

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 29 May 2002

The Council met at half-past Two o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

THE HONOURABLE KENNETH TING WOO-SHOU, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

DR THE HONOURABLE DAVID CHU YU-LIN, J.P.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE MARTIN LEE CHU-MING, S.C., J.P.

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

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

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

DR THE HONOURABLE LUI MING-WAH, J.P.

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

THE HONOURABLE MIRIAM LAU KIN-YEE, J.P.

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

THE HONOURABLE LAW CHI-KWONG, J.P.

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

DR THE HONOURABLE TANG SIU-TONG, J.P.

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

THE HONOURABLE LI FUNG-YING, J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S.

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

THE HONOURABLE MA FUNG-KWOK

MEMBERS ABSENT:

THE HONOURABLE CHAN YUEN-HAN, J.P.

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE DONALD TSANG YAM-KUEN, J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE ANTONY LEUNG KAM-CHUNG, G.B.S., J.P.
THE FINANCIAL SECRETARY

THE HONOURABLE ELSIE LEUNG OI-SIE, J.P.
THE SECRETARY FOR JUSTICE

MR MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR JOSEPH WONG WING-PING, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE

MRS LILY YAM KWAN PUI-YING, J.P.
SECRETARY FOR THE ENVIRONMENT AND FOOD

DR YEOH ENG-KIONG, J.P.
SECRETARY FOR HEALTH AND WELFARE

MRS REGINA IP LAU SUK-YEE, J.P.
SECRETARY FOR SECURITY

MS SANDRA LEE SUK-YEE, J.P.
SECRETARY FOR ECONOMIC SERVICES

MS ELAINE CHUNG LAI-KWOK, J.P.
SECRETARY FOR HOUSING

MS EVA CHENG, J.P.
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

MR RAYMOND YOUNG LAP-MOON, J.P.
SECRETARY FOR COMMERCE AND INDUSTRY

CLERKS IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPER

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

Subsidiary Legislation/Instrument	<i>L.N. No.</i>
Banking (Amendment) Ordinance 2001 (32 of 2001) (Commencement) Notice 2002	85/2002

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Companies Selling Time-share Packages for Overseas Resorts

1. **MR HOWARD YOUNG** (in Cantonese): *Madam President, I have received complaints from members of the public against the staff of some companies selling membership for time-share packages for overseas resorts. These staff employ hard-selling tactics in pressurizing them into signing contracts of a complex nature for buying time-share membership packages before they are perfectly clear about the terms of the contracts, and they find themselves deceived only afterwards. In this connection, will the Government inform this Council:*

- (a) *of the number of companies selling time-share packages for overseas resorts in Hong Kong at present;*
- (b) *of the total number of such complaints received in the past three years and the amount of money involved; among these complaints, the number of persons concerned who were able to terminate the contracts and recoup the money they had paid; and*
- (c) *whether it has considered regulating the way these companies conduct business or following some countries' practices of including a provision in the contracts to allow the contracting parties to have a cooling-off period, so as to protect the interests of consumers?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, my reply to three parts of the question raised by Mr Howard YOUNG is as follows:

- (a) We do not have separate data on the number of companies selling time-share packages for overseas resorts. These companies requires a business registration to operate. While they should have stated their nature of business in the application form for registration, the database does not identify companies by their specific nature of business, such as selling time-share packages.
- (b) In the past three years, the number of complaints received by the Consumer Council relating to time-share packages is as follows:

<i>Year</i>	<i>Number of complaints</i>	<i>Amount involved HK\$</i>
1999	76	1,687,000
2000	74	1,585,000
2001	171	4,111,000
2002 (up to April)	65	1,345,000
Total	386	8,728,000

The average amount of money involved by each case ranged from \$20,000 to \$24,000. About half of the complaints were successfully resolved through mediation, leading to termination of contracts, refunds in full or in part, or offers of additional choices or benefits by the companies concerned. Complainants involved in other cases might, depending on the circumstances of their cases, be advised to pursue their claims through the Small Claims Tribunal.

- (c) In considering whether we should regulate the sale of time-share packages, we must be clear as to what are the specific problems we aim to tackle, and whether regulation is the most effective and appropriate approach.

There is no intrinsic problem with the concept of time-share package. This view is shared by an adjudicator on a case relating to time-

share membership contract in the Small Claims Tribunal. We should not therefore equate time-share schemes with malpractice.

Moreover, the Unconscionable Contracts Ordinance offers recourse for consumers who consider themselves victim to an unfair or unconscionable transaction. Contracts deemed unconscionable might not be enforced in whole or in part, or have the unconscionable parts amended. In the past, there were also examples of successful claims by consumers under the Unconscionable Contracts Ordinance.

We believe that "empowering" consumers so that they could exercise their rights and make their choices conscientiously is an effective way to safeguard their interests. Hence, our focus is on enhancing the consumer's knowledge and increasing awareness. Take the example of complaints against time-share packages, we believe that unpleasant experience may be avoided if consumers are better informed of the nature of such schemes, and are prepared to assert their rights during the transaction. Consumers should be on the alert and think twice when they receive offers suggesting they have won prizes which entice them to join such schemes; insist on scrutinizing the terms of the contract before signing on; and choose to walk out when pressure is felt.

Consumer education is an important aspect of the Consumer Council's statutory functions. Consumer Council has, through its monthly magazine *CHOICE* and the media, provided information and advice on time-share schemes. A brochure on points to note in joining such schemes is also available at all its Consumer Advice Centres.

MR HOWARD YOUNG (in Cantonese): *Madam President, I share with the Secretary, who pointed out at the end of the second paragraph of part (c) of the main reply that it was inappropriate to equate time-share schemes with malpractice for some such products were good. I have the experience of accompanying several people to visit a company in Causeway Bay where time-share schemes were offered. Although no packages were finally purchased, I had felt the severe pressure therein. I am aware some laws in Britain have*

provided that consumers can have a cooling-off period of one week after signing certain contracts. They might even withdraw if they consider the contracts improper.

PRESIDENT (in Cantonese): Mr YOUNG, can you state your supplementary question?

MR HOWARD YOUNG (in Cantonese): *Has the Government studied this practice? I understand that it is adopted by some overseas insurance industries, probably for the sake of targeting malpractice or safeguarding consumers who should fully understand that they have to make long-term contribution after signing the contracts. Has the Government considered the merits and demerits of adopting this practice in Hong Kong?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, we have gathered some data concerning the regulation of time-share schemes and the stipulation of a cooling-off period in countries worldwide. A guideline was issued by the European Union (EU) in 1994 requiring its member states to regulate by way of legislation time-share contracts with a validity of more than three years. Subsequent to the issue of the guideline, the EU published a report on the progress of implementation by its member states. As at October 1999, time-share schemes were being regulated by 15 EU countries in various forms. Insofar as the cooling-off period is concerned, most of the 15 EU countries have specified it to last 10 days, though it was extended to 14 days in Austria and Britain. In some cases, it was subject to certain specifications. For instance, it may be extended to three months or beyond if a relevant party asks for more detailed information (including property information). It will all depend on the regulating circumstances of each country.

We have also studied the regulation of time-share schemes in the United States. According to the information we have acquired, time-share contracts are regulated in different ways by various states. In California, time-share contracts are regulated by way of commercial and professional laws. Buyers are allowed to rescind the contracts within three days. We do not have, however, the detailed information on the relevant refunding arrangements. In Texas, time-share contracts are regulated in a similar manner, though the

contracts can be rescinded within six working days. Again we do not have detailed information on the relevant refunding arrangements. In Australia, time-share schemes are divided into two categories. It is stated clearly in the contracts signed by the members of the "Australian Time-share and Resorts Council" (a non-trade organ) that the relevant schemes can be rescinded within five days. Companies not belonging to this organ are regulated by ordinances registered with the Australian Securities Investment Commission, whereas the cooling-off period may last for as long as 10 days. Nevertheless, we do not have detailed information on the relevant refunding arrangements.

We have also carried out a study in Hong Kong to examine the trades in which a cooling-off period is provided. Actually, there are no cooling-off provisions in the laws of Hong Kong regarding sales and purchase (including property transaction). Nevertheless, we understand that the insurance industry provides a two- to three-week cooling-off period following the signing of an insurance contract. The insured may make a request to rescind the contract during the cooling-off period. Under normal circumstances, a full refund of the premium will be made. The calculation of cooling-off period is within 21 days from the date the insurance contract was signed, or within 14 days from the date the policy was issued (whichever is the shorter). This cooling-off arrangement is meant to be a guideline made by the insurance industry itself and a self-discipline measure. It is not meant to be a legal provision.

PRESIDENT (in Cantonese): Honourable Members, seven Members are still waiting for their turn to raise their supplementaries.

SECRETARY FOR ECONOMIC SERVICES (in Cantonese):Thank you, Madam President.

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

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, I have answered the part concerning whether a provision relating to the cooling-off period has been provided in the laws of Hong Kong and overseas countries.

PRESIDENT (in Cantonese): Secretary, so you have finished your reply.

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, I have finished my reply.

MR KENNETH TING (in Cantonese): *Madam President, the Secretary indicated in the main reply that there was a tendency for complaints against time-share packages for overseas resorts to rise over the past two years. Will the Government consider putting companies registered in the name of travel agencies under special surveillance?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, I think we should first of all find out if the problem is really so serious. As I mentioned in the main reply, a total sum of \$8,728,000 has been involved in 386 cases recorded since 1999, though this number represents only 1% of the number of complaints received by the Consumer Council during the corresponding period. We can nevertheless judge the seriousness of the problem from the amount of money involved. In fact, consumers have already heightened their alertness in this area. Through the mediation of the Consumer Council, more than half of the complainants have received compensation. Therefore, there is no plan at the moment to regulate such commercial transactions by way of legislation. We have also examined whether such activities are being regulated by the Travel Agents Ordinance. As far as we understand it, such business activities are not governed by the Ordinance at present.

MR ANDREW CHENG (in Cantonese): *Madam President, the Secretary kept on explaining the cooling-off period. I hope the Secretary can really understand that many people employ hard-sale tactics resembling a "hedge-in fight" to compel their clients to sign contracts. As stated by the Secretary earlier, the EU and many countries have since 1994 legislated on the provision of a cooling-off period in contracts. Insofar as Hong Kong is concerned, the Consumer Council has recently dealt with some relevant cases and, according to my understanding, it has entered into agreement with certain local firms that a cooling-off period be added when contracts are signed, though the period may last only three to five*

days. As the Consumer Council has deemed it necessary to do so, and the firms are also willing to accept the cooling-off arrangement to prevent their industry from being tainted by unruly elements, why did the Government still insist that the problem was not so serious and refuse to consider such legislation?

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, we would like to thank the relevant companies for making the proper business arrangements. We also welcome the industry to exercise self-regulation and give consumers better protection. For the time being, we think it is impossible for us to legislate everything. This Council is a solemn place, while legislation is also a very serious procedure. We cannot rely solely on legislation to resolve all problems. In addition to consideration of resources, legislation is an extremely important step. It must be reviewed and considered very seriously.

Insofar as consumer protection is concerned, it is most important for us to launch publicity campaigns to remind consumers of the need to immediately heighten their alertness when they are approached by a staff representing a certain company or receive a telephone call and are being told they are being offered some concessions or they have won a prize to become a member of the company. Thus, a lot of things cannot be resolved simply through legislation. Consumers should also understand the position they should uphold before the problems can be radically resolved.

PRESIDENT (in Cantonese): This Council has spent more than 16 minutes on this question. I shall allow one last supplementary.

MR TOMMY CHEUNG (in Cantonese): *Madam President, earlier on, the Secretary indicated that the Government would not resort to legislation. Nevertheless, the Consumer Council has proposed to the Government last year to amend the Trade Descriptions Ordinance, the Summary Offences Ordinance and the Inconscionable Contracts Ordinance. Will the Secretary inform this Council whether the Government will implement these proposals by amending these ordinances to offer better protection to consumers?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, what we are doing at the moment is to review whether the relevant legislation can, within its own scope, resolve some of the problems raised by the Consumer Council. Furthermore, we are examining how the existing legislation can be enforced to dovetail the concerns of the Consumer Council. We are still reviewing the scope of the relevant work to examine what powers can be invested in the Consumer Council under the existing law. This is what we are doing now.

PRESIDENT (in Cantonese): Second question.

MISS CHOY SO-YUK (in Cantonese): Madam President, I would first like to say something. It seems that my Honourable colleagues has not yet received the main reply to my main question.

PRESIDENT (in Cantonese): Miss CHOY, please ask your main question.

Protection of Large Trees from Damage Caused by Works

2. **MISS CHOY SO-YUK** (in Cantonese): *Madam President, a large banyan tree at Kadoorie Road fell down this month, crushing a man to death. It was reported that the fall was allegedly caused by maintenance works on the slope near the tree because workers had trimmed away part of its main roots and covered the trunk bottom tightly with concrete paste, resulting in the withering of the roots. In this connection, will the Government inform this Council whether:*

- (a) *officers will be deployed to inspect big trees in the territory which may be affected by the works of any projects, and to provide proper treatment and conservation when necessary; if so, of the details; if not, the reasons for that; and*
- (b) *more effective conservation measures will be formulated to ensure that the trees within construction sites can grow normally and not be affected by the works?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, as the tree toppling accident at Kadoorie Road is still under investigation by the police, we believe that it would not be appropriate to comment on the causes of the accident at this stage.

- (a) We do not consider it necessary to conduct a territory-wide inspection exercise of trees that may be affected by works projects.

The Government has already put in place a set of comprehensive measures to preserve trees. For government projects, the Works Bureau Technical Circulars state clearly that government officers are responsible for protecting trees from unnecessary pruning, damage or felling. Notwithstanding engineering and financial constraints, the relevant departments need to consider different options for tree preservation when designing and implementing works projects.

If there are trees on a government works site, the department carrying out the works needs to inspect and make a record of them during the design stage regardless of whether the trees would be affected by the project. Should the trees need to be transplanted or felled, the department concerned is required to submit to the Lands Department a tree inspection report, together with a treatment plan and a compensatory planting proposal. The Leisure and Cultural Services Department (LCSD) and the Agriculture, Fisheries and Conservation Department (AFCD) will examine the proposals and provide professional advice to the Lands Department to assist the vetting of applications.

Where trees are retained on sites but might be affected by the projects, the relevant department must adopt appropriate preservation measures to properly protect the trees from damage. The LCSD and AFCD will provide professional advice for the department to effectively protect the trees. Project supervisors also need to conduct regular site inspections to ensure that the trees will not be affected by the works.

As for private works, authorized persons of the projects are responsible for ensuring that trees would not be affected by the

works. The Lands Department conducts regular site inspections to ensure that the projects are implemented according to the lease conditions. It also takes follow-up actions upon receiving public complaints. If interference with trees on sites that have a tree protection clause is evidenced, the Lands Department may impose a fine on the landowner pursuant to the lease conditions, or impose additional conditions requiring the landowner to carry out compensatory replanting or landscaping works.

- (b) The Government has already put in place a set of effective measures to ensure that the trees within the project areas will not be affected by the works.

MISS CHOY SO-YUK (in Cantonese): *Madam President, in part (a) of her main reply, the Secretary said the Government has already put in place a set of comprehensive measures to preserve trees, so as to ensure that they would not be subject to unnecessary pruning. I would like to cite an example to seek the Secretary's explanation. In Tai Hom Village, Diamond Hill, on a site managed by the Lands Department, an old big banyan tree was rotten to death and fell to the ground. In response to our query, the Lands Department said it was only responsible for managing the land but not the trees. We made an inquiry with the AFCD but were told that actions could only be taken to protect the trees, subject to referral and authorization by the Lands Department. Right now, the banyan tree is still lying on the spot where it fell. We approached the LCSD but were told that it was not within its jurisdiction for the tree was not within 5 m of the roadside. In this case, may I ask the Secretary, how could it be said that the Government has put in place a comprehensive policy on protecting trees from being damaged or felled?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I will follow up on this specific case with the relevant departments for the crux of the problem is whether special measures should be in place to protect trees on works sites when construction works are in progress. In fact, I have explained in my main reply which are the parties that should protect trees affected by construction works on works sites. However, as regards the specific case Miss CHOY So-yuk talked about earlier, I would take up the matter with the relevant departments and give Members a written reply to explain the cause of the problem. (Annex I)

MR WONG YUNG-KAN (in Cantonese): *Madam President, with reference to part (b) of the Secretary's main reply to Miss CHOY So-yuk's main question, may I ask over the past several years, how many cases of unlawful damaging or felling of trees inside or outside the works sites were caused by contractors for various reasons in order to carry out the construction works? What has been done to follow up with such situations?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, the Buildings Department have not keep any statistics on the number of trees felled by contractors in construction projects. However, in the course of private construction works, if there were tree protection clauses in the land lease and the relevant party did not compile with the clause and failed to take proper care of trees, then the Lands Department may impose a fine on the landowner pursuant to the lease conditions. I understand that during the period from 1992 to 2001, there were 21 such cases involving landowners being fined by the Lands Department for failing to take proper care of trees in the course of private construction works.

MR JASPER TSANG (in Cantonese): *Madam President, when the Secretary said in her main reply that government departments should protect trees when construction projects are underway, she used terms like "responsible for", need to consider", what should be done "during the design stage" and "must adopt" certain measures. In relation to things that the Government is "responsible for" or "must do", may I ask what kind of monitoring system is there? What would be the consequences if the relevant departments did not perform or neglect to perform certain things?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, in fact, different departments have different shares of responsibilities in adopting such preventive measures. Though the vetting authority lies with the Lands Department, the AFCD and the LCSD are responsible for providing professional advice. If necessary, a District Lands Conference, chaired by an Assistant Director of the Lands Department may also be conducted. At present, we have established a mechanism to co-ordinate the greening efforts, including the planting and maintenance of trees, of all relevant departments. In the event of any problems, the case could be referred to an

inter-departmental working group for actions. The Chairman of this working group is the incumbent Secretary for the Environment and Food who is vested with the powers to deal with relevant issues.

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

MR JASPER TSANG (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. My question is, if relevant departments did not adopt tree protection measures they "must adopt", what would be the consequences?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, under the existing mechanism, it could be said that the departments are monitoring one another and a mechanism is also in place to supervise the work of every department.

MS MIRIAM LAU (in Cantonese): *Madam President, many slopes in Hong Kong are actually tightly sealed in concrete paste, that is, they have been strengthened by means of "shotcreting" where tree roots are often covered with concrete paste. And, the banyan tree in question might have been caused to collapse for this reason. However, in Hong Kong, many slopes are actually strengthened in this way. In view of this incident, will the Government conduct a comprehensive review to see whether such a method of shortcreting the slopes would have an impact on environmental protection and trees conservation?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, according to information at hand, the Civil Engineering Department (CED) has been conducting researches on the latest technology for strengthening slopes in Hong Kong and the works department of the CED has been instructed through Works Bureau Technical Circulars that shotcreting should be avoided as far as possible in dealing with slopes. I believe that the relevant works department would certainly adopt the latest technology and observe the principle that trees growing on slopes should not be affected.

However, I would also like to take this opportunity to explain that in general, if the trees are healthy, their roots would have a tight grip on the soil, and this is helpful in maintaining the stability of the slope to a certain extent. However, if there were problems with the health of trees, the safety of the slope would be affected.

DR RAYMOND HO (in Cantonese): *Madam President, I understand that during the design stage of a project, it is often necessary to take photographs to record the locations of trees. Would the Secretary inform us whether the persons-in-charge of government projects or in the case of outsourcing works, related persons of relevant consultancies, are provided with sufficient information to let them know which trees should be protected or the depth and width of the roots of trees that should be protected?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, in fact, in the case of both government and private projects, a tree inspection report should be compiled before the commencement of works to list the location of trees on works sites for record purposes even if it is not necessary for trees to be felled. Upon receipt of such reports, the works department concerned would, depending on their needs, seek professional advice from the AFCD or LCSD.

MR HOWARD YOUNG (in Cantonese): *Madam President, the Wanchai District Council raised the issue of the felling of trees on private works sites last week. Our impression was that due to legal implications, it seems that the Government cannot do anything about it. Therefore, even though the Government said that it has already got a comprehensive policy, it may actually be impossible to offer comprehensive protection for trees. If there were simply no conservation measures for certain lots, then is it true that the Government cannot do anything in the area of trees protection? Furthermore, what is the proportion taken up by private land in a similar situation in Hong Kong?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, as regards this issue, I had consulted the Lands Department to acquire an understanding of the relevant situation. As Mr Howard YOUNG

said, if the land lease were drawn up before 1972, there would not be any tree preservation clause. However, if it were necessary to modify the lease conditions in the course of development, the Lands Department would, in accordance with the prevailing conditions, add in relevant clauses on tree preservation where possible. I have tried to seek information on relevant figures from the Lands Department. Though the Lands Department could not provide me with any figures, we could see from the information it provided that there are clauses on tree preservation in most of the land leases in Hong Kong. The general situation is, even if there are no tree preservation clauses in the land lease, before the commencement of private works projects or when applications have to be submitted to the Buildings Department, it would consider whether other means, such as by imposing restrictions on the design and height, could be employed to achieve the target of trees preservation. When I said such measures are comprehensive and effective, we could not unilaterally alter the terms of such leases due to restrictions in the land lease.

PRESIDENT (in Cantonese): We have spent 16 minutes on this question and will now move onto the last supplementary question.

MISS CHOY SO-YUK (in Cantonese): *Madam President, in the last paragraph of her main reply, the Secretary emphasized that the Government has already put in place a set of effective measures to ensure that the trees within the work sites will not be affected. I would like to tell the Secretary that a big tree in Lung Wah Street, Sai Wan, placed under government protection and should not be affected by the works projects, has now had a substantial part of felled and not much of it were left. As regards to this specific case, I would like to ask the Secretary how has the set of effective measures operated? Why has the tree become what it is today?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I would follow up on the specific cases mentioned by Members one by one. What I would like to say is that we have already got an effective mechanism to deal with these issues. Furthermore, the inter-departmental working group would conduct a clause-by-clause study on the internal guidelines to see whether certain clauses should be enhanced and whether the duties of relevant departments should be more clearly defined. The

most important thing is we would conduct regular checks to see whether there are problems and loopholes in policy enforcement; if so, we would see how the existing mechanism could be improved.

PRESIDENT (in Cantonese): Third question.

Nurturing Growth of Local Companies

3. **MR SIN CHUNG-KAI** (in Cantonese): *Madam President, it is learnt that some members of the World Trade Organization (WTO) facilitate local companies to be imparted the technologies that they lack by awarding contracts of government projects to foreign companies. In this connection, will the Government inform this Council whether:*

- (a) *subject to the principles of the WTO Agreement on Government Procurement (GPA), it has made reference to the practices of other WTO members and formulated relevant policies and incentives which aim at nurturing the growth of Hong Kong-based companies by enabling them to acquire the technologies that Hong Kong lacks through their exposure to the government projects awarded to foreign companies, so as to enhance the competitiveness of local companies; if no such policies and incentives have been formulated, of the reasons for that;*
- (b) *nurturing the growth of local companies has been set as one of the objectives in the implementation of large-scale government projects on information technology application (IT); if not, of the reasons for that; and*
- (c) *it has evaluated the effectiveness of the various large-scale government projects on IT application awarded over the past three years, including the Smart Identity Card Scheme, the replacement of the Command and Control Communication System of the Hong Kong Police Force and the replacement of the communication and mobilizing system of the Fire Services Department, in nurturing the growth of local companies; if it has, of the valuation criteria and the outcome thereof; if not, whether such evaluation will be made?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President,

- (a) Of the 140-odd members of the WTO, 13 of them, including Hong Kong, have signed the GPA¹. The GPA aims at ensuring that its contracting parties conduct government procurement in accordance with the two major principles of "non-discrimination" and "transparency" in order to obtain the best value for money. The principle of "non-discrimination" includes most-favoured-nation treatment and national treatment, which means that for procurement covered by the GPA, the Hong Kong Government shall accord the suppliers of another contracting party treatment no less favourable than that accorded to the suppliers of any other contracting parties or any local suppliers. The GPA also clearly stipulates that, when selecting suppliers, evaluating tenders and awarding contracts in the course of procurement, a contracting party cannot adopt "technology licensing" measures to promote local development. As we understand, "technology licensing" measures include requiring foreign companies awarded with government projects to transfer technologies to local companies which participate in those projects.

Further, our established government procurement policy is that we would not give preferential or discriminatory treatment to any suppliers, and we will select services and products that best serve public interest with the objectives of ensuring open and fair competition and achieving best value for money.

As such, the Hong Kong Government will not impose any "technology licensing" measures in our procurement work.

- (b) One of the major objectives of our "Digital 21" IT Strategy is to promote the development of the local IT industry. To achieve this objective, the Government has been actively outsourcing IT projects to create a market of sufficient size to stimulate the development of the local IT industry.

¹ The GPA is a plurilateral trade agreement and so far there are 13 parties to this Agreement, namely Aruba; Canada; European Union; Hong Kong, China; Iceland; Israel; Korea; Japan; Liechtenstein; Norway; Singapore; Switzerland and the United States.

As a party to the GPA, the Hong Kong Government has to comply with its provisions in inviting tenders for large-scale IT projects. The Government cannot set aside a certain proportion of projects for bidding by local companies exclusively. Neither will it require foreign companies to form partnership with local companies to bid for government projects. However, without breaching the GPA, the Government will exercise flexibility to assist small and medium-sized companies in the industry in bidding government IT projects. For example, where practicable and without affecting the projects, larger scale projects can be split into smaller ones to provide more opportunities to companies interested in becoming suppliers of services outsourced by the Government. We have also provided more information on government IT projects and relieved the financial burden on the contractors (such as not requiring performance bonds to be provided when the contractors can prove that they have sufficient financial capability to undertake the projects) so as to encourage more small and medium-sized companies in the industry to bid for government IT projects.

- (c) In implementing individual IT application projects, the Government's primary consideration is to meet the operational requirements of user departments and achieve cost effectiveness. Therefore, nurturing the growth of local companies has not been set as a major objective in the implementation of such projects and we have not made any evaluation in this respect. However, the active outsourcing of government IT projects would certainly help drive the development of the local industry.

Statistics of the past three years indicate that the vast majority of government IT projects were awarded to locally incorporated companies, including companies with their principal business based in Hong Kong and branch offices of multinational companies incorporated in Hong Kong. These companies may, taking into account the scale and complexity of the projects concerned, undertake the projects alone or in partnership with other companies. They may also introduce, through their business partners or their overseas branch offices, advanced technology that Hong Kong has yet to embrace.

Subject to the requirements of individual projects, the Government will require the contractors to make appropriate arrangements when introducing the necessary advanced technology, such as requiring the principal personnel responsible for the project to work full time in Hong Kong to ensure that the project meets the contractual requirements and is implemented according to schedule, and requiring the contractor to ensure that it has adequate supporting staff in Hong Kong for the relevant advanced technology. We have incorporated similar requirements in the contracts of large-scale government IT application projects, including the Smart Identity Card Scheme, the Command and Control Communication System of the Hong Kong Police Force and the communication and mobilizing system of the Fire Services Department.

Madam President, we are convinced that the above arrangements would encourage multinational companies to increase co-operation with local companies and introduce advanced overseas management experience as well as promoting the adoption of advanced technology in Hong Kong.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, I am glad to learn that 13 WTO members have signed the GPA. I have often heard that such member states as Singapore, have taken these measures to enable local companies to be awarded contracts or to grow through government projects. Has the Government made any comparison to see what differences there are between their tender contracts and ours in Hong Kong? Why is it that their conventions or practices are viable but the same cannot be implemented in Hong Kong, despite the fact that we all are signatories to the GPA?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, as far as we understand it, Singapore is also one of the 13 contracting parties. In other words, they are also required to accord the same treatment to Hong Kong IT companies or other contractors taking part in any tendering exercise. Our current practice is that on the premise of not affecting the relevant projects, we may exercise some measure of flexibility to meet the objective of achieving the best value for money. For example, if the relevant technology requires the permanent stationing of a

group of personnel in Hong Kong, we will include this in the terms of the tender. To fulfil this requirement, the relevant company may have to recruit a large number of employees in Hong Kong and even provide training for them so as to transfer the technology to them beforehand. Yet, this is not our objective. Our objective is to ensure that the project can proceed smoothly and meet our requirements. In this connection, we believe different countries may have different practices. As to a specific comparison between Hong Kong and Singapore, we do not have such information.

MR ALBERT CHAN (in Cantonese): *Madam President, in part (c) of the main reply, the Secretary mentioned that nurturing the growth of local companies has not been set as a major objective of the Government in the implementation of individual IT application projects. Madam President, the authorities have recently made continuous efforts to advocate local community economy, but the relevant Policy Bureaux and departments have not provided matching policies or measures at all. In other words, the Government has only talked a great deal about it but has taken no concrete measure to support its implementation. If the Government genuinely wishes to promote local community economy, can it consider formulating measures and policy directions with the major objective of nurturing the growth of local companies particularly in implementing individual IT application projects? Can the Government consider and review this?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, perhaps I should further explain this part of my reply. This part of the reply, when reading in context, means that when conducting government procurement in the course of implementing individual IT application projects, should nurturing the growth of local companies be set as an objective? Our answer is that we hope we can meet both objectives, but we cannot give up the objective of achieving the best value for money in the course of our procurement and adopt nurturing the growth of local companies as our only major objective. It is because in conducting tender exercises, we certainly hope to obtain in return value-for-money services or products. This is very important. In the meantime, if we are able to meet both objectives, there will also be measures to facilitate the growth of local companies. For example, we will split a large-scale project into many smaller projects as far as possible to facilitate bidding by local companies. Moreover, we will examine the possibility of allowing a greater degree of flexibility in respect of

financial arrangements. In spite of these measures, it does not mean that we will not be able to meet the most important objective and that is, the objective of achieving the best value for money, in the course of our procurement.

DR TANG SIU-TONG (in Cantonese): *Madam President, the Secretary stated in part (a) of the main reply that 13 WTO members have signed the GPA. Of the 140 WTO members, only 13 or less than 10% have signed the GPA. Why does Hong Kong sign the GPA but not for these other countries? What good does it do to us after signing it? Have we actually tied our own hands in so doing?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, of the 13 members that are signatories to the GPA, many are countries with which Hong Kong has developed major trade ties, such as Canada, the European Union, the United States, Singapore and Switzerland. I also understand that the European Union consists of 15 countries which are also major trade partners of Hong Kong. The signing of the GPA is greatly beneficial to our free trade, for these countries have to remove all their trade barriers and allow bidding from tenderers in Hong Kong. Therefore, we consider that signing the GPA is tremendously helpful to promoting free trade in Hong Kong. As to why many other WTO members have not signed it, I am certainly not in a position to speculate their reasons. But I think many countries, especially the developing countries, must have regard for their own pace of development. They also have to consider the fact that it takes time for them to catch up and so, they must provide some measure of protection for their domestic industries. If they open up their markets completely in one go, it may deal a very great blow to them. For these reasons, many developing countries may not consider signing the GPA.

DR TANG SIU-TONG (in Cantonese): *A brief follow-up, please. I just want to ask as the Secretary said that.....*

PRESIDENT (in Cantonese): Dr TANG Siu-tong, you are not allowed to ask a supplementary question this way. You can only state the part that has not been answered.

DR TANG SIU-TONG (in Cantonese): *I just wish to ask whether or not it would be a great loss to Hong Kong had Hong Kong not signed the GPA. The Secretary did not answer this point.*

PRESIDENT (in Cantonese): Dr TANG, is this point part of the supplementary question asked by you earlier on? As far as I remember, it appears that this part was not included in your question.

DR TANG SIU-TONG (in Cantonese): *Just now I was asking the Secretary about the pros and cons of signing the GPA.*

PRESIDENT (in Cantonese): Dr TANG, please sit down.

MR NG LEUNG-SING (in Cantonese): *Madam President, the Secretary mentioned in part (b) of the main reply that to facilitate bidding by small and medium-sized enterprises for these projects, the Government has, among other things, split larger scale projects into smaller ones. In this connection, has the Government some longer term and more favourable measures to facilitate participation from local small and medium-sized enterprises? For example, will stipulations be made in future to require foreign companies awarded with large-scale projects to transfer their technologies to the relevant local companies?*

PRESIDENT (in Cantonese): Which Secretary will give an answer? Secretary for Information Technology and Broadcasting.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, if we stipulate technology transfer in the terms of the tender, then as far as we understand it, this might be in conflict with the GPA, for we are not allowed to do so. But as I have explained earlier on, we can exercise some measure of flexibility by requiring the relevant company to have a group of technology personnel permanently stationed in Hong Kong. In that case, the objective of technology transfer can be achieved, because if the company concerned is required to set up

a company in Hong Kong, then it may want to enter into partnership with some local companies. We have checked the records for the past three years and found that 78 IT contracts being opened for tender were awarded to locally incorporated companies. From this, we can see that these arrangements should have served their purposes, because their number accounted for as high as 95%. With these stipulations, we can satisfy the requirements of the GPA on the one hand and on the other hand, they allow us to meet the objectives of technology transfer and facilitating bidding by local companies for these contracts as far as possible.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, in part (a) of the main reply the Secretary mentioned that 13 WTO members have signed the GPA. We are one of the contracting parties where free trade is most earnestly practised, do we have any mechanism in place to monitor whether or not the other 12 countries have disseminated in Hong Kong such messages about their tender invitations?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, since they have signed the GPA, they should bring to the notice of the world information about their tender invitations for government works projects in a transparent and open manner, including uploading all the information onto the Internet and notifying business associations of other countries or offices of international enterprises in their countries of these opportunities. In fact, similar practices are adopted in Hong Kong. But the WTO has not stipulated the way in which this information should be published. However, we know that other contracting parties have by and large followed this practice.

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

MR LAU PING-CHEUNG (in Cantonese): *Madam President, it appears that the Secretary did not answer my supplementary question. I asked the Secretary if the Hong Kong Government has any mechanism in place to monitor whether or not other countries have taken the same actions, but the Secretary only replied that they should do so. Then has the Government actually set up a mechanism to monitor whether or not they have taken such actions? In my supplementary*

question, I asked whether or not they have taken these actions, but the Secretary only replied that they "should" do so, and the word "should" only carries a general sense.

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, I think we should look at it from two levels. At the first level, I think those who most want to know whether the other countries have followed these procedures are the tenderers themselves. Since there are so many kinds of industries, the Government does not have a central mechanism to keep track of what projects are open for tender in foreign countries. If, in countries that are signatories to the GPA, there are such projects that have not come to the notice of companies in Hong Kong, then the Government should be informed in the first instance. If we learn of such situation, the WTO has the mechanism to resolve disputes. In case there are really these disputes, then the problem can be resolved at another level, that is, the international level. But according to our understanding, there have not been many such cases so far.

PRESIDENT (in Cantonese): We have spent over 17 minutes on this question. Now we will move on to the fourth question.

Handling Sexual Abuse Cases

4. **MR MICHAEL MAK** (in Cantonese): *Madam President, regarding recent successive revelation by the mass media of alleged incidents of sexual abuse on boy by Catholic priests, will the Government inform this Council whether:*

- (a) *apart from the above-mentioned, it has received any reports of similar incidents involving other religious personnel; if so, of the details;*
- (b) *it will conduct studies and draw up measures to prevent the recurrence of similar incidents and, without compromising the respect for freedom of religion, establish clear guidelines and a complaints mechanism for handling sexual abuse cases by schools, dormitories or residential care homes and so forth, operated or managed by religious bodies, in order to protect the rights of the victims; and*

- (c) *it will require the religious bodies concerned to disclose their internal records when investigating criminal cases involving sexual abuse in future?*

SECRETARY FOR SECURITY (in Cantonese): Madam President,

- (a) The Government maintains a Child Protection Registry, which is a centralized registry of child abuse cases (including sexual abuse) under the administration of the Social Welfare Department (SWD). However, it does not capture information on the religious background or religion-related occupation of abusers. Nor do the police keep statistics on breakdown by occupation of arrested persons.
- (b) The SWD has, in consultation with relevant government departments and non-governmental organizations (NGOs), formulated multi-disciplinary guidelines stipulated in the "Procedures for Handling Child Abuse Cases" which was last revised in 1998. The Procedures provide guidance on how the government departments, NGOs, schools, residential homes for children and other concerned professionals should work together to handle suspected child abuse cases including those involving sexual abuse. The Procedures have been widely circulated and are applicable to, among others, schools and residential child care facilities.

To ensure that all primary and secondary schools would identify early signs and symptoms of child abuse among their students and report such cases, the Education Department delivered to all schools the Chinese version of the Procedures in October 2001. Seminars for school staff were also held on 1 December 2001 and 13 March 2002 to explain the procedures on handling child abuse cases and share with participants the multi-disciplinary collaboration across departments. Moreover, a circular memorandum was issued to all schools, requesting school heads to follow the Procedures in cases where the abuser was found to be a school staff.

As for preventive measures, we have launched public education and publicity activities on both a territory-wide basis and at the district

level. The activities include television and radio Announcements of Public Interest, distribution of posters and booklets, and a series of training programmes. They aim at helping children develop the knowledge and skills to protect themselves against sexual abuse, enhancing parents' and carers' awareness of child sexual abuse, and encouraging early reporting of suspected cases for professional intervention.

- (c) The police investigate each and every criminal case thoroughly and in accordance with police powers conferred by various ordinances. If necessary, legal advice will be sought. However, there is no statutory obligation for religious bodies to disclose their internal records when investigation of sexual abuse cases is undertaken by the police.

MR MICHAEL MAK (in Cantonese): *Madam President, under normal circumstances, the result of preventive measures should usually be quite good. However, under exceptional circumstances, in criminal cases such as paedophile crime, we could only get half the result with twice the effort; if the measures were not carried out properly, the consequence would even be disastrous. Since the Government has established a centralized registry of child abuse cases (including sexual abuse), I would like to know whether it has captured information on criminal cases involving paedophile crime? Furthermore, the most important thing is, exactly what kind of professional follow-up service will these victims receive?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I will answer this supplementary first, as Dr YEOH who is sitting next to me may have something to add later on.

As far as I know, the Director of Social Welfare chairs a special committee on child abuse, which co-ordinates and handles child abuse cases, such as finding out appropriate measures to be adopted on sexual abuse cases to children. Certainly, as for preventive measures, education and publicity work should be conducted in every school. As the cause of such crime is very complicate, it is hard for the Government to single out any person who is paedophile from the mass; it is therefore hard to prevent such crime. Accordingly, to the best of my

knowledge, up to now, preventive measures taken by the Government mainly focus on teaching relevant professions, NGOs and social workers, with a view to detecting possibly abused children, and providing professional training on how such cases should be handled.

As for the question of what measures do government departments have in order to deal with these cases, there are a number of measures. Let us take the police for example, most "districts" or "stations" have their own Child Abuse Investigation Unit. In other words, police stations in every district have specifically trained police officers who can handle child abuse cases. The Child Protection Special Investigation Team of the SWD will work together with the Child Abuse Investigation Unit of the police.

Furthermore, there are special arrangements for obtaining evidence from these vulnerable youngsters. The Video Recording Suites for vulnerable witness introduced by the police in 1995 is a special video recording arrangement which allows young victims to give evidence via video recording, so that they may not have to give evidence in court or make a statement in the police station. Moreover, the videotapes could be presented as evidence in court.

Since 1996, the police and the SWD have launched the Witness Support Programme. Under that programme, there will be supporting aides escorting young victims to the Court to give evidence. Furthermore, the protection of women and juveniles unit of the police will provide special shelter or so called "safe house" to abused child, so that the child may get away from the detrimental environment and live under the protection of the police. To the best of my knowledge, the Department of Justice also has a Vulnerable Witnesses Team and a group of specially trained counsels and attorneys who will take statements from these victims and deal with their cases in an exclusive way. In fact, ever since the '90s, relevant government departments have adopted a range of special measures to deal with vulnerable witnesses.

I do not know whether Dr YEOH has anything to add?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, with regard to the SWD, if someone reports on a suspected child abuse case, a multi-disciplinary group of the SWD will discuss the case and see whether appropriate service should be provided, or the SWD should intervene and protect the young victim. Moreover, as far as the suspected sexual abused

victim is concerned, the SWD will provide referral services, including counselling service or referral to a psychologist. Certainly, the referral can only be made with the consent of the suspected victim. If the alleged child-molester is one of the parents or a member of the family, even if he objects, the SWD can still intervene and give protection to the child concerned under the Protection of Children and Juveniles Ordinance.

PRESIDENT (in Cantonese): Mr MAK, is your supplementary question not answered?

MR MICHAEL MAK (in Cantonese): *Madam President, the Secretary has not answered the first part of my supplementary, that is, whether it has information on the criminal cases involving paedophile crime.*

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

SECRETARY FOR SECURITY (in Cantonese): Madam President, if someone abuses a child, I believe he should be a paedophile. That is my deduction.

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, some people criticized that the paedophilic Catholic priests incident is a political struggle and commented with certainty that the police was disgruntled about the high profile intervention of the Catholic Church on the right of abode issue, and consequently publicized old cases as such in order to take reprisal against the Catholic Church. May I ask the Secretary if this is true?*

PRESIDENT (in Cantonese): Mr YEUNG, in accordance with the Rules of Procedures, you shall not ask the Secretary to confirm whether statements of the press are accurate. Please raise your supplementary in another way.

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, the Secretary mentioned in part (c) of her main reply that there was no statutory obligation for religious bodies to disclose their internal records. Is it because of such*

disgruntlement of the police with the Catholic Church for doing the things which I have just mentioned that such old cases were disclosed via the press?

PRESIDENT (in Cantonese): Secretary, you have the right to choose how the supplementary should be answered.

SECRETARY FOR SECURITY (in Cantonese): Madam President, first of all, I have to emphasize that the Government would definitely not adopt this kind of conspiratorial approach to respond to criticisms in that respect. Furthermore, the major government department dealing with the right of abode cases is not the police; it should be the Immigration Department. In fact, the police only set up the hotline on 4 May after they had learnt about the alleged incidents of sexual abuse on the boys by Catholic priests from the headline of an English newspaper on 2 May. They only received four calls from 4 May up to now, in which two were inquiries and two were reports. Therefore, the allegation that the Government intentionally disclosed some information in order to take reprisal against a certain party is totally groundless.

MR JAMES TO (in Cantonese): *Madam President, I would like to follow up part (c) of the main question of Mr Michael MAK. As far as I know, the strict principles of the law is that besides observing the code of confidentiality, paying due respect to laws and seeking court approval for the access to certain kind of news information after going through specific procedure, lawyers and litigants should evaluate public interest before disclosing the relevant information. As for activities such as confessions being conducted by religious bodies and their followers, there is no exemption for the obligation of confidentiality. May I put the following question to the Government: on the one hand, we should pay respect to the freedom of religion, on the other hand, there is no exemption in this respect as far as the law is concerned; so when the authorities concerned enforce the law, how can it strike a balance and on what basis can it obtain evidence, and what could be done if the information to be obtained involves religious services such as confession or rituals considered very important by religious bodies?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, there is no legislation which forces a person to report to the police. As far as I know,

neither is there any legislation which forces the clergy to provide the police with the information they obtained from confessions, with a view to assisting the investigation of the police. Furthermore, to the best of my knowledge, the information obtained from confessions are usually oral information, and unless the clergy concerned has made written notes when he was hearing the confessions, otherwise the police will have no idea of what evidence that has been obtained. Hence, we are not giving any special favours to certain members of the clergy, but if there are only some oral information without any written evidence, tapes or notes and so on, couple with the fact that nobody makes any report to the police, then it would be impossible for the police to know what information they should seek from the priest, since they do not know what kind of confession the priest had heard.

Nevertheless, according to the Police Force Ordinance, the police certainly have the right to apply for court approval for a search warrant in order to collect evidence or for a court order to seize evidence. If, in the course of investigation, the police have sufficient evidence to substantiate that a certain premises contains evidence, the police may of course follow regular legal procedure to search that premises and seize the information.

MR JAMES TO (in Cantonese): *Madam President, what I wish to follow up is that besides the written evidence the Secretary has just mentioned, will the police ask a certain clergy to provide the oral information he had heard from the confession? How can the Government strike a balance between the two, or will the Government take that action? This is part of the supplementary I have just asked.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, the police is duty bound to bring culprits to justice after crimes are reported and investigated. On receipt of a crime report, we would surely question people who are probably in the know. However, unless there are clear provisions in the law, it would be difficult to force a certain party to give evidence.

I would leave it to the Secretary for Justice to provide further information on legal issues.

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

SECRETARY FOR JUSTICE (in Cantonese): Madam President, just as the Secretary for Security said, if the defendant confessed to the priest that he had abused a child, under the law of the Vatican, the priest should keep the rule of confidentiality. However, if the priest discloses to the police that there is one such written confession, and the information is found useful to prosecution, then the priest will be summoned to give evidence.

As to how the Court will deal with him when he is summoned for giving evidence, please allow me to cite two cases for illustration. It has been pointed out that "The Court has a discretion to excuse a witness from answering a question when to do so would involve a breach of confidence." In the *Hunter v. Mann* case in 1974, the Judge said, "If a doctor, giving evidence, is asked a question which he finds embarrassing because it involves him talking about things which he would normally regard as confidential, he can seek the protection of the Judge and ask the Judge if it is necessary for him to answer. The Judge, by virtue of the overriding discretion to control his court which all English judges have, can, if he thinks fit, tell the doctor that he need not answer the question. Whether or not the Judge would take that line, of course, depends largely on the importance of the potential answer to the issues being tried." Furthermore, in the *British Steel Corp. v. Granada Television Ltd.* case in 1981, Lord WILBERFORCE said : "Courts have an inherent wish to respect this confidence whether it arises between doctor and patient, priest and penitent (here he specifies the relationship between the priest and the penitent), banker and customer, between persons giving testimonials to employees, or in other relationships. A relationship of confidence between a journalist and his source is in no different category But in all these cases the Court may have to decide that the interest in preserving this confidence is outweighed by other interests to which the law attaches importance." I believe that this is the relevant legal procedure.

PRESIDENT (in Cantonese): We have spent more than 18 minutes on this question. We shall now proceed to the fifth question.

"Fire Lily" Anti-Vice Operation

5. **MR LAU KONG-WAH** (in Cantonese): *Madam President, it has been reported that, in an anti-vice operation code-named "Fire Lily" mounted on the*

7th of this month, the police and public security authorities in Guangdong Province made a total of 339 arrests in Hong Kong and the Mainland, and an application was made to the Court to freeze the assets worth \$86 million belonging to a local triad syndicate. In this connection, will the Government inform this Council:

- (a) of the assistance and support provided by public security authorities in the Mainland in the above operation;*
- (b) whether cross-boundary investigations were carried out in the above operation by law enforcement authorities of the two places under mutual agreement; and*
- (c) how the above-mentioned frozen assets will be disposed of?*

SECRETARY FOR SECURITY (in Cantonese): Madam President,

- (a) In the operation code-named "Fire Lily", the Guangdong Public Security Bureau have set up a specific task force to exchange intelligence with the Hong Kong police, and assist the Hong Kong police in the collection of evidence.
- (b) During the operation, law enforcement authorities of the two sides have not conducted any cross-boundary investigations. Instead, both parties have assigned liaison officers at the operation command centre of the other side in order to co-ordinate this cross-boundary operation.
- (c) The assets restrained include property, vehicles and bank deposits which amount to \$86 million. These assets belong to 12 defendants who have already been charged.

Under section 15 of the Organized and Serious Crimes Ordinance (Cap. 455) (OSCO), unless the Court has any specific order, the assets involved will continue to be restrained until the criminal proceedings of the cases involved are completed. If the persons charged are convicted, the police will apply to the Court for confiscation of the assets in accordance with section 8 of the OSCO.

MR LAU KONG-WAH (in Cantonese): *Madam President, part (b) of the main reply mentions that law enforcement authorities of the two sides have assigned liaison officers at the operation command centre of the other side, may I know if this is the first time when such an arrangement is made? The operation this time was very successful, but it also revealed that the triad syndicates in Hong Kong and on the Mainland have shown a high degree of co-operation. Would the Secretary tell us if similar cross-boundary operations will be made to combat other crimes?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, with regard to combating cross-boundary prostitution activities, large scale joint operations such as "Fire Lily" is the first one we have carried out and no previous operation of this kind existed before. The operation this time was very successful. There are other kinds of cross-boundary crimes such as the smuggling of illegal immigrants, drug pushing and trafficking. That is why the Hong Kong police attach great importance to co-operation with their counterparts on the Mainland and also in Macao. Apart from cracking down vice activities, with respect to combating drug trafficking, the Hong Kong police and the Guangdong Public Security Bureau carried out a joint operation in March this year. A total amount of 1 667 kg of ketamine, 9 000 "ecstasy" pills and a small amount of "ice" and cannabis were seized, together with two pistols and 133 rounds of ammunition. Whenever necessary, the Hong Kong police will co-operate with their counterparts on the Mainland and Macao to combat cross-boundary criminal activities.

MR LAU KONG-WAH (in Cantonese): *Madam President, the Secretary has not replied to my question of whether or not this is the first time when both sides assigned liaison officers at the operation command centre of the other side.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, this is the first time during a joint operation like this when both sides assigned liaison officers at the operation command centre of the other side in order to co-ordinate a cross-boundary operation.

MR WONG YUNG-KAN (in Cantonese): (in Cantonese): *Madam President, the operation this time has won public acclaim. The Secretary in part (b) of the*

main reply points out that both sides assigned liaison officers at the operation command centre of the other side. I know that many of the illegal immigrants would sneak into the territory by sea. May I ask the Secretary how liaison efforts in this respect can be stepped up?

PRESIDENT (in Cantonese): Mr WONG Yung-kan, the theme of this question is on the "Fire Lily" anti-vice operation, but are you asking a question on the co-operation of law enforcement authorities at sea?

MR WONG YUNG-KAN (in Cantonese): *Madam President, from the newspapers we can read about many*

PRESIDENT (in Cantonese): Mr WONG, may I know how is this supplementary question related to the main question?

MR WONG YUNG-KAN (in Cantonese): *Madam President, this is related to the main question. It is because many women who come to Hong Kong to be prostitutes sneaked into our territory through our waters. So how would the Government curb such kind of activities? (Laughter)*

SECRETARY FOR SECURITY (in Cantonese): Madam President, those who enter the territory illegally on high-powered speed boats will be intercepted by the marine police. *(Laughter)*

Maybe I need to explain the difference between the "Fire Lily" operation and the interception of women who come to the territory by sea for prostitution purposes. The reason why we undertook the "Fire Lily" anti-vice operation is that, as we all know, there are so many women from the Mainland who work as prostitutes on Hong Kong Island and some places in Kowloon. There are people who would recruit a large number of these women from the Mainland and arrange for them to come here to work as prostitutes. The women will be brought to some of the guest houses for prostitution. The business is run by syndicates. Such syndicates operate essentially on a cross-boundary basis. They would recruit women on the Mainland and arrange for them to come to

Hong Kong. Other syndicates in Hong Kong would provide support. This is why law enforcement authorities on both sides of the boundary should co-operate to investigate into such activities, especially in the exchange of intelligence in this regard. As a matter of fact, the main kind of co-operation we have is in the exchange of intelligence, for neither the authorities in Guangdong nor Hong Kong can make investigations or take enforcement actions on the other side, so there is a need to exchange liaison officers.

As to the use of high-powered speed boats in transporting women to Hong Kong to work as prostitutes, this is only a part of the activities of these prostitution syndicates. If these women come to our territory on high-powered speed boats, they will be intercepted by our marine police. How can the effectiveness of work in this area be improved? Principally, we have to rely on intelligence so that our marine police can be made aware of the routes they use and where they will land.

MR JAMES TO (in Cantonese): *Madam President, considering the fact that no confidential information regarding the operation is to be divulged, may I ask the Secretary what in fact is the co-ordination work being undertaken in these cross-boundary operations in which liaison officers are assigned at the operation command centre of the other side?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I am afraid I cannot give a more specific reply to questions in this regard, for if I give concrete details, the intelligence work for similar operations may be affected.

MR LAU KONG-WAH (in Cantonese): *Madam President, in the past after the anti-vice raids are over, prostitution activities will soon revive. Will the Secretary consider conducting more operations like the "Fire Lily" so that prostitution activities will not revive in another form in the place where the raids are made?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, Mr LAU was absolutely right. The police often go to some of the buildings to carry out anti-vice raids and arrest the prostitutes found there. Though these operations are not ineffective, such may not be the best method to tackle with the problem,

because the fact that these women can come into Hong Kong to work as prostitutes must be facilitated by people working behind the scene to recruit these women, to send them here and arrange for them to work in different kinds of vice establishments. Therefore, law enforcement authorities on both sides of the boundary must work together to crack down on these triad syndicates and in particular ensure that their assets be frozen and confiscated. We are of the view that this is a very effective way to combat such syndicates and so we would continue to do so. Our operation this time has succeeded in smashing one such ring. But if they manage to revive (since there is significant financial stake involved in such criminal activities, I think the ring members will take on a new form to conduct their business), we will continue working with our mainland counterparts to crack down these rings.

PRESIDENT (in Cantonese): Sixth question.

Reduction of Land Area Reserved for Public Housing

6. **MR ALBERT HO** (in Cantonese): *Madam President, according to the information submitted by the Government in May this year to the relevant panels of this Council concerning the land restructuring studies on the four areas of Ngau Tau Kok, Shek Kip Mei, Cheung Sha Wan and Ho Man Tin, it is estimated that the ratio of public housing to the overall land in each area will drop substantially upon redevelopment. Taking Ho Man Tin area as an example, the land for public housing will plunge from 24% to 6% of the overall land area. Although the information shows that the housing split between public and private housing for certain parts of those areas after the restructuring is yet to be determined, the relevant proposal has already worried the affected public housing residents who fear losing the opportunity of in-situ rehousing.*

- (a) *of the rationale to be adopted for deciding the ratio of public housing in each of the four areas and the time to announce the relevant outcome;*
- (b) *how it will ensure that the affected public housing residents will be rehoused in-situ, given that the public housing supply in each area will decrease drastically; and whether it has estimated the number of households which cannot be rehoused in-situ and have to move of their districts; and*

- (c) *whether it has assessed if the relevant policy will result in a gradual decrease of public housing land in urban areas and the ensuing impacts?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, in planning different types of housing development, the Government will first of all consider the overall demand for housing in Hong Kong, in order to determine the total need for housing land. In recommending whether a specific site should be used for public housing or private housing, the Planning Department and Housing Department will consider a number of factors, such as the specific demand for a particular housing type in the district, the suitability of the site for development, and so on. During the detailed planning of land uses of a district, the Government will give priority to reserving land for meeting the local rehousing needs of public housing residents affected by the redevelopment of public housing. This has always been the practice of the Housing Authority (HA).

The restructuring studies jointly carried out by the Housing Department and Planning Department in Ngau Tau Kok, Ho Man Tin, Shek Kip Mei, and Cheung Sha Wan districts are no exception. We shall reserve enough land to meet the rehousing need of the affected public housing residents, after which we shall consider allocating the remaining sites for other uses (including private housing developments, schools and open space). Therefore, although it is anticipated that the amount of land reserved for public housing would be reduced, it will not affect the HA's policy for local rehousing for the affected residents.

Specific proposals for the use of land in the four districts will be examined in detail under Stage 2 of the restructuring studies, expected to commence in mid-2003. It is scheduled that by mid-2004, appropriate ratios for public and private housing will be determined for these four districts.

In the past few years and coming years, the HA's supply of flats located in the urban areas has in fact increased and will increase further. It is projected that in the next eight years, the HA will provide about 150 000 new flats in the urban areas, of which 77 000 flats will be built on new land granted by the Government to HA in areas such as West Kowloon and South East Kowloon, while the remaining 75 000 new flats will be made available through the HA's ongoing redevelopment of its old public housing estates.

MR ALBERT HO (in Cantonese): *Madam President, after many residents have become aware that the restructuring would lead to a substantial decrease in the ratio of public housing land, they are worried that the Government may recover plenty of premier land in urban areas in the course of the restructuring programme and allocate such land for private development in order to increase government revenue. Having listened to the reply just made by the Government, the Government has guaranteed in-situ rehousing, but I wish to follow up whether the definition of in-situ rehousing would be too broad. For instance, the affected Ho Man Tin residents would be rehoused in the Kowloon area, would this be bona fide in-situ rehousing? Would the Government provide adequate services and facilities for taking care of the elderly, such as building more elderly's hostels and housing for senior citizens to cater for the needs of the gradually ageing population?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, Mr Albert HO has asked a question about the definition of in-situ rehousing. As regards the rehousing of residents affected by public housing redevelopment programmes, the Housing Authority would put together all public housing resources available at that time when it works out the specific plans and make rehousing arrangements for affected residents in the same area or the adjacent areas. For example, West Kowloon includes Cheung Sha Wan, Shum Shui Po and the West Kowloon Reclamation while East Kowloon is another area comprising many small areas. A specific example is that when the residents in Stage 6 of the Lam Tin Estate affected by redevelopment has to be rehoused, they could choose to move to the public housing flats in the Lam Tin Estate that were built earlier, the newly completed housing estate flats in the Sau Mau Ping Estate, Tsz Wan Shan Estate or Chui Ping Estate, or the refurbished flats in the same area or other areas that they are willing to move to. They might also purchase Home Ownership Scheme (HOS) flats or participate in loan schemes and become owners. The HA first adopted the *in-situ* rehousing arrangement in 1988, so, this policy was well-tested. Residents were able to find suitable homes and to get their living environment improved.

The Government has also noticed the issue of ageing population mentioned by Mr Albert HO. In respect of *in-situ* rehousing, we would provide adequate housing and support facilities on the basis of the projected numbers of old people. To cope with the gradual increase in the elderly population in Hong Kong, we would normally adopt a universal design when we build new housing estates.

In other words, we would design flats suitable for the youth and elderly, so that even if the residents have become old or have difficulties moving around, they can continue to live in their flats.

DR DAVID CHU (in Cantonese): *Madam President, concerning the four areas on which the land restructuring studies are conducted, would the Secretary inform us of the major differences between this programme and the conventional build back? What are the advantages of land restructuring in respect of specific planning?*

SECRETARY FOR HOUSING (in Cantonese): *Madam President, conventionally, the redevelopment by the HA was only restricted to the scope of individual estates. The present mode of land restructuring is that overall planning is made with the use of public housing land and the contiguous government land. In terms of both quality and quantity, we hope that we can fully utilize land with potentials for development and improve non-conforming land use. We may also improve the transport facilities, the environment of the area and provide diversified facilities and more community meeting points such as urban plazas to bring to the community new impetus and vitality, thereby up lifting the quality of life of the residents.*

Taking the four areas as example, there are actually a lot of substantial advantages. In respect of the numbers of flats, we can provide 260 000 housing flats, there would be over 34 800 more flats and the rate of increase would be 15%. The population accommodation would increase by 720 000 and the rate of increase would be around 12%. We can also open up land for building schools. It is estimated that 13 additional schools would be built, including 12 primary schools and one secondary school. Besides, we can develop 6 hectares of leisure ground, three public transport terminals, five pedestrian links, a new district centre as well as urban plazas, landmarks, and so on; moreover, we can preserve historical buildings. Thus, there are quite a lot of advantages.

MR FREDERICK FUNG (in Cantonese): *Madam President, the reports of the land restructuring studies on the four areas have not specified any timetable but each report has stated that eight to 12 public housing estates would be redeveloped and demolished. These reports make many residents worry about*

when their housing estates would be demolished and whether in-situ rehousing arrangement would be made. At some consultation meetings, some residents of HOS flats have surprisingly expressed their wish to have the Government demolish the housing estates that they were living in. These reports stirred up problems and failed to give any answer or timetable. Does the Secretary know how the residents feel? If so, how does she intend to address their discontents now that the next report would only be published two years from now?

SECRETARY FOR HOUSING (in Cantonese): Madam President, I would like to thank Mr FUNG for his question. These four reports are of conceptual nature and we have continuously conducted consultations from the end of March to the end of May. We have also attended the meetings of the District Council in each area to clearly explain the concept of land restructuring.

I would like to take this opportunity to reiterate that the six housing estates that have already been incorporated into the overall redevelopment programme of housing estates would be redeveloped under a five-year redevelopment programme. For instance, the Valley Road Estate has already been demolished and the demolition of Phase 2 and Phase 3 of the Upper Ngau Tau Kok Estate would be completed by the end of the year. As regards the timetable for the redevelopment of nine HA estates and three Housing Society estates, we would conduct a study at the next stage, that is stage 2, before deciding upon which estates would be given priority. If the redevelopment programme of housing estates is confirmed, the residents would be given a notice period of 18 to 24 months, so they should have sufficient time to make preparations for removal and there is actually no cause for them to worry.

MR HENRY WU (in Cantonese): *Madam President, the Secretary has stated in the second paragraph of her main reply that the remaining sites would be allocated for other uses, and for building more parks. However, the programme would be implemented in the four areas at the same time and I am very concerned about greening in urban areas. Would the Secretary inform this Council whether the implementation of such plans would lead to a reduced ratio of greening areas such as parks in the area? Greening areas as a whole may not have decreased, or would even conversely be increased, however, would the greening areas in a particular area decrease? If so, could the Secretary provide me with the data on the original and future greening areas in various areas?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, I would like to thank Mr WU for his question. Actually, we have stepped up greening efforts in every area. Since we are still at Stage 1 of the programme, we have still not decided upon the uses for a lot of lands. We would consider in detail how greening would be carried out. For instance, we have still not decided upon the uses of a total of 87 hectares of land including 22 hectares in Ngau Tau Kok, 27 hectares in Ho Man Tin, 19 hectares in Shek Kip Mei, 19 hectares in Cheung Sha Wan. We wish to improve the environment in the various areas and step up greening. Apart from the leisure grounds under the Stage 1 plan, we would also consider increasing the ratio of greening areas on the land that we have just referred to.

MR CHAN KAM-LAM (in Cantonese): *Madam President, the Secretary has given some figures in her main reply and we are somehow worried that there may be quite a shortage in public housing supply in the future. In the last paragraph of her main reply, the Secretary has stated that there would be 150 000 flats in the coming eight years and 77 000 flats would be built on land newly allocated to the HA by the Government while the remaining 75 000 flats would be provided in line with the implementation of old estates redevelopment programmes. Only 75 000 flats would be provided in the next eight years, that is, less than 10 000 public housing flats would be supplied each year. Could the Government guarantee that people in need would be allocated suitable flats in the future?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, I would like to thank Mr CHAN for his question. I have said in my main reply that, whether it be in the past or in the next few years, the number of public housing flats in the urban areas has been on the increase and in considerable amount. When we consider the relevant supply, we would certainly take the wishes of the residents into account. Apart from the urban areas, the so-called extended urban areas such as Sha Tin and Tsuen Wan as well as the New Territories are very popular with public housing residents or applicants on the Waiting List. As I have said in my main reply, in land allocation, the Government mainly considers the overall housing demand before considering that of individual areas. We think that there is sufficient land in the urban areas to be allocated for public housing construction, and there is thus no cause for worries.

PRESIDENT (in Cantonese): We have spent more than 16 minutes on this question. Last supplementary.

MR ABRAHAM SHEK (in Cantonese): *Madam President, would the Secretary inform us how a balance could be struck among the four areas so that the housing demand of the residents of the areas would be satisfied while a certain amount of premier land could be allocated for sale to solve the financial problems of Hong Kong?*

PRESIDENT (in Cantonese): I do not quite understand the supplementary raised. Do you wish to ask a question about the four areas mentioned in the Secretary's reply?

MR ABRAHAM SHEK (in Cantonese): *Madam President, that is right. My question is related to these four areas.*

SECRETARY FOR HOUSING (in Cantonese): Madam President, I would give Mr Abraham SHEK a brief reply. We would consider allocating more land for private housing. The Government has four criteria for land allocation, which are equally applicable to these four areas as well as other areas. Firstly, the land policy. We have to make good use of land resources in order to obtain satisfactory economic and social results. Secondly, in respect of planning, we have to set an appropriate ratio for urban areas and new towns in order to attain social and visual harmony. Thirdly, to get the best development results, public housing must be built on land with a high density and of a large area. Fourthly, as I have just said, another important factor is *in-situ* rehousing arrangement for the affected residents. As I have said when I replied to Mr Henry WU's question, according to government plans at the present stage, we have still not decided upon the uses of 87 hectares of land within the four areas. I believe more land can be earmarked at Stage 2 for the development of private housing.

PRESIDENT (in Cantonese): Oral question time shall end here.

WRITTEN ANSWERS TO QUESTIONS**Infringement of Intellectual Property Rights**

7. **MR JAMES TIEN** (in Chinese): *Madam President, it has been reported that in Hong Kong, infringement of trade marks or copyrights is liable to criminal prosecution, whereas infringement of patent rights has to be resolved by civil litigation. In this connection, will the Government inform this Council:*

- (a) *of the types of intellectual property rights infringement which are liable to criminal prosecution;*
- (b) *of the types of intellectual property rights infringement which cannot be prosecuted as a criminal offence under the existing legislation; and the reasons for not criminalizing such activities; and*
- (c) *how Hong Kong's legislation for protecting intellectual property rights compares with that of common law countries such as the United States, the United Kingdom and Singapore?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Chinese): Madam President,

- (a) In Hong Kong, certain acts infringing copyright or trade marks attract criminal liability. For example, anyone who sells infringing copies of copyright work or goods bearing counterfeit trade marks may be criminally prosecuted.
- (b) As for protection of intellectual property rights in patents, registered designs and layout-designs of integrated circuits, the relevant legislation only provides for civil remedies. Rights owners can protect their rights through civil proceedings. For instance, they may apply to court for injunction orders and claim damages from persons infringing their rights.

At present, infringing acts involving any of the three types of intellectual property rights mentioned above are not rampant in Hong Kong. In general, civil protection is adequate. We therefore have not criminalized such infringing acts.

- (c) The laws protecting intellectual property rights in Hong Kong comply fully with the international standards laid down in the Agreement on Trade-Related Aspects of Intellectual Property Rights under the World Trade Organization. The remedies provided in our legislation for patents, registered designs and layout-designs of integrated circuits are broadly comparable to those of the relevant legislation in countries such as the United States, the United Kingdom and Singapore.

Establishment of Manpower Development Committee

8. **MISS LI FUNG-YING** (in Chinese): *Madam President, it has been learnt that the Education and Manpower Bureau has already redeployed some staff from the Vocational Training Council (VTC) to undertake work on setting up the Manpower Development Committee (MDC). In this connection, will the Government inform this Council:*

- (a) *whether the MDC is expected to be set up within this year; if so, of the persons who will be invited to sit on the MDC; if not, the reasons for that;*
- (b) *whether the day-to-day operation of VTC has been affected by such redeployment; and*
- (c) *of the posting for the staff concerned upon the formal establishment of MDC?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Madam President,

- (a) The MDC is not expected to be set up within this year. The original intention was to set it up in April 2003 following the establishment of a Preparatory Committee in early 2002. However, due to staffing constraints, there has been a delay in the original schedule. The current plan is to set up a Preparatory Committee around mid-2002 to pave the way for the MDC to be established. On the basis of this timing, the MDC is likely to be formed some

time in late 2003 or early 2004 to provide time for the Preparatory Committee to complete its work. The composition of the MDC has yet to be decided.

- (b) Currently, we have seconded one staff from the VTC to assist in the preparatory work for setting up the MDC. This arrangement has not affected the day-to-day operation of VTC.
- (c) Upon the formal establishment of MDC, the staff concerned will be posted back to the VTC.

Complaints About Nuisance Caused by Drivers Sounding Car Horns

9. MR HOWARD YOUNG: *Madam President, I have received a complaint that, around mid-night every night, many taxis queue for passengers along the roads near Windsor House in Great George Street and Pearl City Mansion in Paterson Street. These taxis are double-parked and block the traffic flow in the area, causing some drivers to sound their car horns in order to get through. This poses a nuisance to nearby residents and may affect tourists' general impression of Hong Kong. In this connection, will the Administration inform this Council of the number of complaints about honking nuisance in the area received every month this year and the measures to be taken to solve the problem?*

SECRETARY FOR TRANSPORT: Madam President, the Transport Department (TD) has received a total of 14 complaints about nuisance caused by taxis after mid-night in Great George Street and Paterson Street near Pearl City Mansion since January this year. The breakdown figures by month are given below:

<i>2002</i>	<i>No. of complaints received</i>
January	5
February	4
March	1
April	3
May (up to 22 May)	1

The TD has taken the following actions to tackle such problem in Paterson Street and Great George Street:

- (a) the traffic light green time was extended after mid-night to allow more traffic from Paterson Street to left turn to Great George Street and from Great George Street to Gloucester Road;
- (b) the police was requested to step up enforcement actions; and
- (c) a letter was issued to the taxi trade to solicit their support to urge taxi drivers to behave and not to obstruct the traffic circulation along Paterson Street and Great George Street.

The TD and the police will continue to jointly regulate the taxi activities at Paterson Street and Great George Street. Subject to consultation with the concerned parties, the TD plans to implement traffic management measures in the near future to better regulate the use of kerb-side space along these streets. In the interim, the police will step up enforcement actions against those who blatantly violate the traffic regulations in order to maintain smooth traffic flow in the area concerned.

Traffic Arrangements in Commercial Districts

10. **MR ANDREW CHENG** (in Chinese): *Madam President, at present, the section of Queen's Road Central outside Cheung Kong Center is a four-lane westbound carriageway. However, the lane closest to the Center is restricted to vehicles entering the Center only, resulting in the reduction of the lanes to three. Consequently, this section of the road becomes very congested during rush hours. In this connection, will the Government inform this Council whether:*

- (a) *this section of the road is a private road; if so, when and the basis on which this section was designated as a private road; if not, of the rationale for restricting this section to vehicles entering the Center only;*
- (b) *it will consider opening the lane concerned to all vehicles; if so, when this will commence; if not, of the reasons for that and how the Administration will resolve the traffic congestion caused by the reduction of lanes from four to three in this section; and*

- (c) *such form of traffic arrangement also currently operates in other commercial districts (that is, Central, Admiralty, Causeway Bay and Tsim Sha Tsui); if so, of the names of the roads and buildings concerned?*

SECRETARY FOR TRANSPORT (in Chinese): Madam President, the subject section of Queen's Road Central is a public road. It serves not only the users of Cheung Kong Center, but also a temporary public carpark which will be replaced by a permanent one currently under construction. This permanent public carpark, which will provide about 800 public parking spaces, is expected to open later this year.

Queen's Road Central is primarily a three-lane road, starting from the section just beyond the signalized crossing in front of the Hongkong and Shanghai Banking Corporation Headquarters Building, shortly downstream from the above public carpark. The extra fourth lane is provided to serve the public carpark and hence would not materially affect the capacity of the road. To alleviate traffic congestion on Queen's Road Central, the Transport Department has been implementing various traffic management measures to improve traffic flow. Measures include shifting the vehicle pick-up/set-down zone outside the New World Tower slightly upstream and imposing a no-stopping restriction on private buses on that section of the road and widening of the Pedder Street/Queen's Road Central junction to enhance junction capacity.

The above traffic lane arrangement is not uncommon. Similar designated lanes are provided on Canton Road for the Ocean Terminal Carpark in Tsim Sha Tsui, at Convention Avenue for the Convention Centre Carpark in Wan Chai and at Kennedy Road for Hopewell Centre. All the above cases involve public carparks and the designated lanes help to avoid obstruction caused by vehicles wishing to enter these carparks.

Cross-harbour Ferry Services

11. **MR ALBERT CHAN** (in Chinese): *Madam President, there are densely-populated districts and commercial centres on both sides of Victoria Harbour. However, the cross-harbour ferry services for these areas are*

inadequate, resulting in the public having to resort to using indirect transport routes on land to travel between districts which are rather close in actual distance, thus wasting both their time and money. In this connection, will the Government inform this Council:

- (a) whether it will consider suggesting to the ferry companies concerned to provide feeder bus or light bus services to make it more convenient for the public to travel between the ferry piers and the commercial or residential areas in the vicinity of the piers, so as to attract more ferry passengers; and*
- (b) in view of the future new development plans for areas such as Wan Chai, Southeast Kowloon and West Kowloon, which are close to the shores of Victoria Harbour, whether the Government has plans to build more piers in those areas so as to provide the public with fast and convenient ferry services; if so, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT (in Chinese): Madam President, at present, public transport interchanges are provided in the vicinity of all major ferry piers with facilities for the operation of bus and minibus services, and so on. The Transport Department (TD) has encouraged ferry operators to join hands with other public transport service operators to introduce interchange schemes to facilitate passengers to travel more conveniently between ferry piers and nearby commercial or residential areas. Separately, the Government will also continue its efforts to improve the walkway systems connecting major ferry piers with nearby activity centres.

As regards the possible introduction of ferry services to new development areas, the TD's review on the future development of domestic passenger ferry services in Hong Kong completed at the end of 2001 has indicated that, for the next few years, only a Kai Tak – North Point ferry service is anticipated to be potentially viable. The review has recommended that, subject to availability of berthing facilities, consideration should be given to invite the private sector to operate this service when the population intake builds up in these development areas. The TD has followed this up with the relevant departments to ensure that the potential need for pier facilities at Kai Tak will be taken into account in finalizing the development plan for South East Kowloon Development.

Misuse of Personal Data Kept in Public Registers

12. **MISS EMILY LAU** (in Chinese): *Madam President, at present, members of the public can have access to the public registers kept by various government departments (for example, the Land Registry). It has been reported that the personal particulars contained in such registers have been used by people for commercial or even illicit purposes. In this connection, will the executive authorities inform this Council:*

- (a) *of the types and number of public registers which are publicly accessible;*
- (b) *whether they have assessed if personal particulars are so excessively disclosed under the existing system that the privacy and interests of the individuals concerned may be infringed; and*
- (c) *of the measures in place to ensure that the relevant information will not be misused?*

SECRETARY FOR HOME AFFAIRS (in Chinese): *Madam President,*

- (a) As at end 2001, our record shows that there were 126 public registers. They may be categorized into:
 - (i) registers of qualified persons/organizations/schemes, and so on, for example, register of enrolled nurses, register of approved trustees of Mandatory Provident Fund schemes;
 - (ii) lists of registered persons/organizations/properties/products, and so on, for example, geographical constituencies provisional and final registers, register of businesses, land register, register of patents;
 - (iii) registers of licences/certificates/notices issued, for example, register of estate agent licences, register of certificates of marriage; and

- (iv) miscellaneous items like the list of grants approved by Hong Kong Arts Development Council, register of applications for a licence to conduct a specific process under section 14(3)(a) of Air Pollution Control Ordinance.

- (b) Bureaux and departments concerned have been asked to review the registers to ensure that they do not collect or disclose more personal data than necessary to fulfil the specified purposes of the register. They have confirmed that 117 registers (93%) do not collect or disclose more personal data than necessary. Remedial action in the form of legislative amendments will be taken on six registers (5%). Three other registers are being reviewed.

- (c) In December 2000, Home Affairs Bureau issued guidelines to bureaux and departments on the principles to be observed in operating public registers. These include, among other things:
 - (i) consider whether there are legitimate purposes for introducing the proposed new public register;
 - (ii) specify the purposes in the relevant legislation;
 - (iii) consider providing for, in the legislation, measures to safeguard against possible use of the public register for purposes unrelated to its intended purposes;
 - (iv) inform data subjects of the specified purposes of the register;
 - (v) do not collect or disclose more personal data than necessary to fulfil the specified purposes of the register;
 - (vi) advise persons accessing the public register not to use the personal data for any purpose unrelated to the specified purposes;
 - (vii) limit search keys to those that are required to fulfil the specified purposes; and

- (viii) do not disclose public register information in bulk except where this is compatible with the purpose for which the information therein is made available.

Implementation of the guidelines would enable the Privacy Commissioner's Office to take actions under the Personal Data (Privacy) Ordinance.

Bureaux and departments concerned have taken administrative actions to ensure that the information contained in the public registers would not be used for unrelated purposes. These include issuance of Personal Information Collection Statements to the data subjects informing them of the specified purposes of the register and advisory notices to persons accessing the public register not to use the personal data therein for any purpose unrelated to the specified purpose.

Fifty-seven (45%) of the existing public registers have specified the purposes for which the personal data are made available in the relevant legislation. Bureaux and departments concerned are taking actions, or will do so when opportunities arise, to make legislative amendments to specify the purposes of 66 public registers (52%) in the relevant legislation. Legislative amendment was considered unnecessary for two (2%) of the registers, and one register is under review. Home Affairs Bureau will continue to monitor implementation of the guidelines to see whether other measures are required.

Conversion of Open Nullahs into Underground Drains

13. **DR RAYMOND HO** (in Chinese): *Madam President, regarding the conversion of open nullahs into underground drains, will the Government inform this Council:*

- (a) *of the total number of open nullahs throughout the territory and the district with the largest number of such nullahs;*
- (b) *of the number of open nullahs converted into underground drains in the past two years, and the reasons for such conversion; and*

- (c) *whether it has considered converting all open nullahs into underground drains; if so, of the details; if not, the reasons for that?*

SECRETARY FOR WORKS (in Chinese): Madam President,

- (a) Currently there are 45 major open nullahs under the management of Drainage Services Department. The district with the largest number of such open nullahs is Yuen Long, which has nine open nullahs.
- (b) Regarding the conversion of open nullahs into underground drains, there were works during the past two years to convert parts of three open nullahs into underground drains. The location of these nullahs and the reasons for converting them into underground drains are as follows:
- (i) Part of the Tai Hang Tung Nullah in Tong Yam Street was decked to facilitate the construction of the Tai Hang Tung Flood Storage Scheme,
- (ii) Parts of the Tuen Mun Nullah were decked to accommodate the new railway stations of the West Rail, and
- (iii) Parts of the eastern section and the western section of the Yuen Long Nullah were also decked to accommodate a new railway station of the West Rail.
- (c) From the flood prevention perspective, we do not currently have a comprehensive programme to convert all the open nullahs into underground drains. To convey the same flow, a closed culvert generally needs to be much wider than an open channel because of the obstructions to the flow caused by the interior columns and walls supporting the deck. Very few existing open channels and nullahs have sufficient spare capacity to allow for the adverse hydraulic effects of decking, and simply placing a deck over the channels would result in an unacceptable increase in risk of flooding. On the other hand, the widening of channels would result, in most cases, in considerable disruption to the community, additional land

requirement and a large capital expenditure. Nonetheless, we will consider decking some of the nullahs when it is necessary to do so in order to cope with adjacent developments.

Handling of Budget Deficit by Hospital Authority

14. **MR MICHAEL MAK** (in Chinese): *Madam President, regarding how the Hospital Authority (HA) solves the problem of an estimated budget deficit of \$580 million in this financial year, will the Government inform this Council whether it knows if the HA:*

- (a) *will consider cutting directorate posts and their remuneration package, adjusting the salaries of other staff, amalgamating grades or reducing ranks; if it will, of the details;*
- (b) *has assessed whether lowering the entry salary of nurses will affect their morale and the quality of new appointees; if the assessment result is in the negative, of the rationale; and*
- (c) *will, apart from cutting its expenses, consider offsetting the deficit by increasing the fees of some medical services; if it will, of the details and the expected increase in revenue?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Madam President,

- (a) Over the years, the HA has actively pursued a host of measures to reduce costs, enhance productivity, operational efficiency and the quality of service delivery. These include, among others, the downsizing of its non-clinical directorate staff from 66 in 1996-97 to 57 in 2001-02, and the introduction of a new medical grade structure (including a review of the pay and reward system of doctors) in May 2000. The HA has been considering all possible measures to address its short-term budget deficit, including embarking on productivity enhancement initiatives, re-engineering the provision of health care services to develop the more cost-effective ambulatory and community-based services, strengthening the co-operation and

interface with the private sector, and ongoing review of its human resource policies. The HA is conducting a review on its human resource policies to explore further opportunities for optimizing the use of its resources and to refine the system so that it can support the organization to respond more efficiently to changing circumstances. All possible options will be explored in the process. In the interim, the HA will cover the projected deficit in 2002-03 by its own fiscal reserves accumulated over the years.

- (b) The HA is currently conducting a comprehensive review on its nursing grade structure. The purpose of the review is to re-organize the nursing grade structure to focus on the delivery of direct patient care by way of a primary nursing practice model (whereby each patient is assigned to the care of a primary nurse during hospitalization), and professional accountability with a view to providing quality patient care. Also, the career development of nurses will be based on their professional competence. The HA has yet to make a decision on whether changes will be introduced to the pay scales of the nursing grade. The HA will consult the staff concerned before implementing the proposed new nursing grade structure.
- (c) As foreshadowed in the Health Care Reform Consultation Document published in December 2000, the Government is in the process of reviewing the fees and charges of public medical services to better target our subsidy to various services in the most appropriate manner. This review is not related to the budget deficit situation currently faced by the HA. We are in the process of formulating the scope, magnitude and timetable of this fee restructuring exercise. We shall consult the Legislative Council and members of the public on the way forward in the latter half of 2002.

Hong Kong-born Children Applying for CSSA

15. **MISS CHOY SO-YUK** (in Chinese): *Madam President, under the current rule, a child born in Hong Kong of parents who are not Hong Kong residents may still apply to the Social Welfare Department (SWD) for Comprehensive*

Social Security Assistance (CSSA), if one of the parents is a Chinese national, subject to compliance with other eligibility requirements. In this connection, will the Government inform this Council of the number of such Hong Kong-born children who applied for CSSA, as well as the amount of CSSA payments involved, in each of the past three years?

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Madam President, under the existing provisions of the CSSA Scheme, an applicant must be a Hong Kong resident and have resided in Hong Kong for at least one year in order to be eligible for assistance. Any person whose presence in Hong Kong is unlawful or who has been admitted into Hong Kong for non-residence purpose (for example, a tourist, an imported worker or a foreign domestic helper) is not eligible for assistance. In exceptional circumstances, the Director of Social Welfare may, at her discretion, grant assistance to an applicant who does not satisfy the residence requirement. The residence requirement is not applicable to persons born in Hong Kong who have acquired permanent residence status at birth.

A Chinese citizen born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region is a permanent resident, regardless of the residence status of his or her parents. Therefore, if one of the parents of a child is a Chinese citizen and the child is born in Hong Kong, the child will acquire permanent residence status at birth, thus becoming eligible for assistance under CSSA (subject to compliance with other eligibility requirements). The parents of the child would, however, not be eligible for CSSA, if they cannot satisfy the residence requirement. The SWD does not routinely collate statistics on the number of applications received from such Hong Kong-born children (that is, a child born in Hong Kong of parents who are not Hong Kong residents, but one of whom is a Chinese national) and the amount of CSSA payments involved.

Defaults on Repayment of Credit Card Loans

16. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding overdue repayment of credit card loans, will the Government inform this Council whether it knows:*

- (a) *the number of cases involving overdue repayment of credit card loans and the amount involved in each of the past three years;*
- (b) *the number of the above cases in which the cardholders are post-secondary students, and the number of such students who have filed for bankruptcy due to inability to pay debts; and*
- (c) *if banks will tighten the vetting and approving criteria for credit card applications made by post-secondary students?*

SECRETARY FOR FINANCIAL SERVICES (in Chinese): Madam President,

- (a) Based on the results of a regular survey conducted by the Hong Kong Monetary Authority (HKMA) on credit card receivables, the number of credit card accounts overdue for more than 90 days and the amounts involved together with the delinquency ratios¹ respectively for the past three years are as follows:

<i>At the end of:</i>	<i>Overdue > 90 days</i>		<i>Delinquency</i>
	<i>No. of account²</i>	<i>Amount</i> <i>(HK\$ million)</i>	<i>Ratio</i> <i>(%)</i>
1999	16 402	369	0.92
2000	14 940	388	0.76
2001	28 978	796	1.28
March 2002	38 775	1,147	1.90

- (b) Based on the results of an informal survey conducted by the HKMA on 14 authorized institutions that issue credit cards to post-secondary students or have launched student credit card programmes, there were 178 student card accounts with overdue amounts more than 90 days as at end-March 2002. Over the 12-month period ending 31 March 2002, there were 47 accounts relating to student cardholders that were involved in personal

¹ Delinquency ratio is measured by the total amount of credit card receivables overdue for more than 90 days and remaining unpaid at the reporting date as a percentage of total credit card receivables.

² As there is a break in series as of December 2001 owing to an increase in the number of surveyed institutions, the figures provided above for 2001 and March 2002 are strictly not comparable to prior years' figures.

bankruptcies. Care should be taken in interpreting these numbers as (i) some cardholders may have more than one student card; and (ii) although the cardholders might have been students when the cards were first issued to them, some might have graduated and were no longer students at the time of bankruptcy or when the debts or overdue amounts were incurred.

The Government has not kept statistics on the number of post-secondary students who have filed for bankruptcy due to inability to pay debts.

- (c) The HKMA has recently completed a round of special on-site examinations on the credit card operations of a selected number of card-issuing authorized institutions in Hong Kong. Major areas examined included, among other things, the card-issuing criteria and policies of the institutions concerned. These include those applicable to credit cards issued to students. As a result of the examinations, the HKMA has recommended improvements to the card-issuing criteria and policies to several institutions. The HKMA will continue to monitor closely the credit card operations of authorized institutions as part of their ongoing supervisory process.

Delay in Commissioning of Container Terminal No. 9

17. **MR ALBERT CHAN** (in Chinese): *Madam President, it has been reported that the commissioning of the first berth of Container Terminal No. 9 (CT9) will be at least eight months behind schedule, and the total project cost may overrun by hundreds of million dollars. In this connection, will the Government inform this Council:*

- (a) *of the difference between the original and present estimated dates of completion for each major item of works of the project;*
- (b) *in respect of each item, of the details about the causes of delay, estimated cost overrun, the parties liable to pay compensation and the remedial measures in place;*

- (c) *of the respective financial losses the cargo handling industry and the overall economy of Hong Kong will suffer as a result of the delay in the project; whether the Government has measures in place to minimize the losses; and*
- (d) *whether the land grant conditions of the project have specified the date of completion of each item of works; and whether penalty clauses concerning delay in completion have been stipulated; if so, of the details; if not, the reasons for that?*

SECRETARY FOR ECONOMIC SERVICES (in Chinese): Madam President,

- (a) The major items of works of CT9 include the development of six berths. As stipulated in the land grants signed between the Government and the developers, the target completion dates of the first to the sixth berth in sequence are May 2002, March 2003, September 2003, January 2004 and November 2004 (for the fifth and the sixth berths). The developers are also required to complete the formation works for about 70 hectares of land for provision of roads and container back-up facilities and return the land to the Government before November 2004. According to the latest information provided by the developers, the estimated date of completion of the first berth will have to be delayed for 14 months. As for the land for back-up facilities to be returned to the Government, the formation works are expected to be completed by December 2004.
- (b) As the entire CT9 project is a private development, any loss or compensation incurred as a result of slippage of works will be borne by the developers and their contractors. According to the explanation given by the developers, the delay is mainly due to environmental problems arising from the dumping of contaminated mud and the reorganization of contractors during the crucial period of the works. The contractors have arranged to provide additional equipment and machinery required for the works in order to make up for the lost time. The works are now making good progress.

- (c) The total handling capacity of the existing eight container terminals at Kwai Chung is capable of coping with the current freight demand. The terminal operators are also striving to enhance the handling capacity of their respective terminals. Therefore, the overall cargo handling industry will not suffer even if there is a delay in the completion of the first berth of CT9. Nevertheless, the Government is closely monitoring the progress of the works, urging the developers to catch up with the original target completion date.
- (d) The land grant conditions of CT9 have specified in detail the date of completion of each item of works as set out in (a) above. The relevant penalty clauses are as follows:

(1) *Container terminal berths*

Should the developers fail to complete the works within the specified date, the Lands Department will consider granting an extension of the completion date and impose a fine therefor, taking into account the progress of work. In case of serious delay, the ultimate sanction is to take re-entry action in accordance with the land grant conditions. The Lands Department has approved the extension of completion date of the first berth to 6 July 2003 and imposed appropriate fines.

(2) *Land for back-up facilities*

Should there be a delay in the formation of land for back-up facilities, the Government may impose an indemnity in accordance with the land grant conditions.

Relocation of Victoria Prison

18. **MISS EMILY LAU** (in Chinese): *Madam President, regarding Victoria Prison, will the executive authorities inform this Council:*

- (a) *whether they plan to relocate Victoria Prison in view of its overcrowding situation; if so, when it will be relocated;*

- (b) *of the short-term measures to alleviate the overcrowding in the prison; and*
- (c) *as the Chief Executive stated in his policy address in October 2001 that in order to attract more tourists, the Government would implement as quickly as possible five medium-to-long-term tourism initiatives, including a cultural tourism development project in Central, whether the authorities have plans to convert the prison for uses relating to the promotion of tourism?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) With a current certified accommodation of 438 places, Victoria Prison admits male and female prisoners serving a custodial sentence as well as male and female detainees who have violated the Immigration Ordinance and are awaiting repatriation or deportation. In the previous year (from 1 May 2001 to 30 April 2002), its average occupancy rate was 131%. In the same period, the average occupancy rate of all penal institutions was 113%. In view of the serious shortfall in the number of penal places overall, the Administration has no plans to decommission or relocate Victoria Prison.
- (b) The Correctional Services Department is planning to convert some of the buildings of Hei Ling Chau Addiction Treatment Centre (Annex), Chi Ma Wan Drug Addiction Treatment Centre and Ma Hang Prison in 2002 and 2003 to provide 520 additional penal places. This, coupled with management measures to reshuffle the penal population, will help alleviate the overcrowding problem of penal institutions. In addition, upon the completion of the Detention Centre of the Immigration Department in Tuen Mun in 2004, 400 additional places will be provided to receive all detainees who have violated the Immigration Ordinance and are awaiting repatriation or deportation. This should help alleviate further the overcrowding situation of Victoria Prison further.
- (c) The cluster of buildings comprising Central Police Station, Victoria Prison and the former Central Magistracy is part of Hong Kong's

major historic heritage. Consultants have been appointed to study innovative means to develop the building cluster with a view to promoting Hong Kong's culture and tourism and providing the general public and tourists with a good place for entertainment, while preserving its historical values. A prerequisite for any development is the relocation of the various government institutions therein, including the reprovisioning of the penal places of Victoria Prison elsewhere. A study on this is now underway. The Administration will consider the results of the relevant studies and map out the way forward for development of the building cluster.

Maximum Parking Duration Set for Parking Meters

19. **DR RAYMOND HO** (in Chinese): *Madam President, regarding the maximum parking duration set for parking meters, will the Government inform this Council:*

- (a) *of the basis for determining the maximum parking duration;*
- (b) *whether it received, over the past three years, complaints from the public about the maximum parking duration being too short; if so, of the number of such complaints; and*
- (c) *whether it plans to extend the maximum parking duration in respect of parking meters located at picnic sites; if so, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT (in Chinese): Madam President, where the traffic situation permits, on-street parking spaces will be provided to meet the demand for parking. Parking meters are installed at heavily utilized parking spaces to achieve the traffic management objective of rationing heavy demand for short-term parking, ensuring a reasonable turnover of vehicles and reducing traffic problems arising from vehicles circulating for available parking spaces. Three types of parking meters are provided for under the current legislation, namely half-hour, one-hour and two-hour meters with the majority (85%) of the existing 17 000 parking meters being two-hour meters. Motorists who need to park their vehicles for a longer period are encouraged to use off-street car parks provided for the purpose.

In the past three years, we received a total of 10 complaints which were all related to the operation of parking meters at specific recreational spots in the rural areas. In response to the complaints, the Transport Department had removed some of the meters and converted some others to weekday operation only. Follow-up surveys revealed that the above measures had addressed the concerns of the complainants.

The present maximum time limit of two hours for parking meters is considered generally effective in achieving the traffic management objective of providing convenient on-street parking facilities for short-term users. Extending the time limit will undermine this objective, and may upset the present balance between on-street and off-street carparking. However, we would continue to devise other appropriate measures such as those mentioned in paragraph two above, to better meet the demand for carparking at specific locations.

Interdiction of Civil Servants During Disciplinary Proceedings

20. **MR ERIC LI** (in Chinese): *Madam President, regarding the interdiction of civil servants during disciplinary proceedings, will the Government inform this Council:*

- (a) *in respect of those cases completed in the past five years, of the average and the longest duration between the time a decision was made to initiate disciplinary proceedings and the time the final decision was made with regard to the case; and the reasons for such duration;*
- (b) *whether it will consider reviewing the process concerned to require that disciplinary proceedings must be completed within a reasonable span of time;*
- (c) *whether it has assessed how the normal operation of the department concerned would be affected by the prolonged interdiction of its staff members or such prolonged interdiction resulting from their intentional protraction of the proceedings, during which they were paid half or full salary; and*

- (d) *of the number of civil servants who have been dismissed or compulsorily retired after disciplinary proceedings, and those who have been reinstated upon judicial review, since January 2000, and the amount of compensation received by them?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Madam President, an officer may be interdicted (that is, suspended from duty) pending the outcome of criminal or disciplinary proceedings if it is considered not in the public interest for him to remain in office before he is cleared of the charge against him.

We do not resort to interdiction lightly. Factors that are taken into account include the nature and gravity of the criminal or disciplinary offence laid against the officer; possibility of the same offence recurring if the officer remains in office; availability of suitable posts for redeploying the officer, and likely public perception. We interdict an officer only when redeployment to alternative duties is not possible or inappropriate.

An interdicted officer will normally have 50% of his salary withheld upon being charged with a criminal or disciplinary offence which may lead to his removal from the service. If he is subsequently convicted of an offence serious enough to warrant removal from the service, payment of his salary will be stopped in full.

Specifically on the four points raised in the question, I would like to respond as follows:

- (a) For the time available for preparing this reply, we have only managed to come up with the required statistics for the past two years.

Action on 231 cases which involve interdiction was concluded within 2000-01 and 2001-02. The average time taken to complete the related disciplinary proceedings was about 9.5 months. For the case with the longest duration, it took about 20 months to complete the proceedings. The unusually lengthy period of time taken was due primarily to the complexity of the case, which in the event entailed lengthy arguments over the legal merits of the officer's representations; the consolidation of a large volume of documentary evidence, and the need to consider the testimonies of a large number of witnesses.

- (b) At present, the rank-and-file staff and officers of certain ranks in the disciplined services are governed by disciplinary provisions prescribed in the relevant disciplined services legislation. Other members of the Civil Service are subject to disciplinary provisions in the Public Service (Administration) Order (PS(A)O).

The complexity of disciplinary cases varies. It is not practicable to prescribe at the outset how long the disciplinary inquiry should take. In the interest of due process, the officer must be given a fair hearing and reasonable opportunities to defend his case. That said, the Administration is fully conscious of the public's expectations that the processing time should be kept within reasonable bounds.

For cases handled by the Secretariat on Civil Service Discipline (the Secretariat) which was set up in April 2000, as part of the Civil Service Reform, to process centrally disciplinary cases under the PS(A)O, the processing time has progressively improved following the implementation of streamlined procedures. In the past, cases requiring a hearing took on average seven to 18 months to complete, depending on the circumstances of individual cases. Experience since the inception of the Secretariat shows that cases could be disposed of more expeditiously whilst preserving natural justice. The processing time for cases requiring a hearing has been shortened by more than 30% or three months in some instances, and many cases could be completed within five to 15 months. The Secretariat has completed 112 cases in 2001-02, of which over 80% could be disposed of within 12 months.

We will make sustained efforts to ensure that the time taken to complete disciplinary proceedings is kept within reasonable bounds. Further measures to streamline the procedures will be introduced in the light of experience.

- (c) The effect that the interdiction of its staff members may have on a department's operations has been generally manageable. Where an officer had to be interdicted, alternative arrangements have been made to cover for the officer without any significant undue problems. Furthermore, the effect of interdiction should be seen in perspective. In the earlier part of this reply, I have stressed that an officer is interdicted only when redeployment to other duties is not possible or

inappropriate and where to do otherwise is manifestly not in the public interest. In most interdiction cases, the nature and gravity of the criminal or disciplinary offence laid against the officer is such that it would not be in the public interest for the officer to continue to discharge his official duties before he is cleared of the charge. As an illustration, of the 101 interdicted officers whose disciplinary cases were concluded in the 12 months ending March 2002, 71 (or over 70%) have eventually been removed from the service.

- (d) During the period from 1 January 2000 to 31 March 2002, 193 civil servants have been dismissed or compulsorily retired after disciplinary proceedings. Since January 2000, there has not been any case where the officer is reinstated upon judicial review.

BILLS

First Reading of Bill

PRESIDENT (in Cantonese): Bill: First Reading.

EVIDENCE (MISCELLANEOUS AMENDMENTS) BILL 2002

CLERK (in Cantonese): Evidence (Miscellaneous Amendments) Bill 2002.

Bill read the First time and ordered to be set down for Second Reading pursuant to Rule 53(3) of the Rules of Procedure.

Second Reading of Bill

PRESIDENT (in Cantonese): Bill: Second Reading.

EVIDENCE (MISCELLANEOUS AMENDMENTS) BILL 2002

SECRETARY FOR JUSTICE: Madam President, I rise to move the Second Reading of the Evidence (Miscellaneous Amendments) Bill 2002. The Bill is in two parts.

The purpose of Part I of the Bill is to implement recommendations made by the Law Reform Commission in its 1988 Report on the Competence and Compellability of Spouses. It relates to the extent to which a person can lawfully be called to give evidence for or against his or her spouse in criminal proceedings.

Let me first explain the background and the problem that we seek to resolve. A witness is competent to give evidence if the law permits him or her to do so. A witness is compellable to give evidence if the law requires him or her to do so.

In Hong Kong, the competence and compellability of spouses to testify in criminal proceedings is governed by both common law and statute. At common law, a person is not competent to give evidence for or against his or her spouse except in very limited circumstances, such as where that spouse is accused of inflicting violence on that person. Various statutory provisions have extended the competence of a person to give evidence against his or her spouse, for example, the Criminal Procedure Ordinance provides that a person is competent to testify on behalf of his or her spouse where that spouse is a defendant in a criminal trial. However, a person cannot, under the present law, be compelled to give evidence against his or her spouse under any circumstances.

This can produce unjust and arbitrary results. For example, if a person witnessed his or her spouse murdering somebody over the age of 16, he or she would not be competent to testify against that spouse. In the absence of other evidence, no criminal proceedings could be brought and the murderer would evade justice. Further, even though competent to do so, a witness may refuse to testify on behalf of his or her spouse where that spouse is a defendant in a criminal trial. It matters not whether the refusal is for good or bad reasons; the rule applies regardless of how important the testimony might be to the defence of the accused spouse. An injustice to the accused may result.

The Law Reform Commission recommended a series of improvements to the law of competence and compellability to achieve a balance between the interests of justice and the principle of interfering as little as possible with relationships between married couples and the family.

The Commission made three main recommendations:

- First, that a person should be compellable to give evidence for the prosecution in limited types of criminal proceedings.

- Second, that a person should be compellable to give evidence for the defence of his or her spouse in all criminal proceedings.
- Third, that a person should be competent to give evidence for the prosecution in all criminal cases against his or her spouse.

In 1990, the Administration introduced a Bill to implement these recommendations but the Bill was defeated. The principal opposition to the Bill was based on the possible effect that compelling wives to testify against husbands would have upon wives and the family unit in Chinese society. However, the social welfare sector was critical of the Bill's defeat. It was said that the legislators had acted according to outdated values: Family situations were not the same as they were many years ago, and women were no longer totally dependent upon their husbands to the point of having to tolerate abuse.

In 1996, a High Court judge wrote to the Attorney General following a case in which a defendant was convicted of murdering his mother-in-law. In the letter, the trial judge observed that it would have been easier to disprove the defendant's case had the defendant's wife — who provided valuable information in a witness statement — been competent to give evidence for the prosecution.

In 1999, a judge of the District Court referred to the "historical hangover" of the rule that spouses are neither competent nor compellable to give evidence against each other and recommended that the Department of Justice should "look at this area of law with a view to legislative change".

Statistics show that there has been a rising trend of family violence over the last four years. There has been an increase in child abuse cases (from 409 in 1998 to 535 in 2001) and battered spouse cases (from 1 009 in 1998 to 2 433 in 2001).

The Administration agrees that it is desirable to amend the law to more effectively address the issue of domestic violence. In July 2000, the Administration circulated a consultation paper on the proposed implementation of the recommendations to the legal professional bodies, women's groups, social welfare organizations and other interested non-governmental organizations. The majority of responses supported the recommendations. The Legislative Council's Panel on Administration of Justice and Legal Services also supported the proposed amendments.

The Administration considered whether spouses should continue to be able to choose whether to testify for the prosecution. In some common law jurisdictions, the law requires wives or husbands to testify in all cases. We do not propose to follow that approach.

The Administration favours giving a spouse the choice, in most cases, as to whether to give evidence for the prosecution. It also favours retaining the confidentiality of marital communication in most situations. However, in the case of crimes affecting the family itself, the Administration considers that the interests of justice should outweigh interests such as the sanctity of marriage, the confidentiality of marital communications, and family harmony. The crimes identified are of a type where these factors have failed and the family is in need of the protection of the law.

The Administration, therefore, proposes that a person should be compellable to testify against his or her spouse only in exceptional cases where the family itself was threatened by the accused spouse. Accordingly, clause 4 of the Bill provides that a person may be compelled to give evidence against his or her accused spouse where that spouse is charged with assaulting, injuring or threatening injury to that person or a child of the family under 16 years of age. The same rule will apply to sexual offences against such a child. Such a witness would also be compellable if the accused was charged with attempting, conspiring to commit, aiding, abetting, counselling or procuring or inciting the commission of any of the offences that I have just mentioned.

Furthermore, in order to take account of concerns raised in consultations regarding the sanctity of marriage, the proposed new section 57A of the Criminal Procedure Ordinance gives the court a discretion to exempt a witness spouse who is compellable to testify for the prosecution. Such a provision will allow the courts to strike a balance between the competing community interests of protecting spouses and children from crimes inflicted upon them and interfering as little as possible with marital relationships.

The proposed section 57A(2) requires the judge, in deciding whether to exempt a spouse, to consider, among other things, the risk of harm to the spouse and the marital relationship if no exemption were granted. Even if there is such a risk, the court may refuse to grant the exemption if exposure to the risk is justified by the nature and gravity of the offence and the importance of the spouse's evidence.

These provisions recognize the importance which society places upon the family, while seeking to assist in deterring and punishing the actions of spouses which are destructive of the family. If the law is not changed, the harmful actions of these persons could remain immune from public view and punishment. Part I of the Bill, therefore, represents an important step in this area of the law and in responding to problems of domestic violence.

Clause 4 of the Bill also implements the other main recommendations of the Commission. The thrust of these was to move away from the rigidity of the common law position, where a spouse was excluded from giving evidence, towards a situation where that spouse would be competent and compellable in all cases to testify for the other spouse, and competent in all cases to testify against the other spouse.

Madam President, by implementing the amendments, the Bill will assist not only the prosecution but also the defence as the interests of justice dictate that all available evidence should be capable of being introduced into court.

I now turn to Part II of the Bill. The purpose of that Part is to enable a witness outside Hong Kong to give evidence in criminal proceedings in Hong Kong by way of a live television link.

At present, where evidence in a criminal case in Hong Kong is needed from a witness who is outside Hong Kong, that witness will generally have to travel here to give the evidence. However, a witness may be deterred from coming here by the expense and inconvenience involved. In such a situation, the only present alternative is to take his evidence by way of a request issued by the Court of First Instance or by the Secretary for Justice under mutual legal assistance procedures. This involves questioning the witness in the presence of an authority in the requested jurisdiction and presenting his evidence in written form in Hong Kong. The disadvantage of this procedure is that such evidence cannot be tested in cross-examination unless counsel travels to the jurisdiction to conduct the cross-examination. Furthermore, the Hong Kong court is unable to observe the demeanour of the witness.

We, therefore, propose to allow a witness abroad to give evidence to a Hong Kong court via live television link. By allowing a witness outside Hong Kong to give evidence in this way, the inconvenience and expense of bringing

him to Hong Kong will be avoided. It will also enable the court to facilitate cross-examination and to observe the demeanour of the witness.

At present, a Hong Kong court has no power to permit a witness outside Hong Kong to give evidence in criminal proceedings via live television link. Part II of the Bill accordingly empowers the court to permit a party to criminal proceedings to adduce the evidence of a witness outside Hong Kong by such means. The status of evidence adduced during the process will be the same as evidence adduced physically in a Hong Kong court.

The Bill does not specify the means by which the attendance of the witness outside Hong Kong is to be arranged. However, it is envisaged that the parties may wish to make use of the mutual legal assistance arrangements between Hong Kong and foreign jurisdictions. It is, therefore, necessary to ensure that the provision of evidence via live television link is possible under the mutual legal assistance procedures. For this purpose, the Bill empowers the Court of First Instance and the Secretary for Justice to make a request to an overseas authority or court to assist in the taking of evidence of witnesses overseas via live television link. To facilitate reciprocity, the Court of First Instance and the Secretary for Justice are empowered to render similar assistance to foreign jurisdictions, if requested.

Most common law jurisdictions have enacted similar legislation and Hong Kong is now ready to make use of modern technology. The Judiciary is installing a technology courtroom equipped with overseas live television link facilities that is expected to be operating by the end of this year. I, therefore, consider that it is timely to change the law to facilitate witnesses abroad to give evidence to a Hong Kong court via live television link. I urge that this proposal be supported.

Madam President, I commend this Bill to the Legislative Council. Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Evidence (Miscellaneous Amendments) Bill 2002 be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Marine Fish Culture (Amendment) Bill 2002.

MARINE FISH CULTURE (AMENDMENT) BILL 2002**Resumption of debate on Second Reading which was moved on 17 April 2002**

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

MR WONG YUNG-KAN (in Cantonese): Madam President, before speaking I have to declare my interest. I am the Chairman of the Federation of Hong Kong Aquaculture Associations (the Federation), a member of the Advisory Committee on Agriculture and Fisheries, and the Chairman and member of the Aquaculture Subcommittee.

Before I became a Member of the Legislative Council, the trade had started in 1996 to make repeated demands at the Advisory Committee on Agriculture and Fisheries to the Government for amendments to be made in those parts of the Marine Fish Culture Ordinance which had become outdated. Why did the trade demand that amendments be made? The major reason was that in 1982, when the Government amended the Marine Fish Culture Ordinance, the 50-odd fish culture points in Hong Kong were designated into 28 fish culture zones. Mariculturists encountered a kind of limitation due to the arrangements, the environment and the size of rafts within these zones. Licences cannot be freely transferred; nor can raft sizes as specified in the licences be altered at random. Even erecting raft structures as watchtowers is subject to a number of restrictions. Insofar as developments in marine fish culture is concerned, all these have certainly become difficulties to a certain extent for the trade.

After a considerable amount of time, areas for marine fish culture begin to age, which also cause other problems relating to the age and time of mariculturists. Some people say those who are in the marine fish culture business are rather advanced in age. But the Government has not provided any leeway within the Marine Fish Culture Ordinance to let the trade know how it

can develop. Due to the plurality of limitations, the younger generation can have no means to join the trade even if they have wanted to. For example, if I had a raft of 200 sq m, I could not enlarge it even if I intended to do so. Limitations as such have forced elderly mariculturists to put away their rafts unused. At that time, the Government also specified the locations and arrangements of rafts, both of which cannot be altered at random. If alterations are made to the positions of rafts as specified in the licence, a series of co-ordination efforts involving various parties have to be made and such alterations may have to be carried out in areas specified by the Government. Some mariculturists are thus hindered from developing their business.

After repeated negotiations between the trade and the Government, the Government in 1999 reached a consensus with the trade on ways to transfer ownership of rafts and to systematically deal with the fish culture zones. Lastly, I must mention that the trade has expressed considerable support for the Bill, which was tabled before the Legislative Council this year. As I am the Chairman of the Federation, I have had numerous meetings with the trade. We are even supportive of the revised fines proposed by the Government. But certainly, the Government will consider further what I have said here. I recall that previously it was said that moving a raft from a fish culture zone required approval from the Director of Agriculture, Fisheries and Conservation. In 1998, even in the face of the emergence of the red tide and the subsequent repeated attacks, rafts could not be moved, for mariculturists could not do so unless they acted against the law laid down by the Government.

Up to now, I still hope the Government can sympathize with mariculturists. Due to the difficult business situation encountered by the marine fish culture trade, I hope the relevant bureau or department may grant approval for mariculturists to move their rafts away from fish culture zones when the emergence of the red tide is detected. Of course, we will then move the rafts back according to the law when the red tide subsides.

The Federation, the trade, the Democratic Alliance for Betterment of Hong Kong and I are very much in support of the Second Reading of the Bill.

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

(No Member responded)

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, the Marine Fish Culture (Amendment) Bill 2002 seeks to allow the transfer of fish culture licences by licensees. The amendment enables the fish culture business to integrate under the market mechanism and encourages the business to develop in a more modern and environmentally friendly manner.

I sincerely thank Members, especially the Honourable WONG Yung-kan and the trade, for their hitherto unyielding support for the Bill. I shall be moving some technical amendments during the Committee stage to make the Bill clearer and to give it greater integrity.

If passed, the Bill will take effect on next Friday when it is gazetted. I trust the amendments will benefit fish culturists and will help the fish culture business to continue its development. I urge Members to support the passing of the Bill.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Marine Fish Culture (Amendment) Bill 2002 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Marine Fish Culture (Amendment) Bill 2002.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee.

MARINE FISH CULTURE (AMENDMENT) BILL 2002

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Marine Fish Culture (Amendment) Bill 2002.

CLERK (in Cantonese): Clauses 1, 3, 4 and 6 to 9.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2 and 5.

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam Chairman, I move the amendments to clauses 2 and 5, as set out in the paper circularized to Members. Both amendments are technical amendments. My amendment to clause 2 seeks to stipulate beyond doubt that a licensee includes a person who obtains a licence through transfer under clause 8A(3)(a). The purpose of amending clause 5 is to standardize the expressions in English in the relevant provisions in the Bill. Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex II)

Clause 5 (see Annex II)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for the Environment and Food be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2 and 5 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam Chairman, I move an amendment to the Schedule, as set out in the paper circularized to Members. This is a technical amendment that seeks to standardize the expressions in English in the relevant provisions in the Bill. Thank you, Madam Chairman.

Proposed amendment

Schedule (see Annex II)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for the Environment and Food be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

MARINE FISH CULTURE (AMENDMENT) BILL 2002

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese):
Madam President, the

Marine Fish Culture (Amendment) Bill 2002

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Marine Fish Culture (Amendment) Bill 2002 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Marine Fish Culture (Amendment) Bill 2002.

MOTION

PRESIDENT (in Cantonese): Government motion.

GOVERNMENT MOTION

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I move that the motion to support the accountability system for principal officials be passed by the Legislative Council.

Since the Chief Executive outlined the framework of the accountability system for principal officials in his policy address last year, the Legislative Council and members of the public have been discussing this issue. Their discussion shows their concern on the introduction of the accountability system. During this period of time, apart from participating in the relevant discussion, we have also listened to the views expressed by different sectors. In working out details of the accountability system for principal officials, we have fully considered and incorporated these views, with a view to improving the system.

The Chief Executive announced details of the accountability system at the Legislative Council meeting on 17 April. This was followed by more extensive

discussion. The Legislative Council has set up a Subcommittee to facilitate exchanges on the details of the new system. The Subcommittee meets twice a week, four hours each time. In addition, the Legislative Council has also arranged public hearings to gather the views of the public.

Other political groups and non-government organizations have also had discussion on this issue. All such discussion is useful and constructive. Through such discussion, we have a better understanding of the views, concerns and misconceptions of the public. Our participation in discussing this issue and answering relevant questions, be it in the Legislative Council Chamber or otherwise, prompted us to study the issue more thoroughly. It provided us the opportunity to explain our thinking and to address the concerns expressed by the public. It also provided us the opportunity to take into account the views of the public and make modifications to the system as appropriate. Apart from the views expressed during the meetings of the Subcommittee, members of the Subcommittee have also put in many written questions. As at 27 May 2002, the Subcommittee has raised over 80 follow-up questions and we have responded to all these in writing. We have also provided written response to all the issues raised and views expressed by the public during the public hearings.

I hope that Members could, instead of focusing their attention on the details, look at the wider picture today. I would like to put on record the background, objectives and merits of implementing the new accountability system.

Since the reunification in 1997, we have been enjoying a high degree of autonomy under the Basic Law. With Hong Kong people governing Hong Kong, there has been enhanced awareness among the community of the need for good governance. Hong Kong people have higher expectations of the Government, and expect Secretaries of Departments and Directors of Bureaux to enhance their accountability, including, where necessary, to step down for policy failures. Such a demand is not consistent with the established appointment and removal system of the Civil Service.

Since the reunification, the legislature and the media have become more aggressive and critical, subjecting the Government to more intensive monitoring and pressure. This is the characteristic of a civilized and open society. However, Directors of Bureaux are now expected not only to be responsible for the formulation and implementation of policy, but also to explain policies to the

Legislative Council and the public and to gain their support. They are under increasingly heavy workload and pressure, and the results may not always be to their entire satisfaction.

The Government would need to bring in changes in step with such developments. We need to introduce the accountability system to meet the needs and aspirations of the community. The accountability system has six specific objectives:

1. to enhance the accountability of principal officials for their respective policy portfolios;
2. to enable senior government officials to better appreciate the aspirations of the community and better respond to the needs of the community;
3. to select the best and most suitable persons to take up the principal official positions to serve the community and to enhance governance;
4. to enhance the co-operation between the Government and the Legislative Council;
5. to better co-ordinate the formulation and implementation of policies to ensure effective implementation of policies and provision of quality services to the public; and
6. to maintain a permanent, professional, clean and politically neutral Civil Service.

To achieve the above objectives, we consider that the accountability system must comprise seven core elements.

Firstly, principal officials under the accountability system shall be accountable for matters falling within their policy portfolios and in extreme cases, they may have to step down for serious policy failures;

Secondly, principal officials under the accountability system should not come under the civil service establishment; the civil service appointment and

removal system should not be applicable to principal officials under the accountability system;

Thirdly, candidates for principal officials under the accountability system may come from within or outside the Civil Service;

Fourthly, principal officials under the accountability system shall be directly responsible to the Chief Executive;

Fifthly, principal officials under the accountability system shall be appointed to the Executive Council and take part in the high level decision making process;

Sixthly, principal officials under the accountability system shall more proactively liaise with the people, keep closer tabs on the public pulse and ensure better response to community aspirations; and

Seventhly, principal officials under the accountability system shall engage more proactively in communication with Members of the Legislative Council.

Based on these seven core elements, we have developed the specific arrangements under the accountability system. The major elements include:

Firstly, the appointment arrangement under the new system is more flexible and it enables the Chief Executive to select the most suitable persons from within and outside the Civil Service as principal officials. Under the new appointment system, competent, committed and innovative persons can be recruited to join the Government and serve the public.

In addition, principal officials under the accountability system will no longer be appointed on civil service terms, and can truly assume political responsibility. This fulfils the expectation of the public.

Secondly, principal officials under the accountability system will have well-defined powers and responsibilities. They will be responsible for their respective policy portfolios and be directly accountable to the Chief Executive. Principal officials will have clear demarcation of duties and well-defined powers and responsibilities. As such, they will be held more accountable to the Legislative Council and the public to gain their support.

The Chief Executive will delegate authority to them and appoint them as Members of the Executive Council. They will participate in the Government's high level decision-making process. As such, the Government will be in a better position to co-ordinate its priority on policy implementation and allocation of resources.

In addition, principal officials will be held responsible for matters within their policy portfolios. They will be accountable to the public and the Legislative Council, and will answer questions from them. In extreme cases, they may have to resign over major policy failures.

Thirdly, implementation of the accountability system will strengthen the importance attached to public opinions and sentiments and foster a culture of enhanced accountability. Principal officials have to take greater initiative to liaise with the public and formulate policies, which meet their needs and aspirations. This includes more visits to districts to communicate with members of the public directly to take heed of their sentiments. They will have to actively disseminate information through the media and explain policies to the public so that the public can have a better understanding of the rationale of government policies. This will be conducive to building up consensus in the community.

Principal officials under the accountability system will have to engage in proactive communication with Members of the Legislative Council to establish mutual trust and strengthen co-operation. They will carefully listen to and consider the views of Members of the Legislative Council with a view to enlisting their support for government policies.

Next, I would like to talk about the basic principles guiding the formulation of the accountability system. In formulating the accountability system, we are guided by the following two principles:

First, the accountability system must be consistent with the Basic Law and be lawful and constitutional. I wish to point out that during the discussion at the Subcommittee, some members have cast doubt on the legality and constitutionality of the accountability system. We have made clear that the accountability system is entirely legal and constitutional. The Government of the Hong Kong Special Administrative Region (SAR) formulates the accountability system on the basis of the Basic Law and all arrangements under the accountability system are fully consistent with the Basic Law.

Second, while implementing the accountability system, we must uphold the integrity of the civil service system and maintain a permanent, neutral, clean and meritocratic Civil Service.

The Chief Executive made it clear at the Legislative Council meeting on 17 April that this was the established policy of the Government. The civil service system of recruitment, assessment, promotion, posting and disciplinary action will remain unchanged after the implementation of the accountability system. Under the accountability system, the existing strengths of the Civil Service will be preserved and given fuller play.

The Honourable Martin LEE proposes to amend the Government's motion to one that supports an accountability system for principal officials which is grounded in a democratic political system based on universal suffrage and is accountable to the Legislative Council.

As we all know, only some of the existing Members of the Legislative Council are returned by universal suffrage, and the method for selecting the Chief Executive shall be specified by the Basic Law and in accordance with the principle of gradual and orderly progress, with the ultimate goal being the selection of the Chief Executive by universal suffrage. According to the Basic Law, it is only after 2007 that the Legislative Council may be formed and the Chief Executive selected by universal suffrage. In light of the above, we, of course, will not be able to satisfy Mr LEE's demand at the moment, or even in the near future. In that case, does Mr LEE suggest that the accountability system should not be implemented before universal suffrage is fully introduced? Does the amendment require that universal suffrage be fully introduced as a prerequisite for the implementation of the accountability system? If the answers are in the affirmative, then I think the debate today may well end here because according to the amendment proposed by Mr LEE, any discussion on the accountability system before universal suffrage is fully introduced would be meaningless, thus rendering it unnecessary for us to spend time debating whether the accountability system should be implemented.

If it is not the objective of Mr LEE's amendment to require that universal suffrage be fully introduced as a prerequisite for the implementation of the accountability system, then how should one interpret what he refers to as "the accountability system which is grounded in a democratic political system based

on universal suffrage"? I think Mr LEE must give us a clear explanation for the purpose of today's debate. Otherwise, our debate would be rendered completely worthless.

As regards the establishment of an accountability system for principal officials which is accountable to the Legislative Council, we think the requirement of the Basic Law for the executive authorities to be accountable to the Legislative Council is crystal clear and needs no repeating. As a matter of fact, Article 64 of the Basic Law stipulates that the Government of the Hong Kong SAR must abide by the law and be accountable to the Legislative Council of the Region: it shall implement laws passed by the Legislative Council and already in force; it shall present regular policy addresses to the Legislative Council; it shall answer questions raised by Members of the Legislative Council; and it shall obtain approval from the Legislative Council for taxation and public expenditure. After the implementation of the accountability system, the SAR Government will continue to be accountable to the Legislative Council in accordance with Article 64 of the Basic Law.

Judging from opinions aired in discussions held in different forums over the past month or so, we can say that there is in fact consensus in our society on the implementation of the new system. There is also a consensus that the accountability system for principal officials can help the Government to attain its objectives of streamlining its structure, enhancing efficiency and better serving the community.

The results of a recent opinion poll on the accountability system for principal officials conducted by AC Nielsen as commissioned by the Home Affairs Bureau indicate that over 65% of the respondents supported the implementation of the accountability system and close to 60% of the respondents agreed that the system should be implemented on 1 July this year. Moreover, over 60% of the respondents agreed that the Chief Executive should have a team of officials who share a common mission to help him formulate and implement policies. Close to 80% of the respondents agreed with the proposal for the Chief Executive to delegate powers to Secretaries of Departments and Directors of Bureaux under the accountability system to enable them to have the necessary authority to formulate and implement policies. What does this mean? It illustrates the fact that members of the public generally agree that the system should be implemented and expect it to take effect as soon as possible.

Madam President, although the Government and Members do not see eye to eye on a number of arrangements relating to the accountability system, I trust that we have a common goal, namely, to enhance governance of the SAR Government. We need to take the first step by implementing the accountability system at the start of the new term of the Chief Executive. After that, we could revise the system in the light of experience with a view to improving the system. There is no point in engaging in a tangle of empty discussion based on hypotheses. I, therefore, urge Members to vote in support of the Government's motion. Thank you, Madam President.

The Secretary for Constitutional Affairs moved the following motion:

"That this Council supports the accountability system for principal officials."

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

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, since the Chief Executive announced the arrangements and details of the accountability system for principal officials to Members on 17 April 2002, the government officials concerned have given the Panel on Constitutional Affairs (the Panel) and the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues (the Subcommittee) a comprehensive analysis of the various arrangements under the new system, answered Members' questions and held in-depth discussions with them. Although the Administration and Members may hold different views on individual issues, we are in unity in perfecting our accountability system. I would like to take this opportunity to extend my warmest gratitude to all members of the Panel and some 30 members of the Subcommittee for their valuable opinions. To ensure the implementation of the accountability system on 1 July as scheduled, they had made strenuous efforts to hold discussions on various important issues within a very tight timeframe to make improvements to the new system. I would also like to thank the Secretary of the Subcommittee for her hard work in arranging meetings, distributing papers and taking follow-

up actions on the discussion items. With her assistance, all the meetings had proceeded smoothly and discussions on various issues were held as scheduled.

The Subcommittee has, up till this day, met for a total of 46 hours in 12 meetings, two of which were held to solicit public views. At these meetings, members of the Subcommittee discussed the accountability system for principal officials and gave a lot of useful comments. After careful consideration, we have introduced some amendments to fine-tune the accountability system, and I will explain them in detail later. On soliciting public views, over 120 organizations and individuals have put forward their opinions to the Subcommittee while views from various sectors of the community have also been received. The majority of them are in support of the implementation of the accountability system.

At the Subcommittee meetings, government officials and members discussed in great detail the arrangements under the accountability system. The main points of the discussions include:

- (1) The constitutionality of the accountability system;
- (2) Preservation of the integrity and political neutrality of the Civil Service;
- (3) The inclusion of the office of Secretary for Justice in the accountability system;
- (4) The inclusion of the office of Secretary for the Civil Service in the accountability system;
- (5) The function, composition and operation of the Executive Council;
- (6) The rank and role of permanent secretaries;
- (7) Conflict of interest and code of practice for principal officials;
- (8) The splitting, merging and retaining of the Policy Bureaux;
- (9) The working relationship between bureaux and departments; and
- (10) Review of the advisory and statutory bodies.

Members of the Subcommittee raised varied views on the above issues. We had also listened to the views of the community at large. We consolidated these views and adopted some of the proposals after careful consideration and thorough deliberation. Earlier on, the Secretary for Constitutional Affairs has already explained some of the issues. I will now highlight the stance of the Administration on a few important issues in six parts, and these are the issues over which members had expressed great concern during the discussions. The Secretary for Constitutional Affairs, the Secretary for Justice and the Secretary for the Civil Service will later speak on other issues respectively.

(I) Preserving the political neutrality, integrity and probity of the Civil Service

One of the important principles to be upheld in implementing the accountability system is to maintain the integrity of the civil service system. During the discussion on the accountability system for principal officials at the Subcommittee meetings, we realized the concern of some members that the accountability system, which required civil servants to follow strictly the instructions of principal officials, might have an impact on our civil service system.

Members' concern is understandable because an efficient, professional, impartial, politically neutral, clean and honest Civil Service is not only the pillar contributing to Hong Kong's stability and prosperity, but also one of the important assets essential to our success. In fact, when the Chief Executive introduced the accountability system to the Legislative Council on 17 April, he stressed that "in introducing the accountability system, we must ensure the stability and continuity of the civil service structure. Not only do we have to achieve this, but through the introduction of the accountability system, we must preserve and enhance the distinctive qualities of the civil service system, that is, permanence, professionalism, political neutrality, and an uncorrupt administration."

Today, I would like to take the opportunity to reiterate that the Government of the Hong Kong Special Administrative Region (SAR) attaches great importance to the merits of the Civil Service and is committed to upholding them. To allay Members' worries, we have adopted a series of initiatives to ensure that civil servants are upright and impartial in discharging their duties and prevent the Civil Service from being politicized.

In the Code of Practice for principal officials under the accountability system, we have included provisions setting out their relationship with civil servants, which provide for the following five points:

- (1) the principal officials shall uphold and promote at all times the core values as well as the political neutrality, integrity and impartiality of the Civil Service;
- (2) the principal officials shall not require or influence, directly and indirectly, civil servants to act in an improper manner which may conflict with their role as civil servants or violate the civil service principle of political neutrality;
- (3) the principal officials shall note that the Secretary for the Civil Service, as a principal official, is responsible to the Chief Executive for managing the Civil Service, including safeguarding the core values of the Civil Service;
- (4) the principal officials shall note that civil servants are appointed, managed and promoted in accordance with the principles of fairness and openness as well as the prevailing rules and regulations applicable to the Civil Service. They shall also note that the Public Service Commission plays an independent role in these matters; and
- (5) the principal officials shall note that civil servants are subject to the prevailing civil service disciplinary mechanism under which allegations of misconduct against individual civil servants are determined through an impartial process based on consideration of factual evidence.

Compliance with the provisions of the Code of Practice is one of the conditions of employment for principal officials under the accountability system. A principal official who fails to comply with the provisions in the Code of Practice will have violated the terms and conditions of the employment contract.

Besides, a circular will be issued to all civil servants, setting out the core values and the principles of a high degree of integrity that they must uphold in discharging their duties, including tendering clear and frank advice on policy options and faithfully implementing the decisions taken by the highest level of the Government.

To safeguard civil servants against political impact, the circular will also lay down procedures for dealing with situations in which civil servants are asked to work in breach of the law, or to act in an improper manner which may conflict with their role as civil servants. To address their concerns, these complaints will be handled in strict confidence.

Our Civil Service, established through years of sustained efforts, is renowned for its uprightness and honesty. We are determined to uphold this reputation.

(II) Inclusion of the Secretary for the Civil Service in the Accountability System

Another issue in relation to the maintenance of a politically neutral Civil Service is whether the Secretary for the Civil Service should be included in the accountability system. Some people have raised objections, worrying that a Secretary appointed under the accountability system will lose his independence in handling civil service matters and find it difficult to safeguard the interests of the Civil Service. Some Members have opined that the post of the Secretary for the Civil Service should continue to be filled by a civil servant in order to ensure the political neutrality of the Civil Service. Here, I would like to point out that all these concerns are entirely unnecessary and groundless.

The Chief Executive has decided, after careful consideration, that the Secretary for the Civil Service should be included in the accountability system. Under the system, the Secretary for the Civil Service will have two major responsibilities: one is the Government's policy relating to the Civil Service, the other is the management of 180 000 civil servants. Civil service policy is one of the most important amongst government policies, which are mainly implemented by the Civil Service. The Secretary responsible for civil service policy should assume total responsibility for his portfolio and should be subject to a high degree of accountability just like other Secretaries appointed under the accountability system, so as to preserve the integrity of the accountability system. As a Member of the Executive Council, he can ensure that the interests of the Civil Service will be taken into account before any decision is made by the Government.

In fact, one of the major duties of the Secretary for the Civil Service is to uphold the fundamental beliefs and tenets of the Civil Service and to ensure the

integrity of the civil service system. He has the duty to implement the established civil service policy of the SAR Government as clearly professed by the Chief Executive, that is, to maintain a permanent, meritocratic, professional, clean and politically neutral Civil Service. He is also duty-bound to preserve, in accordance with the Basic Law, the existing recruitment, appraisal, promotion, deployment and disciplinary mechanism of the Civil Service.

I would like to point out that the inclusion of the Secretary for the Civil Service in the accountability system does not in any way conflict with the need to maintain a politically neutral Civil Service. As before, the Civil Service will conscientiously fulfil its duties and faithfully assist the Chief Executive and the principal officials appointed under the accountability system. Civil servants will also continue to give of their best in offering honest and clear advice on policy proposals. Once the Chief Executive or principal official concerned has made a decision, civil servants will support fully the decision and implement it fully and faithfully, irrespective of their personal beliefs. They will assist the principal officials in explaining and defending the decisions so as to secure the support of the public and the Legislative Council. Civil servants will not voice their personal views in public, and the Civil Service will continue to follow the important principle of political neutrality.

(III) Inclusion of the Secretary for Justice in the Accountability System

Some people, including the Hong Kong Bar Association, have expressed the view that the post of the Secretary for Justice will be politicized if it is included in the accountability system. They have qualms about whether the Secretary for Justice can remain independent and impartial in exercising the functions of his office, in particular the duties relating to criminal prosecution. It has been suggested that the Secretary for Justice can delegate the functions in respect of criminal prosecution to the Director of Public Prosecutions.

Having considered the views of various parties, we still think that the Secretary for Justice should be included in the accountability system. The Secretary for Justice is responsible for the formulation of law-related policies. Like other Secretaries, the Secretary for Justice has to be responsible for his policies. Thus, it is reasonable to include the Secretary for Justice in the accountability system and require him to be fully accountable for his portfolio. The Secretary for Justice will elaborate on this issue shortly.

(IV) Reorganization and Merging of Policy Bureaux

To go along with the accountability system, we are planning to reorganize some Policy Bureaux, reducing their number from the existing 16 to 11. As to the reorganization of Policy Bureaux, members of the Subcommittee have different views. Generally speaking, some members think that the proposed distribution of policy areas is uneven. While some Policy Bureaux (such as the Environment, Health and Welfare Bureau) will be inflated with a share which is too large for their responsible Secretaries to handle; some (for instance, the Constitutional Affairs Bureau) are left with only one policy area in their portfolios. On the reorganization and merging of policy areas, some members have rather strong views over the merging of the Environment and Food Bureau (EFB) with the Health and Welfare Bureau (HWB), and that of the policy areas of manpower resources and industry and commerce.

After careful consideration of members' views, we have adopted some of the proposals and altered the original arrangements accordingly.

We will first alter the original arrangement of amalgamating the EFB with the HWB. The EFB's existing policy areas relating to environmental protection and pollution control will be grouped with those of transport and works and put under the portfolio of the Secretary for Environment, Transport and Works. This arrangement is based on two considerations:

First, the construction of road and railway networks tends to involve the acquisition of massive green lands. This will easily have an adverse impact on the environment and ecology. The grouping of the relevant policy areas under the same Secretary will make it possible to strike a balance between the different needs of the two areas.

Second, environmental protection and pollution control is one of the major government policies, and the issue of reducing pollution is most pressing. To keep in line with the policies in this regard, we must strictly control vehicle emission, encourage public transport to use environmentally-friendly fuel and develop a sound railway network. Co-ordination work in these two areas can be enhanced if the relevant policies are formulated by the same Secretary.

As for the policy areas of food safety and environmental hygiene, they will, as originally planned, be grouped with those of health and welfare under the Secretary for Health, Welfare and Food. Since food safety and environmental

hygiene are closely related to medical and health services, these areas are put under the same Secretary to facilitate better policy co-ordination.

Another amendment is related to arrangements in the area of labour policy. Some members object to merging the policy area of human resources with that of commerce and industry, fearing that labour policy will be neglected.

We do appreciate the concerns of the members. After careful deliberation, we have modified our original arrangements. First, we will withdraw the original arrangement of merging the manpower policy portfolio with the commerce and industry policy portfolio. On the other hand, in order to highlight the importance that the Government attaches to the labour policy, we will have the two policy portfolios of labour policy and economic development merged under the purview of the Secretary for Economic Development and Labour. The Secretary for Education and Manpower will continue to be responsible for manpower needs assessment and policy matters on training and retraining. Such an arrangement is made in the light of the following considerations:

First, the function of the Secretary who is responsible for the economic development portfolio is, apart from overseeing the energy policy, to ensure a sound economic infrastructure for Hong Kong, so as to maintain Hong Kong's position as the major international and regional aviation, marine, logistic and tourist centre. While developing our economic infrastructure to enhance the competitiveness of Hong Kong, we have to ensure that the labour issues are properly handled. An effective labour policy and a sound economic infrastructure are both essential elements contributing to the economic development of Hong Kong.

Second, the emphasis on the development of the tourism and the logistics sectors in Hong Kong will create many employment opportunities in the labour market. In formulating policies on these two areas, the responsible Secretary can also take into account the labour policies to ensure that they complement each other well.

The reason for merging the two policy portfolios of information technology (IT) and commerce and industry is that the development of commerce and industry requires the support of IT. At the same time, the IT policies are closely related to the development of the local commercial and industrial sectors. Placing these two portfolios under the purview of the same Secretary will facilitate better co-ordination.

To sum up, the number of Policy Bureaux will remain the same subsequent to these amendments and the 11 Secretaries are set out as follows:

- Secretary for the Civil Service — to be responsible for the policies and management of the Civil Service
- Secretary for Commerce, Industry and Technology — to be responsible for policies on commerce, industry and information technology
- Secretary for Constitutional Affairs — to be responsible for policies on constitutional issues
- Secretary for Economic Development and Labour — to be responsible for policies on economic affairs and labour issues
- Secretary for Education and Manpower — to be responsible for policies on education and manpower
- Secretary for the Environment, Transport and Works — to be responsible for policies on environmental protection, transport and works
- Secretary for Financial Services and the Treasury — to be responsible for policies on financial and accounting services
- Secretary for Health, Welfare and Food — to be responsible for policies on health, welfare and food safety
- Secretary for Home Affairs — to be responsible for policies on home affairs
- Secretary for Housing, Planning and Lands — to be responsible for policies on housing development, planning and land-related matters
- Secretary for Security — to be responsible for policies on security

(V) *Restriction of the Activities of Outgoing Principal Officials under the Accountability System*

Principal officials under the accountability system often have access to a large amount of internal confidential information of the Government, some of which may be of substantial commercial significance. To uphold public confidence in them, the Government will stipulate in their employment contracts that they shall obtain the advice of a committee appointed by the Chief Executive before engaging in employment or businesses within one year after stepping down from the office. The committee will publicize their advice so that the community can monitor directly the activities of outgoing principal officials.

Some people are of the view that the non-binding advice of the committee cannot prevent principal officials from engaging in activities which have conflicts with public interest in an effective manner. Some suggest that legislation should be made to restrict their activities after termination of their appointment. Some think that principal officers should seek permission from the committee before engaging in any employment or businesses. As to the one-year "sanitization" period, some Members consider it overly lax while others find it too strict as it will deter interested persons from taking up the posts of principal officials under the accountability system.

We understand Members' concerns and recognize the importance of avoiding conflict of interest. In fact, when imposing this restriction, the Government seeks to strike a balance between public interest and the reasonable interest of individual principal officials.

First of all, we do not consider it necessary to impose control by means of legislation. Under the existing legislation, any former principal official who violates the relevant provisions of the Official Secrets Ordinance contravenes the law and is liable to criminal prosecution. As for other provisions governing their activities after stepping down from office, these are already laid down in the employment contract. If the former principal officials violate the contract terms, the SAR Government is empowered to take legal actions against them.

We also find it unnecessary to require former principal officials to obtain approval from the committee before taking up any employment or going into any business. In fact, according to overseas experience, public criticism and public pressure already serve as an effective monitoring mechanism. The United

Kingdom is a case in point. Similar mechanism is used in the United Kingdom to impose restrictions on former Ministers, requiring them to obtain advice from the committee concerned, though the advice so sought is by no means binding. In a report prepared by the Legislative Council Secretariat, it is stated that "while the Advisory Committee will not take any action against any person if he does not follow its advice, there is little evidence suggesting that its advice has not been followed. One reason is that it may leave a bad image to the public if the minister concerned has had his personal interest overriding his public integrity. Another reason is that it may cause embarrassment between the prospective company in which the former minister concerned intends to join and the government, and this might affect the relationship between the two." We can, therefore, see that the officials concerned and the companies or employers intending to employ them will be brought under public scrutiny.

As for the one-year "sanitization period", we consider it a suitable and reasonable arrangement that is neither too strict nor too lenient.

(VI) Relationship between the Executive and the Legislature

I would like to talk about the relationship between the executive and the legislature. When I took over the post of Chief Secretary for Administration in May 2001, one of my priorities was to enhance the communication between the executive and the legislature.

The Basic Law provides for a system of checks and balances, and a complementary relationship between the executive and the legislature. This system will remain unchanged under the accountability system. The SAR Government will continue to be accountable to the Legislative Council in accordance with Article 64 of the Basic Law. The principal officials under the accountability system will also take the initiative to enhance communication and co-operation with Members of the Legislative Council.

The Government is aware that the support of the Legislative Council is essential for the successful implementation of its policies. The principal officials under the accountability system will be held fully accountable for their respective policy portfolios. They are prepared, from the time they assume office, to be proactive in communicating with Members of the Legislative Council, establishing mutual trust and strengthening co-operation, so as to ensure the successful development and implementation of their policies.

Madam President, the SAR Government has introduced the accountability system for principal officials for the purposes of more effective administration and good governance. We believe the new system will not only bring about a new outlook and style of governance, but also become more responsive to the demands of the people.

I urge Members to vote in support of the motion moved by the Government. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr Martin LEE will move an amendment to this motion, as printed on the Agenda. The motion and the amendment will now be debated together in a joint debate.

MR MARTIN LEE (in Cantonese): Madam President, I move an amendment to the motion proposed by the Secretary for Constitutional Affairs as printed on the Agenda.

In 2000, the short piling scandal was revealed and amidst the uproar of public outrage, the Chief Executive made the following statement in his policy address for 2000: "the previous Legislative Council and the community have expressed the view that as senior officials are involved in policy making and play a leading role in public affairs, they should be held accountable for the outcome of their policies. As Hong Kong people are now running Hong Kong, I appreciate their aspirations for the Government of the Hong Kong Special Administrative Region (SAR) to be subjected to a higher degree of accountability. I also agree that the SAR Government should respond seriously, undertake a thorough review, and make the system of accountability more complete."

One year later, in his 2001 policy address, Mr TUNG Chee-hwa proposed that an accountability system be established, so as to "ensure the Government can better respond to the demands of the community; make sure that policies are well co-ordinated; strengthen the co-operation between the executive and the legislature; ensure effective implementation of policies; and provide quality services to the public."

Then on 13 December 2001, in the meeting which Mr TUNG Chee-hwa declared his intention to stand for a second term, he made a speech entitled "Governance in step with the times and strengthening competitive edge" and

made it clear about the need to "implement the new accountability system by July next year. Through a more accountable system, senior officials will become more answerable in their service of the community. In addition, we believe that it will foster an accountability culture within the entire Civil Service that is more in tune with the times."

Remarks like "a higher degree of accountability", "better respond to the demands of the community", and "an accountability culture more in tune with the times", and so on, are all high-sounding claims and these are the rationale upon which the accountability system is founded. But can the accountability system for principal officials now submitted to the Legislative Council for deliberation achieve these objectives?

Let us look at what in fact is the so-called accountability system proposed by the Chief Executive. To put it simply, it is a centralization system whereby all the powers are convergent on the Chief Executive. This is because the accountable officials under this system are all selected by the Chief Executive and appointed by the Central Government. However, as the Chief Executive does not have to be accountable to the Legislative Council, so he is only accountable to the Central Government, and the senior officials in theory have only to be accountable to the Chief Executive alone. If an accountability system which is accountable to the Chief Executive alone is built on the foundation of a Chief Executive who is not returned by democratic elections, that will not fulfil the objective of senior officials being accountable to the public or to the Legislative Council, it will only serve to strengthen the undemocratic and autocratic rule by the Chief Executive.

When the Chief Executive gave a briefing on the accountability system and answered questions from Members of the Council, he stated many times that the principal officials were accountable to he himself alone. That shows that the appointment and dismissal of the accountable officials depend entirely on the wishes of the Chief Executive alone. He would only have to say that a principal official "will have to be responsible for a mistake made" and have that principal official dismissed. Therefore, if we think carefully, we will be able to know that the so-called accountability system is fraught with problems despite its grandiose appearance. It is in reality a means to further Mr TUNG Chee-hwa's paternalistic rule.

Looking at the matter from another perspective, many people including Mr Michael SUEN think that since the process of democratization is constrained by

the provisions in the Basic Law and cannot be speed up, then why not first introduce the accountability system so that the people can ask the present officials to be responsible for the outcome of their policies? But if the accountability system is one like what TUNG Chee-hwa has in mind, not only will the above objective fail to materialize, but it would also only create a negative impact on the governance of the territory. It is because the offices held by the officials are like "iron rice bowls" and they do not have to be accountable for the political mistakes that they have made. So whenever there are problems with the governance of the Chief Executive and if the principal officials think that these are not to the advantage of society, they would try their best to stop them. For they do not have to worry about the security of their positions. However, when the accountability system is introduced, the Civil Service will be made more political and the Chief Executive will have a greater control over the principal officials. These accountable officials will tend to develop a culture of unconcealed flattery and servile obedience, in order that their positions will remain secure, then what good will this do to our society?

When the short piling scandal was exposed, Members of the Legislative Council moved a motion of no confidence against Ms Rosanna WONG, the Chairman of the Housing Authority and Mr Tony MILLER, the Director of Housing, asking them to be held responsible for the mistakes they committed on the short piling incident of public housing estates. In the end, Ms Rosanna WONG resigned of her own accord amidst pressure from the Legislative Council and public opinion, and that is the first incident of accountability. If only the Chief Executive had transferred Tony MILLER at that time, the accountability culture of the SAR could have developed gradually. Unfortunately, the Chief Executive wanted to make a head-on confrontation with the Legislative Council and public opinion by refusing to accede to the demand for accountability from both the public and the Legislative Council and he even stated that he wanted Tony MILLER to remain the Director of Housing and so Mr MILLER remains the Director of Housing even to this day. From this, it is hard to convince people that when the Chief Executive has gathered all the powers in his hands after the accountability system is in force, he would respect the views of the public and the Legislative Council.

A more serious thing is that when the Chief Executive replied to questions raised by the Members in the Legislative Council, he refused repeatedly to make a pledge to develop a mechanism or a precedent on the dismissal of directors of bureaux under the accountability system. He also stressed that even if the

Legislative Council had passed a vote of no confidence on a bureau director, he would not necessarily dismiss that person and that the motion of no confidence was only one of the factors he would consider. Thus, the motion would not have an absolute impact on his decision. As a matter of fact, it would be very difficult to pass a Member's motion under the existing system of separate voting according to the methods of election. If a vote of no confidence can really be carried in the Legislative Council, the public demand it shows will be very strong indeed. If in circumstances as these the Chief Executive still refuses to undertake to respect the public opinion as reflected in the Legislative Council, then how can he realize the objective of "senior officials should be held accountable for the outcome of their policies" which he has pledged in his policy address for 2000? That shows completely that the accountability system which he proposes is an utter deception and all the grand reasons which he presents are all but lies aiming merely at obtaining public support and for which he has never intended to put into practice.

Why does the accountability system have to be introduced at once and before any consultation is made to the public and the Legislative Council? In my opinion, an accountability system like this will not help at all in preventing the SAR Government from committing the same kind of grave errors it has committed over the past five years. Events like the target of 85 000 units of housing production, the Sally AW case, the Cyberport, the interpretation of the law by the National People's Congress, the case of the intervention of academic freedom by Andrew LO, and so on, may recur under this system. What is more of a public concern is that all of the above-mentioned events are related to Mr TUNG. In the rally which he declared his intention to seek a second term, he made a public admission of the three major deficiencies of his governance: "I believe the implementation of some policy objectives could have been better managed; the interests of different sectors could have been better balanced, the reform initiatives could have been better prioritized; and the response and reaction of the community could have been better assessed." He subsequently went to Beijing on a duty visit and he was able to solicit the open support of the three top leaders of the Central Government for his intention to seek a second term. That cast the suspicion that in order to get the support from the national leaders and succeed in securing a second term, he was trying to shift the blame of the failures of his policies onto the civil servants and to make a pledge to the national leaders that if only the accountability system was introduced, then all would be well in the next five years. And so he was able to get some supportive remarks from the leaders on his campaign for re-election. It is precisely

because of this that he is so eager to launch the accountability system as he has to fulfil the pledge made to the leaders before he assumes the office of the Chief Executive for the second term.

According to Article 103 of the Basic Law, the existing civil service system should be maintained. This shows that the political neutrality of civil servants is something to which the Central Government attaches great importance. The accountability system which is about to be introduced will have an important impact on both the civil service system and the entire political system. So before the system is launched, views from all the parties concerned should be consulted. A clear-cut direction for reform as well as the details for implementing the system should be formulated. The situation is like when we want to prepare a tasty dish. We need to spend enough time to choose the ingredients and we need to look for the best way to cook. It is only after these are done then we could present a delicious dish. Does our Government have ample preparation for the accountability system? Or does it want to avoid criticism from Premier ZHU again that it holds discussions but does not reach any decision and does not implement decisions when they are made? Now our Government is making decisions without holding any discussions at all and it is trying to launch the accountability system on 1 July. Now the so-called accountability system of the Chief Executive is like a Mr ZHU who is the boss of a restaurant and he asks the chef Mr TUNG to make a fried chicken for him. Mr ZHU is an impatient person and he urges the chef to make the fried chicken quickly. In order to show the boss that he is a capable cook, TUNG does not care about whether the ingredients are suitable and the time for marinade is enough, and he simply puts the chicken into the boiling oil to fry. Of course, this will enable the skin of the chicken to become crisp and tasty to be put on the table for the boss, but the meat is still raw and cannot be eaten. So the efforts made are a failure. Madam President, actually I know nothing about cooking, the above information is provided by my wife.

In fact, we are now in the 21st century and all democratic and civilized places are talking about political accountability and this invariably means that the government is accountable to the people. But the system of accountability that Hong Kong is about to launch is a so-called accountability system where senior officials are accountable to the Chief Executive alone, and that is really ridiculous. Therefore, my amendment is grounded on a political system of popular and democratic election and it is an accountability system in which principal officials are accountable to the Legislative Council. It is proposed

precisely with the aim of providing a remedy for the deficiencies of the accountability system and with a view to meeting the objectives proposed by Mr TUNG, that is to say, with "a higher degree of accountability, can better respond to the demands of the community and is more in tune with the times". Madam President, I would like to use the following words to sum up my speech: "No democracy, no accountability".

Thank you, Madam President.

Mr Martin LEE moved the following amendment:

"To add "which is grounded in a democratic political system based on universal suffrage and is accountable to the Legislative Council" after "That this Council supports the accountability system for principal officials"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr Martin LEE to the Secretary for Constitutional Affairs' motion be passed.

MR IP KWOK-HIM (in Cantonese): Madam President, the Basic Law provides that the Hong Kong Special Administrative Region (SAR) can discuss and examine, and even to make amendments on, the two major political issues of the elections of the Chief Executive and the Legislative Council Members after the year 2007, as the saying goes, a major change in 10 years and a minor change in five years. Since there may be a need for a major constitutional operation on our political system in 2007, so at a time when it is five years after the reunification, and in order that the SAR Government can be in tune with the times and meet the demands of our society, it is necessary that minor operations should be performed on our administrative framework. For it is only through making these moves that administrative reforms can be carried out in a gradual and orderly manner and that any unnecessary trauma can be avoided.

Why is this operation of administrative reform need to be carried out? It is because we have to respond to public demand. Some time ago and in the wake of the short-piling incident of public housing estates, the chaos related to the opening of the new airport as well as a number of policy failures, the public

has made demands that government officials should be subjected to the scrutiny of public opinions and that the officials should be held responsible for their policy failures and they should even resign in expiation as a result. It is clear that the public demands that principal officials should be accountable. Accountability and democracy are two completely different things while they are not mutually exclusive, though. But if some people use a narrowly-defined concept of democracy, that is, universal suffrage, and say that this is the public demand for accountability, then it is really an attempt to confuse and deceive. The DAB believes that public demand in this respect is clear. The accountability system for principal officials is a demand for the executive authorities to be held responsible for their policies. As for political reforms like popular elections and universal suffrage, they should be carried out in accordance with provisions in the Basic Law.

After the accountability system is introduced, the working relationship between the Chief Executive and the principal officials will be strengthened and the functions of the principal secretaries and Policy Secretaries redistributed. The Policy Bureaux will be reorganized and new arrangements for appointment and termination of service for senior officials will be introduced. I would now talk about the position of the DAB on these issues.

Queries about the accountability system usually start with the issue of its constitutionality. A resolution is proposed by the Government in accordance with the provisions of section 54A of the Interpretation and General Clauses Ordinance to legislate on the accountability system. This invoking of the provisions of section 54A is in the view of the DAB both a legal and appropriate move to make. We are aware of the fact that the accountability system is primarily aimed at reorganizing the framework of the Government. The reorganized Policy Bureaux involve changes in the statutory functions of the public officers concerned. It is therefore a fit and proper move to propose a resolution under section 54A to transfer the statutory functions of a public officer to another, as the invocation of section 54A with respect to the accountability system would transfer the related statutory powers to the principal officers in the reorganized Policy Bureaux. Regarding the fact that some Honourable Members think that to conduct a debate via the form of a motion would deprive Members of the opportunity for discussion, the DAB does not agree to this. As the Chairman of the Legislative Council Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues, I have the experience of chairing more than 10 meetings of the Subcommittee, in which members raised questions on the major principles as well as the minor questions

and had thorough discussions on them. The Government provided replies for each of the queries and explained the arguments put forward. The inclinations and conclusions of the members are very clear. Therefore, there were actually very adequate discussions during the 40-odd hours of Subcommittee meetings which were held more than 10 times.

As for the plan of the Government to have all the principal officials in the topmost echelons of the Government to leave the civil service establishment and be appointed according to the terms and conditions which are different from those of the civil servants, the DAB thinks that this is in compliance with the related provisions in the Basic Law. For when principal officials are appointed under non-civil service terms, that will not affect the relevant constitutional provisions and will not affect the capacity of these principal officials as civil servants. Under Article 101 of the Basic Law, "public servants" include all principal secretaries and Policy Secretaries, whereas section 3 of the Interpretation and General Clauses Ordinance states that the meaning of "public servants" is the same as that of "public officers". Public officers mean those who take up a salaried post in the SAR Government. From this it can be seen that principal officers employed under non-civil service terms and conditions are permitted under the Basic Law. The newly appointed principal secretaries and bureau directors under the accountability system will not have their roles and duties as specified in the Basic Law affected as a result of the change in the appointment system.

In addition, the DAB thinks that the decision to appoint principal secretaries and bureau directors under new appointment terms, to transfer the decision-making powers to non-civil servants and to reorganize the 16 Policy Bureaux and so on, have not contravened Articles 100 and 103 of the Basic Law which provide that the previous system shall be maintained. The DAB thinks that the introduction of new measures to improve the governance of Hong Kong should not be allowed to be impeded in any way simply because of the words "the previous system shall be maintained". The legislative intent of the provisions should be taken into full account and respected. The original intention of the provisions is only to prevent civil servants from being affected by the reunification and it does not mean to impose any obstacles on the development of the political system, nor do they intend to do the same to measures aiming at improving the administration of the territory. The DAB thinks that the SAR Government should take into consideration the state of social development and to launch reforms as appropriate on the administrative framework in order to better exercise its duty of administration.

As to the question of the functions and duties of certain principal officials under the accountability system, such as whether or not the Secretary for Justice should continue to undertake prosecution work, the DAB thinks that as one of the principal secretaries under the accountability system, the Secretary for Justice should have the ultimate authority to decide whether or not criminal prosecution should be instituted. Such powers should not be vested in the Director of Public Prosecutions, for only by doing so could the provisions in Article 63 of the Basic Law be realized. If there are views that the Secretary for Justice, being an accountable official, will affect the office holder's prosecution decisions, then this would tantamount to a disregard of the provisions in the Basic Law which safeguard the Secretary in taking charge of prosecutions free from any interference.

As to the functions and roles of the Executive Council, the DAB thinks that its functions and roles have not changed under the accountability system. The launch of the accountability system which leads to an increase in the number of ex-officio members in the Executive Council should not affect the discharge of its duties in helping the Chief Executive to make decisions, nor will the process of formulating policies be affected. However, the DAB thinks that even if the accountability system has not changed the functions of the Executive Council, and that there is no provision in the Basic Law on the proportion of ex-officio and unofficial members of the Executive Council to be appointed by the Chief Executive, there should be an increase in the number of unofficial members in the Executive Council since the number of ex-officio members has increased as a result of the accountability system. This will ensure the availability of difference opinions which the Chief Executive can take into account when policies are formulated.

As to the splitting up or merging of Policy Bureaux, the most controversial ones are to take out manpower policy from the Education and Manpower Bureau and put it together with the bureau for business affairs and the decision to merge the Environment and Food Bureau with the Health and Welfare Bureau into a gigantic Policy Bureau. The DAB thinks that the operation to split up and merge the 16 Policy Bureaux is not that satisfactory. Having said that, this reshuffle of policy portfolios is a very complicated task and it is hard to tell whether any decision is right or wrong. In different places in the world, there are ways to delineate policy areas and the most important thing is whether it would best suit local conditions. The DAB thinks that as public reaction to the handling of the labour and environment policy areas is so strong, the

Government should conduct more reviews and make amendments as necessary. I have listened to the speech made by the Secretary earlier in which it was mentioned that some amendments were made after the views of Honourable Members were heard. The Government has been so ready to take good advice and the DAB feels that this should be welcomed.

In the meetings of the Legislative Council Subcommittee, the Government made it clear that after the accountability system was put into force, the bureau directors might in the course of formulating their policies, reorganize the departments and the related public sector organizations in their respective policy portfolios. The DAB agrees that the bureau directors should undertake reforms as appropriate in their departments, but they must be aware of the differences in the organizational structure of their bureaux and that these may affect the initial outcome of the accountability system and even the operations of the entire Government. Therefore, the DAB urges the Chief Executive and the accountable bureau directors to proceed in a gradual and orderly manner when reorganizing the bureaux.

As for the details of the appointment of officials under the accountability system, since the Government has proposed a draft code for accountable officials, that shows queries raised by the public have been responded. The code has, for example, specified that accountable officials should not make any improper intervention in the affairs of the civil servants in order that the rules which ensure the neutrality of civil servants are maintained. There are also specifications on the prevention of conflicts of interest, and the accountability to the Legislative Council, and so on. In addition, in the contract entered into between the Government and the accountable officials, there is a requirement stipulating compliance with the code. So the DAB thinks that the code has already imposed a certain binding effect on the accountable officials and so the DAB agrees with the general contents of the code as proposed by the Government.

As for the arrangements for outgoing principal officials which is a subject of much controversy, the accountable officials are required to seek the approval of a committee appointed by the Chief Executive for this purpose before taking any up employment or going into any business within one year after stepping down from office. The DAB thinks that this requirement is acceptable. For we believe that this one-year cooling period should be able to strike a balance between the need to recruit men of ability and the protection of public interest. The DAB thinks that if only the views of the committee is disclosed to the public,

it is believed that officials who have stepped down will respect the views of the committee since any move made by the officials is under the scrutiny of public opinion and the public at large. In Britain, there is a committee for such purpose, that is, the Advisory Committee on Business Appointments and its views are likewise not binding on former ministers, but to this day no minister who had stepped down has not complied with the advice given by this committee. So, the DAB has grounds to believe that principal officers who have stepped down would take the advice of the committee because they are concerned about their reputation and they are under the scrutiny of the community.

Lastly, the DAB is very surprised by the amendment moved by Mr Martin LEE, for the Democratic Party has always been urging for reforms and we are surprised to find them being so conservative as to cling to the old system and resist the reform proposals. At times, people are so adamant about their beliefs that they will be lead into committing grave mistakes. By the same token, the Democratic Party clings to its conviction of being an opposition party and raises its objection simply for the sake of making it. It forces an unreasonable amendment on the Government's proposal to launch an accountability system. Their amendment is a contravention of the Basic Law and is not practical at all. This is a disguised attempt to block reforms and to sabotage the accountability system. It is also a blatant disregard of popular demand for an accountability system and so they are committing the grave mistake of turning a blind eye to the interests of our society. Therefore, the DAB is opposed to the amendment moved by Mr Martin LEE.

With these remarks, Madam President, I support the motion proposed by the Government.

MR LAU CHIN-SHEK (in Cantonese): Madam President, on the accountability system for principal officials, I think among the people who have expressed their views on the subject, Mr Allen LEE is perhaps one of those who have presented some very objective and sensible views. Allen is one of the very first people who advanced the idea of a ministerial system and they were a minority at that time. Allen also gave his support for the accountability system in the first instance after the Chief Executive announced his plan to go ahead with the idea. It is because Allen thinks that any government leader should have his own small coterie of staunch supporters and he is convinced that the ministerial system can ensure the political neutrality of the civil servants. However, it is also Allen

who after having seen the details of the accountability system changed from being a fervent supporter to an opponent of the system, for the reason that after the system is put in place, not only will the accountable Policy Secretaries have to undertake political duties, but that the permanent secretaries who are civil servants will also have to explain and defend government policies in public. And this would make the work of permanent secretaries very political indeed.

Madam President, the launch of the accountability system is, according to official views, due to the fact that the government policies have become more and more political in their formulation and implementation and so it is not desirable for senior officials to undertake the decision-making work, for they are supposed to be politically neutral. By analogy, a vital assumption that should underline the accountability system is that the system is capable of ensuring political neutrality in the civil servants. But this game is "nothing but a dream" and will serve nothing to maintain the political neutrality of civil servants, and on the contrary, it will undermine the century-old tradition of civilian bureaucrats which has been in force in Hong Kong.

The accountability system that is being launched is rash and there have not been adequate discussions in the community on the possible impact on the Civil Service as a result of this change in the administrative structure. Quite a lot of people have raised this point and there is no need for me to repeat the arguments involved. Now even the Civil Service is caught unprepared for this soon launching accountability system and I feel very worried.

Madam President, last week there was an incident in which Mr Donald TSANG, the Chief Secretary for Administration, made some inadvertent errors in his speech. And that is an example to show that the authorities have not consulted the civil servants on the concept of the accountability system, the timetable for its preparation, and so on. Even those affected do not know of the details and they know nothing about when will the list of accountable officials be finalized. Given this kind of policy formulation and preparation, I cannot imagine what will happen on 1 July when the system will be put into force.

If the accountability system is to improve the administration of the territory, how come even the civil servants are kept in the dark about what Mr TUNG has in mind? Is it like what representatives of delegations which came to the Legislative Council Subcommittee to present their views had said, "the launch of the accountability system is because some civil servants are not

complying with the wishes of Mr TUNG and so Mr TUNG is trying to make some drastic change in order to pick some people who share the same beliefs as him to put the civil servants under control"?

If this is really what the authorities have in mind, then they should be bold enough to tell everyone about it. They should not make use of the accountability system as a pretext to form a coterie of staunch supporters, or to put it bluntly, to purge people who hold different views.

Now when Mr TUNG wishes to deal a death blow to the bureaucrat-led form of governance, does it ever occur to us that all other merits of this system may also have to be completely destroyed in the process?

Madam President, if we look at the political scene both at home and abroad, in the past as well as at present, we will notice the perennial problem of the offsprings of political figures abusing the influence of their parents, this is, the so-called "Party of Princes". This kind of phenomenon is found in China and many other places. Recently, the son of KIM Dae Jong, the President of South Korea, was accused of abusing the position of his father to advance his personal interests. Fortunately, we have not heard of the son of Mrs Anson CHAN making a noise in the political or business scene in Hong Kong, or the son of Donald TSANG obtaining any advantages by abusing the powers of his father, or the daughter of Mrs Regina IP giving orders to people.

The fading out of the excellent tradition of civil servants is not something that the people of Hong Kong would wish to see.

Madam President, right from the outset I do not support an accountability system which is not based on democracy. Nor have I ever held any unrealistic expectations for the accountability system proposed by Mr TUNG.

Apparently, the Chief Executive we have is not returned by universal suffrage. He is not accountable to the Legislative Council. And the so-called accountability system implies accountability to the Chief Executive himself alone. The fact that Mr TUNG will be able to strengthen his coterie of followers will enable him to put into force the policies he has in mind. But as there is absolutely no mechanism whereby the people can exert any checks and balances, and since the previous mode of operation of the Civil Service will be destroyed by this system, it is doubtful that whether government policies will be more in line with public opinion, or that the quality of administration could be improved.

Madam President, after the reunification in 1997, I believe most of the people in Hong Kong hope that the previous system which is well-operated will be maintained and there should not be any rash attempt to make changes of all a sudden. The civil service system and the rule of law are the cornerstones essential to our success. I just fail to see a U-turn in public opinion to demand for a destruction of the system and alternative arrangements of governance led by civil servants.

My position is very clear. I am opposed to this superficial system of accountability which in essence is a convergence of powers. I would not support any system which will destroy the tradition of Government by bureaucrats.

Madam President, the motion moved by the Secretary for Constitutional Affairs on behalf of the Government is of vital importance. It is because irrespective of the aim that the accountability system is to enable Mr TUNG to form a cabinet, to appoint senior officials to meet a more political environment, or as some groups which support the system will say, the structure and idea of Civil Service are out of touch with the times, I think the Government will have to admit that it is a major change indeed.

Madam President, when Mr TUNG came in the middle of last month to this Chamber to announce his plan for the accountability system and to take questions from Members, I asked him a question and that was, "Was there any form of consultation made with the civil servants during the process of formulating the accountability system, especially those senior officials who are now sitting on his right hand side? And if they have any concerns, is there any channel to deal with them?" I recall at that time Mr TUNG did not answer directly whether or not any consultation was made with the principal secretaries and the Policy Secretaries and he did not respond to the question of whether there were any concerns among the civil servants about the accountability system.

Now almost a month and a half have passed and there are only 30 or so days before the accountability system is due to be implemented. I would like to ask Mr Michael SUEN as well as the principal secretaries who are either present or absent today:

Which one of you could tell us clearly whether or not Mr TUNG has consulted your views on the plan and contents of the accountability system? Is the situation like what Mr TUNG said last month that when formulating the

system, he had discussed these issues in detail with the principal officials, including those who are present or not present today, before he arrived at these conclusions? Did he ever talk about these with you or not? Yes, or no?

Could these principal officials tell the people of Hong Kong that when after the accountability system is put into force, what will be the changes in the organization framework and operation of the Government? For example, does the Secretary for Housing know whether or not the Housing Authority will exist, or will there be a Housing Society any more?

Could the Secretary for Education and Manpower tell me that the plan to split manpower affairs from the Education and Manpower Bureau proposed after a detailed study is made with her and her colleagues? Could she tell us the advantages and disadvantages of such a splitting up?

Although the Policy Secretaries Mr CHAU Tak-hay and Ms Sandra LEE are not present, could they tell us what in fact is the difference between merging trade and industry affairs with manpower affairs, or merging economic affairs with manpower affairs? Did they make these proposals? Did they suggest adding manpower affairs to their portfolio? Or is the whole thing a result of rash and frequent changes of mind?

Could Mr Joseph WONG tell us why the Secretary for the Civil Service will have to be termed as political appointment? Was he ever consulted on this? Did he make his views known?

DR E. K. YEOH is also not here today, but as for the idea of merging food safety and hygiene to the two policy areas of health and welfare, does he think that he and his successors will be able to handle this heavily packed policy portfolio?

Mrs Regina IP is not here today either. Now, Mrs IP and the Commissioner of Police are all officials on salary point 8 of the directorate pay scale, in future when the Secretary for Security is made one rank higher than the Commissioner of Police, will the latter have to follow her decisions? Will there be any autonomy with regard to the professional code and conduct of the police?

Can any of the principal secretaries and Policy Secretaries tell us whether they will still be principal secretaries and Policy Secretaries under the accountability system, or will they be permanent secretaries?

Madam President, I expect Mr Michael SUEN will say in his reply later that the list of the newly appointed principal officials will not be announced until 1 July and today is only a motion debate. Here, I am not trying to obtain the contents of this list, my query is that since the accountability system would bring about such a major change to the administrative framework, and since these officials are the partners of the Chief Executive and the ones who are mostly affected, just how much do they know? Were they ever consulted? Were they kept in the dark or was it out-and-out a black box operation?

For the past 30 years, I have worked with these officials in our respective positions in the service of Hong Kong. We may have different views and positions on many issues. But still I would like to praise them for their loyalty and devotion, and for their clean and impartial service. Why, why and why when there are only 30 days left when a major overhaul will be made to the system that they are still left in the dark as to the future staffing, future organization and future operational arrangements? Why are they cast into such an enigma about their future and their postings?

In its deliberations on the contents of the accountability system, the Legislative Council Subcommittee has accumulated papers up to few feet high and tens of hours have been spent in the meetings. The debate we have now is likely to be a very long one too. At least it will drag on to the small wee hours of the night when everyone is left dog-tired. If, in the stillness of the night, we can have a chance to ponder over the whole thing, we should soberly ask questions as these: What in fact is the accountability system? What will it bring to Hong Kong? How great will the impact be on the Civil Service? Shall I go for it?

Madam President, perhaps I have said too much already and I think it is time for me to stop. Thank you.

DR PHILIP WONG (in Putonghua): Madam President, on the subject of the accountability system for principal officials being discussed today, some people describe it as a major reform in the administrative system of Hong Kong and is crucial to the success of the Chief Executive in putting into practice the concept of "Hong Kong people ruling Hong Kong" and reviving the local economy during his term of office in the next five years. I am basically in agreement with this view. For I think that putting the accountability system into practice is the broad direction to take and it is in tune with the historical facts and political reality of Hong Kong, hence it should be affirmed and supported.

In fact, the Legislative Council Subcommittee has held a total 12 meetings to deliberate on the accountability system. When the meetings are added with the public consultation sessions, a total of almost 50 hours are spent in the meetings. I attended the meetings every time and in each of the meetings I listened very carefully to the speeches made by the officials, especially their replies to the questions raised by Members. In my opinion, their detailed explanations to the system are in line with the Basic Law which provides for the principle of an executive-led Government. But unfortunately, it seems that the mind of some people is set and they are unwilling to accept these explanations, no matter how reasonable and complete they are. It therefore gives people the impression that the meetings are a waste of time. I do not wish to use a lot of time to discuss the details and I would just like to concentrate on talking about my personal views on why the accountability system should be launched.

During the days of the British colonial government, our administrative system was very conservative and old-fashioned. Even countries like Singapore, Australia, New Zealand, Canada, and so on, as well as some of the places near Hong Kong, have all seized the opportunity to launch their own political reforms. But the administrative system of Hong Kong still remained unchanged. That is out of tune with the times. One of the greatest shortcomings of this is that all the policies were examined, designed, vetted and approved by the relevant departments in London and later handed over to the Governor of Hong Kong for implementation as instructed. The Governor took orders from London and the major officials and executives all took orders from the Governor. In the Hong Kong British Government, an overwhelming majority of the principle officials and executives were not vested with the powers to take part in the formulation of policies and they were lacking in the experience of policy formulation. However, they were very good at implementing policies and also at discerning the intentions of London and making efforts to match with the policies of the Governor. For example, when the Governor Chris PATTEN decided to launch his political reform package which was considered to be a "three contravention" package, some of the officials might not quite agree with the reforms, but they still tried their best to put these into practice and would not oppose them in public. The people of Hong Kong therefore did not know the extent to which these officials agreed or disagreed with the reforms. And so the public would not want these officials to be held accountable for the political reforms. I am not saying that they were not responsible but that London only trained them how to implement policies instead of training them how to formulate policies. They were not required to bear the political responsibilities of the policies, and provided that they had no problems with their integrity and so on, they would not be replaced, not to mention being forced to step down.

After the reunification, these major officials and executives are all retained and the Central Government has never intervened in the internal affairs of the Hong Kong Special Administrative Region (SAR). It is because the Central Government wants to put into practice the principles of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". In this way the people of Hong Kong have become their own masters. All these are what we see with our own eyes. For example, every time when the Chief Executive goes to Beijing for a duty visit, we can see that the Hong Kong and Macao Office of the State Council in China has never probed into the internal affairs of the SAR. The Chief Executive is thus given a free hand to deal with the affairs of the SAR. Now that almost five years have passed after the reunification, the Chief Executive can only perform his work in the absence of a coterie of followers, day in and day out working from seven to eleven to attend to the affairs of the SAR. He has to bear the criticism of "holding discussions without reaching decisions, making decisions without putting them into practice and doing things without boldness and decisiveness". He really works very hard. There is no responsible government in the world which permits its major officials to do what they like and to say what they like, or shirking responsibilities and even doing things in exact opposite of what they pretend to be. It is with great sincerity that the Central Government wants to put into practice the concepts of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". But who is to formulate the policies to run the territory? How to prevent differences in view between the Chief Executive and the major officials with regard to their concepts of running the territory? Efforts in this respect do not have any precedents and they need to be explored into by trial and error in actual practice. The Chief Executive is a busy person and he has to meet guests every day, go on overseas trips and attend many important functions. Unless he is a superman, it would be very difficult for him to give too much time and energy to attend to policy formulation and the overall situation. Moreover, I think that in matters such as policy formulation, it would be difficult to rely on the efforts of just one person and it would be better if a team is committed to doing it. A team will be able to gather more views than one person and a team may make more scientific and practical decisions. Against the background of impacts from the Asian financial turmoil, the globalization of the world economy and rapid developments of a knowledge-based economy, there is an urgent need for the SAR Government to be flexible and make improvements to enable it to get in tune with the times. Such efforts will maintain our position as an international trade and finance centre and enable us to respond to the ever-growing popular demands. By so doing the SAR

Government will obtain the support of both the people of Hong Kong and international investors and be able to remain a success in the midst of fierce competitions. Since we already have so many high calibre officials in Hong Kong, if the accountability system is introduced, we can attract talents with political aspirations, innovative thinking, leadership qualities and who are dauntless in the face of criticism. They should be able to put in the best of their efforts and work in close partnership with the Chief Executive for the betterment of the SAR. These new recruits should work with the elite in the existing establishment and form a leadership circle with a clear sense of direction and working philosophy. They will form an efficient ruling framework with a clear delineation of powers and responsibilities. In the next few years they will assist the Chief Executive in conducting research, formulate policies, face the public and bear responsibilities so that the SAR Government will be more able to deliver quality public services, promote economic restructuring, steer the territory out of the economic doldrums, raise the quality of life of the people and boost their confidence for the future of Hong Kong. Looking at the accountability system from this perspective, its key feature is to further realize the concepts of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". Hence, the system is in line with the fundamental interests of the people of Hong Kong and it does have a part to play in the prosperity, stability and order of the SAR, as well as promoting the progress of its political culture.

Reforms in the administrative framework have never been easy tasks. There should be careful planning in advance and these reforms are to be launched in an orderly and gradual manner. To ensure that the reforms will achieve their targets, people from all walks of life should join hands and work towards this goal. The Hong Kong Chinese General Chamber of Commerce is optimistic about this new idea of an accountability system and will lend its full support towards this end. Recently, many of our members took part in discussions on the accountability system and they put forward many views on it. They suggested that "the capable should be recruited", "public opinion be gauged", "government structure be streamlined", "administrative efficiency be enhanced", "more policy research be conducted", "cohesion of the Civil Service be strengthened", "encouragement be given to the media and political parties to present constructive views", and that "executive-legislature relationship be improved", and so on. I think all these suggestions will facilitate the introduction of the accountability system.

Madam President, I so submit.

MR LAU WONG-FAT (in Cantonese): Madam President, it is said that "political reforms should change with the times". It is also said that "when all means are exhausted, changes have become imperative; and once changes have been made, solution will emerge." At all times and in all countries, many governors launched reforms, large and small. These might be reforms in political system, legal system or in the mode of government. There might be successes or failures. Thus, as one looks back into history, reforms were the norm and were always in continual sequence. There might be counter-currents but it is always decent reforms that managed to stay.

The Government of the Hong Kong Special Administrative Region (SAR) is planning to launch an accountability system for principal officials. Undoubtedly, the system seeks to improve the administration of Hong Kong. The Government takes the initiative to enhance the accountability of principal officials to achieve better co-operation and interaction between the Government and the people. This is therefore a step that should be supported and endorsed.

With reunification, the SAR Government took over the entire system and method of administration from the British Hong Kong government in order to achieve a smooth transition. Now, experience shows that copying everything from the former government cannot achieve the expected results, when faced with a new situation and when new concepts of governance are required. It is for this reason that Mr TUNG, with implementing the Basic Law as a premise, launches what he regards as a reform that can better realize his principles of governance and enhance his quality of administration during his second term. This coincides with the principles of "political reforms should change with the times" and "when all means are exhausted, changes have become imperative; and once changes have been made, solution will emerge."

The accountability system is not an extemporaneous thought. It cannot possibly be a public relations tactics to please the people. I trust this is a manifestation of the determination to change and grow by the leadership headed by Mr TUNG after years of hardship and after learning from experience. The accountability system has a clear objective. While there may be certain inadequacies in some specifics or some areas, the new system as a whole is nevertheless a desirable one. Moreover, there is no such thing as a perfect system and this proposal is one that has never been put to practice. China in opening itself to the outside world and in carrying reform of its economic

structure is making adjustments as it proceeds. Mr DENG Xiaoping once said, "Groping the stones to cross the river," which is a pragmatic and prudent way of doing things.

Madam President, I think all of us should take an open and positive attitude towards the accountability system, should be helpful in fostering the relevant reform and should see it come to fruition with patience. All of us should, as we implement the system, take up the responsibility to monitor it in order to make it better. With these remarks, I support the original motion.

DR RAYMOND HO (in Cantonese): Madam President, from what happened in the past four years or so, the existing government framework in Hong Kong is falling short of the demands of the needs of the community. Directors of Bureaux in the Hong Kong Special Administrative Region (SAR) are responsible both for formulating policies and for executing them. These senior civil servants also play an important political role, including the role of salesmen to market policies to this Council and the people. Hence, it would not be possible for civil servants to be politically neutral any more. There is a need for reform.

THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair.

The accountability system for principal officials fits well as a solution to the problem. In the system, political accountability and policy implementation are separated to make sure that civil servants continue to be politically neutral. The system can help to enhance the accountability of principal officials as well as to make policy implementation more effective.

Under the system, the Chief Executive will take up a key role. If the Chief Executive could exercise a strong leadership, he could avoid repeating the past failures of the Government in its decision-making process, often accused of having "deliberation without decision and decision without action".

On the other hand, principal officials will have a pivotal role to play in the accountability system. Principal officials must be sensitive politically and adroit in their political skills in order to gain the support of the people, the media and this Council in respect of government policies. Therefore, they must

possess the right qualities in terms of character and experience. Furthermore, principal officials dealing with policy areas involving the Mainland must have a certain degree of understanding about the Mainland and are willing to foster better liaison between Hong Kong and the Mainland. Some officials were not positive enough in developing co-operation between Hong Kong and the Mainland in the past, I hope the relevant officials can do better in this regard in future.

As regards the portfolios that the principal officials are responsible for, some critics do not agree with those proposed by the Government. Some of the worries they bring up are understandable. I think, however, that the most important issue is the clear definition of the powers, duties and portfolios of every principal official to minimize any conflict that may arise between the officials.

I hold a different view, however, towards the political appointment of the Secretary for the Civil Service (SCS) being a secretary under the accountability system. The post would be more appropriately filled by a civil servant in the permanent and pensionable establishment. The reason is that the Civil Service Bureau handles mainly personnel matters involving the internal affairs of the Government, including recruitment, conditions of service and welfare, which are not directly related to the people. According to the plans of the Government, the SCS will be responsible for (1) civil service policy; and (2) the management of the Civil Service. But the relevant official may encounter very great difficulties in the discharge of his/her duties.

I had asked government officials this question at a meeting of the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues: If the SCS, after considering the views of the civil servants, makes a proposal to the Executive Council in respect of a policy that affects the civil servants, such as substantial pay cuts or greatly reduced welfare or the dismissal of a significant number of civil servants, and if the Executive Council would not accept his opposition but adopted a decision unwelcomed by the civil servants, who subsequently react with great dissatisfaction, will the SCS, be politically responsible for such a problem that has arisen in the portfolio under him, despite his/her efforts to make a suitable recommendation to the Executive Council?

Moreover, due to the confidentiality code of the Executive Council, civil servants might think the SCS has not catered to their interests by not having

stood up to voice the oppositions of the service at meetings of the Executive Council, but, instead, having resorted to executing policies against them. Under the circumstances, can the SCS, after his/her term of "political appointment" expires or even during the period in which he/she is politically responsible for the matter, return to serve as a civil servant amidst extensive enmity among his colleagues? Up to now, I have not received any satisfactory reply from the Government.

Madam Deputy, though I do not endorse the idea of designating the SCS a "political appointee" under the accountability system, I support the proposed accountability system as a whole. I so submit. Thank you.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, the Achilles' heel of the accountability system for principal officials in the Hong Kong Special Administrative Region (SAR) lies in the absence of a foundation in democracy. Chief Executive TUNG Chee-hwa is returned by a small circle of 800 people. He does not have the mandate of the people and there is an inherent lack of democracy about his office. In addition, the political direction of the accountability system is oriented to the centralization of powers and the concentration of such powers on the Chief Executive who will appoint people sharing the same beliefs as his as Policy Secretaries and make them accountable to him rather than the Legislative Council. This is a system of autocracy and is poles apart from democracy. Therefore, the Democratic Party makes an amendment to the motion moved by the Government. Our amendment is made as a matter of principle. It represents our demand for an accountability system to be built upon the foundation of a democratic system of government returned by universal suffrage and accountable to a Legislative Council returned also by universal suffrage.

Now five years have passed since the reunification and TUNG Chee-hwa has shown nothing but incompetence in governing Hong Kong. The people are filled with grievances. The opinion of the leftists is that the lack of co-operation from the senior officials has been the cause of the many blunders committed by TUNG Chee-hwa. The proposed accountability system is in fact a shift in political power, a purge of the unwanted and a replacement of offices and their bearers. A major change to our political system as this is not introduced in the form of legislation but to be effected by way of a resolution which is hurriedly

proposed, backed up by the "royalists" and to be forced through this Council by 1 July, with the aim of providing an auspicious compliment to the re-election of TUNG Chee-hwa and the imminent visit of JIANG Zemin.

The accountability system has been so rashly proposed that it is fraught with deplorable problems. The resolution proposed by the Government for its passage is likewise sloppy and worthless. I would now like to highlight its 10 major flaws and deficiencies.

First, there is a fundamental change in the nature of the Executive Council. In the past, the Executive Council used to be composed mainly of members of the public. The accountability system has led to a great surge in the number of ex-officio Members from three to 14 persons, representing almost a five-fold increase. The nature of the Executive Council has thus changed from that of being an advisory body in the past to something close to a cabinet system. Since the officials are the subordinates of the Chief Executive, they take orders from him and it is hard for them to present collectively some different views. Moreover, it is difficult therefore to realize the stipulations in Article 56 of the Basic Law that "If the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record". This is tantamount to abolishing this mild and last resort which the Executive Council has on checking the powers of the Chief Executive and so the functions of the Executive Council as specified in Article 56 of the Basic Law are practically in demise.

Second, the idea of the political neutrality of the civil servants has relegated to nothing but a myth. In the past, the Government often highlighted the political neutrality of the civil servants, but under the accountability system, the Secretary for the Civil Service is also an accountability official and he is not politically neutral at all. As a Member of the Executive Council, does he formulate civil service policies on behalf of the civil servants or the public? Is he able to act on the interest of the civil servants and express their concerns clearly to the Government? Can he uphold the political neutrality of civil servants? When the Secretary for the Civil Service becomes an accountability official, he assumes a double political identity and he cannot please both sides at the same time. He will not command the trust of civil servants, nor can he uphold political neutrality which has become a myth.

Third, the permanent secretaries under the accountability system are not politically neutral at all. Since they are civil servants, they should therefore be

politically neutral. However, we can see the permanent secretaries will be responsible for "explaining and defending government policies as well as canvassing support from the public and the Legislative Council". They should also answer questions raised by Members of the Legislative Council, introduce bills and take part in debates. Their duties are not different from those of the accountability officials. In the eyes of the public, officials who formulate policies and those who speak out for the policies share quite the same ideas and it is hard to tell if they are neutral. And has this so-called political neutrality become a myth or a lie? Will a lie told 10 times become a myth?

Fourth, there is confusion in the powers of the principal Secretaries and those of the Policy Secretaries. In theory, the accountability officials should have their respective powers and responsibilities and they are directly accountable to the Chief Executive. However, since the accountability system has been introduced in such a hurry, there is no time for the transfer of powers among the principal Secretaries and the Policy Secretaries. At present, 120 pieces of legislation on the powers of the Chief Secretary for Administration are related to various Policy Bureaux. And there are close to 500 pieces of legislation related to the powers of the Financial Secretary. All these pieces of legislation have not been dealt with in the transfer of powers under the accountability system. Hence, the principal Secretaries still have the authority to act in place of the accountability Policy Secretaries to give instructions and orders, grant approvals, conduct investigations, receive appeals, issue notices, give evidence and receive petitions, and so on. If the powers and responsibilities of principal Secretaries and Policy Secretaries are not clearly delineated, then how can they be accountable and who are to be held responsible for the things they do?

Fifth, the splits and combinations of departments are hectic. The hurried introduction of the accountability system results in a reorganization of the departments which is ill-considered. Such reorganizations are being made even now. Some time ago there was the proposal to combine the four policy areas of environment, food, medical services and health. Under this proposal, the new Policy Secretary has to manage almost one third of the public resources, and that is a mega combination. The proposal to combine labour affairs with economic affairs or as in the previous proposal, with the trade and industrial affairs, is made out of commercial considerations. The incorporation of environmental affairs into transport and works in the hope that there will not be a repeat of the Long Valley incident is a kind of incorporation in big gulps. The decision to

make the Civil Service Bureau an accountability bureau is a further dismantling of political neutrality in the Civil Service. To make the Chief Secretary for Administration a commander without an army is a new attempt to dismantle the politics of the separation of powers. Irrespective of these dismantlings or incorporations, or how new combinations are made, all these are done out of the wishful thinking of a government led by businessmen. It is the result of the confused moves made by the officials and this exposes the chaos associated with the accountability system.

Sixth, the mergers of different bureaux and departments may result in massive layoffs. These mergers do not merely result in changes in staffing arrangements involving permanent secretaries, department heads or the directorate grade staff, they may also lead to downsizing and layoffs among the rank and file. At present, there is much tension in the relationship between the Government and the civil servants and conflicts are likely to erupt any time. Civil servants are placed in very difficult circumstances, for they have to face a salary review, enhanced productivity and downsizing in the establishment, and so on. When these are coupled with the reorganizations and layoffs that ensue from these mergers of bureaux and departments, they are caught in a threatening thunderstorm. The civil servants are like a suit which has been constantly changed and cut into pieces. The second term of TUNG Chee-hwa will last only five years, but he is contemplating to use half of the time to reorganize the Government and spend a lot of his energy to iron out personnel matters instead of improving the economy and solving the problem of unemployment. This is simply a wrong choice in politics.

Seventh, a constitutional convention is still non-existent in Hong Kong. The accountability system lacks a foundation in democracy and this is an inherent deficiency. The lack of a constitutional convention is an acquired deficiency. The accountability officials are parachuted onto their positions. They do not have to come before the Legislative Council to answer questions from Members before they assume office. They do not necessarily have to offer any explanation when they leave office. All that is required is one month's notice. During their term of office, even when there is a serious political blunder or a grave problem with their integrity, or when the Legislative Council has passed a motion of no confidence against them, they would not necessarily have to be told by the Chief Executive to step down. When such an accountability system is lacking a foundation in democracy, and when the accountability officials are not subject to checking by public opinion, the so-called accountability will become a mockery, a hollow sham which will confuse and deceive the public.

Eighth, the emergence of a ruling party of business interests. The SAR Government is shored up by the business sector which dominates the 800-member electoral school, in which the labour and the grassroots serve no other purposes than window-dressing. In the past, the senior officials would come from the Civil Service and they would manage to balance the interests of different social classes. However, the design of the accountability system is such that the ministerial system with a revolving door kind of free entry and exit is especially built in to give green lights to the business sector. It seems that under this system the business sector is all the world and they should reign supreme. People in the business sector have always attacked the grassroots for their love of free lunches. Now with the accountability system, these tycoons come into power without having to go through any elections, they become the ruling party without having to form any party, and they munch the delicacies of a political banquet without ever doing any thing to deserve it. All of the above will underline future class conflicts.

Ninth, conflict of interest resulting from the unholy alliance of officials and the business sector. Most businessmen in Hong Kong are persons of integrity, but even as the Government is run by businessmen, there is a need to prevent officials from conspiring with businessmen to make use of public interests to further their private gains. When officials have left office, they should be prevented from making use of the information they have compiled or grasped, including that on finance or land, and use it to advance their personal gains. The committee formed for the purpose of matters related to the employment of accountability officials after they have stepped down can at most make some public advice on the employment of these officials in the private sector or firms which show a clear conflict of interest. The committee is powerless to stop these former officials from taking up employment. The committee is therefore the best example of a toothless tiger. In its efforts to maintain cleanliness and prevent conflict of interest, the SAR Government should strive to defend public interest. It should refrain from making itself a shelter for those senior officials from the business sector. To design a system which would be tempting to officials to commit offences in this aspect is like opening Pandora's box and let out the evil spirit of corruption to the devastation of the SAR.

Tenth, modern-day court politics. The responsibility of a modern government is to be accountable to the people. But the SAR Government is going precisely in the opposite direction. Officials in the SAR are accountable

to TUNG Chee-hwa. Democracy now becomes court politics. An anomaly of a Director of the Chief Executive's Office is created for this purpose. The holder of this office is politically appointed, and he or she will attend the Executive Council meetings. The person is not required to be politically neutral. He or she is not an accountable official or a civil servant. His or her powers are unchecked. All he or she has to do is to follow the instructions of the Chief Executive, follow up work of the Chief Executive's Office and be accountable to the Chief Executive. So in this way the Director becomes an imperial official and the mouthpiece of the Chief Executive, a kind of higher-ranking Andrew LO. The office holder may then go about freely and make people yield to the mighty hand of his big boss. The Andrew LO incident is a lesson we have to learn, and the University of Hong Kong scandal is still fresh in our mind, so we can never allow the phantom of court politics to loom over the skies of Lower Albert Road. The Director of the Chief Executive's Office should never be allowed to speak on behalf of the Chief Executive and give orders unchecked.

Madam Deputy, some time ago I made the analogy that the accountability system is like a dish of fried rice in Hong Kong politics. There is something more to this analogy. Without democracy, this dish of fried rice is like cooking rice without rice, it is like rice without any ingredients when there is no accountability, the confusion and chaos are like burnt and overcooked rice, and the hurry and rashness are like raw and undercooked rice. Chief Executive TUNG Chee-hwa is the cook for the accountability system, but the dish of political fried rice that he has made is a weird monstrosity which resembles practically nothing. He does not have to be accountable, he can never be fired and he can stay on for a second term. This is the best example of accountability in the SAR. One is left utterly aghast, speechless and exasperated.

Madam Deputy, the criticism that the Democratic Party levels at TUNG Chee-hwa's accountability system is justified and well-grounded. It is not made simply for the sake of raising objections. Our amendment seeks to add the elements of democracy and accountability on top of the system proposed. Democracy is a political system returned by universal suffrage. To be accountable is to be accountable to a Legislative Council returned by popular elections. This is the key to the success of the accountability system. This is also the greatest difference between our party and TUNG Chee-hwa and the DAB. Our amendment is going to be voted down and that we know, but our amendment is like a mirror of history which will tell the right from wrong, it is

also like a river that flows relentlessly, able to withstand the test of time and meet its challenges.

With these remarks, Madam Deputy, I support the amendment moved by Mr Martin LEE.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Deputy, I rise to speak in support of an accountability system for principal officials (accountability system) which is grounded in a democratic political system based on universal suffrage and is accountable to the Legislative Council.

Madam Deputy, before discussing the accountability system proposed by Chief Executive TUNG Chee-hwa, I should like Honourable Members to look back on a dark period in the constitutional history of China more than 80 years ago. In 1913, YUAN Shikai, not satisfied that he was just the Provisional President of the Republic of China, strove to bribe members of different political parties and councillors to elect him as the President, thereby marking his first step in restoring the monarchical system.

After he had assumed office, YUAN Shikai sought to further centralize powers by amending the then constitution, which was the Provisional Constitution, on the pretext that the Provisional Constitution imposed too many restraints on the President and thus made it very difficult for the President to discharge his duties. But since his proposal was met with objection from the then parliament, YUAN Shikai dissolved the parliament and set up a central political council to amend the Provisional Constitution to confer absolute power on the President by abolishing completely all clauses imposing restraints on his powers. This amendment was passed after only 40 days' discussion and subsequently promulgated on 1 May 1914. The thrust of the amendment was mainly to set up a centralization system under the President, as well as to remove the Prime Minister from the Cabinet and establish the President as the head of administration instead.

Having centralized all powers, YUAN Shikai's greed for personal power became even more voracious. In order to further centralize powers, he turned the country into a constitutional monarchy in November 1915 and proclaimed himself emperor.

Perhaps Members may find this episode in history rather familiar. Of course, the Hong Kong Special Administrative Region (SAR) is currently experiencing the dark period in the constitutional history of China more than 80 years ago. The formulation process and contents of the accountability system proposed by Mr TUNG have served to reflect the fact that he is as autocratic and dictatorial as YUAN Shikai. Today, Mr TUNG is going to follow the same old disastrous road in history and lead Hong Kong down a dark political abyss.

Madam Deputy, the dictatorial and self-centred style of Mr TUNG is reflected in not only the formulation process of the accountability system. Before announcing his proposal, Mr TUNG had already set 1 July as the latest date of implementation, and that is why he required Members to pass the relevant resolution on 19 June shortly after he had announced his proposal in this Council on 17 April. Despite the profound and far-reaching effects it will have on Hong Kong's future political system, we are only allowed 64 days to consider this reform proposal. Perhaps we should consider ourselves lucky that Mr TUNG is more generous than YUAN Shikai, as he has allowed us 14 days more. Nevertheless, I really have to ask this question: Is a period of two months long enough? In the past, whenever we put forward proposals for political reform, government officials would always say we should take some time to discuss the proposals in great detail. When we were talking about the 2003 District Council Election, the Government even told us that there was too little time to introduce any reform. Hence, I cannot help but ask this question: For what reason can the accountability system be implemented so hurriedly? I believe the reason is very simple, because this is Mr TUNG's "imperial decree", government officials must oblige and members of the public must not raise objection to it.

Mr TUNG loves to do things behind closed doors much more than the colonial government. Before 1997, the then Government would publish green papers or white papers on major reforms or changes to solicit opinions from the public, albeit not many opinions would be accepted in the end. Still, members of the public would be given a chance to discuss the issues concerned. Yet today, Mr TUNG just loves to decide everything with a few persons behind closed doors, so much so that even those government officials who would be directly affected were informed of the relevant contents only one or two days earlier than the public. Such a practice is not only undemocratic, but is also showing disrespect for the relevant government officials and their subordinates. How can Hong Kong have any hope when our leader is so dictatorial?

We hold that any reform proposal not formulated in a democratic way and not discussed by the public is only a process for a small coterie of participants to allocate benefits among themselves, rather than a process catering for the well being of the people or bring about hope for society as a whole. I believe such a system will be despised by the public in the end.

Just like YUAN Shikai trying to further increase the power of the President, Mr TUNG is introducing the accountability system on the pretext that the restraints of the existing system are making his administration very difficult, while in reality, he is trying to enhance his power by further centralizing all powers. The two major obstacles in Mr TUNG's eyes are, namely, the Legislative Council and the civil service system inherited from the colonial government.

With regard to the Legislative Council, the Government all along stresses that the fact that it has only power but no ballots in the Council has impeded the implementation of policies, and that is why it hopes to introduce a ministerial system to improve the situation in this context. Hence, it should not come as any surprise that the Government appoints Honourable colleagues from political parties that are close to the Government as Executive Council Members (or even as ministers) to participate in the decision-making process, with a view to ensuring the smooth passage of policies introduced by the Government through the Council. Actually, the accountability system will only help to make the relationship between the Government and certain political parties even closer. In fact, under the existing system, the Government has already incorporated into its policies the views of individual parties that are close to it. As regards the political parties maintaining a close relationship with the Government, even if they should oppose the Government's suggestions at the beginning, they would make volte-face at the right time to support the Government. Members have all seen that in the recent case of civil service pay cut, which was a typical example. So, the so-called efforts to absorb political parties into the Government aim only at highlighting the forces in support of the Government, so that the Government can blatantly have its policies passed in this Council without discussion.

Therefore, it is just the wishful thinking of certain Honourable colleagues that with the establishment of the accountability system, the democratic system operating effectively in other democratic countries can be introduced into Hong Kong to hold the Administration accountable to an elected representative council. To cite an example, if we should require that in the event of this Council passes a

motion of no confidence in respect of a certain government official, the official concerned has to step down immediately, the Chief Executive could still reply to us that he would take into account different opinions before deciding whether or not to replace that official. After all, the replacement or otherwise of the government official concerned is still the decision of the Chief Executive, and so we must look into the ways we play our monitoring role. In fact, given the present undemocratic political system, the powerful force of the royalist parties in this Council, and the bicameral voting system provided under the Basic Law, any motion of no confidence moved by Members just can hardly be carried. Nevertheless, the Government still strives to impose restrictions everywhere to pre-empt the power of the Council. The attempts made by Mr TUNG to concentrate all powers on himself are perhaps better than only the efforts made by YUAN Shikai to dissolve the parliament. In what way are they better? Bearing in mind that YUAN Shikai dissolved the parliament, it is indeed our fortune that the Chief Executive does not dissolve this Council.

Further still, Mr TUNG has put the blame of his poor leadership and hence unsatisfactory governance of Hong Kong over the past five years on the uncooperative civil service system inherited from the colonial government. This attitude of his has indeed annoyed many civil servants. But then, the Chief Executive is bent on changing this system and wiping out completely the good image of our civil servants, who have been known for their loyalty and cleanliness.

Madam Deputy, in future, the Secretaries of Departments and the Directors of Bureaux will be appointed on non-civil service terms and accountable to only Mr TUNG. They will not be protected by the civil service system and their promotion or extension of appointment will be determined solely by Mr TUNG. Under the circumstances, when giving their honest advice, the accountability officials will probably try to avoid certain taboo subjects, lest they will be blamed and punished by the Chief Executive for hindering administration. The traditional neutrality of civil servants and their standing practice of giving advice in the best interest of the public will give way to efforts to win Mr TUNG's favour and to accept his orders indiscriminately. Will that be of any good to the future development of Hong Kong? I am afraid that will certainly develop into a nightmare for Hong Kong.

The accountability system has damaged the principle of political neutrality upheld by civil servants all along, thereby affecting not only the quality of policies but, more importantly, also the policy areas where impartiality and

neutrality are indispensable. In this connection, the question of whether or not the Secretary for Justice should be an accountability official was raised at the meetings of the Subcommittee. Our concern is that if the Secretary for Justice should be made an accountability official, the office holder would not be able to determine fairly and impartially whether or not to institute prosecution against a certain person because his or her decision would be subject to political influence or the influence from Mr TUNG. Hence, I hold that the present practice should be maintained, that is, Secretary for Justice should not be included in the list of principal officials under the accountability system. Perhaps some may argue that the "Sally AW Sian case" has taken place even under the existing system. However, the question remains whether we wish to see similar incidents happening continuously in future. Yet this is exactly where our concern about the new system lies, for we are concerned that such situation will continue to occur in future.

Apart from the Secretary for Justice, concern has also been aroused over the post of Secretary for the Civil Service. Since the Secretary for the Civil Service is responsible for matters relating to civil servants like promotion, posting, appraisal, and so on, he or she is expected to demonstrate a certain degree of neutrality. But then, if the Secretary for the Civil Service should be included as one of the Directors of Bureaux under the accountability system, political as well as other factors will have to be taken into consideration in the dealing of matters related to promotion, thereby threatening the neutrality of civil servants. That way, the merits of meritocracy in the Civil Service will be injured.

Speaking of the neutrality of the Civil Service, actually, the Government has not given us any clear answer regarding the two aforementioned posts or the roles and political responsibilities of government officials below the level of Directors of Bureaux. These issues are of concern to not only Honourable colleagues having doubts about the accountability system but also members of the public who support the system. I therefore hold that the Government must explain the issues clearly to us expeditiously.

Madam Deputy, as I pointed out at the beginning of my speech, any reform proposal formulated behind closed doors without undergoing the process of democratic discussion will only serve as a means for a small coterie of participants to allocate benefits among themselves. This can be seen very

clearly in the portfolios of the three Secretaries of Departments and 11 Directors of Bureaux. Earlier on, the Chief Secretary for Administration mentioned that as a response to the views raised by Members, the labour policy portfolio would be taken out from the Education and Manpower Bureau to merge with the policy portfolio of economic development. In other words, in future, the so-called labour matters will be aimed at coping with the various economic development needs, while other issues like labour rights, and so on, will naturally be put in positions lower down the priority list. Such an arrangement is visibly designed to curry favour with the industrial and commercial sector, and is fully in line with Mr TUNG's governance strategy of having businessmen ruling Hong Kong to the neglect of the people's livelihood.

Indeed, it can be expected that, in future, the practice of "benefiting only members of the same coterie" will be all the more prevalent and serious in matters ranging from appointments of Secretaries of Departments and Directors of Bureaux to formation of different advisory bodies. With Mr TUNG holding all powers in his hand, the monitoring power of the Council will be pre-empted. Moreover, as the Directors of Bureaux are no longer civil servants, and in view of their numerous ties of interest with different members of society, they will naturally appoint their own trusted followers to the various advisory bodies to help establish their own influence. What worries people is that such kind of nepotism will certainly intensify the deterioration of politics in the SAR.

Madam Deputy, Mr TUNG is trying to establish his autocratic and dictatorial rule by copying the example of YUAN Shikai 80-odd years ago to centralize all powers in his hand. With the strong support from the royalist parties, the motion today will certainly be carried. Nevertheless, I must remind Mr TUNG and the people in his league not to be complacent, for history tells us that undemocratic political power that fails to win the support of the people is powerful on the surface only, and that without any substantial support, such kind of power will certainly be cast aside by the people. YUAN Shikai was overthrown after he had proclaimed himself as emperor for 83 days, and the politicians he had bribed eventually came to realize how wrong they had been. I just hope Honourable colleagues can draw lessons from history. Only those political systems that are democratic enough and have won the mandate of the people can bring about long-term peace and stability.

Madam Deputy, I so submit.

MR JAMES TIEN (in Cantonese): Madam Deputy, during the British-Hong Kong Administration era before the reunification, Hong Kong was governed by the United Kingdom through the Governor appointed by it, and the Governor was assisted by a governance team. While there were certainly Members of different background serving on the then Executive Council, the principal government officials were civil servants. Hong Kong had been governed in this way for more than 100 years.

After the reunification, the concept of "one country, two systems", which is not found in any other places of the world, is being realized through the Basic Law. While China upholds socialism and the Central Government is run by the Communist Party, Hong Kong has all along been a capitalist economy, how are the two going to co-operate to make the governance of Hong Kong work? Can this objective be achieved by applying the past mode of operation without making any modification? Or should we look at it from another angle and introduce a ministerial system to help govern Hong Kong? Mr Allen LEE, former Chairman of the Liberal Party, had been advocating this idea in 1997-98. Certainly, whether it is called the ministerial system or other system, the most important point is that the principal officials under this system must be held accountable. As regards the principal officials, naturally they are not the lower or middle level members of the 180 000-strong Civil Service, who are responsible for implementing policies in accordance with the decisions made by their supervisors.

In these few years since the reunification, our principal officials are the present Bureau Secretaries. Sandwiched between Policy Bureaux and government departments, these principal officials are indeed having a hard time. On the one hand, they are members of the Civil Service; yet on the other hand, they are also the policy makers. In the event of any policies going wrong, should these officials resign on their own initiative, be dismissed by the Chief Executive without affecting the morale of the Civil Service as a whole, or be held accountable for that collective responsibility we have all along been talking about? Mr TUNG has been talking about this reform for several years, particularly, he made mention of implementing an accountability system for principal officials (accountability system) in his policy address last year. At that time, many Honourable colleagues thought he was just talking about it casually and hence the suggestion should not be taken seriously. It was only in these last two months that the Government has come up with some specific ideas for implementation.

Nevertheless, we have got to be realistic. If the Chief Executive should put forward this proposal to implement this accountability system earlier, he would be questioned why he believe he could certainly win in standing for the Second Chief Executive Election. People would ask him why he was so sure he could be re-elected, and what he would do if the person winning the election should give no support to the accountability system despite the many things he has done. So, even though the Chief Executive has this concept in mind for quite some time, he would not put forward his proposal until after the completion of the Chief Executive Election in February or March.

Mr Martin LEE considers there are problems with the appointment of principal officials, and that this system may turn the Chief Executive into a dictator because the principal officials appointed by him will all obey his overriding views. In my opinion, regardless of how they are returned, the Presidents or Prime Ministers of countries across the world do have their respective cabinets, all the members of which are appointed by them. When the President or Prime Minister won an election (this is the most important point in Mr Martin LEE's view, and I will come to that later on), or if the political party to which he belongs won an election, he would then appoint the major figures in his party as principal government officials. If there were not enough persons to fill the posts, he would then organize a coalition government and appoint other people in support of him as members of his cabinet. This ruling body will certainly be composed of persons sharing the same views and philosophies of governance. Likewise, members of the body responsible for governing Hong Kong should naturally agree to the same concepts and mode of operation. Otherwise, things just will not work. The practice of Hong Kong in this respect is no different from that of any other countries in the world.

Earlier on, the Honourable CHEUNG Man-kwong has spoken a lot on how the implementation of this system would enable the business sector to have free political lunches. If that should be true, the 11 accountability officials to be appointed by Mr TUNG would all come from the business sector. However, in my view, things will not turn out that way. Many members of the business sector consider it not attractive to be appointed as accountability officials, and that may not necessarily have anything to do with the fact that the \$3 million-odd annual remuneration compares gravely unfavourably to their present income. Rather, they have many other considerations in mind, one of which being related to the argument of "difficult entry and exit" and "easy entry and exit" I am going to explain to Honourable Members now.

Indeed, several members of the business sector will most probably be appointed as principal officials under the accountability system, and I believe the general public will agree that they should be appointed to such official positions. I do not think these businessmen will be appointed as Secretary for the Civil Service, Secretary for Home Affairs or Secretary for Constitutional Affairs, nor as the Secretary responsible for welfare-related matters. The posts they are appointed to should have something to do with the development of the economy, such as industry, commerce, economics, finance, and so on. If the Directors of such Bureaux were selected from the industrial and commercial sector, they could really bring with them some insight into the economic development of Hong Kong in these coming few years or the direction in which the development of world economy will proceed. On the basis of such information, they could then genuinely create more employment opportunities. I believe the public at large will certainly support this idea. Besides, I do not believe any members of the industrial and commercial sector will be interested in being appointed as Directors of Bureaux responsible for policy areas that they are not specialized, well versed or interested in. Hence, I think the attitude we should adopt towards this system is to make sure that the most suitable persons are appointed to the right accountability official positions, rather than dividing the candidates into such camps as the business sector, the academia, or the non-industrial/commercial and non-academic circles like the labour sector, and so on.

I should also like to speak on the objectives mentioned by the Secretary for Constitutional Affairs, Mr Michael SUEN, earlier on. The third objective he mentioned is to select the best and most suitable persons to take up the principal official positions. The Liberal Party and the different political parties may have greatly divergent views about this. At present, some views advocate "easy entry and exit" for candidates while some others advocate "difficult entry and exit". We believe that if candidates are allowed to have "easy entry and exit", more elite members of society will be attracted to join the Government, and such elite members may come from the business sector, as well as the academia or the pro-democracy camp.

In my view, time is not the most important factor giving rise to conflict of interests; the critical period lies not in one year or three months after the relevant Director of Bureaux has left office. What then is the major cause of conflict of interests? Let us take a look at what policy areas there are in Hong Kong presently. I do not think there is any information or circumstances so confidential or sensitive that significant conflict of interests will arise when the

relevant principal official leaves office. To cite an example, suppose the principal official responsible for housing or real estate matters suspense the sale of Home Ownership Scheme (HOS) flats during his term of office, but who knows his successor will not put up those 20 000 HOS flats for sale right after he has left office? What good would it do to the principal official concerned even if he should have obtained such information? Another example is that if the principal official responsible for economic services should subject banks to a certain form of regulation, he still could not eliminate the possibility that his successor would adopt a regulatory approach totally different from his. What I should like to ask is whether the information he has is free of any time limit. I am afraid not.

In my view, whether or not the relevant principal official is of great value to the commercial enterprise he joins upon leaving office is the most important factor affecting the occurrence of any conflicts of interest. One of the particularly sensitive subjects is whether or not the exchange rate will be delinked eventually. Does the Government has any policy specifying under what circumstances the link exchange rate will be abolished, say, the fiscal reserve level has dropped to a certain level, the rate of unemployment has risen to a certain level, or the rate of economic growth has reached a certain level? If the exchange rate should delinked, some people would certainly be able to reap profits, and this is not any issue that can be resolved by the one-year "sanitization" period, as the link may be abolished five or even 10 years after the relevant principal official has left office. For this reason, I believe the Government should consider handling the question of whether or not the relevant information could be used. In other words, regardless of the duration they have stepped down from the office, former principal officials should be prevented from making use of the relevant information to short-sell or purchase Hong Kong dollar in the event of the aforementioned situation taking place. I feel that the Government should reconsider the length of the "sanitization" period because the one-year period is not so important; the thrust of the matter lies in the information the relevant outgoing principal official has obtained and whether or not he could put such information to use. If that one-year "sanitization" period could be shortened, I believe more people would be willing to participate in the accountability system. That way, the Government could at least have more choices.

Madam Deputy, now I would like to switch to the philosophy of governance that the principal officials should adopt according to the Government.

Many Honourable colleagues say the philosophy is still empty talk and I also share their view. The philosophy is still empty talk, because it remains unknown now whether or not the principal officials can really improve, upon assuming office, the implementation of policies, the relationship between the Executive Council and the Legislative Council, as well as the communication between the Government and the people. So, the philosophy is still an empty talk. However, the Liberal Party believes that since the Government really wants to implement the accountability system, if we give the Government our support, we will at least know whether the Government can do it successfully or not; but if we do not give it our support, the system will just remain empty talk.

We certainly very much hope that upon the implementation of the accountability system, the principal officials will really visit the various districts to explain in detail to the residents their respective policy areas, what problems society have currently, the ideas and new initiatives they intend to put forward, how such ideas and initiatives will be implemented, and so on. If the principal officials could really do that, they should not be inviting envy from any Members returned to the Council by different constituencies. Given that they welcome opinions from the public and Members are representatives of public opinion, Members should give support to the good work done by principal officials. There is indeed no cause for envy! On the contrary, we may even save our effort and energy if the principal officials can really do that. The only worry is that the relevant principal officials step down from their office to compete with us for seats in the next Legislative Council term. Yet I believe the principal officials will not stand for election. Compared to their \$3.7 million annual salary, the remuneration for Members is only \$60,000 monthly or \$700,000 to \$800,000 annually; hence, I just can see no reason why they would wish to be Members. For this reason, no matter how good they do their job and how much support they win from the public, we just do not have to worry about the principal officials competing with us for seats of the Council. At any rate, I feel that we should support the Government making this attempt as far as possible. The greater the success the Government can achieve, the easier will be our work. Moreover, the Government knows it very well that what Members attach most importance to and fear most is public opinion. If the public opinion is in support of the policies implemented by the Government, will any Members raise objection to such policies? That being the case, the relationship between the executive authorities and the legislature will certainly be improved by then.

Certainly, Madam Deputy, nothing can be perfect. With regard to the new proposal put forward by the Government today, the Liberal Party had originally considered it excessive to establish 11 Policy Bureaux. But then, the Government's view is that if the accountability system is to be implemented at this stage, it would like to set up 11 Policy Bureaux for the time being, including the Civil Service Bureau. As regards the remaining 10 bureaux, there are still widely divergent views on the merger or otherwise of individual bureaux. In my view, no matter how the policy portfolios are merged under or allocated to the bureaux, there may still be problems. Having listened to the views from representative councils, Members and the public, the Government has now come up with the suggestion to merge the environmental policy portfolio with the policy portfolios of transport and public works under one bureau. We support this proposal because the Liberal Party has also made this recommendation before.

There are also other proposals which we did not have any strong opinions at first. The Government has now proposed to merge the manpower policy portfolio with the policy portfolio of economic development, rather than merging it with the commerce and industry policy portfolio. We have also accepted this proposal after listening to the explanation made by the Government earlier on. If a separate bureau should be set up for the manpower policy portfolio (which is another suggestion), or if a separate bureau should be set up for the environmental policy portfolio, we might have 13 Directors of Bureaux rather than 11. In other words, the Chief Executive would be working with not only three Secretaries of Departments and 11 Directors of Bureaux but three Secretaries of Departments and 13 Directors of Bureaux, in which case decision-making could be more difficult.

Earlier on, the Chief Secretary for Administration mentioned merging the manpower policy portfolio with the policy portfolio of economic development. We consider this proposal feasible on the grounds that the present economic development may not be consistent with the manpower needs of industries and businesses as in the past. As far as the manufacturing and trading sectors are concerned, the manpower needs of industries and businesses have been made clear over the years. The wage earners, businesses and the Government all know that the sectors that still have potential for growth are those within the policy areas under the Economic Services Bureau. For example, the tourism industry (the Deputy President is the Chairman of the Hong Kong Tourism Board), logistics industry, airport or container freight, and so on, can still create new employment opportunities and offer new potentials for economic

development. So, much can be achieved if the manpower policy portfolio is incorporated into this portfolio. In my view, the most important point remains whether or not the Director of the relevant Bureau can create more employment opportunities. We should not dwell on arguing about the feasibility of merging the economic development policies with manpower policies, nor should we put the blame on industries and businesses for emphasizing economic development to the neglect of our manpower or labour needs whenever labour disputes arise. I am sure the relevant Director of Bureau to be appointed shortly will be able to strike a balance between the various conflicting needs.

We also consider it reasonable to merge the policy portfolios of information technology (IT) and commerce and industry together. Today, many of our existing and conventional trades and industries have to rely on technology for operation. If policies on such trades and industries could be merged with the IT policy portfolio, it would be possible to bring about improvement to or even facilitate the reform of conventional industries.

Lastly, I do agree it is a tough job to be the Secretary for the Civil Service. This is because the Secretary for the Civil Service is to a certain extent obliged to safeguard the values upheld by the Civil Service all along; but then, if he is to safeguard such values, how is he going to implement any civil service reform? I hope the relevant Secretary will really have to do more thinking about this.

Speaking of the merger of bureaux and government departments, the Liberal Party considers it necessary to further downsize the establishment. One of our reasons is that 70% of the Government's annual expenditure is spent on the salaries and benefits of civil servants and employees of subvented organizations. Nevertheless, the matter must be handled very carefully to avoid making any radical moves that will arouse too much discontent among civil servants.

Madam Deputy, the Liberal Party supports the original motion. Thank you, Madam Deputy.

MISS MARGARET NG: Madam Deputy, under Article 64 of the Basic Law, the Government of the Hong Kong Special Administrative Region (SAR) must abide by law and be accountable to the Legislative Council. We should, of course, support any change to the existing system which would make the

Government more accountable to this Council. However, the proposed accountability system is not such a system. Rather, it aims at creating a class of officials who are answerable only to the Chief Executive. This has nothing to do with Article 64 at all.

So what reasons are there for us to support the new system? It is argued that the Chief Executive must be allowed to choose his own team, and his choice should not be confined to civil servants. He should be able to choose also from outside the Civil Service. This is reasonable. However, he already has that option. He also already has the option to offer them employment on contract rather than pensionable terms. Last year, in a discussion of the Panel on Constitutional Affairs, I suggested that the contract may include a term which allows the Chief Executive to require an official to resign, if a vote of no confidence against him is passed in this Council. That would be compatible with Article 64. Unfortunately, my suggestion was ignored.

What distinguishes the system now proposed appears to be: (1) the principal officials named are "political appointees", chosen by the Chief Executive on political grounds; (2) they are not civil servants themselves, but a superior class above civil servants; they take over the statutory functions and powers of civil servants, although they may not have any mandate or qualification other than the fact that they are trusted by the Chief Executive; and (3) they are to be paid much higher salaries worked out with reference to top executive pay in the private sector. This is said to be necessary to attract good people. It is also said to be well worth it, because the new recruits will bring with them new management skills and expertise, which will improve efficiency and help save the economy.

Well, we will soon see what kind of people are appointed under the new system. But none of the above features should prevent these principal officials from being accountable to the Legislative Council. It is argued that under the Basic Law, executive power is conferred on the Chief Executive alone, and he alone is accountable to the legislature. I do not agree with that. Executive powers conferred on the Chief Executive as head of the SAR Government are exercised by government officials under the law. These officials can and should be accountable to the legislature for the exercise of their power. It is simply that the Chief Executive has no intention of making them more accountable to the legislature, and this makes it difficult for me to support the proposed system.

Madam Deputy, the Administration does not hide from us that the proposed system introduces radical changes. Many Members have strongly and repeatedly protested that for such radical changes, far too little time has been allowed for consultation and deliberation. In the almost surreal intensive probing of the last six weeks, it has been made plain for all to see that the Administration is just not ready. Many major issues have not been thought through. Hasty decisions are made and only the most sketchy answers are available for very serious questions. The outcome of this motion debate must be evaluated on that basis.

The most fundamental issue that we have to consider is the constitutionality of the proposed system. The Administration insists that it is constitutional, on the basis of a very broad and liberal reading of the Basic Law, and that what is not expressly prohibited is allowed. I am not sure that this is the right approach. But if this is the approach adopted for the proposed system, then the same approach must apply when we come to proposing measures of democratization, for example, in devising conventions to make principal officials more accountable to the legislature. But even on the broad approach, I find certain proposals of the new system incompatible with the Basic Law.

The most obvious point is the role of the Executive Council. Article 55 of the Basic Law does not indeed specify the number or proportion of Members to be appointed from each category of principal officials, the Legislative Council Members and public figures. But it has never been in doubt that the Executive Council should have a fair number or proportion of Members who come from different sectors of the community and should operate with a measure of independence. Otherwise, provisions such as those under Article 50 (dissolution of the Legislative Council) and Article 56 (overriding the majority opinion of the Executive Council on important policy decisions) would be almost nonsensical.

Once the Executive Council is composed almost entirely of principal officials, present functions of the Executive Council under our statutes will be materially distorted. For example, an appeal to the Chief Executive-in-Council will lose its meaning. More serious still is the rule-making power of the Chief Executive-in-Council, where it works to inject a measure of objectivity and outside look, but in future, this safeguard will be gone.

Another issue is the role of the Civil Service as provided in Articles 99 to 104 of the Basic Law. In particular, Article 103 provides that "public servants"

shall continue to be appointed and promoted on the basis of "their qualifications, experience and ability" and the "previous system of recruitment, employment, assessment, discipline, training and management for the public service" shall be maintained. This leaves no room for political appointees whose essential qualifications are that they share the political outlook of the Chief Executive and, of course, are appointed by the Central People's Authorities.

While I fully accept that a constitutional document should facilitate and not preclude development, we are duty-bound to have regard to the letter and spirit of the Basic Law. My further objection is that even if compatible with the Basic Law, where radical changes are being made to the existing system, primary legislation is absolutely necessary. The new class of politically appointed "public servants" should be established by law, just as the equally new class of "permanent secretaries" should be instituted by law. Their powers and responsibilities, their rights and obligations, their relationship to each other, should be defined and safeguarded by law. The Administration does not intend to introduce any legislation apart from a resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1). This merely effects the change of title of the Bureau Secretaries, while the substance of the change is ignored.

My objection is not just about form, but about matters of crucial practical importance. Hong Kong's past stability and prosperity have depended to a great extent on a stable, professional, clean and politically neutral Civil Service. This must be preserved, or confusion, instability and even corruption will soon set in, and the good administration of Hong Kong will be irretrievably lost. With it, we will lose the confidence of international investors. We would have done a great disservice to the interests of the SAR.

Even if the Administration is bent on going ahead with the proposed system, there should at least be codes regulating the conduct of the political appointees and preserving the values of the Civil Service, enshrined under an overarching legislation. The Government only agrees to a code incorporated by reference into the contract of each principal official. This is not good enough. A contract is a private document which lacks transparency. The enforcement of a contractual term is only by private action, not a matter for public scrutiny. Similarly, it is not good enough to substitute a Civil Service Code enshrined by law with a Civil Service Circular which is not readily available to the public.

Moreover, the contents of both documents are still incomplete, crude and, in other ways, unsatisfactory. It is a matter of deep concern that with little more than a month to go before the date set for implementation, so much is still uncertain. How can the requirements be amended once the contract is signed? Or are the principal officials and permanent secretaries to be left in the dark? How can the public be expected to have confidence in the new system?

An adequate system to deal with conflict of interest is crucial if the public is to have any trust in the new system and in order to prevent abuse of office and corruption. It is necessary to require an ex-principal official to abstain from taking up any occupation which would legitimately invite questions as to whether he could have used his public office to further his own interests when he returns to the private sector. Merely to require him to seek non-binding advice from a committee appointed by the Chief Executive for a one-year period is absurd. An ex-civil servant is subject to the binding decision of such a committee for three years. It is argued that a stringent requirement will discourage good people. I am not convinced. The best people will need no persuasion to appreciate the requirement. A lax system will only encourage abuse, and give the Government a bad name.

Madam Deputy, the legal profession feels very strongly that confidence in the rule of law requires the utmost protection of the independence of the office of the Secretary for Justice. To make that a political appointment will damage independence, actual and perceived. I have asked Mr TUNG Chee-hwa in this Chamber what advantage did he see in making the Secretary for Justice a political appointee. All he could say was that there was no disadvantage. Other officials said that the Secretary will just carry on as before. If so, then why change?

If, in the teeth of opposition, the Secretary for Justice is to be politically appointed, then to protect judicial independence, the Secretary must at least cease to be a member of the Judicial Officers Recommendation Committee. And to protect the independence of criminal prosecution, an independent prosecution service within the Department of Justice must be established by legislation, so that the power under Article 63 of the Basic Law will be exercised by a director of criminal prosecutions, without diminishing the Secretary's accountability to the Legislative Council for what is done. The Administration argues that Article 63 precludes this because the Secretary for Justice cannot "abdicate"

from his or her responsibility. I disagree with that. Article 63 provides that the Department of Justice, not the Secretary for Justice, shall control criminal prosecutions free from any interference. Many common law jurisdictions have adopted the approach that I outlined above.

There are many other vital issues that I should like to raise, but time does not permit. However, I must express this overall misgiving: that the manner of introducing the proposal and the determination that it will be implemented by 1 July, ready or not, just because Mr TUNG so commands, underlines the true nature of the system. This is a big step towards the rule of man and away from the rule of law. "The Medium is the Message", as Marshal McLUHAN said in 1967. The name "accountability system" is itself a lie. The Chief Executive may have the best intentions for good governance, but the means does not justify the end, and I very much fear that the means proposed today will not even achieve the end of good governance, but rather its opposite.

Thank you, Madam Deputy.

MR FREDERICK FUNG (in Cantonese): Madam Deputy, the Government proposed to implement the accountability system for principal officials, which the layman calls the "accountability system for senior officials", in July this year, and this is expected to be an important threshold in the development of the future political system of Hong Kong, and in the administration of Hong Kong in particular. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I believe that in considering the pros and cons of this major organizational reform, we should be pragmatic and compare it with the existing Civil Service in Hong Kong, which is responsible for both policy formulation and implementation, in order to weigh up the merits and demerits of the two systems. In fact, as early as 1998, the ADPL advocated the implementation of a quasi-ministerial system in Hong Kong to the Chief Executive and the mass media with a view to addressing the blind spot in Hong Kong's existing political system, that is, the lack of a clear delineation of powers and responsibilities, so that the Chief Executive could take on board people with common political aspirations and form a cabinet to govern Hong Kong, while the Civil Service would be transformed into a politically neutral system responsible for policy enforcement. However, the Chief Executive did not accept our proposal at that time.

In the bygone era when Hong Kong was under British rule, in theory the only ruler in Hong Kong was the King or the agent appointed by him, that is, the colonial Governor whose symbolic significance in politics was greater than his actual significance. In the daily operation and administration of the Government, however, the power was vested in administrative officials who were well versed in the situation and politics of Hong Kong. They had the power to formulate, interpret and implement policies and had become the actual powers that be. This practice of politicizing the bureaucracy was in fact a far cry from the model laid down according to the doctrine prescribed by traditional wisdom that civil servants have to uphold "political neutrality". In the bygone era of British rule, civil servants were in fact not neutral.

However, this group of administrative officials were not popularly elected, nor were they returned by any kind of election. They were chosen from a closed and almost lifelong establishment. Although such a system of Civil Service has been practised for many years and can ensure consistency and predictability in the implementation of policies, it also gave rise to a large political group that monopolized most of the political positions. In fact, why can civil servants not be returned by elections? After the reunification, this system failed to and still cannot respond quickly to the rapidly changing social aspirations and appears to be rigid, since the existing Civil Service does not have any concept of assuming personal political responsibility. Furthermore, the entire training that civil servants receive do not equip them to handle political tasks, for example, they failed to formulate any policy for the long-term development of Hong Kong. Nor are they sensitive to political issues. And they are reluctant to face the general public. These are tasks which political leaders and policy makers in all countries have to deal with and through which they demonstrate their abilities, but our civil servants have failed to do so. Over the past five years, we could easily find case after case of administrative blunders in which the culprit could not be identified. Even though administrative officials committed obvious mistakes in decision-making — they may not have broken the law or any rule, but having made blunders in policy decisions, they did not have to assume any responsibility for their policy decisions at all under the protection of the appointment agreement. Many Honourable colleagues have mentioned that in the short-piling scam in public housing projects, despite the Legislative Council's motion on a vote of no confidence in the Director of Housing, he could remain in office under the protection of the civil service appointment agreement, and this fully highlights the shortcomings of a system which vests power without any need to assume responsibility.

On the other hand, after the reunification, the selection of the head of the administration has also undergone a change in nature. As I have mentioned, under British rule the Governor was appointed by the sovereign state. After 1997, the Chief Executive is returned by election, regardless of whether he is elected by a minority or is popularly elected. All in all, he is not appointed by the sovereign state. Candidates running for the Chief Executive office will all seek the help of their think tanks in turning their ideas of governance into election platforms so as to win the approbation of the public. I believe any Chief Executive elect would want to make good his election platform during his term of office, no matter whether other people agree with it or not. Under such circumstances, it is necessary that there is a group of people who are willing to strive in partnership with him to accomplish, implement and attain what is set out in his election platform, and this group of people (some of the candidates are seated here) must share common beliefs and have a tacit understanding with him, no matter whether they are all chosen from the industrial and commercial sector or from the general public. The Chief Executive simply needs a team that can fight alongside him in his governance. This is purely a strategy and a need in governance and administration. In fact, later on it will be necessary for him to go one step further and form a ruling coalition in the Legislative Council, so that the Government can canvass enough votes in both the executive and the legislature to support its policies and to realize the election platform. I have to reiterate that I may not agree with this platform, but this is a natural trend in the development of the so-called ruling body. This is so in the United States, the United Kingdom and Japan. Why cannot Hong Kong be the same?

Madam Deputy, on the other hand, changes in the office bearer of the Chief Executive office will cause embarrassment and pose a dilemma to administrative officials. For example, if Chief Executive A implements a certain policy and Chief Executive B opposes it, under the present system in which the posts of Bureau Directors are assumed by civil servants, the same Director may have to implement totally reverse and contradictory policies. This will in fact cause the Director great embarrassment and make him lose credibility. I believe Mr Michael SUEN certainly had personal experience on this. In 1994, Governor Chris PATTEN wanted to introduce full direct election of all district board members, but after 1997, the Chief Executive wanted to introduce an element of appointment. The direct election of all district board members back then was advocated and promoted by Mr Michael SUEN, but after 1997, the merits of appointing district board members were also promoted

by Mr Michael SUEN. Do Members not find that this is a major blow to the credibility of Mr Michael SUEN? This is not a desirable approach in administration. However, what I mean is the approach in administration, not the system of democracy that is involved.

After the Asian financial turmoil, the civil service system, which plays dual roles and is highly political, was confronted by a series of challenges giving rise to immense political pressure, and a number of administrative blunders made the public's calls for the officials concerned to step down increasingly strong and frequent. The ADPL and I consider that one crucial factor in deciding the implementation of the ministerial system is whether the civil service system should be politically neutral after the reunification. If they are indeed politically neutral, then they should not be allowed to formulate policies. If they are indeed politically neutral, then they should not be drawn into the political whirlpool. The Civil Service is only an executive core responsible for enforcement of policies, and political tasks and governance should be left to politicians, including the Chief Executive and his partners. This group of people, that is, the Chief Executive and his partners should formulate policies and assume full responsibility for the outcome.

Although some opinions consider that as the composition of modern society becomes increasingly sophisticated, its division of labour will also become more elaborate and professional, so the conventional narrow sense of administration may in fact no longer be entirely applicable to administrative officials. Another view holds that the new system will undermine the power of existing administrative officials so that the Chief Executive will have a monopoly of power, which is tantamount to autocracy. However, the ADPL and I believe that these arguments are not sufficient to overturn, negate or reject the implementation of the accountability system.

Firstly, concerning the power in the hands of the Chief Executive, Article 48 of the Basic Law has in fact stipulated his executive power. Had the Chief Executive wanted to carry out autocracy, he could have done so long ago. That would mean that so as long as there is the Basic Law, there is autocracy; and if we want to get rid of autocracy, then we have to abolish or amend the Basic Law. The Chief Executive has the power to appoint and dismiss civil servants. In fact, since he can appoint any civil servant as a Bureau Director, he can also act in a totalitarian way. Therefore, the ADPL and I see the accountability system as a process of power transfer. Under such a system, the Chief Executive can

appoint members of the public, including non-civil servants, as accountability officials, changing the past situation when the Secretaries and Bureau Directors appointed were mostly civil servants. Besides, the people appointed will not be civil servants. Even if someone used to be a civil servant, he would no longer be one after accepting such an appointment. This "qualitative change" is also a process of power devolution, from vesting power only in civil servants to vesting it in civil servants and non-civil servants alike. At the same time, administrative officials employed in permanent and lifelong terms will only be responsible for the day to day duties. That is to say, they will no longer have any political power, decision-making power or power to rule. The permanent secretaries will withdraw entirely from political duties and their major duties will be to design procedures for policy implementation and supervise their subordinates in implementing policies, whereas the future accountability officials will be responsible for formulating and promoting policies. I totally agree that the latter type of duties should not be carried out by permanent secretaries, so as to keep civil servants entirely neutral. From the viewpoint of the Chief Executive, he has to delegate his power to the various principal secretaries and ministers. From the viewpoint of civil servants, they have to hand over their ruling power to politicians.

Since the term of office of the principal officials is only five years at the longest, this group of officials charged with political responsibilities normally will hope to carry out their administration smoothly, therefore they will strive to have a sharper political acumen within this limited period of time. Therefore, I think that greater importance will be attached to public opinion than before. Although we cannot rule out the possibility that in the future no one will still be held responsible for administrative blunders or the Chief Executive will be unwilling or refuse to replace the person concerned, but under such circumstances, at least we know in whom (including the Chief Executive) the problem lies. The future political repercussions arising from this will be far greater than the claim that "because of the civil service agreements, it is not possible to dismiss someone". No one can say that any more. The accountability system, which groups an entire policy area under the charge of one politically appointed official, has another advantage. Take the housing policy as an example, unlike in the past, when the Executive Council, the Housing Bureau, the Housing Authority and the Housing Department can all make decisions, after the accountability system is established, I believe the situation of policies coming from many quarters and each department implementing its own policy will definitely not and should not occur again.

Apart from this, the ADPL and I are also concerned about the division of powers and responsibilities between the accountability officials and the permanent secretaries. The documents issued by the Government on the accountability system pointed out that the duties of the permanent secretaries include implementing the policies formulated by accountability officials, assisting in the introduction, defence and explanation of the policies on public occasions, responding to questions raised by the Legislative Council, eliciting support on policies from various sectors of the community, and so on. From the institutional level, political tasks such as lobbying and policy promotion should in fact be all taken over by politicians rather than placed under the charge of civil servants, so as to fully realize the spirit of accountability under the new system. We are concerned that should there be any mistake in the implementation of policies in the future, the accountability officials can still make the permanent secretaries scapegoats on the grounds that the latter have a part to play in policy promotion.

In view of this, the ADPL and I hope that before the Government formulates this policy, it can make reference to the system of other countries. I wish to make some suggestions to the Government based on the existing system in Japan. In the long run, the Government should create new posts of politically-appointed Deputy Secretaries. Under the existing cabinet system in Japan, there are two deputy ministers. These deputy ministers are in fact called Vice-ministers, one of them is a politically-appointed Parliamentary Vice-minister who assists the Minister in such political tasks as promoting policies and securing popular support. The other Permanent Vice-minister is responsible for the actual work of the Ministry. The Parliamentary Vice-minister and the Minister are both "politicians" and together with the cabinet forms a political being, whereas the Permanent Vice-minister, on the other hand, is at the tip of the bureaucratic pyramid. In principle, he adopts a neutral stand towards the views of the Minister and only assists the Minister in supervising his subordinates in their administrative work. We believe that it is worthwhile for Hong Kong to make reference to this system in which the political and administrative heads co-exist in the same Ministry.

Madam Deputy, ADPL and I support both the original motion and the amendment moved by Mr Martin LEE because we can assert that a political system based on popular election and accountability to the Legislative Council is definitely better and it will be able to realize the spirit of accountability better. We also believe that changes must be made in administration, since change is the principle underlining the accountability system. However, we hope and believe

that after introducing the changes, things will become better. We also understand that a lot of people still hold different views on the details of the proposed accountability system and we do not agree with some of the details either, but still we think that the direction is generally correct. I believe that the amendment moved by Mr Martin LEE is an ideal and a goal, and with the continuous increase in the number and proportion of directly elected Members in the Legislative Council, the amendment moved by Mr Martin LEE will sooner or later become a reality.

Madam Deputy, I so submit.

MR SZETO WAH (in Cantonese): Madam Deputy, the Chief Executive, Mr TUNG Chee-hwa, has behaved like an overlord in pushing through the accountability system for principal officials (the accountability system). Although the meetings scheduled by the Subcommittee formed by this Council to examine the system have yet to conclude and discussion is still underway, the Government has decided to propose this motion today. The Government has cited two reasons for proposing the accountability system: First, to recruit people "sharing the same beliefs" to be principal officials responsible for decision-making; second, the existing Bureau Directors are not held politically accountable even if they have made mistakes because they are civil servants, so future principal officials will be held politically accountable for blunders and will have to resign. The Government's point is that the blunders made in the governance of Hong Kong over the past five years are wholly attributed to the fact that the Bureau Directors have failed to share the beliefs of the Chief Executive. And in spite of the blunders they have made, they refused to be held politically accountable and were reluctant to quit. Are these remarks fair to the Bureau Directors?

THE PRESIDENT resumed the Chair.

Let us now examine the policies which have been subject to the most severe denial, denunciation, condemnation and criticism during the first term of office of the Chief Executive: the target of "building 85 000 homes" to enable 70% of the population to purchase their own homes; establishment of 13 centres; suspected government involvement in secret dealings for failure to put the Cyberport to public tender; the decision of not prosecuting Ms Sally AW Sian; breach of the Basic Law and infringement of Hong Kong's judicial independence

by inviting the National People's Congress to interpret the Basic Law following a judgement made by the Court of Final Appeal; the requirement of teachers to sit the "benchmark examination" by virtue of the mother-tongue teaching policy; abolition of the link between pay for school clerical staff and the civil service pay; lump sum grant subvention arrangement for social welfare organizations; vindication of the 1967 riots through awarding YEUNG Kwong, head of an anti-British committee, the Grand Bauhinia Medal; expansion of police powers through declaring the entrance of the Government Secretariat Headquarters a restricted area where rallies are prohibited as well as carrying out selective prosecution under the Public Order Ordinance; the recent proposal of cutting civil service pay by 4.75%; the proposal of reforming higher education to commercialize education; open conflicts between the Police Force and the Independent Commission Against Corruption, and so on. Will government officials please point out specifically which of the policies mentioned above are not in line with the "beliefs" of the Chief Executive and which Bureau Directors, who refused to step down, should be held politically accountable for these blunders? In my opinion, the underlining concepts of these policies generally originated from Chief Executive TUNG Chee-hwa. The first one who should be held responsible politically should therefore be the Chief Executive. He should make no attempt to divert our attention by putting the blame on some other people.

Now that the Chief Executive is trying to recruit principal officials who "share his beliefs". What is precisely his so-called "beliefs"? To be loyal, fair, clean, impartial, and to work diligently, listen to people's views, serve the public, and so on, should all be considered as ethics rather than "beliefs". "Belief" is something of an ideology. The so-called "common beliefs" precisely mean unified thinking and way of thinking, and may even mean sharing the same religion, as if having spiritual affinity. In my opinion, if all principal officials with policy portfolios in the SAR should be birds of this feather, we will be in great peril.

As the saying goes, "when the water is too clear, there are no fish; one who is too clever has no friends". A pure accountability system is like a mahjong game. If a player sets his eyes on "flush" and not satisfied even with "mixed flush", he will definitely lose badly. Even if he wins one or two games, it will not help the whole situation.

The making of a correct policy is just the opposite. It is not based on "sharing the same beliefs". Rather, it is resulted from gathering views from

different angles, mutual challenge, counter-balance, mutual exchange, complement and consolidation. If the Chief Executive, the three Secretaries of Departments plus 11 principal officials share the same beliefs, it will mean the 15 brains will become one. Though it may come up with a snap idea, there will be no more pooling of collective wisdom. As a result, the Government will not only easily run into "trouble", the "trouble" will be so disastrous that one can hardly bear seeing it.

The Chief Executive's attempt to gather people "sharing his beliefs" to form the highest decision-making hierarchy is tantamount to "inbreeding", which will often lead to the birth of mentally handicapped, disabled and deformed babies. Such babies might be attributed to policies made by the hierarchy. Another possible consequence can be the top-down changes in different ranks in the Civil Service. As only those who "share the same beliefs" may have a chance to be promoted, many will pretend they "share the same beliefs". The "sharing of the same beliefs" will thus become the outfit for those who opt to curry favour with people in power. As a result, the whole Civil Service will gradually corrupt from the top down.

It was during the "Mao Zedong era" that the "sharing of a common belief" was at its peak in China when thousands of millions of people shared the same brain. The whole nation would take to the streets upon receiving a highest order. "Those who understand have to obey, those who do not have to do the same". If we look back at history, we will find how horrible "the sharing of the same beliefs" is. It is really inconceivable that someone can come up with the idea of "unification" in the 21st century and forget the tragic lessons in history.

Now I would like to say a few words about political accountability and the requirement to resign for making a wrong decision.

The Executive Council is governed by a collective accountability system. Does this system cover political accountability? As all policies are made after discussion and endorsement by the Executive Council, does it mean the whole Executive Council must be held politically accountable for such policies if they go wrong? In fact, all these policies must have the consent of the Chief Executive before they can be implemented. So there is even a greater need for the Chief Executive to be held politically accountable for all the blunders. If the Chief Executive and all members of the Executive Council insist that they are totally unrelated to those blunders and that the principal officials should be held accountable instead, then they are merely trying to find scapegoats. The system should be named a "scapegoat system", not an "accountability system".

Furthermore, who should be responsible for judging which policy has gone wrong and which principal official should be held politically accountable and step down? Should the Chief Executive alone decide or should it be decided by this Council or through universal suffrage?

Should the proposal of building "85 000" homes be considered a blunder? Given the fact that the policy has not been mentioned for the past two-odd years, does it mean the blunder made in connection with this decision has automatically disappeared? By the same token, does it mean the political accountability in connection with this wrong decision has also disappeared?

Now let me cite another example. This year's Budget has proposed to cut civil service pay by 4.75%. Though it seems very unlikely that the proposed pay cut can be implemented, yet the proposal has dealt a serious blow to the entire Civil Service. The Government has rashly put forward this proposal without regard to the established mechanism and seeking any legal advice. We are only told recently that legislation is the only solution. It once crossed my mind as to how the Government came up with the 4.75% salary cut. The method adopted is in fact very simple. Last year, senior civil servants received a pay rise of 4%. Deducting this 4% equals to 4.75% of the present salary. This cannot be more simple. With this overtone of planned economy, how dares the Government talk about free market? Can we consider the proposing of this rate of pay cut a blunder? Should the one responsible for making this blunder be held politically accountable?

Although the list of principal officials appointed under the accountability system has yet to be published, it is not hard to imagine some incumbent Bureau Directors have surely been chosen while some others have definitely not been picked. I congratulate those who have been chosen not only because they have got a promotion, but also because they have been honoured as sharing "the same beliefs" and have not made any policy blunders. On the other hand, I am worried about them for fearing that they might one day become a scapegoat for being judged as having made a wrong decision and thus be forced to resign. As for those who have not been picked, I feel sorry for them since they will then be judged indirectly as not "sharing the same beliefs" and that they are unwilling to quit even though they have made a blunder. Yet, I feel happy for them since they will not be made a scapegoat one day.

It is hard to immediately gauge the separatist effect of the proposed civil service pay cut on the entire Civil Service. Senior civil servants are the nucleus

of the Civil Service. It is also hard to evaluate to what extent their morale will be hit by the accountability system. The Civil Service was praised as one of the outstanding teams in the world before as well as after the reunification. It was not long before that it was badly shaken. Who is the culprit behind this? Can people who care about Hong Kong not take this with a heavy heart?

Have Honourable Members who are prepared to vote for the accountability system today thought of their obligations to assume political responsibility in history for casting a vote for the system?

With these remarks, Madam President, I oppose the motion and support the amendment.

MR NG LEUNG-SING (in Cantonese): Madam President, following the reunification, colonial rule in Hong Kong has become to "Hong Kong people ruling Hong Kong" with "a high degree of autonomy". Compared to the past when the Government was administered by civil officials led by a governor appointed by the Queen, there is a marked difference in public expectations of the SAR Government. Now the public expects the SAR Government to make a greater commitment, to have longer-term concepts of governance and planning, and to respond to public aspirations in a quicker and more accurate manner. The proposal of the accountability system for principal officials (the accountability system) by the SAR Government definitely does not mean that the system, once implemented, will immediately meet various administrative and governance requirements arisen out of constitutional changes and in the wake of the reunification. The entire political system of the SAR will still develop in the direction as specified in the Basic Law. In comparison with the old system, the implementation of the accountability system can obviously bring certain positive effects. To start with, the Government will no longer be confined to a system of civil officials. Instead, talents may be drawn from all sectors of society so as to inject new thinking, new style and new expertise into the leadership of the Government. Secondly, the Chief Executive will be assisted by an integrated and co-ordinated ruling body sharing the same beliefs and goals. This will help remove the drawbacks of the current system such as policy overlap, half-hearted implementation, poor efficiency, and so on. The Chief Executive will then be able to focus his energy on important matters and no longer need to assume the sole responsibility for all matters of administration. Furthermore, endowed with a greater sense of mission and commitment, the leadership of the SAR

Government can thus actively seek community support and govern the territory in a more aggressive and smoother manner. Politically appointed principal officials will no longer enjoy the "iron rice bowl" protection that used to be enjoyed by civil servants, and may even have to step down for their blunders in response to public aspiration. This is manifestation of political accountability. Finally, subsequent to the development in political culture, there will be more room for enhanced co-operation in future between the leadership of the executive, parties with the same beliefs in this Council and independent Members. A certain form of political fusion may even be achieved too. This will enhance mutual co-operation between the two organs and eventually lead to reflection of the mainstream views of this Council and administration by the Government in a more effective manner.

On the constitutional level, the SAR Government may improve and develop a governance model more in line with the above-mentioned realistic needs of society within the parameters of the Basic Law. It is not provided in the Basic Law that principal officials must be employed in accordance with the civil service terms and conditions. Neither has it made any specific provisions in relation to the government framework nor ruled out the possibility of reorganizing Policy Bureaux. The direct entry of principal officials to the Executive Council can further strengthen the role played by the Executive Council and ensure consistency between policy and implementation. The Basic Law has clearly stipulated that the function of the Executive Council is to assist the Chief Executive in decision-making. This function can obviously be strengthened through the accountability system.

In fact, the accountability system issue has induced enthusiastic discussions among members of the community for quite a long time. A lot of views have been expressed by experts, academics, politicians, and so on. During the first term of the Legislative Council alone, at least two debates on Members' motions were held over this issue, with one being entitled "Relationship between the executive authorities and the legislature", and the other on the report on political development. In fact, it can be said that there has been frequent expression of public views on the principles and specific design of the accountability system. Of course, the discussion can go on endlessly. We should indeed listen to these views with an open mind. We must not, like some colleagues in this Council who appear to be suffering from a rise in body temperature like people running a fever, listen impatiently to the views expressed by some members of the public who have been invited to come

before this Council. Members should perhaps consider this carefully. If we must come up with a perfect proposal supported by 100% public consensus before reform can be carried out, no reform can then possibly be implemented. To start with, it is often unnecessary and, at the same time, impossible for a reform to succeed instantly. In the course of reform, adjustment and revision can be made constantly in light of the actual situation and problems encountered. Furthermore, as an ancient saying goes, "even a wise man sometimes makes a mistake; a stupid person may once in a while have a good idea; a wise man may listen to the advice given by a person who cares nothing about conventions or decorum". Of course, it is important to listen to the views given by people holding different schools of thought, it does not mean we can be ever successful because eventually we still have to make up our mind after listening to various views. Consultation cannot replace the Government's due commitment in decision-making. As representatives of public opinion, Members of this Council must state their position clearly on important issues founded on realistic requirements. They must not use consultation as an excuse to shirk their responsibilities.

It is stated clearly in the amendment that universal suffrage and accountability to this Council should be made the prerequisite for lending support to the accountability system. In my opinion, the accountability and electoral systems may be two different developmental processes. The main objectives of the accountability system are to enhance the efficiency of the executive, further smoothen the relationship between the Chief Executive, government officials, and that between the executive and the legislature, and respond to the demands for accountability brought about by social changes. As for the development of the electoral system for the SAR, it has been clearly provided for in the Basic Law. Since the existing administrative framework is found to have drawbacks or problems, we should, as far as possible, carry out reform expeditiously. We must not stick to our folly and sit still and wait, in the hope that universal suffrage will eventually appear one day. It will not benefit any party in society if we allow the drawbacks or problems with the current system to exist or allow the executive not to play its governance role fully simply because we must negate the accountability system for universal suffrage has not yet been introduced. In fact, the implementation of the accountability system will not impede the development of our electoral system. On the contrary, it will be conducive to such development because a more modernized administrative framework that can answer better the needs of society in future can be implemented by the relevant accountability officials. This will enable the overall development of the future

democratic system to better dovetail with public opinion and to be implemented in a smoother manner.

Some people are worried that the Chief Executive will arrogate all powers to himself under the accountability system. As all of us are aware, however, the power of the Chief Executive is provided for in the Basic Law. It is simply impossible for the relevant provisions in the Basic Law to be altered as a result of the introduction of the accountability system. So how can the power of the Chief Executive be expanded? On the other hand, whatever powers the Chief Executive may have at the moment, the implementation of the accountability system will not cause any changes to these powers. On the contrary, there will be more room for the Chief Executive to devolve his powers and responsibilities in different policy portfolios to the political appointees. Some people are also worried that the accountability system will bring about the so-called flattery culture. In fact, there is always the possibility for the so-called flattery culture to arise out of a relationship between leadership and the led. We can see that both the public and private sectors encounter the same problem too. The same thing also happens to some overseas countries where the political accountability system has been practised for years. In fact, the accountability system merely provides a framework. The specific composition of the leadership line-up always involves the human factor. The Chief Executive naturally needs to recruit talented people through a more appropriate system to enable the entire leadership line-up to share the same beliefs and play its role efficiently. This is a significant factor determining whether he can succeed in administration during his office.

The questions of being accountable to this Council and in what manner and to what extent the executive is to be accountable to this Council involve the fundamental relationship between the executive and the legislature. They are also governed by the Basic Law. The accountability system should not, and cannot, alter such a fundamental structure. For instance, the Chief Executive is responsible for the appointment and dismissal of principal officials in the SAR. In exercising such power, the Chief Executive must definitely consider many factors. Since it is provided in the Basic Law that the Chief Executive is empowered to do so, he must be responsible for making the final decision, both at present and in future. He must not, in violation of the constitution, base his decision on the voting inclination of this Council in order to show that he is accountable to this Council, instead of making his own decision. If the executive is to hand over its decision-making power to this Council, it will definitely violate the Basic Law. Therefore, one of the key objects of the

accountability system is undoubtedly to make political appointees to be accountable to the Chief Executive. If this direction of accountability is altered so that these appointees are required to be accountable to this Council, will it confuse the roles played by this Council and the Chief Executive? How can legislative power be separated from executive power? Looking at the matter from another angle, we will find that, under the conceived political accountability system, the composition and administration of the SAR leadership will be more in line with the rules of political games and better enable the Government to balance choices against its governance ability and public acceptability. This is because in a continuously liberalizing community, and given the possibility of having to step down for administration blunders, principal officials will have to bear political risks for any acts made not in line with mainstream public opinion. In the course of formulating policies, there will be more room for co-operation between the executive and the legislature. I am convinced that, while the internal accountability of the executive, will be enhanced, its accountability to the public and this Council will naturally be strengthened too.

With these remarks, Madam President, I support the motion.

MR WONG YUNG-KAN (in Cantonese): Madam President, on 1 July 1997, Mr TUNG Chee-hwa assumed the Chief Executive' office and inherited the responsibility of leading the 180 000-strong Civil Service left behind by the British Hong Kong government in preparation for a smooth transition to the Government of the Hong Kong Special Administrative Region (SAR). The mission, considered a major challenge at that time, has aroused extensive concern among the international community.

Mr TUNG, as the first Chief Executive of the SAR Government, thus became the pioneer of "Hong Kong people ruling Hong Kong". After succeeded in seeking a second term as the Chief Executive, he concluded his successes and failures during his first term of office. On 17 April this year, Mr TUNG unveiled in this Council his proposal of implementing the accountability system for principal officials (the accountability system) on 1 July. The central idea of this proposal is to extract the principal officials with policy portfolios, formerly holding the "iron rice bowls", from the Civil Service. Instead, they will become political appointees and be employed on contract terms. The old system will still be applicable to civil servants, who will be responsible for policy enforcement and remain politically neutral.

Although the civil service system, put in place more than a century ago, has gone through reforms and changes, no reforms carried out since the establishment of the Independent Commission Against Corruption in the '70s can surpass the accountability system when it comes to the reverberations caused in various quarters of society. Some people are worried that the accountability system will enable the Chief Executive to arrogate all powers to himself, thereby damaging democracy in Hong Kong. Such worry is indeed unnecessary. According to the provisions of the Basic Law, the Chief Executive is subject to checks and balances of the Legislative Council since the latter may impeach the former. At present, the checks and balances of our political system, still in perfect condition, remain unaffected by the proposal. In my opinion, the accountability system will not give the Chief Executive any new power. It will only further smooth his path to exercise the powers that come with his office, powers that are compatible with his responsibility. It also marks another evident progress of our democratic political system following the return of the Chief Executive by election after the reunification. The fact that the civil service system can reform and transform in keeping with the times will enable the Government to keep a sharper tab on public opinions and enhance its efficiency of administration.

In July 1997, all civil servants glided through the transition and stayed in office under the leadership of the former Chief Secretary for Administration, Mrs Anson CHAN. The public and the international community once thought that the reunification was as simple as a change of flags under the influence of the myth that civil servants would remain politically neutral, and by virtue of their faith in the ability of the Civil Service to cope with contingencies.

Since the occurrence of a series of incidents such as the chaos in connection with the opening of the new airport after the reunification, the public could really witness the vulnerable side of the Civil Service in coping with the new situation, in addition to its well-known cleanliness, efficiency and political neutrality. There were scandals relating to corruption in housing projects and jerry building; the offer of compensation to Siemens without any good reasons by the Kowloon-Canton Railway Corporation; and a denounced Rural Planning and Improvement Strategy minor works programme carried out in the New Territories. This latter 10-year programme, having received a government funding of \$1.6 billion, is aimed at upgrading the infrastructure in rural areas in the New Territories and improving the living environment and sanitation of rural areas, and was scheduled for full completion in 2000. But up to March this

year, 76 construction projects were still pending completion and 46 more in the middle of planning. According to preliminary estimation, those projects suffering from slippage will not be completed until the end of 2006. Moreover, the Government will be required to incur an additional cost of \$200 million, given that some government departments, including public bodies, are still following extremely complicated working procedures and extended deadlines. Sometimes, it may take several years to carry out work relating to proposal, consultation and vetting before actual construction works can commence. All this shows that the bureaucratic style of "discussion without decision and decision without implementation" does really exist in the Government. People who are ignorant of the truth will then vent their spleen on the Chief Executive. It is indeed time to change this unreasonable system of keeping the civil servants politically neutral and requiring the Chief Executive to shoulder all political responsibilities.

The design flaws of the government framework only represent the tip of the iceberg where the crux of the problem lies. Under the existing system, senior officials rising up from the Administrative Officer grade are progressively promoted from within the civil service system. The merits of these officials are they will follow proper procedures and handle matters fairly. However, they tend to suffer from the shortcomings of rigidity and lacking in boldness. They have been ridiculed by the public for their reliance on consultants to gather proof to support their argument whenever problems are encountered. As a result, a lot of good opportunities have been missed. Moreover, the Government has to spend a huge sum of public money on consultancy fees. What is more, Hong Kong is being ridiculed as "a place ruled by consultants". Being protected by the "permanent system", civil servants who have erred are not held accountable personally under the collective accountability system. Senior officials are given asylum owing to the fact that "punishments are not for nobles". Even in the face of intense opposition, they can still shirk their responsibilities by simply offering an "apology". They do not have to be held politically accountable for negligence of duty.

After summarizing all these observations, I think it is imperative to reform the existing civil service system, in terms of the senior official structure, the civil service or the operational procedures. There have been repeated calls from the public in recent years for Mr TUNG to introduce a new body of governance officials with similar convictions, consistent pace and the determination to advance and retreat together. Only through fully exercising its functions can

the Government make fundamental improvement to its deep-rooted practice of giving principal officials "powers but not responsibilities", and can the Government hold itself accountable to the public and to the legislature. At present, the highly paid chief executive officers of international list companies are held accountable to the performance of their companies. They must step down if their companies suffer losses or persistently perform badly since they are accountable to the boards of directors as well as shareholders. The accountability system perceived by the Chief Executive actually follows the same principle of the popular market economy — the principle of linking powers and responsibilities to management.

It has been suggested that should a principal official appointed under the accountability system be given a vote of no confidence passed by this Council, the Chief Executive must have him replaced. I consider this suggestion undesirable because it will interfere with the Chief Executive's power of making appointment and removal and is not in line with the Basic Law. Under Articles 73 and 79 of the Basic Law, this Council may, following a set of statutory procedures, interfere with the appointment and removal of public officers in the SAR, including judges of the Court of Final Appeal and the Chief Judge of the High Court, Members of the Council, and even the Chief Executive. However, it is powerless to interfere with the appointment and removal of principal officials. Therefore, it is inappropriate for this Council to deal with matters outside its ambit.

The accountability system, after implementation, will bring two distinct changes to administration by the Government: First, as accountability officials will be held accountable, they must be better prepared to observe the people's sentiment and have the courage to face the public. They can no longer use the permanent system and the so-called political neutrality as their protective shield. They must assume responsibility for policy blunders. The SAR Government will thus become more liberal. Second, the decision-making team formed by the SAR Government under the accountability system will have a more specific goal and move in a more consistent direction. This will help avoid the long-standing malpractice of "holding discussion without decision and making decision without implementation". The Chief Executive will thus be able to execute his order and serve the public more effectively.

What needs to be dealt with after a good mechanism has been established is the selection of suitable talents. We hope the second-term Chief Executive

can appoint people without sticking to fixed criteria and organize a strong body to govern Hong Kong. As accountability and efficiency are the focus of the accountability system and future administration, we hope the accountability system can be put into implementation as soon as the second term of the SAR Government starts to operate.

Madam President, I so submit.

MR AMBROSE LAU (in Cantonese): Madam President, the Hong Kong Progressive Alliance (HKPA) has been advocating that the Government should establish a system that clearly delineates powers and responsibilities, has a streamlined structure, is efficient and can rapidly respond to public sentiments. The accountability system for principal officials (the accountability system) has responded to the social aspirations and come as a manifestation of efforts to improve administration.

With the existence of a "iron rice bowl system" for principal officials throughout the years, principal officials do not have to assume responsibility for administrative blunders, giving rise to the strange phenomenon that principal officials will perform their duties in a perfunctory manner and follow the beaten paths. As a result, in the event of administrative blunders by the Government, the Chief Executive alone would be held responsible. The accountability system would precisely rectify these unhealthy phenomena.

The new system is not intended to allow the Chief Executive arrogate to himself all the powers, conversely, it would help the Chief Executive transfer to Members of the Executive Council more substantive policy-making powers and the consequential responsibilities. According to Article 54 of the Basic Law, "the Executive Council of the Hong Kong Special Administrative Region shall be an organ for assisting the Chief Executive in policy-making". Article 56 of the Basic Law further elaborates the powers and responsibilities of the Executive Council and it states that "except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council". It is worth noting that it also states that "if the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record".

We can see from the provisions of the Basic Law that the policy-making system of the Chief Executive in Council embodies the executive-led principle and the authority of the Chief Executive, and it also allows the Executive Council to check and balance the policies made by the Chief Executive to a certain extent. It would avoid arbitrary acts by the Chief Executive and avoid his deviation from the collective accountability system. Therefore, the Executive Council would not passively play the role of a policy-making consultant of the Chief Executive, but it would more actively assist the Chief Executive in making policies in a sounder manner.

Under the accountability system, the functions of the Executive Council conferred by the Basic Law would not change. Conversely, after the principal officials have joined the Executive Council, as the Chief Executive has said, they would have to be respectively responsible for all matters within their policy portfolios. They would have to work out policies and policy objectives as well as be responsible for the implementation and results of policies. They would also have to directly participate in decision-making in respect of the allocation of public resources. Evidently, Members of the Executive Council would play a more substantive policy-making role in future.

Even though the accountability system would make the Government more accountable to the elected Legislative Council, the HKPA thinks that it is unsuitable to mix up the implementation of the accountability system and the democratic popular election system. As deduced from the contents of the amendment, before there is universal suffrage, we should not or cannot implement the accountability system. As there is no universal suffrage in Hong Kong yet, is the amendment asking the Government to shelve the accountability system first? Some colleagues of this Council frequently criticize that the implementation of some government policies has been impeded and some principal officials have performed their duties in a perfunctory manner. Now, the Chief Executive has actively responded to social aspirations and he is determined to implement the accountability system. While principal officials have powers under this system, they have to bear responsibilities for administration. Why have some colleagues of this Council deliberately complicated the issue and sought to impede the implementation of the accountability system? Since the community generally agrees that the implementation of the accountability system by the Government is a good deed, why can the accountability system not be implemented at once?

Of course, the accountability system has significant impact on the quality and results of government administration, therefore, the HKPA expects the

Government to try its best to take the advice of various sectors, and balance the interests of various parties before implementing the relevant system so as to realize the results of the accountability system. The Government should honour its pledge and review the results of the new system when it is appropriate, including the number of accountability officials and the combination of Policy Bureaux. It should also continue to improve the functions and mode of operation of the accountability system in the light of actual experience so that the implementation of government policies would not be impeded and the Government would really think in the way the public think and act in earnest as the public do.

With these remarks, Madam President, I support the original motion.

MISS EMILY LAU (in Cantonese): Madam President, I speak in support of Mr Martin LEE's amendment. The Secretary said earlier that many Members had responded to the accountability system for principal officials (the accountability system) by saying that the system should seek to make government administration more effective, give full play to good governance and answer the aspirations of the people. At first, the Secretary indicated that public response had been unanimous for a survey company had pointed out that 65% of the people supported this system.

Madam President, I believe I would even be surprised if we ask the public whether the Government should be accountable and the answer is not 100% positive. However, how many members of the public will understand whether this accountability system will make the Government accountable to them or to the Chief Executive, Mr TUNG Chee-hwa? As such, very often, the results of opinion polls would depend on how the questions are phrased. If the Secretary is so confident, he should conduct another opinion poll to ask what the public would think if the Government is accountable to the Chief Executive alone while the public and the Legislative Council do not have any power to replace the principal officials? I believe that the accountability system could best be enshrined in the power of making replacements. The spirit of this system could be truly realized only if the public has the power to replace principal officials or to replace them through the Legislative Council, where some Members are returned by direct elections. I really find it very hard to accept if it were said that the public would accept this system under which there is no provision for replacement of the principal officials.

However, I know that many members of the public are of the opinion that the executive authorities have never and will never be accountable to the public, so what is the big deal if it is not accountable to the public after 1 July? This is nothing new. No matter how much you say now, they simply would not listen. Though the Chief Executive did first bring up the issue of the accountability system more than two years ago, the real and specific details of this system were not put forward until April this year. Now, everything in relation to this system has to be decided within two months. Many members of the media and outsiders have asked me this question: Why was there not any public consultation?

Madam President, there was no substance when this system was discussed at Legislative Council meetings and we were only consulted on the accountability system and the ministerial system in general. If the Government were to do things in such a manner in the future, then I believe nothing could be achieved in spite of the accountability system. In fact, many people suspect that the Chief Executive has made so many people unhappy with his administration in the past years precisely because the public was not consulted before policies were implemented. Policies were either implemented hastily or amended speedily. During our two public hearings, we learned that many attending organizations were of the opinion that civil servants should be held responsible for the blunders in policy-making and implementation. Of course, I would not say that civil servants are always right, but should they be taking all the blame? Should the Chief Executive be then looking for a plan to drive away all those civil servants who are not likeable and retain those who are happy to follow him? Could the existing governance problems be actually ironed out by doing so?

Madam President, I believe that we will soon get the answer. Members of the public are also asking whether this system could really improve the governance. The public would even say: Is it not true that Ms Rosanna WONG was forced to step down as a result of the short-piling scam? However, the Chief Executive slapped the Legislative Council in the face a few weeks after she had stepped down — all right, you want her to leave? I appoint her as the Chairman of the Education Commission. The Chief Executive has even tried to convince her to take up a ministerial post. It did not happen only because she had turned down the offer. Mr Tony MILLER was not dismissed or even transferred as in the above case. Mr Andrew LO did not have to leave and many senior government officials had told me in private that they would be happy to see him leave and even more happy if he was dismissed immediately.

However, in the end, no actions were taken against him. So, the public asked whether the problem could simply be resolved by replacing all or some of the people when there is evidence so concrete to show that blunders have been made, instead of making amends. The public could only tell us not to be so naive.

I agree with Miss Margaret NG's comments earlier. The Chief Executive is only trying to let outsiders join the Government. Then, is it not true that Secretary Antony LEUNG comes from the outside, so do Secretary Elsie LEUNG and Secretary YEOH Eng-kiong? This has long been proven practicable, then why is he still doing all this? Is he trying to please certain people in the business sector, thinking that the Government could be streamlined as a result?

I am all for streamlining. I am a member of the Public Accounts Committee. But could the objective of streamlining really be achieved by doing so? Members of the public have looked at this system with misgivings and they are not sure whether some improvements could really be made or that it would only mean more people with personal connections will join the Government from the outside to pave the way for their businesses and their future. This is what we are most worried about. Why are we so inflexible? It is not that we do not trust other people, but as a lot of powers and information are involved, we must not allow such powers and information to be abused.

Madam President, I support the amendment. The Government indicated that it has made reference to foreign countries. Many Prime Ministers and Presidents of foreign countries have the power to pick members of their cabinets and I fully support the idea that they should be given such powers. I support not only the idea that the Chief Executive should have the power to appoint his own cabinet, but also the formation of a ruling coalition. This is the solution to resolving and rationalizing the relationship between the executive and the legislature. I made this proposal to the Chief Executive one or two years ago, but he told me that it was infeasible. Why? This is because it is not allowed under the Basic Law. Since the Legislative Council is responsible for monitoring the executive authorities, he said, how could a coalition be formed? Now, I do not know what the new system will be like, but the problem is, we could not make inconsistent choices. We could not just choose what we like from foreign systems and dismiss what do not like. It is true that the Presidents of foreign countries could pick their own cabinets but the President of the United

States have to consult and seek the approval of the Senate before he could do so. Though the Prime Minister of the United Kingdom does not need to seek the approval of the Parliament, most of his cabinet ministers come from the House of Commons. Since those ministers are returned by universal suffrage, they are appointed on such a basis. These are the practices of foreign countries, but the Chief Executive did not say anything about it. When I raised this point at the panel, I was told that this was due to the "one country, two systems" principle and the unique situation of Hong Kong, and so on. By doing so, the Government is only copying some part of the foreign systems but not the whole system. It only copies what it likes and when it comes to something it does not like, they said that this is the "one country, two systems" principle. I think this is very inconsistent. In the past, many Members said the quality of our civil servants was very high and they were very professional because they acted inconsistently and were not self-contradictory. They would not just choose what they liked and drop what they did not like. Otherwise, I would have found it unacceptable.

My reason for supporting Mr Martin LEE's amendment is, like I said earlier, the realization of the accountability system lies in the ability of dismissing negligent officials. If we think that a certain official is not doing a good job, then we should have the power to dismiss him. I think that the existing accountability system should be renamed as "the accountability system for principal officials to Mr TUNG Chee-hwa". This is not a simple accountability system because people would think that under the accountability system, government officials should be accountable to the society as a whole. But this is not the case. Therefore, such an accountability system could not really achieve the above purpose and no mechanism has been established in this relation. Since there is such a deficiency in the system, I have proposed that a mechanism should be set up, and that mechanism is the Legislative Council. That means if the Legislative Council passed a motion of no confidence in relation to a certain principal official, the principal official in question should resign.

I understand that Article 48(5) of the Basic Law provides that the appointment and removal of principal officials should be made by the Central People's Government. However, even without amending the Basic Law, the Legislative Council could still play a more active role and that is, if the legislature passed a motion of no confidence in relation to a certain principal official, the Chief Executive should make recommendation to the Central

People's Government to have him removed. Then, we would have a mechanism for the removal of principal officials. However, the Government refused to accept this proposal and only said consideration would be made. I could not help asking how the relationship between the executive and the legislature could be rationalized. However, the fact is — I hope that the Secretary would also talk about this later — if we really moved a motion of no confidence in relation to a certain principal official and the motion was carried by a majority, the Secretary himself also said he would not be so shameless as to stay on his job. Many officials have told me in private that they would certainly leave before such a motion is moved against them. Since this is how it is going to happen, then why could the Government not be more open-minded as to say that despite the provisions under Article 48(5) of the Basic Law, the Legislative Council could still play the role of such a mechanism. By doing so, the so-called accountability system could somehow be realized. I really could not support the motion if even this was not allowed.

Madam President, I said earlier that I support the formation of a ruling coalition for I think that this would rationalize our relationship with the executive authorities. However, I do not know what the Chief Executive would do after listening to so many views. I only feel that since some Members of the Legislative Council are returned by direct elections — I hope that very soon all Members will be returned by direct elections — and they are the true representatives of Hong Kong people, I would find it acceptable if they could join the executive authorities in governing Hong Kong. However, they should truly be working together in governing Hong Kong. We should not say that you are the "royalist", the ruling party or we are the opposition party; we should all take a clear stand and share honour and humiliation together. Of course, if the Democratic Alliance for Betterment of Hong Kong (DAB) were capable of winning all seats in the Legislative Council in direct elections, I would commend them for their outstanding performance. However, if the policies they implement in co-ordination with the executive authorities are improper, I believe they would pay a hefty price in future elections. This is the same for foreign parliaments. Several years ago, only two Members of the Parliament of the Canadian Government were left among the 100-odd Members after an election. The people of Canada could get rid of all those Members without firing one shot or shedding a drop of blood and this is the realization of the accountability system. Even if nothing were changed at the moment and as the Government said, nothing would be changed before 2007, something could still be done. But the Government is not willing to do anything. As such, Madam President, I

will not be support the current government motion at all. As Mr LAU Chin-shek said, this is a fraud and we would not help the Government to deceive the people.

When this proposal was first mooted, even some foreigners were deceived. I heard that some foreign governments had thought that the Government would do two things. It would make the executive authorities more accountable to the legislature and help Hong Kong to become more democratized in a progressive manner. However, the Secretary has given us a reply in the documents and we now know that both cases have not come to pass and that it was only a misunderstanding. I believe that everyone knows that this issue has been given a lot of publicity. Our legal advisor also pointed out in a document that this is by far the greatest change in governance since the handover of sovereignty — it is not a reform and reform is a good thing. This is only a change — and though this is a great change, the two things mentioned earlier remain virtually unchanged. And, after the changes were made, our Government would not become more accountable for it would only act according to the Basic Law — as read out by the Secretary in his speech earlier and the political system would not become more progressive as a result. Therefore, I hope that Hong Kong people and our foreign friends would not harbour any illusions or misunderstandings for the Government is not going to do those two things. The Secretary should also make himself clear in his response and ask everyone not to have any misunderstanding for once some people hear that there would be changes in the political system, they would think that there would be reform.

However, I agree to one point and I think it is a good thing to allow members of political parties to take up ministerial or secretary posts. I really think that this is a good thing. I do not understand about one of the provisions in the law governing the Chief Executive election and that is, the Chief Executive is required to renounce his political membership status upon election. I hope that this restriction could be removed in the future. However, this would give rise to one problem and people would ask whether members of the Communist Party, the Kuomintang or those who has a similar membership status could be appointed as principal officials. Yesterday, the Secretary told us that it was possible but the candidate must be subject to the Chief Executive's approval. That means a person should not be barred from applying — or rather we should not say apply but be invited — to take up the post of principal official because of his Communist Party, Kuomintang Party or even Democratic Progressive Party membership status. However, some people may be interested in applying for

those posts and I think that those posts should be made open for application — I hope the Secretary could respond to this later on. However, yesterday, the Secretary also said that there would be a form to be filled out by the candidate. When we were talking about the detailed character check yesterday, Deputy Secretary WONG said people who are invited to take up the posts of principal officials are not required to make an entry on their political affiliation on the form, but they have to put down their social affiliation. Secretary Michael SUEN said that another form could be designed and I think it is necessary to have such a form.

Furthermore, the Secretary also said yesterday that the relevant affiliation should be disclosed and the candidate may not necessarily be discriminated against as a result. Yesterday, I also asked if the political party of the candidate was not based in Hong Kong, but outside Hong Kong, would members of the public question the loyalty of the candidate towards Hong Kong? Could he be considered as the most suitable candidate for the principal official and Bureau Director posts in Hong Kong? However, in spite of all this, we should at least know about their political affiliation. Therefore, he should not only make a declaration to the Chief Executive but should also tell all members of the public that he is a member of the Communist Party or the Kuomintang and is now applying for the Bureau Director post. I think this point is very important.

Madam President, finally, I would like to talk about the issue of the political appointment of the Secretary for the Civil Service. Several days ago, I said the staff side of the Disciplined Services Consultative Council had participated in the hearing conducted by us in this relation and the staff side representatives indicated that they were very worried about this. They said they were concerned that the interest of civil servants might become a bargaining chip in the political struggle in large measure. In order to protect their own interests, civil servants would be forced to be politicized. It would be very doubtful whether they could maintain their political neutrality in the discharge of their duties. I asked the staff side representatives whether we should be worried that the disciplined forces would become a tool for those in power to suppress their political opponents. The answer was that when politically accountable Bureau Directors receive instructions from the Chief Executive to implement certain policies, the Directors would have to shoulder the responsibility. They may also be biased towards a certain party, but the disciplined forces would still have to carry out such politically motivated decisions, and the Directors may override the views of civil servants and the disciplined forces. Therefore, they said they

are also very worried about such phenomena. Madam President, if the disciplinary forces are so worried, then I believe there is a good reason for you and me to be worried as well. If we are the only ones saying this, you may think that these are only Members' opinions, but now civil servants are also saying the same thing. I think someone should give us a formal response.

With these remarks, I support Mr Martin LEE's amendment and object to the Secretary's motion.

PRESIDENT (in Cantonese): Honourable Members, there are still 10 Members waiting to speak on this motion and I believe more Members would request to speak later. Therefore, I do not think that this Council will be able to conclude the debate on this motion at 10 pm tonight. Now, I will continue to call upon other Members to speak. At 10 pm, I will suspend the meeting.

MR ABRAHAM SHEK: Madam President, thank you for the good news.

The accountability system for principal officials was formulated during the last two years. The Chief Executive has submitted the proposal and addressed this Council on 17 April 2002. This proposal will significantly reform the administrative structure of the Government. I would like to express my strong support for the accountability system for principal officials as it is beneficial to the community in the long run.

Hong Kong has been reunited to the Mainland for nearly five years. In order to have a smooth handover, the government administrative structure remains unchanged from former colonial government. Although the procedures of our administrative system have had proven successes in the past, they have become irrelevant for the present. In these few years, our economy has been adversely affected by the downturn of the external economy. Unemployment rate is rising while the salary level of workers is moving downward. The value of fixed assets is depreciating as well. Members of the public lack confidence in our future.

As for our Administration, the Government of the Hong Kong Special Administrative Region (SAR) cannot keep step with the changing times. The administrative structure is cobwebbed, overgrown, and probably outdated.

Policy-making process is slow. The Government has developed a culture of hearing, consulting but not deciding. And at times, decisions were made with inadequate follow-up actions. Policy outcome cannot meet the aspirations of our community. It is anticipated that economic development will be adversely affected if our Government cannot resolve these administrative problems. For the above reasons, the Government introduces this new accountability system for principal officials.

The public hold diverse views about the new accountability system. Some members of the public worry that the Chief Executive will be too powerful in making policies. In my view, they are simply over-worried. In fact, apart from the power delegated to the Chief Executive by the Basic Law, the Chief Executive is also the chief executive officer in the administrative structure of the SAR Government. Whether the new accountability system will be implemented or not, he is the one holding the highest executive power. However, taking a more positive view, the new accountability system allows the Chief Executive to decentralize his power to the principal officials so that the officials have a higher level of flexibility and autonomy in their executive domains. So, where is the despotism? These officials will be delegated with more power to formulate, explain, co-ordinate and implement policies than the existing Bureau Secretaries. This is because the principal officials will accept total responsibility for policy outcome, whether it is a success or a failure. If the accountability officials are not delegated with more power, who would want to be a principal official with responsibility but without power?

Another public concern is that civil servants will no longer be politically neutral. A culture of shoe-shining, yes-minister and the rule of man will appear in the Civil Service. Although this worry may not be unreasonable, it reflects a lack of understanding and confidence in the SAR's rule of law and the present civil service system. Under the new accountability system, civil servants will not change their roles. They will continue to be politically neutral since they do not hold responsibility for policy outcome, but just support the policy decisions, and fully and faithfully implement the policies.

Madam President, the success of this new policy will depend on whether it can accelerate socio-economic development and improve people's livelihood. If the new accountability system plan can be fully implemented, I am confident that it will enhance the Administration's ability and improve the performance and the service culture of our Civil Service.

In my view, the major difficulty in introducing the accountability system at the present stage is whether it can attract capable people committed to working for Hong Kong. Otherwise, the "old wine in new jug" situation will exist. The new accountability system will not work, and the problems of the SAR Government will not be resolved.

The employment package for principal officials under the accountability system is not as attractive as some have said. There are too many limitations that reduce its attractiveness. So, I believe that there is a high possibility that the first team of principal officials under the accountability system will be picked from the existing Bureau Secretaries in the Civil Service.

I have no doubt about the effectiveness of the existing Bureau Secretaries in serving the community or their capability in becoming principal officials. However, being civil servants for years, conservatism, strict obedience and conformity are deeply rooted in their minds and will be difficult to correct. It is a task that they have to do. Moreover, their present identity as Bureau Secretaries, with a close working relationship with the Civil Service, may conflict with their new identity as principal officials. The policy-making accountability officials will be in a dilemma when they do not share the same ideas with their civil servants in policy implementation. By having civil servants rather than political appointees to fill the accountable official posts, there will be no change from the existing system. Besides, the Government will need to pay a huge amount of pension to the Bureau Secretaries (who will be the principal officials) for their changeover. This will give the public a negative view that the Government is wasting public money in this financially difficult time. In this matter, the Government has a lot to explain, and it must do so speedily.

Another obstacle that the Government has to overcome is how to balance the interests of different parties in policy formulation and policy implementation.

One of the Government's arguments for the proposed system is a need to encourage the principal officials to better respond to the needs of the community in the decision-making process.

I do not doubt the good intention of the Government's efforts to promote better accountability. On some occasions, it may be potentially dangerous to depend too much on public opinions in policy formulation.

This may place too much power on those who know how to mobilize public opinions to secure undue advantages for themselves under the banner of public opinions. The community will suffer if a principal official will be allowed to satisfy whatever public demand without taking wider social and political interests into consideration. That was the situation with our last governor, Mr Christopher PATTEN.

Such cases do exist in our present political arena. The most obvious of them is the Government's housing policy which has been blindly guided by public opinions.

In order to secure support from the public, the Government has deviated from its long-established housing principle of only providing assistance to those in genuine housing need.

Public housing flats have been sold at discounted prices much below the market value to sitting tenants, including some well-off residents who could have afforded private housing. By doing so, the Government has marked down the value of public housing and depleted precious public resources.

Besides, the Government has to build more public housing flats to make up for the loss to the housing supply in the public housing rental sector, thus increasing the Government's long-term financial burden.

At the same time, the Government has been refusing to discontinue the Home Ownership Scheme (HOS), even though the Scheme has wreaked havoc with the property market. The Government has disregarded the fact that there is significant overlapping between HOS and private housing market, thereby confusing the property market and incurring unfair loss on private housing owners.

Madam President, I could not help but worry that the above situation will continue or even deteriorate after the full implementation of the accountability system in July. While I hope that all our future principal officials will be of high personal integrity and always take social interests into account in serving the community, I also urge the Government to devise a mechanism that can effectively balance different interests in the decision-making process.

Another feature of the system that prompts my concern is its impact on the co-operation between the executive and the legislature. So far, the Government

has provided no answer on how the future principal officials will be held more accountable than their predecessors to the Legislative Council.

The Government should be well aware of the importance in securing the support of the Legislative Council to the successful implementation of the proposed system, as the Legislative Council has acted as a channel to reflect public opinions and sectoral interests to the Government. I, therefore, urge the Government to explain clearly its policy on the issue of executive/legislative relationship.

The accountability system is not exactly a perfect, immediate solution to all the inherit problems in the SAR Government. There may be unexpected problems during the implementation process. Whether the system can succeed will depend on the Government's continual improvements to the system.

The proposed system is far from a whim or an act of political expedience as some have suggested. Instead, the proposed system is a product of careful consideration.

The Chief Executive proposed the accountability system after summarizing his five-year experience in administering Hong Kong according to the principle of "Hong Kong people ruling Hong Kong".

Hong Kong is facing enormous challenges which we have never experienced before. We are now searching the best way to restructure the local economy as well as integrate our economy with the Mainland. We should adopt a new thinking and abandon the bureaucratic culture in administration.

Hong Kong's administrative system is likened to a patient suffering from chronic heart diseases. What is needed is not a minor operation of angioplasty (ballooning type), but a complex operation of multiple bypasses, so that Hong Kong could have a new heart to weather our present socio-economic storms and attacks.

For the long-term interests of Hong Kong, I support the Administration's reform by implementing the accountability system for principal officials. With these words, I support the government motion.

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, the gravest distortion and misunderstanding of the accountability system for principal officials (accountability system) come not from the general public but the Members opposing the accountability system in this Council. Why? The answer is very simple and can be summed up in a few words: "Opposing whatever from TUNG Chee-hwa to the neglect of facts".

To begin with, the accountability system can effectively resolve the past problem of Policy Secretaries having all powers but not any responsibilities. Incidents like the substandard piling problem of public housing estates, the new airport fiasco, avian flu, and so on, have all highlighted the absurdity of the fact that senior officials do not have to bear any political responsibilities. Naturally, members of the public are very discontented. But then, this situation is in fact resulted from the posting system of civil servants and the selfish departmentalism of senior officials. Senior officials have only administrative but not political responsibilities. The principal officials to be employed by way of political appointment will no longer be members of the Civil Service and their terms of office are the same as that of the Chief Executive. They have to accept full responsibility for the policies in their respective portfolios and may even have to resign and step down when such need arises. As their responsibility is to formulate and promote policies, these principal officials will all join the Executive Council, so that they are conferred with powers and corresponding responsibilities. So, the aspiration of the community in this respect is answered.

Secondly, the accountability system can help to ensure and give play to the tradition of political neutrality upheld by civil servants all along. In this connection, while the majority of civil servants responsible for implementing policies can remain politically neutral, senior civil servants like Bureau Secretaries can hardly be politically neutral because of their responsibility to formulate policies and make decisions. Hence, the accountability system can save the principal officials from the embarrassment of remaining politically neutral in name only. That way, they can justifiably implement the Chief Executive's philosophy of governance and participate in political efforts to strive for public support without impacting on the stability, consistency, professionalism, neutrality and integrity of the Civil Service.

Thirdly, the accountability system can help the Chief Executive to form his own ruling body to establish a strong Government and thereby enhance the

efficiency of administration. Over these past five years since its establishment, the SAR Government has demonstrated a habit of "discussing without decisions and making decisions without taking action" on many occasions. The crux of the problem lies in the fact that the Chief Executive does not have a ruling body which shares his beliefs. How can a loosely united group do a good job? I therefore hold that it is the right time to implement the accountability system when the second SAR Government assumes office.

Fourthly, some Members have made the absurd criticism that the accountability system is an attempt by the Chief Executive to centralize and amass power. The power of the Chief Executive is clearly specified in the Basic Law. Under the provisions of the Basic Law, the Chief Executive is the head of the SAR Government responsible for leading all officials of the SAR Government, including civil servants. According to articles 43, 48 and 60 of the Basic Law, all powers of the officials of the SAR Government come from the Chief Executive. How the Chief Executive delegates the powers is completely determined by the needs of administration. Since the powers of the Chief Executive are all conferred by the Basic Law, he will not and does not have to introduce a new system to enhance his powers. On the contrary, with the implementation of the new system, the Chief Executive is not centralizing but delegating and distributing powers. He will delegate powers to not only the three Secretaries of Departments but also further to the 11 Bureau Directors, so that the Bureau Directors under the accountability system will have sufficient powers to formulate, co-ordinate and implement the policies for which they are accountable for. So, people are simply over-worried to consider that the Chief Executive is trying to amass power by way of the accountability system. According to the Basic Law, the Legislative Council can impeach the Chief Executive and the Chief Executive is therefore not unchecked. Moreover, the existing sound arrangements of checks and balances will not be changed or reduced after the implementation of the accountability system.

Fifthly, some Members have queried that the officials under the accountability system would be responsible to the Chief Executive rather than the public. I hold that it is erroneous to pitch accountability to the Chief Executive against accountability to the public. The accountability system will not alter the fact that the executive authorities are accountable to the legislature and, hence, the public; nor will it alter the subordinate relationship between the Chief Executive and principal officials. While the Bureau Directors under the original system are responsible to the Chief Executive, the new system will only

set out more clearly the powers and responsibilities of the Bureau Directors. That way, the responsible Bureau Directors can be identified and held accountable for mistakes made. Hence, Bureau Directors will not be playing the musical chair game as they did in the past when they were transferred frequently to different posts and tried to do a good job of their work with power but no responsibility. It is expected that the accountability system will oblige the principal officials to come closer to the public to understand their needs, strive for their support, and to be held more accountable to the people.

Sixthly, some Members consider that since the Chief Executive is not elected by universal suffrage, the accountability system is lacking in acceptability. I just cannot agree to this view. The Chief Executive is elected in accordance with the Basic Law, he must therefore be adequately representative and accepted. The Chief Executive is empowered to nominate and report to the Central Government for appointment the various Secretaries of Departments and Bureau Directors. The new accountability system only changes their terms of appointment, to ensure more choices, better versatility and greater flexibility. It can hardly be described as any radical change. To put it frankly, some people are in fact trying to check the power of the Chief Executive by way of the political neutrality of senior officials. These people have adopted a distrusting attitude towards the Chief Executive and are therefore acting against the executive-led spirit enshrined in the Basic Law. Actually, such kind of view is unhealthy either, bearing in mind that the senior officials are not selected by way of election and do not have to bear any political responsibility despite the power they have to formulate policies. Is it not a mockery of the democratic system to expect government officials not returned by election to check the Chief Executive who is selected by election? Actually, checks and balances on the executive authorities should be imposed by the legislature, the Judiciary and the media in society, rather than asking the different government departments to check or shield each other and thus wasting each other's resources. Moreover, universal suffrage and the accountability system are two completely different things. Whether or not there is election by universal suffrage, the accountability system can still be implemented. We support the development direction of democracy and universal suffrage, and the Basic Law also stipulates that election by universal suffrage should be the ultimate goal. However, it will take some time to achieve this ultimate aim in a gradual and orderly manner. The accountability system only aims at defining more clearly the powers and responsibilities of the Secretaries and Bureau Directors, and is therefore an

important step in the development towards a democratic and liberal government. We should not oppose the implementation of the accountability system just because the ultimate goal of election by universal suffrage is not yet achieved. Opposing the accountability system on the pretext of universal suffrage is wrong in that so doing is saying "No" to democracy, liberalization and progress.

Seventhly, I hold that the accountability system has already struck a suitable balance between the need to require principal officials to bear political responsibility and the need to uphold the stability of the Civil Service. The majority of public opinion supports and approves of the principle and direction of the accountability system; besides, opinion survey results also indicate that the majority of the people interviewed support the accountability system. According to a recent survey conducted by the Hong Kong Federation of Youth Groups, over 50% of the 500 young persons interviewed support the SAR Government implementing the accountability system, 12 times more than the 4% who hold the opposite view. The results of a survey conducted by the Confederation of Youth Associations in Hong Kong also indicate that 56.4% of young persons will have greater confidence in the Government because of the implementation of the accountability system, while 55.9% believe the new system can help speed up the decision-making process of the Government in future.

Eighthly, there are still Members criticizing that the accountability system has been put forward hastily without thorough discussion. In fact, the principles of the accountability system had already been spelt out in the Chief Executive's policy address in 2000, while a more detailed description of the system was given in the 2001 policy address. Besides, the Panel on Constitutional Affairs has also discussed the issue at a number of meetings. On 17 April, the Chief Executive came before this Council to elaborate on the accountability system and answer Members' questions. The Chief Secretary for Administration and other government officials have also answered many phone calls from members of the public to explain the accountability system to them. Further still, the Subcommittee set up by the Council to study the issue has so far held 12 meetings and invited many interest groups and scholars to submit their views. The different views raised have all been fully reflected in this Council and given thorough discussion. The vote to be taken in this Council tomorrow will be a vote taken by representatives of public opinion, who are by no means rubber-stamps.

With these remarks, I support the motion moved by the Government. Thank you, Madam President.

DR LUI MING-WAH (in Cantonese): Madam President, at the Legislative Council meeting held on 17 April, the Chief Executive, Mr TUNG Chee-hwa, announced his proposal for an accountability system for principal officials (accountability system). Under the proposed new structure, three Secretaries of Departments and 11 Directors of Bureaux will be created, all of whom to be appointed under the accountability system. These positions are political appointments on agreement terms and their tenure of office will be the same as that of the Chief Executive. The Secretaries of Departments and Directors of Bureaux will all be responsible to the Chief Executive. There will be no subordination between these principal officials and they will all be appointed as Members of the Executive Council. The Directors of Bureaux will have full power to formulate and implement policies and will be held accountable for their policies.

Since the announcement, the proposed accountability system has induced heated discussions among members of society, and the Legislative Council has also set up promptly a Subcommittee to seek detailed explanation of the contents of the proposal from government officials. All these discussions have focused mainly on the following areas: the motive of setting up the accountability system, whether or not the accountability system is in line with the Basic Law, the background and requirements of candidates for the Secretaries of Departments and Directors of Bureaux under the accountability system, whether or not they are required to undergo a one-year "sanitization" period upon retirement from office, the relationship between the accountability officials and the Legislative Council, and so on. As the implementation of the accountability system will bring about significant changes to both the management structure of the Government and the culture of governance in Hong Kong, its success or otherwise is closely related to the governance of Hong Kong and the well-being of society in future. Hence, it is very meaningful to conduct extensive, in-depth and constructive discussions on the proposed accountability system, with a view to perfecting its contents and future implementation. As a representative of the industrial sector in this Council, I wish to discuss the accountability system from a pragmatic angle.

First of all, I should like to speak on the necessity for reform. There is a necessity for the Chief Executive to implement the accountability system at the

commencement of his second term of office. Since the reunification, incidents in the SAR like the new airport fiasco, the vanishing of the "85 000 housing construction target", the chaotic chicken slaughters during the avian flu attacks, substandard piling problem of some Home Ownership Scheme housing blocks under construction, and so on, are all reflective of the fact that there are plenty of problems with the Government's policies and management. Besides, the management structure and governance culture inherited from the British-Hong Kong era has also hindered the Chief Executive's efforts to realize his ambitions on the governance front. For this reason, the Chief Executive has decided to set up his own governing body by selecting and appointing a new team of Secretaries of Departments and Directors of Bureaux directly responsible to him. These "accountability officials will share the same objectives and agenda, will be held accountable for their policies and will have to step down from their office where necessary".

In fact, changing the management structure is an important means employed by industrial and commercial enterprises to improve their operational efficiency and cut costs. While an enterprise has to re-adjust its structure in times of rapid growth, it is all the more necessary for the enterprise to undergo restructuring when its business turnover drops in tandem with an economic downturn. In particular, with the share prices of listed Internet-based high-technology companies plunging in recent years, many large enterprises have to undergo restructuring and downsizing to enhance efficiency and maintain their competitiveness. The economy of Hong Kong has remained weak in these past five years. It is true that not all of the factors leading to the high unemployment rate and poor performance of the consumer market can be controlled by the Government, but its "active non-intervention" policy and the lack of any effective strategic measures have really let the people down. If the Chief Executive's accountability system can help to facilitate economic development and create employment opportunities, the economy of Hong Kong may hopefully get out of the present quagmire in the next five years. In the case, the accountability system merits support.

Secondly, I hold that senior government officials must be active and proactive; but then, a decision-making team sharing a "common agenda" and direction may not necessarily guarantee success. The objective of reform is to formulate quality policies and measures and to achieve effective administration and management. As such, under the new system, whether or not the accountability officials are able to break through the existing framework and

concepts, and whether or not they can enhance the efficiency of administration and put forward effective policies to revive the economy and thereby enable the people to alleviate their hardships will be the yardstick for assessing the effectiveness of these senior officials and even the accountability system as a whole. On the economic front, for example, without any long-term policies or objectives, the Government has all along let the market adjust on its own. As a result, the manufacturing industry, which Hong Kong has relied on for a long time, is moving out of the territory gradually. Once the driving force is gone, the economy just keeps falling deeper into the abyss. The accountability officials under the new system must rectify fundamentally such past weaknesses as short-sightedness and passiveness in handling matters. They should adopt a macroscopic, far-sighted, active and proactive attitude to formulate long-term policies and measures to give a boost to the economy. Otherwise, the reform will only be a change in name but not in content if only the officials are changed while the policies remain unchanged. In that case, it is just meaningless to implement the accountability system.

With regard to the candidates for the relevant offices, the original intention of the Chief Executive is to invite the management elites in the business sector to join the Government to help him govern Hong Kong. But judging from the latest developments, due to the various restrictions and conditions, not many of the candidates he has approached are interested in sacrificing their personal benefits for public service. This is partly attributable to the remuneration for senior officials, which is not all comparable to that offered by private enterprises. Another reason is that because the policies they formulate may have conflict of interests with some of the parties concerned, the accountability officials are concerned that their personal development upon leaving the office may be affected. For these reasons, many of the elites in society are unwilling to accept the appointment even if they are interested in the position. However, if the majority of the accountability officials should be promoted from the existing Bureau Directors, some might query whether such accountability officials could meet the Chief Executive's requirements. If the current performance of such officials are not "up to standard", will they be enabled by some supernatural power upon assuming the offices under the accountability system so that their abilities can be enhanced significantly all of a sudden?

Thirdly, the relationship between accountability officials and civil servants should be a co-operative relationship of different positions. Under the new system, the accountability officials with substantial power in their hands are not

members of the Civil Service; as such, they are not restricted or protected by the legislation on civil servants. Besides, the power to appoint or remove these accountability officials rests solely in the hand of the Chief Executive. As regards the permanent secretaries, they will still remain in the Civil Service and their responsibility is to implement policies. If the existing Bureau Directors should be appointed as permanent secretaries, they would lose their power to formulate policies; however, the accountability officials will have no say in their appointment and removal, which will still be done in accordance with the practice currently in force within the Civil Service. Despite the difference between their responsibilities and backgrounds, the accountability officials and permanent secretaries have to closely co-ordinate with each other in their daily work and to rise up to challenges and pressures jointly. Without the accountability officials, no policies can be formulated; without the civil servants, the policies cannot be implemented. Given that the Directors of Bureaux and the Civil Service are independent of each other, and that the Directors of Bureaux are not empowered to appoint or remove the staff under their respective bureaux, the two different streams of officials may encounter considerable technical problems in their day-to-day operation. It must be noted that, such problems, if not handled properly may impact on the efficiency and quality of administration.

With regard to the success or otherwise of a department's management and its effectiveness, even though the accountability officials are responsible for formulating policies, as the permanent secretaries and their assistants are the civil servants responsible for implementing the policies, they should also be held responsible for their work. For this reason, the spirit of the accountability system should be applied to not only the policy-making officials but also the entire Civil Service and become the new management culture of the Civil Service. Otherwise, if only the officials at the upper levels are enthusiastic but those at the lower levels are unconcerned, the accountability system can never achieve the highest objective of the Chief Executive in introducing this reform.

Fourthly, I should like to speak on the continuity of policies. Since the Members of the Executive Council will be replaced when a new Chief Executive assumes office, in order to maintain the continuity of policies and public services, the Government must keep a close watch on and strive to strengthen the roles and functions of the bureau permanent secretaries to ensure that the continuity of such policies and public services can remain unaffected. Indeed, this is exactly

the merit of the past system of civil officials and this should by no means be undermined by the proposed reform.

Fifthly, I am afraid the workload on the Chief Executive will become excessively heavy. As the three Secretaries of Departments and 11 Directors of Bureaux are led by the Chief Executive, this arrangement can certainly ensure the efficiency of his leadership. Yet at the same time, the heavy workload thus generated may also impact on the efficiency of the Chief Executive in administration or even his ability to keep a holistic view of the entire picture and to work out strategic plans. For this reason, it is imperative that the Chief Secretary for Administration and the Financial Secretary should co-ordinate with each other under the system and share the Chief Executive's burden. Otherwise, the Chief Executive will have to work without any rest.

From the various analyses, we can see that the majority of the political headaches facing Hong Kong at present are rooted in the weak economy, and that the economic downturn is partly attributable to some external factors. Nevertheless, the lack of appropriate policies and far-sightedness on the part of the SAR Government has indeed served to add salt to the wound of the poor economy. As there are not any forces in society to unite the people or give them a common goal to strive for, the people in economic hardships are all the more in need of a strong and powerful leader to unite them and lead them to ride out the storm together. The accountability system is more progressive than the collective accountability system in principle, and I hope the Chief Executive will rectify his past poor record with this reform and establish a strong Government and thereby facilitate the development of the economy. This is indeed the common hope of the people of Hong Kong.

MR ANDREW WONG (in Cantonese): Madam President, I attend today's meeting with a heavy heart because I used the slogan "government officials should be responsible and Members and the public should be monitoring" when I participated in the direct election of the Legislative Council in 1991. In 1994, I moved a motion debate on the political appointment of principal officials. Unfortunately, it was not passed. In 1997, I mentioned the matter to Mr TUNG and, after five years, he has now decided to implement the policy. I should be pleased, but I am actually not pleased at all.

Since the beginning of the 1980s, I have said on public occasions that even during the colonial era, certain persons could be politically appointed as Legislative Council Members. At that time, all appointed Members were politically appointed because there was no direct election. I would like to cite the example of Miss Maria TAM. Given the fact that the Government then thought highly of Miss TAM and appointed her as an Executive Council Member, why did it not politically appoint her as the Secretary for Transport? (Certainly, she should step down in the event of conflict of interest). I always believe that accountability and universal suffrage are two completely different matters. The stable democratic system in the United Kingdom today originated not from the popular voting and election systems during the Ancient Greek era because the systems came to an end very soon. Actually, the separation of powers, judicial independence, separation of powers of the executive authorities and the legislature and checks and balances on the Government gradually evolved in the United Kingdom during the 13th century and these phenomenon of checking had arisen from political appointment.

I am very sorry that I cannot support Mr Martin LEE's amendment because he has said that all reforms would be meaningless if reforms are not preceded by popular election. I recall that Mr Martin LEE had made the argument before. When he debated over my motion in 1994, he negated my motion for the same reason. Miss Emily LAU did so for the same reason and Mr Allen LEE was also against my motion for other arguments, for instance, for the sake of a smooth transition. Yet, those are not problems at all. If a person becomes an official on political appointment, he must evidently be accountable to the person who appointed him, that is, the Chief Executive. The person who appointed him can definitely dismiss him, but the political appointment official can also submit a resignation to the Chief Executive; that is the strength of checking. In other words, if the policy-making of the Government intrudes into the portfolio of a principal official, and the official is dissatisfied, he can submit a resignation without a further word. If the relevant policies run into problems in future, then the official does not have to be accountable. Conversely, the Chief Executive and other officials concerned should be collectively accountable. At that time, the public may regard the official who has resigned of his own accord with special respect and they may even elect him as the Chief Executive.

I find it very strange, and I do not understand, whether the motion under debate today is about matters of principle, that is, the principle of the accountability system being accountable to the Legislative Council on the basis of universal suffrage. We have the specific proposals as just amended by the

Chief Secretary for Administration on our table. Talking about the specific proposals, my heart is really very heavy now, so sorry, I cannot support these specific proposals. If the Government does not take on board my views and make amendments at a meeting of the Establishment Subcommittee later, I would attend the meeting on 6 June and vote against the document of the Establishment Subcommittee. Originally, I could not attend the Finance Committee on 14 June because I would be visiting my daughter who is going to graduate in the United States. However, I have changed to a late night flight to the United States, and I would be able to attend the meeting and vote against the document of the Finance Committee. As regards the Council meeting to be held on 19 June, I would return to Hong Kong in the early morning and attend the meeting and vote against the resolution. I declare publicly that I do not support today's motion. It aches my heart to do so. Nevertheless, I would like to express my views on the specific proposals on my table. I hope that the Government would make amendments to the proposals. I am going to make six points below.

First, I am dissatisfied with the concurrent implementation of the accountability system and a reform such as splitting education and manpower affairs because education affairs are totally different from manpower affairs. Merging two bureaux without reorganization is very simple and a person can be appointed as the Bureau Director who would concurrently oversee another Policy Bureau. The administrative measures would have the effect of merging and I fully agree that the Chief Executive can do so. It is a pity that, after the present incident, the Government has to play tricks to distract the attention of the media. Tomorrow, the newspapers would certainly report that the Chief Secretary for Administration had made another concession and the changes had made the scenario completely different. That should not be how things are. It is crucial for us to find out what an accountability system this is. Can the accountability system ensure the continuous independence of the Civil Service? In my view, we can actually retain the existing three Secretaries and 16 Bureau Directors. However, a person can concurrently take up the posts of two Bureau Directors. For instance, I have suggested that the Chief Secretary for Administration can concurrently be the Secretary for the Civil Service. I do not oppose the political appointment of the Secretary for the Civil Service. This is the same as the British Prime Minister concurrently acting the Minister for the Civil Service. It is feasible for a person to take up two offices and it may not be necessary to have three Secretaries and 11 Bureau Directors.

Second, I would like to say that it is very difficult for civil servants to remain neutral, because when the existing Secretaries are too busy to attend to

something else, the permanent secretary would have to speak for him and solicit votes for him in this Council. He also has to speak in his defence and so the line may be difficult to draw. Very often, since there is only one Bureau Director, another person has to play some of his political roles. This can be very dangerous; therefore, I would rather have the Government pay more for the creation of the office of deputy director in each bureau. For instance, if the Chief Secretary for Administration is concurrently the Secretary for the Civil Service, and if the Deputy Secretary for the Civil Service is also politically appointed, more people can share the role of the politically appointed official.

Mr Frederick FUNG mentioned earlier the system in Japan. I would like to tell him that there has recently been a restructuring in Japan. In the past, a ministry (department) had a minister and two senior vice ministers, including an under-secretary for administration and a permanent under-secretary. However, Japan has recently revised the relevant legislation on the cabinet organization, with more than one under-secretary for administration. Evidently, Mr Frederick FUNG shares my views in making this point. We think that there should be a politically appointed deputy under-secretary and even more than one deputy under-secretary. This is better than the appointment of a private team to the bureau by the Secretary on his own. The team is going to work for him and they do not bear any political responsibilities. But they would have significant influence on the Secretary indeed. These people may even act like tyrants outside, which would be very dangerous. In future, it may not be possible to appoint two deputy under-secretaries on political appointment. The trend seems similar to the recent development in Japan. Presently, I have been given to understand that the Government would consider the political appointment of deputy under-secretaries. But the arrangement would be considered later. Nevertheless, if we fail to get the arrangement onto the right path right at the outset, but develop it only later, it may be very dangerous.

Third, I fully agree with the analysis made by Miss Margaret NG earlier. We discussed the matter before at the meetings of the former Constitutional Affairs Panel and the recent meetings of the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues. Now that they have interpreted the Basic Law in a lax way, which is conducive to constitutional development, we wonder why the powers are not given to others. I do not understand why the Secretary for Justice cannot confer all powers related to criminal prosecution to the Director of Public Prosecutions. This is one of the conditions proposed by me in respect of the implementation of this system. If the Government is unwilling to do so, I would feel that it would

relax when it likes to relax and tighten when it likes to tighten. In other words, the Government chooses to be cold or warm, as it likes. However, it is not at all right. I also agree that the appointment of the Director of Public Prosecutions should be subject to recommendation by the Judicial Service Commission, but the Commission does not nominate the appointment. Rather, a list of nominees will be submitted to the Commission which would then consider whether the candidates concerned are suitable. This is just like the way the Public Service Commission works. It also only recommends some candidates and gives some advice but, in fact, the Chief Executive has never declined the recommendation of the Civil Service Commission and the Judicial Service Commission.

Fourth, I would like to say that I agree with the political appointment of the Secretary for the Civil Service as I have just mentioned. The candidates to be so appointed may not necessarily be civil servants, but it would be a very cumbersome arrangement to allow him to take up his original post once he has vacated the office. I have earlier proposed that the Chief Secretary for Administration can concurrently be the Secretary for the Civil Service but if he cannot do so, and another person has to be appointed as the Secretary for the Civil Service on political appointment, I think it is necessary to maintain the D9 and D10 grades above the existing D8 grade so that civil servants would theoretically have promotion prospects. Actually, why can some original D9 and D10 posts not be retained? After the highest grade post of the Civil Service has been created in the Chief Secretary for Administration's Office, the person taking up the post should be renamed the cabinet secretary general or permanent secretary. Naturally, he would be the head of the Civil Service. If a civil servant is promoted to the post, his powers would evidently be equal to those of the Secretaries and Bureau Directors on political appointment. But in fact, all operations would remain the same as it is today. When selecting the candidates for the post, the candidates have to pass the recruitment board, promotion board, and so on, according to the general procedures. The Civil Service Commission would then consider whether the selected candidates are suitable.

Fifth, I am very worried about the post of the Director of the Chief Executive's Office. At present, many problems related to controlling officers have been solved, but the Personal Secretary of the Chief Executive's Office still continues to be a controlling officer concurrently. Now that the person who holds the office is called the Director of the Chief Executive's Office, why can he not be a controlling officer? Why must it be a political appointment? Does this officer on political appointment have any portfolio? He does not have to

bear any responsibilities if he has made mistakes. There should be a corresponding senior officer in the Chief Executive's Office to continue to work for the Chief Executive, therefore, the retention of a D8 post would not have any significant problems and it can continue to be taken up by a civil servant. If the Chief Executive has to appoint somebody to take up the post, there may be a more serious problem. The Chief Executive might not dare to do so during his first term, but this time, it is perfectly justifiable for him to make a political appointment for the post. Obviously, if a certain person is appointed to join the Government, he would have significant influence on the Chief Executive and he would have control of other Bureau Directors. At that time, everybody would knock on his door just like everybody looking for Mr Andrew LO before; the only difference is that the person would be an official on political appointment. I cannot help asking whether the phenomenon of the imperial court filled with eunuchs would emerge then. Which eunuchs would have more power? That is the problem.

Sixth, during our debate on the policy address in October last year, I proposed that it was necessary to establish three constitutional conventions. The first constitutional convention is the most important and it is "the official concerned must resign in the event of a motion of no confidence". A Member has earlier mentioned the impeachment of the Chief Executive, which is another matter that is related to incidents of serious dereliction of duty or the breach of laws. Yet, I wish to say that we can propose a motion of no confidence if an official has made mistakes or is even unpopular. The Government must make a pledge, but I know that the Government has been evasive as though it is afraid that it may pinch the nerves of somebody if it puts something too clearly.

The second constitutional convention is that the person who has been appointed as a Secretary or Bureau Director must have the support of this Council or would at least not be opposed by this Council. Only on this premise would the first constitutional convention be consolidated and the requirement that "the official concerned must resign in the event of a motion of no confidence" would be met.

The third constitutional convention is related to the Chief Secretary for Administration. The whole proposal on our table smacks strongly of a usurpation of powers. In other words, the Chief Secretary for Administration almost does not have to bear responsibilities any more. Dr LUI Ming-wah has made some analyses, which showed that there would be a bottleneck if all

Secretaries and Bureau Directors would have to directly report to the Chief Executive in future. At that time, there must be a situation where there is deliberation but no resolution or resolution but no action. In my view, the Chief Executive should interpret the Basic Law in a lenient manner that would be conducive to constitutional development. He can authorize the Chief Secretary for Administration to form a government and the Chief Secretary for Administration must have the consent of the Chief Executive beforehand. Hence, the Chief Executive must first select the candidate to assume the office of the Chief Secretary for Administration and the person must have the majority support of this Council. In that case, the person appointed as the Chief Secretary for Administration can then appoint other Secretaries and Bureau Directors.

I have made the six suggestions above and I hope that the Government would follow good advice and give me an opportunity to support the motion that I originally supported very much. Thank you, Madam President.

MR LEUNG FU-WAH (in Cantonese): Madam President, I have just listened to the speech made by Mr Andrew WONG for more than 10 minutes. I will listen very carefully whenever he rises to speak because I regard each occasion as an opportunity for learning more about public administration. Besides, I have also listened to the splendid remarks made by Mr YEUNG Yiu-chung. Madam President, if every speech made by him is that splendid, I would have an urge to join the Democratic Alliance for Betterment of Hong Kong (DAB) — I mean I had that impulse just at that moment. (*Laughter*)

Madam President, the Chief Executive, Mr TUNG Chee-hwa announced at the end of last year that if he was successfully re-elected, he would implement the accountability system for principal officials (accountability system) in July this year. He believed it would help the fusion of government departments. On the one hand, it would enhance the accountability of the principal officials, and on the other, it can mitigate the contradiction and mismatch within the government structure, thereby enhancing the administrative and management efficiency of the SAR Government as a whole.

As we all know, the existing government structure has gradually developed and expanded since decades ago, that is, at the end of the 1960s, in the light of the needs at that time. Since the government structure had become

more and more enormous, to improve the administrative efficiency of the executive structure of the Government then, the former British Hong Kong Administration began to introduce some policy branches, that is, Policy Bureaux today, to the government structure as proposed in the MACKENZIE Report. Thus, there was a middle management in the government structure to assist in the co-ordination of policy enforcement by various government departments. Yet, the government structure that has developed for decades is obviously no longer suitable to the modern day society and it must be improved indeed.

Actually, the failed co-ordination and fusion between government departments, between Policy Bureaux as well as between Policy Bureaux and departments has become an obstacle to effective management within the Government. For example, the outbreak of the avian flu incident in Hong Kong a few years ago highlighted this problem. Since the duties of the departments and Policy Bureaux involved in the avian flu incident, including the Health and Welfare Bureau, the Department of Health, the then Agriculture and Fisheries Department, the two former Municipal Councils and the former municipal services departments were unclear, co-ordination failed and the incident was unsatisfactorily handled. Some of my relatives in Canada also thought that it was a shame to watch news footages showing some chickens struggling in huge black plastic bags. The scenes appeared precisely because all government departments had failed to effect co-ordination seriously. Hence, the Government set up the Environment and Food Bureau later.

Let me give another example. We all know that greening work is underway in Hong Kong. We may think that it is simple to plant grass and trees at the sides of roads, but the Secretary has told us that the work involves three Policy Bureaux and 12 departments. Given that a simple task like this involves three Policy Bureaux, how can it be handled well? This is also a significant problem.

I would like to compare Hong Kong with our neighbours. A few days ago, Mr LEE Kuan-yew indicated that he would visit mainland China once a year and he would have a happy surprise every year. However, it seems that nobody has ever told us that he has had a happy surprise when he visits Hong Kong every year.

In the policy addresses in the past five years, the Chief Executive proposed quite a few strategies of governance and new proposals on development. The

community generally supported the proposals when they were made and some people even said that the proposals should have been adopted long ago. However, a few years later when it is almost time for the policy address to be delivered, the media and the public would draw conclusions. They would unexpectedly find that, though many policies are mentioned, we only hear all thunder but see no rain, and some proposals have ended up in obscurity. What are the problems? Is the philosophy of the Chief Executive impracticable or unacceptable to the community, or is their implementation within the government structure unsatisfactory? Taking the local community economy currently emphasized in society as an example, the Government has indicated that it would study and develop the local community economy in the hope that more jobs would be created. Those in the sector or those who have been involved in the cause and have come into contact with the relevant departments would sigh when they see that policies are made by a number of departments and the administrative procedures are rigid.

One of the important functions of the accountability system is to improve the overlappings in the government structure, enhance the administrative efficiency of departments and achieve effective administration.

The quintessence of the accountability system is that the accountability officials would share common goals and beliefs and bear responsibilities; they would step down if necessary. Mr SZETO Wah has earlier repeated the remarks made by the Chief Secretary for Administration that civil servants should remain politically neutral, professional, highly efficient, clean, honest, fair and impartial, but that should not be the case. These qualities should fit the Civil Service and I do not understand why Mr SZETO Wah should describe the principal officials under the accountability system with these characteristics.

Evidently, the administrative structure and governance culture inherited from the colonial government have prevented the Chief Executive from giving full play to his philosophy of governance. Establishing a mechanism to enable the Chief Executive to select candidates who share his beliefs as Secretaries and Bureau Directors and organize them into a ruling body would enable the consistent implementation of policies. Certainly, sharing common beliefs and talking in the same tune are not a guarantee of success. But if the decision-making team lacks a consensus, there would certainly be a failure. Actually, the Government is not alone in selecting people with common beliefs to make up the decision-making body. Have political parties not done the same? Of

course, the operation of political parties is simpler and people with different convictions can withdraw from the political party. Some colleagues present have also withdrawn from their old political parties. Otherwise, when the contradictions within the government surface, the arguments would not only affect the whole. We certainly do not wish contradictions to arise within the enormous government structure, therefore, it is essential for the executive-led Government to prevail.

Under the new system, everybody is concerned about whether the principal officials would break through the old framework, introduce new thinking and have the initiatives to set policy objectives in a macroscopic and positive manner. According to the original intention of the Chief Executive, elites should be introduced from outside, especially the business sector. But after I have participated in the 40-odd hours of meeting of the Subcommittee on the accountability system, I find that the remuneration of accountability officials is obviously less attractive than that in the business sector; and they also have hesitation about other constraints. It is more intolerable that the posts have already been vilified before the implementation of the system. A colleague who has left the Civil Service has been described as a eunuch. Although I am not so described, such form of lashing like the excavation of one's ancestral grave makes me sad. If an elite outside is willing to take up the office, we have to praise him for his willingness to sacrifice his considerable remuneration and admire him for his bravery in facing up to almost deliberate provocation, caustic remarks and labelling.

Madam President, the amendment proposed by Mr Martin LEE is nothing but a declaration of the position of the Democratic Party, which is detached from the motion proposed by the Government and the reality of Hong Kong. The community is generally asking the Government to enhance administrative efficiency and make officials responsible for policy blunders. Today, the survey conducted by the Home Affairs Bureau precisely illustrates this point. If anybody should query the survey, I hope he would responsibly offer some relevant concrete proof. We do not wish this Council to become a venue for individuals to do anything as they please or make irresponsible remarks. The Basic Law has express provisions on the development of the democratic system in Hong Kong and the ultimate goal is for all Legislative Council Members to be returned by universal suffrage. But has Hong Kong reached that stage? If the accountability system should be premised on the amendment of Mr Martin LEE, I am afraid we would not have to discuss the proposal any more, just as stated by Secretary Michael SUEN at the very beginning of this debate.

The amendment requires that the principal officials be accountable to the Legislative Council. It is doubtless an attempt to extend the powers of the Legislative Council, and it has deviated from the provisions of the Basic Law. It is another "imagination" that is detached from the reality. The Basic Law has not conferred on the Legislative Council such power. The accountability system requires that officials bear full responsibility for the effects of policies and the services provided by the executive departments. If there are problems with administration in the future, I believe the relevant officials will have to leave office very soon, given the high transparency in society nowadays. As compared with Honourable Members who have a four-year term of office, voters have to wait for four years before penalizing us with their votes even if they are dissatisfied with our performance. Yet, in respect of accountability officials, the effect could be felt very soon.

Given the prevalent economic difficulties, a high unemployment rate and public discontents, the Government should really grasp public opinions in a more accurate and timely manner. That the accountability officials should regard this as their prime task, we should be very pleased indeed. The Hong Kong Federation of Trade Unions expects the Government to adhere to the principle of meritocracy without sticking to one pattern, and select persons with moral integrity and ability who are accepted by the public and are willing to become accountability officials. I also hope that competent people in Hong Kong would accept the challenge and make commitment to helping our economy break away from the difficult position and solve the unemployed problem of the grass-roots workers.

Madam President, as Mr YEUNG Yiu-chung has remarked, the contents of our debate today are largely repetitive. After all, I think that Members who oppose the motion have a guilty conscience and they are afraid that they would not have anything else to oppose or criticize once the accountability system is implemented and improvements are seen in administration. As they always say that they represent public opinion, who else would they represent then? In my view, they have not given Hong Kong a chance to become better and they do not want "one country, two systems" to be a success. I am sorry if I have guessed right, and I hope these Members would not mind.

Obviously, any changes in system must be made within the framework of the Basic Law. This precisely further proves that those who oppose the accountability system are simply against the Basic Law. For this reason, a very

strange phenomenon is often found in this Council, that is, people are opposing the Basic Law while holding the Basic Law. Those who claim to represent public opinion often act in defiance of public opinion.

With these remarks, Madam President, I oppose the amendment and support the original motion.

MS AUDREY EU (in Cantonese): Madam President, colleagues of this Council and the public at large demand an accountable government. Mr LAU Chin-shek said earlier that Mr Allen LEE supports the accountability system for principal officials (accountability system) and Mr Andrew WONG has also said that he supports the accountability system. Naturally, the results of opinion polls indicate that people support the accountability system. Unfortunately, the accountability system proposed by the Government carries accountability only in name but not in substance. In view of purpose, contents and methods of implementation, the whole proposal fails to realize the spirit of accountability. I have the following views on the accountability system to be implemented by the Government.

First, the introduction of the accountability system is certainly a constitutional reform that affects the governing structure of the Government and the relationship between the executive authorities and the legislature, a serious matter indeed. The Government should conduct an extensive and in-depth consultation such as the publication of Green Papers and White Papers during the era of the former British Hong Kong Administration and even follow the example of some Western countries to convene a constitutional convention. It should invite academics, public opinion representatives and the public to participate in discussions for purpose of reaching a consensus. It is a pity that the Government has declined to conduct such a consultation.

Second, the Government has embarked on the implementation of the accountability system in a hurry and, for the sake of implementing the new system on 1 July, it has failed to consider a lot of issues carefully. For instance, concerning the integration of Policy Bureaux, the Government intended to merge commerce and industry and manpower affairs, and task another Secretary concurrently with the four important areas including food, the environment, hygiene and welfare. Thanks to persistent criticisms made by the press and Members in today's debate, the Government finally accepted that modifications

are required. However, the proposal to merge environment, transport and works is only made today. Since many problems would arise, we would definitely not have sufficient time to discuss the proposed merger. As to whether the two related policy areas of constitutional affairs and home affairs should be merged, the Government is not willing to listen to Members' views. There are many other examples such as the circumstances under which accountability officials can participate in what political activities, whether they can support other people in running for an election, how would the person who assumes the office of Director of the Chief Executive's Office be accountable and the acting appointment of accountability officials. Our discussions so far have sufficiently shown that the Government has not made any sound arrangements or sufficient consideration.

To embark on the implementation on 1 July, this Council has to hold marathon meetings for more than 40 hours within six weeks non-stop. Madam President, I am not saying that Members are lazy, but the dates of many meetings have clashed since there are so many additional meetings within such a short time. Although we wish to convene the meetings, it is impossible for us to convene them and it is impossible for us to hold sufficient discussions. Madam President, I have much reservations about implementing such a significant reform within such a short time.

Third, after the implementation of the accountability system, the Executive Council would change from an advisory body that assists the Chief Executive in decision-making into the cabinet of the Chief Executive. In future, there would be more officials than non-officials in the Executive Council and the relevant arrangement would have deviated from the original intent of Articles 54 and 56 of the Basic Law.

In future, if the Executive Council wishes to continue to hear appeals lodged by the public against the administrative decisions of the Government — under the existing legislation, there are 53 types of such appeals — it could become a closed-shop hearing. The Government's accountability system proposal has not stated how such cases would be handled and when a Member raised a question in this regard, Secretary Michael SUEN only responded that legal advice on whether the official concerned should withdraw from a meeting would be sought when there may be a conflict of roles. In other words, the Government would determine what should be done on each occasion. Madam President, in my view, a government official's withdrawal from a meeting will not suffice to solve the problem. The Government should consider transferring

the appeal function of the Executive Council to the Court or an independent appeal board to ensure independent and impartial handling of cases.

Fourth, one of the essences of the accountability system is that government officials should assume responsibilities for administration blunders. However, under the accountability system devised by Mr TUNG, the power to appoint and dismiss the principal officials rests in his hand and this Council will have no say. The Government has explained that since the Basic Law has prescribed that the principal officials should be appointed and dismissed by the Central Authorities, the Legislative Council cannot decide whether officials would remain in office. Under the premise of "one country, two systems" and a "high degree of autonomy", if the Legislative Council really passes the dismissal of an official, the Central Government and the Chief Executive should respect the public opinion represented by this Council. In my view, the Government should at least establish a constitutional convention and promise that the impeached officials must be dismissed to ensure that the officials would bear political responsibilities. Otherwise, regardless of how many times the Government has emphasized, in future, an accountability official who makes a mistake would absolutely not be reluctant to part with his office in a shameless manner and the public would hardly have confidence. When the accountability system was first mooted, we learnt from the phone-in radio programmes that the public supported the accountability system. However, after the incidents of Ms Sally AW Sian, the substandard piling problem with public housing and Andrew LO, the public evidently lacks confidence in whether Mr TUNG would comply with public opinion and dismiss principal officials in the future.

Actually, Mr TUNG has stated at the outset that accountability officials are accountable to him. Now that Mr TUNG would hold the power to dismiss principal officials in his hands in future, if incidents like the intervention in public opinion polls or the attack of the Radio Television Hong Kong or the suppression of the Falun Gong as ordered by Mr TUNG arise, it is worrying if any principal official would dare say that his views differ from Mr TUNG's.

Fifth, it has been reported that Mr TUNG would appoint some party members in this Council to the Executive Council in the future. I worry that it may transfer some subjects that should have been openly debated in this Council to the Executive Council for a decision to be made without open debate. If so, the role of this Council in checking and balancing the Government would be further undermined in the future and the Government would be less accountable to this Council.

Sixth, besides this Council, the monitoring functions of advisory bodies would become weaker in future. At present, quite a few statutory or advisory bodies such as the Housing Authority, Equal Opportunities Commission and Advisory Council on the Environment have some solid powers and they have realized the democratic principle of participation by the people. However, the Government has stated that it will review the functions of statutory and advisory bodies. According to the relevant paper, the Government has stressed that "statutory bodies should not go beyond the roles, powers and responsibilities of principal officials." If the powers of statutory and advisory bodies were really crippled, it would be another action to cripple participation by the people following the abolition of the two former Municipal Councils. I am really sorry that the Government keeps backtracking on the road of democracy.

Seventh, I believe everybody will agree that government policies can hardly be enforced without civil servants. The accountability system precisely deals a great blow to the Civil Service. In future, accountability officials would be in charge of manpower and structural reviews and the office of the Secretary for the Civil Service would be a political appointment, would the reform to be implemented in future fully take the views of civil servants into consideration? Would the advancement of civil servants, especially Administrative Officers, be politicized?

In the face of an institutional reform, the pay system review underway and the recent disputes arising from the pay cut, the morale of civil servants has fallen to a new low. Yet, intentionally or unintentionally, the Government seems to have put the blame for the administration blunders in the past five years on the failure of civil servants to co-operate fully with the Chief Executive.

In fact, this Council has invited different community organizations to express their views on the accountability system. Quite a few groups in support of the accountability system unanimously think that the blame for mistakes made now should be put on civil servants. I am afraid the "popular will battle" of the Government has been very successful. Nevertheless, I hope the Government would note that it would get burnt if it stirs up trouble that way. If the discontents of civil servants continue to accumulate, they would become a time bomb and it would be dreadful to contemplate the consequences once the bomb explodes.

The accountability system would most probably impact on the civil service tradition of political neutrality. It is disappointing that, though Members have

repeatedly suggested that the Government should formulate internal codes as a firewall between officials on political appointment and civil servants, so that civil servants would have a channel for complaints if they are instructed to do something against their conscience or public interest. Unfortunately, the Government has refused to do so, completely lacking in due political awareness.

Eighth, the culture and bureaucracy of civil servants are frequently criticized but they have certain traditions and practices. For instance, more than one official would participate in decision-making and a written record would be kept in order to ensure that the Government is open, transparent and clean. I worry that, after the implementation of the accountability system in the future, to enhance efficiency, there would be more the so-called leader projects — the Disneyland or Cyberport are typical examples of such. The sequela of these projects still exist. I worry that, if we appoint some people from outside the Civil Service as Secretaries, they would have a cobweb of ties with the outside. Since they only have a five-year term of office, they can rejoin their original sectors after only one year of "sanitization". Without sufficient monitoring, there would easily be corrupt or improper conduct. The Government should make complete legislation for the new accountability system rather than relying on some resolutions about the transfer of powers.

Ninth, Madam President, I wish to discuss the political appointment of the Secretary for Justice. I have said more than once that the job nature of the Secretary for Justice is very sensitive, especially in respect of the conflicts between the legal systems of China and Hong Kong, for instance, the case of CHEUNG Chi-keung and Prof LI Shaomin as well as the interpretation of certain provisions of the Basic Law by the Standing Committee of the National People's Congress. The Secretary would have to deal with the highly sensitive issue of the making of laws under Article 23 of the Basic Law in the near future. If political consideration were involved, it would affect the rule of law and jeopardize public interest.

The Secretary for Justice also has extensive powers in prosecution and granting immunity to witnesses and she must be impartial and demonstrate to outsiders that she is impartial.

The Secretary for Justice is also a defender of public interests, but public interests are often in conflict with the interests of the executive authorities, and the decision made by the Secretary for Justice would be questioned. If the

office were politicized, the Secretary would encounter more difficulties, especially when Mr TUNG has stated that the accountability officials would be accountable to him. Should there be incidents similar to the Sally AW Sian incident, the public would inevitably query whether the Chief Executive has interfered with the decision of the Secretary. Even though the Government has emphasized that, in other countries that adopt the common law system such as Britain, Canada and Australia, officials in charge of laws and prosecution policies are appointed on political amendment. But these countries have long-standing constitutional conventions, so if the executive authorities intervene in the judicial policies, they have to bear serious political consequences. In 1924, the Labour Party Government in the United Kingdom had to step down after it was exposed that it had intervened in the prosecution by the Attorney General.

Therefore, if the Government is really bent on having its own way and intends to politicize the appointment of the Secretary for Justice, I hope that it would at least transfer prosecution and the defence of public interests to the Director of Public Prosecutions and Law Officer concerned. Hence, the Secretary for Justice would only be in charge of legal policies, so that the confidence of the public can be boosted.

Madam President, the implementation of the accountability system is essential to Hong Kong in order to ensure that the Government is accountable to the public. However, the accountability system must be coupled by the returning of the Chief Executive and the Legislative Council by universal suffrage. Granting this, the powers of the Government would come from the public and the accountability officials would really be accountable. Actually, the democratic system would not affect the executive-led government and the ruling party would have the support of the majority, like a duck to water. Thank you, Madam President.

MR MICHAEL MAK (in Cantonese): Madam President, first of all, let me express my gratitude to you for your kind permission to let me speak earlier because I have tight schedule tomorrow afternoon. Nevertheless, I will still hurry back to vote in support of a democratic accountability system.

Madam President, it is an undeniable fact that with the principle of "Hong Kong people ruling Hong Kong" being implemented in Hong Kong since the reunification, members of the public have increasingly higher expectations of the

Government. The target of 85 000 flats, the interpretation by the Standing Committee of the National People's Congress of the Basic Law, and the substandard piling incident have made the people of Hong Kong realize what terrible effects the rule of man could bring. Hence, people begin to reflect on the merits and importance of accountability and transparency.

It is certainly a good idea and principle for a place to put democracy into practice and establish an accountability system to monitor the performance of the officials responsible for administration, thereby holding the government responsible to the people. Towards the end of his first five-year term of office, the Chief Executive has proposed to implement an accountability system for principal officials (accountability system). I consider the principle of this proposal encouraging.

Regrettably, however, the "TUNG-style accountability system" made up by the Chief Executive, his trusted aides and a small coterie of government officials has a strong overtone of the rule of man. Despite the shell of accountability on the outside, the innards of the whole thing are problematic and abhorring. This system is just a piece of "nice-looking rubbish", as it only borrows the concept of accountability from overseas countries without doing anything to bring its spirit compatible with the concept.

Both the formulation and implementation of this "TUNG-style accountability system" are poles apart from what people have in mind. While this "TUNG-style accountability system" is Mr TUNG's "flash in the pan", he has not made any consultation efforts beforehand. While almost nobody have had a part in the conception process, even the senior government officials are not informed of the implementation plans or the arrangements for selection of candidates. As regards the merger of Policy Bureaux, it is done in a chaotic manner without any principle at all. The most important, and also the fundamental issue, is that the principal officials under the "TUNG-style accountability system" are responsible to only the Chief Executive but not the general public. If such officials should make any serious mistakes, they "might" have to step down for those mistakes. But then, whether or not the blundering official really has to step down is solely the subjective decision of Mr TUNG; the public at large who have been contributing to the Treasury just do not have any say. This is indeed total disregard for the Legislative Council representing the public opinion; what is more, this can also be described as

showing disrespect for the social system as a whole — let me repeat, showing disrespect for the social system as a whole!

The hasty manner in which the "TUNG-style accountability system" is being introduced is indeed unprecedented. Mr TUNG is determined to implement the accountability system, yet he only allows about two months' time for consultation with Members. As such, even though many problems with the system have yet to be resolved, the Council is already required to give the green light to the financial proposals for the remuneration payable to the relevant Secretaries on the grounds that the system has to be brought into operation on 1 July. Such a weird argument is no different from putting the cart before the horse. This paternalist approach just makes me feel like being forced by a cook or my domestic helper at home to eat and finish everything he or she has cooked. Drawing on my own experience, I believe Members will also feel as uncomfortable as I do.

On the two occasions where Members of the Council received views of different groups and organizations on the accountability system, the voices I heard were almost unanimously in support of the accountability system proposed by the Government. So I openly queried their so-called "utopian dream", but they were unable to answer. This has reminded me of something a year ago. At that time, a certain children's chorus and a certain association of broiler dealers expressed their views on the Public Order Ordinance and opined that it was unnecessary to amend the Ordinance. Such kinds of "conditioned" views are in fact giving support to the Government in an almost irrational manner, but will they be helpful to the discussion on the feasibility, ideal and philosophy of the entire system?

On the whole, the entire "TUNG-style accountability system" is full of mystical colours. Given that Mr TUNG has set his mind on implementing his proposed new system, he should have made some calculations based on his wishful thinking, particularly the ideal candidates for appointment as principal officials. However, Mr TUNG has once again demonstrated his style of "discussing without deciding" in this matter. Since Mr TUNG wants to hastily implement his proposed accountability system on 1 July, the Bureau Secretaries just do not have any time to give a clear account of the future direction of policies to the public; hence, the people are being deprived of their right to information once again. I hold that the Government must provide the Council with a clear explanation of this matter.

With regard to the significant changes currently proposed to the political system, I am most concerned with my major counterpart — the proposed Environment, Health and Welfare Bureau. Even though the Chief Secretary for Administration pointed out today that the environmental policy portfolio would be taken out from the proposed Environment, Health and Welfare Bureau, the newly proposed Health, Welfare and Food Bureau will still have 77 000 staff members and \$70 billion at its disposal. In other words, this new Bureau will still be a "mega Bureau". I cannot help but wonder what kind of "superman" the Government will appoint to take charge of this "mega Bureau".

It appears that the new posts of Secretaries may largely be filled by incumbent civil servants, and I believe it is too early to judge whether such an arrangement will do good or harm at the present stage. Taking the government official whom I am familiar with as an example, this self-conceited official has never paid heed to the views from the members of my sector. What is more, he has even broken the convention by making it clear openly that he would not appoint the two Members returned by health care professionals to this Council as members of the Hospital Authority. So, he has ideologically cut any co-operative relationship with the relevant Legislative Council Members. With such a dictatorial style and the practice of doing things behind closed doors and appointing people by favouritism, how can he co-ordinate the various measures in the policy portfolios under the Health, Welfare and Food Bureau in future? Is he going to make the relevant permanent secretaries to make explanations to Members, speak in debates on policies and lobby Members on his behalf? Does he want to change the apolitical stance of civil servants and politicize the Civil Service?

According to my management philosophy, regardless of whether the future principal officials are new faces with new culture, new faces with old culture or old faces with old culture, the most important point is that they have the mind and courage to be held accountable to the public for their work. Another important point is the availability or otherwise of an effective monitoring mechanism to oblige the principal officials to be responsible and step down.

Lastly, I should like to respond briefly to the criticism made by Mr IP Kwok-him against the democrats. Earlier on, Mr IP Kwok-him mentioned that in refusing to support the accountability system proposed by the Government, the democrats were posing an obstacle to the democratic development of Hong Kong against the political reform process prescribed under the Basic Law. I wish to

tell Mr IP that the promotion of democracy is not done by reciting the relevant provisions. Rather, we have to examine whether the policies put forward are an illusion conjured to mislead the public. Now that the Chief Executive has stated that the principal officials would be responsible to him alone, it is obvious that he is not devolving but centralizing powers. So, this is indeed a major retrogression in democracy. If we accept this accountability system blindly and indiscriminately, we are betraying the people of Hong Kong at the expense of the territory's future as a whole!

Madam President, I hold that the "TUNG-style accountability system" is blatantly showing disrespect for the Legislative Council, as it has been tabled hastily before this Council for passage without sufficient consultation and the proposed merger of Policy Bureaux is just a mess. So, even though the spirit of this reform may be commendable, it has been introduced without any good strategy at all. According to my management philosophy, this is a very bad reform package lacking in comprehensive strategy and proactive planning. Who wants an accountability system without any monitoring arrangement or step-down mechanism?

Showing no respect for the fundamental spirit of democracy, this so-called accountability system under which the principal officials are responsible to the Chief Executive alone and no step-down mechanism is available is actually a monarchical system for centralizing powers! In future, if any accountability official should be found guilty of dereliction of duty, I believe Mr TUNG would immediately come forth and say, "The relevant secretary has already paid the heaviest price and been held accountable, for he has said sorry for so many times! Why must we force him to step down?" So, the blundering official could then be let off lightly. That way, the purpose of holding the principal officials accountable will be shattered completely!

Madam President, I so submit and pledge that I will certainly return to this Chamber tomorrow to vote in support of a democratic accountability system.

MR LAU PING CHEUNG (in Cantonese): Madam President, I speak in support of increasing the accountability of principal officials. Since the reunification of Hong Kong, the popularity rating of the Chief Executive has been lower than that of the Chief Secretary for Administration and the Financial Secretary in various public opinion polls. As the representative of public

opinion, the Legislative Council has successively lashed severe criticisms at a number of principal officials in our debates and Select Committee reports and even moved no-confidence motions. However, the Chief Executive, who has a low popularity rating in public opinion polls, has never been the target of our no-confidence motions.

The discrepancy in public opinion is a rather unusual phenomenon, for according to the constitution, this Council has the power to activate the mechanism for dismissing the Chief Executive; but we do not have the power to require the Government to remove government officials whom we regard as incompetent. This phenomenon could be interpreted as: though we think that certain officials should be held responsible for specific incidents like chaos in the new airport opening and the short-piling scam in public housing, the Chief Executive is ultimately held responsibility due to deficiencies in the system mentioned earlier.

Another example is, some people in the society are of the opinion that the "85 000" housing policy is a failure and they generally feel that the Chief Executive should be blamed. However, before his retirement, Mr Dominic WONG, the former Secretary for Housing, disclosed that this policy was formulated before the reunification and the Chief Executive had merely endorsed its implementation. As this policy was included in the Chief Executive's first policy address, it gave people the wrong impression that he had arbitrarily pushed through the policy and was thus made the target of all criticisms.

Under such circumstances, I support the implementation of the accountability system for principal officials (accountability system), through which the Chief Executive can make recommendations to the Central People's Government on the appointment and removal of principal officials, so that they could undertake the responsibility of policy formulation and implementation.

Since this is known as the accountability system, relevant officials must also be truly accountable. On the recommendation of the Chief Executive, the existing bureaux will be merged into three departments and 11 bureaux, and different opinions have been expressed in society on this division. When the Chief Executive first briefed this Council on the accountability system, I pointed out that the merger of the environment portfolio with the health and welfare portfolio was not a satisfactory arrangement. At that time, Mr TUNG also

admitted that this was not a scientific delineation. I would like to emphasize that my opinion is based mainly on the consideration of power and responsibility.

At present, the main function of the Environmental Protection Department (EPD) is to enforce the Environmental Impact Assessment Ordinance (EIAO). While it does not have to consider other aspirations in society, it only plays a passive role of determining whether works projects proposed by the Government or other organizations are in compliance with the provisions of the environmental protection legislation. I understand that Mr Jasper TSANG intends to move a motion debate next week on the issue of congested boundary crossings. I would like to take this opportunity to point out that there is actually a very long land boundary between Hong Kong and Shenzhen, so the choice for the location of crossings should not be restricted to the existing few. The problem is departments that are in charge of the projects are only concerned about the timing and cost of the projects, while the EPD only adheres to the provisions of the EIAO. With each party working on its own and the absence of a common target, works programmes are often repeatedly turned down, thus resulting in a waste of time and energy. For this reason, I think that by integrating environment, transport and works policies, a reasonable balance can be struck at the policy formulation stage. I wholeheartedly commend the Government for its ready acceptance of our proposals and for making the revisions.

Secondly, I would like to talk about my views on how Directors of Bureaux and permanent secretaries could work with existing civil servants under the new system. We all know that the Chief Executive only brought along two of his own staff when he first assumed the office of the Chief Executive. We can foresee that future Directors of Bureaux would also encounter problems similar to those faced by Mr TUNG at that time. Even serving Bureau Secretaries who take on the new offices as politically accountable Directors of Bureaux will also encounter similar difficulties in staff supervision because their status will have changed and they are no longer civil servants.

Madam President, I think that under the new accountability system, Directors of Bureaux should have greater powers in selecting permanent secretaries and direct subordinates and in matters relating to the reward, punishment, promotion and deployment of such officers. Certainly, this falls under the terms of reference of the Task Force on the Review of Civil Service Pay Policy and System. It is premature to talk about specific reforms and civil

service groups should be consulted. All in all, new Directors of Bureaux must be given such powers before they could effect perfect control over the formulation of policy directions.

In fact, both parties are not pleased under the current circumstances. In order to remain apolitical, civil servants are unable to defend government policies wholeheartedly, and are thus often subject to criticisms from this Council and members of the public; on the other hand, it is impossible for the senior management to dismiss civil servants even if they have made blunders. I would like to quote what the Chief Secretary for Administration said on two public occasions to illustrate this point. On 20 January this year, the Chief Secretary for Administration said "civil servants have remained silent in order to maintain their dignity and follow collective decisions, but a small group of people have taken this as signs of weakness or tacit admission of guilt. I think such assumptions are unhealthy." On 25 April, he made it even more clearly: "I do believe the Accountability System offers tremendous scope for constructive change in the Civil Service. First of all, it will relieve permanent civil servants who are Principal Officials from the Jekkyl and Hyde role they now play as politically-neutral civil servants on the one hand, and quasi-political 'ministers' on the other. There will be a clear distinction and division of responsibilities between politically-appointed Principal Officials and permanent civil servants."

I think that since new Directors of Bureaux have borne greater political responsibilities, they should also enjoy the same level of power over permanent secretaries and their direct subordinates, especially in the terms of reward, punishment, promotion and deployment. I think that a certain amount of the Bureaux's financial resources should be placed under the discretion of the Directors of Bureaux. It could be directly used as bonuses in rewarding civil servants with outstanding performances or to subsidize policy programmes under the change of such civil servants to help them to carry out those programmes. This is within the scope of performance, reward and punishment system in the civil service pay review we talked about earlier. Under the new system, permanent secretaries and direct subordinates of the Directors of Bureaux could retain their political neutrality and no longer need to explain their policies in public. Since their performances in policy formulation are only known to the relevant Directors of Bureaux, the Directors must be given such powers before they could form a closely knitted team with the permanent secretaries and their direct subordinates.

Furthermore, under the existing system, Policy Bureaux are led by Administrative Officers and the role of professional staff is comparatively insignificant. After the implementation of the accountability system, I believe the Directors of Bureaux would be more concerned about policy promotion and securing the support of this Council and the community as a whole. In comparison, their role in policy formulation and implementation may be lessened.

Since the reunification, Hong Kong must have a farther vision in construction and planning. For instance, in the past two years, Hong Kong and its neighbouring regions have held more negotiations on planning and development and the negotiations were conducted at a higher level. As such, we need the support of more professionals in such areas as engineering, construction, planning, law and accountancy to prevent deviation in policies and failures in achieving the original targets of policy formulation due to insufficient professional advice.

Madam President, I so submit.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, the Chief Executive seeks to reorganize the existing decision-making structure in accordance with the executive-led constitutional arrangement as provided for in the Basic Law, proposing the setting up of an accountability system comprising three Departments and 11 Bureaux and requiring the accountable officials to be directly responsible to the Chief Executive. I agree with the principles and objectives of the accountability system. I also agree that these arrangements can mitigate such problems as poor inter-departmental co-ordination and ineffective implementation of policies and orders. Certainly, the significance of the accountability system lies not only in improved administration and management. More importantly, the system should serve to enhance the accountability of the Government. Under Article 64 of the Basic Law, the Government must be accountable to the Legislative Council. While the Government's accountability is not necessarily equivalent to its accountability to the Legislative Council, the Government's accountability to the Legislative Council is definitely an indispensable part of the accountability system.

I think the accountability system should be able to help enhance communication between the Executive Council and the Legislative Council as

long as officials are made Members of the Executive Council. Although there is no express provision in the Basic Law requiring the Executive Council to be accountable to the public, the Executive Council, being a body that assists the Chief Executive in decision-making, should be indirectly accountable to the Legislative Council which represents public opinion.

There have all along been many views in the community, that Members of the Executive Council do not work with a sufficient degree of transparency. They seldom explain to the public their philosophy of governance; and the confidentiality rule of the Executive Council makes it difficult for the public to monitor this highest decision-making echelon of the Government. Some Members of the Legislative Council have also criticized the lack of communication between the Executive Council and the Legislative Council. The Executive Council does not have to communicate with the Legislative Council before any decision is taken, and after a decision is made, it still may not actively lobby for the support of Members of the Legislative Council. While communication is not completely lacking between both Councils at the moment, their communication does warrant improvement. Although Members of the Executive Council will dine and meet with Members of the Legislative Council on a regular basis to exchange views on major public issues, there have been few opportunities for in-depth discussion on government policies. I believe the implementation of the accountability system should be helpful to alleviating these problems. As undertaken by the Chief Executive, future Members of the Executive Council, being principal officials under the accountability system, will not only keep tabs on public sentiments, but also canvass support from the public and the Legislative Council on proposals relating to policies, legislation, fees and charges, and public expenditure. This should be able to enhance the communication and co-operation between the Executive Council and the Legislative Council, and make the Executive Council work in the interest of the general public.

Obviously, whether the accountability system can truly improve the administration of the Government still depends on whether or not the policy structures to which the accountable officials belong can provide sufficient support. Insofar as the present reorganization proposal is concerned, there is still room for improvement. Having said that, I basically agree with the direction of the reorganization towards a streamlined structure. Indeed, the government structure has been ever expanding over the past decades. As a result, some institutions are no longer necessary, whereas some others have

become outdated. The Government should drastically streamline and reorganize its structure. This can allow Secretaries flexibility in exercising powers within their ambit on the one hand and substantially reduce expenditure and thus alleviate financial pressure on the other.

We must face up to the reality squarely. The competitiveness of Hong Kong is put to unprecedented challenges. While our country's accession to the WTO will generate greater business opportunities for Hong Kong, the operational costs have subjected many industries and businesses to lots of hardships. So, the Government must not deceive itself, thinking that the public still has unlimited resources and that it can arbitrarily increase tax to capitalize on these resources. I urge the Government to adopt a new thinking to reform the government structure and devise a new system that is suitable and efficient, so as to smooth out the implementation of policies and orders as well as the operation of the Government. This would save the valuable time and expensive manpower from being depleted by meaningless disputes or squabbles.

Madam President, to make the accountability system a success, a sound design of the system is certainly important, but the recruitment of talents is also crucial. Under Article 55 of the Basic Law, Members of the Executive Council do not only come from principal officials of the executive authorities, but also include Members of the Legislative Council and public figures. I hope that as the accountability system will allow greater flexibility in personnel arrangements and resource utilization compared with the old structure, the Chief Executive should recruit more talents with professional knowledge and experience to join the Government, so that the Government will have more new thinking to meet the new challenges.

With these remarks, Madam President, I support the original motion. Thank you, Madam President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): Honourable Members, it is now almost 10.00 pm at night. I now suspend the meeting until 2.30 pm tomorrow.

Suspended accordingly at five minutes to Ten o'clock.

WRITTEN ANSWER**Written answer by the Secretary for the Environment and Food to Miss CHOY So-yuk's supplementary question to Question 2**

During a regular inspection of the vacant government lot at Tai Hom Village on 28 May 2002, officers of the District Lands Office (Kowloon East) (DLO) found that a tree had toppled and subsequently sought professional advice from the Agriculture, Fisheries and Conservation Department (AFCD) as to the method to treat the tree. On the same day, the DLO received a telephone enquiry about the incident from Miss CHOY's assistant, and replied that the incident was noted and appropriate follow-up action would be taken.

The DLO and the AFCD conducted a joint site inspection on 30 May 2002 to examine the cause of the incident and the feasibility of replanting the tree. According to the AFCD's professional advice, the growth of the fallen tree was hindered by the restricted environment, and the roots were disproportionate to the crown and the height of the tree and failed to keep the tree firmly in the soil. In view of the poor conditions of the root system, it is quite possible that it would fall down again if replanted, the AFCD therefore considered it undesirable to replant or transplant the tree as it might endanger pedestrians and the trees nearby. As such, the DLO removed the tree in question on 7 June 2002.

Annex II

MARINE FISH CULTURE (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment and Food

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting "by adding -" and substituting - "- (a) in the definition of "licensee", by repealing "the holder of a licence" and substituting "a person to whom a licence has been issued or transferred or whose licence has been renewed"; (b) by adding -".
5	In the proposed section 16(2)(c), by deleting "grant" and substituting "approve".
Schedule, section 6	In the proposed item 59, in paragraph (b), by deleting "grant" and substituting "approve".