

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 12 February 2003

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, G.B.S., 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 CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

DR 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., J.P.

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

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, J.P.

MEMBER ABSENT:

THE HONOURABLE ALBERT CHAN WAI-YIP

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE DONALD TSANG YAM-KUEN, G.B.M., 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, G.B.M., J.P.
THE SECRETARY FOR JUSTICE

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR HOUSING, PLANNING AND LANDS

PROF THE HONOURABLE ARTHUR LI KWOK-CHEUNG, G.B.S., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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

DR THE HONOURABLE PATRICK HO CHI-PING, J.P.
SECRETARY FOR HOME AFFAIRS

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

THE HONOURABLE STEPHEN IP SHU-KWAN, G.B.S., J.P.
SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

THE HONOURABLE FREDERICK MA SI-HANG
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Practising Certificate (Special Conditions) Rules (L.N. 184 of 2002) (Commencement) Notice 2003	19/2003
Official Languages (Alteration of Text under Section 4D) Order 2003	24/2003
Tax Reserve Certificates (Rate of Interest) Notice 2003.....	25/2003
Registration of Electors (Appeals) (Amendment) Regulation 2003	26/2003
Election Committee (Registration) (Voters For Subsectors) (Members of Election Committee) (Appeals) (Amendment) Regulation 2003.....	27/2003
Fugitive Offenders (Sri Lanka) Order	28/2003
Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) Order 2003	29/2003
Trade Marks Rules.....	30/2003
Trade Marks Ordinance (Cap. 559) (Commencement) Notice 2003.....	31/2003

Other Papers

No. 56 — AIDS Trust Fund 2001-2002 Annual Accounts together with the Director of Audit's Report

- No. 57 — Report of changes to the approved Estimates of Expenditure approved during the second quarter of 2002-03 (Public Finance Ordinance : Section 8)
- No. 58 — Annual Report 2001-2002, including Statement of Accounts and Auditor's Report, of the Hospital Authority
- No. 59 — Report and Statement of Accounts of the Samaritan Fund, together with the Director of Audit's Report, for the year ended 31 March 2002

Report of the Bills Committee on Village Representative Election Bill

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Members, this is the first meeting of this Council in the Year of the Goat. I wish everyone of you good health and every success in your work.

Questions. First question.

Wages and Remuneration for Workers of Government Service Contractors

1. **MS LI FUNG-YING** (in Cantonese): *Madam President, it has been reported that the contractors of outsourced government services are paying low wages to the workers concerned and not providing them with statutory rest days. In this connection, will the Government inform this Council:*

- (a) *of the services outsourced by various government departments in the past two years, whether it knows the number of workers employed by the contractors for these services, and the highest, lowest and median monthly wages of these employees during the period, together with a breakdown by the types of jobs;*
- (b) *of the respective numbers of complaints received by the departments concerned last year from these workers regarding their wages and remuneration, with a breakdown of the numbers by the nature of the complaints; and*

- (c) *whether any measures are in place to ensure that these employees are paid reasonable wages and provided with statutory rest days; if so, of the details; if not, the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, the Government outsources a great number and many kinds of services. With outsourcing experience gained over the years, the Government has developed a well-established mechanism to ensure that the outsourcing process fully reflects the dynamism, efficiency and flexibility of free market through open and fair competition. Such mechanism enables departments to provide services in a cost-effective manner. Since all contractors of outsourced services have to abide by local statute including the Employment Ordinance, all employees of the contractors are protected as far as rest days and other basic labour rights are concerned.

The Government realizes that non-skilled workers need additional protection due to their relatively weak power in wage negotiation. The Government has therefore issued guidelines in May 2001 on the tendering of outsourced projects that involve the employment of a large number of non-skilled workers. The guidelines stipulate that a marking scheme should be adopted that takes into account both service quality and price so that contracts are not awarded merely based on price. Quality-wise, factors taken into consideration include the wage levels and working hours offered by tenderers for their workers and whether the package offered is on a par with the going market practice of similar trades and whether the service standards meet the Government's requirement. In addition, in assessing the tenders, Controlling Officers must take into account all previous violations of the Employment Ordinance. All stipulations in the tenders, particularly the terms of employment of the employees, are binding. After the contracts are awarded, all government departments that have outsourced their services should monitor whether the contractors have complied with their contractual or statutory obligations. The Government will not tolerate any breach of the law or contracts.

Part (a) of the question raised by the Honourable LI Fung-ying concerns the services outsourced by various government departments in the past two years, the number of workers employed by the contractors for these services and the monthly wages of these employees. As the authority to decide on the outsourcing of services has long been devolved, Controlling Officers are not

required to submit to the Financial Services and the Treasury Bureau details of their outsourced services. The services outsourced are numerous and are of varying nature and scale, ranging from petty translation jobs to the operation and management of tunnels for road traffic. The Food and Environmental Hygiene Department (FEHD) and the Leisure and Cultural Services Department (LCSD) alone are managing more than 330 service contracts. As a lot of resources would be needed for the government departments to furnish information on all the items of services outsourced, the number of workers employed by the contractors and the wage levels of these workers, we regret that we cannot provide the information as requested. I wish Members would understand this.

Part (b) of the question concerns the number of complaints received by government departments from workers regarding their wages and remuneration. As contract management is the responsibility of the government departments themselves, we do not have the information of these complaints at hand. Nevertheless, we have made enquiries with a couple of departments with rich experience in outsourcing activities. It is known that the FEHD received three salary-related complaints in 2002. Of these, the first is a case about a worker being underpaid. The second is about six workers who had not yet received their wages by the wage payment date and the third is about a contractor who failed to provide his employees with rest days. The LCSD also received two similar complaints in 2002. One involves deductions made by the contractor from the wages payable to a security guard for administrative fees and uniform deposit and reduction of the security guard's wages and paid leave. The other case involves a venue contract staff whose uniform deposit and wages were withheld. The departments concerned had followed up the above complaints and referred those cases involving alleged breach of the labour legislation to the Labour Department for further action.

Part (c) of the question concerns the measures for ensuring that the workers employed by the contractors are paid reasonable wages and provided with rest days. On salary protection, as mentioned earlier, we have issued guidelines in 2001 to protect the basic rights of non-skilled workers. Apart from tendering, the departments concerned must have a monitoring mechanism in place to ensure that contractors comply with the contract terms. On rest days, it is stipulated in the Employment Ordinance that every employee who has been employed under a continuous contract shall be granted not less than one rest day in every period of seven days. Any employee who finds that his or her employer does not grant rest days in accordance with the Employment Ordinance

may lodge a complaint with the Labour Department for follow-up action. As mentioned above, provisions have to be included in the service contract signed between the Government and the contractor whereby the contractor has to abide by the provisions of the Employment Ordinance. Employees are therefore protected as far as statutory rest days are concerned. In case of breach of contract, the government department may impose sanctions on the contractor based on the terms of the service contract. Furthermore, government departments may take into consideration the contractors' previous violation of the Employment Ordinance when assessing tenders submitted by the contractors for outsourced projects in the future. Lastly, the Labour Department will monitor the contractors and safeguard workers' statutory rights through daily or special inspections, investigation of complaints and ad hoc on-site inspections.

In summary, government departments have amassed much experience on outsourcing over the years and the rights of the workers are safeguarded by the Employment Ordinance and relevant contracts.

MS LI FUNG-YING (in Cantonese): *Madam President, it is stated in the main reply of the Secretary that with outsourcing experience gained over the years, the Government has developed a well-established mechanism. If this mechanism is considered well-established, then I must say it is disappointing still. The Secretary said that he could not provide the detailed figures on this and only cited several major departments as examples, but such examples sufficiently reflected that cases of underpayment of wages and under-provision of leave had occurred. I have this supplementary question. Is this mechanism so well-established that there is no room for improvement? Or are there still some defects that the Government must address? Or are there problems in punishing offending contractors that the Government must do more on this front?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, as I have said, apart from a fair and open mechanism, we have also established an effective monitoring mechanism to oversee the execution of contract or statutory obligations by contractors. Ms LI Fung-ying is right, there is still room for improvement in certain areas. However, if contractors do not comply with the Employment Ordinance or underpay wages, we will deduct their marks in the next tendering exercise.

This is a very effective measure. Contractors must maintain good performance if they wish to keep on securing outsourced contracts from the Government.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, the Secretary mentioned earlier that a monitoring system is primarily in place and a certain degree of punishment may be imposed on the contractors concerned in awarding new contracts. However, is the Secretary aware that in some cases, an outsourcing contractor may participate in a tendering exercise under another name? Will the Secretary inform us in what way the Government will prevent those contractors who have repeatedly breached the legislation from winning a tender?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, every department has a team of colleagues responsible for monitoring the outsourced services of the department. Regarding the situation just mentioned by Mr LEUNG Yiu-chung, that is, a mere change of company names for participation in another tendering exercise, our colleagues are quite experienced in handling such cases. I believe they will be able to identify such cases. However, if Members find it necessary to reflect this phenomenon to me or to each Policy Bureau, we are prepared to accept their opinions.

DR LUI MING-WAH (in Cantonese): *Madam President, the work quality and conditions of employment of workers of a company will be greatly influenced by its track record, background and experience. Will the Secretary inform us of the methods employed by the FEHD and the LCSD to vet the background of a bidding company?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I would like to confirm if the supplementary question seeks to clarify whether each Policy Bureau has the power to decide the terms of their own outsourcing contracts.

PRESIDENT (in Cantonese): Secretary, please sit down first.

DR LUI MING-WAH (in Cantonese): *Madam President, the FEHD and the LCSD have outsourced a great number of services. Will the Secretary inform us how the two departments stipulate and scrutinize the qualifications of tenderers?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, as I have said, in May 2001, the Financial Services and the Treasury Bureau set down the broad policy on devolution of authority of outsourcing to various departments. Regarding the relevant details, I will ask the two departments to give detailed explanations in writing if Members are interested. (Appendix I)

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, it is stated in the second paragraph of the Secretary's main reply that, in May 2001, the Government issued guidelines to all departments, stipulating the adoption of a marking scheme in tendering exercises to take both service quality and price into account. However, according to surveys conducted by the Oxfam Hong Kong and The Hong Kong Polytechnic University, despite the dual system in place, the current wage level of workers is still something around \$3,000. In view of the dropping level of wages, will the Government consider setting a minimum wage level as the base for calculating tender prices?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, the objective of outsourcing is to enable government departments to provide services in a more efficient, more flexible, and more cost-effective manner. The outsourcing mechanism is market driven, because the operation of the market is freer, more flexible, and more efficient than that of the Government. We have no intention to stipulate a minimum wage level, as suggested by Miss CHAN Yuen-han, before outsourcing contracts are awarded to contractors. However, as I have explained earlier, we will make reference to the market wage level. For instance, should there be a contractor claiming he could employ a worker at \$2,000 to \$3,000 a month, but according to the market rate and our experience, the monthly rate for that particular type of work should be \$5,000, then the contractor may not necessarily win the tender by just offering lower costs. This is what I meant earlier.

MR ANDREW CHENG (in Cantonese): *Madam President, the replies given by the Secretary so far seem to be singing praises of the outsourcing mechanism, suggesting that is sound and foolproof. However, I consider it more of a sound mechanism of exploitation than a foolproof mechanism boasted by the Government. Madam President, my supplementary question focuses on a re-think by the Government. It is said that once outsourcing contractors were found to have irregularities on wages, benefits and work arrangement, the Government would deduct their marks. However, the Government can do so only after the workers have been exploited. The company concerned can just change its name afterwards and participate in another tendering exercise, but the Government can do nothing about it. We would like to have more information, but the Government said that this would involve a lot of resources so it could not be done. Is the Government really capable of monitoring the situation? Therefore, I hope that the Secretary will reconsider the views put forward by our colleagues just now. If the Government does not want the workers to be exploited, it should consider setting up a protection system on minimum wages in the cleaning and security trades, the workers of which are most prone to exploitation. Will the Secretary consider this?*

PRESIDENT (in Cantonese): This is the most importance sentence in your supplementary question. *(Laughter)* Secretary for Economic Development and Labour, please reply.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I will try to answer Mr Andrew CHENG's supplementary question. First, I would like to point out that, to protect the rights and interests of employees, the Labour Department will conduct frequent inspections of workplaces assigned to these contractors. Those contractors, like any other employers, are subject to regular inspection by the Labour Department. For example, I am aware that there were 42 successful prosecution cases last year, that was year 2002, mainly related to the unlawful provision of wages in lieu of leave or failure to provide rest days. I believe Secretary Frederick MA, has answered this already. All along, our wage levels are determined by market force. As Secretary Frederick MA said earlier, before any decision is made, we would consider a lot of factors, and we would examine the market medium wage level of a particular type of job, the workers to be employed, the experience of potential employees, as well as the track record of the contractors.

Certainly, we can still resort to the mark deduction system. Once contractors were found to have exploited their workers or breached the Employment Ordinance, the Labour Department would provide, on request of the department concerned, information on companies intent on taking the provision of services for their consideration. Given such a monitoring system, together with the weighting of various factors, there should certainly be some help. Regarding the situation cited by Members just now, that is, delinquent companies changing their names to participate in another tendering exercise, as past performance and track record are also factors of consideration in awarding tenders, once a company changes its name, it will become a new company with no track record and thus its chances of getting a new contract will be affected. Therefore, we can see that the Government has in fact a monitoring mechanism in place, and this mechanism is subject to continuous improvement.

PRESIDENT (in Cantonese): This Council has spent more than 17 minutes on this question. This is the last supplementary question.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, the safeguards mentioned by the two Secretaries so far are all academic. The devil is in the details, so to speak; the Secretary just now said that the Government would not set a minimum wage level because we already have a marking scheme. However, every department used a different marking scheme, and the weighting of those scores on the entire tender is in fact trivial. That is why cases like the Housing Department employing workers at \$4,100 to \$6,800 monthly for eight hours a day happened. In what ways are workers protected? Will the Secretary discuss further on the marking scheme with departments now outsourcing security and cleaning services? Will he reconsider setting the minimum wage level to protect workers?*

PRESIDENT (in Cantonese): Secretary for the Financial Services and the Treasury, are you going to answer this question?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I have to thank Mr LEE Cheuk-yan for his comments. As I have said, we have already devolved the authority of

outsourcing to the departments. However, the suggestions made by Mr LEE Cheuk-yan are very good, and I will discuss with my colleagues to see what we can do. In respect of the minimum wage level, Secretary Stephen IP has already given an answer, I will not give the details here.

PRESIDENT (in Cantonese): Second question.

Ethnic Minorities

2. **MR JASPER TSANG** (in Cantonese): *Madam President, regarding the ethnic minorities, will the Government inform this Council of:*

- (a) *the population sizes of various ethnic minorities at present, and how they compare to those for each of the past five years;*
- (b) *the situation of their employment and schooling; and*
- (c) *the difficulties they encountered in integrating into society, and the assistance provided to them by the Administration?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President,

- (a) According to the 2001 Population Census, a total of 343 950 persons were classified as ethnic minorities (who were non-Chinese in ethnicity), constituting 5.1% of the whole population. Over 56% of them were Filipinos and Indonesians. The figure includes foreign domestic helpers. The breakdown is at Annex A.

As data on "ethnicity" was only collected for the first time in the 2001 Population Census, we are unable to provide the trend of changes over the past five years.

- (b) The 2001 Population Census provides insight into the employment and schooling situations of ethnic minorities.

Employment

The majority of ethnic minorities — 261 226 — were working population (that is, persons aged 15 and over who work). The majority of the working ethnic minorities (73.4%) were engaged in occupations classified as "elementary" and in the "community, social and personal services" sector. The concentration in "community, social and personal services" was particularly high for the Asians because a large proportion of them were domestic helpers. Detailed statistics are at Annex B.

Schooling

The school attendance rates of ethnic minorities at the primary (aged 6 to 11) and secondary (aged 12 to 16) age groups were very close to 100% as a result of the implementation of the nine-year compulsory education in Hong Kong. However, for those in the kindergarten, matriculation and tertiary education age groups, the school attendance rates of ethnic minorities were slightly lower than those of the whole population.

The education attainment of ethnic minorities was generally good. The proportion of ethnic minorities aged 15 and over with primary education or below was 12.0%, which was lower than 28.9% of the whole population aged 15 and over. The proportion of ethnic minorities aged 15 and over who had attended tertiary education amounted to 31.8%, which was much higher than the 16.4% of the whole population. Detailed statistics are at Annex C.

- (c) We are mindful of the difficulties ethnic minorities — particularly those of South Asian or Southeast Asian descents — encountered in integrating into the mainstream community. We are aware that the problems they experience in their day-to-day life are mostly in the areas of education and employment. These problems are mostly the results of language problems and a lack of awareness of the availability of government services.

To this end, the Government has developed a strategy which has evolved over the past few years. Essentially, the strategy includes

practical measures to help the new arrivals adapt to life in Hong Kong and to facilitate their integration into the mainstream community. It also includes public education to arouse awareness and to foster a culture of mutual tolerance and respect.

At the policy level, we have a Steering Committee on New Arrival Services — chaired personally by the Permanent Secretary for Home Affairs — to centrally co-ordinate and oversee services provided for mainland as well as non-Chinese new arrivals. Additionally, the Deputy Secretary for Home Affairs chairs a semi-annual meeting with the Nepalese community to keep abreast of the concerns of and problems faced by them.

Specific practical assistance targeting ethnic minorities includes:

- (i) language classes — for the last two years, we have been funding several non-governmental organizations (NGOs) for organizing Cantonese classes at various levels targeting ethnic minorities with a view to assisting them to integrate effectively into the mainstream community;
- (ii) vocational training — vocation training programmes are open to all eligible persons irrespective of race, colour, national or ethnic origin. We are working with several major institutions for organizing vocational courses specifically for ethnic minorities. Last year the Vocational Training Council organized three courses for the Nepalese. Two more courses are in the pipeline this year;
- (iii) education support services — to facilitate ethnic-minority children to integrate into the mainstream education system, the Education and Manpower Bureau provides financial support to schools and NGOs for organizing induction programmes;
- (iv) school placement — all eligible local children, including ethnic-minority children are entitled to nine-year free and universal education. The performance pledge of the Education and Manpower Bureau is to arrange admission of

newly arrived children to public sector schools up to Secondary Three within 21 working days. We have enhanced the dissemination of school information by organizing seminars and publish on the Internet the names of public schools that accept ethnic-minority children;

- (v) service information — we have produced a service guidebook "Your Guide to Services" to facilitate newly arrived ethnic minorities to obtain information on the services available to them in the community. The guidebook is published in English, Tagalog, Thai, Indonesian, Hindi, and Nepali (Sinhalese and Urdu are on the pipeline) to facilitate greater understanding. We have also introduced the Mobile Information Service at the Hong Kong International Airport where relevant information is distributed to non-Chinese migrants when they enter Hong Kong; and
- (vi) the Equal Opportunities (Race and Sexual Orientation) Funding Scheme — the Scheme provides funding to NGOs who wish to organize projects for assisting ethnic minorities' integration and promoting racial harmony. In 2002-03, 40 projects had received funding amounting to \$1.03 million.

We also reckon that the acceptance of ethnic minorities by the mainstream community will help speed up the integration process. To this end, we have been using public education to arouse awareness and to foster a culture of mutual tolerance and respect. The Committee on Promotion of Racial Harmony, established in June 2002 and comprising members from government departments, NGOs and ethnic minority groups, provides advice and direction on public education and publicity for promotion of racial harmony. The Committee is underpinned by a dedicated Race Relations Unit — established in June 2002 — tasked specifically with the responsibility to promote racial harmony.

In districts where the number of ethnic minorities is significant, the local District Offices and community organizations organize various events and activities to enhance the ethnic minorities' sense of belonging and to promote racial harmony.

Annex A

Ethnic Minorities by Ethnicity⁽¹⁾, 2001

<i>Ethnicity</i>	<i>Number</i>	<i>Percentage</i>	<i>Proportion of Ethnic Minorities Among Whole Population (%)</i>
Asian (other than Chinese)			
Filipino	142 556	41.4	2.1
Indonesian	50 494	14.7	0.8
Indian	18 543	5.4	0.3
Thai	14 342	4.2	0.2
Japanese	14 180	4.1	0.2
Nepalese	12 564	3.7	0.2
Pakistani	11 017	3.2	0.2
Korean	5 263	1.5	0.1
Bangladeshi, Sri-Lankan	1 718	0.5	0.0
Other Asian	5 854	1.7	0.1
European			
British	18 909	5.5	0.3
Other European	9 968	2.9	0.1
American/Canadian	9 334	2.7	0.1
Australian/New Zealander	6 883	2.0	0.1
Others	22 325	6.5	0.5
Total	343 950	100.0	5.1
Whole population	6 708 389		100.0

Note: (1) Includes foreign domestic helpers.

Annex B

Employment of Ethnic Minorities, 2001⁽¹⁾

	<i>Ethnic Minorities</i>	<i>Whole Population</i>
Working population by occupation (%)		
Managers and administrators	9.5	10.7
Professionals/Associate professionals	8.8	20.9
Clerks/Service workers and shop sales workers	6.0	31.3
Craft and related workers/Plant and machine operators and assemblers	2.2	17.2
Elementary occupations	73.4	19.5
Skilled agricultural and fishery workers; and occupations not classifiable	0.0	0.3
Working population by industry (%)		
Manufacturing	2.4	12.3
Construction	2.6	7.6
Wholesale, retail and import/export trades, restaurants and hotels	8.4	26.2
Transport, storage and communications	3.0	11.3
Financing, insurance, real estate and business services	7.9	16.1
Community, social and personal services	75.5	25.5
Others ⁽²⁾	0.2	1.0

Note: (1) Includes foreign domestic helpers.

(2) "Others" include such industries as "Agriculture and fishing", "Mining and quarrying", "Electricity, gas and water" and industrial activities inadequately described or unclassifiable.

Annex C

School Attendance of Ethnic Minorities, 2001

	<i>Ethnic Minorities</i>	<i>Whole Population</i>
School attendance rate (%)		
3 – 5	86.0	94.7
6 – 11	99.3	99.9
12 – 16	96.0	97.5
17 – 18	54.7	71.2
19 – 24	3.7	26.4
25+	0.2	0.3
Aged 3 and over	9.7	22.1

	<i>Ethnic⁽¹⁾ Minorities</i>	<i>Whole⁽¹⁾ Population</i>
Education attainment (highest level attended) ⁽²⁾		
Primary or below	36 655 (12.0)	1 618 212 (28.9)
Lower secondary	34 299 (11.2)	1 060 489 (18.9)
Upper secondary	70 649 (23.1)	1 473 681 (26.3)
Matriculation	66 998 (21.9)	528 090 (9.4)
Tertiary	97 301 (31.8)	918 500 (16.4)
Total	305 902 (100.0)	5 598 972 (100.0)

Note: (1) Figures in brackets represent the percentages in respect of the total.

(2) Figures refer to the population aged 15 and over.

MR JASPER TSANG (in Cantonese): *Madam President, if we look at only part (b) of the Secretary's reply to my question and the information in Annexes B and C, we will find a seemingly contradictory phenomenon, that is, the level of education attainment of ethnic minorities is far higher than that of the average of the whole population. The proportion of ethnic minorities aged 15 or above who have received tertiary education is almost double that of the average of the whole population. However, in employment, nearly three quarters of them are employed in elementary occupations, a proportion that is much higher than the average rate of 19% in the whole population. Why is this so odd? If we further look at part (a) of the reply and Annex A, we will discover the reason behind this. It turns out that the Government has included in its calculation foreign domestic helpers from the Philippines and Indonesia who account for 56% of ethnic minorities. We all know that all foreign domestic helpers from the Philippines have received tertiary education. May I ask the Secretary for Home Affairs if he thinks that the daily life, education standard and everyday needs of foreign domestic helpers, who account for 56% of ethnic minorities, are in fact very different from the remaining 40% or more of people of South Asian origins born and raised locally? If these foreign domestic helpers are factored into the compilation of statistics, the realistic situation cannot be reflected at all. May I ask the Secretary whether he will separate the two groups and compile the statistics again, so that the Government can truly understand what difficulties ethnic minorities born, raised and educated locally are facing in schooling and employment?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I would like to thank Mr TSANG for the supplementary. The information I have given to Members in my reply is provided by the Audit Commission. I will relay Mr TSANG's view to the Audit Commission, that is, to separate the two groups in the compilation of statistics and we will provide the information to Mr TSANG.

PRESIDENT (in Cantonese): Members, there are now 14 Members waiting to ask supplementaries. Please be as concise as possible when asking supplementaries.

MRS SOPHIE LEUNG (in Cantonese): *Madam President, part (c) of the main reply mentions the issue of integration into the community. My understanding of integration is that, apart from providing government services to the ethnic minorities, we also have to let them know what contribution they can make to society as new arrivals. Will the Steering Committee concerned give more examples in its brochures of new arrivals who have made contributions to Hong Kong as an international city, as well as the contribution made, so as to boost the determination of new arrivals in integrating into the community, so that they can look at matters from the perspective of giving to society rather than solely taking from society?*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary? Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we will list out in detail the trades in which new arrivals can serve society in the brochures distributed to them, so that they can blend into society. However, we must note that in their integration into society, the main problem they encounter is language. Therefore, we have to lay the ground work in this area properly first by providing language training courses to them. We will pay extra attention to this area.

MR ANDREW WONG (in Cantonese): *Madam President, I believe the figures were provided by the Census and Statistics Department (C&SD), but the issue does not lie in whether they were provided by the C&SD or the Audit Commission, but rather, in the main question's failure to ask about one important element, that is, among the ethnic minorities in Hong Kong, how many are holders of work permits and how many have the permanent right of abode, or how many are domestic helpers working on a temporary basis. If such a classification had been made, perhaps it would have been better. May I ask the Secretary if he will consider reprocessing all the statistics to enable us to see what the problems are?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I believe had Mr TSANG's question asked about the situation of South Asians on the outset, there would have been a better pointer for us to provide a more comprehensive and focused reply. We will reconsider this matter on going back to my office.

As to Mr WONG's question on whether we can set out detailed information on the employment situation of these people or whether they have work permits, the main reply given by me is based on the Population Census conducted in 2001, in which information on ethnicity was collected for the first time. This had not been done before and previously, only questions relating to nationality were asked. If it is a question of nationality, then it can be dealt with easily, since such figures are available from the Immigration Department, but ethnicity has to be proclaimed by interviewees, who have to consider their ethnic origin. We all know that ethnicity is different from nationality. A lot of people are of the same nationality but of different ethnicity. In this regard, we will discuss with the C&SD further on how to do a better job of it.

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

MR ANDREW WONG (in Cantonese): *Madam President, I did not request that another census be carried out. I do not know what questions were asked in the Census. I believe the important point is whether these ethnic minorities have permits to work in Hong Kong, for example, a university lecturer is different from foreign workers or domestic helpers, and whether some of these people are permanent Hong Kong residents. If we carry out an analysis on the abode status of ethnic minorities in Hong Kong, the picture may become clearer. May I ask the Secretary if he could discuss with the Commissioner for Census and Statistics to see if this kind of information was collected in the last Census, so that an analysis can be carried out?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I believe the thrust of Mr WONG's supplementary is whether these ethnic minorities are local residents or if they only have work permits. I believe Members all know that foreign domestic

helpers have to obtain visas before they can come to Hong Kong, or renew their contracts after working for two years. Some of them may have already become permanent residents. If we want to obtain such information, I believe we have to ask a lot of questions when conducting a census and much more time will be required. If Members consider that this kind of information is important, we can go back and study with the C&SD whether such information can be collected when conducting a census in the future.

PRESIDENT (in Cantonese): Since Council has spent more than 16 minutes on this question, I can allow only one last supplementary from Members.

MR JAMES TO (in Cantonese): *Madam President, after many voluntary agencies and social work organizations have pointed out the problems in schooling and employment encountered by ethnic minorities, has the Government carried out a comprehensive assessment on the employment and schooling of ethnic minorities from South Asia? Are the problems related to the lack of legislation against racial discrimination?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Home Affairs. If any other Secretary should wish to add anything, he may do so later. I will ask the Secretary for Home Affairs to reply first.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the authorities established the Committee on Promotion of Racial Harmony in June last year. The aim is precisely to deal with the employment and schooling problems encountered by ethnic minorities in Hong Kong in order to enable them to integrate into Hong Kong society as quickly as possible and to understand the reasons why they cannot do so. We are now discussing with other Policy Bureaux to see what assistance can be offered and the work that the relevant Policy Bureaux have to undertake. We are now embarking on the work in this area in order to understand the needs of ethnic minorities.

MR JAMES TO (in Cantonese): *Madam President*

PRESIDENT (in Cantonese): Mr TO, please wait a minute and let other Secretaries reply first. Secretary for Economic Development and Labour.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, perhaps I should add a few words. On employment, I believe many Members are fully aware that the majority of foreign domestic helpers come from the Philippines or Indonesia. There is not much of a problem in this area. The problem has to do with other ethnic minorities. They may encounter difficulties in finding employment because of language problems. The Labour Department deals with them of course with a fair hand and there is no distinction between ethnic minorities and other members of the public in Hong Kong. In placement services, I believe Members are all aware that we provide bilingual services, that is, services in both Cantonese and English as well as tailor-made job-matching service. Apart from finding jobs of interest in the English pages on the Internet, they can also visit the Labour Department in person to seek assistance in English or Cantonese. Moreover, the authorities have also implemented the Youth Pre-employment Training Programme and provided pre-vocational training. However, according to past experience, we know that the number of people enrolling in these programmes is not particularly high. Therefore, as a matter of fact, the authorities have made efforts and some non-governmental organizations have also organized courses using English as the medium of instruction. We will continue to do so in the future.

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): Yes, Madam President. I would like to add something for I have not yet answered part of Mr James TO's supplementary.

The policy of the Hong Kong Government on ethnicity is to foster a culture of mutual tolerance and respect among the ethnic minorities and locals. We will arouse the awareness of the public of the ethnic minorities and enhance awareness of racial harmony. The authorities have carried out consultation exercises in 2001 and 2002 on whether legislation against racial discrimination in

private organizations and between individuals should be enacted. The results reveal that many views are supportive of legislation but there are also views opposed to it. The authorities are now further considering the implications of different decisions. We will make a decision shortly.

PRESIDENT (in Cantonese): Third question.

Allocation of PRH Flats to Elderly Households

3. **MR FREDERICK FUNG** (in Cantonese): *Madam President, the Housing Department (HD) launched the Proactive Registration Campaign for Elderly Persons between November 2000 and March 2001 and pledged to allocate public rental housing (PRH) flats to the registered and eligible elderly households by the end of 2003. In this connection, will the Government inform this Council:*

- (a) *of the number of eligible elderly households registered in the Campaign; among them, the respective numbers of elderly households which have been allocated with PRH flats, have refused to accept the allocated units and are still waiting for allocation;*
- (b) *of the number of each type of PRH flats offered by the HD to the elderly households so far; and*
- (c) *whether there are enough small self-contained PRH flats for allocation to these elderly households by the end of this year; if so, of the details; if not, the reasons for that?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, my reply to the three-part question is as follows:

- (a) The HD conducted a "Pro-active Registration Campaign for Elderly Persons" from 22 November 2000 to 31 March 2001. A total of 7 824 applications were received, of which 5 112 met the eligibility criteria for PRH. Other than 200 applications which do not fulfil the residence requirement and are therefore frozen, all the eligible elderly families have been offered public rental flats. We have

thus achieved in advance our pledge of offering public rental flats to them by end 2003. Of the eligible applications, 3 200 have already accepted our offer, 927 have accepted other arrangements or given up their applications, and the remaining 785 applicants have been offered public rental flats at least once.

- (b) Similar to handling all other applications on the Waiting List, the HD allocates flats to elderly applicants registered during the Campaign as and when small flats are available. Flats for allocation include Housing for Senior Citizens featuring shared facilities and warden services, as well as different types of self-contained and non-self-contained small flats. The HD does not maintain statistical records of the allocation offers made. Hence, we do not have breakdown of the offers for these applicants by flat type.
- (c) We envisage that about 5 400 small self-contained flats for households of one to two persons would be available for allocation in 2003, which should be sufficient to meet anticipated demand.

MR FREDERICK FUNG (in Cantonese): *Madam President, the Secretary mentioned in part (a) of the main reply that 7 824 applications had been received and the number was far smaller than the number anticipated by the HD. As members of the public we would think that the small number of applications is due to insufficient publicity so that some elderly persons who may want to apply for PRH flats have not submitted applications. As the programme is well-received by the public, especially the elderly, may I ask the Secretary if similar campaigns would be launched in future so that elderly persons can register and be allocated PRH flats?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as far as I know, the "Pro-active Registration Campaign for Elderly Persons" was launched with the elderly persons as targets and it was carried out in response to request. However, that is not the only means for elderly persons to apply for PRH flats. In fact, many elderly persons are on the Waiting List for PRH flats and many of them have been allocated such flats. We would be glad to launch a similar campaign if there is a particular need for it.

MR NG LEUNG-SING (in Cantonese): *Madam President, I am glad to learn from the main reply that the Government has achieved in advance its pledge of offering public rental flats to elderly persons by end 2003. This is the kind of efficiency which the public would be delighted to see as public services are improved. However, as 927 applicants have accepted other arrangements or given up their applications, could the Secretary inform this Council of the reasons for these applicants giving up their applications?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I am grateful to the Honourable Member for the compliment. I am sure our front-line staff would feel very encouraged.

The fact that 927 elderly households have accepted other arrangements or given up their applications is mainly due to several different reasons. First, they have joined some existing PRH households. Second, they have applied for Home Ownership Scheme flats as a result of the improvement in their living conditions or assistance given by their children. Third, they have given up the applications of their own accord. Some applicants may withdraw their applications since they have refused offer of public rental flats three times. As a result of these reasons, a total of 927 elderly households have given up their applications.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, the main reply says that a total of some 7 000 applications were received, while some 2 700 applications failed to meet the eligibility criteria. May I ask what the reasons are? In addition, apart from allocation of public rental flats to these elderly households, are they offered any rental subsidies to help solve their housing problem?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, 2 712 applications did not meet the eligibility criteria because of the following reasons: failure to meet the Waiting List asset or income requirements; duplication in registration, that is, the applicant has registered on the Waiting List and registers again in the Campaign; the applicant is already a tenant of a public rental flat and wishes to be put on the Waiting List again by

taking the opportunity of this Campaign. This last group of applicants could have applied through another channel, but not through this Campaign. The above three reasons are the most common ones.

Of the 3 200 households allocated public rental flats, most of them have accepted the flats offered. Only 45 of them opted for the rental subsidy and that accounts for only a very small proportion.

MR ALBERT HO (in Cantonese): *Madam President, part (c) of the main reply said that about 5 400 small self-contained flats for households of one to two persons would be available for allocation in 2003. May I know if these 5 400 flats include Housing for Senior Citizens flats featuring shared facilities and warden services? If so, what is the total number of flats available for allocation? What kinds of flats are usually more preferred? What are the respective numbers of flats with shared facilities and warden services as well as self-contained flats without warden services offered in the allocation?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, the 5 400 flats do not include Housing for Senior Citizens flats, but they include newly completed flats and renovated flats. The number of Housing for Senior Citizens flats available in 2003 is 700 and the number of such flats will decrease continuously. Members may recall that as the Housing Authority considers these flats to be less popular than expected, so it is decided that the production of this kind of flats should stop and focus be put on the provision of self-contained flats for households of one to two persons. According to information I have at hand, the number of new or renovated flats coming on stream over the next four years would be 23 400. The number of flats in supply would be sufficient. It is because the number of elderly persons living in public rental flats is increasing. There are presently about 1 million elderly persons aged 60 or above in Hong Kong and 42% of them are living in public housing. So the demand for this type of flats will increase and we will increase the number of new flats and renovated flats annually to meet this demand. As I have said, 23 400 self-contained flats for one person will become available over the next four years, and it is estimated these flats should be able to meet the demand.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, when the Secretary answered Mr Frederick FUNG's supplementary question, he said that a second or third registration campaign might be considered. May I ask the Secretary how this would be done and whether or not registration work would be undertaken again? If so, when would this be carried out?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as I said in my reply to the previous supplementary question, the supply of this kind of flats is adequate and so it is not true to say that since there is no supply of this kind of flats that publicity is not made. In fact, if elderly persons apply for registration on the Waiting List, they will be allocated a flat more quickly. We will also consider whether or not such registration efforts should be made in the public housing estates where Housing for Senior Citizens flats are provided or in the vicinity of these housing estates. However, I would think that this only serves to remind the elderly of the opportunities available. The supply of these flats is sufficient. So irrespective of whether or not such actions will be taken, provided that the elderly persons have registered on the Waiting List, we will be able to meet their needs.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, has your supplementary question not been answered?

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, may I ask the Secretary how the needs will be gauged and how public demand is estimated?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, through the offices of Honourable Members, we can know if any elderly persons think that information in this respect is not sufficient and more should be provided. We can also learn about the situation through our own offices as well. If there are many people who wish to obtain information on this, then we will make specific responses to the requests made.

MR FREDERICK FUNG (in Cantonese): *Madam President, I would like to follow up the supplementary question raised by Mr LEUNG Yiu-chung just now.*

The main reply mentions a total of 7 824 applications, and that is about 40% less than the number anticipated by the HD. In other words, the HD has originally reserved more than 12 000 flats for allocation to the elderly persons. I also indicated earlier that I hoped the Campaign could be launched for a second time since I felt there was a need for it. May I ask the Secretary if similar campaigns will be launched as there are more than 4 000 flats still unused?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):

Madam President, these flats will not be unused. These flats are there for elderly persons to apply in the Campaign and they have made applications during this promotion exercise voluntarily. I think anyone who has a need for these flats should have made an application already. As I have said, the supply of this kind of flats is sufficient and it is not the case that we cannot meet the demand because of a shortage of such flats. So as the Honourable Member has said, if the public has a positive response to this, I would consider launching a second round of publicity efforts.

DR RAYMOND HO (in Cantonese): *Madam President, the Secretary said that 40% of the 1 million elderly persons in Hong Kong are living in public housing, and the Secretary is also prepared to launch a second registration campaign. But why is it that part (b) of the main reply mentions no breakdown of the offers for applicants by flat type is available as the HD does not maintain statistical records of the allocation offers made? If such figures and information are useful for future registration exercises, would the Bureau consider asking the HD to compile such information for future reference?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):

Madam President, maybe I should make a clarification here. Part (b) of the main reply says that the relevant information is not available and this refers to the fact that when we make the allocation offers, we do not have any specific breakdown on the types of flats offered. I believe this is the kind of information that Mr Frederick FUNG would like to know in the main question. We have different types of flats in the Housing for Senior Citizens scheme, such as types I, II, III and self-contained flats. But we do not have any breakdown of the offers made by flat type, that is why I said that we did not maintain statistical records of the allocation offers made. If we wish to find such information, we will have to

search each case file and that is certainly a problem. So that is what I meant when I said we did not maintain statistical records on this.

PRESIDENT (in Cantonese): Fourth question.

Services of RTHK

4. **MR NG LEUNG-SING** (in Cantonese): *Madam President, concerning Radio Television Hong Kong's (RTHK) services, will the Government inform this Council:*

- (a) *whether the services currently provided by RTHK include publicizing and promoting government policies; if so, of the Administration's criteria for assessing the quality and effectiveness of such service and the assessment results; if not, the reasons for that; and*
- (b) *whether, given that the Chief Executive has stated in this year's policy address that the Administration will "economize, enhance efficiency, dispense with redundant services and redeploy our resources, taking practical measures to prevent any erosion in the quality of public services and ensuring the continuation of the necessary ones", it has assessed if the various services currently provided by RTHK are the necessary ones; if so, of the relevant assessment criteria and results; if not, the reasons for that?*

SECRETARY FOR COMMERCE, INUSTRY AND TECHNOLOGY (in Cantonese): Madam President,

- (a) It is the Government's established policy to maintain the editorial independence of RTHK. As a public service broadcaster, RTHK's mission is:
 - (i) to inform, educate and entertain audiences through multimedia programming;

- (ii) to provide timely and impartial coverage of local and global events and issues;
- (iii) to deliver programming which contributes to the openness and cultural diversity of Hong Kong;
- (iv) to provide a platform for free and unfettered expression of views; and
- (v) to serve a broad spectrum of audiences and cater to the needs of minority interest groups.

Although its services do not include a specific item of publicizing and promoting government policies, RTHK informs the public of government policies as part and parcel of its service to inform the public through multimedia programming. For instance, RTHK's productions like "Hong Kong Letters", "Pentaprism" and "City Forum" provide government officials with opportunities to explain government policies and the public with forums to openly express their views. Government policies are thus publicized and promoted by means of strengthening communication between the Government and the public.

The criteria for assessing the quality of such service are the accuracy, impartiality and balanced presentation of the subject matter in the programmes. These are matters of principle laid down clearly in RTHK's Producers' Guidelines. RTHK also voluntarily observes the Broadcasting Authority (BA)'s Generic Code of Practice on Television Programme Standards which provides that due impartiality has to be preserved in programmes dealing with matters of public policy in Hong Kong. The quality of such service is above all monitored by the public. Should the public find these programmes not up to the required standard, they can lodge complaints with RTHK or the BA. As regards effectiveness, it is estimated that RTHK's radio service has attracted a listenership of almost 3 million. Besides, RTHK's phone-in programmes on public affairs register 2 883 hours a year and RTHK's Cyber Station has a daily hit rate of 8 million. These figures reveal that many members of the public are obtaining a

variety of information, including government policies, through the service of RTHK.

- (b) A majority of advanced economies have in place public service broadcasters to inform, educate and entertain the public. We consider that it is necessary to maintain public broadcasting services to complement commercial broadcasting services in catering to the needs of a broad spectrum of audiences. Examples of such complementary functions are the promotion of Putonghua and English, as well as culture and arts; and the provision of programmes on parental education, elderly and childhood education, civic education for the youth, fight-crime and anti-smoking campaigns, and medical and health awareness. Regarding the government initiatives to enhance efficiency, dispense with redundant services and redeploy resources, RTHK, like other government departments, needs to meet cost saving targets. The Director of Broadcasting is now considering a series of economizing measures such as enhancing outsourcing, re-engineering work processes, reorganizing manpower structure, reducing payroll cost and increasing simulcasting periods.

MR NG LEUNG-SING (in Cantonese): *Madam President, thanks to the Secretary for the main reply he has just provided. Before raising my follow-up question, I wish to say that many people, including my constituents, have felt concerned all along whether, under the accountability system for principal officials, the Secretary can do something about policies in respect of RTHK. I heard that, under the leadership of the Secretary, some programmes of RTHK are felt by the people to have shown some positive improvement recently. But still, as the Government has allocated \$500 million public money to RTHK as its operating fund, so should not people who have made contribution to the fund (that is, the taxpayers) have the right to ask a question? Is it reasonable or in the interest of the public for RTHK to make more efforts to promote the causes of the Government positively in its programming?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, RTHK is a public organization with an annual expenditure of several hundred million dollars. Mr NG Leung-sing just asked,

as the operating expenditure of RTHK is provided by the Government, whether it should be subject to the orders of the Government and report whatever the latter wants it to report. On the surface of it, if this happens in the commercial sector, the man who funds an organization has the right to order it to report in the way he dictates. However, the service objects of RTHK have been clearly stipulated in its mission, that is, the criteria for assessing the programmes produced by it are accuracy, impartiality and balanced presentation. Therefore, just as the case in other advanced economies, this public service broadcaster of ours will continue to adopt the criteria of accuracy, impartiality and balanced presentation to assess its programmes, and the programmes of RTHK are mainly to provide the broad spectrum of audiences as well as minority interest groups with information, education and entertainment.

MR MA FUNG-KWOK (in Cantonese): *Madam President, the public finances are tight now. Regarding the activities of RTHK, has the Government reviewed which the core activities of RTHK are, and which services cannot be provided by private television stations? Given that some of the services can be provided by private television stations, is it still necessary for RTHK to provide such services on public money? For the remaining core activities, how does the Government assess their effectiveness? As I cannot see how the Secretary assesses their effectiveness in his main reply, I really want to know what the government standards are.*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, ever since I assumed my office, I have already heard of questions raised by different people very much similar to the supplementary question put forward by Mr MA Fung-kwok, that is, whether RTHK should compete with private stations over certain types of programmes, meaning that the public service broadcaster is competing with the private operators for profits. As I have just said, the mission of RTHK is "to inform, educate and entertain audiences through multimedia programming", and "to serve a broad spectrum of audiences and cater to the needs of minority interest groups". I believe RTHK is duty-bound to fulfil its mission in this respect. Therefore, I believe the programmes being produced by RTHK are consistent with its mission and the criteria. As for its expenditure in production and other various aspects, whether they are good value for money, whether they are too expensive or too cheap, actually RTHK has conducted a review of its overall

expenditure in the wake of criticisms by the Audit Commission of the production costs of its programmes being too expensive. The review was conducted to examine how its work could be done more efficiently and in a more cost-effective manner. Therefore, in the year 2001-02, RTHK enhanced its outsourcing. For example, in the year 2001-02, RTHK contracted out 20 projects involving over \$10 million, which accounted for about 28% of the total expenditure of RTHK. On other aspects, RTHK has strictly controlled its remuneration costs arising from overtime work, studied the integration of work units, streamlined manpower, reduced its programme production budgets, and directed staff to maintain programme quality despite smaller budgets. I can understand that, at a time of financial difficulties, each and every government department has the obligation to utilize the resources effectively, cut expenditure while maintain service quality. In this regard, RTHK is no exception.

PRESIDENT (in Cantonese): Mr MA Fung-kwok, has your supplementary question not been answered?

MR MA FUNG-KWOK (in Cantonese): *Madam President, can the Secretary elaborate the assessment criteria? The Secretary has just mentioned the financial criteria, but I think RTHK as a public organization should also have standards in terms of social cost-effectiveness. What is the view of the Secretary in this aspect? Can he provide some supplementary opinions?*

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

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I believe for information programmes or entertainment projects, some objective figures can be used as assessment criteria. RTHK's radio service has attracted a listenership of almost 3 million; and the popularity rating of its television programmes is 73.06, the highest among all local television stations. In 2002, RTHK won 29 awards. RTHK's Cyber Station has a daily hit rate of 8 million. With these standards, we think that RTHK has fulfilled its service objects, and catered to the needs of the general audience in Hong Kong as well as those of the minority interest groups.

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, the Secretary mentioned in his main reply that the mission of RTHK does not include publicizing and promoting government policies. In this connection, what criteria does RTHK base on to decide which government policies it would promote and which it would not? Or will it promote only policies considered correct by the Government, but not those considered not correct?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, RTHK would not assess which government policies are correct, which are not. Generally speaking, all government policies are right. (*Laughter*) Therefore, when it proceeds with its production, RTHK will adhere to its traditional principles of accuracy, balanced presentation and objectivity as standards of programme production.

PRESIDENT (in Cantonese): Mr YEUNG Yiu-chung, has your supplementary question not been answered?

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, I think the Secretary has not answered in explicit terms what actually the criteria are. As all government policies are right, is RTHK duty-bound to promote all such policies? However, from a realistic point of view, as RTHK has not included such an item in its mission, is it true that it can refrain from doing any promotion for the Government?*

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

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, in fact the Government formulates policies every day. So it is not possible for RTHK to produce a programme for each government policy to introduce it, I try not to use the word "promote", or to provide a platform for the public to express their views, because there are many policies in which the public is not particularly interested. Therefore, RTHK works according to its traditional principles, that is, to inform, educate and entertain audiences through multimedia programming, and to cater to the needs

of minority interest groups. Within the scope of its editorial independence, RTHK would choose some policies that involve public interest or that are of interest to the public, and a platform would be provided for the officials and people from all walks of life in the community to enhance their communication, and provide a channel for the officials to explain the policies concerned and facilitate the expression of opinions by the public.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, my supplementary is on parts (a) and (b) of the main reply. The Secretary mentioned in part (b) of the main reply that the Director of Broadcasting would consider the reduction of manpower and payroll cost, as well as outsourcing work processes. In short, it is about cutting costs. However, as mentioned in the last part of part (a) of the main reply, RTHK's Cyber Station has a daily hit rate of 8 million. I understand that when the service was first launched, the daily hit rate was just between 800 000 and 900 000, but now the rate has gone up dramatically. In fact, many Hong Kong people or overseas Hong Kong people rely on RTHK's programmes for information on Hong Kong. Taking myself as an example, when I travelled abroad, I would also listen to news broadcasts on RTHK. As some people may wish to watch some old programmes in the so-called "archive", such as "Under the Lion Rock" which was produced 30 years ago, has the Administration explored the possibility of allowing RTHK to charge some service fees in this regard, keeping to the principle of not competing with the private sector for profits? Taking the above case as an example, will the Administration also allow RTHK to charge some fees for its unique programmes produced in the past, as a way of subsidizing part of the costs?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we have a system in place to enable RTHK to sell some of its programmes in order to recover the costs and to help relieve the financial hardship. We hope we can reduce the government expenditure in this way. Therefore, in this regard, we have a mechanism to enable RTHK to do so.

PRESIDENT (in Cantonese): We have spent more than 16 minutes on this question. This is the last supplementary question.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, what are the respective listenerships of Radios 1, 2 and 5 of RTHK? Can a breakdown be provided to us? Besides, with the ageing of the local population, and given private radio broadcasters seldom produce programmes for the elderly, will the Government allocate some resources to RTHK to enhance its production of programmes suitable for the elderly?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I did not catch the first part of the supplementary of Mr TAM Yiu-chung. Can you request him to repeat it please?

PRESIDENT (in Cantonese): Certainly. Mr TAM Yiu-chung, please repeat it.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, the first part of my supplementary is: What are the respective listenerships of Radios 1, 2 and 5 of RTHK? The main reply has just provided the total listenership.*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I do not have the specific figures at hand. Please allow me to provide the relevant figures to Mr TAM Yiu-chung later in writing. (Appendix II) As for programmes for the elderly, we attach great emphasis on the production of programmes for the elderly, because many elderly people rely on listening to radio programmes and watching television programmes as their primary entertainment in their daily life. I certainly welcome suggestions from everyone in this regard, so that we can keep on improving the programming of RTHK.

PRESIDENT (in Cantonese): Fifth question.

Collaboration with NGOs in Organizing Waste Recovery Activities

5. **DR LAW CHI-KWONG** (in Cantonese): *Madam President, it is learnt that the Administration will, in collaboration with a proponent organization,*

implement a pilot scheme on the separate collection of wet and dry wastes in several housing estates on Island East early this year. In this connection, will the Government inform this Council of:

- (a) the name of the organization concerned and the division of responsibilities between the organization and the relevant government department(s);*
- (b) the total estimated expenditure of the pilot scheme and the amount to be borne by public money, together with the expenditure on the procurement and distribution of plastic bags; and*
- (c) the criteria for determining whether to collaborate with non-governmental organizations in organizing waste recovery activities; and the organizations with which it will collaborate in organizing such activities?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, the Government has been testing out various waste recovery systems in order to identify the modes that are the most cost-effective and will best suit local needs. Such systems include placement of waste separation bins at public venues and public/private housing estates to facilitate the public to participate in waste separation. Moreover, we have been exploring the feasibility of utilizing waste management facilities to assist in waste recovery work. For instance, we in July last year set up a pilot recycling plant at the Northwest New Territories Transfer Station to recover used electronic and electrical appliances collected at the local districts. In recent years, we have also been working closely with community organizations and green groups to try out different waste recovery systems.

Last year, the Democratic Alliance for Betterment of Hong Kong (DAB) has proposed to carry out wet/dry waste sorting as a means to promote waste recycling, and has applied for funding from the Environment and Conservation Fund (ECF) to carry out the project. As this form of waste recovery has been practised overseas but never in Hong Kong, we have agreed to collaborate with the organization concerned to carry out a pilot scheme to test the economics and logistics of this form of waste recovery.

The organization concerned is responsible for the implementation of the pilot scheme and the related educational and publicity work in the participating housing estates. The Government will provide technical support and assist in formulating a code on wet/dry waste sorting. Moreover, the Government will set up a temporary sorting facility at the Island East Transfer Station and arrange for the delivery of dry waste to the facility for re-sorting.

The pilot scheme will last one year and its estimated expenditure is about \$6.2 million. The ECF has granted the organization concerned about \$1.5 million for the waste recovery, educational and publicity work in the housing estates, of which about \$0.5 million will be used for the procurement of plastic bags for wet/dry waste sorting. The remaining \$4.7 million will be used by the Environmental Protection Department to set up the temporary sorting facility, delivering dry waste to the facility and hiring staff for the waste sorting work.

We believe that the pilot scheme will help bring down the costs for waste transfer and landfilling and reduce the demand for landfill space. We will carry out a review upon completion of the scheme to examine the cost-effectiveness of this form of waste recovery. Having considered the capacity of the sorting facility at the Island East Transfer Station and the need to manage within available resources, we have no plans to carry out other wet/dry waste sorting pilot schemes.

Any local non-profit-making organizations may apply to the ECF for funds to carry out community waste recovery projects. The ECF Committee and its Vetting Sub-committee, comprising mainly non-officials, will consider each project with regard to its effectiveness in promoting waste recycling, its status as a non-profit-making project and its benefits to the community. We will continue to co-operate with the organizations carrying out these projects and provide necessary support to facilitate the implementation of community waste recovery projects.

DR LAW CHI-KWONG (in Cantonese): *Madam President, I welcome the Government's response and attitude this time, but in order to avoid causing misunderstandings, I hope to raise a supplementary seeking clarification by the Government. The Government has been extremely cautious all along in co-operation with political parties. It can be said that co-operation between the*

Government and a political party is a taboo. Considering the reply by the Secretary today, has the attitude of the Government been changed, that it will co-operate with a political party, and it will consider the co-operation no longer a taboo regardless of the fact that that party is known as a ruling coalition party?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, according to the Environment and Conservation Fund Ordinance and practice of the Government, there would be no favouritism or taboo as long as the relevant body is a non-profit-making organization. Madam President, I would like to take this opportunity to tell all political parties that we welcome their participation. In fact, a certain political party has already indicated its interest in applying for funding to launch some projects and we would take that into consideration.

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, can the Secretary tell us how many organizations of similar nature are applying for funding to carry out their projects? How many of them have already been approved and disapproved? What are the reasons of disapproval, and can the names of these organizations be disclosed?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, the funding applications of six organizations of similar nature have been approved this year. As I do not have the figures on organizations still waiting for approval at hand, I will therefore provide a written reply. (Appendix III)

MR WONG YUNG-KAN (in Cantonese): *Madam President, with regard to waste recovery projects, the New Territories Association of Societies to which I belong had applied for funding to carry out projects on waste collection and separation in the rural areas, and the application was approved. Why did no organization apply for funds to carry out the wet/dry waste separation project in the past, and what kept them away from applying for funds? The Secretary mentioned in the main reply that this form of waste recovery has been practised overseas, why was it not carried out in Hong Kong until now?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, it was true that no organization had applied for funds to carry out wet/dry wastes separation projects in view of the complexity of the operation and the enormous quantity of wastes involved, which would be as many as dozens of tons and would bring about problems in the sorting process if the implementation is not satisfactory. For example, even people are willing to purchase waste plastic bottles and aluminium cans, where should the entire pile of dry waste be stored upon collection in the first place? Hong Kong is short of space, so the rental alone would make the project commercially not viable if the recyclable waste collector has to rent a warehouse to store the dry waste. After consideration, the Government found there is extra space in the Island East Transfer Station for the setting up of a conveyor belt system, then we could plan the sorting of dry waste sent to the facility.

Many people are of the opinion that all the wastes collected are filthy and the people of Hong Kong would be unwilling to engage in waste separation work as they are so self-conceited. However, the reality is quite the opposite. At present, the person in charge of the Island East Transfer Station has already employed some workers to do the work, thus the project has begun. Green collar workers in many advanced countries in the world, such as Japan, the United Kingdom and San Francisco in the United States, are engaging in this kind of work, and they have won the recognition and respect of society at large. Perhaps the idea of waste recycling in Hong Kong was somewhat unrealistic in the past, therefore nobody would propose the implementation of waste separation projects. I took some time to study the DAB's proposal concerning the implementation of the project this time around, and I considered that the project should be viable granting several conditions were met, for example, provided that the transportation problem was solved and a venue for centralized waste sorting was found. For that reason, we have launched the pilot scheme. Under this project, about 25 tons of wastes would be treated, therefore preparation should be made in advance, otherwise it would be difficult to find someone to take care of the wastes piling up like a mountain. I hope Mr WONG Yung-kan will accept my explanation.

MR FRED LI (in Cantonese): *Madam President, it is reported that under the pilot scheme, every household would be given two plastic bags for waste separation and recovery purposes. If there were 8 000 household participants,*

then the Government would have to give out 5.48 million plastic bags in a year. May I ask whether this approach is contradictory to the principle of using less plastic bags that the Government has all along advocated, in particular the use of non-biodegradable bags?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, the plastic bag used for the recovery of dry waste is part of the entire dry waste body, and we all hope that some of the recyclable waste can reach a considerable quantity. Furthermore, the plastic bags are not necessarily non-recyclable. If the dry waste collected is clean, then the bags carrying it can be recycled. Disposed plastic bags can also be found among dry waste, and we will ask the recyclable waste collector to recycle them.

MR CHAN KAM-LAM (in Cantonese): *Madam President, a large number of housing estates and residents have participated the pilot scheme launched by the Government. Moreover, many voluntary workers have assisted in the separation of wastes. Would the Government consider encouraging more housing estates and residents to actively take part in the scheme under certain circumstances?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, Mr CHAN Kam-lam is right. We also wish to promote the pilot scheme on a larger scale. We have to consider whether we could break even, as government subsidies are a matter of formality, it has to collect waste one way or the other, therefore we have actually prepared to pay for the relevant expenditure. What we have to consider is whether the pilot scheme could break even, and whether the recyclable waste collector considers the business viable. If the answer is positive, then I believe the Government will go ahead with the promotion of the scheme on a bigger scale.

MISS CHOY SO-YUK (in Cantonese): *Madam President, may I ask the Secretary if she has assessed whether the conduct of the collaboration with the relevant organization on public money is beneficial to the Government's work or overall public interest?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, I believe we should wait for the completion of this pilot scheme before we could conduct a substantive assessment. However, as far as the approach is concerned, I have all along felt that the work of publicizing among 8 000 households how to separate dry/wet wastes — I believe everybody in this Chamber also agrees that this work can begin only after we have prepared the relevant announcement of public interest (API) for residents — should more suitably be carried out by community organizations, political parties, regional workers or organizations or even green groups. This I fully agree. As far as effectiveness is concerned, I believe this is already a rather good achievement as the Government managed to bring together so many residents who are willing to take part in the scheme within just several months.

MR LAU WONG-FAT (in Cantonese): *Madam President, people of Hong Kong are accustomed to waste separation bins in three different colours for different domestic wastes. May I ask the Secretary if it means that the current waste separation approach has failed to meet the practical needs since the Government has now adopted a new approach in waste collection, therefore the authorities have to seek an alternative means?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, the existing approach of using three bins of different colours in separating wastes is the initial step. As to these three wastes, namely aluminium cans, paper and plastic bottles, there is no problem with the recovery of aluminium cans and waste paper, as they are quite valuable. Every resident in Hong Kong knows how to separate these two types of waste. Moreover, some people would even steal them after they were put in the waste separation bins, because they are saleable and valuable. For this reason, these waste separation bins have to be locked up. However, the recovery of plastic bottles is a problem, because plastic bottles are light and they occupy more space. Therefore, some waste collectors will dump them at landfill sites which is indeed not a cost-effective method.

In fact, some of the dry wastes among others are quite valuable, and the objective of the current three-colour separation approach is to sort out the most valuable waste first. Just think about the fact that many of the clothes, shoes, small plastic utensils or even plastic bags we throw away every day are in fact

recyclable. The practice overseas is to crush them into pieces and then use the pulverized material as raw material for other products. Some European countries even require finished products to contain a certain percentage of the recycled material. Therefore, we have taken the first step, and the second step is to increase the recovery quantity. Besides, we have to try other means, too. For that reason, as far as these three kinds of waste are concerned, one of them is already a problem, but as the other two types are more valuable, there should be no problem recycling them at any time. As to other types of waste, we also hope that we can increase the recovery rate.

PRESIDENT (in Cantonese): This Council has already spent more than 16 minutes on this question. This is the last supplementary question.

MR JASPER TSANG (in Cantonese): *Madam President, earlier I realized that the quality of answers given by the Secretary would depend on the quality of the questions asked by Members. When the Secretary answered the supplementary raised by Dr LAW Chi-kwong, she mentioned that the estimated expenditure was about \$6.2 million and the DAB was granted about \$1.5 million. In order to dispel misunderstandings, can the Secretary explain the purpose of this \$1.5 million?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, the \$6.2 million expenditure, which included the \$1.5 million given to the DAB for the implementation of part of the scheme, would be used for the payment of, firstly, additional cost of collecting dry waste of each household in housing estates; secondly, promotional and publicity work, such as the printing and delivery of leaflets; and thirdly, the supply of plastic bags for waste recovery and the manufacturing of plastic bags in green and black. Since the DAB would get certain extra financial sponsorship, therefore the donation would be returned to the Government in future. Therefore, the expenditure would probably be less than \$1.5 million. Furthermore, the money collected from the sale of waste in future would become government revenue.

PRESIDENT (in Cantonese): Last oral question.

Safety of Underground Gas Pipes

6. **MR WONG SING-CHI** (in Cantonese): *Madam President, on the 12th of last month, two manhole covers suddenly flew up at Chung On Street, Tsuen Wan, hitting and injuring some passers-by. The Hong Kong and China Gas Company Limited (Towngas), after investigation by its staff, concluded that the incident was caused by an explosion of the accumulated towngas which had seeped from an underground cast iron gas pipe. In this connection, will the Government inform this Council:*

- (a) *whether the relevant departments have investigated thoroughly the causes of the incident; if so, of the findings;*
- (b) *whether it has assessed if the Towngas should expeditiously replace all underground cast iron gas pipes, so as to safeguard public safety; and*
- (c) *of the measures to ensure that underground fuel pipes will not pose a threat to public safety?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President,

- (a) The Electrical and Mechanical Services Department (EMSD) has conducted an investigation into the incident involving an explosion caused by leakage of towngas from an underground cast iron pipe in Chung On Street, Tsuen Wan, on 12 January this year. Preliminary findings indicated that the incident involved gas leakage from a 200 mm cast iron underground pipe. The pipe was some 1.4 m below the Sha Tsui Road surface in Tsuen Wan. Upon excavation and examination, it was found that there was a small crack in a section of the pipe wall and that the mud below this part of the pipe had been washed away. The crack would most probably have been caused by the loss of mud support underneath on the one hand and, the weight of the earth and the pressure and vibration of running vehicles on the road on the other. The explosion was caused by gas which appears to have leaked from the damaged pipe, accumulated in the two manholes and ignited by an undetermined source.

Concurrently, the Director of Electrical and Mechanical Services has, in accordance with the Gas Safety Ordinance, required the Towngas to conduct an investigation into the incident and submit a report. The Director has just received the report and is examining its findings.

- (b) The cast iron pipe involved in the incident has been widely used for gas distribution in various parts of the world before the 1970s. These pipes meet international safety standards. Generally speaking, the useful life of these cast iron pipes exceeds 50 years. Since the early 1970s, with improved gas pipe materials becoming available, the Towngas has stopped the use of cast iron pipes and switched to pipes of other materials. Since then, the Towngas has also launched a programme to replace cast iron pipes. The replacement takes into account such factors as the age of the pipe and the geological condition of the site, and so on. To date, the Towngas has replaced most of the cast iron pipes. Those still in use only constitute about 1 % of the installed network, about 30 km.

The Company has agreed to replace all the cast iron pipes in the busy districts within one year. Meanwhile, the Towngas implemented a leakage surveillance programme last month in respect of all cast iron pipes in Hong Kong and detected nothing abnormal.

- (c) Apart from providing for the safe importation, manufacture, storage, transport, supply and use of gas, the Gas Safety Ordinance also regulates gas pipes.

As the provider of underground gas pipes in Hong Kong, the Towngas is obliged, under the Gas Safety Ordinance, to safeguard public safety, comply with all relevant legislation and requirements announced by the Government with regard to gas safety, and to have in place procedures with regard to the design, construction, installation, testing, operation, maintenance of all its plant (including gas pipes) and arrangements for dealing with emergency and crisis situations. In this regard, the Towngas had made reference to the procedures adopted by similar gas supply companies in other developed countries and drawn up and implemented the Company's operating procedures, as agreed with the EMSD.

Pursuant to the Gas Safety Ordinance, the Towngas conducts regular leakage surveillance of its underground gas pipes. In this connection, the Towngas undertakes annual inspections of all its gas pipes to check if there is any leak. After the incident in Chung On Street, the Towngas agreed to increase the frequency of leakage surveillance of cast iron gas pipes, pending their entire replacement, from twice a year to once a month.

As the enforcement agency of the Gas Safety Ordinance, the EMSD regulates and monitors the operation of the Towngas, approves the design and construction of gas transmission pipes, monitors the Company's maintenance works, and conducts safety inspections on its gas distribution installations.

Underground gas mains had in the past been damaged by contractors during road excavation works, posing risks to the workers and the public. In view of this, the Government enacted regulations in 1996 to stipulate that all reasonable measures should be taken by contractors or the person in charge of the works to determine the location of gas pipes before excavation works commence so as to avoid damage to gas pipes. Otherwise, the contractors or the persons in charge of the works are liable to prosecution. The EMSD reminds contractors periodically of the statutory requirements and will, as appropriate, initiate legal action against offenders.

MR WONG SING-CHI (in Cantonese): *Madam President, the Secretary mentioned in his main reply that a crack was found on the pipe. Furthermore, he mentioned that the useful life of these pipes could exceed 50 years and the damage to the pipe was not caused by excavation works. Obviously, the reason for the crack in that pipe was unknown and this in addition to the loss of mud has resulted in this accident. However, I believe the useful life of 50 years should also have factored in the impact of the loss of mud and pressure on the pipe. The Secretary has not mentioned in the main reply why the crack appeared in the pipe and why it was damaged. He only said that the Towngas would conduct its own surveillance on the condition of the pipes, but he did not say what role the Government plays in this process. May I ask the Government, before all cast iron pipes are replaced, how could it reassure members of the public and make them feel that they are protected?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I already said in my main reply that these were only preliminary findings and the EMSD received the investigation report several days ago. Experts will consider the report in detail to see whether any follow-up is necessary. I would like to point out that cast iron pipes meet international safety standards. In fact, the United Kingdom, the United States and Japan are still using such cast iron pipes. For example, 38% of the pipes in the United Kingdom are still cast iron pipes. In Hong Kong, only 1% of the pipes are cast iron pipes and the number is comparatively small. I also said earlier that the Towngas has promised to replace all the cast iron pipes in the busy districts within one year. During the interim, the Towngas will step up its surveillance from its previous practice of twice a year to once a month.

Actually, the incidence rate of such accidents in Hong Kong is not very high. I have checked the records, for example, in 2001, one person was slightly injured, but it was not necessarily attributable to cast iron pipes; from 1999 to 2000, no accident occurred; in 1998, only one person felt unwell after inhaling gas. From this we can see that, compared to the international standards, the relevant figures of Hong Kong are by no means high. In this regard, the EMSD will continue to monitor the situation and the Towngas will also step up its surveillance. Furthermore, the Towngas will also replace such cast iron pipes as soon as possible.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, since gas pipelines are buried underground, they must be aligned in a certain way. May I ask the Government whether there is any mechanism to ensure accuracy in the alignment of the Towngas's underground gas pipes? If not, other public utilities companies or contractors who are responsible for excavation works may accidentally damage the gas pipes because they are not sure about the alignment and depth of gas pipes, and thus resulting in accidents.*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, the EMSD does have such records. The Towngas has to report the relevant alignment and the depth of the gas pipes to the EMSD. Furthermore, I also said earlier that the authorities would also use a sophisticated instrument in conducting monthly tests on the road surface along the above-mentioned alignments to check whether there was any leakage. In other words, we do have records.

MR MICHAEL MAK (in Cantonese): *Madam President, I would also like to follow up Mr WONG Sing-chi's supplementary question on how to reassure the public. In part (b) of the main reply, the Secretary said the Towngas had agreed to replace all the cast iron pipes in the busy districts within one year. Is the target of "within one year" set by the Government or is it just a target set unilaterally by the Towngas? Could the Government urge the Towngas to quickly replace the cast iron gas pipes in question in less than one year, so as to provide a genuine reassurance to the public?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): *Madam President, I believe everyone also understands that to replace the cast iron pipes in the busy districts like Mong Kok, Yau Ma Tei, Tsim Sha Tsui and Wan Chai, the biggest problem is, first of all, the roads must be excavated. As this involves traffic arrangements, approval from the Highways Department and the Transport Division of the police must be sought and an assessment on its impact on the traffic of busy road sections must be submitted to the Transport Department. Moreover, the works cannot take place at night because it involves legislation on environmental protection.*

In fact, like Mr Michael MAK, I also hope the Towngas can complete this task as soon as possible. The Towngas also explained that certain procedures were involved and in replacing the gas pipes in busy districts, the relevant traffic conditions should also be taken into consideration. Members should be aware that if the roads are excavated, there would be impact on the traffic. As such, it is reasonable that a year is required for the replacement of all the cast iron pipes in busy districts. Furthermore, I also explained earlier that among overseas countries (such as the United States, Japan and the United Kingdom), 38% of the gas pipes in the United Kingdom are still cast iron pipes, therefore cast iron pipes do not pose any danger on their own.

MR TOMMY CHEUNG (in Cantonese): *Madam President, the Secretary mentioned in part (b) of the main reply that such cast iron pipes constituted only about 1%, that is, about 30 km, of the installed network, and all cast iron pipes in the busy districts would be replaced within one year. May I ask the Secretary what percentage of the 30-km cast iron pipes is in the busy districts? Moreover, has the Government held discussions with the Towngas on the timetable for replacing the cast iron pipes in other districts, or that they would be replaced*

only upon the expiry of their useful life (because the useful life of such pipelines is 50 years), or that in the light of this accident, the pipelines of other non-busy districts would also be replaced? Is there such a timetable?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, like Mr Tommy CHEUNG and Mr Michael MAK, I also hope that all cast iron pipes will be replaced as soon as possible, but I have already talked about one practical consideration earlier, and that is, traffic problems caused by road excavations in busy districts. Of course, everyone can say that as the risk in the busy districts is greater and more vehicles are running on the road surface, the replacement of the cast iron pipes in busy districts should be given priority. I said earlier in my main reply that the Towngas had agreed to replace all the cast iron pipes in the busy districts within one year. Of the 30-km installed network, about one third is in the busy districts, while the rest is in comparatively non-busy districts. We have held discussions with the Towngas, after which it has agreed to replace the cast iron pipes in non-busy districts after the completion of such replacement works in the busy districts. Traffic and other conditions permitting, the Towngas will complete the relevant works within 2004 and it will not wait for 50 years for we will not do so. As compared with other countries, we will adopt safer measures, that is, to try every means possible to change all pipes rather than waiting for 50 years.

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, most water, gas and electricity pipes will crack or break as a result of mud loss and pressure and thus lead to accidents. Will the Government consider constructing some large steel and concrete casings for the installation of pipes by the Company, so that incidents of gas leakage will not occur again in the future?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I believe we are all under pressure. *(Laughter)* This proposal may not necessarily be the best solution. I also said earlier that we are now carrying out regular inspections. The EMSD has a set of very stringent procedures to monitor workers responsible for the installation of pipes. Random inspections will also be conducted to ensure that they do possess certain qualifications and monthly inspections will be made. If we look at the accident rate in Hong Kong by applying the international standards, we will find that the

situation in Hong Kong is actually better than many other advanced regions and our standards are by no means low. If there are areas where we can do better, we will certainly continue to give consideration to and look into those areas.

MR FRED LI (in Cantonese): *Madam President, at present, 1 % of the cast iron pipes have not yet been replaced and those in the busy districts will be replaced in the following year. May I ask the Secretary how much time has lapsed since cast iron pipes were first installed and what was the cost? Moreover, will the cost of installing 30-km of gas pipes be passed onto the gas tariffs?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I do not have the cost of installation at hand. I will consult the Towngas later and reply in writing. (Appendix IV)

PRESIDENT (in Cantonese): We have spent more than 16 minutes on this question. This is the last supplementary question.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, thank you for giving me permission to ask the last supplementary question. Will the Government assist or has it assisted persons affected by the Chung On Street incident to claim compensations? If not, what are the reasons?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I would like to thank Mr TAM Yiu-chung for his question. According to my understanding, four injured persons were sent to the hospital and they did claim compensations. I understand that three claims have been settled and each person was granted an *ex gratia* payment of about several tens of thousands of dollars. Individual shop owners have also requested the Towngas to make compensations and this issue will be followed up by the Towngas and the shop owners on their own.

PRESIDENT (in Cantonese): Oral question time ends here.

WRITTEN ANSWERS TO QUESTIONS**Cases of Obtaining CSSA Payments by Deception**

7. **MR ERIC LI** (in Chinese): *Madam President, it has been reported that a woman was found last month to have withheld information about her possessing assets in Hong Kong and the Mainland, the value of which was over ten million dollars, in order to defraud the Government of Comprehensive Social Security Assistance (CSSA) payments. In this connection, will the Government inform this Council whether:*

- (a) it conducts investigations when vetting and approving CSSA applications to find out if the applicants possess assets in other territories; if it does, of the details; if not, the reasons for that;*
- (b) it conducts regular random checks on the immigration records of CSSA recipients' leaving and returning to Hong Kong, and asks them to give the reasons for their departure from Hong Kong; and*
- (c) it will consider imposing financial penalties on those who have been convicted of obtaining CSSA payments by deception?*

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

- (a) Any person who applies for CSSA is obliged to provide true information about his or her financial situation to the Social Welfare Department (SWD) including the total assets in and outside Hong Kong belonged to the applicant and his or her family. Wilfully giving false information or withholding information in order to obtain assistance by deception is a criminal offence. The applicant may, in addition to being disqualified for CSSA, be liable to prosecution under the Theft Ordinance (Cap. 210). The SWD conducts reviews, random checks and data matching with other government departments and organizations in Hong Kong to cross check the information given by applicants and applicants' continued eligibility for assistance.

- (b) CSSA recipients, like other residents of Hong Kong are free to leave and return to Hong Kong. Assistance is also payable during a recipient's temporary absence from Hong Kong provided that the total number of days of absence from Hong Kong does not exceed the permissible limits¹ in a yearly period. All recipients' absences can be identified through monthly matching exercise with the Immigration Department. Recipients will be requested to give the reason for their departure from Hong Kong, if there are circumstances which warrant explanation such as frequent absences from Hong Kong of a recipient classified as a family carer.
- (c) A recipient who has obtained overpayment by giving false information or withholding information will be asked to repay the SWD the overpayment. Fraud cases are referred to the police for further investigation and possible prosecution. Those convicted of obtaining CSSA payments by deception may be subject to such penalties as imprisonment, community service orders and financial penalties as decided by the Court.

Relaxing Restrictions Imposed on Frontier Closed Area

8. **MR LAU WONG-FAT** (in Chinese): *Madam President, as it has been more than five years since Hong Kong's reunification with the Motherland and the economic and trade relationship between Shenzhen and Hong Kong is becoming increasingly close, will the Government inform this Council whether it will consider relaxing the various restrictions imposed on the Frontier Closed Area (FCA); if so, of the details; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): Madam President, the FCA south of the land boundary was established by the Hong Kong Special Administrative Region to provide a buffer zone to help our security forces to maintain the integrity of the land boundary and combat illegal immigration and other cross-boundary criminal activities. Access to the FCA was controlled by the police through the issue of FCA permits based on the need to prevent

¹ 180 days a year for elderly or disabled recipients
60 days a year for other recipients

excessive presence of people and activities therein. Since its establishment, the FCA has played an important role in maintaining security in the boundary area.

Recently, we note that there have been extensive discussions in the community on the FCA policy. In view of the concerns of the community and boundary security considerations, the Security Bureau is now reviewing the coverage of the FCA. We intend to consult the concerned parties on the outcome of the review in mid-2003.

Regulation of Accountancy Profession

9. **MR CHAN KAM-LAM** (in Chinese): *Madam President, the Hong Kong Society of Accountants (HKSA) may, at its discretion, form Investigation Committees and Disciplinary Committees to deal with complaints about the professional misconduct of professional accountants. It has been reported that the authorities suggested to the HKSA in December last year that, to enhance the credibility of these committees, the number of lay members should be more than half of their respective membership. In response, the HKSA accepted the suggestion and further proposed to set up an Independent Investigation Board to investigate cases involving alleged substandard audit work performed for listed and regulated companies. In this connection, will the Government inform this Council:*

- (a) of the content and progress of the discussions between the authorities and the HKSA;*
- (b) whether it has estimated when the new arrangements can be implemented; and*
- (c) whether it plans to have the self-regulation arrangement for the accountancy profession eventually replaced?*

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

- (a) Accountants have a duty to safeguard the accuracy and integrity of financial reporting. Conscious of the need for an effective, transparent and accountable regulatory regime that is in line with

international developments, I met with representatives of the accounting profession in December 2002 to discuss ways to improve the existing regime set out in the Professional Accountants Ordinance (Cap. 50). In response to the Administration's request for enhancing the independence element in the present regulatory regime, the HKSA submitted detailed proposals to the Administration on 22 January 2003. The proposals are summarized as follows:

- (i) increase the lay members in the HKSA's Council (that is, the governing body);
- (ii) expand the membership of any Investigation Committee instigated by the HKSA's Council from three to five, and alter the composition of the Investigation Committee, with the majority of members (including the chairman) being lay persons;
- (iii) alter the composition of the five-member Disciplinary Committee instigated by the HKSA's Council, with the majority of members (including the chairman) being lay persons; and
- (iv) establish an Independent Investigation Board to deal with alleged accounting, auditing and/or ethics irregularities related to companies listed on the Stock Exchange of Hong Kong.

The HKSA's proposals are a move in the right direction. We intend to take forward the proposals to enhance the independence and transparency of the HKSA's Council and two Committees in the first instance. Implementing such proposals would require amendments to the Professional Accountants Ordinance. The proposal for an Independent Investigation Board warrants more detailed examination, in particular in the light of international developments on the oversight of the auditing profession. We will continue our dialogue with the HKSA in this regard.

- (b) As mentioned in our Corporate Governance Action Plan for 2003 (presented to the Legislative Council Panel on Financial Affairs on

13 January 2003), we aim to finalize the legislative proposals to enhance the regulation of the accounting profession in the third quarter of 2003, in consultation with the HKSA.

- (c) In considering the development of the regulatory regime of the accounting profession, our objective is to ensure that the relevant regulatory regime is effective and transparent, inspires confidence in investors, serves the needs of Hong Kong and is in line with international trends. The nature of such regulatory regime is not a primary concern.

Implementation of the Fixed Penalty (Public Cleanliness Offences) Ordinance

10. **MR YEUNG YIU-CHUNG** (in Chinese): *Madam President, the Fixed Penalty (Public Cleanliness Offences) Ordinance (the Ordinance) commenced operation in June last year. In this regard, will the Government inform this Council of:*

- (a) *the details of the enforcement actions taken by the relevant government departments; and*
- (b) *the districts and kinds of premises with higher littering rates as indicated by the number of fixed penalty notices issued?*

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

- (a) The Ordinance provides for a fixed penalty of \$600 for committing public cleanliness offences including littering, spitting, unauthorized display of bills and posters and fouling of street by dog faeces. Seven departments, namely the Food and Environmental Hygiene Department, the Leisure and Cultural Services Department, the Marine Department, the Hong Kong Police Force, the Housing Department, the Environmental Protection Department and the Agriculture, Fisheries and Conservation Department are authorized under the Ordinance to take enforcement action in areas or venues under their management responsibility.

Following the commencement of the Ordinance on 10 June 2002, the Administration has issued over 11 000 fixed penalty notices, of which about 97% were issued to offenders without the assistance of the police. Some 90% of the offenders paid the penalty within the statutory time limit while less than 0.6% have disputed liability for the offence. Overall, the implementation of the Ordinance has been effective in improving the cleanliness of Hong Kong.

- (b) The majority of fixed penalty notices were issued in densely populated areas and venues with high pedestrian flows. Eastern, Mong Kok and Kwun Tong have recorded the most offences, with some 10% of the total number of notices issued in each of these districts. According to our enforcement experience, places near MTR entrances, bus stops, convenience shops and snack shops are more prone to littering, particularly improper disposal of cigarette butts, soft drink containers and straw wrappings.

Resolving the Problem of Missing of Illegible Government Leases and Grants

11. **MR LAU PING-CHEUNG** (in Chinese): *Madam President, in its Policy Objectives published in October 1999, the Government indicated that it intended to introduce legislation in early 2000 to resolve the problem of missing or illegible government leases and grants. However, the Administration advised this Council at the end of last year that the introduction of the relevant bill would be deferred to 2004-05. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of cases of failure to complete conveyancing transactions and disputes over land boundaries as a result of missing or illegible government leases and grants in the past three years;*
- (b) *of the difficulties encountered in drafting the relevant bill; and*
- (c) *whether interim measures will be taken to facilitate conveyancing transactions prior to commencement of the legislation; if so, of the details; if not, the reasons for that?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese):

Madam President,

- (a) We do not have a record of the number of relevant failure cases. Disputes over conveyancing transactions and land boundaries between individuals are matters of a private nature and they are normally not reported to the Government.
- (b) To facilitate property conveyancing, the proposed legislation aims to provide a mechanism to reconstitute the missing and illegible government leases and related land documents so that the reconstituted leases and related land documents will have the status of the original ones. It is therefore necessary to ensure that the reconstituted terms and conditions of the land leases will be as close to the original as possible. However, the original and reconstituted terms and conditions may not be completely the same. In the event, the proposed legislation needs to provide avenues for those affected to raise objections and appeals or to seek legal redress in order to help safeguard their property interests.

We are in the process of identifying a workable reconstitution mechanism and we intend to consult the major stakeholders on the proposals before finalizing them for introduction into the Legislative Council. The proposed legislation is highly technical and complex, and it will take time to complete the necessary consultation and law drafting procedures. We envisage that the relevant bill may only be ready in 2004-05.

- (c) It should be noted that conveyancing is still possible even if the relevant land lease is missing or illegible. If there is clear and cogent secondary evidence of the contents of a missing or illegible government lease and of its due execution, the relevant legal requirement for conveyancing is fulfilled and property transaction can take place. Other than this, the Lands Department also deals with missing and illegible government leases on a case by case basis by way of surrender and regrant of land. Under this mechanism, the land owner surrenders all his interests in the lot concerned and the Government regrants the same lot to him upon mutually agreed terms and conditions.

Quarters for Officers of Disciplined Services

12. **MR LEUNG FU-WAH** (in Chinese): *Madam President, regarding the supply and demand of quarters for the officers of disciplined services (other than the post-tied quarters and operational quarters designated by departments for their staff), will the Government inform this Council:*

- (a) *of a breakdown by the types of disciplined services, the grades and locations of the quarters, the numbers of quarters supplied, demanded and allocated as well as the average quarters vacancy rate in the past three years, and the anticipated supply and demand in the next three years;*
- (b) *of the current average waiting time for various grades of staff in the disciplined services before they are allocated quarters;*
- (c) *whether there is specific stipulation in the existing policies that the Administration is required to allocate quarters for the staff in the disciplined services within a certain period of waiting time; if so, of the details;*
- (d) *whether it has assessed the need for measures to shorten the waiting times; if the assessment outcome is in the affirmative, of the target waiting times; if it is in the negative, the reasons for that;*
- (e) *whether it has assessed the reasons for a relatively high vacancy rate for some of the quarters, and of the solutions; and*
- (f) *whether it will allocated flats under the Home Ownership Scheme that are now vacant or expected to be completed soon for use as quarters for the disciplined services; if so, of the specific arrangements and implementation timetable; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): Madam President, before replying to the individual questions, we would like to point out that, according to existing policy, disciplined services' "departmental quarters" are allocated to eligible applicants subject to the availability of resources.

Eligible staff of the disciplined services can apply for different quarters in order of preference. The departments will allocate the quarters in accordance with an established points system. The waiting time of individual applicants will vary, depending on the departments in which they are serving, their rank, seniority, number of children and the particular flats of their preference.

(a) (i) Demand and supply of quarters:

The demand and supply of departmental quarters of the various disciplined services are as follows:

	<i>As at January 2000</i>		<i>As at January 2003</i>	
	<i>Supply of</i>	<i>Number of</i>	<i>Supply of</i>	<i>Number of</i>
	<i>quarters</i>	<i>eligible</i>	<i>quarters</i>	<i>eligible</i>
		<i>applicants*</i>		<i>applicants*</i>
Hong Kong Police Force	12 237	13 639	12 259	13 525
Fire Services Department	3 928	4 698	4 014	4 881
Correctional Services Department	2 466	2 958	2 340	3 486
Immigration Department	1 243	1 755	1 366	1 742
Customs and Excise Department	1 493	1 843	1 564	2 055
Government Flying Service	88	92	89	96
Total	21 455	24 985	21 632	25 785

* The number of eligible applicants includes those who are already accommodated in quarters and can apply for transfer to other quarters. As regards the grades and locations of the quarters, please refer to Annexes 1 to 6.

(ii) Number of staff who are allocated with quarters:

Over the past three years, a total of 3 592 staff members of the disciplined services have been allocated with quarters for the first time. Details are as follows:

Hong Kong Police Force	2 015
Fire Services Department	608
Correctional Services Department	434
Immigration Department	243
Customs and Excise Department	287
Government Flying Service	5
Total	3 592

(iii) Average quarters vacancy rate:

The average quarters vacancy rates of the various disciplined services over the past three years are as follows:

Hong Kong Police Force	3.20%
Fire Services Department	0.14%
Correctional Services Department	6.00%
Immigration Department	2.54%
Customs and Excise Department	0.53%
Government Flying Service	3.00%

(iv) The anticipated supply of quarters in the next three years:

Bearing in mind the question of resources, it is envisaged that there will not be any additional units in the next three years.

(v) The anticipated demand for quarters in the next three years:

The demand for quarters depends on the number of new recruits, retirees and outgoing staff, as well as the marital status of serving officers. Assuming that the change in staff numbers and the mix of married and unmarried members of staff in the next three years are similar to those in the past, it is envisaged that there will be on average an annual increase of around 500 eligible applicants in the next three years. Details are as follows:

	<i>Inspectorate</i>	<i>Rank and File</i>
Hong Kong Police Force	6	0
Fire Services Department	6	55
Correctional Services Department	10	86
Immigration Department	51	199
Customs and Excise Department	12	57
Government Flying Service	8	Nil
Total	93	397

- (b) For the current average waiting time for various grades of staff in the disciplined services, please refer to the following table:

	<i>Inspectorate/ Officer</i>	<i>Rank and File</i>
Hong Kong Police Force	2 years	3.7 years
Fire Services Department	1.6 years	5 years
Correctional Services Department	4.3 years	4.7 years
Immigration Department	1.4 years	6.6 years
Customs and Excise Department	4.1 years	5.7 years
Government Flying Service	0.3 year	Nil

- (c) As explained at the beginning, quarters are provided subject to the availability of resources. Hence, there is no stipulation on the longest waiting time for quarters.
- (d) As stated above, quarters are provided subject to the availability of resources. Thus, there is no stipulation on the longest waiting times, nor is there any particular measures to shorten the waiting times. However, the Government will regularly review its policies on departmental quarters, with a view to assisting staff members in meeting their housing needs in the most appropriate ways.
- (e) Apart from those awaiting allocation and maintenance, some of the quarters have higher vacancy rates because of their remote location, below-standard unit size, older age and inadequate complementary facilities.

To enhance the quality of the vacant quarters, the Architectural Services Department carries out maintenance and renovation works on them regularly, and amalgamates adjoining units of smaller size where conditions permit, in order to allocate them to eligible applicants.

- (f) The Government is looking into the proposal of using some flats under the Home Ownership Scheme for reprovisioning old departmental quarters. No decision has yet been made; there are no specific arrangements or implementation timetable.

Department: Hong Kong Police Force

	<i>Situation Three Years Ago</i>					<i>Situation At Present</i>				
	<i>Supply of Quarters</i>				<i>No. of Eligible Applicants</i>	<i>Supply of Quarters</i>				<i>No. of Eligible Applicants</i>
	<i>Hong Kong</i>	<i>Kowloon</i>	<i>New Territories</i>	<i>Sub-total</i>		<i>Hong Kong</i>	<i>Kowloon</i>	<i>New Territories</i>	<i>Sub-total</i>	
AA	0	0	0	0		0	0	0	0	
A	0	0	0	0		0	0	0	0	
B	48	32	8	88		53	26	12	91	
C	23	42	44	109	Inspector = 591	23	25	26	74	Inspector = 691
CD	21	11	34	66		24	33	69	126	
D	112	111	31	254		108	72	24	204	
E	36	35	2	73	Rank and File = 13 048	40	41	2	83	Rank and File = 12 834
F	90	151	118	359		31	891	113	1 035	
G	720	658	1 036	2 414		802	3 205	1 044	5 051	
H	582	1 118	1 376	3 076		559	1 059	1 262	2 880	
I	284	358	364	1 006		230	84	369	683	
IJ	1 204	2 226	1 130	4 560		566	374	1 041	1 981	
J	13	127	48	188		11	0	32	43	
JKL	0	0	0	0		0	0	2	2	
K	0	38	6	44		0	0	6	6	
Total	3 133	4 907	4 197	12 237	13 639	2 447	5 810	4 002	12 259	13 525

The supply of quarters increased by 22, and the number of eligible applicants reduced by about 114 over the past three years.

Department: Fire Services Department

	Situatoin Three Years Ago					Situation At Present						
	Supply of Quarters			No. of Eligible		Supply of Quarters			No. of Eligible			
	Hong Kong	Kowloon	New	Sub-total		Applicants	Hong Kong	Kowloon	New		Sub-total	Applicants
	Territories					Territories						
AA	-	-	-	-		-	-	-	-			
A	-	-	-	-		-	-	-	-			
B	5	5	1	11		5	4	3	12			
C	5	2	2	9	Inspector = 304	5	1	5	11	Inspector = 322		
CD	49	3	9	61		49	4	18	71			
D	12	41	11	64		13	36	12	61			
E	15	18	11	44	Rank and File = 4 394	18	18	17	53	Rank and File = 4 559		
F	28	21	61	110		25	59	78	162			
G	237	346	240	823		236	453	259	948			
H	250	719	389	1 358		247	741	346	1 334			
I	-	-	444	444		-	-	467	467			
IJ	24	72	713	809		24	-	687	713			
J	110	84	1	195		-	-	-	-			
JKL	-	-	-	-		-	156	26	182			
K	-	-	-	-		-	-	-	-			
Total	735	1 311	1 882	3 928	4 698	622	1 472	1 920	4 014	4 881		

The supply of quarters increased by 86, and the number of eligible applicants increased by about 183 over the past three years

Department: Correctional Services Department

	Situation Three Years Ago					Situation At Present				
	Supply of Quarters			No. of Eligible		Supply of Quarters			No. of Eligible	
	Hong Kong	Kowloon	New Territories	Sub-total		Applicants	Hong Kong	Kowloon	New Territories	
AA	-	-	-	-	Inspector = 310	-	-	-	-	Inspector = 337
A	-	-	-	-		-	-	-	-	
B	13	3	-	16		11	2	2	15	
C	8	7	2	17	Rank and File = 2 648	8	7	2	17	Rank and File = 3 149
CD	14	7	9	30		14	3	21	38	
D	35	27	11	73		41	14	23	78	
E	68	36	20	124	Rank and File = 2 648	63	21	26	110	Rank and File = 3 149
F	125	1	21	147		117	20	33	170	
G	271	206	255	732		275	234	218	727	
H	497	137	364	998		481	176	305	962	
I	21	45	39	105		12	5	38	55	
IJ	51	41	52	144		11	-	76	87	
J	41	3	33	77		42	-	27	69	
JKL	-	-	-	-		6	-	4	10	
K	2	1	-	3		2	-	-	2	
Total	1 146	514	806	2 466	2 958	1 083	482	775	2 340	3 486

The supply of quarters reduced by 126 over the past three years because the Government Property Agency approved the temporary locking-up of quarters in Lai Chi Kok Reception Centre and some quarters in Hei Ling Chau for other future use.

On the other hand, the number of eligible applicants increased by about 528 over the past three years.

Annex 3

Department: Immigration Department

	Situation Three Years Ago					Situation At Present				
	Supply of Quarters			No. of Eligible		Supply of Quarters			No. of Eligible	
	Hong Kong	Kowloon	New Territories	Sub-total		Applicants	Hong Kong	Kowloon	New Territories	
AA	-	-	-	-		-	-	-	-	
A	-	-	1	1		-	-	-	-	
B	5	-	5	10		5	-	6	11	
C	41	1	9	51	Officer = 625	41	1	4	46	Officer = 436
CD	10	2	58	70		10	1	68	79	
D	22	12	37	71		22	18	114	154	
E	74	11	14	99	Rank and File = 1 130	74	20	12	106	Rank and File = 1 306
F	27	35	53	115		17	55	50	122	
G	36	104	244	384		36	124	250	410	
H	-	44	240	284		-	40	231	271	
I	-	-	142	142		-	-	151	151	
IJ	-	10	6	16		-	10	6	16	
J	-	-	-	-		-	-	-	-	
JKL	-	-	-	-		-	-	-	-	
K	-	-	-	-		-	-	-	-	
Total	215	219	809	1 243	1 755	205	269	892	1 366	1 742

The supply of quarters increased by 123, and the number of eligible applicants reduced by about 13 over the past three years.

Department: Customs and Excise Department

	Situation Three Years Ago					Situation At Present				
	Supply of Quarters			No. of Eligible Applicants		Supply of Quarters			No. of Eligible Applicants	
	Hong Kong	Kowloon	New Territories			Sub-total	Hong Kong	Kowloon		
AA	-	-	-	-		-	-	-	-	
A	-	-	-	-		1	-	-	1	
B	11	7	6	24	Officer = 279	18	9	7	34	Officer = 315
C	8	6	23	37		6	3	26	35	
CD	5	3	13	21		2	6	24	32	
D	3	20	4	27	Rank and File = 1 564	0	8	34	42	Rank and File = 1 740
E	29	15	0	44		29	42	4	75	
F	10	32	58	100		40	77	66	183	
G	68	71	175	314		36	106	180	322	
H	1	110	302	413		5	151	299	455	
I	0	0	152	152		-	0	145	145	
IJ	22	100	8	130		-	100	8	108	
J	99	119	1	219		-	0	1	1	
JKL	-	-	12	12		-	119	12	131	
K	-	-	-	-		-	-	-	-	
Total	256	483	754	1 493	1 843	137	621	806	1 564	2 055

The supply of quarters increased by 71, and the number of eligible applicants increased by about 212 over the past three years.

Department: Government Flying Service

	<i>Situation Three Years Ago</i>					<i>Situation At Present</i>				
	<i>Supply of Quarters</i>				<i>No. of Eligible Applicants</i>	<i>Supply of Quarters</i>				<i>No. of Eligible Applicants</i>
	<i>Hong Kong</i>	<i>Kowloon</i>	<i>New Territories</i>	<i>Sub-total</i>		<i>Hong Kong</i>	<i>Kowloon</i>	<i>New Territories</i>	<i>Sub-total</i>	
AA	-	-	-	-		-	-	-	-	
A	-	-	-	-		-	-	-	-	
B	1	13	1	15		1	11	2	14	
C	-	6	-	6	Officer = 92	-	5	-	5	Officer = 96
CD	-	3	1	4		-	5	3	8	
D	3	6	2	11		-	5	2	7	
E	12	0	4	16	Rank and File = 0	-	-	19	19	Rank and File = 0
F	0	0	15	15		-	-	28	28	
G	12	0	9	21		1	7	-	8	
H	-	-	-	-		-	-	-	-	
I	-	-	-	-		-	-	-	-	
IJ	-	-	-	-		-	-	-	-	
J	-	-	-	-		-	-	-	-	
JKL	-	-	-	-		-	-	-	-	
K	-	-	-	-		-	-	-	-	
Total	28	28	32	88	92	2	33	54	89	96

The supply of quarters increased by 1, and the number of eligible applicants increased by about 4 over the past three years.

Deferring Railway Development Projects

13. **MR AMBROSE LAU** (in Chinese): *Madam President, as the employment population in Sai Ying Pun and the Central District in 2008 is anticipated to be lower than the previous forecast, and the Western District Development (WDD) has not been confirmed, the authorities decided last month to defer the construction of the North Hong Kong Island Line (NIL) of the Mass Transit Railway (MTR), shelve the West Hong Kong Island Line (WIL) Phase 2, and request the MTR Corporation Limited to examine modifications to its preliminary proposal on the South Hong Kong Island Line. In this regard, will the Government inform this Council:*

- (a) of the ways to avoid further discrepancies in employment population forecasts; and*
- (b) whether it has assessed the impact of the relevant projects being deferred and shelved on the residents in the Western and Southern Districts?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President, the Island Line Extensions (ILE), as recommended in the Railway Development Strategy 2000 (RDS-2000), comprises the NIL and the WIL. The NIL is planned to relieve congestion on the existing Island Line (ISL) and the Tsuen Wan Line (TWL). The WIL is intended to support the proposed WDD and urban renewal in the Western District and to relieve road traffic congestion in the area.

The Second Railway Development Study, completed in May 2000 on which the RDS-2000 was based, adopted the 1996 by-census projection and other socio-economic data available in August 1999. But there have been changes in various land use parameters and the property market leading to a reduction in residential and employment population. These changes include:

- The scale of the proposed Western District reclamation will be reduced by about 75% and its implementation may be deferred.

- The estimated number of residential flats arising from private redevelopment will likely be reduced by 5% because of the changes in the property market.
- The reduction in the scale of the proposed Central and Wan Chai reclamation will reduce the associated total floor area of office premises by 30%.
- About 3% of the proposed office development/redevelopment will likely be affected by the slowing down of the property market.

Population and employment forecasts are inevitably subject to changes so as to reflect the latest development plans, housing policies, population characteristics and economic trends. Not all of these are under the Government's control but we will continue to regularly review and update the development assumptions and planning parameters.

We have decided to defer the completion of the NIL because the anticipated congestion in the railway network would not happen at the time as predicted in the RDS-2000. Our latest assessment is that the Causeway Bay section of the existing ISL and the Nathan Road section of the TWL would still have spare capacity up till 2016. Hence, deferral of the NIL to beyond 2016 will not bring pressure on the existing rail network or road traffic. With a reduction in forecast employment and the commissioning of the Sha Tin to Central Link, both the ISL and TWL will still have spare capacity in 2016, even with the additional loading from the opening of the WIL Phase 1 from Sheung Wan Station to Belcher and the South Hong Kong Island Line. There is therefore no need to implement the NIL within the window of 2008 to 2012 as set out in the RDS-2000.

The eastern section of the WIL between Sheung Wan Station and Belcher (that is, Phase 1) does not hinge on the Western District reclamation and hence should be taken forward independent of the reclamation. However, the western section between Belcher and Kennedy Town (that is, Phase 2) is affected by the reclamation and its planning should be held in abeyance until the way forward for the reclamation is confirmed.

The WIL Phase 1 would extend the ISL westward by about 2 km and markedly improve the transport links to the Western District. The proposed

Kennedy Town Station would be less than 1 km away from the proposed Belcher Station. Therefore, the existing population living in the catchment of the proposed Kennedy Town Station should still be able to make use of the WIL Phase 1 before the commissioning of the WIL Phase 2.

Default Payment of Wages to Employees

14. **MR LEE CHEUK-YAN** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *of the number of outstanding wage claims received by the Labour Department in the past three years, together with a breakdown by trade;*
- (b) *of the number of employers prosecuted for defaulting on payment of wages to their employees in the past three years and among them, the number of those who were convicted and its breakdown by the penalties imposed by the Court; and*
- (c) *whether it has reviewed the enforcement of the relevant legislation and its adequacy in deterring employers from defaulting on payment of wages; if so, of the outcome of the review and the areas where improvement is needed?*

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

- (a) The number of cases arising from non-payment of wages handled by the Labour Department in the past three years is as follows:

	2000	2001	2002
Number of labour disputes (Labour disputes are cases involving more than 20 employees)	12	7	8
Number of claims (Claims are cases involving 20 or less employees)	7 501	8 381	9 545

The following is a breakdown of the 27 labour disputes by industry:

<i>Industry</i>	<i>Number of cases</i>
Manufacturing	2
Construction	9
Wholesale, retail and import/export trades, restaurants and hotels	7
Transport, storage and communications	4
Financing, insurance, real estate and business services	2
Community, social and personal services	3

The Labour Department does not have the breakdown of claims by industry.

- (b) In the past three years, the number of employers prosecuted by the Labour Department for defaulting on payment of wages under the Employment Ordinance is as follows:

	<i>2000</i>	<i>2001</i>	<i>2002</i>
No. of employers prosecuted	29	39	78
No. of employers convicted	19	34	58
No. of convicted employers by the level of fines imposed by the Court			
\$4,999 and below	6	18	24
\$5,000 - \$9,999	7	9	23
\$10,000 - \$19,999	4	5	9
\$20,000 and above	2	2	2

In the past three years, the Court did not impose any custodial sentence on employers for late payment or non-payment of wages under the Employment Ordinance.

- (c) The Employment Ordinance stipulates that the employer should pay wages within seven days after the end of the wage period. An employer is liable to prosecution for late payment and the maximum penalty is a fine of \$200,000 and imprisonment for one year. At the same time, an employer is required to pay interest on the outstanding amount. As the current provisions in the Employment Ordinance already provide adequate protection for employees, the Government does not consider it necessary to amend the law.

The Government is very concerned about the situation of non-payment of wages to employees. To step up enforcement action against wage offences, the Labour Department has recently set up a new Employment Claims Investigation Unit to expedite in-depth investigation with a view to taking prompt prosecution action against employers. The Labour Department has also been paying frequent inspection visits to workplaces such as construction sites and catering establishments to detect wage offences.

At the same time, the Labour Department has launched a series of publicity programmes to remind employers of their wage payment obligations and urge employees to make early wage claims and come forward as prosecution witnesses.

We believe that these measures will help to deter employers from defaulting on payment of wages.

Household Appliances Pre-installed in HOS Flats

15. **MR HENRY WU** (in Chinese): *Madam President, some newly completed Home Ownership Scheme (HOS) (including Private Sector Participation Scheme) flats are pre-installed with household appliances, such as electric water heaters and air-conditioners, before they are put up for sale. In this connection, will the Government inform this Council of:*

- (a) *the normal commencement date of the maintenance period for such electrical appliances;*
- (b) *the number of reports of defective appliances pre-installed in the HOS flats, made by the flat owners when they took possession of their flats to the Housing Department (HD) or the developers concerned, the number of items involved for each type of electrical appliances, the expenditure on repairing or replacing these defective appliances and the party who paid for it, in each of the past five years;*
- (c) *the follow-up measures that the HD or the developers concerned will take if the maintenance period of such appliances has already expired when the owners take possession of the flats; and*
- (d) *the current number of completed HOS flats which have not been sold, together with a breakdown by the types of pre-installed household appliances; whether it will, when leasing or selling such flats in the future, consider replacing such appliances or extending their maintenance period before handing them over to the tenants/owners; if it will, of the estimated cost?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese):
Madam President,

- (a) The maintenance period for domestic appliances (including air-conditioners and gas water heaters) provided by suppliers usually commences from the date of substantial completion of the housing development. To enhance protection for purchasers of HOS flats, since September 2002, the defects liability period for new flats lasts one year commencing from the date of assignment of individual flats. The above warranty covers all provisions in the flat including domestic appliances.
- (b) For HOS flats sold before September 2002, the flats and the appliances provided therein were generally still within the defects liability period provided by contractors and appliance suppliers when owners took over the flats. Under normal arrangements,

defects reported by owners were referred to the contractors, who would undertake any necessary repairs and bear the expenses involved. The HD did not collate such information in the past and hence does not have the requisite statistics.

From September 2002 onwards, new HOS flats are covered by one-year defects liability period commencing from the date of assignment of individual flats. Our records show that of the 1 447 HOS flats sold since September 2002, the HD has replaced one air-conditioner and carried out repairs for 45 air-conditioners. The expenditure involved is \$34,700.

- (c) The HD will undertake the necessary repair or replacement at its own expenses for defects in the appliances identified by owners when taking over their flats even if the defects liability period provided by suppliers has expired.
- (d) At present, there are 16 500 completed but unsold HOS flats (including flats under the Private Sector Participation Scheme). Of these, about 11 500 flats are equipped with both air-conditioners and water heaters, 3 000 flats with water heaters only, and 2 000 flats without any of these appliances. All the air-conditioners and water heaters are brand new installations. There is no need to replace them unless they do not function properly when the flats are sold. The maintenance arrangements for pre-installed domestic appliances will be considered together with the disposal of surplus HOS flats. Nonetheless, the Housing Authority will continue to provide one-year defects liability period covering provisions and pre-installed appliances in the flat from the date of assignment as mentioned in part (a) above for the small number of remaining HOS flats to be sold to Green Form applicants. As no decision has yet been made on the number of such flats, we cannot estimate the maintenance costs involved.

Provision of Medical and Elderly Services to Frail Elderly

16. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, regarding the provision of medical and elderly services to the frail elderly, will the Government inform this Council whether it has plans to:*

- (a) *develop a care system based on the case management model so that the frail elderly can receive one-stop and continuous medical and elderly services,*
- (b) *set up a central database on the medical and elderly services that have been used by each frail elderly, saving the need to conduct case review by the service institutions concerned, and*
- (c) *enhance the training of front-line staff to promote their understanding about other professions and strengthen the co-ordination of various professional services,*

thereby improving the long-term care (LTC) services continuously provided to the frail elderly; if it has such plans, of the details; if not, the reasons for that?

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

Madam President, it is the Government's aim to develop a quality and sustainable LTC system, to provide a range of medical, nursing and personal care and supporting services to frail elders who require assistance in the provision of such services.

- (a) We have taken active steps to provide tailor-made services to frail elders based on individual care needs in a holistic manner. These include the use of an internationally recognized tool to assess the care needs of elders applying for subsidized LTC services since November 2000. The tool takes into account the impairment level, carer and psychosocial support, and environmental and health factors of elders in determining their care needs. It has helped to make more precise matching of services to care needs in both the community and residential settings. The assessment results also provide the basis for individual care planning for elders receiving the services. In parallel, we have introduced the concept of Individual Care Plan (ICP) into our community and residential services. Under the ICP concept, operators are required to develop and document holistic and individualized care plans using a multi-disciplinary approach and within a defined period upon users' admission to services. The operators are also required to conduct review at regular intervals and at least once annually to adapt the ICPs in response to service users' changing care needs.

To facilitate the provision of a continuum of services in one care service/facility to meet the varied care needs of elders as their health conditions change, we will continue to build on established strategies to facilitate service integration, cross sector collaboration and service accessibility. Since April 2001, we have introduced a package of enhanced home and community care services providing home and centre based services to suit the varied needs of frail elders. Under a recent major exercise to re-engineer elderly community services, all existing Multi-service Centers for the Elderly and over 100 Social Centres for the Elderly will be upgraded into District Elderly Community Centres and Neighbourhood Elderly Centres respectively within 2003-04, providing holistic care and support to elders living in the community. At the same time, we will upgrade 138 existing Home Help Teams into Integrated Home Care Services Teams to provide a continuum of care to enable frail elders to age at home. We will also provide additional resources to provide in situ expansion in Day Care Centres for the Elderly to meet the care needs of frail elders in an integrated manner, including those with dementia. In parallel, we will continue to pursue the concept of continuum of care in government supplied residential care home premises put out for open tender. For example, for the three contract residential care homes which we invited tenders in July 2002 providing a total of over 280 subsidized places, about half of these places are designated for elders of nursing home frailty.

- (b) We are aiming to establish a single entry point for all subsidized community and residential care services for elders. The concept is to no longer require elders to queue up for different services. Instead, there will be a central waiting list for all subsidized LTC services, and services for elders will be matched in accordance with their care needs as assessed by the standardized tool. The Social Welfare Department (SWD) is in the process of upgrading its computer system to facilitate implementation of the central waiting list. We aim to put the new system in place in the latter half of 2003.

In parallel, the SWD is at an early stage of implementing Phase II of its Information Systems Strategy, which includes a Client

Information System (CIS). The CIS is a case management system, which contains database on the welfare services used by all service users (including elders), their background and their needs. The CIS will be designed to comply with the interoperability framework of the Information Technology Services Department. This will facilitate future information exchange between the databases of the SWD, Hospital Authority (HA) and other non-governmental organizations.

- (c) We place strong emphasis on manpower training and upgrading of the care capability of elderly service units to take care of frail elders. We are doing so by strengthening the multi-disciplinary approach in service delivery, and through equipping the professional and non-professional staff with the requisite skills and knowledge through training. We have taken steps to improve the training programmes with the dual aim of increasing staff competency and enhancing cross sector co-operation. To quote a few examples, from 2002-03 to 2005-06, we will provide a total of 1 760 multi-skilled training places for care workers, and a total of 760 and 680 training places on care for elders with dementia respectively for care workers/home helpers and professional staff including social workers and allied health staff.

At the same time, the Department of Health (DH) is working closely with the SWD to enhance training for front-line staff and to promote multi-disciplinary sharing of experience and inter-sectoral collaboration in health promotion for elders. For example, the DH has recently developed a mechanism for sharing of information with the SWD and its Elderly Health Services have strengthened their outreach skills training programmes for formal carers working in residential care homes to better meet the specific needs of different care homes. The Community Geriatric Assessment Teams and Psychogeriatric Teams under the HA also provide training on practical skills for carers taking care of frail elders at residential care homes. The DH, with the support of the HA and the SWD, has recently conducted a review on training for formal and informal carers with the aim of maximizing the use of training resources and efforts.

Guesthouses and Service Apartments Converted from Office Buildings

17. **MR ABRAHAM SHEK** (in Chinese): *Madam President, regarding guesthouses and service apartments converted from office buildings, will the Government inform this Council whether:*

- (a) *these two types of converted premises are subject to the same extent of regulation as hotels under the Buildings Ordinance (Cap. 123), the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) and the Fire Services Ordinance (Cap. 95); if not, of the reasons for that and the relevant details; and*
- (b) *it has assessed the impact of the conversion into guesthouses and service apartments from office buildings on the hotel industry and the private residential rental market; if so, of the assessment results; if not, the reasons for that?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese):
Madam President,

- (a) The Hotel and Guesthouse Accommodation Ordinance (Cap. 349) does not provide individual definitions of "hotel", "guesthouse" or "service apartment". According to this Ordinance, the term "hotel and guesthouse" is taken to mean "any premises whose occupier, proprietor or tenant holds out that he will provide sleeping accommodation for any person presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and is in a fit state to be received". Operators of these premises have to apply for and obtain hotel and guesthouse licences, and come under the control of the licensing authority, no matter whether these premises are located in office buildings or not. However, premises in which all accommodation is provided on the basis of a minimum period of 28 continuous days for each letting are excluded from the application of the Ordinance.

According to section 8 of the Hotel and Guesthouse Accommodation Ordinance, the licensing authority may refuse to issue a licence to a "hotel" or "guesthouse" concerned on specific grounds. These

grounds include the premises being not suitable for use as a "hotel" or "guesthouse" for reasons of the protection of life and property under the Fire Services Ordinance (Cap. 95), and the premises not complying with any requirement relating to design, structure, fire prevention, health, sanitation and safety set out in the Buildings Ordinance (Cap. 123). Furthermore, under section 9 of the Hotel and Guesthouse Accommodation Ordinance, upon application for renewal of a licence, the applicant has to submit an "authorized person's certificate" to certify that the premises have been maintained by the licence holder in a proper condition with regard to building and fire safety.

As regards premises providing accommodation that do not fall under the definition of "hotel and guesthouse", they are subject to control under relevant legislation, depending on the type of premises. Generally speaking, in terms of building and fire safety, all premises have to comply with the construction and design standards prescribed by the Buildings Ordinance, including requirements regarding fire safety installations. For example, they have to comply with the appropriate fire service installations prescribed in accordance with the "Code of Practice for Minimum Fire Service Installations and Equipment" by the Director of Fire Services, having regard to the intended use of the buildings.

- (b) We have not conducted any specific assessment of the impact of the conversion of office buildings to "guesthouses" and "service apartments" on the hotel industry and the private residential rental market. Different types of accommodation are geared towards different needs. We consider that it is best to leave the market to determine the exact levels of provision of the different types of accommodation.

Statistics on Mainlanders Settling in Hong Kong

18. **MR JAMES TO** (in Chinese): *Madam President, regarding statistics on mainland people settling in Hong Kong, will the Government inform this Council:*

- (a) *of the number of mainland people who came to Hong Kong for settlement under the Certificate of Entitlement (CoE) Scheme during the period from 1 July 1997 to the end of December 2002 and, among them, the respective numbers of those who were "aged under 20" and "aged 20 or above" on arrival;*
- (b) *of the number of people who had been issued with the CoE but were still residing in the Mainland at the end of December last year;*
- (c) *of the number of CoE applications which were being processed by the Administration at the end of December last year;*
- (d) *of the number of people entering Hong Kong from the Mainland for reunion with spouses on One-way Exit Permits (OWPs) last year, together with a breakdown by the following:*
 - (i) *the OWPs issued under the "sub-quota for long-separated spouses" or other sub-quotas;*
 - (ii) *the OWPs issued by the Guangdong Authorities or other authorities; and*
 - (iii) *the number of years of marriage with spouses in Hong Kong, that is, "less than five years" or "five to less than 10 years", which they furnished on arrival; and*
- (e) *whether it knows the daily average number of OWPs issued by the mainland public security departments last year and, among them, the respective numbers of those which were issued under the sub-quotas specified for "children born in the Mainland of Hong Kong permanent residents" and for "long-separated spouses"?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) From 1 July 1997 to the end of December 2002, a total of 132 925 holders of CoE came to settle in Hong Kong. Among them, 99 277 were aged "under 20" and 33 648 were aged "20 or above".

- (b) As at end December 2002, the number of people who had been issued with CoE but had yet to come to Hong Kong for settlement was 4 683.
- (c) As at end December 2002, the number of CoE applications being processed by the Immigration Department was 5 176.
- (d)
 - (i) According to information furnished by holders of OWPs on their arrival in Hong Kong, the number of entrants coming for reunion with their spouses was 20 266 in 2002. Among them, 2 846 claimed that they have been separated from their spouses in Hong Kong for 10 years or more and 17 420 claimed to have been separated from their spouses for less than 10 years.
 - (ii) We do not have information on the number of OWPs issued by the different mainland provincial authorities. According to information furnished by holders of OWPs who entered Hong Kong for settlement in 2002, 10 364 of those who came for reunion with their spouses in Hong Kong stated that their place of origin was Guangdong Province whereas 9 902 stated that their place of origin was other provinces.
 - (iii) According to information furnished by holders of OWPs who entered Hong Kong for settlement in 2002, the numbers of entrants who had been married with their spouses in Hong Kong for a period of "less than five years" and those who had been married for a period of "five years to less than 10 years" were 230 and 15 584 respectively.
- (e) The above figures are compiled strictly on the basis of information provided by OWP entrants upon their arrival in Hong Kong. We do not have information on the daily average number of OWPs issued by the relevant mainland authorities. Nor do we have information on the breakdown of OWPs issued under the sub-quotas specified for "children born in the Mainland of Hong Kong permanent residents" and for "long-separated spouses".

Traffic Accidents Involving Vehicles Carrying out Maintenance and Cleaning Work on Highways

19. **MS MIRIAM LAU** (in Chinese): *Madam President, regarding traffic accidents involving vehicles carrying out maintenance and cleaning work on highways, will the Government inform this Council:*

- (a) *of the number of such accidents and the resultant casualties in each of the past three years, together with a breakdown by the occurrence of such accidents in the day time and night time;*
- (b) *whether it will enhance monitoring of the contractors concerned to ensure strict compliance with the road safety code; if so, of the details; if not, the reasons for that; and*
- (c) *whether it will review the adequacy of the safety measures in place for road maintenance work, and formulate new measures in this respect in the light of the various causes of accidents, such as drivers of other vehicles driving at high speed; if so, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President, the number of traffic accidents involving road works vehicles and the number of casualties involved in those accidents in 2000 to 2002 are set out at Annex.

Traffic safety is accorded top priority in road works operations. The Highways Department (HyD) has published a "Code of Practice for the Lighting, Signing and Guarding of Road Works" (the Code) under the Road Traffic Ordinance to set out in detail the temporary traffic management measures to be adopted for road works. All government contractors are required to comply with the Code and stringent measures are in place to ensure compliance. Failure to observe the provisions of the Code may be taken into account in any legal proceedings when deciding if a contractor was at fault or not and may also be relied upon as tending to establish or negate liability in question.

Upon receipt of a works order issued by the HyD, the contractor is required to submit details of the proposed temporary traffic management measures to the Traffic Police for approval. For works with significant traffic impact, the contractor is required to seek the approval of the Transport Department in addition to the Traffic Police. When lane closure is being set up, Traffic Police will be present on site to monitor the process and to provide assistance where necessary. In addition, under government contract requirements, all contractors are required to employ registered safety officers to advise on and to ensure implementation of adequate and proper safety measures including the provision of safety training to all workers.

The HyD and the Traffic Police conduct regular patrols to the works sites to ensure that all necessary traffic and safety arrangements are strictly followed. Contractors and other road users found to be in breach of traffic regulations will be prosecuted. We will continue to carry out site inspections to ensure strict compliance with the Code.

The HyD, the Transport Department and the Traffic Police periodically review the Code to ensure that the requirements contained therein are up-to-date and effective. We are considering the introduction of new measures to further enhance road works safety. They include installing Truck Mounted Attenuators at the back of road works vehicles to absorb the energy of a collision, thereby reducing the risk and seriousness of personnel injuries and property damage; and introducing the use of Variable Message Signs to alert and prompt oncoming drivers to take appropriate actions.

We will also arrange training courses for drivers of road works vehicles to better equip them with the special knowledge and skills for manipulating the vehicles safely. Noting that some of the accidents might involve non-compliance of traffic regulations, enhanced publicity on road safety to educate other road users on appropriate actions to take on seeing road works warning signs and signals will be launched. We will also continue to make use of available channels such as regular meetings with the transport trade to disseminate road safety messages.

Annex

Number of traffic accidents involving road works vehicles

	2000	2001	2002
Occurred during day time (7 am to 7 pm)	0	2	7
Occurred during night time (7 pm to 7 am)	12	5	20
Total	12	7	27

Number of casualties involved in the above accidents

	2000	2001	2002
Slight injuries	12	14	56*
Serious injuries	1	3	12
Fatalities	3	0	3

* 37 out of the 56 cases were arising from three accidents which involved a bus or a mini-bus.

Long-term Unemployed People

20. **MR CHAN KWOK-KEUNG** (in Chinese): *Madam President, regarding the long-term unemployed people, will the Government inform this Council:*

- (a) *of their number and the longest period of unemployment among them, according to the information from the Census and Statistics Department (C&SD);*
- (b) *whether it has looked into the ways by which long-term unemployed people meet their daily expenses and the difficulties they encounter when they look for jobs; and*

- (c) *of the assistance, apart from the Re-employment Pilot Programme for the Middle-aged, rendered to the long-term unemployed people with regard to their employment and financial means?*

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

- (a) Results of the General Household Survey conducted by the C&SD for the period September to November 2002 show that the number of unemployed persons who had been unemployed for six months or more was 77 000. Amongst them, 24 800 had been unemployed for 18 months or more. The survey did not collect information about the longest duration of unemployment
- (b) The General Household Survey conducted by the C&SD did not collect information on how the unemployed meet their daily expenses. This is because such information is generally very sensitive, for example, the respondents may borrow money from relatives and friends, and so on. They are often reluctant to provide such information. The survey also did not collect information on the difficulties faced by the unemployed in finding a job.

Experience of the Labour Department in helping job-seekers revealed the following difficulties usually faced by these persons: some of them were of low education attainment and low skill level and were unable to meet the needs of the market, and that the wage level and employment conditions of the job vacancies in the market did not match their expectation.

- (c) The Labour Department provides one-stop employment services to job-seekers at 11 Job Centres. Where necessary, job-seekers can choose to join the Job Matching Programme. Under the Job Matching Programme, placement officers provide personalized employment services to the job-seekers which include in-depth interviews, employment counselling, group briefings and job referral services, and so on. Placement officers also provide

appropriate assistance in training and retraining so as to improve their employment prospect. Job-seekers who have registered with the Labour Department can also make use of the Telephone Employment Service without visiting the Job Centres in person. Through the Interactive Employment Service website, the Labour Department also provides 24-hour employment services and employment information to job-seekers on the Internet.

Special employment programmes for the middle-aged long-term unemployed

The Labour Department launched the Re-employment Pilot Programme for the Middle-aged in February 2001 to provide one-stop service for job-seekers aged 40 or above who had been unemployed for three months or more. The programme expired at the end of January 2003 and helped more than 5 000 participants secure employment.

Drawing on the experience of the Re-employment Pilot Programme for the Middle-aged, the Labour Department will launch the Re-employment Training Programme (RTP) and the District Employment Programme (DEP) for the middle-aged in April 2003 with a view to strengthening employment services to the middle-aged unemployed.

Under the RTP, the Labour Department will strengthen its job matching services to assist participants to secure employment as soon as possible. To encourage employers to engage the middle-aged unemployed and provide them with on-the-job training, each employer participating in the RTP will be paid a training subsidy of \$1,500 per month per trainee for up to three months. This will also help those who have been placed to stay in their jobs.

Besides, the Labour Department will, under the DEP, join hands with non-governmental organizations on a pilot basis at the district level to provide comprehensive employment and support services and to place the middle-aged unemployed in jobs in the vicinity of where they live.

To help the long-term unemployed adjust to the changing labour market, the Employees Retraining Board provides a variety of retraining courses and placement services to help them acquire new skills and to enhance their existing skills for re-entering the labour market.

An unemployed person who has difficulty in meeting his or her basic and essential needs may apply to the Social Welfare Department (SWD) for financial assistance under the Comprehensive Social Security Assistance (CSSA) scheme. The SWD has also commissioned non-governmental organizations to run the Special Job Attachment Programme and the Intensive Employment Assistance Fund to offer support to CSSA recipients who had been unemployed for longer periods or who had been facing particular difficulties.

STATEMENT

PRESIDENT (in Cantonese): Statement. Secretary for Security will make a statement concerning the Bill to implement Article 23 of the Basic Law. In accordance with Rule 28(2) of the Rules of Procedure, no debate may arise on the statement but I may in my discretion allow short questions to be put to the Secretary for Security for the purpose of elucidating it. Secretary for Security.

Secretary for Security, please hold on for a while. Mr James TO, do you have a point of order?

MR JAMES TO (in Cantonese): Yes.

PRESIDENT (in Cantonese): Please make your point.

MR JAMES TO (in Cantonese): *Madam President, is there any requirement that a written text of the statement must be made available for distribution to Members at the time when the statement is made? If there is no such requirement, does the President think there is such a need? Since the statement*

is rather lengthy, a written text will facilitate perusal by Members. If the Government can do this, can arrangements be made now?

PRESIDENT (in Cantonese): The Rules of Procedure does not require the Administration to provide the text of the statement in advance to the Legislative Council for Members' reference at the meeting before such a statement is made. Furthermore, the Administration made many statements in the Legislative Council in the past, but the text of the statement was not provided on each occasion. However, since Mr James TO has made such a request, I will refer it to the Secretary for Security. It may be unfair to ask the Secretary for Security to give an immediate response. However, can the Secretary offer some assistance and see what can be done?

SECRETARY FOR SECURITY (in Cantonese): Yes, we can do that.

PRESIDENT (in Cantonese): Secretary, then please ask your colleagues to arrange for the distribution of the written text of the statement to Members as soon as possible. Secretary, please make your statement now.

Bill to Implement Article 23 of the Basic Law

SECRETARY FOR SECURITY (in Cantonese): Madam President, I am very pleased today to report, on behalf of the Government of the Hong Kong Special Administrative Region (HKSAR), to Honourable Members on the progress made in our legislative work relating to the implementation of Article 23 of the Basic Law (Article 23).

The SAR Government released on 24 September last year a consultation document on "Proposals to implement Article 23 of the Basic Law", and made legislative proposals concerning the prohibition of seven kinds of activities that endanger national security as stipulated under Article 23.

During the three-month consultation period, there was enthusiastic response from various sectors of the community. When the consultation period ended on 24 December last year, we received over 100 000 submissions.

Those who submitted views to us include individuals, organizations, local residents and people living outside Hong Kong. The submissions came from a wide range of sectors and strata, including district organizations, professional and business bodies, local and foreign chambers of commerce, clansmen's groups, religious sector, businessmen, women's groups, students, staff and faculty members of tertiary institutes, cultural and arts sector, legal sector and publication sector.

This public consultation can be said to be the most extensive, most thorough, and one which most deeply involved the community. The Government hopes to get a better understanding of the public's views, concerns and worries through the consultation exercise. In this respect, I think we have achieved our goal as a result of the three-month consultation.

The SAR Government is happy to see that many Hong Kong residents support in principle the enactment of local legislation to implement Article 23, so that the SAR could fulfil its constitutional duty as soon as possible. At the same time, through the enthusiastic response made by members of the community, we have been able to acquire a good grasp of the concerns of the public over specific concepts or aspects of our proposals. We are also very happy to have received very valuable advice from some legal experts and other professionals, which has helped us to improve our proposals.

After taking into account all the views expressed, the SAR Government made a positive and quick response on 28 January by issuing a leaflet on the way forward for implementing Article 23. We have made nine important clarifications on policy directions and have set out in more definite and clearer terms various definitions and concepts. There has been a positive response to the Government's clarifications after the release of the leaflet.

From the experience of the past four months, the SAR Government fully understands the public's wish to see details of the draft legislation. We believe some people's worries have in fact arisen from the lack of legislative details, and this has made it difficult for some people to assess accurately how the proposals would affect them, thus giving rise to unnecessary misunderstandings.

In order to allay public concerns, the SAR Government has been working at full steam to prepare the drafting of the legislative provisions. I am happy to report, on behalf of the SAR Government, to Honourable Members that we have

finished drafting the Bill to implement Article 23. In accordance with the usual procedure, the National Security (Legislative Provisions) Bill, which has been approved by the Chief Executive in Council yesterday, will be introduced into the Legislative Council for scrutiny.

Before explaining the content of the Bill to Members, I wish to stress two points.

First, as we pointed out in the consultation document, we are not introducing a radically new, specific piece of legislation. In implementing Article 23, we are amending three existing Ordinances, namely the Crimes Ordinance, the Official Secrets Ordinance and the Societies Ordinance, and are definitely not extending mainland laws or concepts to Hong Kong

Second, one of the important principles in drafting the Bill is that we try to make it clear, simple and concise so that the public will clearly know what acts, according to the draft legislation, would constitute offences under Article 23. We are confident that after the publication of the Bill, people will understand that the legislation to implement Article 23 will not affect their daily lives and that Hong Kong will continue to be a free and open society and remain a world metropolis enjoying free flow of information. The Bill has in fact abolished some existing offences, which have been in our statutes before and after the reunification, such as the offence of possession of seditious publications and the offence of misprision of treason. In addition, the Bill has also sought to narrow down the scope of some current offences. Take the treason offence as an example, it will be stipulated that the offence will not be applicable to non-Chinese nationals.

Now, I would like to introduce to Members the content of the Bill.

Treason

According to the Bill, a Chinese national will commit the offence of treason if he:

- (i) joins foreign armed forces at war with the People's Republic of China with the intent to overthrow or intimidate the Central People's Government, or to compel the Central People's Government to change its policies or measures;

- (ii) instigates foreign armed forces to invade China with force; or
- (iii) assists a public enemy at war with China with an intent to prejudice the position of the country in the war.

As I have mentioned earlier, the offence of treason will only apply to Chinese nationals. For clarity, various concepts involved are clearly defined. For example, "public enemy" is defined to mean foreign governments at war with China or foreign armed forces. "A state of war" is defined to mean only open armed conflict between armed forces or publicly declared war. General demonstrations or riots are not considered war.

As we have pledged earlier, we would not only drop the proposal to codify the common law offence of misprision of treason, but would also make clear in the Bill that the offence of misprision of treason will be abolished altogether.

Secession

The offence of secession is defined as withdrawing any part of the People's Republic of China from its sovereignty by using force or serious criminal means that seriously endangers the territorial integrity of the People's Republic of China, or to do so by engaging in war.

"Serious criminal means" refers to criminal acts that will endanger a person's life, cause serious injury to a person, create serious risks to public health or safety, lead to serious damage to property or serious interference with electronic system, essential service, facility or system.

Therefore, only acts that involve engaging in war, using force or serious criminal means akin to terrorist activities that seriously endanger the territorial integrity of the People's Republic of China will be regarded as secession. After considering public views, the references to "threat of force" and "resisting the exercise of sovereignty" as stated in the consultation document will not be included in the Bill. "Force" and "serious criminal means" used must be of such a scale that it endangers the territorial integrity of the country before the relevant offence is committed.

Subversion

A person would commit subversion if he:

- (i) disestablishes the basic system of the People's Republic of China as established by the constitution;
- (ii) overthrows the Central People's Government; or
- (iii) intimidates the Central People's Government

by using force or serious criminal means that seriously endangers the stability of the People's Republic of China or by engaging in war.

As with the offence of secession, only acts that involve engaging in war, using force or serious criminal means akin to terrorist activities will be regarded as subversion. After considering public views, the reference to "threat of force" as stated in the consultation document will not be included in the Bill. Only the actual use of force or serious criminal acts similar to terrorist activities that endanger national security will constitute a subversion offence.

Sedition

An offence of sedition means to:

- (i) incite others to commit the offence of treason, subversion or secession; or
- (ii) incite others to engage in violent public disorder that would seriously endanger the stability of the People's Republic of China.

In relation to seditious publications, we have explained in public that section 10 of the existing Crimes Ordinance already criminalizes the possession of seditious publications. Taking into account the concerns raised by librarians, journalists and other members of the public, we have decided to abolish the offence of possession of seditious publications through this legislative process, so as to protect the freedoms of speech and academic research.

As regards the handling of seditious publications, the Bill states that apart from the actual act, there must also be a necessary element of "intention" before anyone would be convicted of the crime. In other words, the prosecution will have to prove beyond reasonable doubt the intention of the person concerned to incite others to commit the offence of treason, secession or subversion.

Theft of State Secrets

As explained in the consultation document, we would make use of the existing Official Secrets Ordinance to protect state secrets. We are only proposing two amendments to the Ordinance.

The first of these amendments is purely an adaptation of laws. Information relating to relations between the Mainland and Hong Kong has always been protected, both before and after the reunification, under the category of "international relations". After the reunification, it would not be appropriate to continue to protect such information under the rubric of "international relations". We have therefore proposed in the consultation document that a separate category of protected information, "relations between the Central Authorities and the HKSAR", should be identified, independent of "international relations".

During the three-month consultation, there were views that the scope of "relations between the Central Authorities and the HKSAR" is not clear enough, and concerns that the free flow of information might be affected. After careful consideration, we have decided to clearly specify in the Bill that this category of protected information should be defined as: affairs concerning the HKSAR which are within the responsibilities of the Central Authorities under the Basic Law.

In addition, disclosure of such protected information would only be penalized if the relevant person knew, or had reasonable grounds to believe, that the unauthorized disclosure of the information would likely endanger national security. The Bill would specify that it shall be a defence if a person did not know or had no reason to believe that the information belongs to a protected category, or that disclosure of which would endanger national security. The meaning of "national security" will follow the existing definition in local laws, that is the "safeguarding of the territorial integrity and independence of the People's Republic of China".

The second amendment is to plug an existing loophole. According to existing laws, it is an offence to make a damaging disclosure of information which has in turn been disclosed without authority by public servants or government contractors. However, it is not an offence to make a damaging disclosure of the same information if it had been obtained by illegal means, such as stealing from a confidential government file registry.

This is clearly a loophole. We therefore consider it necessary to make it an offence to make a damaging unauthorized disclosure of protected information which had been obtained by unauthorized access.

One of the views raised during public consultation is that the scope of "unauthorized access" of protected information is too wide. For example, news reporters might not be able to verify on each occasion whether a person who provides information has been authorized to do so. We have therefore decided to define the relevant activities more precisely to mean "illegal access" of protected information, which would only mean specified criminal acts, that is, unauthorized access to computer by telecommunication, access to computer with criminal or dishonest intent, theft, robbery, burglary or bribery.

Foreign Political Organizations

Article 23 sets out to prohibit foreign political organizations or bodies from conducting political activities in the SAR, and to prohibit SAR political organizations or bodies from establishing ties with foreign political organizations or bodies.

After consideration, we consider that the existing provisions of the Societies Ordinance are already adequate and appropriate in prohibiting these two categories of activities. We have thus decided to rely on existing legislation and will not propose any amendments.

Organizations Endangering National Security

It is commonly accepted that crimes seriously endangering national security are seldom perpetrated by a single individual, but are often carried out through an organized effort. We therefore consider that the Bill should empower the Secretary for Security to proscribe organizations that endanger national security. During the consultation period, the public was in particular

concerned about the proscription of local organizations that are subordinate to mainland organizations. I would now briefly explain the relevant stipulations in the Bill.

Before making a decision to proscribe a local organization, the Secretary for Security must consider a number of issues in accordance with the provisions of the Bill, which are:

- (i) that the relevant mainland organization must have been prohibited by the Central Authorities on the ground of national security in accordance with mainland laws;
- (ii) that the decision to prohibit a mainland organization must be made through an open decree;
- (iii) that the local organization must be subordinate to the prohibited mainland organization; and
- (iv) that the Secretary for Security must have reasonable grounds to believe that the proscription of the local organization is necessary in the interest of national security and is proportionate for such purpose.

As regards "subordination", it will be clearly defined in the Bill to mean:

- (i) the local organization solicits or accepts substantial financial contributions, financial sponsorships or loans from the mainland organization;
- (ii) the local organization is directed or controlled by the mainland organization; or
- (iii) the policies of the local organization are determined by the mainland organization.

According to the Bill, unless a person continues to participate in the activities or acts as an office-bearer of the proscribed organization, proscription itself does not create a criminal offence.

It would not be an offence even though a person may be a member or office-bearer of a proscribed local organization, if he does not know or has no reason to believe that the organization has been so proscribed.

The Bill also provides for an appeal mechanism. Any person aggrieved by the Secretary for Security's decision to proscribe an organization could lodge an appeal to the Court of First Instance within 30 days of the proscription. After considering the public's views, we agree to drop the proposal in the consultation document to establish a special tribunal to deal with such appeals.

Emergency Investigation Powers

During the consultation period, we received comments from quite a number of organizations and residents that the emergency investigation powers proposed in the consultation document would lead to unwarranted expansion of police powers.

After considering the views from various sectors, we agree that only police officers at the rank of Chief Superintendent or above, instead of Superintendent, could authorize the exercise of emergency investigation powers. The Bill has also clearly specified that such powers could only be exercised under exigent circumstances as stipulated.

In addition, in order to safeguard the freedom of the press, the Bill has also specified that the search or seizure of journalistic materials in the investigation of Article 23 offences must be authorized by court warrants.

As we have pledged earlier, the Bill contains no new provisions to extend the existing financial investigation powers of law enforcement officers.

Trial by jury

In order to provide an additional safeguard for our citizens, the Bill stipulates that any person charged with the offences of treason, secession or subversion, which could attract a maximum penalty of life imprisonment, must be tried by a jury. Those charged with sedition or unlawful disclosure, which are punishable by a lesser penalty, may opt for trial by jury at the Court of First Instance, other than going through trials at the District Court or Magistracy under established procedures.

The Bill also stipulates that, for an accused who has opted for a jury trial and subsequently convicted, he shall not be sentenced by the trial Judge at the Court of First Instance to any penalty that would be heavier than the penalty that could have been imposed by a District Court or a Magistrate, had he not opted for a jury trial in the first place.

Protection of Human Rights

The SAR Government has stressed on many occasions that the freedoms and rights enshrined under the Basic Law and enjoyed by Hong Kong residents will continue to be protected. The Bill specifically provides that the interpretation, application and enforcement of the provisions implementing Article 23 shall be consistent with Article 39 of the Basic Law, which includes compliance with international human rights standards.

Our Work Plan

The SAR Government will proceed with the legislative work in accordance with the usual procedures. The Bill will be gazetted on Friday and will be introduced into the Legislative Council for First and Second Readings on 26 February.

As to when the Bill will be passed, it will be entirely a matter for the Legislative Council. We sincerely request the Legislative Council to set up a Bills Committee soon to scrutinize the provisions in detail.

We hope that members of the community, after studying the Bill to be gazetted this Friday, will appreciate that the Government has really taken heed of public views and incorporated many useful suggestions collected during the three-month consultation exercise which was virtually unprecedented in scale and thoroughness. We are confident that we have struck a right balance between protecting national security and safeguarding people's rights and freedoms. Thank you, Madam President.

PRESIDENT (in Cantonese): Members have now all received and read the written text of the Secretary for Security's statement. Members may now seek elucidation from the Secretary for Security on the contents of the statement. As Members have the written text on hand, I believe it will be more convenient

for Members, as they can seek elucidation direct on the basis of the written text. As for issues not covered by the written text, it is my responsibility to disallow Members' questions on them, but Members may ask their questions on other occasions.

DR YEUNG SUM (in Cantonese): *On the second page of the statement, it is stated in the second paragraph that "The SAR Government is happy to see that many Hong Kong residents support in principle the enactment of local legislation to implement Article 23, so that the SAR could fulfil its constitutional duty as soon as possible". Madam President, I wish to ask the Secretary through you how she has drawn this conclusion. It is because many professional researchers and academics have pointed out that the Government's Compendium of Submissions is basically flawed and has confused the positions of many submissions. So, it is absolutely impossible for her to conclude that the enactment of legislation is supported by a majority of the people. Can the Secretary elucidate how she has come to this conclusion?*

SECRETARY FOR SECURITY (in Cantonese): I thank Dr YEUNG for his question. It is stated in my statement that we have noticed that many residents support "in principle" the enactment of legislation to implement Article 23. We have considered the submissions received, and apart from submissions, I mean submissions in black and white, we have also attended many open or closed-door forums. Although many people had on these occasions expressed views as to how improvements could be made or how they thought our proposals could be improved in respect of the legislative timetable, we think that the people support in principle the Basic Law and they also support in principle that we have this constitutional duty under the Basic Law to enact legislation to implement Article 23.

MR FREDERICK FUNG (in Cantonese): *Madam President, you may have to rule whether or not my question should be allowed, because while my question has to do with the subject of this open statement today, it may not be entirely related to the contents of the statement. The main reason is that.....*

PRESIDENT (in Cantonese): Mr Frederick FUNG.....

MR FREDERICK FUNG (in Cantonese): *I would like to state my question first before you rule on it, Madam President. I think the Secretary coming to make an open statement today before the gazettal of the Bill shows her respect for the Legislative Council. But according to a news report today, the Director of the Hong Kong General Chamber of Commerce, Mr Eden WOON, said that he had already read the Blue Bill several days ago. I think there is no ground for anyone to be made privy to the Blue Bill before it is endorsed by the Executive Council and before the Secretary comes before the Legislative Council to explain it. Is this an attempt to belittle the Legislative Council? I do not know if Secretary Regina IP is involved in this matter and if she is not, will she trace the responsibility for its disclosure, which is similar to the disclosure of state secrets under the current legislative proposal? (Laughter)*

PRESIDENT (in Cantonese): Mr FUNG, as you may know, this question is not related to the statement. However, I believe that you, Mr FUNG, will have ample opportunities to ask this question again.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, I wish to seek elucidation on the part on "Our Work Plan" in the statement. It is said that "The SAR Government will proceed with the legislative work in accordance with the usual procedures. The Bill will be gazetted on Friday.....". Would the Government elucidate whether any Hong Kong citizen, including Mr Eden WOON of the Hong Kong General Chamber of Commerce, has read or received this Bill or the draft of the Bill before its gazettal this Friday?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, if Mr CHEUNG referred to the Blue Bill to be published in the gazette, not even I myself have seen it and so, the answer is no.

MR CHEUNG MAN-KWONG (in Cantonese): *My question consisted of two parts. I asked whether anyone had read the Blue Bill or the draft of the Bill. If nobody has read the Blue Bill, then has anyone read the draft of this Bill? The Secretary still has not answered this part of the question.*

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, the draft of the Bill was not mentioned in the statement. Only the Bill was mentioned.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, the draft of the Bill is mentioned here.*

PRESIDENT (in Cantonese): We have different interpretations of this point. I trust that you, Mr CHEUNG, will definitely have the opportunity to ask again a question about this. Now, I would let other Members ask their questions.

MR MICHAEL MAK (in Cantonese): *Madam President, in the last paragraph of the statement, the Secretary said that the SAR Government "has really taken heed of public views and incorporated many useful suggestions collected during the consultation exercise which was unprecedented in scale and thoroughness". I wish to tell the Secretary that many people may not necessarily convey their views to the Secretary in black and white, and the Secretary had said some time ago that opinions not expressed in black and white would not be incorporated into the Compendium of Submissions. These people have been asking the Government not to enact legislation to implement Article 23 and they are asking the Government to publish a White Bill. Are these views not considered useful? How did the Secretary set the criteria, based on which she has decided that the legislative process be started by a Blue Bill?*

PRESIDENT (in Cantonese): Mr MAK, you are seeking elucidation but the statement did not mention a White Bill. Can you seek elucidation on basis of the text of the statement? Would you like me to give you some time to think about it? I can let other Members ask their questions first.

MR MICHAEL MAK (in Cantonese): *In her reply to a Member's question earlier on, the Secretary did mention the Blue Bill.*

PRESIDENT (in Cantonese): Yes, but you were asking about a White Bill, were you not?

MR MICHAEL MAK (in Cantonese): *I did not mean that. The Secretary said that many useful suggestions had been incorporated. What constitute "useful" suggestions?*

PRESIDENT (in Cantonese): Well, if you put your question this way, I can accept it. You are seeking elucidation on the meaning of useful suggestions.

SECRETARY FOR SECURITY (in Cantonese): Madam President, in fact, I have stated at the outset that the views considered by the Government are not restricted to those expressed in black and white which have been incorporated into the Compendium. We have also carefully studied the views presented to us during the many open or closed-door forums or discussions attended by us, and also the views expressed by members of the public in newspapers. Regarding the useful suggestions that we have taken on board, I have cited a number of them in my statement earlier. For example, the suggestion that the offence of treason be applicable to Chinese nationals only, the abolition of the offence of misprision of treason, the abolition of the offence of possession of seditious publications, and so on. These are useful suggestions accepted by the Government.

MR LAU KONG-WAH (in Cantonese): *Madam President, the Secretary mentioned in page two of the statement that after the Government had issued a leaflet on the way forward, nine important clarifications on policy directions were made and there had been positive response to the Government's clarifications. Can the Secretary give us any example to illustrate the situation, and had the Secretary contacted groups that had expressed concerns before coming to this conclusion?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, Members may know that after the Government published this leaflet on the way forward on 28 January, the Chief Secretary for Administration and I met with some foreign and local chambers of commerce on that day. After listening to our explanation, the chambers responded very positively. I remember that the British Chamber of Commerce had issued a statement which welcomed my clarification. The

President of the American Chamber of Commerce also welcomed my clarification and was very happy that the Government had dispelled the public concerns. Moreover, in the past couple of weeks, some foreign media have also commented quite positively on the clarification made by the Government. We have had contact with some legal academics, who expressed satisfaction with the Government's willingness to listen to their views and its efforts to continuously improve the legislative work.

MR JAMES TO (in Cantonese): *Madam President, I wish the Secretary would clarify a sentence in page three of the statement: "We are confident that after the publication of the Bill, people will understand that the legislation to implement Article 23 will not affect their daily lives." I remember the Chief Executive once said that it "would not undermine in any way, the existing human rights, civil liberties enjoyed by the people of Hong Kong" prior to issuing the consultation document. Does the former remark imply and admit that the liberties and rights enjoyed by the people are diminishing actually, only that their lives would not be affected?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, Mr TO has actually asked this question before and I have also answered it. In saying that "the freedoms of the people will not be affected", the Chief Executive referred to the basic human rights and freedoms protected by the Basic Law. Our legislative proposals will absolutely not affect these basic human rights and freedoms, and we firmly believe that they will not affect the daily lives of Hong Kong people.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, I wish the Secretary to clarify the expression "understand" mentioned in page two of the statement, as I am afraid the understanding of the Secretary was not so professional. She said that she fully understood the public's wish to see details of the draft legislation. Can the Secretary clarify what exactly was her understanding? Could it be possible that her understanding was wrong fundamentally? It is because the community at large wish to see a White Bill, not details of the draft legislation, therefore I am concerned that perhaps the Secretary was not so professional in that respect.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, perhaps Mr LEE should read my statement more carefully. I said that the SAR Government, not just myself, fully understands the public's wish from the experience of the past four months. This is the understanding gained by the Government after giving overall consideration to the submissions received and the views expressed by the public in many forums and newspapers. Indeed, many people have told me or other government officials or colleagues that they wished to see the early introduction of this Bill; they even said that a White Bill was unnecessary and hoped that a Blue Bill could be introduced early to start the legislative process. We consider that many public concerns have arisen mainly because the consultation document published by us in September only made policy proposals, without providing the provisions very clearly. We believe the early publication of the Bill will enable the people to know more details and hence help remove many unnecessary concerns.

MR LEE CHEUK-YAN (in Cantonese): *I beg your pardon. The Secretary has not answered my question. My question was to seek elucidation on the understanding of the SAR Government, in order to ascertain whether the Government can understand the public's wish to see a White Bill, not the details of the Bill. I did ask very clearly whether the Government could understand this.*

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

SECRETARY FOR SECURITY (in Cantonese): I have nothing to add.

MS AUDREY EU (in Cantonese): *I would like the Secretary to elucidate the part concerning "Our Work Plan" on page 14 of the statement in respect of the paragraph about the Secretary having really taken heed of public views and incorporated many useful suggestions during this large-scale public consultation exercise.*

Madam President, I would like the Secretary to elucidate this: Regarding each of these nine clarifications on policy directions and the contents of this statement, what contents of the submissions were accepted by the Government in

making the subsequent amendments and coming up with the specific contents in the clarifications and the statement? What are the contents of those submissions that have not been accepted or not considered as useful suggestions? Will the Secretary include this area of work in the future work plan, so that everyone will know how the Government arrived at this outcome today from the 100 000-odd submissions received during this large-scale consultation exercise?

PRESIDENT (in Cantonese): Ms Audrey EU, you may sit down first.

I would like to know if you were seeking elucidation on the procedures adopted by the Government to incorporate the views received during the consultation exercise. Right?

MS AUDREY EU (in Cantonese): *Yes. What I exactly wish to know is how this outcome was drawn from the 100 000-odd submissions; and we can only find three simple categories in the Compendium. How did the Secretary arrive at these amendments and the specific contents today?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, although we have received more than 100 000 submissions, many of them are just a brief expression of position. For instance, they only stated that they supported or opposed the enactment of legislation now; some have expressed concern; and certainly, there are specific suggestions too. Proponents of specific suggestions are mainly legal professional bodies, academics in law, and so on. In fact, many suggestions are repetitive and so, it is not very difficult for the Government to grasp these suggestions. Certainly, the Government, after considering all the suggestions, will make a judgement as to which suggestions have merits, and which are constructive and useful suggestions that can be accepted. I have just cited three examples, including the abolition of the offence of misprision of treason and the offence of possession of seditious publications, the suggestion that the offence of treason be applicable to Chinese nationals only, and narrowing down the treason offence to cover a far smaller scope than the existing offence of treason.

I believe that after reading the Bill, Members will know more clearly what opinions are accepted by the Government.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, I would like the Secretary to elucidate the definition of "subordination" on page 11. A point being mentioned is that "the local organization solicits or accepts substantial financial contributions..... from the mainland organization". The "mainland organization" mentioned here seems to mean that the mainland organization is the mother organization, whereas that in Hong Kong is its subsidiary. But if the organization in Hong Kong is the mother organization, whereas that in the Mainland is a subsidiary, will this provision apply?*

SECRETARY FOR SECURITY (in Cantonese): *Madam President, the word "subordination" is defined in accordance with the definition under the existing Societies Ordinance, meaning that the local organization is subordinate to a mainland organization. The definition of "subordination" is one of the considerations mentioned in page 11.*

MR ANDREW CHENG (in Cantonese): *Madam President, I would like the Secretary to elucidate the last line of the first paragraph on the second page, which says that "In this respect (which means the consultation exercise), I think we have achieved our goal as a result of the three-month consultation". Another sentence, about which a question was also asked by Dr YEUNG Sum earlier, is "The SAR Government is happy to see that many Hong Kong residents support in principle the enactment of local legislation to implement Article 23".*

Madam President, it is very good that we have got the written text of this statement. I reckon the word "many" has an underlying meaning of "majority", just that this word was deleted and substituted by the word "many". This is my guess. I would like to seek elucidation on this: First, despite this flawed Compendium which was completed in such a short period of time, the Secretary nevertheless said that the consultation exercise was unprecedented both in scale and thoroughness. Also, from this Compendium, we can know nothing about the consultation process and the submissions received, and the public concerns have not been allayed. But the Secretary said that the goal had been achieved. What does it mean by "having achieved the goal"?

Moreover, the Secretary also mentioned "many" and fulfilling the SAR's duty as soon as possible. But the description of "many" here may not be as many as the number of people in opposition and that is why the Secretary dared

not use the word "majority". In this connection, may I ask the Secretary how many people she thinks have stated in the submissions collected in the Compendium that they would like this to be done as soon as possible? And by "as soon as possible", does it mean that the Blue Bill has to be published as early as on this Friday?

SECRETARY FOR SECURITY (in Cantonese): With regard to Mr CHENG's request for my elucidation on the first paragraph on the second page, my answer is that in our view, the goal that has been achieved is that we can fully understand the public views, as well as their concerns and worries through this consultation exercise. That is why we consider that we have achieved the goal. We do think that through such a large-scale consultation exercise and such thorough discussions, we have been able to understand the aspects about which the people feel concerned and worried, and we have taken active measures to dispel these concerns and worries.

MR ANDREW CHENG (in Cantonese): *The Secretary still has not answered the part concerning "fulfilling its duty as soon as possible" in the second paragraph.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I think it is appropriate to use the word "many", because indeed, we have not only considered the submissions collected in the Compendium, but also contacted many members of the public and organizations. Many organizations have claimed that they represent many or a vast majority of people. Our impression is that these people support in principle that this constitutional duty must be fulfilled and that the sooner it is fulfilled, the better the disputes in society can be resolved.

MR ALBERT HO (in Cantonese): *Madam President, I would still like the Secretary to explain the conclusion in the second paragraph on the second page of the statement that "The SAR Government is very happy to see that many Hong Kong residents support in principle the enactment of local legislation to implement Article 23". I wish to ask the Secretary this: Given such a tight timeframe for the collection and analysis of the submissions, many mistakes are*

found in the Compendium of Submissions. Is she worried that before this conclusion was drawn, her executive officers might, when classifying the submissions, include many submissions that "do not oppose legislation in principle" or "support legislation in principle" but "do not support the way that legislation be enacted as proposed by the Government" in the category of "supportive of legislation in principle"? Is she worried that there could be such a mistake? It is because there is still time for people who have given their views to request a change of the categorization of their position. As this has not been done, will she be worried that there is problem in drawing such a conclusion prematurely?

PRESIDENT (in Cantonese): Mr Albert HO, whether or not the Secretary is worried is not pertinent to elucidation on the contents of the statement. Therefore, I will let you ask another question later, so that you can have the opportunity to rephrase your question to make it relevant to the contents.

MR ALBERT HO (in Cantonese): *Perhaps I will drop the latter half of the question for the time being, and I will ask only the first half of the question. That is, for the so-called supportive views as mentioned by the Secretary, do they include views that support legislation in principle but do not support that legislation be enacted now and in the way as currently proposed? I just wish to ask the Secretary this: For views that do not oppose the general principle, will they be also included as supportive views, so to speak?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I think we should not dwell on the categorization of submissions in the Compendium because, as I have said earlier on, the views that the Government has listened to include not only views in black and white in the Compendium, but also many views expressed at many symposiums, forums, in newspapers or to government officials. What I have mentioned in my statement reflects the Government's assessment.

MR ALBERT HO (in Cantonese): *Madam President, my question was very specific. In her statement the Secretary said that many residents supported in*

principle the enactment of legislation. But according to the Secretary's understanding, insofar as views that are classified as supportive of legislation in principle are concerned, do they include views that support legislation in principle but do not support the enactment of legislation in the way as currently proposed by the Government? What is her understanding? Are these views also considered to be supportive views as referred to by the Secretary?

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

SECRETARY FOR SECURITY (in Cantonese): I have nothing to add.

MS EMILY LAU (in Cantonese): *Madam President, I also wish to question the Secretary on a point mentioned in the statement about the Government hoping to get a better understanding of the public's views, concerns and worries through the consultation exercise.*

I would like the Secretary to elucidate this: In the course of consultation, apart from telephoning the banking sector asking the bankers whether they really take an opposing view as revealed by Dr David LI yesterday, was it part of the consultation exercise for the Secretary to make personal telephone calls to some organizations? Moreover, why did she do so? Can the Secretary elucidate whether making these calls to verify their views smacks of intimidation to the public?

PRESIDENT (in Cantonese): Ms Emily LAU, since you have the written text with you, please tell me first the paragraph on which you are seeking elucidation? Which page?

MS EMILY LAU (in Cantonese): *Madam President, I was seeking elucidation on.....*

PRESIDENT (in Cantonese): Which page?

MS EMILY LAU (in Cantonese): *Yes, I should tell you, Madam President, that I am referring to the top of the second page. Since colleagues have read it out for many times, I thought you, Madam President, can catch up.*

PRESIDENT (in Cantonese): I do not know which part you are referring to.

MS EMILY LAU (in Cantonese): *The part that reads, "..... hopes to..... through this consultation exercise". Have you found it? It is in the second and the third lines; the part that reads "to get a better understanding of the public's views.....". I wish to ask the Secretary this: Is making telephone calls a way to understand public views? I would like the Secretary to elucidate whether there is a need to make such verifications, Madam President.*

PRESIDENT (in Cantonese): Ms LAU, were you seeking elucidation on whether making telephone calls is a means to conduct consultation in this consultation exercise which, according to the authorities, is conducted to get a better understanding of public views?

MS EMILY LAU (in Cantonese): *Yes. I learned from Dr David LI yesterday that it is a fact that the authorities have telephoned the bankers. While some people said that he was lying, we do not think he was lying. Apart from telephoning the bankers, were telephone calls also made to some other organizations? How many calls did the authorities make and on what principle did they make such calls for verification purposes?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I think any government official or Bureau Director, if he or she has to conduct a large-scale consultation to explain or promote a policy or a piece of legislation, will inevitably have to make some telephone calls, and there must be some talks on the telephone. So, the answer is yes. But as to the number of calls, I do not have the statistics.

MS CYD HO (in Cantonese): *Madam President, I would like to ask the Secretary this: In the third page of the statement it is said that "the SAR Government has been working at full steam to prepare the drafting of the legislative provisions", and I would like to have more information about the expression of "at full steam". Regarding the reason why the Compendium of Submissions has been criticized as incomplete and unfair, is it because the drafting of the legislation had to proceed at full steam and therefore, the drafting instructions were issued before the submissions were carefully considered and categorized? Or is it that the drafting of the legislative provisions was carried out at full steam before the details had been worked out? Will this lead to negligence and omissions? In fact, I hope the Secretary will tell us specifically when she issued the drafting instructions to the Department of Justice. We have asked this question before on other occasions, but we were not given an answer.*

PRESIDENT (in Cantonese): Ms HO, were you asking the Secretary to elucidate the meaning of "at full steam"?

MS CYD HO (in Cantonese): Yes, "at full steam", or rather "at flying speed".

PRESIDENT (in Cantonese): Secretary, can you elucidate this, so that Members can have a better understanding of "at full steam"?

SECRETARY FOR SECURITY (in Cantonese): I would like to explain in the first place that there are errors or minor mistakes in the categorization of submissions in the Compendium does not mean that the Government has failed to understand the concrete proposals or the concerns expressed by the people. In fact, we have been receiving submissions continuously since the end of September. It is not the case that the Government considered these opinions only in December when the consultation period had ended. Rather, we have thoroughly considered and studied these opinions in the last four to five months. Therefore, the minor mistakes of categorization in the Compendium will not inhibit the Government from understanding these opinions. On the question of speed, I remember that Ms HO has asked us before when the drafting instructions were issued. I have checked the records and if my memory has not

failed me, it should be 14 January. As to whether it is "at full steam" or "at flying speed", I think I have to leave it to Members to make their own judgement.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, I wish to seek elucidation from the Secretary on the leaflet on the way forward issued on 28 January as mentioned in the second page of the statement. Is this leaflet on the way forward a consultation document, or is it meant to give nine important clarifications on policy directions, as said in the statement? If it is meant to provide clarifications, then why would a conclusion be drawn in the end that "there has been a positive response to the Government's clarifications after the release of the leaflet"? Through what channels did the Government gauge the response of the public? Besides, can she explain clearly what she meant by saying "there has been a positive response"? It is because when she answered Mr LAU Kong-wah's question earlier on, she mentioned some members of the banking sector or the business sector. Through what channels did the Government draw the conclusion that "there has been a positive response"? Did it conduct interviews with the people? If so, what methods and channels were adopted to obtain the views of the public?*

SECRETARY FOR SECURITY (in Cantonese): *Madam President, this leaflet on the way forward issued on 28 January gives clarifications on policy directions, and is not a consultation document. As to how the Government came to the conclusion that there has been a positive response, I have already explained this earlier on and I have nothing to add.*

MR FRED LI (in Cantonese): *Madam President, I only wish to seek a brief elucidation from the Secretary. Regarding the paragraph which says that "The SAR Government is happy to see that....." in the second page, I do not know why Mr Andrew CHENG is so intelligent as to be able to see that "many" is used to replace "majority". It beats me indeed. However, I would like the Secretary to elucidate this: What exactly is the word that has been deleted? (Laughter) And why was the original word deleted and replaced by "many"? What did it mean originally?*

PRESIDENT (in Cantonese): Mr Fred LI, you cannot ask a question in this way. Members can seek elucidation on the parts that they consider to be unclear. But as to what the statement intended to say originally and how it was intended to be written originally, I think this is outside the scope of elucidation. Certainly, you are absolutely at liberty to ask the authorities to make clarification on this point at other meetings, but you may not do so now. I am sorry. You cannot ask this question.

MR FRED LI (in Cantonese): *Can I ask another question?*

PRESIDENT (in Cantonese): Fine, I will give you one more chance.

MR FRED LI (in Cantonese): *Thank you, Madam President. Regarding the word "many" used in the statement, with what was a comparison drawn for the Government to conclude that "many" residents are supportive of legislation? Did a majority of the submissions received express this view, or is it that there were plenty of opposing views but still, lots of them were in support of legislation in principle and she, therefore, used the word "many"?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, this conclusion of the Government was drawn through a diversity of channels and through contacts with the public. Even if the Member checks our Compendium of Submissions, he can still see that a majority of the local views, be they from organizations or individuals, support the enactment of legislation. Certainly, we can also draw this conclusion through other channels.

MR LAU CHIN-SHEK (in Cantonese): *Madam President, I would also like the Secretary to elucidate the part in page 11. It is stated that "the relevant mainland organization must have been prohibited by the Central Authorities on the ground of national security in accordance with mainland laws"; organizations that are subordinate to such mainland organizations will be proscribed if they meet the relevant definitions.*

I would like to ask a question the other way round. If an organization being prohibited on the ground of national security is a subsidiary organization, and if the parent or mother organization is in Hong Kong, that is, the mother, so to speak, is in Hong Kong, then will the local organization be proscribed? If the provision is not applicable to such subordination, then does it mean that there is no problem once the status of the subsidiary organization is swapped with that of the mother organization?

PRESIDENT (in Cantonese): Mr LAU Chin-shek, it seems that you did not listen to the question asked by Mr LAU Ping-cheung who had sought elucidation on this point earlier.

MR LAU CHIN-SHEK (in Cantonese): *He did ask a question, but the Secretary's reply was ambiguous. She was only explaining on the basis of the Societies Ordinance. But I was putting a question to the Secretary the other way round. That is, can she tell us explicitly whether proscription could be avoided by a swap of status between the mother organization and the subsidiary organization?*

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

SECRETARY FOR SECURITY (in Cantonese): Madam President, I thank Mr LAU for his question. I am glad to explain this clearer. According to the definition in the Bill, the mainland organization being proscribed must be the mother organization and the organization in Hong Kong is its subsidiary, so to speak, which means that the organization in Hong Kong is subordinate to this mainland organization. If the organization in Hong Kong is the mother organization which has no branch in the Mainland, then it is not subject to the proscription mechanism.

MR LAU CHIN-SHEK (in Cantonese): *Madam President, if that organization has a branch in the Mainland, it will mean that the mainland organization, because of its subordination to the Hong Kong organization, is subordinate to or*

a branch of the Hong Kong organization. If this branch is prohibited by the Central Authorities on the ground of national security, then is it that its mother organization will not be proscribed, as the Secretary has said just now?

PRESIDENT (in Cantonese): Mr LAU, I know that you are very keen to know the answer to this question. But I cannot let you keep on asking questions about this, for this will not be elucidation, but further discussion. I believe Members will certainly have the opportunity to discuss this further in the future.

MISS MARGARET NG (in Cantonese): *Madam President, in the second page of the statement the Secretary said that the SAR Government "fully understands the public's wish to see details of the draft legislation". I would like the Secretary to elucidate whether she will conduct a second consultation before formally tabling the Bill, since she understands the public's wish to see details of the Bill? If so, can she explain how the arrangement of introducing the Bill into the Legislative Council for scrutiny in accordance with the usual procedure as mentioned at the end of the next paragraph can serve the purpose of further conducting public consultation given that many people would like to see the details of the legislative provisions as I have just mentioned? Moreover, Madam President, I notice that the Bill is not attached to the statement made by the Secretary today. Can she also explain the reason for this?*

PRESIDENT (in Cantonese): Miss Margaret NG, you may sit down first. I think perhaps you are not very clear about this. As the statement has also mentioned, the purpose of the Government making this statement in the Legislative Council is to prepare for the gazettal of the Bill this Friday, and the Bill will then be tabled at the Legislative Council for First Reading on the 26th of this month. So, I think this is the answer to the latter half of your question.

MISS MARGARET NG (in Cantonese): *Madam President, I would like you to clarify. Although I know that she had mentioned the gazettal of the Bill, publishing the Bill in the gazette is not the only way. So, I would like the Secretary to elucidate this: What is her understanding of the public's wish? If*

she really understands the public's wish, will she show us the provisions as soon as possible or even today, so that we do not have to wait until the gazettal of the Bill on Friday? On the gazettal of the Bill, she only mentioned the usual procedure. Can the Secretary elucidate how the usual procedure can satisfy this special need? That is, how can it answer the aspiration of the people and that of society in general?

PRESIDENT (in Cantonese): Miss NG, it is mentioned in the statement that in order to allay public concerns, the SAR Government has been working at full steam — Miss NG, you may sit down first — the SAR Government has been working at full steam to prepare the drafting of the legislative provisions, which will be introduced into the Legislative Council for scrutiny in accordance with the usual procedure. Were you asking whether the Government appreciated the concerns of the people during this process? Is that what you mean?

MISS MARGARET NG (in Cantonese): *Madam President, if that is too complicated, let me put it in more express terms. Insofar as the present arrangement is concerned, will the Secretary, having understood the public's wish, conduct a second round of consultation after the introduction of the Bill? If this is the Secretary's understanding, can she explain how the present arrangement can answer the aspiration?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, first of all, my statement only mentioned that we understand the public's wish to see the details of the Bill early. A second round of consultation is added by Miss NG. Indeed, the Government has consulted the public from the beginning to the completion of the drafting of the Bill. After the introduction of the Bill, we will continue to listen to whatever views that various sectors of the community may have. On the point about the usual procedure mentioned by Miss NG, certainly, as a usual practice, the Government will provide the Bill to the Legislative Council before publishing it in the gazette. We are at present preparing the text of the Bill, especially the Chinese translation, and we are in the process of final proofreading. We will provide the Bill together with the Legislative Council Brief to Members tomorrow before the gazettal of the Bill.

PRESIDENT (in Cantonese): Alright. Although several Members who wish to seek elucidation are still waiting for their turn to ask a question, we have been seeking elucidation for 45 minutes already. *(Laughter)* Under such circumstances, the time for elucidation ends here. Members can carry on with the discussion at other meetings in the future.

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bills: First Reading.

COPYRIGHT (AMENDMENT) BILL 2003

TUNG CHUNG CABLE CAR BILL

CLERK (in Cantonese): Copyright (Amendment) Bill 2003
Tung Chung Cable Car Bill.

Bills 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 Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

COPYRIGHT (AMENDMENT) BILL 2003

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I move that the Copyright (Amendment) Bill 2003 be read the Second time.

One of the main objectives of the Bill is to make permanent the suspension arrangement of the Copyright (Suspension of Amendments) Ordinance 2001.

The proposal originated from the amendments to certain criminal provisions in the Copyright Ordinance made under the Intellectual Property (Miscellaneous Amendments) Ordinance 2000. These amendments came into effect on 1 April 2001 seeking to introduce criminal liability for the use of infringing copies in business. While the original aim of these amendments was to deter and combat against rampant activities involving pirated computer software and audio-visual works, the amendments applied also to photocopying of printed works as well as downloading of information from the Internet. When the amendments came into effect, the public generally felt that the scope of the amendments was too wide which hampered the dissemination of information and classroom teaching.

In recognition of the public's opinions, the Government proposed and the Legislative Council enacted in June 2001 the Copyright (Suspension of Amendments) Ordinance 2001 in order to suspend the amendments concerned except as it applied to the four categories of copyright works, namely computer programmes, movies, television dramas and musical recordings. In other words, the criminal liability for the use of pirated copies of copyright works in business is confined to these four categories of copyright works. Criminal liability for the use of pirated copies of other copyright works has been suspended. The arrangement will expire on 31 July this year.

Having conducted an extensive public consultation and sought the views of the Legislative Council Panel on Commerce and Industry, we decided to make permanent the suspension arrangement, confining the criminal liability for the use of pirated copies in business to the four categories of works as aforementioned.

The Bill also seeks to improve the wording of the criminal provisions related to dealing in infringing copies. It does so by listing out the offending acts, such as selling pirated copies for profit. This will set out in clearer terms the difference between offence related to dealing in infringing copies and that related to using pirated copies in business context. This will also make the provisions more transparent.

Moreover, the Bill removes the phrase "in connection with any trade or business" in the relevant provisions of the Copyright Ordinance so that activities marginally related to business will be excluded from the scope of criminal and civil liability related to end-users.

During the public consultation, there was concern that imposing criminal sanctions against employees who use pirated copies supplied by their employers in business context will be too harsh, in that the employees may not decline to use the pirated copies as they are afraid of losing their jobs. To address this concern, we propose in the Bill to provide a defence against criminal liability for employees using pirated copies supplied by their employers. The defence will be available with retrospective effect from 1 April 2001. However, the criminal liability against an employee who knowingly deals in pirated copies will remain unchanged.

Another end-user related proposal under the Bill is the removal of civil and criminal liability in relation to the use of parallel imported copies of copyright works in business.

"Parallel importation" refers to the importation, without the permission of the copyright owner, of copies of copyright works lawfully made outside Hong Kong. According to the Copyright Ordinance, for a copyright work that has been published for 18 months or less, it is a criminal offence to import otherwise than for private and domestic use a copy of that work which is an infringing copy by virtue of its parallel importation.

In general, the parallel importation or subsequent sale of copies of a copyright work which has been published for more than 18 months from its publication will not attract any criminal liability but civil remedies are still available to the copyright owner. Apart from this, using parallel imported copies of copyright works in business may also attract civil liability.

The Bill suggests removing the criminal and civil liability for the importation and use of copies of copyright works by end-users in business. However, existing restrictions on parallel importation will continue to apply to acts of commercial dealings in parallel imported copies, for example, the sale of parallel imported copies, or importing such copies for sale. The amendments related to the removal of criminal liability should apply retrospectively as regards any offence committed before commencement of the Bill, unless the person in question has already been convicted.

Separately, in view of the concern expressed by the publishing industry about the illicit reproduction of books by copy shops for commercial purposes, we add to the Bill new provisions to tighten the criminal sanctions against these illegal activities.

All the recommendations in the Bill were made after extensive consultation with the public, the industry, and the Legislative Council Panel on Commerce and Industry. These recommendations help to address the potential concerns of the public about the legal liability arising from the use of infringing copies in business. In addition, they help facilitate the free flow of genuine goods and increase the availability of products, thereby assisting enterprises, especially small and medium enterprises, to use legitimate products. The Bill also strengthens the combat against illicit reproduction of books, thereby improving the protection of copyright works.

With these remarks, Madam President, I commend this Bill for Members' support.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Copyright (Amendment) Bill 2003 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.

TUNG CHUNG CABLE CAR BILL

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I move that the Tung Chung Cable Car Bill be read the Second time.

In April 2001, the Government invited private sector proposals for a 30-year franchise in respect of the finance, design, construction, operation and maintenance of the Tung Chung Cable Car System linking Tung Chung and Ngong Ping on Lantau. We went through a process of detailed assessment based on predetermined assessment criteria, and decided to award the franchise to the MTR Corporation Limited (MTRCL).

The Government entered into a Provisional Agreement with the MTRCL in July last year. This enables the MTRCL to commence work on the Project before the grant of the franchise, including developing a sufficient design for the System and its ancillary developments, carrying out requisite environmental and technical studies, and completing the necessary statutory procedures. In

parallel, the Government has started drafting work on the enabling legislation to provide for the legal framework for the franchise, and preparation of the relevant Project Agreement.

In drafting the Bill, we have adopted the principle that provisions which must have statutory backing will be set out in the Bill. Matters which can be dealt with through contractual means will be addressed in the Project Agreement. The operation, maintenance and safety standards of the System will be regulated by the Aerial Ropeways (Safety) Ordinance, as in the case of the aerial ropeway system in Ocean Park.

The Bill provides for the grant of a 30-year franchise to the MTRCL or its wholly owned subsidiary (referred to as "the Company" hereafter) for the design, construction, operation and maintenance of the Cable Car System, including a right for the Company to determine and collect fares for use by the public of the cable car service, and the obligation of the Company to pay to the Government a royalty; the consequences in case of a failure by the Company to comply with any requirement of the legislation or a breach of the Project Agreement; and provisions for arbitration in the event of disputes.

Part 7 of the Bill provides a mechanism to deal with default on the part of the Company, and the consequences of revocation or termination of the franchise. On termination or expiry of the franchise, the Company will have to vest assets in respect of the System in the Government. The Government will pay to the Company the equivalent of the residual value of such assets after deducting all sums payable by the Company to the government.

Under Part 3 of the Bill, the Company shall have statutory rights to use the land comprising the Cable Car System Area. The Bill also provides for the Company to use and grant licences for the use of the commercial gross floor area, and with a right to demand and collect licence fees and operate vehicle parking facilities at the Tung Chung Terminal and the Ngong Ping Terminal. The Company shall also have wayleaves and other related rights over unleased land that are necessary to render the franchise effective.

To facilitate the development of the Cable Car System, Part 4 of the Bill provides for the creation of statutory easements, with a mechanism for payment of compensation to the owners of the leased land affected by the easements, to

enable the Company to place, operate and maintain the aerial ropeway over the leased land. It also provides for entry on land by the Company in an emergency in connection with the System, with consequential arrangements for compensation to the owners of the leased land affected.

Madam President, the development of the Tung Chung Cable Car System is one of the major tourism development initiatives for Lantau launched by the Government. We need to legislate to enable the grant of the franchise as soon as possible to implement the project. I hope the Bill could be enacted within the current Legislative Session, so that the Cable Car System could be completed in 2005 as scheduled. The completion of the System will complement other major tourism attractions in Lantau which will also be completed in 2005, including the Hong Kong Disneyland, in promoting the further development of Lantau as a major tourism node in Hong Kong.

Madam President, I commend the Bill to this Council.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Tung Chung Cable Car Bill 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 now resume the Second Reading debate on the Village Representative Election Bill

VILLAGE REPRESENTATIVE ELECTION BILL

Resumption of debate on Second Reading which was moved on 9 October 2002

PRESIDENT (in Cantonese): Mr IP Kwok-him, Chairman of the Bills Committee, will address this Council on the report of the Bills Committee.

MR IP KWOK-HIM (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on the Village Representative Election Bill (Bills Committee) I report on the results of the main deliberations of the Bills Committee.

The object of the Village Representative Election Bill (the Bill) is to bring the elections of village representatives (VRs) under statutory control. The main proposals made are to provide for the establishment of the office of Resident Representative for an Existing Village and the establishment of the office of Indigenous Inhabitant Representative for an Indigenous Village or a Composite Indigenous Village; to provide for the elections of Resident Representatives and Indigenous Inhabitant Representatives. The Bills Committee made detailed and in-depth deliberations of the proposed election arrangements made in the Bill.

Under the electoral arrangements proposed in the Bill, indigenous inhabitants who are residents in a village are entitled to vote in both an Indigenous Inhabitant Representative election and a Resident Representative election. Indigenous inhabitants who are not resident in a village are only entitled to vote in an Indigenous Inhabitant Representative election. Non-indigenous villagers are only entitled to vote in a Resident Representative election.

Some members opine that the Bill may not be consistent with the Hong Kong Bill of Rights since it is a departure from the principle of "one person, one vote". Some other members hold a different view and point out that a certain degree of disparity of treatment in electoral arrangements may be acceptable as long as it is justifiable.

The Administration has explained that indigenous villagers need two types of VRs to effectively represent their different interests. An additional vote is given to indigenous inhabitants so that they can elect Indigenous Inhabitant Representatives to ensure that their traditional rights and interests are protected.

In addition, Dr TANG Siu-tong has queried that the Bill may not be consistent with the Heung Yee Kuk Ordinance. He has pointed out that the demarcation of boundaries for village constituencies as proposed in the Bill may result in some residents in the villages of the New Territories not being eligible to participate in the elections of VRs.

The Administration has explained that it is impracticable to include isolated village houses within the delineated area of the boundary map for they are really too far away.

The Administration has stressed that the Bill complies with the laws of Hong Kong and the Court of Final Appeal (CFA) judgement.

Madam President, on the issue of whether or not civil servants can be nominated as candidates and be elected as VRs, members' position is unanimous. They are of the view that since VRs are not paid and do not enjoy any special rights, civil servants should be allowed to be nominated as candidates and elected as VRs, and to hold office as VRs. A majority of the members of the Bills Committee, however, consider that even if all the prescribed public officers defined in the Bill are allowed to be nominated as candidates and be elected as VRs, and hold office as VRs, it is unlikely that they will do so in reality.

As to the problem of possible conflict of interest as pointed out by the Administration, it can be addressed by the adoption of appropriate administrative guidelines and measures. Members have pointed out that under the existing practice, a civil servant would not be able to obtain the approval of his department head for running the office of a VR, if his official responsibilities as a civil servant may conflict with his public duties as a VR.

The Bills Committee originally decided that the Chairman should move a Committee stage amendment to the effect that civil servants and such public officers as prescribed by the Bill may be nominated as candidates and be elected as VRs, and hold office as VRs.

After the Bills Committee has reported its deliberations to the House Committee, the Administration has informed the Bills Committee that it has agreed to move the same amendment at the Committee stage as that originally intended by the Bills Committee. The Bills Committee welcomes such a decision from the Government. Therefore, I have withdrawn the notice given by me to move the amendment. The Secretary for Home Affairs will explain the Government's position on this issue later.

Some members of the Bills Committee, including Mr Andrew CHENG and Mr Albert CHAN, have raised strong objection to the residency requirements for electors and candidates for Resident Representative elections

proposed in the Bill which requires electors to have lived in the Existing Village concerned for three years and candidates to have lived in the Existing Village concerned for six years. Mr Albert CHAN has advised the Bills Committee that he would move a Committee stage amendment to delete the "residency-in-village" requirements. As Mr Albert CHAN is presently not in Hong Kong, Mr Andrew CHENG will move the relevant amendment in his place.

Some members have expressed concern that there will be overlap in the functions of Indigenous Inhabitant Representatives and Resident Representatives and this may lead to confusions and conflicts. Mr Andrew CHENG will move a Committee stage amendment later to amend the functions of the Indigenous Inhabitant Representative.

In response to members' suggestion, the Administration has agreed to move Committee stage amendments on requirements for holding village by-elections and reducing the number of electors required to lodge an election petition.

The Administration has also proposed that surviving spouses of deceased indigenous inhabitants may register as electors in the elections of Indigenous Inhabitant Representative provided that they have not re-married. The Administration will move a Committee stage amendment to this effect.

The Administration will move a Committee stage amendment to amend clause 1 of the Bill to the effect that with the exception of sections 2 and 19 of Schedule 4, the Bill will come into operation on gazettal so that the preparatory work for the elections of VRs can commence immediately.

Finally, in response to the request of the Bills Committee, the Secretary for Home Affairs has undertaken, at the resumption of the Second Reading debate of the Bill, to improve the consultation on the demarcation of village boundaries, to review the subsidies to village offices and Rural Committees, to review the arrangements for village by-elections and to improve the wording of the provisions of the electoral laws.

On the issue of village by-elections, I would like to point out in particular the Bills Committee's view that since the holding of village by-elections will incur a lot of resources, it may not be worthwhile to hold a by-election to a vacancy if there are only a few months remaining before the end of the current

term of the office concerned. In response to the suggestion made, the Administration has undertaken to extend the four-month period preceding the end of the current term of office of the VR concerned for which no village by-election to fill a vacancy would need to be held and examine the similar requirement for holding a District Council or Legislative Council by-election.

Madam President, I so submit.

Madam President, I now seek your approval to speak in my personal capacity. Thank you.

Madam President, I shall speak on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB) in support of the Bill and the Committee stage amendments proposed by the authorities. The CFA ruled in December 2000 that the VR election held at Shek Wu Tong village was in contravention of the Hong Kong Bill of Rights and the VR election at Po Toi O village was both in breach of the Hong Kong Bill of Rights and the Sex Discrimination Ordinance. In view of these, the Government made this Bill. After deliberations and discussions made in the Bills Committee, the DAB is of the view that although the Village Representative Election Bill is not perfect, it has realized the judgement passed by the CFA on the CHAN Wah and TSE Kwan cases and upheld the rule of law in Hong Kong. As a new round of VR elections is scheduled to start this year, if we do not pass this Bill which is consistent with legal principles and the CFA judgement, then it is likely that people may knowingly breach the law and that they will allow the situation to go on despite the fact that the existing electoral arrangements are unlawful. Therefore, the DAB thinks that there is both an urgency and a social need for the relevant legislation to be enacted.

During deliberations on the Bill, members expressed different views on the legislative principles involved and also cast some doubts on them. Some members rejected the idea of having two kinds of VRs and proposed that a "wholly indigenous inhabitant model" for the election of VRs should be adopted. In addition, some members suggested that only one office of VR should be set up to represent both the indigenous inhabitants and the non-indigenous inhabitants. The DAB agrees with the proposals made in the Bill to provide for the election of two types of VRs, that is, those for indigenous inhabitants and non-indigenous inhabitants, because such an arrangement is more appropriate and better serves the interests of all parties.

Some members have questioned whether or not the Hong Kong Bill of Rights would be contravened when indigenous inhabitants can have two votes while non-indigenous inhabitants can only have one. The Government in response made a comparison between the requirements as set out in the Bill and those set out in the Hong Kong Bill of Rights. It also referred to three principles found in the general test in *The Queen v Man Wai-keung (No. 2)* to justify the additional vote enjoyed by indigenous villagers. It is of the view that such a departure from the principle of identical treatment for all villagers is justified and necessary. The DAB accepts this explanation for the general test is consistent with the Hong Kong Bill of Rights and has been duly considered and deliberated upon.

Madam President, another issue of contention is the eligibility requirements for electors and candidates in a VR election. The Democratic Party opposes the requirement that an elector should have been resident in the village concerned for three years and that a candidate should have been resident in the village concerned for six years. We are aware that Mr Andrew CHENG will propose an amendment to delete the provisions on residency requirements. The DAB considers that the residency requirements are reasonable, for if someone has not been resident in a village for a certain specified period and stands for the election, it would make people doubt his knowledge of the affairs of the village concerned. Should Mr CHENG's amendment be carried so that the residency requirements are abolished, I would worry that the problem of "vote planting" would arise. That is to say, some people will move into a small village for the purpose of running in the VR elections. This would affect the stability of the village concerned. Therefore, the DAB will not support the amendment by Mr Andrew CHENG.

In addition, the DAB is also opposed to the other two amendments to be proposed by Mr CHENG, that is, the amendments to change the functions of the two types of VRs, stating that Indigenous Inhabitant Representatives can only reflect views relating to the lawful traditional rights and interests of indigenous inhabitants, while Resident Representatives cannot reflect views on affairs relating to the lawful traditional rights and interests of indigenous villagers. The Democratic Party is of the view that this separation of functions would serve to avoid confusions and conflicts. On the other hand, the DAB thinks that since clause 6(4) of the Bill has already restricted the functions of Indigenous Inhabitant Representative to dealing with affairs relating to the lawful traditional rights and interests of indigenous inhabitants, there should not be excessive

restriction on the areas of which views can be reflected. The DAB is also of the view that there is no need to impose any restriction on the areas of village affairs which VRs can reflect. The amendment is therefore unnecessary.

The Bill also proposed originally that civil servants and public officers could not be elected as VRs. The DAB and other members think that there is nothing improper to permit civil servants to become VRs, for VRs are different from District Council members in that the office of VR is not remunerated. Their dealing with village affairs is entirely voluntary and they do not enjoy any special privileges. The DAB is of the view that VR elections should not be subject to the same kind of restrictions on public officers as in District Council elections. In fact, when public officers stand for such elections, they are subject to the control of their department heads through the Civil Service Regulations, therefore the DAB opposes the original proposal made in the Bill. The Bills Committee originally decided to move amendments to the relevant provisions through the Chairman. Later the Government accepted the recommendation made by the Bills Committee and agreed to move the amendments. The DAB welcomes such an arrangement.

With these remarks, I support the Second Reading of the Bill on behalf of the DAB.

MR LAU WONG-FAT (in Cantonese): Madam President, as Members are aware, the new arrangements for the conduct of VR elections originated from a ruling made by the Court of Final Appeal (CFA) in end 2000. The ruling, tantamount to repealing the electoral systems employed villagers as a matter of custom, has produced enormous impact on the rural community.

Since then, the Home Affairs Bureau and the New Territories Heung Yee Kuk have been working with perseverance, exerting their utmost in search of a good solution. Following extensive consultations with rural representatives and repeated negotiations between both parties, and after going through great controversies, the Heung Yee Kuk finally reached a consensus with the Administration on new electoral arrangements. The consensus was endorsed by a majority vote in the Full Council meeting held by the Heung Yee Kuk in October 2002.

As Secretary Patrick HO said on one occasion, the new electoral arrangements are a win-win solution. They are not only in line with the CFA

ruling, but also a realization of Article 40 of the Basic Law, namely, the lawful traditional rights and interests of the indigenous inhabitants of the New Territories shall be protected by the SAR.

Madam President, it is not at all easy for the new electoral arrangements to be formulated. They actually represent the best possible arrangements under the realistic circumstances. They have shown that the indigenous inhabitants of the New Territories are not only law-abiding and tolerant, but also willing to act in the interest of the majority in keeping abreast of the times. I do appreciate that the new electoral arrangements, albeit being the best given the realistic circumstances, may not satisfy the demands of all people. Judging from another angle, however, the implementation of the new electoral arrangements can enable the CFA's ruling to be implemented expeditiously. Will it be more desirable and beneficial if the delay faced by some 700 villages in the conduct of elections for a new term can be resolved expeditiously, than allowing the disputes to go on indefinitely?

Madam President, in scrutinizing the Bill, the Bills Committee has listened carefully to the views expressed by people from various sectors of the community and made some very constructive recommendations. I implore Honourable colleagues to support the Bill. With these remarks, I support the motion.

MR TOMMY CHEUNG (in Cantonese): Madam President, I would like to comment on the Village Representative Election Bill on behalf of the Liberal Party.

The controversies surrounding the election of VRs in the New Territories revolved around the electoral arrangements for indigenous inhabitants and non-indigenous villagers. The Liberal Party is of the view that whatever the arguments may be, VR elections must be reformed, so that they can keep pace with social development and comply with the rulings of the CFA.

Although the disputes have been going on for more than two years, the Government has been maintaining close contact with the Heung Yee Kuk and New Territories inhabitants, and all stakeholders finally reconciled to come up with a compromise acceptable to most people. This has been encouraging.

The Liberal Party maintains that the dual representation system proposed in the Bill is able to safeguard the traditional rights and interests of New Territories indigenous inhabitants and also update arrangements for VR elections to take account of non-indigenous villagers' rights. It can thus be considered a win-win arrangement.

As for the eligibility requirements for electors and candidates, the Government and the Heung Yee Kuk once held divergent views, but we are pleased to note that they have now reached a consensus under which an arrangement of "three years and six years" will be adopted. This means that a residency of three years will qualify one to vote, and a residency of six years will qualify one to stand in a VR election. The Liberal Party thinks that this is a better arrangement, because all non-indigenous villagers will be qualified to vote in VR elections four years later.

However, Mr Andrew CHENG will move an amendment to separate the functions of an Indigenous Inhabitant Representative and those of a Resident Representative. The Liberal Party has some reservations about this, because this may intensify the conflicts between indigenous inhabitants and non-indigenous villagers, thus leading to a new round of disputes.

In the final analysis, the only difference between indigenous inhabitants and non-indigenous villagers is just a matter of identity; they are not really two separate groups with mutually exclusive interests. "Unity brings mutual benefits and separation mutual harm". All people living in the same village should be encouraged to participate actively in the affairs of the village regardless of their identities; only this can create a satisfactory and harmonious living environment.

Finally, the Liberal Party hopes that the Government can conduct a review on the operation of the dual representation electoral arrangements after the VR elections this year, so as to ensure the successful implementation of this system.

With these remarks, the Liberal Party supports the Second Reading of the Bill.

MR ANDREW CHENG (in Cantonese): Madam President, the procedures of VR elections in the New Territories have all along been criticized as undemocratic and discriminatory. They are not subject to legislation on election and corrupt practices. There are also numerous unreasonable rules like VRs may refuse the registration of villagers as electors; women who have married and moved out of the village are not permitted to vote; and non-indigenous inhabitants are not permitted to vote despite their having lived in a village for more than 10 years, and so on.

In August 1994, the Heung Yee Kuk issued the Model Rules for the Conduct of VR Elections which include such rules as "one person, one vote" and equal voting rights for men and women, and so on. However, the Government has only been encouraging the villages to comply with these rules, and villages are permitted to amend the rules to suit their own needs. As the rules are not strictly enforced and they only exist in name, they are only a "toothless tiger".

All along the Democratic Party has been urging the Government to make legislation to regulate VR elections and to put them under the ambit of the Corrupt and Illegal Practices Ordinance in order to make them fair, just and open. In the past, the Government tried to shirk its responsibility by putting up the excuse that VR elections were private elections.

In the VR elections in 1999, at last two non-indigenous inhabitants made use of the judicial review process to query the validity of the electoral arrangements of the VR elections in 1999 in the villages they lived. In respect of the challenge, the Court of Final Appeal (CFA) ruled that first, the exclusion of non-indigenous villagers from voting or standing for election in the elections of VRs was contrary to the right to participate in political affairs as stipulated in Article 21(a) of the Hong Kong Bill of Rights; and second, the electoral arrangements under which non-indigenous women married to indigenous men had the right to vote but non-indigenous men married to indigenous women were excluded from voting, contravened the provisions under the Sex Discrimination Ordinance.

After the delivery of the CFA judgement, there were calls, including those from the Democratic Party, to bring the elections of VRs under statutory control. Having reviewed the procedures and arrangements for rural elections, the Government decided that the conduct of such elections should be brought under statutory control. After deliberations were made on the Bill in the Bills Committee, the Second Reading debate of the Bill is resumed today.

Madam President, the main objects of the Bill are to provide for the establishment of the office of Resident Representative for each Existing Village and the establishment of the office of Indigenous Inhabitant Representative for an Indigenous Village or a Composite Indigenous Village; and to provide for the elections of Resident Representatives and Indigenous Inhabitant Representatives. However, with respect to the roles and functions of these two types of VRs, the Democratic Party is very concerned about the possibilities that these VRs may take part in the work of Rural Committees (RCs). If a VR is elected as the chairman of a RC, the person will automatically become an ex officio member of a District Council (DC). The chairmen of RCs may even be returned to the Legislative Council through the coterie elections at the DCs or among executive members of the Heung Yee Kuk. This avenue of election to the Legislative Council, as opposed to direct elections, is apparently open to question. We are of the view that the functions of VRs elected in VR elections should be confined to village affairs only and should not be linked with those at the DC or Legislative Council levels. Since the authorities have always drawn a clear line between the elections of the DC and the Legislative Council in terms of their conduct, methods, requirements of candidates, and so on, with those of VRs, I call upon the authorities to review the situation of elects from VR elections advancing to the DCs and Legislative Council and of the system of assemblies so produced. We strongly urge the Government to, in its review of the VR elections, DC elections and the Legislative Council elections later, also review this function of indirectly electing VRs to the Legislative Council with a view to abolishing it.

As for the eligibility of electors and candidates as proposed in the Bill, I would discuss it in detail at the Committee stage. I would not wish to waste too much of the time of Honourable Members because we have a long Agenda today and we have to discuss the short piling incident later. I would like to make the views of the Democratic Party known here. If Honourable Members should agree that the residency requirement for candidates is six years, I would think that this requirement is questionable in a fair and open electoral system. According to the proposal, those residents who moved into an Existing Village in 2002 would not be eligible to stand as candidates in the VR elections this year, or even in 2007. Would it be too harsh on these people if they have to wait for 10 years before they can become candidates in VR elections? I would think that with respect to the eligibility of electors and candidates in VR elections, the years of residency should not be used as a restriction. Now that Hong Kong is an

open society, I would think that villagers should have the right to decide whether or not a person is eligible to become a good VR. A person who has lived in a village for a long time may not become a good VR, while on the other hand, one who has lived in a village for a short time may not be a bad one.

On the issue of the eligibility of electors, if it is the problem of "vote planting" which is a concern to Honourable Members, the problem can be basically resolved if we bring VR elections under the regulation of the Corrupt and Illegal Practices Ordinance enforced by the Independent Commission Against Corruption. In a small village, the problem of vote planting can be dealt with even more easily. If the population of a village used to be only about 100 people, but the size is suddenly increased by a few hundred, then explanation will be required for such a drastic increase. Under the existing laws, the same grounds can be invoked to combat and regulate elections in the DCs and the Legislative Council, especially in functional constituencies of a smaller electorate. I fail to understand why the Government and Honourable colleagues who supported the government proposals would think that vote planting cannot be regulated and monitored by the existing laws. I would therefore urge Honourable colleagues to reconsider the "residency-in-village" requirement, for not only is this requirement not consistent with the requirements in DC and Legislative Council elections, but also a derogation of the wisdom of the villagers in election.

As for the functions of VRs for Indigenous Villages or Composite Indigenous Villages, I would explain them in detail at the Committee stage. However, I would like Honourable Members to look at the paper sent to us by the Government a few days ago. The paper makes a detailed explanation and urges Honourable colleagues to support the amendments to be proposed by the Government and to oppose to my amendment. In page four of the paper under item (e) on the functions of VRs, it says in the explanation that it is most appropriate for an Indigenous Inhabitant Representative elected by indigenous inhabitants to deal with affairs relating to the lawful traditional rights and interests, and the traditional way of life, of indigenous inhabitants. It would not be appropriate to have a VR who is not an indigenous inhabitant and who is not elected from all the indigenous inhabitants of an Existing Village, to deal with affairs relating to the lawful traditional rights of the indigenous inhabitants of the village. Both Mr Albert CHAN and I agree to these views.

Then why do we propose such an amendment? Just now I have heard the speech of Mr Tommy CHEUNG of the Liberal Party, I believe he may have misunderstood our amendment. It is never the intention of our amendment at all to cause division between the indigenous inhabitants and the non-indigenous representative of a Composite Indigenous Village. We just hope that the wording would serve to make the objective and the spirit of the legislation clearer and to avoid confusion. I think the Government would not like to see such confusion as well, otherwise, it would not have made on paper the remarks read out by me earlier. I therefore hope that the Government and Honourable colleagues will understand that there is no conflict between the legislative spirit and the wording to be proposed by me later. I would think on the contrary that the functions of these two types of VRs should be distinguished as much as possible and clashes in their powers should be avoided as much as possible. Despite the fact that I am well aware of the voting inclinations of Members, I would still hope that my views will be put on the record in order to make my position clear. I would like to reiterate again that the two amendments were indeed proposed by Mr Albert CHAN in the Bills Committee and he is not here today. As the amendments are also a consensus which the Democratic Party has been striving to reach, so I am proposing the amendments in Mr CHAN's place.

Madam President, now I would like to turn to the issue of resignation of VRs. In the Bills Committee, I have said that the relevant wording in the Bill is not clear. Under the Bill, a VR may resign from his office by giving written notice of his resignation to the Director of Home Affairs and such a notice should be an original signed by the VR concerned and delivered to the Director of Home Affairs. A notice sent by facsimile transmission would not satisfy the requirement. We urge the authorities to examine and review the wording of clause 10(2) of the Bill, as well as similar provisions in the District Councils Ordinance and the Legislative Council Ordinance to determine if the policy intent of receiving the original of the notice of resignation is duly reflected.

I make this suggestion because I once asked Mr Stanley FISHER about this and he said that it would not be too much of a problem because no such notice had ever been sent by facsimile transmission. Then we stopped arguing on that occasion. But now I wish to draw the Secretary's attention to the fact that there are more than 700 villages, if all the VRs wish to resign and wash their hands off any matter, there may be problems if they choose to fax or e-mail their notices of

resignation. The existing wording in the Bill is not clear, for it says that the original of the signed notice must be received. Time will become a very important concern, for if once the VR has sent his notice of resignation, then he would not be held responsible for anything which happens in the interim before the receipt of his notice. I made this point very clear in the Bills Committee, but the Bureau said that such wording was used in both the District Councils Ordinance and the Legislative Council Ordinance and resignations had never been a problem in the elections of these two assemblies. But it must be noted that there are only 60 Members in the Legislative Council and some 300 members in the District Councils as compared to more than 700 villages which will adopt the dual representation system which is an entirely new system. I hope no legal disputes will arise if VRs use facsimile transmission or other forms which I have mentioned to give their resignation notice. Though legal disputes may not necessarily arise *en masse*, they are nevertheless not desirable. I therefore hope that the Government will give serious thoughts to that point.

Lastly, I hope that the Government would make an undertaking on the following three things: first, to consider putting the maps of the Existing Villages for the 2007 VR elections on the homepage of the Home Affairs Department; second, to review the subsidy given to offices of RCs and village offices in the established resource allocation procedure; and third, to review the electoral arrangements after the VR elections are held in 2003 and to consider extending the period before the expiry of the terms of office of serving VRs within which no by-election will be held and to examine similar requirements with respect to by-elections in District Councils and the Legislative Council.

With these remarks, Madam President, I support the Second Reading of the Bill.

DR TANG SIU-TONG (in Cantonese): Madam President, Article 40 of the Basic Law expressly provides that the lawful traditional rights and interests of the indigenous inhabitants of the New Territories shall be protected by the Hong Kong Special Administrative Region. As an accountable government, it should find the best ways to implement the provisions of the Basic Law and at the same time, devise a set of sound legislation and policies to strike the best balance between the overall interests of the indigenous inhabitants of the New Territories and those of Hong Kong people. It is regrettable that the Bill introduced by the

Government has failed to take into account the interests of the indigenous inhabitants of the New Territories on the one hand and to strike a balance and effect an integration between the overall interests of the former and those of the people of Hong Kong on the other. So I am opposed to this Bill.

Madam President, for any election to be open, fair and just, a basic prerequisite is that electors fully understand the manner in which it is conducted and that they can enjoy the right to a fair election. In the constituencies of the District Council (DC) elections, there are some 17 000 people in the electorate in each constituency and permanent residents of Hong Kong aged 18 or above may elect a DC member through the "one person, one vote" method to serve their community. The operation of such elections is simple and easy to understand, and it is also fair and just. What is the case with the dual representation system? The election of Indigenous Inhabitant Representatives depends on blood ties and the election of Resident Representatives depends on geographical ties. Both are rather strange and completely different concepts that should not be used in the same elections in the first place. However, the authorities claim that in a bid to satisfy the requirements of the so-called rural elections and to prevent "vote planting", the vague concepts of "principal residential address" and "village-type houses" are used in the elections of Resident Representatives. That is to say, the eligibility of electors is determined also by factors like whether or not they live in villages and that the village concerned is their "principal residential address". So if they have two places of residence and they do not live in the village concerned for 183 days or more each year during a three-year period, then they will not be eligible to vote even if they were born and raised up in the village, have properties there or close ties with it. In his lobbying letter to Honourable Members, the Secretary says that the concept of "principal residential address" is clear, but he also says to the effect that discretion will be exercised on the merits of each case. If this concept is so clear, then there will not be any need for the exercise of discretion. In other words, when discretion has to be exercised, it is only obvious that the principles are not clear at all.

Even if this test of "principal residential address" is passed, potential electors will need to demonstrate that they are living in "village-type houses". That is to say, people from the same village who live in the "small houses" built by themselves or the old village houses will be eligible to vote, but if they are living in those "small-house estates" built by developers, then they are not eligible to vote. Given the confusion in the electoral arrangements, it is not at all surprising that disputes have arisen in some 150 villages in the New Territories over the demarcation of village boundaries.

As a matter of fact, in a village which may have a population smaller than the number of Members in this Chamber, the election of VRs who merely have an advisory role should simply not require an electoral system which is such a complicated oddity. It is a system which even the electors themselves are not sure whether or not they are eligible to vote. So how can this be said to be an open, fair and just system? The Government must clearly define the qualification of electors in VR elections and it must never shirk the responsibility by passing the buck to the Courts. When even the electors' eligibility is not clearly defined, how can the Legislative Council be expected to pass a Bill like this?

In addition, on the issue of voting rights, the non-indigenous inhabitants may only cast one vote and elect a Resident Representative. As for the indigenous inhabitants, depending on their eligibility and village tradition, they may cast from one vote to as many as six votes, that is, they may elect a Resident Representative and as many as five Indigenous Inhabitant Representatives. Under clauses 5(3) and 6(4)(a), both the Resident Representative and the Indigenous Inhabitant Representative may speak on matters relating to the whole village, but there is only one representative for non-indigenous inhabitants in each village, while the indigenous inhabitants may have at least two and at most six representatives to speak on their behalf. On matters of common concern in a village, it can be seen that the voice representing indigenous inhabitants is both greater in both "quality" and "quantity" than that of non-indigenous inhabitants.

On the other hand, non-indigenous inhabitants may become electors through marriage with indigenous inhabitants and they are not subject to restrictions like "residency-in-village", "principal residential address" and "village-style houses". They can take part in elections concerning indigenous inhabitants and their voices can be heard through the Indigenous Inhabitant Representatives elected by them. But this channel is blocked when they are married to non-indigenous inhabitants. They have to overcome barriers like "residency-in-village", "principal residential address" and "village-style houses", and so on before they can elect a representative to speak for them. According to the views of Philip DYKES, SC, an expert in human rights law, this kind of electoral system is clearly not consistent with the requirements of Article 21(a) of the Hong Kong Bill of Rights which provides that:

"Every permanent resident shall have the right and the opportunity, without any of the distinctions mentioned in article 1(1) and without unreasonable restrictions —

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;"

and the distinctions mentioned in Article 1(1) of the Hong Kong Bill of Rights include sex, birth or other status, and so on. So how can such an electoral system be considered fair and just?

Madam President, the design of the Bill is such that there is overlap in the functions of the two types of VRs. Each type represents different electors and they are not subordinate to the other. There is no system of deliberation and decision in place. It would be fine if the two work well, but should there be a difference in opinion, what will happen is only discord as they are all representing the villagers and they have an equal status and no dispute resolution mechanism is provided in the Bill. The difference in opinions will lead to indecision in less serious cases and disputes in more serious ones. So there is division between indigenous inhabitants and non-indigenous inhabitants. A quiet and peaceful village will be infested with discord and villagers will become enemies to each other.

Madam President, I notice that Mr Andrew CHENG is trying to delineate the functions of these two types of VRs in his amendment. But the question is, in reality we have villages which may have just a few hundred people, so it is very difficult to distinguish day-to-day village affairs as those belonging to the rights and interests of indigenous inhabitants and those which do not. Also, it would not be practicable to require ordinary villagers to find out whether or not the matters are related to the traditional rights and interests of the indigenous inhabitants before they ask the VR for assistance. If the VR is a responsible person, he will offer his help when requested. And so the problem still remains, for it is a question of the existence of two VRs for each village. That is how the "dual representation system" will create conflicts and disputes. This is the fundamental problem and unless the Bill is rewritten to provide for one VR for each village, or that the "wholly indigenous inhabitant model" proposed by me is adopted, otherwise, if only minor changes and amendments are made, this would only produce unrealistic expectations in a misleading manner.

Madam President, I am not exaggerating or raising alarmist talk. Nor I am making all this up. According to the findings of surveys conducted by the Department of Political Science and Public Administration at the University of Hong Kong in August 2001 and August 2002, 53% and 62% of the VRs who responded opposed the "dual representation system" while only 32% and 27% supported it. One morning in September 2002, more than 5 000 indigenous inhabitants set off from hundreds of villages in the New Territories and assembled in Central for a street procession to voice their opposition to the "dual representation system". What I am doing today is merely to express the concerns and discontent of most of the VRs and indigenous inhabitants, including those who are now protesting outside the Legislative Council Building.

Madam President, according to what Mr Stanley FISHER, Permanent Secretary for the Home Affairs Bureau, has said in the Bills Committee, there are loopholes in the Bill and there is a possibility that it may be reversed by the Courts. However, to date he has not told us where the danger lies. So how can a government like this be called an accountable one? Members should recall that the Government stayed the implementation of the amendments to the Copyright Ordinance, that is, the amendments in the Copyright (Amendment) Bill 2003 which Mr Henry TANG moved a motion early to resume its Second Reading, precisely due to the many loopholes found in that Bill and made it a laughing stock. I really hope that the Council will not repeat the same mistake with this Bill on VR elections.

If the Government really hopes to realize the spirit of Article 40 of the Basic Law through this Bill, it should gain the greatest consensus from the indigenous inhabitants of the New Territories, instead of the Heung Yee Kuk alone. Before any mainstream consensus is reached among the indigenous inhabitants, the Government should never ask this Council to pass the Bill in such haste.

With these remarks, Madam President, I oppose the Bill and call upon all Members to oppose it.

MR WONG SING-CHI (in Cantonese): Madam President, we know that the reason for the introduction of a Bill on the election of VRs is the judgement made by the Court of Final Appeal (CFA), which ruled that the previous VR elections were not fair because only indigenous inhabitants were allowed to vote.

Therefore, non-indigenous inhabitants should also be given the right to participate in the elections. Apparently, the judgement passed by the CFA is made with due consideration of the principle of fairness.

Unfortunately, in this Bill on the election of VRs, only one issue is addressed and it is made with reference to the wording of the CFA ruling that non-indigenous inhabitants should be allowed to take part in the elections. So a new form of election is proposed in the Bill to enable non-indigenous inhabitants to elect their own VRs to deal with village affairs. It seems that this proposal is not consistent with the original intention of the person who has petitioned the CFA, or it can be said that this is not very much in line with our expectation of putting in place an electoral system which is fair and just so that everyone can have an equal opportunity to elect their own VRs.

So with respect to what has been said above on the election of VRs, it should be conducted in the form of "one person, one vote" and one or more VRs should be elected from each vote cast. In this way the election would be fair and reasonable when everyone has an equal opportunity and an equal number of votes to select the VR of his choice.

It is unfortunate that this Bill was introduced as a matter of emergency for the Government felt compelled to solve the problem of VR elections, or its short of wits to come up with any methods whereby the existing rights of indigenous inhabitants are preserved intact. The Bill is about what is commonly known as the "double VR system". I would think that this is in fact not a double VR system because there are more than two VRs in many villages. Irrespective of whether one more VR should be added to each village or not, the fact remains that some villages have more than two, that is, three or four VRs and as Dr TANG Siu-tong has said earlier, there can even be five or six VRs.

In circumstances as these, the system that will come into being is not just a "double VR system". If I might put it this way, the kind of system that the Bill intends to put in place is a "dual-track system of village representation" instead of a "double VR system". It is a dual-track system because one track is where the indigenous inhabitants of a village elect a VR and the other track is where both the indigenous and non-indigenous inhabitants of a village elect another VR. But where the indigenous inhabitants are concerned, they may have already elected four VRs and indeed many villages have three or four VRs, so if this track is also pursued, the indigenous inhabitants may then have four or five votes. But the non-indigenous inhabitants can only have one vote regardless.

We can see that this Bill on VR elections is not consistent with the spirit of the CFA ruling but only with its wording. It can also be seen that this is only a kind of contingency measure devised by the Government to address some matters of urgency. In the long run, I hope that the Government can look into the issue of how VR elections can be conducted and how the system of "one person, one vote" can be adopted to ensure that the elections are fair and that each stakeholder can have equal opportunities and rights of participation.

I also notice one thing which has been mentioned by Mr Andrew CHENG and that is, there should be a distinction in the functions of Indigenous Inhabitant Representatives and the VR or Resident Representatives whose elections the non-indigenous inhabitants may also take part. There is a danger if the functions of these representatives are not distinguished. The dual-track system which I have mentioned does not have such a clear distinction of functions. These two tracks start at the same point, for the two types of representatives may deal with matters of the village concerned, instead of just those related to non-indigenous inhabitants alone. There are many other matters in a village such as roads which need to be attended to and these VRs may give their opinions on these or they may collect the views of the villagers and convey them to the authorities.

VRs elected from these two tracks may share this function, though the Government has said that they do not have any actual power. But Indigenous Inhabitant Representatives may serve another function which may be regarded as a kind of solid power and that is, they can deal with matters relating to the lawful traditional rights and interests of the indigenous inhabitants. So obviously, these two types of VRs may start at the same point, but one track leads to a farther point and its powers or functions may be somewhat greater. But unfortunately, only the indigenous inhabitants are eligible to elect such VRs and they form the electorate. In other words, it is likely that the electorate for this type of VRs is smaller than the electorate for the other type of VRs. Or it can be said that it is not so representative as the other type. For the other track is formed of an electorate of both indigenous and non-indigenous inhabitants. So as a matter of principle, the number of electors and the representativeness of the latter should be greater than the former.

But at the end of the day, VRs elected from this track, despite having a greater number of votes from both indigenous and non-indigenous inhabitants, do not have as many powers and functions as those VRs elected by indigenous

inhabitants alone. Is this not fair? Will conflicts arise? Let me cite an example to illustrate this. The Government may say that VRs elected from the other track may either be an indigenous inhabitant or a non-indigenous inhabitant, but if the VR elect is an indigenous inhabitant, then two points must be noted. One is that since the VR is an indigenous inhabitant, he is expected to be well-versed in matters of the indigenous inhabitants. The other is about his representativeness. VRs elected from this track may represent both indigenous and non-indigenous inhabitants, but the functions and scope of work of these VRs are smaller than those VRs elected from the indigenous inhabitants. So will conflicts arise when there is a lawsuit or when VRs vie for powers?

The Government may argue that it would be difficult for a VR who is not an indigenous inhabitant himself to deal with matters relating to indigenous inhabitants. But is this necessarily the case? In the past, when we worked in the New Territories, we found there were many problems. For example, if I am an indigenous inhabitant and my family name is WONG, but the chairman of the RC may be someone by the surname of LEE. He may not know anything related to the WONG clan at all or that he may not have sufficient information to deal with any matters concerning the WONG clan. But he still has the powers, the abilities and the influence to decide on matters of the WONG clan and he has a say in these matters. In this case, though he is an indigenous inhabitant, he may not know matters of the WONG clan so well. But he may have some influence. If the VR concerned is not an indigenous inhabitant but someone by the surname of LEE. He may not have any rights of the indigenous inhabitants. But he knows me and my clan well and he grows up with me in the same village. As he knows well the affairs of the WONG clan, so why can he not deal with some of these matters for me?

Therefore, many irregularities may arise under this dual-track system, for one type of VR may have greater powers than the other, but they have a smaller electorate and are less representative than the other. Would this lead to conflicts and problems? I hope that the Government will consider these and see if these scenarios may happen and to think of some solutions. I think the Government should be prepared.

On the other hand, the Bill can be considered a compromise. We can see that many details have not been finely worked out and some problems remain unresolved. But does it mean that we should oppose it? I would, of course, very much hope that a more comprehensive and fairer piece of legislation can be

enacted to provide for an electoral system which will lead to fewer disputes among villagers. However, it is sad to see that under the present circumstances, it is not at all practicable. For one thing, it looks as if the Government is not capable of making a more comprehensive piece of legislation, and for another, it is a matter of urgency since VRs must be elected within this year. For if not, many rights and interests of the indigenous inhabitants will suffer and it will lead to a delay in many of the things they want to do. I am very worried that the material interests of the vast number of indigenous inhabitants will suffer greatly if this Bill is not passed and VRs cannot be elected under the existing system.

In such circumstances, we are compelled to work together for the passage of this piece of legislation, despite our reluctance to do so. Though it is unfortunate that this piece of legislation is not complete, all we can do now is to accept the resumption of the Second Reading debate with reluctance. I can only hope that after the amendments are made to it, the Bill will be brought closer to reality and can better protect the substantive interests of the villagers. I hope Honourable Members will accept the amendments to be proposed by Mr Andrew CHENG later and understand the situation that despite our reluctance, the Bill must be passed. However, I do hope that in future, the Government can make a review of the village elections to see how they can be made fair and just, and how the rights and interests of the indigenous inhabitants as well as those of the residents in the New Territories can be protected in actual practice. This is the ultimate goal that we should strive for.

I so submit.

MS EMILY LAU (in Cantonese): Madam President, the appeal by Dr TANG Siu-tong for us to oppose this Bill is attractive as far as the Frontier is concerned. Dr TANG certainly understands the position of the Frontier, however, we can still not figure out why suddenly we seem to be very much in agreement with him.

Nevertheless, we might have to disappoint him this time around because the Frontier is not going to vote against this Bill. Actually, our views on this Bill have changed repeatedly. Madam President, I made a number of telephone calls to members of the Frontier a moment ago to discuss this matter. I have no idea how the Hong Kong Progressive Alliance (HKPA) is going to vote. Despite Dr TANG's appeal to all Members, the HKPA did indicate it was not yet

certain as to whether or not to support him. We can see that a number of Members have been put in a difficult situation as a result of this. I think I have to confess that I did not choose to join the Bills Committee. I seldom comment on a bill if I was not a member of the relevant Bills Committee. However, I must say a few words on how the Frontier and I look at the matter.

We did not join the Bills Committee because there were so many things we had to attend to, not because we were fully confident in the Secretary, as if in the case of Dr Philip WONG, who fell asleep while the Chief Executive addressed this Council. Our case is definitely not like his. Nevertheless, I must point out that (Madam President, I believe you do understand) unless we strongly oppose a Bill, it may not be necessary for us to, like what a number of Honourable Members do, join a Bills Committee because there are simply too many committees. However, Members who have strong views about a Bill should join the relevant Bills Committee to express their views. For instance, a number of Honourable Members joined the Select Committee on sub-standard piling problems for discussion. Instead of expressing their views afterwards, Members who have strong views should seize the opportunity to join the Select Committee to air their views. I will deliver my views in the upcoming debate too. I think I have to do so though I do not have a hand in the motion topic, for I have to express my views on matters of enormous import to me.

Why can the Frontier not oppose the Bill as we please? As pointed out by a number of Honourable colleagues earlier, we agree that the Bill is a progress. I recall Dr Patrick HO pledged his determination to enforce the CFA's ruling faithfully during the policy debate last month. Madam President, I immediately praised the Secretary at that time and I have to do it again today for not every Director of Bureau will enforce the ruling made by the CFA faithfully. Directors of Bureaux will sometimes seek re-interpretation of a ruling made by the CFA if they are not pleased with it. That the Secretary is prepared to enforce the relevant ruling faithfully is vital to upholding the rule of law. It is hoped that the Secretary can convey this message to his colleagues appointed under the accountability system. For the abovementioned reasons, I will support the Bill, though I realize we are likely to, as pointed out by a number of colleagues earlier, encounter some problems in enforcement. However, I still very much hope that VR elections can be conducted on a one-person-one-vote basis. The Government must not allow some people to cast two votes but only one for others.

Another reason for our reluctance to support the Bill is that the elections are coterie elections, so to speak. Due to the scale of the elections, the electoral requirements are just confined to — as was mentioned earlier — the length of residence, prohibition against vote planting, and so on. Certainly, I fully appreciate all this. Madam President, I called on Mr Stephen FISHER a few days ago and told him that problems were bound to arise. We were also told by a representative from the Independent Commission Against Corruption who was seated right here that elections involving very few people were vulnerable to corruption. I believe Secretary Patrick HO understands this very well. Although I stated that corruption and vote planting had to be prevented, what is the case with functional constituency elections since only a hundred or so votes are involved? If elections involving very few people are vulnerable to bribery, it implies that incidents of buying votes will easily occur. In my constituency, for instance, there are hundreds of thousands or even over a million electors. One will find out whether vote planting or buying is possible by just trying to do so.

All this makes us feel that something terribly serious is going to happen. Actually the matter needs not be taken so seriously if VRs will merely take care of matters for indigenous villagers. As pointed out by Mr Andrew CHENG and Mr Albert HO earlier, we have lost count of the number of years this matter has been discussed in this Council. The VRs, once elected, will immediately establish a link with the constitutional framework of Hong Kong. As mentioned by Honourable Members earlier, elected VRs will become members of Rural Committees (RCs), and RC chairmen will become ex officio members of District Councils. At the same time, the chairmen and vice-chairmen of RCs will become ex officio members of the Heung Yee Kuk, a functional constituency in its own right, and as members of a functional constituency, they stand a chance of being elected to this Council. Owing to these links, we all the more hope that all representatives can be returned in a fair, open and just manner to avoid extending the unfairness to our political framework. As I pointed out years ago, customs varied in different villages, with some villages practising "one household, one vote". But with most household owners being male, VR elections were discriminatory against women and this had given rise to numerous problems which were neglected until legal actions were finally taken by certain villagers. I feel that our efforts made over the years have been all in vain. We might perhaps draw a lesson from this, that if we are to force the Government to do something, we might have to take it to the Court. In short, the proposed Bill

is not perfect. However, the absence of a proposed timetable for the review has made it even harder for us to support the Bill. Even though the Government has acknowledged the need for a review, it was unable to tell us whether a goal has been set to bring a perfect solution to this problem. Moreover, the situation might be even worse after review. We have seen cases in which a review does not necessarily bring improvements. If we take the view that there should be a goal acceptable to all in the community, then should all elections be conducted in accordance with certain international standards, particularly when the representatives elected will establish a direct link with Hong Kong's constitutional framework? Today, we are still confronted with a host of problems and this makes it impossible for our goal to be achieved immediately. However, we can still formulate a timetable on when this can possibly be done. The Frontier finds this hardly acceptable because the relevant information is not yet available to date.

Madam President, I think I have to commend the Secretary again. Though the impact of the Bill is not going to be huge for I guess only several thousand people will be affected, the Secretary went out of the way to fly to London to consult the people. I was told that the Secretary made the trip because he had something else to do, not merely because he wished to meet with those people. But since the Secretary was in London, the Heung Yee Kuk invited him to meet with some overseas Chinese leaders and squires. I was also told that the squires were deeply moved (I wonder whether they burst into tears though the Secretary said some of them had really done so). This is not surprising at all for they were consulted by a Director of Bureau who flew from Hong Kong eight or nine thousand miles away just to consult their views on whether the dual representation system should be supported. They were overjoyed because the consultation was meant to protect rather than exploit their interests. The Secretary has succeeded in securing not only their votes, but also votes on the enactment of laws to implement Article 23 of the Basic Law.

We will not say this Bill dealing with election of VRs not important. Therefore, we will take the floor although we were not members of the Bills Committee. However, I am of the opinion that the Secretary can dispense with the consultation on Article 23. In order to faithfully enforce the ruling of the CFA, the Secretary for Home Affairs travelled some 8 000 miles for the sake of consultation. The proposal raised by the Security Bureau to make Article 23 legislation will affect not only the 7 million people currently residing in Hong

Kong, but also Hong Kong people living overseas. Will the Secretary for Security follow the example of Dr Patrick HO? If a Director of Bureau has done something good, we should publicize it so that all Directors of Bureaux can follow suit. This is why I have to commend Dr Patrick HO. Perhaps he can let us know the opinions he has collected in London later on in the debate. In my opinion, if we are to pass some laws which will affect the people of Hong Kong residing locally and abroad, we must, as far as possible, let them know the impact and listen to their views in a pragmatic manner. If the Government can do this for this Bill concerning election of VRs, it should all the more do so when it comes to Bills that are more closely related to the well-being of the people of Hong Kong.

Madam President, I support Mr Andrew CHENG, who suggested, upon the completion of the review, delinking the village representative system from the constitutional framework as far as possible (I think this is possible). In other words, VRs should handle the management of their own villages only. The remaining work should be dealt with by the three- or two-tier assemblies for the link is actually not necessary. In my opinion, it is undesirable for the Government to hold such coterie elections and, given the apparently imperfect electoral methods, incorporate the candidates elected into our constitutional framework. Nor do I agree elected VRs should hold other political privileges. I hope we can break this link very soon.

Lastly, I also share the views expressed by some colleagues about the functions of VRs. When attending the meetings held by certain District Councils as an observer, I found that members of DCs worried gravely that the overlap of functions might lead to confusions or even disputes after VRs were elected and, should that happen, they would not know what to do. Of course, some may argue that VRs will merely gather together for discussion. Is it really so simple? Sometimes, two VRs representing different people and holding different views will make the disputes even more complicated.

I hope the Secretary can, in his response later, give Honourable Members more confidence. We will abstain from voting because neither do we support nor oppose the Bill. Nevertheless, I still hope that the Secretary can give this Council and other people in the community more confidence and assure them that he has given consideration to this issue and is confident that overlap of functions, if any, will not lead to confusions and disputes. I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, the controversy about the VR election has come to an end now, and it is a time we can draw a conclusion on it. On the Bill before us, all I can say is: it is pleasing neither side of the parties concerned. Many of the indigenous inhabitants still think that the "dual representation" system has taken away their monopoly over village affairs, whereas to the ordinary people, the system cannot achieve equal participation by all residents on the one hand, and it also cannot help to achieve devolution of power by the Government to promote rural autonomy on the other, thereby violating the principles of democracy. That the above problems exist in the Bill boils down to the attitude adopted by the Government in drafting the legislation. What is it mainly? Its attitude has been just trying to deal with the judgement of the Court of Final Appeal (CFA), without ever really working to enhance the democratization of the participation of residents in village affairs and strengthening the autonomy of the villages.

In response to the CFA's judgement, so as to make the VR election consistent with the requirements of the Hong Kong Bill of Rights and the Sex Discrimination Ordinance, the Government decided to implement the dual representation system, under which the indigenous inhabitants may, apart from continuing to enjoy the right to elect their Indigenous Inhabitant Representative, vote in conjunction with the non-indigenous inhabitants to elect a Resident Representative. Just as many Honourable colleagues have said, while both categories of people are residents of the same village, the non-indigenous inhabitants only has one representative, and only one vote, whereas the indigenous inhabitants can have more than one representative. This is an obvious breach of one principle of democracy — equal participation. Unfortunately, the Government still stresses that it is impractical to pursue absolute equality, highlighting that since there are deviations in terms of demarcation and sizes of population in other elections, so there are also some deviations in the representativeness of elects. Therefore, cases of not absolutely equal representation do occur sometimes. Therefore, it is not a major problem for VR elections not being absolute equal. However, I would like to clarify that, the so-called small deviations in geographical demarcation or cases of inequality are absolutely different from the situation of VR or dual representation system under discussion. In particular, the inequality in VR elections, similar to the situation of the present election of the Legislative Council, in which some people have two votes, whereas others just have one vote, to elect two representatives, is in my view also a case of inequality, and irregularity.

Besides, Ms Emily LAU has also said just now that, the elected VR may contest for the chairmanship of a Rural Committee, and eventually becomes an ex officio member of a District Council, and then becomes a member of the Heung Yee Kuk, and eventually he could run for the seat of the Kuk's representative in the Legislative Council. I think this situation, this phenomenon of privilege is not in keeping with the times. Such a phenomenon should not happen now. However, unfortunately, in the present case of the dual representation system, such problems have been ignored altogether, and no one cares about the existence of such problems. Therefore, I feel that this is the worst part of it.

In fact, is the above inequality completely unavoidable? I do not think so. Obviously, as long as there is only one election for all the indigenous and non-indigenous inhabitants of a village alike, and eventually only one representative is elected, the problem could be solved. Unfortunately, the Government dares not consider the issue from this perspective, nor does it have the courage to tackle the problem with this approach. This is because the Government just thinks that it has to comply with the CFA judgement, and wishes to have the matter settled as soon as possible. It never really wishes to develop a system with a foundation in democracy, and that explains why it has developed something like the present dual representation system.

However, Madam President, as pointed out in many commentaries, apart from responding to the CFA judgement, there is another objective for the Government to implement this dual representation system, that is, it wants to centralize powers. With the establishment of the offices of the VRs representing different interests, and at the same time, with Indigenous Inhabitant Representatives being able to participate in the affairs of the whole village, conflicts between indigenous and non-indigenous inhabitants will easily arise because of overlapping duties. Amidst such conflicts, the Government can assume a superior position and even become an objective arbitrator in the conflicts. So the Government would be able to take advantage of the conflicts. From a practical point of view, the autonomy of the villages cannot be realized.

Madam President, as a primary unit of participation in public affairs, the village is an important element in the process of democratization. Just like what happens in the political reforms in the Mainland, it all starts from the primary level of village committees. The intention is to encourage the fostering of an awareness of public participation. Therefore, I think the Government should abandon its centralization of powers, so as to avoid frustrating the people in their

participation in political affairs, thereby killing their enthusiasm in public affairs. Otherwise, what the Government does will not promote social cohesion. Instead, it will just create more and more conflicts between the people and the Government, and that between one group of people and another group.

In fact, there are a lot of unsatisfactory points about the dual representation system, just as pointed out by many Honourable colleagues. However, as highlighted by many non-indigenous inhabitants, since there were no representatives in the past, no one would come forward to speak for them sometimes even when they were subjected to disturbances and oppression. Now, it should be considered a kind of progress when they have a representative now.

Besides, the transfer of the supervision of the VR election to the Electoral Affairs Commission will also enhance the impartiality and transparency of the election. This is some kind of progress, albeit within a limited scope. We hope the Government can promote more reforms on such a basis, and eventually bring about democratization with greater political participation by the grassroots. Ms Emily LAU mentioned just now that we needed to see thorough improvements as soon as possible. I hope that in our future political reforms (Madam President, this may well be described as my illusion), this issue can also be put on the agenda for discussion, so that we can have a thorough review that may lead to the realization of full democratization in Hong Kong — making all kinds of elections, be they of people's representatives, village representatives or any representatives, more impartial, fairer and more open, and enabling society to move towards greater democracy.

Madam President, my speech bears great resemblance to those of many Honourable colleagues, especially that of Ms Emily LAU. However, we have not compared our notes beforehand. We have just raised similar proposals without first discussing them between ourselves. Although both of us are members of the Frontier, we really have not compared our notes. The most important point is we have common concepts and common beliefs. We feel that, with our current level of social development, such a backward, conservative and unfair election model should not exist any more. Therefore, we hope that through this Bill, we should be able to make our future electoral system, or the ones in 2004 and 2007, more open and democratic.

Madam President, I so submit.

MR FREDERICK FUNG (in Cantonese): Madam President, first of all, I would like to clarify one point. I am not a member of the indigenous inhabitants organization led by Mr LAU Wong-fat, nor am I a member of the indigenous inhabitant group led by Mr KAN Bing-chee. I am not an indigenous inhabitant. I am just drawing Members' attention to three questions in relation to this case, especially the judgement made by the Judges. I am not a lawyer, but I still wish to point out that the Bill tabled before the Legislative Council now may not be compatible with the requirements of the judgement of the Judges. The main reason is, according to the Hong Kong Bill of Rights Ordinance (BORO) and the Sex Discrimination Ordinance, as revealed in the judgement on the two cases, the indigenous women or non-indigenous inhabitants were not allowed to enjoy the same voting rights to which they should be entitled. The current proposal will lead to three questions, which I hope the Administration or the Secretary will consider. Personally, I do not agree to functional constituency elections. However, I would like to discuss with Members according to what is stipulated in law.

Firstly, the present change is in fact altering the nature of functional constituency. Each functional constituency has its own special nature. The functional constituency of indigenous inhabitants does have its own nature as a constituency in the election, that is, the group of indigenous inhabitants chooses a person to represent the indigenous inhabitants. No matter this representative serves on the District Council or the Legislative Council, he will possess the unique and consistent qualities of an indigenous inhabitant as he is an indigenous inhabitant himself. In short, if a doctor wishes to run for a seat in the functional constituency of doctors, he must be a doctor himself, and be registered and practise in Hong Kong as a doctor according to certain regulations before he can participate in the election. The approach proposed in the Bill changes the nature of a functional constituency, in that some non-indigenous inhabitants may participate in the functional constituency election of indigenous inhabitants as if they were indigenous inhabitants. In fact, the name of the functional constituency of indigenous inhabitants may have to be changed as well in future. It cannot be called the functional constituency of indigenous inhabitants any more, for there has been a change in its nature. If we use the example of the doctors again. Originally only doctors are eligible to vote in the functional constituency of doctors, but now it is not so. Everyone who works in a doctor's clinic may participate in the election as if he is a doctor. An elect out of this may not necessarily be a doctor. Of course, more often than not, those who participate in the functional constituency election are doctors, but they may not necessarily

be doctors. And at least some people who are not doctors will participate in the voting. The present proposal will enable non-indigenous inhabitants to vote. This is a functional change of nature, and whether the change is reasonable is itself an issue debatable or arguable.

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

The second point I would like to raise for the consideration of the Government as well as Honourable colleagues — in fact, many Honourable colleagues have also mentioned this point, but I still wish to talk about it here, because I have three points and this is one of them — but I shall just raise it briefly, that is the issue of what will be created in an indigenous village may be in breach of the BORO. In fact, just like what the Judges had said, if the indigenous inhabitant election is not linked to the District Councils or the Legislative Council, the Court would not have allowed the petition at all. An indigenous village may disallow women to participate in its election, or even men could be disallowed as well. The villages concerned may treat the matter as a family affair, which could be settled and decided internally. The judgement also mentioned this. The indigenous inhabitant election becomes a problem just because it is linked to public elections, therefore it must be compatible with the relevant legislation of the Government, and also the BORO and anti-sex discrimination laws. Otherwise, the two types of elections do not have any connection at all. What has been the situation all along before this? It is like this: a non-indigenous inhabitant in an indigenous village has zero vote; an indigenous inhabitant in an indigenous village has one vote — I mean generally the first election, and I do not count the indirect election in the second election. I mean the first voting. A non-indigenous inhabitant in an indigenous village has zero vote, and an indigenous inhabitant has one vote. And this vote will enable him to elect the so-called village representative (VR), and this VR will become a member of the Rural Committee. What is the change now? According to the change proposed now, a non-indigenous inhabitant will be given one vote, but since an indigenous inhabitant in the indigenous village may also vote in the election of the VR of the non-indigenous inhabitants, and he can also vote in the election of the VR of the indigenous inhabitants, so an indigenous inhabitant has two votes. In other words, what is the situation after the change? It has changed from "zero vote vs one vote" to "one vote vs two votes". If "zero vote vs one vote" is in breach of the BORO,

why has "one vote vs two votes" become legal? I would like the Administration to explain this: Will the Administration explain why "zero vote vs one vote" is illegal, whereas "one vote vs two votes" has become legal?

The third possible unfair situation is the issue of election rights. If the indigenous villages are further extended, and they are compared to us, the non-indigenous inhabitants, another problem will emerge. When we vote in District Council elections, each of us has only one vote. But a non-indigenous inhabitant in an indigenous village will have two votes in a District Council election after adding the vote they have in the indigenous village they live in: one vote in the direct election, and another vote in an indirect election; so the indigenous inhabitants in an indigenous village will have one vote in a direct election and two votes in an indirect election. But we have just one vote. From the angle of voting rights, why are we not given this treatment as opposed to non-indigenous inhabitants in an indigenous village? Why can people enjoy this right once they have moved to live in an indigenous village, but not people out of this indigenous village? This is the third issue I would like the Administration to address.

I feel that, with the existence of the functional constituency of indigenous inhabitants or the privileges of indigenous inhabitants, the problem can never be solved, and such rights can never be converted into a kind of election rights which are very explicit and fully compatible with the BORO. Some people would be given more votes while others fewer votes. Therefore, if we want to tackle the problem, we have to think of an alternative solution. Of course, the Government may not adopt the solution, which we Members have not mentioned before — that the status of indigenous inhabitant be abolished altogether. Without such an identity as indigenous inhabitant, everyone will be equal. Actually, the idea of indigenous inhabitants was a conciliatory policy formulated by the British Hong Kong colonial administration in the past, specifically for the indigenous inhabitants. In fact, there were also indigenous inhabitants in Kowloon. However, the boundary of Kowloon has gradually receded, and eventually the indigenous inhabitants in Kowloon are no longer regarded as indigenous inhabitants any more. Actually, is it still appropriate to retain the status of indigenous inhabitant in this modern society of ours now? This merits discussion. Of course, this can be a very large topic for discussion, and it also involves the Basic Law. Therefore, I feel that it is an issue that cannot be resolved now or in the short term. However, this solution is still a possibility. Of course, the possibility of adopting this solution is very low, or perhaps as low as zero.

The second solution has already been mentioned by one Honourable colleague, that is, all we have to do is to sever the link of VR election of indigenous inhabitants with the District Councils and the Legislative Council. This approach is also compatible with the judgement made by the Judges, that is, if the election of indigenous inhabitants has no relationship with public elections, then all those laws would be irrelevant.

In the light of the above circumstances, I cannot see how this proposal can convince me to support the amendments proposed by the Government. I appreciate the difficulties of the Government: It faces the reality that the District Council elections are drawing near. What will happen if the problem is not addressed? And it is unable to find a solution that can satisfy all stakeholders. But I still have to vote against it. This is not because I support KAN Bing-chee, nor because I support Mr LAU Wong-fat. It is just because I do not feel that this proposal can answer our questions in relation to election, equality and the equal values of votes. I even worry that this Bill may be in conflict with the main points mentioned by the Judges in the judgement. Thank you, Madam President.

DR DAVID CHU (in Cantonese): Madam Deputy, on behalf of the Hong Kong Progressive Alliance (HKPA), I rise to speak in support of the passage of the Village Representative Election Bill (the Bill) and the Committee stage amendments proposed by the Government. The main object of the Bill is to provide for the election of two types of village representatives (VRs), namely, "Indigenous Inhabitant Representatives" and "Resident Representatives". The Government has introduced the Bill because the CFA ruling that the electoral arrangements of two VR elections were inconsistent with the Hong Kong Bill of Rights Ordinance and the Sex Discrimination Ordinance, and it is thus necessary to reform the electoral arrangements. We are of the view that the Bill is consistent with the ruling of the CFA, and it can ensure the fair, impartial and transparent conduct of VR elections while safeguarding the legitimate traditional rights and interests of indigenous inhabitants.

With the constant development of society, great changes have occurred to the outlook of New Territories villages, the composition of villagers and their lifestyle. While many indigenous inhabitants have left their native villages for other places, many non-indigenous residents have moved in. The electoral arrangements adopted in the past have thus been subject to the impact and

challenge of social changes. The HKPA is, however, of the view that the legitimate traditional rights and interests of indigenous inhabitants must still be sufficiently protected, for this is a requirement of the Basic Law. But when it comes to village affairs not involving the legitimate traditional rights and interests of indigenous inhabitants, there should be proper channels for all residents to voice their opinions and take part in decision making. The system of "dual representation" put forward by the Government is thus very pragmatic, being able to balance the interests of all concerned. We are convinced that both indigenous inhabitants and non-indigenous residents actually share the same ultimate goal — improving their living environment and running village affairs in a better manner.

As for the amendments of Mr Andrew CHENG, the HKPA thinks that there are several problems, and for this reason, we cannot support it. Mr CHENG's amendment seeks to delete the function of an Indigenous Inhabitant Representative to reflect views on the affairs of the village on behalf of the indigenous inhabitants of the village. This is an unrealistic proposal because some village affairs may involve the traditional rights and interests of indigenous inhabitants. Besides, to preserve the uniqueness of villages as mini-communities, it is also necessary to retain the requirement on the length of residency in the village. I so submit.

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

(No Member responded)

DEPUTY PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Home Affairs to reply. This debate will come to a close after the Secretary for Home Affairs has replied.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Deputy, the Village Representative Election Bill (the Bill) was tabled before the Legislative Council on 9 October 2002 and the Bills Committee had held seven meetings to deliberate on the Bill. I am very grateful indeed to Mr IP Kwok-him, Chairman of the Bills Committee, and other members for making nothing of hardship to fulfil their duties and I hereby express my sincere gratitude to them.

First of all, I will outline the main concerns of the Bills Committee expressed during its scrutiny of the Bill and then describe the major amendments to the Bill that I am going to move at the Committee stage. Lastly, I will explain why the Government disagrees with the Committee stage amendment that Mr Andrew CHENG will move later.

The first concern of the Bills Committee is that the Bill must comply with the judgement of the Court of Final Appeal (CFA). One of the main objects of the Bill is to formulate legal provisions for the village representative (VR) elections to ensure that these elections are consistent with the provisions of the Hong Kong Bill of Rights Ordinance (BORO) and the Sex Discrimination Ordinance and compatible with the CFA judgement. Dr TANG Siu-tong and several members have asked why it is deemed reasonable for indigenous inhabitants to have two votes while non-indigenous villagers only one vote under the dual representation system. They queried whether the dual representation system complies with the CFA judgement.

We can approach the issue from two aspects. First, why do indigenous inhabitants have the right to cast two votes in the Indigenous Inhabitant Representative and Resident Representative elections respectively? Second, we can conversely consider why non-indigenous villagers can only cast one vote in the Resident Representative elections. Let us first explore why indigenous inhabitants can have the right to cast two votes. The Bill specifies that indigenous inhabitants (indigenous inhabitants who live in the villages) can concurrently vote in the Indigenous Inhabitant Representative and Resident Representative elections but non-indigenous villagers (non-indigenous villagers who live in the villages) can only vote in the Resident Representative elections. Thus, people cannot help asking if this arrangement has deviated from the principle of equal treatment and if there are reasonable explanations. The deviation from the principle of equal treatment will be reasonable only if the following three points have been proven: it is really necessary and reasonable and the extent of deviation from the principle is proportionate to the actual need. In our view, the proposed arrangements for VR elections can meet the requirements of this general test. Let me briefly explain this.

Indigenous inhabitants really need to elect two types of VRs to represent their interests in different status. First, indigenous inhabitants need Indigenous Inhabitant Representatives to represent their interests as indigenous inhabitants; second, they need Resident Representatives to represent their interests as

villagers. If there is only one kind of VRs elected by all villagers, more than half of the indigenous inhabitants will lose their right to vote because they no longer live in the villages. Indigenous inhabitants who do not live in the villages have all along voted in VR elections and I think the general public would agree that indigenous inhabitants really need a dual representation system to represent their interests.

Conversely, let us take a look at non-indigenous villagers who can cast only one vote in the Resident Representative elections but cannot vote in the Indigenous Inhabitant Representative elections. This is also reasonable because non-indigenous villagers do not have the status and rights of indigenous inhabitants and are not members of the clans, so they do not need to elect representatives to represent their interests in this respect. For the same reason, indigenous inhabitants not living in the villages do not have the right to vote in the Resident Representative elections because they do not need to represent their interests as residents. All in all, the dual representation system arranges for two electoral systems to represent the two different interests of two kinds of residents. It can protect the inherent legitimate rights and interests of indigenous inhabitants and comply with the human rights principles and the CFA judgement. The establishment of two kinds of VR offices is the simplest electoral arrangement that meets the needs of the situation in rural areas and complies with the Bill of Rights.

The questions raised by Dr TANG Siu-tong, Mr Andrew CHENG and Mr WONG Sing-chi contain insightful arguments of great substance, and they can really help us expound and prove the pros and cons of the dual representation system arrangement, which is reasonable and justified. I would like to express my gratitude to them again.

(The PRESIDENT resumed the Chair)

Second, concerning the provision for the residency-in-village requirement, the Bill specifies that a person is not eligible to be registered as a voter in a certain village unless he has been a resident of the village for the three years immediately preceding his application for registration and a person is eligible to be nominated as a candidate in an election only if he has been a resident of the village for the six years immediately preceding the nomination. Some members

of the Bills Committee think that it is not really necessary to make this provision for the residency-in-village requirement and have expressed the concern that the provision will disable many people from being registered as an elector or nominated as a candidate.

It is really necessary to formulate the provision for the residency-in-village period for Existing Villages with a small electorate for the following reasons. First, the electors and candidates should have some knowledge and understanding of the village and a sense of belonging to the village community. Second, "vote planting" in a small electorate is a real possibility and the "residency-in-village" requirement prevents such illegal and corrupt electoral practices.

As to a "wholly indigenous inhabitant model", Dr TANG Siu-tong has expressed the concern that the Heung Yee Kuk can no longer represent the interests of indigenous inhabitants of the New Territories. He is also worried that the dual representation system will undermine the link between the Heung Yee Kuk and indigenous inhabitants. Since quite a number of indigenous inhabitants have expressed strong objection to the Bill, he suggests that the Government should withdraw the Bill and adopt the wholly indigenous inhabitant model for the election of VRs.

An object of the Bill is to reform the elector system of VRs in the New Territories to give all villagers who live in the villages the right to vote in the Resident Representative elections. It is unreasonable to introduce a system under which only indigenous inhabitants can vote in and run in elections, for non-indigenous villagers will certainly lose the right to elect VRs and the Rural Committees (RCs) can no longer represent non-indigenous villagers. The suggestion not only has significant implications on the RCs and Heung Yee Kuk, but it will also give rise to a legality issue about whether the Chairmen of RCs need to become the *ex officio* members of District Councils in the New Territories.

We note that it is necessary to protect the lawful traditional rights and interests of indigenous inhabitants, and at the same time safeguard human rights and prevent sex discrimination. The Government thinks that the proposed electoral arrangement is practical, realistic and widely accepted. The dual representation system can balance the interests of different groups of people and comply with the CFA judgement.

In relation to the concept of "resident", some members have expressed concern about the use and actual interpretation of the term "resident" in the Bill. As defined in the Bill, a "resident", in relation to an Existing Village, is defined as a person whose principal residential address is in the village. The Bill defines "principal residential address", in relation to a person, as the address of the dwelling place at which the person resides and which constitutes the person's sole or main home; so the concept is very explicit. If a person has two residences, the amount of time a person stays in the dwelling place will be used by the Administration to determine whether that place is considered his principal residential address. Certainly, the Administration will exercise discretion in dealing with each case on its merits.

Some members have suggested that a person who has close a affiliation with a village and who owns a house or unit in that village should be allowed to register as an elector and be nominated as a candidate of the village. However, implementing the suggestion in villages with few electors will very easily cause "vote planting", therefore, it is not appropriate to allow a person to choose his principal residential address, without reference to the facts and merits of the case.

Some members have mentioned the functions of VRs and they think that the existing wordings of clauses 5 and 6 of the Bill seem to be prejudiced in respect of the status of a Resident Representative and an Indigenous Inhabitant Representative because an Indigenous Inhabitant Representative can also reflect views on the affairs of the village. I wish to emphasize that both a Resident Representative and an Indigenous Inhabitant Representative are VRs enjoying an equal status, and both can become members of the relevant RCs. The Government attaches equal importance to their views. The Government and the representatives of the New Territories communities have determined the functions of the Resident Representatives and Indigenous Inhabitant Representatives after prudent consideration and long and detailed discussions. It is most appropriate for indigenous inhabitants elected by other indigenous inhabitants to deal with all affairs relating to the lawful traditional rights and interests and the traditional way of life, of those indigenous inhabitants. It may not be appropriate for the representatives who are neither indigenous inhabitants nor people elected by all indigenous inhabitants of the villages to deal with affairs relating to the lawful traditional rights and interests of indigenous inhabitants.

As for the restrictions on the participation by a prescribed public officer in an election, Mr IP Kwok-him and other members of the Bills Committee have expressed concern about the disqualification of a prescribed public officer such as a civil servant from being nominated as a candidate and elected as a VR in a VR election. They consider this comprehensive restriction unfair to the prescribed public officers. Members of the Bills Committee have stated that VRs play local and advisory roles and their elections are different from the elections at such higher levels as the District Council and Legislative Council elections, and they suggest the adoption of administrative guidelines to deal with any conflict of interests.

In my opinion, these arguments are reasonable and I have already adopted their suggestion. I will move amendments at the Committee stage to remove the restriction that a specified public officer cannot stand for election as a VR. The Administration will issue some guidelines regulating the participation of civil servants in VR elections. The guidelines will specify that a civil servant can apply for running for the office of a VR. The Administration will try its best to approve applications, but it will first consider the nature of the existing duties of the applicant and the premise is to avoid conflicts of interest and uphold the fundamental beliefs of the Civil Service, including the fair and impartial image of the Civil Service in the minds of the public.

Regarding uploading the maps of Existing Villages onto the Internet, during the scrutiny of the Bill by the Bills Committee, some members asked us to consider making the maps of Existing Villages available on the website of the Home Affairs Department for reference before the 2007 elections of VRs. We will consider the best way to allow public access to the maps of Existing Villages, including whether maps of Existing Villages can be uploaded onto the website of the Home Affairs Department.

Moreover, Mr IP Kwok-him and Mr Andrew CHENG have requested a review of the subsidies to village offices and RCs. We will consider the matter when we conduct a comprehensive review on the village election arrangements.

Madam President, let me expound the main amendments to the Bill that I will move at the Committee stage.

I will propose an amendment to clause 1 of the Bill so that the Bill will be implemented from the date of publication in the Gazette with the exception of

two sections in Schedule 4 that will come into effect from 1 October 2003 onwards. The objective of the amendment is to allow the Home Affairs Department to start working on voter registration immediately after the passage of the Bill.

Clause 2(1) will be amended to include the definition of "surviving spouse". The amendment seeks to allow a surviving spouse of an indigenous inhabitant to retain the right to be registered as an elector of an Indigenous Village or a Composite Indigenous Village. To comply with the provisions of the Sex Discrimination Ordinance, a surviving spouse includes a widow and widower. Nevertheless, the surviving spouse of an indigenous inhabitant should be eligible only so long as he or she has not re-married.

In response to recommendations made by the Chairman and other members of the Bills Committee, we will amend clauses 2(1), 9(1) and 23(1) and sections 3, 4, 10 of Schedule 4 to the Bill to remove the restriction that a prescribed public officer cannot vote in VR elections.

Clauses 7(1)(a), 62(1) and (2) and 63(1) as well as Schedules 1, 2 and 3 and section 20 of Schedule 4 will be amended so that the term of office of the existing VRs, RC members, Chairman and members of the Heung Yee Kuk will be extended by six months, instead of the originally proposed three months. It is because the term of office of the existing VRs will expire on 1 April 2003 and we need more time to make preparations for the elections.

Clause 17 of the Bill will be amended to specify the dates of compilation and publication of a provisional register of electors and an official register of electors for the village. The amendment improves the voter registration procedures and helps the calculation of the age of an applicant when he files an application for voter registration.

New subclause (1A) is added to clause 21 of the Bill to the effect that the Electoral Affairs Commission needs not hold a by-election for a village where the election for that village has failed in total more than once in case no candidate is validly nominated for the election of VRs in a village.

In response to a suggestion by Mr Albert CHAN, we will amend clause 40(a) of the Bill to the effect that an election petition may be lodged by a smaller requisite number of electors. In view of the small size of some of the villages, it is proposed to lower the requirement of "10 or more electors" to "five or more electors".

It is proposed to amend Schedule 4 to add a new clause to the Electronic Transactions (Exclusion) Order, if this clause is passed, certain sections of the Village Representative Election Ordinance will be excluded from the application of sections 5 and 6 of the Electronic Transactions Ordinance.

The Committee stage amendments also include other technical amendments and amendments made to improve the text of the Bill. I will give detailed explanations at the Committee stage and the Bills Committee has already considered and endorsed the above amendments.

Madam President, let me elaborate why the Government disagrees with the Committee stage amendment to be moved by Mr Andrew CHENG later.

Mr CHENG proposes an amendment to clause 6(4)(a) of the Bill to limit the functions of an Indigenous Inhabitant Representative to dealing with all affairs relating to the lawful traditional rights and interests of indigenous inhabitants. Indigenous Inhabitant Representatives elected by indigenous inhabitants should deal with general affairs relating to indigenous inhabitants. Mr CHENG's amendment will create practical difficulties at the village level.

Mr CHENG also proposes an amendment to clause 15 of the Bill to delete the provision that a person is not eligible to be registered as an elector of an Existing Village unless he has been a resident of the village for three years. The amendment proposed by Mr CHENG may result in "vote planting" in an Existing Village with a small electorate. Some people can move *en masse* to a village before voter registration begins and register as electors of the village. "Vote planting" in an Existing Village with a small electorate may affect the result of an election. I urge Members not to support the amendment to be proposed by Mr CHENG and I will explain at the Committee stage why I object to other amendments proposed by Mr CHENG.

In the course of drafting the Bill, we consulted the Heung Yee Kuk, District Councils in the New Territories and the RCs on the relevant proposals. We also discussed the relevant proposals with the indigenous inhabitants and non-indigenous villagers in the New Territories and held two public consultation meetings for residents in the New Territories. The Heung Yee Kuk supported the relevant proposals by a 105:13 absolute majority vote and the Bill won the support of the New Territories community.

Mr Andrew CHENG has reminded us that, if the Bill is passed, there will be significant changes in the nature of village elections in the New Territories. As I said in moving the Second Reading of the Bill on 9 October 2002, the Administration would learn from the experience of the next VR elections and review the electoral procedures and arrangements for village elections.

Since the term of office of the incumbent VRs will expire on 31 March 2003, and considering the CFA judgement, we cannot conduct new elections under the old voting system, thus, it is necessary as a matter of urgency to formulate new legal provisions for the new elections. I strongly urge Members to support the Bill.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Village Representative Election Bill 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.

(Members raised their hands)

PRESIDENT (in Cantonese): I think the question is

Dr TANG Siu-tong rose to claim a division.

PRESIDENT (in Cantonese): If a Member wishes to claim a division, he should respond as soon as possible. (*Laughter*)

Dr TANG Siu-tong has claimed a division. The division bell will ring for three minutes.

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

PRESIDENT (in Cantonese): Mr SZETO Wah, please proceed to vote.

Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Eric LI, Mr Fred LI, Dr LUI Ming-wah, Mr NG Leung-sing, Miss Margaret NG, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Michael MAK, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr WONG Sing-chi, Mr IP Kwok-him, Mr LAU Ping-cheung and Ms Audrey EU voted for the motion.

Dr TANG Siu-tong and Mr Frederick FUNG voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 49 Members present, 46 were in favour of the motion and two against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Village Representative Election Bill.

Council went into Committee.

Committee Stage

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

VILLAGE REPRESENTATIVE ELECTION BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Village Representative Election Bill.

CLERK (in Cantonese): Clauses 3, 4, 8, 10 to 14, 18, 19, 24 to 29, 32 to 35, 37, 38, 39, 41 to 50, 52 to 61 and 64 to 68.

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 1, 2, 7, 9, 16, 17, 20, 21, 23, 30, 31, 36, 40, 51, 62 and 63.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members.

Clause 1

I propose to amend clause 1 by deleting subclause (2) and substituting new subclauses (2) and (3). New subclause (2) provides that, subject to subsection (3), the Village Representative Election Bill shall come into operation on 14 February 2003, the day on which it is published in the Gazette, rather than on a date to be specified by the Secretary for Home Affairs in the Gazette. This amendment seeks to enable the Bill to, after enactment into law on a specified date, come into effect at the earliest practicable time so as to give the authorities ample time to make preparations for the VR elections scheduled to be held in July this year. After the passage of the Bill, voter registration shall commence immediately. Subsection (3) provides that sections 2 and 19 of Schedule 4 shall come into operation on 1 October 2002. These amendments seek to enable the expiry of the term of office of approved VRs to coincide with the commencement of the term of office of newly elected VRs.

Clause 2(1)

Several amendments are made to clause 2(1) and they include, first, in relation to a village, the definition of "first final register" is amended as "first final register for the Village as compiled and published after the commencement of section 17(1)(b)". The amended clause 17(1)(b) provides that the first final register shall be compiled and published not later than 3 June 2003.

Second, in relation to a village, the definition of "first provisional register" is amended as "first provisional register for the Village as compiled and published after the commencement of section 17(1)(a)". Amended clause 17(1)(a) provides that the first provisional register shall be compiled and published not later than 22 April 2003.

Third, the definition of "surviving spouse" is added to clause 2(1). This amendment seeks to achieve the same objective of the relevant amendment made to clause 15(5)(a) to allow the surviving spouse of an indigenous inhabitant to preserve his or her right to register as an elector for an Indigenous Village or a Composite Indigenous Village. A surviving spouse can be either the widow or widower of a deceased indigenous inhabitant. However, a surviving spouse will lose this status upon re-marriage.

Clauses 2(1), 9(1) and 23(1)

Clauses 2(1), 9(1) and 23(1) of the Bill are amended to delete the restrictions of disallowing a prescribed public officer from running for and holding the office of VR. The Bills Committee has recommended that any conflicts of interest and responsibilities can be handled in accordance with the administrative guidelines issued by the relevant departments and management. The Administration will issue the guidelines on regulating the participation of civil servants in VR elections to provide that civil servants may take part in VR elections as candidates. While applications will be approved as far as possible, consideration will first be given to the nature of the duties performed by the applicants, under the prerequisite that conflicts of interest should be avoided and the fundamental conviction of the civil service team, including its image of impartiality in the minds of the public, should be maintained.

Clauses 7(1)(a), 62 and 63(1)

Amendments are made to clauses 7(1)(a), 62 and 63(1) to amend the terms of office of incumbent VRs, the chairmen, vice-chairmen, ordinary members of the Executive Committee of the Rural Committees and the Heung Yee Kuk, and the Special Councillors of the Full Council of the Heung Yee Kuk from extending a further three months to extending a further six months, so as to prevent the occurrence of vacancy in the office of VRs, and members of Rural Committees and the Heung Yee Kuk. Specifically, clause 7(1)(a) must be amended so that the term of the VR elect in the first village ordinary election will be amended from three years nine months beginning on 1 July 2003 to three years six months beginning on 1 October 2003. Clause 62(1) must be amended to extend the terms of office of incumbent office-holders and members of Rural Committees to four years six months. Consequently, the terms of office of office-holders and members of Rural Committees beginning on 1 October 2003 will be amended accordingly from the usual four years to three years six months. Clauses 61 and 63(1) must also be amended to extend the terms of office of incumbent VRs beginning on 1 April 1999 to four years six months.

Clause 16(c)

Clause 16(c) is amended to improve the draft text of the Bill.

Clause 17

Clause 17 must be amended to specify the date for the provisional register of electors for a village and the final register of electors for the village to be compiled and published. This amendment serves to stipulate the timetable and procedures for the registration of electors. Under this amendment, in relation to the first ordinary election, the Electoral Registration Officer shall compile and publish the provisional register of electors not later than 22 April 2003 and not later than 10 September in each subsequent year, and the final register of electors not later than 3 June 2003 and not later than 20 October in each subsequent year. The amendments to clauses 17(2) and (8) are merely minor technical amendments.

Clause 20

The amendment to clause 20 is technical in nature. As the ordinary election held in each village will be completed within a day, it is not necessary for "or dates" to be added to the clause.

Clause 21

New subclause (1A) is added to clause 21 to specify that the Electoral Affairs Commission is not required to hold a by-election in the event that an election for a village has failed twice. This amendment seeks to deal with cases in which no one run for elections in the village. Another amendment seeks to correct a minor mistake made in drafting by amending "處長" to "署長" in the Chinese text.

Clause 30(1)

Clause 30(1) is amended by deleting "or after" for it is redundant.

Clause 31

The amendment to clause 31(1)(c) is a minor technical amendment, whereas the amendment to clause 31(8)(b)(ii) is aimed at improving the draft text of the Bill.

Clause 36(1)

Clause 36(1) is amended to improve the draft text of the Bill.

Clause 40(a)

Clause 40(a) provides that an election petition questioning an election may be lodged by 10 or more electors entitled to vote in an election. Mr Albert CHAN proposed that the prescribed number of electors lodging an election petition should be reduced to take into account small villages. The prescribed number of electors for the purpose of lodging an election petition is now amended to five or more.

Clause 51(2)

The amendment to clause 51(2) is a minor technical amendment.

Madam Chairman, the abovementioned amendments have been scrutinized by the Bills Committee, and no objections have been raised by members. I urge Members to support these amendments.

Proposed amendments

Clause 1 (see Annex)

Clause 2 (see Annex)

Clause 7 (see Annex)

Clause 9 (see Annex)

Clause 16 (see Annex)

Clause 17 (see Annex)

Clause 20 (see Annex)

Clause 21 (see Annex)

Clause 23 (see Annex)

Clause 30 (see Annex)

Clause 31 (see Annex)

Clause 36 (see Annex)

Clause 40 (see Annex)

Clause 51 (see Annex)

Clause 62 (see Annex)

Clause 63 (see Annex)

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 Home Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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 1, 2, 7, 9, 16, 17, 20, 21, 23, 30, 31, 36, 40, 51, 62 and 63 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.

(Members raised their hands)

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 5 and 6.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I move that clauses 5 and 6 of the Bill be amended, as set out in the paper circularized to members.

Madam Chairman, regarding clauses 5 and 6 of the Bill, I will still do the best I can to urge Members to support my amendments. However, I do understand that under the system of separate voting, it is very unlikely that the amendments can be carried. That is why Honourable colleagues may well go for dinner now if they like. I am not going to claim a division for my amendments. I will only do so when we vote on the amendment in respect of the three-year and six-year requirements. Anyway, I will still do the best I can to lobby for Members' support, particularly for the sake of Mr Albert CHAN, who is now in faraway Canada. He was actually the one who first strongly advocated the amendment. At a Bills Committee meeting some time ago, he said to me that he would propose the amendment, but unexpectedly, just the day before he was supposed to do so, he came to know that he must go to Canada immediately for some urgent business. Since we shared similar views on the functions of VRs in the Bills Committee, I have hijacked the amendment, proposed it in his place, and I am doing the best I can to persuade Members.

I believe if I have to make Members who are not members of the Bills Committee understand my point, reference must be made to the function of a Resident Representative for an Existing Village as stated in clause 5(3), Part 2 of

the Bill which reads: "The function of a Resident Representative for an Existing Village is to reflect views on the affairs of the Village on behalf of the residents of the Village. A Resident Representative shall not deal with any affair relating to the lawful traditional rights and interests of indigenous inhabitants." In clause 6 on the office of Indigenous Inhabitant Representative for Indigenous Village or Composite Indigenous Village, however, the functions of an Indigenous Inhabitant Representative are stated in subclause 4(a) and subclause 4(b). Subclause 4(a) reads: "to reflect views on the affairs of the Village on behalf of the indigenous inhabitants of the Village;" and sub-clause 4(b) reads: "to deal with all affairs relating to the lawful traditional rights and interests, and the traditional way of life, of those indigenous inhabitants". The word "and" and the dual functions of an Indigenous Inhabitant Representative did induce rather lengthy discussions in the Bills Committee. Mr Albert CHAN, in particular, expressed very strong disagreement when he came to this point in the discussions. Since I am entrusted by him to move the amendment in his place, I hereby request that the reasons for his strong dissatisfaction be put down in record, and, I must add that I do agree to some of his views.

We feel that the dual representation system proposed in the Bill will bring forth a new situation to which the Bureau must pay attention. It is not at all surprising that villages may well become new venues of political struggles. Though I understand that this will be unavoidable, I still wish to commend the Secretary for his work once again. Ms Emily LAU also expressed appreciation of the Secretary's work, but I appreciate even more the work of Deputy Secretary Stephen FISHER, who is sitting next to the Secretary. I think VR elections actually involve many vested interests between indigenous inhabitants and non-indigenous residents, and also among indigenous inhabitants themselves. To put it simply, these elections will involve power struggles. The Government may of course say that what is being dealt with is just an advisory framework. But as we all know, the traditional rights and interests of indigenous inhabitants, including the right to small houses and that of coffin burial, are intricately related to traditional village customs and clansmanship. Therefore, since a dual representation system is to be established for VR elections, the advisory role of each type of VRs must be clearly defined. It is stressed repeatedly in the Secretary's letter to us that the office of a VR is pure advisory and does not carry any administrative functions. That being the case, all must then be clearly defined in the legislation. But why is that an Indigenous Inhabitant Representative seems to have more functions than a Resident Representative? The Government may surely say that it is because there are always many

overlapping areas. But precisely because of these overlapping areas, we are worried that endless disputes may arise in villages in the future.

Therefore, since even the Government sees these offices as purely advisory in nature with no substantive administrative functions, I very much hope that the Government can really think it over clearly. I mean, in performing the advisory function, Indigenous Inhabitant Representatives should deal with the affairs of indigenous inhabitants, and Resident Representatives should deal with the general affairs of villages.

Madam Chairman, I do not wish to spend too much time on making any additional comments and final appeal here. I have done the best I can. I do not intend to claim a division, for I already know Members' voting decisions. Thank you, Madam Chairman.

Proposed amendments

Clause 5 (see Annex)

Clause 6 (see Annex)

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

MR ANDREW WONG (in Cantonese): Madam Chairman, I decided not to speak during the Second Reading debate because I have already spoken too much on this topic; I have been discussing this topic for three years, and I have thus exhausted virtually all the points. The amendments moved by Mr Andrew CHENG have also been discussed in the Bills Committee many times.

I hope Members can realize the fundamental issue in relation to the dual representation system. An indigenous village is founded on the concept of clans, so the actual residency or otherwise of a clansman in the village is not a question of any relevance. That is why when we talk about the reflection of views on the affairs of the village on behalf of the indigenous inhabitants of the village, we must note that even though an indigenous inhabitant does not reside in the village, he still belongs to the clan. The representative he elects may not reside in the village either and may live in the Boundary Street or Waterloo Road instead.

Should we permit such an elected representative to go back and deal with the affairs of the village on behalf of the indigenous inhabitants? Village affairs may involve the relocation of the great paternal uncle's tomb. I am not aware of what other affairs which are considered that of the village but not that of the indigenous inhabitants. Therefore, there must be someone in the village to deal with things on behalf of the indigenous inhabitants who do not live there, and not only this, the indigenous inhabitants not living in the village will also have views on the affairs of the village and must thus rely on a representative to reflect them. The Government must realize this point.

A so-called Resident Representative, very obviously, is a representative elected by the residents of a village. Since they live in the village, they will necessarily have some expectations. As for the length of residency making one eligible, I shall discuss it in greater detail when Mr Andrew CHENG moves the next amendment.

I wish to add one simple point here. The entire dual representation system of election is meant to deal with one single problem — the realization of the spirit behind the CFA ruling and the rationale on which its judgements were made. I mean, if we say that one can vote only when one actually resides in a village, that is, if a single-representative system is implemented in effect, all will come to depend on the geographical connection. The result will be that the indigenous inhabitants having only lineage connection with the village will forever lose their right to vote. I hope this point has in one way or another answered the question raised by Mr Frederick FUNG. Thank you, Madam Chairman.

MR LAU WONG-FAT in Cantonese): Madam Chairman, I can see the rationale behind the amendment which Mr Andrew CHENG has moved in Mr Albert CHAN's place. The original clauses of the Bill and the amendments moved by Mr Andrew CHENG constitute a fine example illustrating the conflicts between realities and ideals. Down through the ages, many excellent and well-intentioned ideals and theories have been put forward. However, many of them have never been put into practice, or in cases where they were forcibly implemented, they simply achieved the opposite results, failing to survive the test of realities. One major reason for this was their failure to take account of the realities, hence their failure to survive the test of realistic circumstances.

"The Commonwealth State" in the "Record of Rites" depicts a commonwealth state, where the world is like a home shared by all, where thieves and robbers do not exist and where the door to every home need never be locked and bolted. But such a utopia has yet to emerge despite the passage of thousands of years. Human society is now still marked by selfishness and intrigues, and the hostilities, aggressive tendencies and disputes among different countries are forever mounting. This shows that the ideal of a commonwealth state is much too advanced and lofty. One simply does not know when mankind can ever become so wise and broadminded.

I am sure that Members will not wish to have a superficially nice electoral law which however ignores the unique realities of village communities. The original clauses of the Bill aim to strike a proper balance between indigenous inhabitants and non-indigenous villagers in their participation in village affairs. Indigenous inhabitants have lived in their villages for generations; their roots are there, for they were born and brought up there. That is why they all have a very strong sense of belonging to their villages, and they are the ones who know their villages best. It is therefore completely pragmatic and fair to encourage these people to participate in village affairs more actively and fully.

As for the requirement on length of residency, its aim is just to help return VRs with greater representation and legitimacy to better serve villagers. This requirement is no novelty at all. New immigrants, for example, are eligible to vote only after living in Hong Kong for seven years. And, one who wishes to stand in the Chief Executive election must have lived in Hong Kong for 20 years before one is qualified to do so. Even in the United States, claimed to be the most democratic country and the vanguard of human rights, there are also many different restrictions in this respect. Therefore, when it comes to electoral requirements, the question involved is not so much one of fairness but whether they are in line with the realities.

Madam Chairman, I do not question the good intention behind Mr Andrew CHENG's amendments, but as I pointed out just now, there are always conflicts between ideals and realities. Since New Territories villagers have agreed to take their first historic step on the issue of VR elections, we may well wait and see. Why do Members not wait until the implementation of the new electoral arrangements before they think about what to do next?

Madam Chairman, Mr Andrew CHENG has remarked that he would not call upon Members again to vote for his amendments at the Third Reading of the Bill. But somewhat wary still, I must earnestly ask Members to join me in opposing Mr Andrew CHENG's amendments.

Thank you, Madam Chairman.

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

(No Member responded)

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, Mr Andrew CHENG's amendment to clause 6(4)(a) of the Bill seeks to restrict the functions of Indigenous Inhabitant Representatives to the handling of affairs relating to the lawful traditional rights and interests of indigenous inhabitants. Indigenous Inhabitant Representatives are elected by indigenous inhabitants, and for this reason, they should be allowed to voice their views on the general affairs related to indigenous inhabitants. Mr CHENG's amendment will create practical difficulties at the village level. Similarly, Mr CHENG's amendment to clause 5(3) of the Bill seeks to restrict the function of Resident Representatives, so that they cannot reflect any views on affairs relating to the lawful traditional rights and interests of indigenous inhabitants. Resident Representatives are elected by all the people living in a village, including both indigenous inhabitants and non-indigenous villagers, and so, they should have the right to express their views on all affairs of the village. Therefore, I urge Members not to support these amendments.

I wish to stress that Resident Representatives and Indigenous Inhabitant Representatives are both VRs who enjoy an equal status. They will all become members of their respective Rural Committees, and the Government will treat their opinions with equal importance. The functions of Resident Representatives and those of Indigenous Inhabitant Representatives were set down following prudent consideration and thorough discussions between the Government and the New Territories community representatives. We should not lightly abandon the consensus which both sides have worked so hard to bring about. I therefore urge Members not to support the amendments. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Andrew CHENG, do you wish to speak again?

MR ANDREW CHENG (in Cantonese): Madam Chairman, I would like to give a very brief response only. The last few lines of the Secretary's speech do reflect the fact that the Bureau has worked a tough job. I am aware that all officials of the Home Affairs Bureau, for the sake of this Blue Bill, the Village Representatives Election Bill (the Bill), were bombarded with voices from people of different sectors or representing different interests in the villages. Nonetheless, they have managed to resolve the problems one by one. Today, only two Honourable Members object to the Bill, one being Dr TANG Siu-tong, and the other Mr Frederick FUNG. This result is indeed very good. Madam Chairman, now that I have moved my amendments, I would like to say at this very moment today that I very much appreciate the comments made by Mr LAU Wong-fat just now. I have listened to his speech very carefully. Although he disagrees with my amendments, he has, in such a scholarly manner, quoted a lot of classical Chinese writings that I do not quite understand. (*Laughter*) I do know he was talking about ideals, global peace and universal harmony in the world.

Madam Chairman, my first response after listening to his speech was that every one of us should have his own ideals, only that Mr LAU considers my amendments idealistic. In other words, our goal is not unattainable, but in this cruel realistic world, or in a situation where people are cheating one another, if I may borrow Mr LAU's words, it is immensely difficult for ideals to be attained. I actually share Mr LAU's thinking in this respect. Nonetheless, Mr LAU might not be able to do whatever he wants to do because of his position. Being on the highest echelons of the Heung Yee Kuk, he might face enormous pressure and hardship at various levels should he support my amendments. Therefore, I would like to tell Mr LAU that I very much thank him for describing my amendments or the request made by Mr Albert CHAN and me in the Bills Committee to distinguish the advisory function as a pursuit of ideals. Nonetheless, I still hope that such ideals will realize in the villages one day.

Madam Chairman, village boundaries are at present demarcated in a very obscure manner. Of course, some indigenous inhabitants still maintain a clear concept of clansmanship. Yet an increasing number of people from urban areas have moved into the existing villages. It is believed that hundreds of thousands of non-indigenous inhabitants are now living in 700 or so villages. So, who are

going to protect their rights and interests? While non-indigenous inhabitants do not have their own rural body, indigenous inhabitants have Rural Committees, the Heung Yee Kuk, and so on. This explains why I hope the abovementioned ideals can be realized one day.

I am also very grateful to Mr LAU for his advices, though he disagrees with my views. He has been behaving very politely. On this point alone, I believe Mr Albert CHAN has to learn from him. This is because I found from the minutes of the relevant meetings that Mr CHAN had, throughout his representations on this issue, put sharp remarks to Deputy Secretary Stephen FISHER. Mr CHAN had even made a lot of criticisms when it came to discussions about certain issues. I believe we really have to learn from Mr LAU. But still, I have to admit that there are differences between Mr LAU and us in terms of ideology, role and demands. I would now like to make appeal to Honourable Members again to support my amendments. Thank you, Madam Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion negatived.

CHAIRMAN (in Cantonese): As Mr Andrew CHENG's amendments to clauses 5 and 6 have been negatived, I now put the question to you and that is: That clauses 5 and 6 stand part of the Bill.

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): Clause 15.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I move that clause 15(4)(b) be deleted, as set out in the paper circularized to Members.

Madam Chairman, this amendment, which is related to the qualification of village electors, was already mentioned at the resumed Second Reading of the Bill. In order to save time, Madam Chairman, with your permission, I would like to speak jointly on the three-year and six-year requirements. I think I can do so within the time limit because the arguments are quite similar.

Madam Chairman, I believe the Bureau or colleagues opposing my amendment may be thinking about, for instance, the three-year requirement. They may probably be thinking that a person must live in a village for at least three years before he can develop a sense of belonging and gain knowledge of the village, given that VR elections can be considered miniature elections. The numbers of villagers may vary from village to village. While some villages have 700-odd villagers, some have even fewer villagers. To prevent vote planting, there might be a need for the requirements on electors to be raised. However, as Members should be aware, some consequential amendments will be made. They include, *inter alia*, extending the ambit of the Elections (Corrupt and Illegal Conduct) Ordinance, enforced by the Independent Commission Against Corruption (ICAC), to cover VR elections.

I hope Honourable Members will understand that appropriate actions have been taken, given that VR elections are regulated by the law. While some colleagues questioned the three-year requirement in their speeches earlier, they also pointed out that the electorates of some functional constituencies returning Members of the Legislative Council are several-hundred-strong, with some constituencies having two to three hundred electors only — I do not remember the exact figures, but some constituencies do have very few electors. Since all elections are likewise conducted under a constitutional framework in an open manner and subject to the Elections (Corrupt and Illegal Conduct) Ordinance enforced by the ICAC, whereas vote-planting problems are being monitored and prosecution can be taken, why must the Government impose such a strict restriction on the rights and length of residence because it is worried? Three years are a long period. Many non-indigenous inhabitants may stay in one village for a while and move to another for a better living environment. Some of them may live in villages for their entire life. However, they may never have a chance to vote for their VRs. Nor do they know who are their VRs. Is it appropriate? Though I agree that there are grounds for the Government to worry about vote planting, I must point out that ordinances and laws are already in place regulating this. Moreover, there are other functional constituencies in this Council which have a similar background. I consider it not at all appropriate of the Government to voice a concern about vote planting just because the number of electors is small.

When it comes to the six-year requirement for candidacy, I find it even more unreasonable. It seems to me that the number of years proposed during the initial consultation was two or five, not three or six. In short, I can assert that the number was not six. It was really surprising that the number of years turned out to be six when the Bill was gazetted. This was contrary to my impression. After listening to the promulgation, my immediate response was suspicion that there was something wrong with the document or I had made a mistake. The requirement is even more retrogressive than the one initially proposed during the consultation. Why? I have no idea. Perhaps only Mr LAU Wong-fat knows the answer as to why the requirement was eventually changed to six years. Perhaps the Heung Yee Kuk and Rural Committees reached a consensus on this in return for other support. I am not in a position to speculate. However, if we look at it from the idealistic angle, as mentioned by Mr LAU Wong-fat, this is way too far from the ideal. A person wishing to run in a VR election must meet the six-year residency requirement before he can have a chance to stand for election.

As I mentioned during the resumption of the Second Reading debate on the Bill, anyone wishing to stand in VR elections must wait 10 years if he or she moved into a certain village in 2002 or early this year. This is downright ridiculous. I think this is a serious violation of the spirit of holding elections in an open manner. I simply cannot understand why the six-year requirement was proposed. I wonder whether it was because the Government initially thought it had to "ask for staggering prices", but its proposal was approved without the need to "drive a hard bargain". I am profoundly disappointed about this.

Madam Chairman, I have nothing new to add. Neither do I wish to take up Members' time. Later I will definitely claim a division on the two amendments to demonstrate our perseverance. We have to continue holding onto our ideal. Thank you, Madam Chairman.

Proposed amendment

Clause 15 (see Annex)

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

MR ANDREW WONG (in Cantonese): Madam Chairman, I wish to speak on clauses 15 and 22 of the Bill together. Madam Chairman, I understand that the longer the residency periods are, the smaller will be the number of people who can vote, and still less the number of qualified candidates. But the point is that under the dual representation system, one emphasis is lineage, and the other geographical connection. Geographical connection or the lack of it determines whether the person concerned is a village resident. We may set down a day of commencement, meaning that even one single day of residency should be counted as a start. The number of days cannot be zero and must at least be one. A person with one day of residency, for example, or a person who is already living in the village at the time, should be regarded as a resident. Even one single day should be counted. The residency periods can of course be set a bit longer — one year, two years, four years, five years or six years. I cannot recall exactly what the initial preferences of the Government and the Heung Yee Kuk were, but I did seem to hear many different views in the Heung Yee Kuk. Some thought that stringency was advised. Others were in support of latitude.

Therefore, I really do not know why the conclusion of "3-6" was reached in the end. Madam Chairman, we may perhaps ask the Government to confirm whether there were any proposals which were more stringent or more lenient than the "3-6" arrangement.

Personally, I would accept even a "2-4" arrangement. But if I am to recommend a "2-4" arrangement, I may have to declare some personal interest, because I have been living in a village for some three years, or nearly four years. So, I am qualified to be a candidate. And, even under the currently proposed "3-6" arrangement, I can also be an elector. But I am not suggesting a "2-4" arrangement. I think Mr Andrew CHENG's amendment will reduce the residency periods to "0-0". That is to say that once a person moves into a village, he will have the right to vote. This is a total departure from the concept of geographical connection. Therefore, I cannot support his amendment.

I wish to add one more point which I believe is even more important. The requirement on length of residency should not be applied to non-indigenous villagers alone. The indigenous inhabitants living in a village should also be required to have lived there for three years before they can be permitted to vote. If one wishes to become a village representative candidate — even if we are not talking about Indigenous Inhabitant Representatives — a residency period of six years should be required. There should be equal treatment, without any attempts to benefit indigenous inhabitants while jeopardizing the interests of non-indigenous villagers. Therefore, I earnestly call upon Members to oppose this well-intentioned but possibly erroneous proposal of Mr Andrew CHENG.

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

(No Member responded)

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, Mr Andrew CHENG's amendment to clause 15(4) of the Bill seeks to delete the residency requirement for registration as an elector of an Existing Village. The passage of the amendment may produce the undesirable result of frequent vote planting in VR elections. The reason is that some people may rent premises in a village before the commencement of voter registration and then make

arrangements for their friends and relatives to live in these premises until the end of the election. These new residents will then be eligible to register as electors and to vote in the election. In an Existing Village with a small electorate, the election results may thus be affected.

Therefore, I strongly urge Members not to support Mr Andrew CHENG's amendment.

CHAIRMAN (in Cantonese): Mr Andrew CHENG, do you wish to speak again?

(Mr Andrew CHENG indicated that he did not wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Dr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah and Mr WONG Sing-chi voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing and Mr Ambrose LAU voted against the motion.

Ms Audrey EU abstained.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, three were in favour of the motion and 21 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present, seven were in favour of the motion, 11 against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

MRS SELINA CHOW (in Cantonese): Madam Chairman, in accordance with Rule 49(4) of the Rules of Procedure, I move that in the event of further divisions being claimed in respect of the Village Representative Election Bill or any amendments thereto, the Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Selina CHOW be passed. Does any Member wish to speak?

(No Member responded)

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

(Members raised their hands)

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

(No hands raised)

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

I order that in the event of further divisions being claimed in respect of the Village Representative Election Bill or any amendments thereto, the Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that clause 15 be amended. It is necessary to amend clause 15(4), so as to

specify how the age of a person at the time of application for registration shall be calculated. Clause 15(4)(c) and (5)(b) as amended provide that for the purpose of the 2003 elections, unless a person has reached the age of 18 or shall reach the age of 18 on or before 3 June 2003, he shall not be eligible to be registered as an elector for a village, or for the purpose of any election thereafter, unless a person has reached the age of 18 or shall reach the age of 18 on or before 20 October in the year of election, he shall not be eligible to be registered as an elector for a village.

Besides, there are also two minor technical amendments to clause 15(5)(d) of the Bill. Madam Chairman, the above-mentioned amendments have been scrutinized by the Bills Committee, and it has raised no objections to them. I urge Members to support the amendments.

Proposed amendment

Clause 15 (see Annex)

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 Home Affairs be passed. Will those in favour raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Clause 15 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.

(Members raised their hands)

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

CLERK (in Cantonese): Clause 22.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I move that clause 22(1)(b) be deleted, as set out in the paper circularized to Members.

Madam Chairman, we have already discussed the issues relating to the three-year and six-year requirements. In the interest of the next Agenda item — Secretary Michael SUEN is already seated — because I hope that we can discuss the motion on short-piles as early as possible this evening, I am not going to dwell any more on these issues. But I still wish to make an appeal here. I will definitely claim a division later on, and I also hope that our ideal can be realized. Thank you, Madam Chairman.

Proposed amendment

Clause 22 (see Annex)

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

(No Member responded)

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, the object of Mr Andrew CHENG's amendment to clause 22(1) of the Bill is to delete the residency-in-village requirement which a person seeking nomination as a candidate must meet. The electorate in an Existing Village is small, and actually, in a village community, the villagers usually know one another. In a village community like this, a village representative must have a sense of belonging to his community. Besides, he must know the people living in the village and be known by them. The residency-in-village requirement is therefore reasonable. The requirement is also very fair, because it applies to all, indigenous inhabitants and non-indigenous villagers alike. This six-year residency-in-village requirement applicable to candidates is the outcome of long-time and thorough discussions among the authorities, the Heung Yee Kuk and New Territories community representatives. This proposal is accepted by most people in the villages.

Mr CHENG's amendment will produce the effect that virtually anyone may become a candidate. One needs only to rent a unit in a certain village and move into it before the commencement of voter registration, and he can then register as an elector and be nominated as a candidate. This is not a scenario which the inhabitants of Existing Villages in general wish to see. Therefore, I strongly urge Members not to support the amendment.

CHAIRMAN (in Cantonese): Mr Andrew CHENG, do you wish to speak again?

(Mr Andrew CHENG indicated that he did not wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Dr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Henry WU, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah and Mr WONG Sing-chi voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing and Mr Ambrose LAU voted against the motion.

Ms Audrey EU abstained.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, three were in favour of the motion and 20 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present, seven were in favour of the motion, 11 against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As Mr Andrew CHENG's amendment to clause 22 has been negatived, I now put the question to you and that is: That clause 22 stand part of the Bill.

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Schedules 1 to 4.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that Schedules 1 to 4 be amended, as set out in the paper circularized to Members.

Following the amendments to clauses 2(1), 9(1) and 23(1) which delete the restriction forbidding prescribed public officers to stand in village representative (VR) elections and serve as VRs, there is a need to introduce consequential and technical amendments to sections 3, 4 and 10 of Schedule 4. The amendments to Schedules 1, 2, 3 and section 20 of Schedule 4 seek to extend the terms of office of existing VRs, Rural Committee members and those of the Chairman, Vice-Chairman, Ordinary Members of the Executive Committee and Special Councillors of the Full Council of the Heung Yee Kuk by a period of six months instead of three months as originally proposed, so as to ensure that there is no gap in the terms of office of VRs, Rural Committee members and Heung Yee Kuk office-holders. Specifically, Schedule 1 must be amended to change the date of establishing the office of Resident Representative from 1 July 2003 to 1 October 2003.

Schedules 2 and 3 must be amended to change the date of establishing the office of Indigenous Inhabitant Representative from 1 July 2003 to 1 October 2003.

Section 20 of Schedule 4 must be amended to extend the existing terms of office of the Chairman, Vice-Chairman, Ordinary Members of the Executive Committee and Special Councillors of the Full Council of the Heung Yee Kuk by a period of six months instead of three months.

Madam Chairman, the Bills Committee has already studied the above-mentioned amendments and has raised no objections to them. I hereby urge Members to support the amendments.

Proposed amendments

Schedule 1 (see Annex)

Schedule 2 (see Annex)

Schedule 3 (see Annex)

Schedule 4 (see Annex)

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 Home Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Schedules 1 to 4 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.

VILLAGE REPRESENTATIVE ELECTION BILL

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the

Village Representative Election Bill

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 Village Representative Election Bill 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.

(Members raised their hands)

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

CLERK (in Cantonese): Village Representative Election Bill.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Housing Ordinance to approve the Housing (Traffic Contraventions) (Fixed Penalty) (Amendment) Bylaw 2003.

PROPOSED RESOLUTION UNDER THE HOUSING ORDINANCE

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I move that the motion on the Agenda be passed. The motion seeks to amend the Housing (Traffic Contraventions) (Fixed Penalty) Bylaw under the Housing Ordinance (Cap. 283).

Section 30 of the Housing Ordinance empowers the Housing Authority (HA) to make bylaws to regulate the access and parking of vehicles in public housing estates. The Ordinance also empowers the HA to issue Fixed Penalty Tickets to drivers who are in contravention of the bylaws. Penalty clauses and arrangements for payment of these Fixed Penalty Tickets are identical with those issued by the police to drivers in breach of the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) and the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240). Last year, about 1 100 drivers were issued with Fixed Penalty Tickets by the HA for breaching the relevant bylaws.

In the past, fixed penalty payment could only be made by post or in person to the Treasury Offices, Magistracies or District Offices. For the convenience of the public, as well as promoting wider application of information technology and better utilization of Hongkong Post's "PayThruPost" service, in 2001 the Legislative Council approved amendments to the Fixed Penalty (Traffic Contraventions) Ordinance and the Fixed Penalty (Criminal Proceedings) Ordinance to enable payment of Fixed Penalty Tickets issued by the police through Automatic Teller Machines, the "Payment by Phone Service", the Internet, or at post offices, apart from paying by post or in person to Magistracies.

In line with these new arrangements, I now submit to Members a motion to amend the Housing (Traffic Contraventions) (Fixed Penalty) Bylaw under the Housing Ordinance (Cap. 283), to enable payment of Fixed Penalty Tickets issued by the HA through the new channels mentioned above. Subject to the

approval of this Council, the amended Bylaw will come into effect on 1 March 2003.

Madam President, I beg to move.

The Secretary for Housing, Planning and Lands moved the following motion:

"That the Housing (Traffic Contraventions) (Fixed Penalty) (Amendment) Bylaw 2003, made by the Housing Authority on 20 January 2003, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Housing, Planning and Lands be passed. Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Two proposed resolutions under the Interpretation and General Clauses Ordinance in relation to amending subsidiary legislation. First motion: Amending the Appeal Board on Closure Orders (Immediate Health Hazard) Rules.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese):

Madam President, I move that the motion to amend the Appeal Board on Closure Orders (Immediate Health Hazard) Rules (the Rules) as set out on the Agenda be passed.

The Rules were made by the Chairman of the Appeal Board on Closure Orders (Immediate Health Hazard) in consultation with me in accordance with section 128D(20) of the Public Health and Municipal Services Ordinance. This subsidiary legislation serves to regulate the making of appeals against the Director of Food and Environmental Hygiene's decision to make a closure order, to specify the documents to be served, and to provide for the hearing and determination of appeals. Following the passage of the Rules, the Appeal Board on Closure Orders (Immediate Health Hazard) will come into formal operation.

The Administration's proposed amendments to the Rules have adequately reflected the views of the relevant Legislative Council Subcommittee and have been endorsed by the Chairman of the Appeal Board. Thanks to the useful observations and suggestions made by the Subcommittee, we have identified a few areas in the Rules where improvements could be made. The most significant change is the introduction of a time limit in section 13 requiring the Appeal Board to deliver its decision within 10 working days of completion of hearing of an appeal. This 10-day rule is practicable and consistent with our aim of providing an efficient and expeditious appeal mechanism for the aggrieved parties.

Aside from section 13, we have initiated a few other amendments with a view to reflecting our legislative intent more clearly. For example, we have proposed to spell out clearly in section 10 the right of an appellant to apply to the person presiding at a hearing for conducting the hearing in Chinese or English or both. The Subcommittee has also indicated support for all these amendments.

Finally, may I take this opportunity to thank the Honourable Fred LI, Chairman of the Subcommittee, for his able leadership and all other Members for the comments and contributions they made during the vetting period.

With these remarks, Madam President, I commend the motion to Members. Thank you, Madam President.

The Secretary for Health, Welfare and Food moved the following motion:

"That the Appeal Board on Closure Orders (Immediate Health Hazard) Rules, published in the Gazette as Legal Notice No. 200 of 2002 and laid on the table of the Legislative Council on 11 December 2002, be amended -

- (a) in section 2, in the definition of "working day", by repealing "日" and substituting "天";
- (b) in section 4 -
 - (i) by repealing "clear";
 - (ii) in paragraph (b), by repealing "bound" and substituting "affected";
- (c) in section 5, by repealing "clear";
- (d) in section 6(1), by repealing "clear";
- (e) in section 7 -
 - (i) in subsection (1), by repealing "clear";
 - (ii) in subsection (2)(a), by repealing "clear";
- (f) in section 8(a), by repealing "clear";
- (g) in section 10, by adding -

"(3) An appellant may apply to the person who is to preside at the hearing of the appeal to conduct the hearing in Chinese or English or both.";
- (h) in section 12(2), by repealing "clear";

- (i) in section 13 -
 - (i) by renumbering it as section 13(2);
 - (ii) by adding -

"(1) The Appeal Board shall, as soon as practicable and in any event not later than 10 working days after the completion of the hearing of an appeal, deliver its decision on the appeal.";

- (j) in section 15(3), by repealing "clear".

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

MR FRED LI (in Cantonese): Madam President, I can hardly speak.
(*Laughter*)

Madam President, I shall speak in my capacity as the Chairman of the Subcommittee on Appeal Board on Closure Orders (Immediate Health Hazard) Rules (the Subcommittee).

The Subcommittee has held two meetings with the Administration and the Chairman of the Appeal Board to scrutinize the Rules in detail.

The Rules were made on the recommendation of the Bills Committee on Public Health and Municipal Services (Amendment) Bill 2001 to provide an expeditious appeal mechanism for parties affected by a closure order. The Administration has thus added section 128D to the Amendment Ordinance, providing for the establishment of an appeal board to hear and determine appeals against the decision of the Director of Food and Environmental Hygiene (the Director) to make a closure order or his refusal to rescind a closure order.

The Subcommittee has expressed special concern during the scrutiny process about whether the hearing procedures and time limit for delivering a decision as stipulated in the Rules can meet the requirement of an "expeditious

appeal process". The Subcommittee has also sought clarification from the Administration on this.

On appeal procedures, the Administration has advised that under section 128C(7) and (18) of the Ordinance, any person having an interest in the premises and any person aggrieved by the closure order may, within seven days, or a longer period as the Chairman of the Appeal Board may allow, appeal to the Appeal Board. A copy of the closure order will be affixed at a conspicuous place on the premises and also sent to the owner of the premises by registered post. When issuing a relevant order, the Director will categorically remind the recipient of his rights to appeal to the Appeal Board. The form for notice of appeal will also be attached to the copy of closure order.

The Subcommittee has noted the use of "clear working days" for the time limits stipulated in the Rules. For instance, the secretary to the Appeal Board will within three "clear working days" after a notice of appeal is served fix the date, time and place for hearing the appeal, and the date of hearing will be fixed at within 10 "clear working days" of receipt of notice of appeal. In order to comply with the legislative intent of providing an expeditious appeal process, the Administration has accepted members' view that the word "clear" in the relevant sections of the Rules be repealed. This amendment will shorten the statutory time limits for various arrangements.

Some members have expressed concern whether parties affected by a closure order or refusal to rescind a closure order have the right to make representations at a hearing of an appeal.

The Administration has explained that under section 8(a) of the Rules, either party to an appeal may make written requests to the Appeal Board to invite any person who may be affected to make representations at the hearing. The Administration has assured the Subcommittee that the Appeal Board will normally invite all persons named by either party to the appeal to make representations at the hearing, unless there is evidence showing that any such persons named are not relevant or cannot be contacted. The Administration has also advised that under section 5(a)(iv) of the Rules, the Director has to specify all persons who have made representations to the Authority within one month before the making of the decision or closure order under appeal. These persons may be invited by the Appeal Board to make representations at the hearing.

As regards the meaning of "persons who are bound by the Authority's decision or order" in section 4(b) of the Rules, the Administration has explained that these are persons entered by the appellant in paragraph 6 of the notice of appeal together with proper addresses and contact telephone numbers, excluding those entries which the secretary has sufficient reasons to believe to have been frivolously or erroneously included. The Administration has clarified that these relevant persons will take part in the appeal proceedings as witnesses rather than as parties to the proceedings. To reflect the policy intent more clearly, the Administration has accepted the suggestion of the Subcommittee to amend section 4(b) of the Rules by substituting "bound" with "affected" in the reference to these persons.

On the language of hearing, the Subcommittee has suggested that as the appellant may not have legal representation at a hearing, he should be allowed to indicate his preference for the language to be used in conducting the hearing. The Administration has agreed to the Subcommittee's suggestion and will make amendments to section 10 of the Rules to provide that an appellant may apply to the person who is to preside at the hearing of the appeal for the hearing to be conducted in Chinese or English or both.

The Subcommittee considers that the Rules should specify that the Appeal Board must provide its decision on an appeal and the reasons for the decision in writing as soon as possible and within a specified time limit. This is to facilitate an appellant to appeal to the Court of First Instance the soonest possible if he is dissatisfied with the decision of the Appeal Board.

On this, the Administration was originally of the view that it was not necessary to specify in the Rules a time limit on the provision of the decision and reasons in writing. To allay members' concern, however, the Administration and the Chairman of the Appeal Board have subsequently suggested to make an express provision in the Rules requiring the Appeal Board to deliver its decision as soon as practicable within one month.

The Subcommittee does not consider that the Appeal Board should need as long as one month to deliver its decision. After further discussions with the Subcommittee, the Administration and the Chairman of the Appeal Board have finally agreed that the Appeal Board will deliver its decision as soon as practicable and in any event not later than "10 working days" after the hearing of an appeal.

Madam President, the Subcommittee welcomes the amendments made by the Administration to the Rules. These amendments will make the operation of the appeal mechanism more satisfactory and can also reflect the original legislative intent more clearly. The Subcommittee is appreciative of the Administration's prompt responses to members' views.

Madam President, I so submit.

MR WONG YUNG-KAN (in Cantonese): Madam President, the Public Health and Municipal Services Ordinance amended last year enhances the power of the Director of Food and Environmental Hygiene by empowering him to close licensed food establishments posing immediate health hazards. The Democratic Alliance for Betterment of Hong Kong (DAB) supports this for the protection of public health. And, at the same time, we also agree that there is a need to put in place an expeditious appeal mechanism for food establishment owners. Therefore, the DAB supports the passage of the Appeal Board on Closure Orders (Immediate Health Hazard) Rules submitted by the Government to this Council.

Many food establishments in Hong Kong are small businesses, which lead a "hand-to-mouth" existence. Although the Administration stresses that it will be extremely rare for it to close a food establishment "posing immediate health hazards". But once a food establishment is closed, the owner will naturally hope that he can know the outcome of his appeal as soon as possible under the proposed appeal mechanism, so that he can make arrangements or lodge an appeal again as soon as possible. Therefore, the Subcommittee on the Rules considers that the Appeal Board must deliver its decision within a specified time limit. This is not only fair to food establishment owners, and it can also realize the Appeal Board's principle of handling appeals expeditiously. The Government will move a resolution to specify that the Appeal Board will deliver its decision not later than 10 working days after the hearing of an appeal; the DAB is in support of this.

Madam President, many people criticize that the many advisory committees set up by the Government have not held enough meetings. However, if possible, I really hope that the Appeal Board does not have to hold any more meetings in future. I also hope that all food establishments in Hong Kong can keep themselves hygienic and clean. That way, people can eat in them without any worries and fears.

Madam President, I so submit.

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

(No Member responded)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Health, Welfare and Food to reply.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I do not see any need for a reply.

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

(Members raised their hands)

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

(Members raised their hands)

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

PRESIDENT (in Cantonese): Second motion: Amending the eight sets of subsidiary legislation made by the Securities and Futures Commission.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY: Madam President, I move that the motion under my name, as set out in the paper circularized to Members, be passed. This is to amend eight sets of subsidiary legislation made by the Securities and Futures Commission under the Securities

and Futures Ordinance. They are the Securities and Futures (Financial Resources) Rules, the Securities and Futures (Keeping of Records) Rules, the Securities and Futures (Accounts and Audit) Rules, the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules, the Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules, the Securities and Futures (Miscellaneous) Rules, the Securities and Futures (Price Stabilizing) Rules and the Securities and Futures (Insurance) Rules.

The first seven sets of subsidiary legislation were tabled at the Legislative Council on 18 December 2002, and the last set on 22 January 2003.

All the proposed amendments are of technical nature. They seek to rectify the format error of a provision in the English text of the Securities and Futures (Miscellaneous) Rules which would otherwise change the meaning of the provision, and to refine the drafting of the Chinese texts of the other subsidiary legislation to improve the consistency of the Chinese and English texts.

I also wish to take this opportunity to express my sincere gratitude to the Honourable SIN Chung-kai, Chairman of the Subcommittee on draft subsidiary legislation to be made under the Securities and Futures Ordinance, the Honourable Margaret NG, Deputy Chairman, the Honourable Henry WU and other members of the Subcommittee for their valuable contribution to finalizing the 37 sets of subsidiary legislation, including the above eight sets under the Securities and Futures Ordinance. Their hard work is most crucial to the conclusion of the legislative process for commencing the Ordinance on 1 April 2003.

Thank you, Madam President.

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

"That -

- (a) the Securities and Futures (Financial Resources) Rules, published in the Gazette as Legal Notice No. 209 of 2002 and laid on the table of the Legislative Council on 18 December 2002, be amended -
 - (i) in section 2(1) -

- (A) in the definition of "交易日期", in paragraph (j), by repealing "雙" and substituting "各";
- (B) in the definition of "期權合約", in paragraph (b), by adding "該合約內指明的" before "某";
- (ii) in section 46(2)(a), by adding "該等證券的" before "買";
- (iii) in section 53(2)(b), by repealing "債項" and substituting "負債";
- (iv) in section 56(1), by adding "仍然" before "有效";
- (v) in section 60(4), by repealing "進" wherever it appears and substituting "執";
- (b) the Securities and Futures (Keeping of Records) Rules, published in the Gazette as Legal Notice No. 210 of 2002 and laid on the table of the Legislative Council on 18 December 2002, be amended, in section 1(e) of the Schedule, by repealing "證券抵押品" and substituting "客戶抵押品";
- (c) the Securities and Futures (Accounts and Audit) Rules, published in the Gazette as Legal Notice No. 211 of 2002 and laid on the table of the Legislative Council on 18 December 2002, be amended -
 - (i) in section 3(1)(b) -
 - (A) by repealing "報表" and substituting "申報表";
 - (B) in subparagraph (viii), by repealing "本身的衍生工具持倉量" and substituting "衍生工具自營交易持倉的狀況";
 - (ii) in section 4(1)(d), by repealing "報表" where it twice appears and substituting "申報表";
- (d) the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules, published in the Gazette as Legal Notice No. 212 of 2002 and laid on the table of the Legislative Council on 18 December 2002, be amended -

- (i) in section 2, in the definition of "保證金比率", by repealing everything after "百分率是" and substituting "中介人的客戶被容許以該特定種類的證券抵押品向該中介人借貸（或以其他方式自該中介人取得其他方式的財務通融）的上限；";
- (ii) in section 5 -
 - (A) in subsection (3)(c)(i), by repealing "描述" and substituting "種類";
 - (B) in subsection (7)(a) and (b), by repealing "樣" and substituting "種類";
- (iii) in section 8(2)(b), (c) and (d), by repealing "款" and substituting "一種類的";
- (iv) in section 9(2)(b) -
 - (A) by repealing "款" and substituting "一種類的";
 - (B) by repealing "物" where it twice appears;
- (v) in section 11 -
 - (A) in subsection (3)(e)(ii), by repealing "物";
 - (B) in subsection (3)(f)(i), by repealing "款" and substituting "一種類的";
 - (C) in subsection (3)(f)(ii) -
 - (I) by repealing "款" and substituting "一種類";
 - (II) by repealing "物";
 - (D) in subsection (3)(g), by repealing "款" and substituting "一種類的";

- (E) in subsection (5)(b)(i), by repealing "款" and substituting "一種類的";
- (F) in subsection (5)(d), by adding "合約" after "期貨";
- (G) in subsection (6)(e)(ii), by repealing "物";
- (vi) in section 12 -
 - (A) in subsection (2)(b)(i) and (c), by repealing "款" and substituting "一種類的";
 - (B) in subsection (2)(b)(ii), by repealing "款保證物" and substituting "一種類的保證";
- (vii) in section 13 -
 - (A) in subsection (1)(a)(ii), by repealing "物" where it twice appears;
 - (B) in subsection (1)(d), by repealing "物";
 - (C) by repealing subsection (2)(e)(i) and (ii) and substituting -
 - "(i) 於中介人的保管人處開立的帳戶；或
 - (ii) 於中介人的有聯繫實體的保管人處開立的帳戶。";
 - (D) in subsection (3)(d), by repealing "物" wherever it appears;
 - (E) in subsection (3)(d)(i), by repealing "描述" and substituting "種類";
- (e) the Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules, published in the Gazette as Legal Notice No. 213 of 2002 and laid on the table of the Legislative Council on 18 December 2002, be amended -

- (i) in section 3(2)(c) -
 - (A) by repealing "該證券當" and substituting "某上市證券當";
 - (B) by repealing "上市" and substituting "該";
- (ii) in section 4(5), by repealing "根據第(1)、(2)或(3)款記錄口頭保證或第(4)款描述的詳情或" and substituting "記錄口頭保證或第(4)款描述的詳情，或根據第(1)、(2)或(3)款";
- (f) the Securities and Futures (Miscellaneous) Rules, published in the Gazette as Legal Notice No. 216 of 2002 and laid on the table of the Legislative Council on 18 December 2002, be amended by repealing section 2(1)(b) and substituting -
 - "(b) in the case of a document in electronic form, be -
 - (i) sent by means of such electronic transmission as may be approved by the Commission; or
 - (ii) sent by electronic mail transmission,

to such electronic reception facility as may be specified by the Commission on the contact details page of the Commission's web site.";
- (g) the Securities and Futures (Price Stabilizing) Rules, published in the Gazette as Legal Notice No. 218 of 2002 and laid on the table of the Legislative Council on 18 December 2002, be amended in section 12(1)(c), by adding "為提出任何買盤或達成任何交易" after "中";
- (h) the Securities and Futures (Insurance) Rules, published in the Gazette as Legal Notice No. 11 of 2003 and laid on the table of the Legislative Council on 22 January 2003, be amended -

- (i) in section 4(1), by repealing "就任何保險期根據第 5(1)條核准某類受規管活動的" and substituting "為某類受規管活動而根據第 5(1)條就某保險期核准某份";
- (ii) in section 4(2), by repealing "就任何保險期根據第 5(2)(a)條核准某份屬證券交易的受規管活動的" and substituting "為屬證券交易的受規管活動而根據第 5(2)(a)條就某保險期核准某份";
- (iii) in section 4(3), by repealing "就任何保險期根據第 5(2)(b)條核准某份屬期貨合約交易的受規管活動的" and substituting "為屬期貨合約交易的受規管活動而根據第 5(2)(b)條就某保險期核准某份";
- (iv) in section 5(1), by repealing "任何保險期就某類受規管活動" and substituting "某類受規管活動就某保險期";
- (v) in section 5(2), by repealing "就任何保險期";
- (vi) in section 5(2)(a) and (b), by adding "就某保險期" before "核准".

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

MR HENRY WU (in Cantonese): Madam President, the amendments moved by the Secretary earlier to the eight sets of subsidiary legislation under the Securities and Futures Ordinance are mainly technical amendments, some of which seeking to refine the drafting of the Chinese text of the legislation, and so on. I have earlier consulted the industry on the amended provisions of these several pieces of subsidiary legislation and I have been told that the industry finds the amended provisions acceptable and worthy of support.

The Subcommittee on draft subsidiary legislation to be made under the Securities and Futures Ordinance — Madam President, I have decided to call it the Subcommittee as its full name is too long — was set up by the House

Committee on 22 February 2002 and it has taken the Subcommittee 355 days, together with the active participation and efforts of many people, to complete the scrutiny of these eight sets of amendment subsidiary legislation, along with 30 sets of subsidiary legislation passed by negative vetting earlier, and to eventually put a full stop to the Ordinance, which will take effect on 1 April 2003. I would like to take this opportunity to express my gratitude to those people who have worked so hard on this piece of legislation, which is going to have far-reaching impact on the securities industry, and more than 30 other sets of subsidiary legislation.

First of all, my thanks must go to the Chairman and members of the Subcommittee. I have to thank them for the time and patience expended in the 12 meetings convened by the Subcommittee to listen to the questions and views raised by me on behalf of the industry. Moreover, I have to thank members of the working group initiated by me and consisted of members of the industry (including the Hong Kong Stockbrokers Association (HKSbA), the Institute of Securities Dealers Limited (ISDL), the Hong Kong Securities Professionals, veteran representatives of the industry and legal professionals). Over the past year, they attended countless meetings held late in the night by the working group to scrutinize the relevant subsidiary legislation. I would also like to thank the Administration and the Securities and Futures Commission (SFC) for their close co-operation and full discussions with the industry to remove most problems expected to be encountered in actual operation before consulting the public on the relevant subsidiary legislation. The views collected during the public consultation were also sorted and explained in detail in the summary report of the consultation on the subsidiary legislation. Thanks to this new consultative process, the Subcommittee set up by this Council was able to scrutinize the 30-odd sets of subsidiary legislation more smoothly and efficiently. Without such a good consultative mechanism, the time required for scrutinizing the 30-odd sets of subsidiary legislation will definitely be much longer, and the process become more complicated. Moreover, more than 30 sets, not eight sets of subsidiary legislation, might have to be amended today. Instead of just a few technical amendments, more amendments might be required too. I earnestly hope that such a good consultative mechanism and procedures can be retained in future.

Madam President, I have to thank the staff of this Council, particularly the Legal Adviser and his colleagues. They have spent so much time and energy assisting us in scrutinizing the 38 sets of subsidiary legislation and the principal

legislation that was passed last year, particularly the Chinese text of the provisions, and suggesting substantive amendments. Their proposals have been fully accepted by the Government and amendments have been made accordingly. Like the amendments proposed today, they are aimed at enhancing the consistency and clarity of the Chinese and English texts. More importantly, I am given a chance to speak today.

Concerning the Securities and Futures (Insurance) Rules (the Insurance Rules) to be amended today, the SFC was prompted to set up a working group comprising representatives from the industry and the SFC following a request made by the Subcommittee during its scrutiny of the Insurance Rules to fully consult the industry before tabling them again. Meetings were convened by the working group to discuss in detail the requirements set out in the provisions with respect to insurance terms, premium, actual operation and individual provisions, and a consensus was subsequently reached on relevant matters. As Chairman of the working group, I would like to thank all members of the working group here again for their active participation in the many meetings held and their valuable opinions. Furthermore, I would like to thank the SFC staff for their assistance.

In order to take expeditious actions to dovetail with the effective date of the Ordinance and its subsidiary legislation, the working group has taken the initiative to introduce the Brokers' Fidelity Insurance (BFI) Scheme, enforced by the Hong Kong Exchanges and Clearing Limited (HKEx) for years, to regulate securities activities. Insurance companies are required to further discuss other insurance proposals on regulated activities and resolve outstanding technical problems. I believe it is still necessary to continue with the discussions on the provisions of the Insurance Rules and amend them accordingly. The working group must continue to discuss the provisions related to other regulated activities and monitor the smooth operation of the BFI Scheme. For this reason, I hope the SFC and the Government can continue to support the working group and undertake to assist it with the provision of sufficient resources.

Madam President, I have mentioned earlier that the SFC has implemented an effective consultative mechanism, which is working very well. Likewise, the working group mentioned just now, actively led by the industry, is also very useful and efficient. Thanks to the direct participation of professionals, problems expected to be encountered in actual operation and technicalities have been resolved swiftly. It is therefore imperative for the Government to, in considering major problems relating to the industry, allow full and direct

participation of industry representatives, in order to enhance efficiency and achieve better results. When the Government raised the proposal on 10 January of setting up a "tripartite committee" comprising representatives from the Government, the SFC and the exchange company, both the industry and I suggested that a sufficient number of industry representatives must be included. I am very disappointed that, at the end, all the members of the working group were "official representatives".

Besides the Insurance Rules, the industry is also gravely concerned about the Securities and Futures (Financial Resources) Rules for these rules will have a far-reaching implications on the daily operation, business environment and operating costs of the industry. The industry participants have in fact reflected to me that they have the intuitive feeling that the Government will tighten the financial resources rules to coerce them into giving in or making concession in other matters. The fear that the Government can tighten the financial resources rules at any time has not only induced constant fears among industry participants, but also increased the operating costs and affected its operation. Given the present economic downturn and sluggish market transactions, the industry is under enormous pressure. This is contrary to the policy objectives set out in the policy address delivered by the Chief Executive with respect to improving the business environment and lowering operating costs.

The business environment of the industry has been subject to enormous pressure since the two new financial resources requirements on raising the liquid capital and stock collateral haircut percentage took effect on 1 October 2002. Therefore, I hope the authorities concerned can, in the light of the current economic difficulties and the constant shrinkage of market transactions, avoid implementing provisions that will increase operating costs and thereby deal a blow to the industry, particularly the commercial viability of small and medium sized securities firms.

Upon the formal operation of the stringent Securities and Futures Ordinance, there will be more and sufficient provisions to protect investors. Therefore, in reviewing the financial resources rules in future, full consideration should be given to striking a proper balance between preserving a reasonable business environment and protecting investors to enable the flagging market to revive expeditiously and the securities industry to develop healthily for the benefit of investors ultimately.

Madam President, many extremely stringent requirements can readily be found throughout the Securities and Futures Ordinance for strict compliance by the industry. Moreover, the Government has indicated its support for the abolition of the minimum brokerage commission rule to take effect from April onwards. It is hoped by the besieged industry that the "tripartite committee" can respect the motion passed by the Panel on Financial Affairs earlier on the implementation of the proposal to "re-examine the option of introducing a two-tier brokerage commission system". It is also hoped that the HKEx can respect the appeal made by the Panel on Financial Affairs to shelve its decision to remove the minimum brokerage commission rule until the "tripartite committee" has completed its examination of the option.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to reply?

(The Secretary for Financial Services and the Treasury indicated that he did not wish to reply)

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

(Member raised their hand)

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

(No hand raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the Ocean Park Bylaw.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

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

At the meeting of the House Committee on 24 January 2003, Members agreed that I should move a resolution in my capacity as Chairman of the House Committee to extend the scrutiny period for the Ocean Park Bylaw laid on the table of the Legislative Council on 15 January 2003 to 5 March 2003, so as to allow more time for Members to study the subsidiary legislation.

Madam President, I hereby call upon Members to support the motion.

Mrs Selina CHOW moved the following motion:

"That in relation to the Ocean Park Bylaw, published in the Gazette as Legal Notice No. 1 of 2003 and laid on the table of the Legislative Council on 15 January 2003, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 5 March 2003."

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

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

(No Member responded)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Members, it is now 8.47 pm. There are still two motions with no legislative effect on the Agenda of this meeting. For the first of these two motions, Members will each have 15 minutes to speak in the debate. I believe the Council will not be able to dispose of all the Agenda items today before midnight. Therefore, at around 10 pm, I will adjourn the meeting under 2.30 pm tomorrow. We will now continue with the meeting.

PRESIDENT (in Cantonese): Two motions with no legislative effect.

First motion: First Report of the Select Committee. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debate. The mover of the motion will have up to 15 minutes to speak on each of the three occasions for moving her motion, speaking on the amendment and giving reply. The mover of an amendment, the mover of an amendment to an amendment and other Members will each have up to 15 minutes for their speeches. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

I now call upon Ms Miriam LAU to move her motion.

FIRST REPORT OF THE SELECT COMMITTEE

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

The First Report of the Legislative Council Select Committee on Building Problems of Public Housing Units (the Select Committee) was released on 22 January 2003. The Select Committee has taken quite a long time to study the various problems arising from the production of public housing. Some people may ask: Why should the Select Committee take such a long time? The reasons are very simple. Four construction incidents were covered in this review, and each involved many persons and the relevant information was complicated and specialized. So the Select Committee has to turn every stone and piece all the clues together in looking for the causes and results of each incident. More importantly, after confirming the causes of the incidents, the Select Committee has to identify solutions to the problems, and to make appropriate recommendations to prevent recurrence of the problem. For certain problems that would seriously affect the people of Hong Kong, the Legislative Council must discharge its duty of monitoring the Government in the most impartial and critical way, so as to address the concern of the people.

After nearly two years of hard work, the Select Committee comprising 15 members has completed its careful study on the problems arising from the four works projects, namely, Tin Chung Court, Tin Shui Wai, Yuen Chau Kok, Sha Tin, Shek Yam Estate Reconstruction Phase 2 and Tung Chung Area 30 Phase 3. As there are still some criminal legal proceedings going on in respect of Tin Chung Court, and the Select Committee has received some new evidence on the Tin Chung Court incident, we have not included the incident in our First Report. We shall continue to study the Tin Chung Court incident with a view to tabling an investigation report to this Council in due course.

One of the important elements of the work of the Select Committee is to study why serious quality problems have emerged in public housing one after the other. Were they just individual problems, or are there some loopholes in the system? In order to find out the answers, the Select Committee has studied the formulation of public housing policies and the construction processes from the perspectives of the system and the organizational framework.

The Select Committee found that, in the first Long Term Housing Strategy released by the Government in 1987, the Government estimated that in the 14 years between April 1987 and March 2001, there would be a housing demand of 960 000 residential flats. With the dissolution of the Housing Branch in 1988, the Housing Authority (HA) formulated its own production targets in accordance with the targets set down by the Long Term Housing Strategy, as well as the outcome of a review conducted by an inter-departmental task force.

It should be noted that the annual production of the HA had never exceeded 55 000 units before the mid-1990s. However, as revealed by the Public Housing Development Programme (PHDP) in September 1995, the production forecasts of the years 1999-2000 and 2000-01 were both nearly 70 000 units. This housing production forecast was already twice the handling capacity of the staff establishment of the Housing Department (HD) at that time. The amended figures of subsequent PHDPs all showed a trend of continuous upward adjustments in the production forecasts for the year 2000-01. And by June 1997, the production forecast for the year 2000-01 even reached the highest point of 110 000 units.

In the press conference called for release of the First Report of the Select Committee, many journalists were concerned about the bunching of production mentioned by the Select Committee. Was the bunching of production equivalent to the housing policy of providing not less than 85 000 units a year proclaimed by the SAR Government after the 1997 reunification? Although members of the Select Committee and I had repeatedly stressed in the press conference that the bunching of production mentioned in the report of the Select Committee did not mean the 85 000-unit policy announced after the reunification, many subsequent news reports still linked the two together. As the Chairman of the Select Committee, I hope to take this opportunity of the debate today to clarify once again the understanding of the Select Committee.

As I said just now, in September 1995, that is, two years before the reunification, the PHDP then already showed that there would be a bunching of production by the year 2000-01. And the production forecast of that year was calculated with reference to such factors as the estimated housing demand, land supply and the progress of works under the HA. Under such circumstances, there is no evidence to show that there was any connection between the bunching of production and the 85 000-unit policy.

Many people have asked, "With such huge production targets, does it mean that problems with housing construction projects were unavoidable?" Members of the Select Committee think that it may not necessarily be so. As we said in the Report, the bunching of production was not the direct cause of the four incidents. But the bunching did bring about tremendous pressure and put the production mechanism of public housing to severe tests.

In order to prevent problems from emerging in projects at the anticipated bunching of production, the Select Committee thinks that it was necessary for the HA and the HD to adopt a series of measures. Firstly, the *modus operandi* of the Building Committee under the HA must be reviewed.

The Building Committee is responsible for supervising the housing production projects from planning to completion. We note that the workload of the Building Committee increased with the upward adjustment in the housing production of the HA. Before 1995-96, as said by Mr Edward HO, then Chairman of the Building Committee, the workload was manageable. However, in the several years that followed 1996-97, both the number of papers that the Building Committee had to handle and the number of works contracts to be awarded had increased so much that both the Chairman of HA and Mr Daniel LAM, who took over chairmanship of the Building Committee in April 1996, were of the opinion that the workload of the Committee was too heavy and had once considered to streamline its duties. Unfortunately, they did not actively follow up this issue, and the Building Committee maintained its *modus operandi* of holding one to two regular meetings a month, and handled papers related to over 800 projects in a year. Under such circumstances, the Committee seldom went into the details of the construction projects during its deliberations, and many of the papers were passed without discussion. The Select Committee questions whether members of the Committee had effectively discharged their duties.

Certain members of the public have commented that members of the Building Committee are mainly unofficial members, who took up the duties of the Building Committee with a mentality to serve society, on a part-time basis without remuneration. They can only exercise the function of a "referee", instead of a "player" in taking up executive duties of the HD. Therefore, some people query whether it is fair for the Select Committee to level such criticisms against the Building Committee.

In fact, the conclusion of the Select Committee precisely pinpointed at this. The terms of reference of the Building Committee covered not just consultative duties, but also a lot of executive responsibilities, such as approving works plans and scrutinizing project tenders. Exactly for this reason, the Select Committee is of the opinion that it is unrealistic to expect part-time unofficial members to spend a lot of time on scrutinizing and approving project details. Therefore, the terms of reference and *modus operandi* of the Building Committee should be reviewed well before the arrival of the bunching of production.

Several HA and HD staff members told the Select Committee that, the HD had not just sit back and watched the arrival of the bunching of production with folded arms. They pointed out that, apart from employing additional manpower and outsourcing projects, the HD had also implemented internal reforms to streamline its business procedures. The Select Committee agrees that outsourcing can reduce the workload of HD staff. However, the Select Committee discovers that, apart from outsourcing projects, the HD also outsourced its role as the regulator, forgetting the important factor that the works projects of the HA are not subject to the Buildings Ordinance. Therefore, it is necessary for the HD to discharge duties similar to those of the Building Authority in both in-house and outsourced projects, so as to ensure the standards and quality of housing construction. Unfortunately, HD staff of various grades placed their emphasis only on controlling the time and budget of the projects, thereby ignoring the significance of engineering quality. In addition, they spent too much time on paper work.

Madam President, it should be considered a workable solution for the HD to launch reforms to meet the challenge presented by the bunching of production. However, at the same time of implementing reforms, the HD should ensure that the affected staff clearly understand the changes in their duties, and introduce corresponding measures to dovetail with the changes. In this regard, the Select Committee finds that the HD had its inadequacies. Between April 1997 and March 1999, several organizational reforms had taken place. Some of the staff members were not clear of their roles, and the relevant HD manuals were not updated in time, and the management did not provide guidelines to the relevant staff.

It can be anticipated that, given the need to meet tremendous production targets, unclear roles of staff members and increased workload, problems would easily emerge. The Select Committee has also discovered that, in the several incidents investigated, there were several common phenomena, that is, engineering staff devolving a lot of their duties to other staff, a lack of experience on the part of front-line staff members and over dependence on the integrity of contractors in enforcing contract terms. With all such factors, unlawful elements found opportunities of taking advantage of the situation. The Select Committee strongly reprimands several contractors, certain staff members of subcontractors or even directors who had committed criminal offences in the incidents of Yuen Chau Kok, Shek Yam and Tung Chung. The acts of these people have tarnished the reputation of the construction industry. These incidents reflected that there is a need to upgrade the professional conduct of practitioners in the construction industry.

On the analysis of the structures of the HA and the HD, the Select Committee points out where the problems lie by analysing the development of the four incidents. As the problems surrounding the four incidents were construction problems, the Select Committee has devoted substantial coverage to describing the problems relating to the functions, the interaction and the work co-ordination of the people involved, so as to make improvement recommendations. I must point out that, in making those recommendations, we have also made reference to the series of improvement measures proposed by Chief Secretary for Administration Donald TSANG in the "Report on the Review of the Institutional Framework for Public Housing". Our recommendations are made on the basis of this Report. The Select Committee supports a merger of the HA and the HD into a government organ responsible for housing matters. However, in spite of this change, we still think that there should be participation of the public in the formulation and implementation of the public housing programme. That is to say, the HA still has a role to play, whereas the Building Committee, just as I have said earlier, should focus on affairs of strategy. In other words, the Government must review the executive duties of the HA and the Building Committee in the construction of public housing. I think the Select Committee has fully discharged its duties of analysing the structures of the HA and the HD.

I would also like to respond to the query raised on why the Select Committee has the determination to find out the truth of the problems, but not the courage to propose punishments for those who had made mistakes. The

purpose of the Legislative Council in passing the resolution to set up the Select Committee is to find out the truth of the four incidents, so as to make recommendations on improving the quality of housing construction. In line with the letter of the resolution, the Select Committee considers that it is inappropriate of it to make proposals on punishment for individual officers who have made mistakes. However, we hope that the Government will study this report carefully and take appropriate follow-up actions, including taking suitable disciplinary actions against officials who should be held accountable.

Since the disclosure of the several incidents, and to date, different organizations and a commission of inquiry have made a lot of recommendations on how to improve the quality of public housing. I urge the Government and the relevant authorities to study the recommendations as soon as possible and decide which of them should be implemented in order to enable Hong Kong not only to maintain its usual high quality in housing construction, but also make further improvements and continue to make Hong Kong a shining example in the international community.

With these remarks, Madam President, I beg to move.

Ms Miriam LAU moved the following motion: (Translation)

"That this Council endorses the First Report of the Select Committee on Building Problems of Public Housing Units."

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

PRESIDENT (in Cantonese): Mr Frederick FUNG will move an amendment to this motion. Mr Albert HO will move an amendment to Mr Frederick FUNG's amendment. The two amendments have been printed on the Agenda. The motion, the amendment, and the amendment to amendment will now be debated together in a joint debate.

I will first call upon Mr Frederick FUNG to speak and move his amendment to the motion. Then, I will call upon Mr Albert HO to speak and move his amendment to Mr Frederick FUNG's amendment. Members may

then debate the motion and the amendments. After Members have spoken, I will first put Mr Albert HO's amendment to Mr Frederick FUNG's amendment to vote. Then, depending on the result of the vote, I will put Mr Frederick FUNG's amendment, either in its original form or in the amended form, to vote.

PRESIDENT (in Cantonese): Mr Frederick FUNG, you may now speak and move your amendment.

MR FREDERICK FUNG (in Cantonese): Madam President, I move that Ms Miriam LAU's motion be amended, as printed on the Agenda.

Madam President, since August 1999, public housing building scandals have surfaced one after another in Hong Kong, and abnormal uneven foundation settlement (commonly known as the "short pile incidents") was discovered in four public rental housing (PRH) and Home Ownership Scheme (HOS) housing construction sites. A high degree of concern was thus aroused among the general public about the building quality of public housing and demands were voiced for thorough investigations into the incidents. In the meantime, the Government and the HA established select committees to investigate into the incidents and some middle and junior officers were named in the reports for condemnation and suggestions were made. Nevertheless, when the reports were submitted to this Council, they were criticized by us for putting the blame on the junior officers rather than their seniors, and being silent about the senior officers or HA members who had the decision-making powers in respect of policies.

In February 2001, this Council conducted an independent and comprehensive investigation into the short pile incidents. In fact, in June 2000 during the last Session of this Council, Mr Fred LI already proposed a motion debate related to substandard piling works, expressing no confidence in Dr Rosanna WONG, the HA Chairman, who was in office when the short pile incidents happened and Mr John MILLER, the Director of Housing, and the motion was passed by this Council. Today, the incidents have almost come to an end and the Select Committee of this Council on Building Problems of Public Housing Units (the Select Committee) has already published its First Report. Actually, the Report costed members of the Select Committee a lot of time, a total of two years, a total of 200 meetings and \$14 million.

We can see from the Report that colleagues of this Council have conducted in-depth and detailed investigations into the short pile incidents, and the Report has listed out more than 20 proposals made by the Select Committee to reform the structure of public housing and construction from a macroscopic perspective. In addition to dozens of suggestions made and implemented by the HA and the Office of The Ombudsman in the two years after the outbreak of the short pile incidents, the Report does serve certain functions and is constructive in some measure. However, the investigation report published by the HA of its own accord or the investigation by the Office of The Ombudsman on maladministration in handling the short pile incidents have failed to touch upon officials and public officers of Hong Kong who deal with housing policies, especially those who are responsible for policy-making after all. Therefore, I think that the Select Committee of this Council has indispensable importance in this regard and its work and functions must be affirmed.

The Hong Kong Association for Democracy and People's Livelihood and I think that the Report has identified officials who should be held accountable in terms of politics and policy-making, but it has not indicated an attitude towards them, including condemning them. After reading the Report, people very often feel that the Select Committee has been "accommodating" towards these senior officials or public figures who have the power to make policy decisions. Although the Report has set out the specific responsibilities of different senior officials in charge of housing policies, it has not named them directly and their names are only set out in the appendices to the Report of the Select Committee, which partly relieved the political pressure on these public officers. For example, para 9.9 of the Report states that "S for H, as the head of the policy bureau for formulating major housing policies and as an ex officio member of HA, failed to ensure that the production target of the Government was realistic. CHA, as the head of the agent for implementing the Government housing policy, did not give adequate regard to the capability and resources of its executive arm, HD, to meet the unrealistic production target. D of H, as the head of HD, did not sufficiently deal with the increased risks brought by the bunching of production which was beyond HD's capacity to cope", therefore, the Report makes it a point that the three persons were responsible during the time the short pile incidents happened. Yet, the Report has not mentioned what views we should form on the responsibilities of these three persons or the attitude that this Council should adopt towards them. If they warrant condemnation by this Council, then I think the terms of reference of the Select Committee should include "condemnation" but I agree that it does not have the responsibility of "punishment". We can deal with punishment at this meeting, yet, they are not

even condemned. As I have heard, there are apparently comments outside that we have been evasive or accommodating and that we do not wish to directly pinpoint at those who should be held accountable.

Madam President, the biggest difference between my amendment and the amendment proposed by Mr Albert HO to my amendment lies in that I have named Mr Dominic WONG, the former Secretary for Housing, and Mr John MILLER, the former Director of Housing, for condemnation. Madam President, based on para 9.9 read out by me just now, I have named the persons concerned on the basis of the Report that suggested some people have the relevant duties. Why have I not named Dr Rosanna WONG, the former HA Chairman and some former senior officers of the HD such as Mr YUEN Tze-chu mentioned in the Report who have similar duties? It is because I think that Ms Rosanna WONG already, either voluntarily or involuntarily, resigned of her own accord in June 2000, a day or so before this Council debated the motion on the short pile incidents during the last Session as a result of these incidents. Her resignation shows that she was willing to bear the political responsibilities. Now that she has already done so, I do not think we still have to condemn Dr Rosanna WONG. I have not named Mr YUEN Tze-chu or some officials under him here for the following reasons. First, those might be mistakes in administration but not policy and they are not mistakes in politics or political policy-making. Second, other government committees have actually named and criticized Mr YUEN Tze-chu. I am not sure if Members still remember that seven senior officials have been named and Mr YUEN Tze-chu is one of them. Since the Government has already criticized him, I do not think it is necessary to especially highlight him here, and, given his rank, he may not have responsibilities in terms of politics and policy-making that I wish to pinpoint. Given such circumstances, I have proposed this amendment.

I wish to remind Members again that many Members had said, when we proposed the establishment of the Select Committee, that all the reports provided by the Government at that time were pinpointed at administrative officials but not policy-making officials, that is, they had blamed the junior officials but not the senior ones. Since the Select Committee already has a clear grasp of the matters and explicit evidence, data and justifications to prove what is set out in para 9.9 read out just now, I think we are duty-bound. Of course, we can still discuss the extent of condemnation, but my attitude is that the senior officers instead of the junior ones should be blamed. The intent behind this attitude is that the Government had shown an attitude of blaming the junior officers rather than the senior ones in the past, and it would be complete if my opinion, that is,

the views of this Council, were added. Thus, my amendment is pinpointed at the two policy-making officials. In fact, I have chosen to propose such an amendment after serious consideration.

I have read from the newspapers that Mr Albert HO had said that I was blaming the senior officers but not the junior ones. Actually, Mr Fred LI of the Democratic Party proposed on 28 June 2000 a motion of no confidence in Dr Rosanna WONG and Mr John MILLER, and its spirit is entirely the same as that of my amendment. I wish to quote the remark made by Mr Fred LI on that day: "our society may discuss the introduction of a new modern culture of political accountability, under which, be it in the public or private sector, the head of a department which on the whole has committed mistakes or dereliction of duties should be made accountable to the general public and be held accountable for all the blunders". My amendment today actually has precisely the same objectives and spirit as those of the motion proposed by Mr Fred LI on that day — I was not in the Council then. After this Council's investigation into the short pile incidents, I think without reservations that we have more comprehensive and complete information, evidence and data than the several reports before ours. I think that there are sufficient justifications and grounds on which we can condemn those officials whom the Select Committee deemed accountable.

Madam President, the second part of my amendment proposes that the Government has to impose punishment on Mr Dominic WONG, the former Secretary for Housing, and Mr John MILLER, the former Director of Housing. I believe the short pile incidents have actually brought losses to our Government or to the public coffers and I would try to give Members some information. Information shows that most piles of Shatin Area 14B Phase 2, that is, the present Yu Chui Court, an HOS housing estate, were shorter than normal by several metres to some 20 m, and the HA was forced to demolish two completed blocks in March 2000. It translated into a loss of \$250 million, excluding losses in interests and hundreds of millions of dollars in additional construction costs and it is estimated that the total might reach \$1 billion. Besides, the investigation into the case of Tin Chung Court, Tin Shui Wai which has not yet been completed after three years and the reinforcement works on the short-pile buildings is not yet completed. It is estimated that the HA incurred losses as much as \$350 million during the period, of which \$190 million was spent on works to make up for the short piles. Evidently, the Government, especially the HA, has suffered certain losses as a result of the short pile incidents. The policy-making officials concerned were duty-bound, why should they not be condemned or punished?

Furthermore, the short pile incidents have made the public lose confidence in the building quality of public housing. Information shows that since the buildings are not completed on schedule, the HA has especially offered some 2 000 prospective HOS flat owners the arrangements for cancellation of the purchase and sales agreements. Almost all of these buyers have cancelled the agreements and they have actually "voted with their feet" to tell people about their vote of no confidence in the building quality of public housing. Now, only one prospective owner of a flat in Block K of Tin Chung Court, Tin Shui Wai is waiting for occupation of his flat. Further still, a newspaper in Hong Kong conducted a telephone survey in the evening after the Report of the Select Committee was published. Among 100-odd interviewees, around 30% thought that it was unsuitable for the HA to take up the responsibilities of building public housing. That was the result. What did it show? It showed that the short pile incidents brought the HA and the HD pecuniary losses and ruined their reputation. That being the case, why is nobody held accountable? Why is nobody condemned? Why is nobody punished?

On the basis of the above data, the damages done to the reputation of the HD and the HA and the information and evidence in the Report of the Select Committee, my amendment requests the Government to hold Mr Dominic WONG, the former Secretary for Housing, and Mr John MILLER, the former Director of Housing, accountable and to impose punishment on them. After the outbreak of the incidents, Mr Dominic WONG, has received tens of millions of dollars in retirement pension and Mr John MILLER has been promoted and given a pay rise. When the Report was published, what did Mr Michael SUEN, the incumbent Secretary for Housing, Planning and Lands, say? Unless there were certain reports that I have not covered, then, I would like to ask Mr Michael SUEN to touch upon them later. He only lightly said in the newspapers that it was only a small blot in the reputation of the construction industry. I was so angry after hearing his remark that my hair even stood on ends. His comment was really meant to shield a blunder. Why was it just a small blot? The reputation of the HA and the HD has completely been ruined. It turns out that the more mistakes one makes, the more money he gets, so, I think that my amendment has to demand punishment on top of condemnation.

Madam President, I cannot accept Mr Albert HO's amendment because it has deleted the names of Mr Dominic WONG and Mr John MILLER from my amendment and "condemns", which is unacceptable. I know that most

Members will not support my amendment today and my amendment may not even stand a chance of being put to the vote, but I think that if colleagues think that these responsible officials should be accountable, we should not protect them and shield their blunders. If Members agree that we should not join those who shield their blunders, they should vote against Mr Albert HO's amendment for the purpose of condemning the two officials through this Council. Mr Albert HO's amendment has also touched upon punishment, which is the same as my amendment, and the only difference is that it has not mentioned the names and condemnation. If some colleagues support condemning and naming the two officials concerned to indicate the attitude of this Council towards them, I hope they will vote against Mr Albert HO's amendment. I believe chances for my amendment to be put to the vote are slim.

Thank you.

Mr Frederick FUNG moved the following amendment (Translation):

"To add ", and condemns Mr Dominic WONG Shing-wah and Mr John Anthony MILLER who respectively held the posts of Secretary for Housing and Director of Housing at the time of the three incidents relating to the public housing projects in Shatin Area 14B Phase 2, Tung Chung Area 30 Phase 3 and Shek Yam Estate Phase 2, as well as demands that the Administration impose punishment on them" after "That this Council endorses the First Report of the Select Committee on Building Problems of Public Housing Units"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Frederick FUNG to Ms Miriam LAU's motion, be passed.

PRESIDENT (in Cantonese): I now call upon Mr Albert HO to speak and move his amendment to Mr Frederick FUNG's amendment.

MR ALBERT HO (in Cantonese): Madam President, I move that Mr Frederick FUNG's amendment be amended, as printed on the Agenda.

In this motion debate on the First Report of the Select Committee on Building Problems of Public Housing Units, I am speaking on behalf of the Democratic Party, and I would like to propose an amendment to the amendment moved by Mr Frederick FUNG.

Although the investigation of the Select Committee has been very difficult, it has very significant implications. The three investigation committees appointed by the Government focused on identifying the causes of the individual incidents, such as the fraudulent acts of the individuals and the professional negligence of individual officials. In fact, such an approach ran the risk of not seeing the wood for the trees. Certainly, the obvious criminal fraudulent acts were the direct and major causes of the public housing scandals. However, the HA must also admit that some of the HD staff responsible for supervising the projects have committed acts of negligence. But the critical issue is: Is it only the front-line staff directly responsible for the projects should be held completely responsible, whereas the management of the HD and HA, or even the Housing Bureau could stay aloof from all the responsibilities?

In this connection, the Select Committee has conducted comprehensive and in-depth investigations for more than two years. The investigations cover all the four incidents and examine the systems and policies with a top-down analysis, together with a horizontal study on each stage of the work, including land supply, production targets, the power structure among the Housing Bureau, the HA and the HD, the restructuring of the HD, the operation of the Building Committee, building design, outsourcing of projects, system and policy of supervision, the actual situation of individual construction sites, and even the work habits and culture of the HD as a whole. All of these were covered by investigation and inquiry by the Select Committee. In short, the occurrence of the four scandals was attributable to some circumstantial factors, apart from the direct and obvious reasons. They were factors that were related to the managerial policies, systems and culture, as mentioned in the Report.

The above factors contributed to blunders made by individual technical officers and became indirect factors which were taken advantage of by the unscrupulous contractors. However, the top office-bearers of the Housing Bureau, the HA and the HD, as well as the HD management in charge of construction could not possibly be absolved of their responsibility in this regard.

In the conclusions of government investigation reports compiled in the past, the responsibilities were all placed on the front-line staff. Such conclusions were inaccurate and grossly unfair.

As the conclusion of the Report (Chapter IX) said, the Government had formulated an unrealistic housing production target for the year 2000-01 in the mid-1990s. This was a remote background factor which was very significant. In order to achieve this grand target, the HD implemented some significant reforms in its organization, including launching an reorganization in order to cope with the outsourcing of large quantity of design and construction projects as well as a re-engineering of the business procedures. Besides, the workload of the Building Committee of the HA also increased tremendously, but no effort was made to ascertain if the Building Committee could discharge its duties effectively given such workload.

Unfortunately, in the pursuit of an unrealistic housing production target, the management of the Housing Bureau, the HA and the HD had completely overlooked the fact that the HD, apart from its role as the developer of public housing, also played the role and borne the responsibility of a project supervisor. We all understand that the Buildings Ordinance does not apply to public housing constructed by the HD, and the Architectural Services Department (sic) does not have to supervise public housing. However, the HD overlooked its regulatory responsibility conferred by the law. In introducing major structural changes, the management seemed to be only concerned with the timely and even speedy completion of the projects, as well as cost control and savings, yet the quality assurance of projects was forgotten. Given the excessive workload, major changes in systems and procedures, and the substantial outsourcing of design and building works as mentioned above, the management of the HA and the HD lacked an awareness of crisis assessment and risk management. This was the crux of the problems.

In conclusion, we discover that the HD committed the following major blunders in management.

Firstly, in respect of tenders, emphasis was placed only on the prices and timeframes, so much so that it almost became a policy of awarding tenders to the lowest bidders, thereby leading to all sorts of problems, especially the lack of

sufficient quality assurance. Moreover, the HD failed to establish a significant partnership spirit and relationship with the contractors. Under such circumstances, contractors had to win the tenders with very low prices on the one hand, yet they also had to worry about the heavy penalty they might face for delayed completion of works on the other. In order to complete the projects in time, some contractors were under pressure to take short-cuts. The authorities failed to assess the risk in this regard.

Secondly, in terms of work procedures, the HD did not specify effectively the proper procedure for devolution of important work functions and the need for subsequent follow-up. In assigning duties, the HD did not take the specialized skills and experience of the relevant staff into consideration, resulting in some engineering staff being assigned jobs which they could not manage. They might not have enough experience, or in some cases, the excessive workload had made it impossible for them to discharge their duties effectively.

Thirdly, the inadequate supervision of subcontractors and contractors on the part of the officials made it impossible to strengthen the scrutiny of the operating experience of contractors or subcontractors and their financial capability to undertake the projects, in the procedure of awarding contracts. We can even see that some contractors had repeated bad records, yet such records were never treated seriously. This also reflected an inadequate awareness of risk management.

Fourthly, the HD failed to attach any or enough importance to the provision of technical guidance and training to its staff. In the several incidents, we discovered that many of the front-line site officers did not possess sufficient front-line experience, or even had not acquired enough training and professional knowledge. Their superiors expected them to the work in accordance with the guidelines. Unfortunately, they were incapable to perform as desired despite the will, thereby providing opportunities for dishonest contractors to capitalize on the situation. It seemed that site officers in all the four incidents had not received sufficient training, and this was a major blunder. It was also unrealistic for their superiors to expect them to learn at work.

Fifthly, when the HA and the HD implemented their reorganization, the number of outsourced works projects increased substantially. However, the manpower resources were not deployed properly in terms of suitable work

distribution and staff management, resulting in extremely unreasonable workload being allocated to a dedicated engineer in the Yuen Chau Kok Incident. We can hardly expect him to supervise the overall works professionally according to the guidelines in order to implement the relevant work objectives. In delegating power, he did not carry out sufficient follow-up work due to various reasons. It was really a most unfortunate incident, and at the same time, provided the chance for staff of some unscrupulous contractors to exploit the situation.

Sixthly, the Building Committee adopted the approach of "straightforward paper" requiring no discussion in approving most of the piling works. We found that this approval procedure was a major loophole, which let go the chance of assessing prudently the technical competence and abilities of the bidders. On many occasions, the Building Committee failed to notice in the process of examining the tenders that awarding contracts to the lowest bidders might give rise to such a crisis.

On the work culture of the HD, several points are obviously noteworthy.

Firstly, it seemed that the front-line or junior staff dared not reflect the problems they faced to the upper management. For example, the workload of certain dedicated engineers exceeded their capacity, and they had to delegate their work to staff members of more junior levels. Eventually, after several levels of delegation, some technical work was undertaken by the most junior member of the technical staff, that is, the Clerk of Works. Officers who were slightly senior all claimed that they were engaged in other duties. Actually, most of the time, they just stayed in the office to read papers and scrutinize works plans. In fact, was this necessary? If this was really necessary, had such delegation of power been reflected to the management truly? Why could dedicated engineers not reflect such situations to senior officials responsible for supervising them or even to the management? Besides, often there were still illegal works going on in the sites after seven o'clock in the evening. Officials of the HD knew that they had the responsibility to control such situations. However, they knew that it would be impossible for them to get a licence from the Environmental Protection Department, or even if applications were submitted, the chances of getting the approval would be slim, so all they could do was to bury their heads in the sand and turn a blind eye to all this. So, we have reasons to believe that many of the illicit activities were carried out in the night. Why the junior staff could not reflect the real situation to the management?

Besides, the ISO 9000 requirements also gave people a misdirected sense of safety. People were led to think that, as long as there were forms to fill in, and that senior staff could endorse such forms already signed by junior staff, the jobs were considered done properly. This was also a major problem in their work culture.

As an aftermath, in formulating new measures, both the HD and the HA admit that, and the Legislative Council Select Committee also thinks that they should have discovered it much earlier, that it is very important to conduct random checking in the course of supervision. If there were no sufficient random checking, it would be very difficult to prevent shoddy work from happening. In fact, the HD should have sufficient experience to be aware of the undesirable trade practices. They should not have overlooked the possibility that such things could happen in the projects of the HD.

Lastly, the Select Committee has made numerous recommendations, some of which have already been implemented, while there are some others that we hope could be implemented as soon as possible, such as amending the Buildings Ordinance to make it applicable to public housing.

Insofar as some principal officials are concerned, they should bear the responsibility as well — this is the most important point we would like to highlight on this occasion. In paragraph 9.9, we point out that the ex-Chairman of the HA, the ex-Secretary for Housing and the ex-Director of Housing should all be held accountable. Besides, it is also stated in paragraph 9.27 that, at the management level, the director responsible for construction should also be held responsible. The names of bearers of the above offices are all well known to all of us. Therefore, even if the Select Committee has not named them for criticism, we all know who they are. I believe on the issue of responsibility, it is already very clear. The Select Committee is of the opinion that, as the responsibilities have been defined, it should be incumbent on the Government to conduct a study before deciding how to impose punishment on the relevant persons. The Government should give an detailed explanation to the public on how punishment should be imposed, or why no punishment should be imposed, and whether such punishment is reasonable. The Legislative Council should be informed of such details, so the Government should give an account to the Legislative Council on these. After the Government has given us a detailed account of the punishment, we shall follow up. We shall wait and see whether the punishment to be decided by the Government should involve condemnation

or other measures. However, I must stress that this incident will not come to a permanent full stop after this debate. The Legislative Council Panel on Housing or even the whole Legislative Council will take appropriate follow-up action on this incident.

Thank you, Madam President.

**Mr Albert HO's amendment to Mr Frederick FUNG's amendment:
(Translation)**

"To delete "condemns Mr Dominic WONG Shing-wah and Mr John Anthony MILLER who respectively held the posts of Secretary for Housing and Director of Housing at the time of the three incidents relating to the public housing projects in Shatin Area 14B Phase 2, Tung Chung Area 30 Phase 3 and Shek Yam Estate Phase 2, as well as" after "That this Council endorses the First Report of the Select Committee on Building Problems of Public Housing Units, and"; to delete "Administration" after "demands that the" and substitute with "Government"; to add "appropriate" after "impose"; and to delete "them" after "punishment on" and substitute with "those officials who should be held responsible for the incidents".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Albert HO to Mr Frederick FUNG's amendment, be passed.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, the Select Committee of this Council has spent two years on a detailed study of four public housing building scandals that caused a furore. Taking an overview of the evidence given by the relevant parties who have taken part in the hearings over the past two years and the First Report of the Select Committee of the Legislative Council on Building Problems of Public Housing Units, I deeply feel that the blunders in the housing policies of the Government and the improper management system of the HD have caused the series of short pile incidents and incidents of shoddy work and the use of inferior materials. The HD was overburdened mainly as a result of the unrealistic building targets set by the Government. The mismanagement within the HD and serious defects in the

tendering systems and human resources arrangement for monitoring the quality of projects also directly caused the series of short pile incidents, shoddy work and the use of inferior materials.

Although the departments charged with public housing thought that the bunching of production might not be the direct cause for the building problems found in the four incidents, the unrealistic flat production targets had really brought the HD enormous pressure and stretched it beyond its capacity. It was a pity that the highest decision makers of housing policy, that is, the Secretary for Housing, the Director of Housing and the Chairman of the Housing Authority (HA) had not resolutely addressed the problems but allowed them to continue to deteriorate despite knowing perfectly well that the excessive production had caused problems in such aspects as land, establishment and high risks.

Not only so, the heavy pressure faced by these departments in housing construction fully exposed the deficiencies of their systems. The HD and HA management have failed to pinpoint the deficiencies of their systems and introduce fundamental improvements, thus giving the unruly elements a chance. After two years of work, as the Chairman of the Select Committee and colleagues have said, we came to know that the series of building quality problems are actually rooted in the very serious defects in system and the management culture. I really hope that the Government will look squarely at the problems after this debate instead of shirking responsibilities or avoiding the significant issues and dwelling on the trivial ones in response.

Madam President, firstly, the outsourcing and tendering systems are subjects of the most serious criticisms. In the face of production targets beyond their capacity, the departments thought that the manpower and financial pressure of the HD and HA could be relieved through outsourcing so that the consultants could play the role of the HD.

However, the HD is the government department that was most incapable of monitoring the contractors but it also had the largest number of outsourced contracts. The Report pointed out that the HD, in outsourcing building contracts valued at tens of billions of dollars, had also outsourced its responsibilities, and the HD staff only laid particular emphasis on costs and progress control while the monitoring of building quality was completely handled by outsourcing consultants or subcontractor consultants. The HD thought that the departments charged with public housing only played the role of "owners"

who mainly required the contractors to comply fully with the lawful requirements and deliver products punctually without cost overrun while works quality always came last. The subordinates expressed their views time and again but the senior management failed to look squarely at them, therefore, the HD management mostly relied on papers only to effect monitoring.

Besides the inadequate monitoring of the contractors, that the bidders who offered the lowest prices would usually win the tenders under the tendering system was also a problem. Without a good monitoring system, private companies would certainly aim at making profits and they would definitely maximize the profits at the lowest costs. Take the Yuen Chau Kok Incident as an example, the Report stated that the tender price was very low but the staff in charge of tender had not examined it, and the Government did not have to pay more even though the piling costs had increased sharply as a result of particular geological difficulties. Actually, all these became incentives for contractors to deliver shoddy work and use inferior materials. Cases of shoddy work, using inferior materials, passing inferior products off as quality products, muddling along and muddling through work were very often found in the Yuen Chau Kok Incident. The consequent short piles, shoddy work and use of inferior materials obliged the Government to demolish the problematic blocks, causing the public to bear very serious losses together.

Though the Government has improved outsourcing contracts and enhanced monitoring in recent years, the incidents showed that its efforts have not been very effective. Apart from the incidents in respect of the works contracts a few years ago, the cleaning and security contracts of the HD have recently been offered to the bidders who offered the lowest prices, and contractors often exploited their staff who had to work long hours at low wages. For instance, the three recent incidents in which magnets fell from the gates of housing estates and wounded some residents reflected from another angle that there were monitoring problems after the HD had outsourced the management of estates. Ineffective monitoring means dereliction of duties. These incidents have actually sounded the alarm again for the Government and officials in charge of housing affairs.

Madam President, on the other hand, we found in the Report that the arrangements of the HD for human resources management could be described as very clumsy. The Select Committee discovered that the HD staff coped with their heavy workload by devolving the important responsibilities to the junior staff, and it was euphemistically called a transfer of powers. The professional

staff devolved the duties to the Inspectors of Works, who then devolved the same to the Assistant Inspectors of Works, who then again devolved the same to another junior. Finally, the Works Supervisors who had the lowest pay and at the lowest rank were responsible for high-level monitoring duties. This is very ridiculous indeed. When I met them at a meeting of the Select Committee, I thought that it was unfair to severely criticize them because those were not their duties in the first place. It was really a joke for the Works Supervisors at the lowest level to be responsible for supervisory duties of the highest level. Nevertheless, the upper level staff signed without questions the papers for approval prepared by these officers. We had not determined whether they were technically competent on the basis of qualifications. It was a pity that there was insufficient time, if not, we could provide Members with a large number of documents for reference, and they would then see that the upper level staff had signed without questions the papers carrying the decisions made by staff at the lowest level. I really felt that very strange and, in respect of the improper manpower arrangements, the HD staff in charge of the projects at that time had very obviously neglected their duties.

Taking the Yuen Chau Kok short pile incident as an example, the HD staff in charge of the works contracts failed to appoint and deploy suitable persons to supervise the projects, although he knew very well that the structural engineer in charge of the project lacked experience in Large Diameter Bored Piles (he said very clearly that he did not know anything about these piles), he had not stepped up supervision of the work of the structural engineer. When he knew that the numbers of projects assigned to the structural engineer exceeded the established workload indicator, he failed to deploy any resident engineer, as a result, the supervisory work was finally transferred to the Works Supervisor of the site who did not have any experience in supervision. In fact, Yuen Chau Kok had an extremely complicated foundation and it was utterly necessary for a resident engineer to supervise the piling works, yet, the HD had not considered the views repeatedly expressed by the staff.

Apart from an unsound system, the Yuen Chau Kok short pile incident also reflected that the project management had failed to properly manage the project. For instance, grouting was often carried out after 7 pm in the absence of HD staff. Nevertheless, the project manager and the project structural engineer had not heightened their vigilance or handled the matter resolutely, and allowed the contractor to work without supervision. They had obviously neglected their duties and were extremely irresponsible, in violation of their professional conduct.

Actually, the Report also reflected other deficiencies in the HD's system for construction projects, such as the excessive reliance of HD staff on various project manuals, and so on. The First Report on the investigation into the short pile incidents by this Council made 13 proposals to mend the fold after a sheep was lost. But Mr Michael SUEN, the Secretary for Housing, Planning and Lands, subsequently said that the Government had adopted several improvement measures including streamlining the public housing structure and co-operating with the construction industry, which were consistent with the ideas mentioned by the Select Committee. Nevertheless, some reforms have evidently not been made so far; for instance, public housing has still not come under the regulation of the Buildings Ordinance. Furthermore, though there is a substantial reduction in public housing production, it does not mean that the work of reforming the management culture of departments charged with public housing can be relaxed and we still need to further review and improve the outsourcing system.

Summing up, problems are obviously found in the unrealistic production targets set, the excessive emphasis placed by the HD management on monitoring on paper, and the fact that follow-up actions have not been taken. The staff of the departments who had neglected their duties in the four short pile incidents should step forward to bear responsibilities and accept punishments. In future, the departments should learn a lesson and establish a supervision and balancing mechanism to improve the quality of decision-making and management. Madam President, the officials of the housing departments should no longer think that "one makes no mistakes if he does nothing and the less he does, the less mistakes he makes". Only then can Hong Kong people's confidence in the departments be restored.

I so submit.

MR HOWARD YOUNG (in Cantonese): Madam President, after almost two years of hearings and investigations, the First Report of the Select Committee of the Legislative Council on Building Problems of Public Housing Units (the Select Committee) has finally been published. Looking back at the past reports on the investigations into the incidents prepared by the teams appointed by the Administration, we find that most investigations were conducted on individual incidents and were inevitably not comprehensive enough, and the proposals in these reports were merely piecemeal and patchwork. This time, the Select

Committee has studied the whole housing policy and system with individual incidents cited as evidence, therefore, its studies are more comprehensive and consistent with the major objective of the Liberal Party in supporting the establishment of the Select Committee in the first place. From a microscopic perspective, we wish to make a more in-depth exploration of the root of the problems and look for permanent solutions to ensure that the problems will not recur and the quality of public housing can be guaranteed.

The proposals in this Report include a review of the role and functions of the HA and, pinpointing the powers and responsibilities of the decision-making and enforcement departments for public housing, draw clear definitions on the structure and system. The Liberal Party considers this very important. In the past, the Liberal Party emphasized time and again that the Government ought to integrate and streamline the housing structure to avoid the confusion of overlapping roles or policies made by different authorities.

In respect of housing affairs, we could see that there were a Housing Bureau, the Housing Department (HD), the HA and the Hong Kong Housing Society. As regards the HA and the HD, the former was nominally responsible for policy making while the latter was responsible for enforcement, but quite a number of their functions actually overlapped. Besides, the HD had a bloated bureaucratic structure and there were grey areas between the functions of the Housing Bureau and the HA, therefore, confusion would easily be caused and the public were at a loss as to what to do in relation to housing policies. The Chief Secretary for Administration announced last June the proposal for future reform in the housing structure and accepted the streamlining proposal advocated by the Liberal Party all along, including the plan to merge the Housing Bureau and the HD in the hope of gradually turning the HA into an advisory body in the long run. Evidently, the Government is determined to reform the housing structure, but the way in which some specific details will be put into effect is still a cause of concern.

It is also stated in the Report that one of the main causes of the series of public housing short pile scandals was the serious defect in the project tendering and management systems of the HD. Given that the main problems lie in the systems, the Government should start with reforming the relevant systems. Thus, the Liberal Party urges the Government to implement the reform measures proposed by the Select Committee, especially the proposals pinpointing the

housing structure and HD systems, look squarely at the problems, learn a lesson and avoid following the same old disastrous road. Certainly, a more important point to further ensure the quality of public housing, prevent the loss of human lives and make sure that public money is spent where it is worth.

I also wish to talk about some details of the Report. It is mentioned in the Report that the HA often granted most works contracts to the lowest bidder. Although the lowest price offer might not necessarily result in inferior works quality, an excessively low tender price might induce contractors to deliver shoddy work and use inferior materials or carry out substandard works. Therefore, the Liberal Party urges the Administration to suitably or fully consider the financial strength, technical competence and past performance of contractors, especially their past performance in the relevant projects besides considering their tender prices when it invites tenders and grants works contracts in future.

Moreover, it is also stated in the Report that the HD management had supervised the staff inadequately, and the senior staff had devolved their duties tier upon tier, so, the most junior staff had taken up inspection and supervisory duties that required experience and professional judgement. As a result, loopholes emerged and substandard piling works were not found before it was too late. This shows that professional knowledge is a very important factor to ensuring building quality.

It is unfair for Mr Frederick FUNG's amendment to pinpoint two officials only and it is consistent with the conclusion of the Select Committee. In principle, the Liberal Party supports Mr Albert HO's amendment which requests the Government to impose punishment on those officials who should be held responsible for the incidents. In fact, this Council passed a motion on a vote of no confidence in Dr Rosanna WONG, the former Chairman of the HA, and Mr John MILLER, the former Director of Housing, on 28 June 2000 and the Liberal Party also voted for the motion on that day. The Report has not named and criticized several senior officials including Dr Rosanna WONG and Mr John MILLER, which reflected that this Council had sufficient grounds for passing the motion then. The Liberal Party thinks that the Administration should carefully consider the spirit of the passage of the motion on a vote of no confidence by this Council on that day and make improvements accordingly. As to the extent of punishment to be imposed and the specific enforcement of the punishment, the Government should make a decision and follow up on its own.

Lastly, I wish to stress that the four short pile incidents involved criminal acts. Although they have damaged the confidence of people in public housing and the construction industry to a certain extent, we do not wish to criticize all those involved without exception. In fact, all of us can see the very high quality of public housing in Hong Kong and our construction industry has always enjoyed reputation in the world for good quality and also created large numbers of jobs, and it is one of the pillars of Hong Kong economy. We owe all of these outstanding achievements to the efforts made by the construction industry in the past.

Even so, the Liberal Party hopes that the industry can learn a lesson from the experience summed up in the Report and spread the relevant improvement measures throughout the whole industry and continue to maintain and improve the good systems and conduct of the industry in order to ensure the good quality of construction projects in Hong Kong.

Madam President, I so submit.

MS AUDREY EU (in Cantonese): Madam President, as a member of the Select Committee on Building Problems of Public Housing Units (the Select Committee), I rise to speak in support of the original motion moved by Ms Miriam LAU, Chairman of the Select Committee, and the amendment moved by Mr Albert HO, Deputy Chairman of the Select Committee.

It has costed the Select Committee almost two years and nearly \$15 million to complete the First Report, which was considered by some critics not value for money. The necessity of this investigation was questioned as it was pointed out that the Select Committee was merely repeating the investigative work previously carried out by the HA and The Ombudsman and the conclusions drawn in the Report were nothing new.

I wish to highlight the point that this Council is essentially playing its regulatory role by carrying out investigation and studies on substandard piling and other building problems of public housing units. Compared to the HA's internal review and The Ombudsman's follow-up investigation, the investigation undertaken by the Select Committee is undoubtedly more independent and comprehensive. As pointed out in paragraph 1.2 of the Report, other government bodies did not have the statutory power to require the attendance of witnesses to give evidence or the production of documents. On this, the legislative Council does have an edge for it can conduct in-depth investigations

and studies on the problems. Members who have carefully studied the report will be shocked by what they see in each of the paragraphs and can possibly spot numerous mistakes at various stages of public housing construction, from initial planning, the award of contracts to management and construction.

In carrying out our work that lasted nearly two years, I was most impressed that government officials, members of the HA, contractors and subcontractors alike had all displayed an attitude of "this is not my business" in giving evidence. In a nutshell, it was someone's fault. For instance, when the former chairman of the HA gave evidence, she blamed the problems arisen in respect of the bunching of production in the late '90s on insufficient land awarded to the HA. This was however denied by the former Director of Housing, who claimed that massive construction was carried out simultaneously because of delay experienced by the HA in implementing its initial construction programme.

Let me cite the Yuen Chau Kok Incident as an example. While officials of the HD stated that the principal contractor was supposed to be responsible for monitoring the quality and progress of the piling works, the latter emphasized that they had relied on HD staff to carry out inspection. When it comes to on-site supervision, the Project Structural Engineer of the HD handed over his major inspection duty to the Project Clerk of Works, who in turn asked his subordinate, the Assistant Clerk of Works (ACW), to handle his work for he claimed that he had to oversee a number of construction projects at the same time. Owing to the need to deal with paper work and attend meetings, the ACW then handed his task to the Works Supervisors (WS). Eventually, the work of verification which was supposed to be done by a professional engineer was performed by two lowest-ranking WSs, who had no experience of handling piling works at all. Madam President, I absolutely agree with Miss CHAN Yuen-han that the standard of personnel management was deplorable and ridiculous.

Although this example is only the tip of the iceberg, it sufficiently demonstrates that there is a lack of a clear accountability system to govern the construction of public housing from planning to construction. It is unclear as to whom should be held responsible when things go wrong. It has become increasingly clear that the Government should begin by introducing institutional reforms to ensure that someone is held responsible at every stage of the construction works and that sufficient monitoring is in place whereby the powers and responsibilities of the HA, HD, engineering consultants, contractors, and so on, are clearly defined.

As pointed out in the Report, the proliferation of building problems of public housing was fundamentally attributed to the fact that the production targets far exceeded the capacity of the HA and the HD. The actual production target in 1999-2000 and 2000-01 each reached 70 000, twice the production the establishment of the HD can handle per annum. According to the findings of the Select Committee, the Housing Bureau, the HA and the HD had predicted a long time ago the bunching of production, yet no one proposed to adjust or lower the production targets.

While I understand that the Government is duty-bound to provide the public with adequate public housing, it is more important to ensure the structural safety of new public housing for it is crucial to our lives and limbs. We can see from the three cases cited by the Report that both the HD and the contractors were only concerned about on-time completion and cost control in total neglect of the supervision of the quality of construction works. This is essentially the bad consequence of meeting the production targets hastily.

Madam President, I know of the existence of the so-called "construction works for senior officers" in the Mainland. This means that when a leader orders the commencement of certain construction works, his subordinates will spare no expense in carry out his order irrespective of the actual circumstances. I worry that a similar culture has taken shape in the official circle in Hong Kong. Nonetheless, both the Housing Bureau and the HA were obliged to reflect the reality to their superiors. If we look at the matter from another angle, neither the former Governor, Mr Chris PATTEN, or the Chief Executive, Mr TUNG Chee-hwa, should have insisted on the planned production targets had they appreciated the capability and limitations of the HA.

I think it is imperative for the Government to seriously consider the 10-odd reform recommendations made by the Select Committee. I particularly share the view that the functions and powers of the Building Committee under the HA be reviewed anew.

Though most members of the Building Committee serve on a voluntary basis, they are required to vet and approve not only the design and budget, but also the plans and the award of tender, and even to monitor the progress of each project. In 1999-2000, for instance, a total of 193 works contracts were awarded by the Building Committee, at a total value of \$16.5 billion. Obviously, it is unrealistic to expect members of the Building Committee, who

could only rely on the advice given by HD staff, to examine every tender in detail. On the contrary, HD staff took the view that the decision rested with the Committee rather than with them, and they were required only to enforce the decision of the HA. Such a system or arrangement would obviously lead to problems, though it seems unfair to, after the event, blame members of the committee who are working on a voluntary basis. Yet it is impossible for them, as decision-makers, to shrink their responsibility.

People have also criticized the "lowest bidder wins" practice, which is used as the criteria for vetting tenders while the past performance and relevant technical competence and experience of contractors are neglected. In the seven years between 1995 and 2002, 80% to 90% of public housing works were awarded to contractors offering the lowest prices each year. In the Yuen Chau Kok Incident, the HA turned a blind eye to the poor experience of the lowest-bid contractor in piling works and awarded the contract to it. The HA had to swallow the bitter fruit at the end.

Lastly, Madam President, I would like to say a few words on reorganization of the structure of public housing. Well before the Select Committee completed its work (June 2002), the Government had decided to merge the Housing Bureau and the HD to gradually recover the powers and responsibilities of the HA in planning and building public housing and turn it into a pure advisory organ. The relevant arrangements can, to a certain extent, rectify the shortcomings of overlapping housing policies.

Nevertheless, it is not necessarily good for all the powers to be centralized. Even if the Housing, Planning and Lands Bureau is to be tasked with the responsibility of co-ordinating the planning and construction of public housing, it is still possible for the structure to become bloated. Most importantly, no concrete proposals have yet been made to specify ways to enhance public participation in the formulation and enforcement of policies and to prevent "black-box operation" under the new housing structure.

Madam President, I agree with Mr Frederick FUNG's amendment, in that both Dominic WONG and John Anthony MILLER have to be held partially responsible. The Select Committee has indeed also pointed out the responsibilities they should hold. However, the Report has also pointed out the responsibilities that should be assumed by many other people as well as numerous institutional problems. Therefore, we might be over-simplifying the

matter if we resort to condemning the two officials only. I also disagree with Mr Frederick FUNG's proposal of differentiating political and non-political responsibilities. In comparison, Mr Albert HO's amendment is more reasonable, I agree that the Government should carefully study this report compiled by the Select Committee and, in adherence to the spirit of accountability, consider imposing appropriate punishment on the officials, contractors and other people who should be held responsible for the incidents.

Madam President, I so submit.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): Honourable Members, it is now ten o'clock one minute sharp. I decide at this stage to adjourn the Council until 2.30 pm tomorrow.

Suspended accordingly at one minute past Ten o'clock.

Annex**VILLAGE REPRESENTATIVE ELECTION BILL****COMMITTEE STAGE**Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>By deleting subclause (2) and substituting -</p> <p>"(2) Subject to subsection (3), this Ordinance shall come into operation on the day on which it is published in the Gazette.</p> <p>(3) Sections 2 and 19 of Schedule 4 shall come into operation on 1 October 2003.".</p>
2(1)	<p>(a) In the definition of "first final register", by deleting "final register for the Village as compiled and published under this Ordinance before the first village ordinary election for the Village" and substituting "first final register for the Village as compiled and published after the commencement of section 17(1)(b)".</p> <p>(b) In the definition of "first provisional register", by deleting "provisional register for the Village as compiled and published under this Ordinance before the first village ordinary election for the Village" and substituting "first provisional register for the Village as compiled and published after the commencement of section 17(1)(a)".</p> <p>(c) By deleting the definition of "prescribed public officer".</p> <p>(d) By adding -</p>

ClauseAmendment Proposed

"surviving spouse" (尚存配偶), in relation to an indigenous inhabitant, means a person who survives the indigenous inhabitant as his spouse at the time of his death and has not since his death entered into -

(a) a marriage celebrated or contracted in accordance with the provisions of the Marriage Ordinance (Cap. 181); or

(b) a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed,

with another person;".

7(1)(a) By deleting "9 months beginning on 1 July" and substituting "6 months beginning on 1 October".

9(1) By deleting paragraph (a) and substituting -

"(a) is a judicial officer;".

15 (a) In subclause (4)(b), by deleting "applying to be registered" and substituting "the date of application for registration".

(b) In subclause (4)(c), by deleting "at the time of applying to be registered" and substituting -

", or will be an adult on or before -

ClauseAmendment Proposed

- (i) in the case of registration in the first provisional, or final, register for the Village, 3 June 2003;
 - (ii) in any other case, 20 October next following the person's application for registration".
 - (c) In subclause (5)(a), by adding "or surviving spouse" after "spouse".
 - (d) In subclause (5)(b), by deleting "at the time of applying to be registered" and substituting -

", or will be an adult on or before -

 - (i) in the case of registration in the first provisional, or final, register for the Village, 3 June 2003;
 - (ii) in any other case, 20 October next following the person's application for registration".
 - (e) In subclause (5)(d)(i), by deleting "inform" and substituting "informs".
 - (f) In subclause (5)(d)(ii), by deleting "provide" and substituting "provides".
- 16(c) By adding "有關" before "選舉".
- 17 (a) In subclause (1)(a), by deleting "72 days before the village ordinary election date for the Village" and substituting "22 April 2003 and not later than 10 September in each subsequent year".

ClauseAmendment Proposed

- (b) In subclause (1)(b), by deleting "the Village not later than 30 days before the village ordinary election date for the Village" and substituting "a Village not later than 3 June 2003 and not later than 20 October in each subsequent year".
 - (c) In subclause (2), by adding "or other personal particulars" after "address".
 - (d) In subclause (8)(a), by deleting "; or" and substituting a full stop.
 - (e) By deleting subclause (8)(b).
- 20
- (a) In subclause (3)(a) and (b), by deleting "or dates".
 - (b) In subclause (5) -
 - (i) by deleting "or dates";
 - (ii) by deleting "or are".
- 21
- (a) In subclause (1) -
 - (i) by deleting "The" and substituting "Subject to subsections (1A) and (2), the";
 - (ii) in paragraph (a), by deleting "處" and substituting "署".
 - (b) By adding -

"(1A) The Electoral Affairs Commission is not required, on the making of a declaration that an election for a Village has failed as provided in section

ClauseAmendment Proposed

29(2)(a), to arrange for a village by-election for the Village to be held if the election declared to have failed is a village by-election that was held on the making of another declaration that an election for the Village has failed as provided in section 29(2)(a).".

23(1) By deleting paragraph (a) and substituting -

"(a) is a judicial officer;".

30(1) By deleting "or after".

31 (a) In subclause (1)(c), by adding "本條例及 " after "按照".

(b) In subclause (8)(b)(ii), by deleting "在該選舉中就該村選出的候選人人數少於該選舉須選出的該村 " and substituting "在該村的選舉中所選出的候選人人數少於該村的選舉須選出".

36(1) By deleting ", by notice published in the Gazette, declare" and substituting "publish in the Gazette a notice declaring".

40(a) By deleting "10" and substituting "5".

51(2) By deleting "賦予或委" and substituting "委予或賦".

62 (a) In subclause (1), by deleting "3 months" and substituting "6 months".

ClauseAmendment Proposed

- (b) In subclause (2), by deleting "9 months that commences on 1 July" and substituting "6 months that commences on 1 October".

63(1) By deleting "3 months" and substituting "6 months".

Schedules 1, 2 and 3 By deleting "July" wherever it appears and substituting "October".

Schedule 4 (a) In section 3(e), by deleting the proposed definition of "Rural Committee".

(b) By deleting sections 4 and 10.

(c) By adding -

**"Electronic Transactions
(Exclusion) Order**

**10A. Provisions excluded from
application of section 5
of Ordinance**

Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg.) is amended by adding -

"68. Village Representative Election Ordinance (of 2003) Sections 8(1), 10(1), 24 and 26(2)".

ClauseAmendment Proposed**10B. Provisions excluded from
application of section 6
of Ordinance**

Schedule 2 is amended by adding -

"24. Village Representative Election Ordinance (of 2003) Sections 8(2), 10(2), 24 and 26(2)".

- (d) In section 14(a) and (b), by adding "or (j)" after "4(i)".
- (e) In section 15(a), by deleting "or (i)" and substituting ", (i) or (j)".
- (f) In section 17, by deleting "published" and substituting "notified".
- (g) In section 20 -
 - (i) in the proposed section 5(2)(a), by deleting "3 months" and substituting "6 months";
 - (ii) in the proposed section 5(2)(b), by deleting "9 months that commences on 1 September" and substituting "6 months that commences on 1 December".

VILLAGE REPRESENTATIVE ELECTION BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Andrew CHENG Kar-foo

<u>Clause</u>	<u>Amendment Proposed</u>
5(3)	By adding ", other than the affairs relating to the lawful traditional rights and interests of indigenous inhabitants ," before "on behalf of the residents of the Village".
6(4)(a)	By adding "relating to the lawful traditional rights and interests of indigenous inhabitants" after "affairs of the Village".
15(4)	By deleting paragraph (b).
22(1)	By deleting paragraph (b).

Appendix I**WRITTEN ANSWER****Written answer by the Director of Food and Environmental Hygiene to Dr LUI Ming-wah's supplementary question to Question 1**

In contracting out our services, the Food and Environmental Hygiene Department (FEHD) normally does not specify the qualifications the tenderers need to possess. A marking scheme for tender assessment, however, is adopted to ensure that satisfactory services are rendered by the successful tenderers.

A number of assessment criteria which may vary according to the services outsourced are included in the marking scheme. Among them, the management plan, work plan and contingency plan submitted in respect of the tendered service are considered as the tenderer's ability in providing the service. Proposals on monthly wage and allowable daily maximum working hours for workers, experience and performance of the tenderer in relevant work in a specified period, the tenderer's conviction of offences under the Employment Ordinance or other relevant legislation relating to staff employment and claim of qualifications in quality management issued by organizations generally recognized in Hong Kong, and so on, are all taken into account. In addition, the tenderer is required to provide background information and submit details of his company such as Memorandum and Articles of Association and financial information for our reference.

With the above marking scheme, the FEHD can make effective assessment on the service qualities of the tenderers and their offers to guarantee that all the contracts awarded are cost-effective.

Appendix II

WRITTEN ANSWER

Written answer by the Secretary for Commerce, Industry and Technology to Mr TAM Yiu-chung's supplementary question to Question 4

In regard to the listenership of each of the seven radio channels of Radio Television Hong Kong (RTHK), the information is hereby attached for Members' reference.

Listenership of Radio Channels of RTHK

	<i>2001-02</i> <i>(Actual)</i>	<i>2002-03</i> <i>(Predicted)</i>	<i>2003-04</i> <i>(Predicted)</i>
Listenership per channel — past seven days (million)			
Channel 1.....	1.657	1.995	1.995
Channel 2.....	1.536	1.775	1.775
Channel 3.....	0.183	0.318	0.318
Channel 4.....	0.153	0.235	0.235
Channel 5.....	0.471	0.557	0.557
Channel 6.....	0.153	0.153	0.153
Channel 7.....	0.213	0.477	0.477

Source: Radio Audience Survey 2002 by ACNielsen (China) Limited

Sample size: 4 457 (by telephone survey)

Base: All individuals aged nine or above (6 187 000)

Sampling period: November and December 2002

* Respondents can indicate more than one choice

Appendix III**WRITTEN ANSWER****Written answer by the Secretary for the Environment, Transport and Works to Mr CHAN Kwok-keung's supplementary question to Question 5**

As at the end of February 2003, the Environment and Conservation Fund had received seven funding applications from political parties. Six of them have been approved and the remaining one is being considered. Information on the approved projects has been uploaded to the Fund's homepage at <www.info.gov.hk/etwb-e/link/ecf.htm>.

Appendix IV**WRITTEN ANSWER****Written answer by the Secretary for Economic Development and Labour to Mr Fred LI's supplementary question to Question 6**

Just as gas companies around the world, the Hong Kong and China Gas Company Limited (Towngas), established in 1862, had at the start been using predominately cast iron pipes. With this lapse of time, there are no available records of costs for the installation of these cast iron pipes.

Since the mid-1970s, Towngas has stopped the use of cast iron pipes and switched to the use of pipes of more modern materials. Cast iron pipes remaining in service today constitute only about 30 km and have been in place for about 30 to 40 years. Replacement of these pipes would cost about \$80 million to \$100 million. Spending between \$600 million to \$700 million on its network system each year to ensure safe and reliable gas supply (to include new installations, maintenance and replacement of old pipes), Towngas does not expect to have to pass on the additional costs associated with the replacement of cast iron pipes on to the tariff.