areas of their shops;

(4) given that the wage subsidies provided for employers under the Employment Support Scheme (ESS) are calculated on the basis of their numbers of employees with Mandatory Provident Fund (MPF) accounts, but quite a number of employees of certain trades are aged 65 or above and without MPF accounts (e.g. each restaurant having two employees of such type on average, and around 30 000 to 40 000 security guards in the territory being such type of employees), whether the Government will enhance ESS to cover this type of employees;

(5) given that as operators of suspended working platforms are not construction workers registered under the relevant legislation, they are unable to benefit from the subsidies disbursed to construction workers under the two rounds of relief measures, of the Government's measures in place to fill the gaps, so as to assist operators of suspended working platforms; and

(6) given that no targeted assistance has been provided under the two rounds of relief measures for employees with intellectual disabilities, of the Government's measures to help this type of employees, so that they will not be dismissed or their income will not be reduced as a result of suspension of work, wage cut or reduction in working hours?

Reply:

President,

Having consulted the relevant policy bureaux and departments, my consolidated response to the Member's question is set out below:

(1) According to the Transport and Housing Bureau, regulation 51 of the Road Traffic (Public Service Vehicles) Regulation (Cap 374D) requires a taxi driver to display a valid taxi driver identity plate when providing services in order to validate such person's legal identity as a taxi driver. To facilitate the operation of the taxi trade, the Transport Department (TD) has extended the validity period of the taxi driver identity plate from one year to 10 years since October 6, 2018. Through different channels, including TD's regularly published Taxi Newsletter and trade conference etc., TD has reminded taxi drivers to replace their driver identity plate in time in order to comply with the legal requirement.

The subsidy provided to taxi drivers under the Anti-epidemic Fund aims to provide financial assistance to frontline drivers impacted by the coronavirus disease 2019 (COVID-19) epidemic. Therefore, the eligibility for such subsidy includes the requirement that the applicant must hold a valid taxi driver identity plate any time during the three-month period between January 1 and March 31, 2020. TD will continue to communicate with the trade on the details of the scheme, and will flexibly handle the issues raised by the trade on the specific details while ensuring the proper use of public funds.

(2) According to the Transport and Housing Bureau, the Government has provided a one-off non-accountable subsidy of \$10,000 and a one-off survey fee subsidy for owners of each eligible local commercial vessel, including pleasure vessels let for hire or reward, under the first round of Anti-epidemic Fund. The subsidy has already been paid out starting from mid-March 2020. As at mid-May, over 80 per cent of the eligible vessel owners have received the subsidies.

(3) According to the Chief Secretary for Administration's Office, under the Subsidy Scheme for Beauty Parlours, Massage Establishments and Party Rooms (the BMP Scheme), each eligible beauty parlour and massage establishment will receive a one-off tiered subsidy of \$30,000, \$60,000 or \$100,000, depending

on their scale of operation based on the number of workers as evidenced by the applicant's Mandatory Provident Fund (MPF) remittance statement. Taking into account the fact that some beauty parlours/ massage establishments may not need to make MPF contributions for their workers, a practising accountant's certification of the number of workers on payroll is also accepted as proof of number of workers under the BMP Scheme. The application period of the BMP Scheme ended on May 17, 2020.

When devising the BMP Scheme, the Government has considered adopting shop area as the basis of determining the tiered levels of subsidies. However, as opposed to licensed premises such as catering premises where the licensing authority possesses information on shop area, the Government cannot rely on any existing administrative record to determine the shop area of beauty parlours and massage establishments. Neither do lease documents (such as lease agreements, Demands for Rates and/or Government Rent) contain such information. As such, to ensure that public money is used properly, unless an applicant produces a report by an independent third party professional as evidence of its shop area, it would be difficult for the Government to disburse subsidies solely on the basis of information reported by the applicant. Taking into account the need to expediently implement the BMP Scheme in a manner that would facilitate the sector to apply for the subsidy while enabling efficient and effective vetting of applications, the Government considers that requiring an applicant to submit an MPF remittance statement or a practising accountant's certification as evidence of the number of workers is a more prudent and feasible option.

(4) The Government announced on May 12 adjustments to the Employment Support Scheme (ESS), including the extension of coverage of ESS to around 60 000 employees aged 65 or above whose employers have made voluntary contributions for them under the MPF Schemes. Employers may apply for wage subsidies for these employees with a view to encouraging employers to retain mature employees.

Apart from the 60 000 employees aged 65 or above covered by the ESS, together with around 40 000 employees aged 65 or above under the various sector schemes covering land transportation (i.e. taxi, Red minibuses, Green minibuses and local ferries), laundry, catering and construction sectors which have been, or will be launched under the two rounds of Anti-epidemic Fund, as well as around 10 000 employees aged 65 or above employed by government outsourced contracts whose wages are not affected by the epidemic, the various measures as referred above will altogether cover more than 110 000 employees aged 65 or above.

Besides, the Government has put in place a host of social security schemes, which include the Comprehensive Social Security Assistance, Old Age Living Allowance, Old Age Allowance, etc. Eligible elderly persons may apply for assistance according to their needs and circumstances. Labour Department (LD) provides comprehensive and free employment services for job seekers (including elderly persons aged 65 or above). LD will enhance the Employment Programme for the Elderly and Middle-aged in the second half of 2020 to improve the employability of the elderly and help them stay longer in their jobs.

(5) The second-round measures of the Anti-epidemic Fund include the \$81 billion ESS, which provides wage subsidy to eligible employers through the MPF system such that job retention can be achieved and redundancy can be avoided within the shortest timeframe. Operators of suspended working platforms who are eligible self-employed persons under the MPF Scheme may benefit from the ESS.

(6) The Selective Placement Division (SPD) of LD provides personalised employment counselling, job matching and follow-up services for persons with disabilities (including persons with intellectual disabilities). SPD also administers the Work Orientation and Placement Scheme (WOPS) which provides allowances to incentivise employers to employ, coach and support persons with disabilities. In view of the current employment situation, LD will enhance WOPS in the second half of 2020 by increasing the maximum amount of allowance from \$51,000 to \$60,000 payable to employers for employing a person with disabilities.

The Social Welfare Department's "Enhancing Employment of People with Disabilities through Small Enterprise" Project has since end December 2019 launched two relief measures for social enterprises subsidised by the Project, including advancing the payment of the next two operating grant instalments to social enterprises within the funding period to aid their cashflow arrangements; and allowing social enterprises within the contract period which have financial difficulties to apply for supplementary grants to support their operation expenses, thus safeguarding the employment opportunities of employees (especially persons with disabilities).

[LCQ7: Taxation mechanism for demand-side management measures for the property market](#)

Following is a question by the Hon Jeffrey Lam and a written reply by the Secretary for Transport and Housing, Mr Frank Chan Fan, in the Legislative Council today (June 3):

Question:

Since November 5, 2016, the Government raised the ad valorem stamp duty (AVD) chargeable to residential property transactions across the board to a flat rate of 15 per cent (i.e. Part 1 of Scale 1 rate). Nevertheless, Hong Kong permanent resident (HKPR) buyers who do not own any other residential property in Hong Kong at the time of acquisition of the residential property are allowed to pay AVD at the original rates (i.e. Scale 2 rates), which are lower. Besides, a HKPR who replaces his/her only residential property in Hong

Kong by first acquiring a new property before disposing of the original property may apply for a refund of the difference between the AVD amount computed at 15 per cent and that at the original rate, provided that the original property is sold within 12 months after acquiring the new property. In this connection, will the Government inform this Council:

(1) given that in the last financial year (up to February 29 this year), among the residential property transactions which were subjected to AVD at Scale 2 rates, 77 per cent were transactions for properties of prices ranging from \$4 million to \$20 million, whether the Government has assessed if the buyers of such properties (quite a number of whom being first-time home buyers) found it burdensome to pay an AVD of \$150,000 to \$500,000 after making down payments; if it has assessed and the outcome is in the affirmative, whether it will consider lowering the rates;

(2) of the number of those applications for a partial refund of the AVD payment, in each of the past two financial years, which were approved or still being processed, the average amount of refund involved in such applications, and the average number of days between the execution of the instruments for a transaction on the property purchase to the submission of the AVD refund application by the applicant (with a tabulated breakdown by the group to which the property price/value belonged);

(3) whether it has reviewed if the arrangement whereby persons replacing their properties have to pay an AVD at a rate of 15 per cent first and then claim partial refund of AVD after disposing of their original properties has added financial burden to such persons and impeded the turnover of residential properties; and

(4) whether it will (i) review the effectiveness of the various demand-side management taxation measures for the property market and their impacts on the property market and home-buyers, as well as (ii) consider adjusting such measures or establishing an adjustment mechanism?

Reply:

President,

Having consulted the Inland Revenue Department (IRD), my reply to the question is as follows:

(1) In order to accord priority to the home ownership needs of Hong Kong permanent residents (HKPRs) who do not own any residential property in Hong Kong, under the existing mechanism, if a buyer is a HKPR acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition, the relevant residential property transaction is subject to the lower ad valorem stamp duty (AVD) rates at Scale 2. Rates at Scale 2 are the original AVD rates before the introduction of the demand-side management measures by the Government. Depending on the consideration or value of the property (whichever is higher), rates at Scale 2 range from \$100 to 4.25 per cent of the consideration or value of the

property.

In considering whether there is a need to adjust the stamp duty rates concerning residential properties, the Government must carefully take into account the impact of relevant arrangements on the property market as a whole. Any move to relax the demand-side management measures or to lower the stamp duty rates may be speculated by the market as a signal for adjustments to the Government's policy on the property market, which may result in further exuberance in the market. The relevant move may also stimulate demand for local residential properties from some citizens, and may lead to a counter-productive result of pushing up property prices when the current housing supply still lags behind demand. Therefore, the Government must act prudently to avoid sending a wrong message to the market.

(2) According to information provided by IRD, information on applications for partial refund of AVD in relation to replacement of residential properties in the past two financial years is set out at Annex.

(3) Under the existing mechanism of the New Residential Stamp Duty (NRS), if a HKPR acquires a new residential property to replace his/her only original residential property, he/she has to pay the AVD at the NRS rate of 15 per cent (i.e. Part 1 of Scale 1) in the first instance; he/she may apply to IRD within the statutory time limit for a partial refund of the AVD paid upon proof that his/her only original property has been disposed of within 12 months from the date of executing the assignment of the new residential property. The amount to be refunded is the difference between stamp duties computed at the rate of 15 per cent and the rates at Scale 2.

The Government understands that the existing mechanism of paying the relevant stamp duty in the first instance and claiming partial refund of stamp duty paid after disposing of the original property may increase the acquisition costs for persons replacing their residential properties. That notwithstanding, if the relevant requirements are relaxed, it may invite some owners without genuine intention to dispose of their original properties to, under the guise of property replacement, defer payment of stamp duty or profit from holding more than one residential property for a longer period of time. This goes against the policy intent of introducing demand-side management measures and may create loopholes, thereby undermining the effectiveness of the measures in reducing investment demand for residential property. In formulating relevant mechanism, the Government has to strike a right balance between taking care of the practical needs of HKPRs in replacing their properties and safeguarding the effectiveness of the demand-side management measures.

(4) The Government has all along been closely monitoring the development and trend of the property market. The Government notices that since the introduction of various demand-side management measures, there have been effective results in combating short-term speculative activities, curbing external demand and reducing investment demand. The Government will, as always, remain vigilant and make reference to a series of indicators, including property prices, home purchase affordability ratio, property transaction volume, housing supply, local and global economic changes, etc.,

and take appropriate actions as and when necessary in response to market changes, with a view to ensuring a healthy development of the property market.