

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 5 May 2004

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.

DR THE HONOURABLE ERIC LI KA-CHEUNG, G.B.S., 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 CHAN KWOK-KEUNG, J.P.

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, G.B.S.

THE HONOURABLE WONG YUNG-KAN

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

THE HONOURABLE HOWARD YOUNG, S.B.S., 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, J.P.

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 ALBERT CHAN WAI-YIP

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

DR THE HONOURABLE LO WING-LOK, J.P.

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

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

THE HONOURABLE MA FUNG-KWOK, J.P.

MEMBERS ABSENT:

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE LAU PING-CHEUNG

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

THE HONOURABLE FREDERICK MA SI-HANG, J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE STEPHEN LAM SUI-LUNG, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

THE HONOURABLE AMBROSE LEE SIU-KWONG, IDSM, J.P.
SECRETARY FOR SECURITY

THE HONOURABLE JOHN TSANG CHUN-WAH, J.P.
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

CLERKS IN ATTENDANCE:

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

MR LAW KAM-SANG, J.P., DEPUTY 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>
Hong Kong Examinations and Assessment Authority Ordinance (Amendment of Schedule 2) Order 2004	64/2004
Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2004	65/2004
Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) (No. 2) Rules 2004	66/2004
Employees Retraining Ordinance (Amendment of Schedule 2) (No. 2) Notice 2004	67/2004
Import and Export (General) Regulations (Amendment of Seventh Schedule) (No. 2) Notice 2004	68/2004
Tax Reserve Certificates (Rate of Interest) (No. 3) Notice 2004	69/2004
Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) (Commencement) Notice 2004	70/2004
Noise Control (Amendment) Ordinance 2002 (19 of 2002) (Commencement) Notice 2004	71/2004
Law Amendment and Reform (Miscellaneous Provisions) Ordinance 2003 (14 of 2003) (Commencement) Notice 2004	72/2004

Other Papers

No. 81 — Report of changes to the approved Estimates of Expenditure approved during the third quarter of 2003-04 (Public Finance Ordinance : Section 8)

Report of the Bills Committee on Deposit Protection Scheme Bill

Report of the Bills Committee on Broadcasting (Amendment) Bill 2003

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Alleviation of Burden of Travelling Expenses on Students

1. **MR ANDREW CHENG** (in Cantonese): *Madam President, regarding the alleviation of the burden of travelling expenses on students for home-school journeys, will the Government inform this Council:*

- (a) *of the respective numbers of students who were granted travel subsidy at full rate and half rate in the last and current school years, and their respective percentages in the total number of students;*
- (b) *whether it has completed the review on various travel subsidy schemes; if so, of the review results; and*
- (c) *whether it has discussed with various public transport operators to encourage them to offer fare concessions to all full-time students aged 12 or above, so as to alleviate the financial pressure on them?*

SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for Education and Manpower) (in Cantonese): Madam President,

- (a) At present, two travel subsidy schemes are administered by the Student Financial Assistance Agency to provide travel subsidy to needy students.

The first is the Student Travel Subsidy Scheme. The Scheme provides full-rate or half-rate travel subsidy to full-time students at the age of 12 and above.

In the 2002-03 school year, 57 884 students, or about 9% of the total student population, were granted full-rate subsidy. Another 154 882 students, or about 24% of the total student population, were granted half-rate subsidy.

As for the 2003-04 school year, 63 759 and 148 766 students received full-rate and half-rate subsidy as at the end of March 2004, accounting for about 10% and 23% of the total student population respectively.

The second is the Cross-net Travel Subsidy Scheme. The Scheme provides a single tier of travel subsidy to students who are aged below 12 and attending schools outside their residing Primary One Admission Net. In the 2002-03 school year, 31 315 students received the subsidy, accounting for about 40% of all the students who needed to cross net to attend schools.

As for the 2003-04 school year, 30 565 students received the subsidy as at the end of March 2004, accounting for about 37% of the total student population in question.

- (b) The review of the relevant travel subsidy schemes is still in progress. We have not yet finalized any recommendations.
- (c) Under the existing Student Travel Subsidy Scheme, if a student meets the means test and satisfies the other requirements under the Scheme, he/she may receive travel subsidy at full or half rate.

The Government has been encouraging public transport operators to reduce fare levels or offer concessions, including fare concessions to students, taking into account their respective operating conditions. At present, different fare concessions are offered to students by operators of five public transport modes, including Mass Transit Railway, Light Rail, green minibuses, ferries and Peak Tramways.

MR ANDREW CHENG (in Cantonese): *Madam President, we know from part (a) of the main reply that about one quarter of the total student population are granted half-rate or full-rate subsidy. Has the Government seriously considered the idea of granting travel subsidy to all eligible full-time students, in very much the way as it issued travel subsidy cards to all students in the past? This will not only cut down the administrative procedures required to process applications, but will also reduce the travelling expenses incurred by students.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): *Madam President, the basic principle of these two subsidy schemes is to provide assistance to students whose families suffer financial hardship; thus, subsidy can only be offered to some students. At present, students aged below 12 are already offered half-rate fare concessions by many public transport operators. The Government's annual spending on these two subsidy schemes exceeds \$400 million, indicating that the Government's commitment in this respect is tremendous. As to whether we can request public transport operators to offer more fare concessions, as I have pointed out in my main reply, they have all along been encouraged to do so. However, we have to understand that public transport operators also need to hold fast to commercial principles in their operation.*

DR DAVID CHU (in Cantonese): *Madam President, will the Government consider including under the licensing conditions for public transport operators in future a provision requiring them to offer fare concessions to students? That way, the Government will no longer need to request or encourage them to do so.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): *Madam President, as I have said earlier, public transport operators have to adhere to their own commercial principles. If they are to offer fare concessions, they must take into account their respective operating conditions. Therefore, we must strike a balance between the use of public money by the Government to assist needy students, that is, the offering of travel subsidy, and also requesting public transport operators to offer concessions. I can inform Members that in order to encourage franchised bus companies to offer more concessions, we will include "proposals on concessions offered by the applicant" as one of the evaluation*

criteria in the selection of operators for new bus routes in the future. In other words, we are in a way willing to negotiate further with public transport operators in this respect.

DR LUI MING-WAH (in Cantonese): *Madam President, has the Government conducted any survey on the travel subsidy schemes for cross-net students and intranet students, so as to find out the annual expenditure of these two schemes in the last two school years?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, under the Cross-net Travel Subsidy Scheme, in the 2002-03 school year, that is last year, around \$42 million subsidy was granted; in the 2003-04 school year, as at 31 March this year, the amount granted was around \$32 million. Under the Student Travel Subsidy Scheme, the total sum of subsidy granted in the 2002-03 school year was about \$396 million; in the 2003-04 school year, as at 31 March this year, about \$339 million was granted.

MR IP KWOK-HIM (in Cantonese): *Madam President, many students participate in extra-curricular activities. However, under the existing schemes on providing assistance or subsidies, students actively taking part in extra-curricular activities have to shoulder a heavy burden, for travelling expenses are very expensive nowadays. Will the Government consider the provision of subsidy under the existing policy to students who actively participate in community activities or extra-curricular activities?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, the amounts of subsidy provided to students under the existing schemes have already taken into account their home-school journeys per week, covering both normal school journeys and extra-curricular activity trips. As I have mentioned in the main reply, we will conduct a review on these two schemes, and the number of home-school journeys students have to make per week is included in the scope of our review. In other words, our future review will cover this issue.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, the Government has been encouraging lifelong learning and continuing education in recent years. The Legislative Council has recently received a complaint about the denial of travel subsidy to adults and even retired senior citizens who enrol in full-time courses. Besides, since these students have already passed the age of 25, they are not entitled to any Octopus Card concession when they take the Mass Transit Railway. In order to encourage adults, senior citizens in particular, to further their studies, has the Government considered the provision of travel subsidy to them to alleviate their burden of pursuing studies?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): *Madam President, the Student Travel Subsidy Scheme aims to provide subsidy to full-time students aged over 12, with no upper age limit. We do understand that the fare concessions offered by the two railway companies, namely the Mass Transit Railway Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation (KCRC), are restricted to students aged below 25. However, as I said earlier, the subsidy scheme offered by the Government imposes no upper age limit, and all full-time students are eligible to apply for subsidy.*

MR WONG SING-CHI (in Cantonese): *Madam President, may I ask the Government whether it has conducted any studies to compare the student travel subsidy schemes in foreign countries and Hong Kong? If yes, what are the findings of the comparison?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): *Madam President, so far, we have not conducted any comparison of the student travel subsidy schemes adopted in Hong Kong and overseas. I will convey Mr WONG's suggestion to the Education and Manpower Bureau for further consideration.*

MR LAU KONG-WAH (in Cantonese): *Madam President, the Secretary's reply indicates that only one third of the student population can benefit. This means that two thirds of the students cannot enjoy any benefit. In fact, the best and simplest solution is to issue half-fare travel passes again. I believe that the Secretary and I both used the half-fare travel pass during our school years. May I ask the Government whether it has ever proposed the half-fare pass as an*

option? Or, has such a proposal been turned down by public transport operators? Will the Government, being the major and only shareholder of the KCRC, take the lead in issuing half-fare travel passes to students?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I have explained earlier that the spirit of the existing subsidy schemes is to assist students in need. If we were to abandon this principle and disregard students' financial status, providing assistance to them all either in the form of government subsidy or fare concessions offered by public transport operators, the studies involved would be even more complicated. If half-fare travel passes are to be issued with government subsidy, a substantial amount of public expenditure will be involved. I have said earlier that the amount of public expenditure incurred as a result of the two existing subsidy schemes has already exceeded \$400 million. And, requesting public transport operators to offer fare concession may affect their operating costs. Therefore, while we do encourage public transport operators to offer fare concession, we do not specifically request them to issue half-fare travel passes.

MR ANDREW CHENG (in Cantonese): *Madam President, in the reply to Dr TANG Siu-tong's written question on the review of the topic concerned, the Bureau said that the review would be completed in August 2003. It is already May 2004 now. May I ask the Secretary — I understand that the Secretary for Education and Manpower himself cannot answer the question today, but the Secretary is his representative — what has caused all this delay to the review conducted by the Bureau? The Secretary for the Environment, Transport and Works has said that the transport fares in Hong Kong are exorbitant. Students have to pay very high transport fares, but the progress of the Government's review has been so slow. Why?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, in this review, a lot of information has to be collected for analysis. We also have to assess the impacts of the relevant proposals: the number of students affected, the amount of subsidy, the administrative changes required and the interface of the computer system involved. Therefore, we do need more time to

complete this review. We expect that the review can be completed this year, and we will give an account to the relevant panels of the Legislative Council.

PRESIDENT (in Cantonese): Third question.

Football Betting

3. **MR WONG SING-CHI** (in Cantonese): *Madam President, will the Government inform this Council:*

- (a) *whether it knows the number of young people aged between 18 and 25 who participate in football betting activities each time new betting methods are introduced by the HKJC Football Betting Limited, and whether there is an upward trend in such numbers;*
- (b) *of the measures that have been taken by the company since its operation of football betting activities, to prevent young people aged below 18 from engaging in such activities, including random checks of bettors' proof of identity and verification of the particulars of bettors placing bets through electronic means, and so on; if so, of the number of persons prohibited from engaging in such activities as a result of these measures; and*
- (c) *whether the authorities have conducted surveys on students' participation in football betting activities; if so, of the survey results?*

SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for Home Affairs) (in Cantonese): Madam President, the Government's reply to the questions is as follows:

- (a) We have approached the licensee of authorized football betting, the HKJC Football Betting Limited (the licensee) for the information. According to the licensee, it does not have statistics on the number of young people aged 18 to 25 who have participated in football betting each time after new betting methods have been introduced.

- (b) To prevent underage gambling, we have in place a series of measures in the regulatory regime of authorized football betting, so as to reduce the negative impact of gambling activities on young people. Under the Betting Duty Ordinance, the licence for football betting and licence for lotteries shall include conditions which seek to prevent underage gambling. In this connection, the licence issued to the HKJC Football Betting Limited includes a condition stating that it could not accept bets from juveniles and pay dividends to juveniles. We have subsequently issued a code of practice relating to this licensing condition. According to this code, the licensee should display signs at betting premises indicating that juveniles are not allowed to enter and place bets; take reasonable and practical measures to prevent the underage from placing bets; should not open any betting accounts for juveniles; and require passwords from account holders in order to access such accounts and to place bets with the licensee.

In compliance with the above conditions, the licensee has been implementing the following measures to prevent underage betting:

- (i) deploy security guards in uniform at all entrances of off-course betting branches (OCBBs) and within such premises to check the age of patrons whenever in doubt, so as to prevent the entry of the underage;
- (ii) display warning messages against underage betting at the entrances of OCBBs, on publicity materials, in the betting and betting information website, on betting ticket dispensers and betting terminals and windows;
- (iii) publish warning messages against underage gambling on betting tickets;
- (iv) broadcast public announcements about age restriction on betting within OCBBs and racecourses;
- (v) relay age restriction messages to users of telephone betting services during the call waiting periods;

- (vi) set up a special hotline for patrons to report underage access to OCBBs;
- (vii) require applicants for betting accounts to provide proof of age;
- (viii) require passwords from account holders before allowing them to access to their betting accounts; and
- (ix) remind customers not to let the underage have access to their betting accounts in newsletters to account holders.

Between August 2003 to March 2004, the licensee conducted some 496 000 age checks at OCBBs. About 85% of those stopped were able to provide proof of age showing they were 18 or above. Some 75 000 were denied access either because they were underage or they refused to provide proof of age.

- (c) According to the study on "Hong Kong People's Participation in Gambling Activities" conducted by The Hong Kong Polytechnic University (HKPU) in 2001 under the commission of the Home Affairs Bureau, around 5.7% of the interviewees aged 13 to 18 have participated in football betting. To gauge the latest pattern of gambling participation in Hong Kong, the Government is planning to commission an independent institution to conduct a study of the Hong Kong people's gambling participation in the middle of this year. This would serve to track on the results of the study conducted by the HKPU in 2001. In addition to a general questionnaire survey on the pattern of gambling participation, we plan to conduct a focused study into selected cases of problem and pathological gambling with a view to understanding in more details the causes of problem and pathological gambling, including adolescent cases.

MR WONG SING-CHI (in Cantonese): *Madam President, it is stated in the last paragraph of part (b) of the main reply that 85% of those stopped were able to provide proof while 75 000 were unable to do so. It is reasonable for us to presume that these people were below 18. Since persons aged 18 or above*

would have no problem, we can be certain that these people were below 18. Basically, this figure of 70 000 or so is just a survey finding, a survey finding, not the actual figure. The actual figure may be much more enormous. Based on such figures and the situations depicted, does the Government think that the problem of underage gambling is very serious? If the Government thinks that the problem is serious, what specific follow-up measures does it have?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, first, the age checks conducted by the licensee at OCBBs as mentioned in the main reply are of course not scientific. They were basically conducted by the relevant staff of the licensee when in doubt. For this reason, as I have mentioned, these checks were not based on any scientific sampling. Second, we definitely have not underestimated the possibility of young people participating in gambling activities, including football betting. That is why we are also very concerned about the related problems.

In the main reply, besides listing the measures that the licensee has to implement to prevent underage betting, I also mention that a more in-depth study will be conducted in the middle of this year. We very much hope that the findings of this study will provide us with a more scientific basis on which to work out how the problem of young people participating in gambling can be tackled. Moreover, I wish to add that at the same time when the legislation on football betting was enacted last year, the Government also established the Ping Wo Fund, which aims, *inter alia*, to promote and publicize other activities with a view to minimizing the temptation of betting to young people.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, in reply to part(c) of Mr WONG's main question, no, it should be the last paragraph of part (b) of the main reply, the Government points out that 70 000 or so persons were denied access to OCBBs either because they were unable to provide any proof of age or they were below 18. How many of these 75 000 persons were aged 18 but denied access to OCBBs? I wish to ask this question because there are two separate issues here: the first is the failure to produce proof of age and the second is the age being below 18. Is there any breakdown on this figure of 70 000? Moreover, given such an enormous figure, will the Government request the Hong Kong Jockey Club (HKJC) to do something more, instead of merely mentioning the fund aimed at helping young people?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, regarding such 75 000 age checks, the persons concerned were either unable to provide proof of age or aged below 18. As regards a breakdown on those who provided proof of age, showing that they were aged below 18 and those who refused to provide proof of age and were thus denied access to OCBs by the licensee or us, we do not have such information on hand. Later on, we will ask the licensee if it can give us such a breakdown. (Appendix I)

In the main reply, I mention that we, together with the licensee, have implemented a series of measures to prevent underage betting. As to whether we should consider other measures in the future, we wish to get clearer or more accurate data from the study to be conducted in the middle of the year and listen to the views of the community in the meantime before considering any further measures. For the moment, we think that the existing measures are already quite strict.

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, since the authorization of football betting, what have the police achieved in combating illegal football betting? During inspections, how many young people, that is, people under 18, have the police found participating in illegal football betting activities?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, insofar as enforcement is concerned, since the authorization of football betting in August last year, the police have continued with their raids against illegal football gambling activities, and up to this February, there have been 200 successful police operations against illegal football betting activities. About \$4 million in betting slips and cash has been seized. In comparison, there were 25 successful raids in the corresponding period of the year before. Betting slips and cash totalling about \$1.4 million were seized. As has been repeatedly emphasized by the Government, even after the ordinance regarding the authorization of football betting has been passed, the Government will still do its utmost to combat illegal football betting activities. As for Mr YEUNG's question on the age groups of those arrested for or involved in these activities, we do not have the relevant statistics on hand. Later on, the Home Affairs Bureau may be able to collect some relevant statistics. We will then give a reply to Mr YEUNG. (Appendix II)

DR TANG SIU-TONG (in Cantonese): *Madam President, the Government mentions in part (b) of the main reply that the underage are not allowed to open betting accounts, and that passwords are required to access such accounts. Are there any means to prevent persons under 18 from using other people's accounts?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, cases like this must necessarily involve an adult who agrees or is willing to let a person under 18 use his account. Strictly speaking, I think that it is very difficult to tackle this problem by means of enforcement. Instead, we hope to persuade the public, including adults, by means of publicity and education, not to take any actions to encourage underage gambling.

MR MICHAEL MAK (in Cantonese): *Madam President, it is said in part (b) of the main reply that in the 75 000 age checks, some persons aged 18 or below were unable to provide proof of identity. This shows that there is a substantial demand among young people. May I ask the Administration how it is going to give vent to their desire for gambling?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I do not quite understand this supplementary question. We do not allow persons under 18 to gamble, and therefore we will not seek to help them vent their desire for gambling. Instead, we hope that they will not gamble. If the Honourable Member wishes to ask us whether we should do something more to remind them not to gamble, then I can say that as I have just pointed out in my reply to Members's questions, we have already taken various measures, including the Ping Wo Fund, with which a lot of publicity and education work has been conducted to educate and remind the underage not to gamble and not to participate in football betting activities.

MR LAU KONG-WAH (in Cantonese): *Madam President, although the HKJC takes the initiative to report the findings of age checks to the Government, I would still like to ask the Government whether it has tried to carry out any monitoring actions on its own. If not, will the Government do so? If there is any violation on the part of the HKJC and if it allows underage people to actually participate in gambling, what laws can the authorities invoke?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, in the relevant licensing conditions, the HKJC is already expressly required not to allow young people under 18 to participate in football betting activities, and it is also required to take a number of necessary measures. I also mention in the main reply that the HKJC must take such measures. We believe that such measures are appropriate. The Government has not deployed any manpower of its own to monitor the situation at each OCB. However, as I have just said, we will conduct a territory-wide study in the middle of this year, hoping to collect some data before further studying if the Government has to consider other measures.

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

MR ANDREW CHENG (in Cantonese): *Madam President, with respect to Mr Michael MAK's supplementary question and the Secretary's reply regarding education, I wish to refer to part (c) of the main reply, which states that 5.7% of the interviewees aged between 13 and 18 have participated in football betting activities. Based on the population size of Hong Kong, the number of Hong Kong students participating in football betting may be 80 000 or even 100 000. Nevertheless, civic education in school or our school education does not seem to accord enough treatment to telling young people or school children not to participate in football betting. I would like to ask the Secretary how we can prevent students from participating in football betting activities. In the areas of civic education and school curriculums, what has the Government actually done recently?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I think we should adopt a two-pronged approach to the problem. First, it is noted that even at the school level, textbooks contain nothing on advising young people not to participate in football betting. Honestly, from the perspective of general moral education, schools do have such a responsibility. As I mentioned earlier, the Ping Wo Fund established last year has launched a series of publicity programmes, including television and radio promotional programmes. One specific example is that we have commissioned the Hong Kong Education City to launch an education programme named "Say No to Gambling" Action, hoping to

enhance the understanding of young people, parents and teachers of the nature of gambling. I believe Mr CHENG also knows that Euro 2004 will soon commence. For this reason, we will organize a special activity named "Say No to Gambling Action — Youth Creative Award" from May to July, aiming to strength young people's self-control. We will continue with our work in this area.

PRESIDENT (in Cantonese): Fourth question.

Hospital Authority's Handling of Medical Negligence Claims

4. **DR LO WING-LOK** (in Cantonese): *Madam President, concerning the Hospital Authority's (HA) handling of claims of medical negligence, will the Government inform this Council:*

- (a) *of the HA's criteria and mechanism for determining whether to negotiate with the claimant for out-of-court settlement first, or bring the case directly to the Court for its ruling;*
- (b) *of the number of claims of medical negligence that were settled between the HA and the claimants out of court and the total amount of compensation paid to the claimants over the past five years; of the number of cases in which the Court ruled that the HA had to pay compensation and the total amount thereof, with a breakdown showing whether the compensation was borne by the HA or the insurer; and*
- (c) *of the amount of insurance premium paid out by the HA to cover the claims of medical negligence in each of the past five years?*

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

- (a) in deciding whether to negotiate for an out-of-court settlement in medical malpractice claims, the HA would normally act on the advice of the legal adviser appointed by the insurer of its medical

malpractice policy. We understand that the legal adviser appointed by the insurer will take into account the facts of the case and the merits of the claim.

- (b) The number of medical malpractice claims that were settled between the HA and the claimants out of court, the number of cases in which the Court ruled that the HA had to pay compensation, the respective total amounts of compensation paid to claimants in out-of-court settlements and court rulings in each of the past five years are set out in the Annex.

The compensation that has to be paid out for the cases listed in the Annex has all been borne by the HA. This is because the compensation paid out was all below the retention level stipulated in the HA's medical malpractice insurance policies in those years.

- (c) Pursuant to the terms of the agreement between the HA and its insurers, the HA, as the insured, is obliged not to disclose the terms of the insurance policy without the insurer's consent. The insurer has not consented to the disclosure of the premium in the present case.

Annex

Number of Medical Malpractice Cases against the Hospital Authority concluded over the past five years

<i>Calendar Year in which Cases Reported</i>	<i>Period</i>	<i>Settled Out of Court</i>	<i>Amount (HK\$)</i>	<i>Case where Court ruled the HA has to pay compensation</i>	<i>Amount (HK\$)</i>	<i>Settled after legal proceedings commenced</i>	<i>Amount (HK\$)</i>	<i>Total No. of Cases</i>	<i>Total Amount of Compensation paid (HK\$)</i>
2000	01/01/2000 to 31/12/2000	24	\$14.76M	0	\$0.00	9	\$14.6M	33	\$29.36M
2001	01/01/2001 to 31/12/2001	23	\$8.58M	0	\$0.00	2	\$1.24M	25	\$9.82M
2002	01/01/2002 to 31/12/2002	20	\$4.58M	0	\$0.00	1	\$0.12M	21	\$4.70M
2003	01/01/2003 to 31/12/2003	9	\$2.08M	0	\$0.00	0	\$0.00	9	\$2.08M
2004	01/01/2004 to 22/04/2004	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00

Note: Cases reported means medical incidents reported under the medical malpractice insurance policy. A reported case may or may not result in a claim.

DR LO WING-LOK (in Cantonese): *Madam President, we can see from the Annex that the amount of compensation paid in 2000 was the highest in the five years, amounting to over \$29 million. The amounts of compensation in the ensuing years then showed a steady decline. May I ask the Secretary what special incidents had occurred in 2000 that led to such a high amount of compensation in that year? What special measure were taken in the ensuing years to bring down the amount of compensation?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, compensation is usually offered in the same year in which a claim is lodged, but time is needed. The Court usually has to hear the complaints or claims for compensation submitted by claimants and this takes time. Compensation has been made in respect of all the cases in 2000, but some cases in 2001 and 2002 have not yet been submitted to the Court. Therefore, settlements have not yet been reached on some of the cases, and the relevant figures cannot accurately reflect the number of cases requiring the payment of compensation. In other words, there are still some cases that have not been dealt with. As far as I know, there was no special reason for the figures in 2000. In fact, they were not very different from the normal figures.

MR ALBERT HO (in Cantonese): *Madam President, from the four years of statistics provided by the Secretary in the main reply, I notice that the approach of out-of-court settlement was adopted for all cases. Even if legal proceedings had commenced in some cases, no hearing was ever held. As far as I remember, even during earlier times, only very few cases were taken to the Court. May I ask the Secretary whether the HA has adopted a policy of seeking settlement as far as possible, that is, whether the HA will seek settlements with claimants and avoid litigation, so as to reduce the embarrassment caused to it even if it has to pay the price of making higher compensation?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as mentioned in the main reply, the HA normally acts according to the advice given by the legal adviser appointed by the insurer of its medical malpractice policy. If the compensation claim is below the ceiling, the HA will normally pay it out of its own pocket. However, if the ceiling is

exceeded, compensation will be borne by the insurance company. The out-of-court settlements referred to by Mr HO must be discussed with the adviser concerned and its consent must be obtained before they can be executed. Therefore, it is not so much the question of any unwillingness to submit the cases to the Court; rather, very often it is necessary to consider the actual circumstances and whether the claims are fully justified before making any decision.

MR ALBERT HO (in Cantonese): *Madam President, I do not think the Secretary has answered my supplementary, because it is clearly stated in the main reply that the amounts of compensation paid were all below the retention level, that is, they were all borne by the HA itself; the insurer was not involved, and the HA made all the decisions on its own. My supplementary question is on the policy of the HA. I mean, in cases where the insurer is not involved and compensation is borne by the HA itself, is it its policy to avoid litigation by paying higher compensation?*

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

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as a matter of fact, we will discuss all cases with advisers from the insurance sector. Although the retention level may not be exceeded initially, it may still be exceeded when all are added up. Therefore, we will first discuss each case with the adviser before offering any compensation.

MR HENRY WU (in Cantonese): *Madam President, according to the Annex of the main reply, the number of cases and the total amount of compensation have both been on the decrease over the past five years, and this in fact should be a good thing. Since the HA basically did not have to ask the insurance company to pay any compensation in the past five years, the insurance company should be able to lower the premium; it may be necessary for the Secretary to expend some effort on this. Although the Secretary cannot disclose the premium amount, can the Secretary still tell us if he has sought a reduction in premium in the past five years? If no, what were the reasons?*

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

Madam President, as I have already explained in my reply to Dr LO's follow-up question, the figures for 2003 and 2004 cannot depict the total amount of compensation because generally speaking, out-of-court settlements or hearings on claims for compensation will take several years. Therefore, the figures for 2003 and 04 cannot actually reflect the amounts that have to be paid in future. When taking out insurance each year, the HA always appoints an adviser, and the adviser will offer advice to it on the basis of past experience. Concerning how insurance should be taken out, different approaches will be adopted every year, and this is a complicated issue. Of course, he is now inclined to taking out insurance with large coverage. The HA itself will provide the first layer of coverage. However, concerning compensation, in fact nobody in the market is willing to provide any coverage. The HA mainly needs to take out insurance with large coverage, but as a matter of fact, not many companies in the international market are willing to provide any underwriting and the amount of money involved is also rather large. Each year, the HA will discuss with the consultant the design of the insurance policy.

MR HENRY WU (in Cantonese): *Madam President, I asked the Secretary in my supplementary question whether the premium has been adjusted downward, but after saying such a great deal, he has not answered my question.*

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

Madam President, the premium has in fact been on the increase. It has been on the increase ever since the SARS outbreak.

MR NG LEUNG-SING (in Cantonese): *Madam President, concerning the figures provided by the Secretary just now, I would like to ask him whether the Government has made any comparisons on the figures of malpractice claims against the HA and those of a similar nature in the private practice (that is, in respect of private doctors or private hospitals). And, what is the present situation?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as far as I know, we do not have any figures concerning the private practice.

DR LUI MING-WAH (in Cantonese): *Madam President, after the occurrence of a case of medical negligence, the HA will offer compensation, but may I ask the Secretary what the responsibility of the attending doctor is?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, there is a mechanism within the HA to investigate each case. The compensation referred to by Dr LUI is part of the mechanism. As regards whether negligence is involved in the system, there is also a mechanism in the HA to deal with this. If negligence is indeed involved, the HA will handle it under another system.

DR TANG SIU-TONG (in Cantonese): *Madam President, as mentioned by the Secretary in part (b) of the main reply, there is a retention level in the HA for the payment of compensation. May I ask the Secretary how high this retention level is? If this retention level is already adequate for the purpose of compensation, is it possible for the Government to cover all insurance claims by itself without seeking any insurance company to underwrite them?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, it is necessary to have discussions with the insurance company on the retention level on each occasion, and the designs do vary. Therefore, this matter is rather complicated, meaning that each year, reference has to be made to past experience in working out the design. If the retention level is higher, the premium paid to the insurance company will of course be lower. However, recently, premiums in the insurance sector have been adjusted upwards substantially. For example, when a disaster or major incident occurs, huge amounts of compensation are needed. There are only very few underwriters in the international insurance market, and the premiums payable will also be higher. Therefore, the HA is now conducting a review to consider what the design should be, or as Dr TANG put it, to examine how public funds can be saved. The HA will conduct a review each year to ascertain, for

example, whether the best approach is to provide coverage by itself. As far as I know, the HA has considered providing coverage by itself, but because of the greater risks involved, in the end it has still decided to take out a policy in the market.

DR LO WING-LOK (in Cantonese): *Madam President, medical negligence claims in fact involve several components. The first is of course cash compensation of the kind set out in the Annex; another is the legal cost involved and the third is probably the free medical treatment or even lifelong free medical treatment that the HA has to provide to the persons involved. Therefore, may I ask the Secretary whether the insurance policy taken out by the HA for the claims covers the legal costs and the provision of medical treatment to the persons involved?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, these figures do not include the provision of medical services to the persons involved. As regards legal costs, two lawyers are employed by the HA and a lot of the matters will be dealt with by the HA itself. Of course, the costs required for hiring insurance consultants and additional lawyers are calculated separately and are not factored in.

MR NG LEUNG-SING (in Cantonese): *Madam President, as mentioned by the Secretary in part (a) of the main reply, for the reaching of any out-of-court settlement, the HA will base its decision on the advice given by the legal adviser appointed by the insurer. Since the Secretary said that the HA also had its own legal advisers, may I ask the Secretary if it is necessary for its legal advisers to re-examine the decision made by the legal adviser appointed by the insurer?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the HA's own adviser must discuss with the adviser appointed by insurer and the latter's consent must be obtained because when the amount of compensation exceeds the amount that has to be borne by the HA, the portion in excess has to be borne by the insurer. It is of course good for the two lawyers to discuss with one another, consider each other's views and examine what the best approach should be. However, the HA's own lawyer also has to do a lot of

work to do. For example, he has to undertake some preliminary work, collect relevant information, study why an incident has occurred and interview the health care personnel involved before having any discussion with the adviser from the insurance sector.

PRESIDENT (in Cantonese): We have spent more than 15 minutes on this question. Last supplementary.

MR MICHAEL MAK (in Cantonese): *Madam President, medical malpractice cases involve at least three factors, namely, the human factor, the circumstantial factor and equipment. Regarding the medical malpractice cases that occurred in the past few years or even the cases that were eventually settled out of court, I wish to know what improvements have been made in respect of these three factors? In particular, with regard to the human factor, what has been done?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, on the human factor, I believe work has already been carried out in many areas. The first area is of course professional training. Over the past 10 years, the HA has always attached great importance to professional training, to the provision of training opportunities for health care professionals. In addition, many different guidelines have also been drawn up on, for example, the preventive measures that can be taken in the event of an incident. And, whenever any changes are made to the system, health care workers will be informed. The HA will continue to provide education and training and inform health care personnel of the causes of each incident after its occurrence.

PRESIDENT (in Cantonese): Fifth question.

Defraud Attempts by Faking website

5. **MR NG LEUNG-SING** (in Cantonese): *Madam President, recently, there has been a spate of cases of criminal elements seeking to defraud by faking the websites set up or electronic mails sent by some local banks or financial institutions. In this connection, will the Government inform this Council of:*

- (a) *the number of such cases known by the authorities in each quarter of the past two years, as well as the number of those cases in which members of the public were defrauded and the amount of money involved;*
- (b) *the results of the enforcement actions taken by the Hong Kong authorities and the relevant authorities in other jurisdictions against such cases; and*
- (c) *the practical and legal difficulties in preventing and punishing such crimes at present, the co-operative efforts made in this regard by the Hong Kong authorities and the enforcement agencies and financial regulatory authorities in other jurisdictions, as well as the areas for improvement in relation to such efforts?*

SECRETARY FOR SECURITY (in Cantonese): Madam President,

- (a) According to police statistics, the number of cases involving fake websites imitating those of local banks and other financial institutions is nine in 2003, and 12 in the first three months of this year. There are no reports of any person in Hong Kong being defrauded.

In 2003, the police received five reports on fake electronic mails of banks. From January to March this year, there were 110 such cases. There are no reports of monetary losses in these cases.

- (b) On receiving reports of fake websites or electronic mails, the police will investigate their sources. To date, all the web servers concerned are located outside Hong Kong. The police and the relevant regulatory authorities will inform the law enforcement agencies and regulatory institutions of the jurisdictions concerned, with a view to shutting down such websites as soon as possible and investigating the cases. The jurisdictions concerned will keep Hong Kong informed of their enforcement actions. According to the police, among the fake websites reported in 2003, eight have been shut down. Among those found this year, seven have been shut down.

- (c) Criminals can conceal their genuine identities easily on the Internet. Coupled with the cross-border and loose regulation of the Internet, the police have some difficulty in investigation into and collection of evidence in Internet crimes.

At present, the police maintain close liaison and exchange intelligence with the Hong Kong Monetary Authority (HKMA), the Hong Kong Association of Banks (HKAB), the Securities and Futures Commission (SFC), and enforcement agencies overseas and in the Mainland, in order to combat jointly the use of fake websites and electronic mails imitating those of local banks and other financial institutions by criminals for attempted fraud. Such actions include shutting down fraudulent websites.

Besides, the HKMA is a member of the Electronic Banking Group of the Basel Committee. The Group has begun discussion on fraudulent websites since 2002, and has established a contact list to expedite communication among Group members.

The SFC follows closely the discussions in the International Organization of Securities Commissions and, together with other regulators, addresses the issue of dealing with fake websites of financial institutions.

MR NG LEUNG-SING (in Cantonese): *Madam President, I wish to thank the Secretary for replying to us. To our consolation, no Hong Kong people have suffered any financial losses so far. Nevertheless, we are still a bit worried because according to the figures, 110 cases of fake electronic mails of banks were reported from January to March this year. When compared with last year, the figure of just one quarter of this year is already higher than the total figure of last year. If education and publicity programmes are to be conducted in future to prevent losses in these cases, will the Government make use of the existing resources of publicly-run radio stations, with a view to minimizing or even eradicating these cases? As for whether such work should be conducted by the police or the authorities in charge of monetary policies, what arrangements will the Government make?*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Security.

SECRETARY FOR SECURITY (in Cantonese): Madam President, as pointed out by Mr NG just now, it is lucky that these cases have not led to any actual financial losses. This shows that the alertness of the public is quite high already. Nevertheless, we will not treat the matter lightly. For that reason, besides stepping up law enforcement, the police will continue to expose cases of fake websites or electronic mails in the mass media in order to prevent members of the public from being cheated. Certainly, we will make use of all media as much as possible, including the radio station run by the Government. Moreover, the Technology Crime Division of the police is now working on the design of a series of publicity strategies to enhance public awareness of these crimes.

Mr NG also said that there seemed to be a sharp increase in these cases this year. Nevertheless, I wish to point out that these Internet crimes are new crimes. Before 2003, there were no such crimes, and it was only in the last quarter of 2003 that we found some criminals attempting to defraud the public through fake websites. The number of such cases this year, I mean, the number of Internet crimes, for example, has increased. There were just five cases in total last year, but there were already 110 cases in the first quarter of this year, so it seems to be rather alarming. However, I wish to let Members know that of these 110 cases, over 90 were related to the same bank. Therefore, it is in fact not so alarming.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, perhaps I should say a few words more on Mr NG's supplementary question. The e-Banking Working Group under the HKAB already launched a multi-faceted consumer education programme in February 2003, with a view to enhancing the knowledge of members of the public relating to the security measures of electronic banking. The working group will keep on enhancing consumer education in 2004, and this will include the distribution of leaflets. Has Mr NG seen these leaflets? These leaflets are about how consumers should make use of electronic banking. Moreover, television APIs and radio jingles about fake websites and fake electronic mails of banks will be produced and broadcast. The HKMA and the security authorities will make every effort in this respect.

MR CHAN KAM-LAM (in Cantonese): *Madam President, we can see from parts (a) and (b) of the main reply that although nine cases and 12 cases were detected last year and this year respectively, a number of fake websites have not yet been shut down. Has the Government checked with the countries or jurisdictions concerned to ascertain the reasons? And, where are servers of these fake websites mainly located?*

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

SECRETARY FOR SECURITY (in Cantonese): Madam President, with regard to the shutdown of websites, since these are overseas' websites, the countries concerned will have to shut down these websites according to local laws. Nevertheless, we find that the legislation in some countries is different from ours. For example, in some countries, websites resembling those of banks are not expressly prohibited. Therefore, it may not be unlawful to operate such websites unless there are any actual frauds. However, we have all along been exposing these websites to the public once they are discovered, so these fraudulent attempts have never been successful. As I have explained, perhaps there may be some difficulties in shutting down these websites under the laws of the countries concerned.

As for which countries or regions are generally involved in these fake websites, according to the information on hand, the servers concerned are located in the United States, Taiwan, India and Thailand respectively.

MR HOWARD YOUNG (in Cantonese): *Madam President, I am a frequent user of bank websites, and I find their respective practices and security measures quite different. Has the Government ever encouraged banks to jointly establish a platform of minimum security measures, so as to give users a bit more assurance? In certain cases, even a user has logged on his bank account in the bank's website, he will be additionally required to input the security password if he wants to transfer any money from his bank account, but some other banks do not have the same requirement. With regard to this, may I ask whether the Government has ever urged banks to improve their security measures for self-protection?*

PRESIDENT (in Cantonese): Is the Secretary for Financial Services and the Treasury going to answer this supplementary question?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I think the HKMA has put in place some effective measures to deal with fake websites: the raising of public alertness for the detection of suspicious fake websites and electronic mails of banks and the enhancement of security measures of Internet banking. In this respect, the banking sector and the HKMA have adopted a number of measures, one of which is consumer education as I have mentioned. Certain banks have put in place additional security measures, such as the use of electronic mail as a means to accessing their websites. The most important point is that the public should not lightly input personal information into any websites which have not been authenticated. In this respect, consumers should co-operate with banks.

DR DAVID CHU (in Cantonese): *Madam President, in the long run, besides conducting publicity programmes, will the Government consider setting up a website portal? A website portal means a list of accurate web addresses of all financial institutions in the government website. If members of the public wish to communicate with a certain financial institution, they may obtain the accurate web addresses of all financial institutions in Hong Kong after entering the government website.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, in fact the HKMA has already set up such a web page, which contains the web addresses of all authorized financial institutions in Hong Kong. Members of the public may check the list by entering this website. Most importantly, however, we hope members of the public will first call the relevant banking institution to ascertain the accurate web address, instead of lightly using any "search engine" to search for web addresses of banks. This is the most fundamental security measure one should take.

MR HENRY WU (in Cantonese): *Madam President, just now, some Members mentioned a drastic increase in the figure of this year when compared with those of the past. Even though there are no reports of financial losses in these cases, the tendency is in fact not desirable. In my opinion, besides conducting publicity programmes, it is equally important to combat these crimes at source. Just now, the Secretary for Security mentioned that these fake websites were located in five overseas countries. And, it was also mentioned in part (b) of the main reply that several fake websites had been shut down. May I ask the Secretary which of these five countries have succeeded in shutting down fake websites? It was mentioned in part (c) of the main reply that these crimes were marked by a cross-border and loose regulation nature, may I ask the Secretary, of the five countries mentioned just now, which are of the cross-border and loose regulation nature?*

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

SECRETARY FOR SECURITY (in Cantonese): Madam President, by "cross-border", I actually mean "outside Hong Kong". As to Mr WU's question on which countries or regions have shut down these websites (because besides countries, there are regions as well, such as the Mainland and Taiwan. We usually call them regions), I do not have the information on hand. Please allow me to provide additional information later. (Appendix III)

MR HENRY WU (in Cantonese): *With regard to loose regulation, which countries or regions are marked by such a nature?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, what I mean is that, in general, the regulation is quite loose because in the international community, there are no uniform regulations on combating Internet crimes. Internationally, after the International Criminal Police Organization or other international organizations have drawn up some internationally recognized practices, there will be a better regulatory regime.

MR CHAN KAM-LAM (in Cantonese): *Madam President, when replying to Mr Henry WU's question just now, the Secretary for Security said that he did not know which country had shut down any fake websites. In the Secretary's reply to my supplementary earlier, he mentioned four countries, namely, the United States, the Mainland, India and Thailand. May I ask whether they are members of the Electronic Banking Group of the Basel Committee? With regard to legislative regulation, is it true that it is found in just some countries but not in others?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, except the United States, all the countries mentioned by the Secretary for Security are not members of the Electronic Banking Group of the Basel Committee.

MR CHAN KAM-LAM (in Cantonese): *Will the Government further explain whether there are differences in the legislation of the four countries on regulating fake websites?*

PRESIDENT (in Cantonese): Secretary for Financial Services and the Treasury, will you provide a written reply?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Yes, I will, Madam President. (Appendix IV)

MR HOWARD YOUNG (in Cantonese): *Madam President, just now the Secretary for Financial Services and the Treasury said that consumer education would be conducted to enhance public awareness. May I ask whether most of the fake websites in question were reported by vigilant consumers before they came to the knowledge of the Government? Or, were they detected under the surveillance system of the HKMA, indicating that the alertness of consumers was still not high enough? May I ask which is mainly the case?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President. Banks, the HKMA and consumers have all reported such cases.

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

MR HOWARD YOUNG (in Cantonese): *Madam President, just now I asked the Secretary for Financial Services and the Treasury whether he knew which was mainly the case. Does he have any definite answer?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, banks reported most of the cases.

PRESIDENT (in Cantonese): We have spent more than 17 minutes on this question. Now the last supplementary question.

MR NG LEUNG-SING (in Cantonese): *Madam President, the Electronic Banking Group does comprise quite a number of members, but will any mutual aid agreements or document be signed in response to this trend of fake websites?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I wish to thank Mr NG Leung-sing for his suggestion. We will definitely take it into consideration.

PRESIDENT (in Cantonese): Second question.

Import of Beef from Countries with Reported Cases of Mad-cow Disease

2. **MR TOMMY CHEUNG** (in Cantonese): *Madam President, regarding the import of beef from countries which have reported cases of cattle being infected with the mad-cow disease, will the Government inform this Council:*

- (a) *of the existing control over the import of beef from countries which have reported cases of cattle being infected with the mad-cow disease;*
- (b) *of the countries from which the import of beef has been banned in the past five years as well as the relevant dates at which the ban was imposed or lifted, and the countries from which the import of beef has now resumed, together with the respective dates of resumption and the special quarantine requirements that importers have to observe; and*
- (c) *given that beef import from Japan has been banned in Hong Kong since September 2001 following the discovery of cases of cattle in farms in Japan being infected with the mad-cow disease, whether it knows which countries are still banning the import of Japanese beef?*

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

- (a) Under the Imported Game, Meat and Poultry Regulations of the Public Health and Municipal Services Ordinance (Cap. 132), it is specified that each consignment of imported beef must be accompanied by an official health certificate stating that the meat is fit for human consumption. The same regulations provide that the Director of Food and Environmental Hygiene can specify the health requirements to be included in the health certificate. On the control of Bovine Spongiform Encephalopathy (BSE) (also known as "mad-cow disease"), special health attestation is required for countries with BSE, taking reference from recommendations by international authorities including the World Health Organization (WHO) and the World Organization for Animal Health (OIE). The

principle is that the BSE agent should be prevented from entering the human food chain. The OIE provides recommendations on health assurance for imported beef and beef products, depending on the assessment of the BSE status of the cattle population of a country or zone. Criteria to be considered include risk assessment for identifying all potential factors for BSE occurrence (for example, use of meat-and-bone meal), BSE surveillance and monitoring system, reporting and investigation of suspected cattle, and incidence of BSE. High risk parts which are defined as Specified Risk Materials, for example, brain, eyes, tonsils, spinal cord and entire intestine, and so on, should be prevented from human consumption. The Food and Environmental Hygiene Department (FEHD) will consider the risk status of the cattle population of the import country according to OIE recommendations and impose appropriate sanitary requirements on the beef from these countries to ensure public health.

- (b) In March 1996, the importation of beef from the United Kingdom was suspended pursuant to the first report of Variant Creutzfeldt-Jakob disease in the United Kingdom and its possible relationship with BSE in cattle. The United Kingdom and the European Commission subsequently implemented a series of control measures in line with OIE recommendations to prevent and control BSE in their cattle and to ensure the safety of beef. As a result, the import suspension was lifted in September 1999. The importation of beef from Japan, Canada and the United States was suspended in September 2001, May 2003 and December 2003 respectively due to the report of first BSE cases in these countries. The relevant authorities of these countries have been discussing with the FEHD on the control and management measures that they have implemented. The FEHD will assess whether the measures being taken are in compliance with the OIE requirements. Up till now, the importation of beef from these three countries has not been resumed.
- (c) According to the Consulate General of Japan in Hong Kong, as at 28 April 2004, apart from mainland China and Hong Kong, there were 13 other countries and regions, namely the United States, Australia, New Zealand, Poland, Singapore, South Korea, Thailand,

Philippines, Saudi-Arabia, Oman, Northern Mariana Islands, Taiwan and Macao, which were still suspending the importation of beef from Japan.

MR TOMMY CHEUNG (in Cantonese): *Madam President, the Secretary mentions in part (a) of the main reply the criteria set by the OIE, and in part (b), he refers to the relevant dates. Regarding the lifting of importation suspension on beef from the United Kingdom in 1999, may I ask the Secretary to focus on the criteria we adopted in lifting the suspension? Up till now, the importation suspension on beef from Japan has lasted for almost three years. What criteria do we apply in deciding that suspension should continue? Does Japan know the criteria we adopt for not lifting the suspension?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I think every region and country know these criteria, for all is based on the recommendations made by international authorities. The principles we adopt have been clearly listed. However, sometimes there may be disputes over whether a country should be classified as being high-risk, medium-risk or low-risk, and the requirements imposed vary with the different levels of risk. Colleagues of the FEHD have discussed the relevant criteria with different countries, but they have also taken into consideration the surveillance system adopted by the countries concerned. One of our prime concerns is that some places are still using meat-and-bone meal to feed their cattle, meaning that their cattle will still pose higher risks. For places where the use of meat-and-bone meal has not been prohibited, their cattle population runs a much higher risk. I do not know in detail the situation of each of those places, but I know that such criteria are adopted. Colleagues of the FEHD will collect information from each place and each country in accordance with the relevant criteria to see whether the control measures implemented are adequate before any decision is made. It is not a question of time. Very often, we must check whether the measures and control systems adopted can meet our requirements, and whether everything is safe, before the countries concerned are allowed to import their beef to Hong Kong.

MR TOMMY CHEUNG (in Cantonese): *Madam President, the supplementary question I asked the Secretary is on our continued suspension on the importation*

of beef from Japan. However, the reply given by the Secretary just now is rather general. May I ask the Secretary what have led us to suspend the importation of beef from Japan for nearly three years? Is it really because they use meat-and-bone meal?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the reason is that the control measures implemented and the information provided cannot meet our requirements. We have acted in accordance with international standards.

MR WONG YUNG-KAN (in Cantonese): *Madam President, at the end of part (a) of the main reply, the Secretary says, "..... will consider the risk status of the cattle population of the import country..... and impose appropriate sanitary requirements on the beef from these countries to ensure public health." May I ask the Secretary a question about the sanitary measures we are adopting now? In considering the resumption of the importation of beef from a certain country, are the relevant certificates the only criterion? Or, is the detaining of imported beef for examination included in these sanitary measures? And, is imported beef allowed to be released to the market for public consumption only if it passes the examination? Will the Secretary inform us of the measures now in place?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, in regard to BSE, generally, we will first contact the relevant authorities of the countries concerned to discuss the measures they adopt before allowing the importation of beef from these countries. Authorities of countries like the United States, Canada and Japan have contacted us, and I have met with the officials from the authorities of Canada and the United States in person. They have visited Hong Kong and explained to us the measures adopted by them. BSE is a kind of disease that can hardly be tested. It is difficult to detect any contamination by tests once the beef is imported. The strange disease is caused by a very special kind of bacteria, a very special kind of protein that has mutated. That is why the international community shows grave concern about BSE. In general, we will look into the control measures adopted by a country and the effort it has put in, and check the health attestation before allowing the importation of beef from the countries concerned.

MR WONG YUNG-KAN (in Cantonese): *Madam President, the Secretary has not answered my question on what we ourselves will do if all the required health certificates have been provided, and an agreement have been reached between both parties after negotiation. Will imported beef still be detained for examination before it is allowed to be put on the market?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, it all depends on the actual circumstances. For example, in normal cases where whole cattle are transported to Hong Kong, we will usually examine the cattle first. However, if beef is imported, we will have to rely on the relevant authorities of the export countries. But we will certainly conduct checks and tests on imported beef. However, as I have explained, usually, BSE is not caused by beef. The brains of cattle are of higher risk. We, therefore, have to rely on the measures taken by local authorities to examining the brains of cattle at the time of slaughter, for the brains and intestines of cattle pose higher risks than beef. Conducting tests on beef alone is thus inadequate.

MR FRED LI (in Cantonese): *Madam President, may I ask the Secretary to clarify a point. Let us look at the United States, Canada and Japan, in particular the United States and Canada, which are divided into many states and provinces with numerous farms, as examples. Will the discovery of problems in the farms of a certain state or province entail an importation suspension of beef from the entire country? Does our policy require the suspension of beef importation from an entire country when the cattle of one of its states are found to have problems? Will the suspension only be lifted after the problems in the state concerned have been solved? Will the Secretary confirm whether this is our policy?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we have to take into account the actual situation. Of course, following the first BSE case in a province, we do not know whether other provinces may also be affected, nor do we know how serious the problem will become. In the case of BSE, the problem is more serious, for we do not know much about its incubation period and the prevalence of the disease. That is why even if a big country is involved, we will still suspend the importation of beef from the entire country once cases are detected. However, we do understand that different practices are adopted in different provinces. So, if we are

confident that all other provinces have adopted appropriate measures, we may lift the importation suspension on beef from individual province in the light of the actual circumstances of the provinces concerned. For example, in the recent outbreak of avian flu, we have adopted the same approach. Recently, with the exception of one province, we have granted permission for the importation of chilled and frozen chicken from the United States.

MR KENNETH TING (in Cantonese): *Madam President, it is stated in part (a) of the main reply that in addition to the requirement on providing special health attestation, the countries concerned are also required to implement a series of control measures. In the case of Japan, may I ask the Secretary whether it is the failure to provide health attestation, or the failure of the relevant measures to satisfy us, that has led us to retain the importation suspension on beef from Japan?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I have clarified this with colleagues of the FEHD. They consider that the measures taken by them not adequate.

MR HOWARD YOUNG (in Cantonese): *Madam President, I notice from part (b) of the main reply that the incident in Britain occurred in March 1996, and the importation suspension was lifted three years later in September 1999. As the incident in Japan broke out in 2001, it will be almost three years after six months. In addition to the measures taken by the countries concerned, is time one of the factors affecting the decision of lifting importation suspension? Does it mean that we can now expect the lifting of importation suspension on Japan in the near future?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I think that time is certainly one of our considerations. However, as far as I understand, some cases are still found in Japan, and that the problem has not been dealt with fully. Therefore, it is not a question of time; our prime concern is whether the measures implemented can meet our requirements. We must be satisfied that safety is ensured before beef from the country concerned is allowed to be imported.

MR TOMMY CHEUNG (in Cantonese): *Madam President, in part (c) of the main reply and the oral reply given earlier, the Secretary seems to say that every country knows the relevant standards, for these standards are based on the standard set by the OIE — will the Secretary please correct me if I am wrong. May I ask the Secretary whether the OIE has lifted its export suspension on the beef from Japan already? According to part (c) of the main reply, apart from China and Hong Kong, only some 10 countries are still suspending the importation of beef from Japan. Some one hundred other countries have already lifted the suspension. What are the reasons for this?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I am not able to answer this supplementary question from Mr Tommy CHEUNG. However, normally, the OIE will offer its advice to the countries and regions concerned, and it is up to them to make their own decisions on whether to impose any suspension. At present, many neighbouring regions are still suspending the importation of beef from Japan.

MR TOMMY CHEUNG (in Cantonese): *Madam President, the Secretary has not answered whether or not the OIE has lifted its export suspension on beef from Japan?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I have already answered it. The OIE itself does not impose any suspension; it only gives advice to different countries and regions, leaving them to decide whether suspension is required.

PRESIDENT (in Cantonese): This Council has spent more than 16 minutes on this question. Last supplementary question.

DR TANG SIU-TONG (in Cantonese): *Madam President, in part (b) of the main reply, it is stated that importation of beef from Japan, Canada and the United States has been suspended since 2003. However, we learn from the newspapers that many food establishments are still advertising that they serve*

beef from Japan and the United States. Does the FEHD notice this problem? How can it conduct spot check on such beef? Are the advertisements of some food establishments not reflecting the truth?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, on the part of the FEHD, routine spot checks on different kinds of food are conducted. It is of course difficult to confirm the sources of food. But still, spot checks are conducted to confirm whether the food really comes from sources as claimed in the advertisements.

DR TANG SIU-TONG (in Cantonese): *Madam President, excuse me. May I ask the Secretary a question? Since beef is no longer imported from these countries, but some food establishments still claim that beef from them are served. That being the case, is the FEHD the only authority that can verify such claims?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, if complaints are received, we will certainly take follow-up actions. Colleagues of the FEHD will inspect food establishments, and if such cases are discovered, follow-up actions will be taken.

PRESIDENT (in Cantonese): End of oral question time.

WRITTEN ANSWERS TO QUESTIONS

Preventing Tampering of Patients' Medical Records

6. **MS EMILY LAU** (in Chinese): *Madam President, it has been reported that the Hong Kong Patients' Rights Association has recently received four complaints from the family members of patients of public hospitals who suspect that health care personnel have tampered with their relatives' medical records in an attempt to cover up evidence which may work to the disadvantage of such personnel. Such act may constitute an offence of making a false instrument. In this connection, will the executive authorities inform this Council whether:*

- (a) *they know:*
 - (i) *the details of such complaints;*
 - (ii) *the number of complaints of this kind received by the Hospital Authority (HA) and its hospitals in the past three months; and*
 - (iii) *whether the HA will amend the Manual of Good Practices in Medical Records Management to prevent the tampering of patients' medical records; if amendments will be made, of the details; if not, the reasons for that; and*
- (b) *the police have commenced investigations into the allegations in the complaints; if not, of the reasons for that?*

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

- (a) (i) The details of the four cases are as follows:

Case in Haven of Hope Hospital

The case concerned a male elderly patient who passed away in the Haven of Hope Hospital in February 2004. In the course of an investigation which was initiated in response to allegations of misconduct on the part of the hospital's nursing staff, the hospital management discovered that one page of the patient's nursing progress record had been replaced by a page of non-contemporaneous record. Although the result of the hospital's preliminary investigation suggested that the intention of the nursing staff concerned was to make a supplement to the patient's record so as to give a more accurate account of the events, the HA considers that the staff's action was inappropriate and amounted to a serious procedural error. In view of the potential seriousness of the staff's act, the HA has already reported the matter to the Coroner's Court and the Nursing Council. The hospital is also in the process of initiating internal disciplinary action

against the staff concerned in accordance with the HA policies.

Case in Prince of Wales Hospital

The second case concerned a female patient who was admitted to the Prince of Wales Hospital for a repair of fracture in the femur. On 1 October 1999, the patient choked after eating in a hospital ward and required emergency medical assistance. An Orthopaedic and Traumatology (O&T) doctor in the ward was alerted of the incident and rushed over to the patient. The O&T doctor initiated cardiac-pulmonary procedures in an attempt to resuscitate the patient. A resuscitation team arrived at the ward shortly after and took over from the O&T doctor in resuscitating the patient. The patient passed away five days later. The patient's family alleged that the patient's medical record had been altered to shorten the response time of doctors in rendering emergency medical assistance to the patient. The hospital investigated the allegations and concluded that the patient's record was a truthful account of events. The hospital found that the documentation in the patient's record was made immediately after the relevant events occurred and that the patient's record had not been tampered with.

First case in Queen Elizabeth Hospital

A female patient suffered internal bleeding, which was a known complication, after undergoing percutaneous nephrolithotripsy in Queen Elizabeth Hospital on 7 November 2002. Despite medical treatment, the patient passed away on 27 November 2002. The patient's medical record showed that explanations on the risks and complications of the operation had been given to the patient and her relatives prior to the operation. However, the patient's family alleged that the patient's doctors did not inform the patient and her family of the risks of the operation and failed to provide the patient with alternative treatment options. The hospital investigated

the allegations and found that the patient's medical record was a truthful account of the relevant events.

Second case in Queen Elizabeth Hospital

A male patient attended the Accident and Emergency (A&E) Department of Queen Elizabeth Hospital in the early hours of 15 February 2004 for shortness of breath. The patient was admitted into the hospital for further treatment. Since the medical admission wards were full at the time, the patient was temporarily admitted to a ward in the Department of Surgery, in accordance with the hospital's prevailing admission policy. In the surgical ward, the patient was treated by doctors from the medical specialty. Later that day, the case doctor transferred him to a medical ward for further treatment. The patient passed away in the afternoon of 15 February. In arranging for the transfer of the patient from the surgical ward to the medical ward, the case doctor, who was not familiar with the appropriate transfer procedures, advised the admission office to simply put in the record that the patient was admitted directly from the A&E Department to the medical ward. The hospital management was alerted of the incident and its investigation found that while the patient was given proper treatment and care, the recording of admission and transfer procedures was improperly done. The Chief of Service of the Medical Department interviewed and advised the doctor concerned of the need for strict adherence to recording admission and transfer procedures.

- (ii) During the three-month period from 27 January to 26 April 2004, the HA and its hospitals received five complaints of a similar nature, inclusive of the four cases set out in part (a)(i) above. The fifth complaint was received by Fung Yiu King Hospital. The hospital's investigation concluded that the case involved the choice of terminology in the Chinese translation of a record of conversation between the doctor on duty and a member of the patient's family. The allegation that the patient's medical record had been altered was not substantiated.

- (iii) The HA Manual of Good Practices in Medical Records Management has already set out clear instructions on the proper keeping of patients' medical records. The HA has not identified a need to amend the Manual at this stage, but would remind the staff of the instructions from time to time.
- (b) The police has commenced investigation into the cause of death in the first three cases set out in part (a)(i) above. However, no report, complaint or enquiry had been made to the police in respect of the fourth case.

Employment Statistics

7. **MR LAU CHIN-SHEK** (in Chinese): *Madam President, regarding the employment statistics compiled by the Census and Statistics Department, will the Government inform this Council of the numbers of employed persons who worked 60 hours or above during the seven days before enumeration (excluding foreign domestic helpers) in each of the past three years, broken down by industry and occupation?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): Madam President, statistics on employed persons who worked 60 hours or above during the seven days before enumeration (excluding foreign domestic helpers), analysed by industry and occupation, for the years 2001 to 2003 can be compiled from the results of the General Household Survey. The relevant statistics are given in the two tables attached.

Table 1 Number of employed persons working for 60 hours or more during the seven days before enumeration (excluding foreign domestic helpers) by industry, 2001 to 2003

<i>Industry</i>	<i>2001 Number</i>	<i>2002 Number</i>	<i>2003 Number</i>
Manufacturing	32 970	36 881	38 614
Construction	20 652	23 044	24 749

<i>Industry</i>	<i>2001 Number</i>	<i>2002 Number</i>	<i>2003 Number</i>
Wholesale, retail and import/export trades, restaurants and hotels	213 311	241 329	261 857
Transport, storage and communications	64 568	73 719	80 352
Financing, insurance, real estate and business services	77 447	86 068	88 434
Community, social and personal services	62 950	71 343	76 498
Others	2 979	4 579	4 055
Total	474 876	536 963	574 558

Note: Numbers may not add up to the totals owing to rounding.

Source: Figures for a year are averages of the figures obtained from the General Household Survey for the four quarters of the year concerned.

Table 2 Number of employed persons working for 60 hours or above during the seven days before numeration (excluding foreign domestic helpers) by occupation, 2001 to 2003

<i>Occupation</i>	<i>2001 Number</i>	<i>2002 Number</i>	<i>2003 Number</i>
Managers and administrators	44 381	57 142	48 551
Professionals	16 237	20 701	23 007
Associate professionals	50 584	62 564	67 135
Clerks	21 613	28 057	32 262
Service workers and shop sales workers	154 838	165 990	187 117
Craft and related workers	23 518	24 552	26 926
Plant and machine operators and assemblers	60 374	68 158	74 081
Elementary occupations	100 792	105 871	112 325
Others	2 540	3 929	3 155
Total	474 876	536 963	574 558

Note: Numbers may not add up to the totals owing to rounding.

Source: Figures for a year are averages of the figures obtained from the General Household Survey for the four quarters of the year concerned.

Legal Aid Applications Relating to Medical Negligence Claims

8. **DR LO WING-LOK** (in Chinese): *Madam President, will the Government inform this Council of:*

- (a) *the respective numbers of legal aid applications relating to claims of medical negligence received and approved by the Legal Aid Department (LAD) over the past five years;*
- (b) *the number of cases among the approved applications that were settled out of Court, as well as the total amount of compensation they received; and*
- (c) *the number and percentage of cases in which judgement was passed in favour of the claimants among the cases determined by the Court, and the total amount of compensation awarded?*

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): Madam President,

- (a) According to the records of the LAD, the statistics relating to medical negligence claims are as follows:

<i>Year</i>	<i>No. of legal aid applications</i>	<i>No. of approved applications</i>
1999	194	41
2000	182	53
2001	234	67
2002	237	50
2003	238	43

- (b) and (c)

Before late 2002, due to the limitations of its computer system, the LAD did not specifically compile such integrated statistics as the

number of cases that were settled out of Court and the total amount of compensation received by claimants. Manual trawl of the case records to compile the statistics required will involve substantial resources and expenditures.

The LAD implemented an integrated information system in late 2002 to strengthen its case management. According to the computer records, 59 legally aided cases involving medical negligence claims were concluded in 2003. Among them, 38 cases were successful. All of them were settled out of Court. The amount of compensation payable in individual successful cases ranged from \$50,000 to \$12 million, while the total amount payable amounted to about \$56 million.

Remuneration and Benefits for Non-civil Service Contract Staff

9. **MISS CHAN YUEN-HAN** (in Chinese): *Madam President, regarding the remuneration and benefits of the government employees on non-civil service contract (NCSC) terms, will the Government inform this Council:*

- (a) *of the respective numbers of NCSC staff whose contracts were renewed or otherwise in the past three years;*
- (b) *for those staff whose contracts have been renewed, whether their remuneration levels have been adjusted; if so, of the rates and amounts of adjustment; and*
- (c) *whether employees on NCSC terms are entitled to employee benefits?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Madam President, the NCSC Staff Scheme is a standing scheme introduced in 1999 to enable Heads of Department (HoDs) to employ staff on fixed-term contracts outside the civil service establishment to meet service needs which are short-term, part-time or

under review. HoDs have full discretion to decide on the appropriate employment packages for their NCSC staff, subject to the two guiding principles that the terms and conditions for NCSC staff should be no less favourable than those provided for under the Employment Ordinance and no more favourable than those provided to civil servants in comparable civil service ranks or ranks of comparable level of responsibilities.

HoDs can employ NCSC staff on fixed-term contracts for any duration, say from one month up to three years, having regard to the service or operational needs. The employment relationship between a department and a NCSC staff ends upon expiry of the contract. The offer of any further contract is solely at the discretion of the HoD concerned and subject to the prevailing terms and conditions as may be offered.

Against the above background, the Administration's replies to the specific questions are as follows:

- (a) In the past three years, the number of full-time NCSC staff whose contracts were renewed and not renewed was:

	<i>2001</i>	<i>2002</i>	<i>2003</i>
Contracts renewed	6 132	9 871	12 664
Contracts not renewed	3 482	3 729	3 760

- (b) In determining the remuneration package in new contracts, including renewal of contracts for serving NCSC staff, HoDs will make reference to prevailing conditions in the employment market, operational needs of the departments, experience and qualification of the candidates, and so on. The maximum level of pay offered should not exceed the mid-point salaries of comparable civil service ranks or ranks of comparable level of responsibilities. Since HoDs have full discretion to decide whether and how to adjust the pay of serving NCSC staff upon the offer of new contracts, including contract renewal, we do not centrally maintain information on the salary adjustment on renewal of contracts for NCSC staff.

However, we conducted two ad-hoc surveys in September 2002 and 2003 respectively to see whether departments had adjusted or intended to adjust the pay of their NCSC staff having regard to the civil service pay reduction. The 2002 survey indicated that among the 74 departments which employed full-time NCSC staff as at 30 September 2002, five offered pay reduction to some of their full-time NCSC staff during the contract period. The rate of pay reduction was the same as that for civil service pay adjustment in 2002.

For the survey in September 2003, the objective was to study the pay adjustment for NCSC staff after it was decided to reduce the pay of civil servants in 2004 and 2005. The survey results indicate that of the 70 departments which employed full-time NCSC staff as at 1 September 2003, 49 indicated that they had reduced or planned to reduce the pay of their serving full-time NCSC staff either during the contract period or upon contract renewal. The reduction rate in the majority of the cases where pay reduction were effected did not exceed 6%.

- (c) NCSC staff are provided with benefits no less favourable than those provided for under the Employment Ordinance, including rest day, statutory holidays, paid annual leave, maternity leave, paid sick leave, long service payment, severance payment, and so on. We also make contributions to the Mandatory Provident Fund schemes for NCSC staff in accordance with the Mandatory Provident Fund Schemes Ordinance.

Complaints About Transport Services

10. **MR LAU KONG-WAH** (in Chinese): *Madam President, it was reported that the respective numbers of complaints involving the Kowloon-Canton Railway Corporation (KCRC), the Light Rail and red minibuses (RMBs) received by the Transport Complaints Unit (TCU) of the Transport Advisory Committee in 2003*

were higher than those of 2002. In this connection, will the Government inform this Council of:

- (a) *the respective numbers of complaints involving the KCRC, Light Rail and RMBs in 2003, broken down by nature of complaint, and the detailed reasons for the increase in the numbers of such complaints over those of 2002; and*
- (b) *the actions taken to follow up the above complaints, and whether the RMB drivers who were the subjects of complaints will be punished?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President, the number of complaints/suggestions received by the TCU of the Transport Advisory Committee in 2003 on the services of the KCRC and RMBs, as well as the nature of the complaints, are set out at the Annex.

The number of complaints/suggestions on the East Rail increased from 29 in 2002 to 50 in 2003. This was mostly due to an increase in the complaints about passenger services and facilities (particularly inadequate announcements during service disruptions) and erratic service. The West Rail came into operation on 20 December 2003, and seven complaints/suggestions were received by the end of 2003. Complaints/suggestions related to the Light Rail increased from 49 in 2002 to 69 in 2003. This was mainly due to an increase in the complaints about the regularity and frequency of service, and changes in the routings of the Light Rail to tie in with the opening of the West Rail and Light Rail extensions. The number of complaints/suggestions on RMB services increased from 224 in 2002 to 281 in 2003. The increase was mostly related to the conduct of the drivers.

The TCU referred the complaints/suggestions involving East Rail, West Rail and Light Rail to the KCRC for investigation and follow-up actions. The KCRC indicated that they had established new guidelines to inform the public of

service disruptions more speedily. To mitigate the impact of occasional changes to the train schedule due to railway works, the KCRC undertook to implement a number of measures, such as deploying extra staff during peak hours to speed up boarding and alighting, and regulating trains flexibly to maintain an even headway as much as possible. The KCRC would continue to consult the public before changing the routings of the Light Rail.

The TCU referred cases on obstruction caused by RMBs to the police for actions. Other complaints/suggestions on RMB services related to improper driving behaviour and poor conduct of the drivers were referred to the police and the Transport Department (TD). The police would conduct further investigation if the complainants agreed to be witnesses. For complaints where no witnesses are available, the TD would issue letters to the RMB owners concerned asking that they remind the drivers to observe the road legislation.

To promote safe driving among public light bus (PLB) drivers, the TD appointed three organizations in August 2003 to organize the PLB Driver Training Course. In addition, the Vocational Training Council launched a Skills Upgrading Scheme for the road passenger transport industry in April 2004. The Scheme includes a course on "Advance Training for PLB Drivers" which focuses on improving the driving attitude and quality of service of PLB drivers.

Annex

Breakdown of Complaints and Suggestions on the Services of
the KCRC and RMBs Received in 2003

<i>Nature of Complaints/Suggestions</i>		<i>East Rail</i>	<i>West Rail</i>	<i>Light Rail</i>	<i>RMBs</i>
(A)	Adequacy of Service				
	(1) Frequency/carrying capacity	1	-	14	-
	(2) Routing	-	-	8	-
	(3) Hours of operation	-	-	-	-
	(4) Provision of stops	1	2	-	1
	Sub-total	2	2	22	1

<i>Nature of Complaints/Suggestions</i>		<i>East Rail</i>	<i>West Rail</i>	<i>Light Rail</i>	<i>RMBs</i>
(B)	Standard of Service				
	(1) Regularity of service	18	-	18	-
	(2) Adherence to routing	-	-	1	-
	(3) Improper driving behaviour	1	-	3	67
	(4) Conduct and performance of staff (including drivers)	-	-	-	75
	(5) Overcharging	-	-	-	3
	(6) Cleanliness	-	-	1	2
	(7) Conditions of vehicles	2	1	3	4
	(8) Passenger services and facilities	23	2	10	4
	Sub-total	45	3	39	155
(C)	General	3	2	8	125*
	Total	50	7	69	281

Legend:

* These complaints/suggestions are mainly related to obstruction caused by RMBs.

Elderly Persons Living in Residential Care Homes Being Defrauded of Assets

11. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, I have received complaints from members of the public that some elderly persons living in residential care homes (elderly residents) have been defrauded of their bank deposits and even ownership of real estates. In this connection, will the Government inform this Council:*

- (a) *of the number of reports received by the police about elderly residents being defrauded of their assets and the total value of the assets involved in each of the past three years;*
- (b) *of the measures currently taken by the Social Welfare Department (SWD) to prevent elderly residents from being defrauded of their assets; and*

- (c) *whether it plans to reinforce efforts to prevent and curb such fraud cases?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) The police do not keep separate statistics on crimes involving elderly residents of residential care homes for the elderly (RCHEs). The number of cases involving elderly persons aged 60 or above being defrauded is as follows.

<i>Year</i>	<i>Number</i>
2001	464
2002	528
2003	344

Among these cases, less than 1% involve an amount of \$1 million or above, and 80% to 90% involve less than \$100,000.

- (b) The SWD has taken the following measures to help protect the elderly living in RCHEs from being defrauded of their assets.
- (i) Section 16(h) of the Residential Care Homes (Elderly Persons) Regulation (Cap. 459) requires all RCHEs to maintain proper records of the possessions or property which they are storing or holding on behalf of their residents. The SWD conducts periodic inspections on RCHEs to ensure that they comply with the Regulation.
 - (ii) RCHEs run by subvented non-governmental organizations (NGOs) and private operators participating in the Enhanced Bought Place Scheme are required to implement a set of Service Quality Standards. The Standards require service providers to establish policies and procedures for ensuring that service users' rights in relation to private property are

being respected; make such policies and procedures accessible to the service users and other interested parties; provide service users with the opportunities or facilities to keep private property in secure places; and follow appropriate procedures in managing the service users' money and other valuables. The SWD conducts periodic assessments on RCHEs' performance in this regard.

- (iii) The SWD has issued guidelines to other private RCHEs on the implementation of the Service Quality Standards on a voluntary basis.
- (iv) The SWD published the "Procedural Guidelines for Handling Elder Abuse" in December 2003 to enhance the capabilities of relevant parties in handling elder abuse. The Guidelines set out the procedures to be followed by elderly service providers including RCHEs, social workers, medical workers and government departments in handling abuse cases, including financial abuse.
- (v) The SWD and NGOs have organized talks and exhibitions and published leaflets to raise the awareness of the elderly on elder abuse, including financial abuse, and encourage them to seek help if necessary.
- (vi) For elders whose Comprehensive Social Security Assistance (CSSA) payments are handled by appointees, the SWD has provided guidelines for the appointees to observe. These include the requirements to maintain separate bank accounts exclusively for receiving and administering the CSSA payments and to keep accurate expenditure accounts. The SWD will also carry out random checks on these appointee cases to ensure that CSSA payments are properly spent for the benefit of the elders.

- (c) To raise the awareness of the elderly against fraud, the police organize seminars jointly with SWD and NGOs from time to time in RCHEs to explain the common tactics used by fraudsters. The police have also called on the banking industry to pay attention to cases where elderly persons withdraw a large amount of deposit in an unusual manner. The police will continue to take publicity and preventive measures appropriate to the circumstances in each district in order to combat deception cases targeting elderly persons.

Temporary Acting Appointments of Accountable Officials

12. **MR FREDERICK FUNG** (in Chinese): *Madam President, regarding the accountability system for principal officials, will the Government inform this Council:*

- (a) *of the numbers of days when principal officials under the accountability system (accountable officials) were unable to perform their duties due to their taking leave or absence from Hong Kong since the implementation of the system, broken down by post and month, as well as the titles of other accountable officials who temporarily acted on behalf of the absentees;*
- (b) *of the numbers of occasions when accountable officials temporarily acted on behalf of other accountable officials since the implementation; and*
- (c) *whether it will consider creating the post of Deputy Secretary under the existing framework?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Chinese): Madam President,

- (a) Under the accountability system, during the absence of the Chief Secretary for Administration or the Financial Secretary,

arrangements will be made for a Director of Bureau to stand in as Acting Chief Secretary for Administration or Acting Financial Secretary, having regard to operational needs. For other Principal Officials (POs) under the accountability system, there will not be any acting arrangements. This is because in most circumstances, the administrative responsibilities of bureaux can be undertaken by Permanent Secretaries or other senior civil servants in the bureaux under delegated authority. In case of special situations where attendance at a full Legislative Council meeting is required, arrangements will be made for a PO to cover for the absent PO.

In the case of the Secretary for Justice and the Secretary for the Civil Service, given their special roles and responsibilities, arrangements will be made during their absence as necessary for a designated Law Officer and the Permanent Secretary for the Civil Service respectively to attend full Legislative Council meetings. In attending full Legislative Council meetings, the relevant Law Officer and the Permanent Secretary for the Civil Service will limit themselves to established policy.

The acting or covering arrangement made during the temporary absence of POs under the accountability system due to their taking leave or duty visit, together with the number of days absent from duty on these occasions, for the period 1 July 2002 to 30 April 2004 are set out at Annex A.

- (b) The numbers of occasions when POs under the accountability system acted or covered for other POs for the period 1 July 2002 to 30 April 2004 are set out at Annex B.
- (c) The existing acting or covering arrangements are adequate to meet operational needs. At present, the Administration has no intention to create the post of politically appointed deputy secretary under the existing framework.

Annex A

The acting or covering arrangement made during the temporary absence of POs under the accountability system due to their taking leave or duty visit, together with the number of days absent from duty on these occasions, for the period 1 July 2002 to 30 April 2004¹

	<i>Month</i>	<i>Number of days²</i>	<i>Acting appointments made</i>
CS	July 2002	13.5	SHPL
	August 2002	7	SCS
	September 2002	3	SHPL
	November 2002	7	SHPL
	February 2003	4	SHPL
	August 2003	8	SCS and SHPL
	September 2003	8.5	SHPL
	October 2003	3	SHPL
	December 2003	8	SHPL ³
	February 2004	4.5	SHPL ³
	March 2004	1.5	SHPL
	April 2004	2.5	SHPL
FS	July 2002	5	SEDL
	August 2002	1.5	SFST
	September to October 2002	5.5	SEDL ⁴
	November 2002	9	SEDL
	December 2002	1	SEDL
	August 2003	7.5	SFST and SEDL
	September 2003	8.5	SFST
	October 2003	4	SFST and SEDL
	November 2003	8.5	SEDL ⁵
	December 2003	5	SFST and SEDL
	January 2004	5	SEDL
	February 2004	1.5	SEDL
	April 2004	11.5	SEDL ⁶ and SCIT

	<i>Month</i>	<i>Number of days²</i>	<i>Acting appointments made</i>
SCIT	September 2002	9	SEDL
	October 2002	11.5	SEDL ⁷
	November 2002	4	SEDL
	January 2003	7	SEDL
	March 2003	7	SEDL
	November 2003	8	SEDL ⁸
	March 2004	8	SEDL
SCA	August 2002	9.5	S for S
SEDL	July 2002	6	SCIT and SFST
	August 2002	2.5	SCIT ⁹
	September 2002	6	SCIT ⁹
SEM	July 2002	31	SCS ¹⁰
	October to November 2003	8	SCS ¹¹
	April to May 2004	16	SCS ¹¹
SETW	July 2002	31	SCA ¹²
SFST	September 2002	6	SEDL
SHA	July 2002	17	SHPL ¹³
	August 2002	3	SHPL
	December 2002	5	SCS
	December 2003	3	SEM
	March 2004	2	SCS
SHPL	August 2002	5	SHA
	November 2002	0.5	SETW
	April 2003	4	SETW
	March 2004	1	SETW
S for S	July to August 2002	20	SCA ¹⁴
	February 2004	9	SCA

- 1 Acting or covering arrangements are not necessary if attendance at full Legislative
Council meetings is not required during the absence of POs. This Annex does not
include the occasions where acting or covering arrangements were not made due to the
above reason. Also, two acting or covering arrangements which fall outside the scope
of this question have not been included in this Annex. One is the occasion where the
SEDL acted as the FS in July and August 2003 between the departure of the outgoing FS
and the arrival of the incumbent FS. The other is the SCA covering for the S for S in
July and August 2003 for the period between the departure of the outgoing S for S and
the arrival of the incumbent S for S.

The SJ and the SCS do not appear in this Annex as the existing arrangement is for a
designated Law Officer and the Permanent Secretary for the Civil Service respectively,
not POs, to cover for them during their temporary absence.

- 2 In determining the number of days absent from duties, working days are counted in case
of leave while calendar days are counted in case of duty visits.
- 3 There were two separate occasions during this month where the SHPL acted as the CS.
4 This acting arrangement straddled over two months.
- 5 There were three separate occasions during this month where the SEDL acted as the FS.
6 There were two separate occasions during this month where the SEDL acted as the FS.
7 There were three separate occasions during this month where the SEDL covered for the
SCIT.
- 8 There were two separate occasions during this month where the SEDL covered for the
SCIT.
- 9 There were two separate occasions during this month where the SCIT covered for the
SEDL.
- 10 This covering arrangement was made prior to the SEM taking up office.
11 This covering arrangement straddled over two months.
12 This covering arrangement was made prior to the SETW taking up office.
13 This covering arrangement was made prior to the SHA taking up office.
14 This covering arrangement straddled over two months.

Note

CS = Chief Secretary for Administration

FS = Financial Secretary

SJ = Secretary for Justice

SCS = Secretary for the Civil Service

SCIT = Secretary for Commerce, Industry and Technology

SCA = Secretary for Constitutional Affairs

SEDL = Secretary for Economic Development and Labour

SEM = Secretary for Education and Manpower

SETW = Secretary for the Environment, Transport and Works

SFST = Secretary for Financial Services and the Treasury

SHA = Secretary for Home Affairs

SHPL = Secretary for Housing, Planning and Lands

S for S = Secretary for Security

Annex B

Number of occasions when POs
under the accountability system acted or covered for
other POs for the period 1 July 2002 to 30 April 2004

<i>POs</i>	<i>Number of occasions</i>
Chief Secretary for Administration	Not applicable ¹
Financial Secretary	Not applicable ¹
Secretary for Justice	Not applicable ¹
Secretary for the Civil Service	7
Secretary for Commerce, Industry and Technology	6
Secretary for Constitutional Affairs	3
Secretary for Economic Development and Labour	25 ²
Secretary for Education and Manpower	1
Secretary for the Environment, Transport and Works	3
Secretary for Financial Services and the Treasury	6
Secretary for Health, Welfare and Food	0
Secretary for Home Affairs	1
Secretary for Housing, Planning and Lands	15 ²
Secretary for Security	1

- 1 Under the accountability system, no arrangement will be made for the Chief Secretary for Administration (CS), the Financial Secretary (FS) or the Secretary for Justice to act or cover for other POs.
- 2 The number of occasions for the Secretary for Housing, Planning and Lands (SHPL) and the Secretary for Economic Development and Labour (SEDL) to act or cover for other POs is the highest amongst POs. This is due to the existing arrangement that the SHPL and the SEDL normally stand in as the CS and the FS respectively during the latter two's temporary absence.

Patients Referral Scheme on Drug Compliance and Counselling Service

13. **MR MICHAEL MAK** (in Chinese): *Madam President, it has been reported that the Hospital Authority (HA) plans to launch the Patients Referral Scheme on Drug Compliance and Counselling Service this July. Registered pharmacists from the participating pharmacies will, at no charge, follow up the drug administration of patients of the specialist out-patient clinics at public hospitals who suffer from cardiovascular, diabetes mellitus or asthmatic diseases. In this connection, will the Government inform this Council whether it knows:*

- (a) the reasons for the HA including only the three types of diseases in the Scheme;*
- (b) what impact the HA expects the Scheme will have on the waiting time of specialist out-patient service; and*
- (c) if the HA will consider including other chronic diseases in the Scheme?*

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

- (a) The counselling service by community pharmacists is a pilot scheme of the HA to be launched in partnership with the private sector to provide better service to patients. The three diseases were chosen because they constitute a heavy burden in terms of patient morbidity and mortality in Hong Kong.
- (b) The objective of the scheme is to improve the quality of care to patients, rather than to reduce the waiting time at Specialist Out-patient Clinics (SOPCs), although better compliance with the doctor's instructions for taking drugs by patients should help reduce unnecessary re-attendances and hospital admissions.
- (c) The HA will review the scheme and assess its impact on patients by monitoring the progress of implementation and conducting surveys

among patients, participating pharmacists and doctors. Continuation of the scheme and extension to other patient groups will depend on a number of factors, including the patients' willingness to participate in the scheme, continuous support from pharmacists in the private sector and the impact of the scheme on patient outcome.

Dedicated Websites Set up by Government

14. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, it has been reported that apart from the websites of various Policy Bureaux and government departments, dedicated websites have also been set up for specified issues or subjects. In this connection, will the Government inform this Council of:*

- (a) *the respective numbers of dedicated websites which have been newly set up, deleted or terminated over the past 18 months, as well as the total number of dedicated websites at present; and*
- (b) *the criteria for deciding to set up, delete or terminate dedicated websites?*

SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for Home Affairs) (in Chinese): Madam President,

- (a) Information in hand indicates that over the past 18 months, 42 thematic websites have been set up and eight were deleted or terminated. At present, the total number of thematic websites stands at 139.
- (b) Bureaux and departments may set up thematic websites for various issues, including matters of public concern, policy measures, campaigns or competitions, reports, publicity campaigns, public services, and so on. Some of them have an easy-to-remember Uniform Resource Locator (URL) to facilitate users in obtaining

relevant information or services. Generally speaking, when the thematic websites have served their purpose after a period of time, the relevant websites may be relocated to the archives. Bureaux and departments may also delete thematic websites that are obsolete and no longer required.

Prevention of Terrorist Attacks

15. **MR ALBERT CHAN** (in Chinese): *Madam President, since the September 11 incident in 2001, terrorist attacks have plagued Bali of Indonesia, Zamboanga of the Philippines, Istanbul of Turkey, Moscow of Russia and Madrid of Spain, and so on, causing heavy casualties and demonstrating the unpredictability of terrorist activities. In view of Hong Kong's developed infrastructure and vibrant activities in external transportation, communications and finance, and so on, will the Government inform this Council:*

- (a) of the risk of Hong Kong being attacked by terrorists;*
- (b) of the measures in place to prevent terrorists from launching attacks in Hong Kong; and*
- (c) whether it will strengthen security measures to prevent Hong Kong from becoming a target of terrorist attacks; if it will, of the details of such measures; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) Hong Kong is a safe city. At present, the risk of terrorist attacks on Hong Kong is "moderate", which means the possibility of Hong Kong coming under a terrorist attack is not high. There is also no intelligence to suggest that Hong Kong will become a target of terrorist attacks. Nevertheless, we will continue to maintain a high degree of vigilance and stay alert at all times.

(b) and (c)

We are closely monitoring international developments and their impact on Hong Kong. We are also maintaining close contact with relevant overseas authorities to ensure that we can get hold of the latest intelligence and assess the situation accurately. Based on the relevant intelligence and assessment, we will regularly review the security measures for critical infrastructure (such as those for the airport and the public transport systems), and strengthen the security arrangements and contingency plans when necessary. In addition, we exercise stringent immigration controls.

Regarding legislation, we are actively implementing the relevant United Nations resolution and international conventions to ensure that Hong Kong will not become a centre for terrorists to raise funds or plan attacks. In this respect, the Bills Committee of the Legislative Council is scrutinizing the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003. We hope that the Bill can be passed as soon as possible.

We believe that with an effective intelligence network, a rigorous monitoring system and the appropriate legislation, we can effectively prevent terrorists from launching attacks in Hong Kong.

Water Seepage in Public Housing Estates

16. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that water seepage from the ceiling has caused a prolonged nuisance to the tenant of a flat in Kwong Tin Estate, Lam Tin. The Housing Department (HD) has issued 61 letters to the tenant of the flat above the affected unit requesting entry for inspection and maintenance purposes, but to no avail. In this connection, will the Government inform this Council whether:*

- (a) *it has looked into the reasons for the tenant concerned not co-operating with the HD, and whether it has reviewed the effectiveness of issuing the above letters;*

- (b) *the existing legislation and tenancy agreements of public housing estates empower the HD to punish public housing tenants who refuse to co-operate in this regard; if so, of the details; and*
- (c) *it will put in place a policy to ensure the co-operation of public housing tenants with the HD; if so, of the details?*

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

Madam President, concerning the incident in which a tenant of Kwong Tin Estate in Lam Tin had repeatedly refused access of HD staff to inspect interior installations of the flat which might have caused water seepage at the ceiling of the flat below, the HD has, since implementation of the "Marking Scheme for Tenancy Enforcement in Public Rental Housing and Interim Housing" on 1 August 2003, issued verbal and written warnings to the unco-operative tenant. Penalty points had been allotted against the tenant on two occasions totalling 14 points. At last, staff of the HD were able to access the flat with water seepage problems to complete the necessary repairs. My reply to the three-part question is as follows:

- (a) The Ombudsman carried out an investigation into the case in late 2003 and found that the unco-operative tenant had used different excuses to refuse the HD's access to the flat for inspection and repairs, which was unfair to the tenant of the flat below. The Ombudsman also recommended that the HD should be more decisive in taking enforcement actions against unco-operative tenants, including termination of tenancy, for better deterrent effects. In fact, there was room for improvement in the HD's handling of the current case merely by repeatedly issuing letters over a rather prolonged period, instead of taking further follow-up actions such as termination of tenancy. The Department had finally taken rigorous actions to solve the problem. In the light of this incident, the HD management has instructed estate front-line staff to be more pragmatic, proactive and decisive in handling estate management matters, paying special attention to the actual circumstances of individual cases so as to prevent unnecessary nuisance to other tenants.

- (b) Under the existing tenancy agreement, tenants are required to permit HD staff and authorized persons to access their flats for inspection and repairs within reasonable hours. The HD may terminate the tenancies of tenants who refuse to co-operate.
- (c) The HD launched the "Marking Scheme for Tenancy Enforcement in Public Rental Housing and Interim Housing" on 1 August 2003. Under the Scheme, tenants who refuse HD staff or authorized persons access to their flats for inspection and repair of installations within the HD's responsibility will be allotted seven penalty points. If a tenant accumulates 16 penalty points or more, his tenancy will be terminated.

Cancer Cases

17. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding cancer cases, will the Government inform this Council of:*

- (a) *the number of cancer cases newly diagnosed each year since 2000, together with a breakdown by the types of cancer and the patients' age profile (in age groups each covering five years);*
- (b) *the types of cancer showing an upward trend in incidence rates in recent years; and*
- (c) *the trends on cure rates and mortality rates for various types of cancer in recent years?*

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

- (a) At present, statistical information about cancer cases is compiled by the Hong Kong Cancer Registry (the Registry) of the Hospital Authority (HA). It regularly collects cancer-related information from public and private hospitals as well as the Department of Health. Due to the need to cross-check over 140 000 cases

reported from different sources to avoid double-counting and to verify the accuracy of the data, the compilation of data is very time-consuming. The Registry can only produce verified reports of various types of cancer cases up to 2001. The numbers of new cases of cancer diagnosed in 2000 and 2001 are 21 349 and 21 404 respectively. A detailed breakdown is at Annex.

- (b) To adjust for the effects of population growth and ageing, it is the international practice to use the age-standardized incidence rate (rather than the absolute number of new cases) as the measure of cancer incidence trend. With regard to the 10 most common cancers in 2001, the ones with rising age-standardized incidence rates are prostate cancer, female breast cancer and colorectal cancer.
- (c) The overall age-standardized mortality rate for all cancer types has been decreasing. Common cancers showing decreasing age-standardized mortality rates include cancers of the lung, liver, nasopharynx, and so on. The age-standardized mortality rate for breast cancer remained relatively stable. Colorectal cancer and prostate cancer showed an increase in age-standardized mortality rate.

There is no universally-accepted definition of "cure rate" for cancer in the field of medicine because it is not possible to ascertain the true absence of cancer in people, who may or may not have cancer treatment before.

It is however an international practice to compare treatment results of cancer using the "five-year relative survival rate" ("survival rate"), which is defined as the ratio of the proportion of observed survivors in a cohort of cancer patients to the proportion of expected survivors in a comparable set of individuals who do not have any cancer history. The HA is in the process of compiling the five-year survival rates of selected cancers by matching cases of individual cancer patients with the information of the Death Registry for the period between 1996 and 2001. The statistics will be available at a later stage.

Annex

Number of New Cases of Various Types of Cancer by Age Profile and Gender in 2000

Type of Cancer	0-4		5-9		10-14		15-19		20-24		25-29		30-34		35-39		40-44		45-49		50-54		55-59		60-64		65-69		70-74		75-79		80-84		85 +		Age Unkn		All ages
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F			
Lung	0	0	0	0	0	0	0	0	0	0	1	2	4	9	6	19	21	64	41	100	47	149	53	193	59	314	113	479	147	519	209	412	218	182	168	163	0	0	3 951
Colorectum	0	0	0	0	0	0	3	2	1	3	6	5	11	10	19	21	48	51	73	67	113	94	98	71	237	146	277	201	321	248	281	221	158	188	95	140	1	0	3 210
Breast	0	0	0	0	0	0	0	0	0	4	0	20	2	65	0	177	0	320	2	311	1	227	2	148	0	135	2	134	1	118	2	111	1	80	1	66	0	2	1 932
Liver	0	0	0	0	1	1	3	1	1	3	13	1	12	5	53	6	88	12	119	19	147	27	126	20	170	39	184	47	132	66	103	47	37	34	32	35	0	0	1 584
Nasopharynx	0	0	0	0	0	0	1	2	6	5	15	7	41	21	97	56	149	50	130	53	96	35	66	22	67	22	53	24	41	15	16	11	13	3	4	3	2	0	1 126
Stomach	0	0	0	0	0	0	1	0	0	1	3	1	2	6	6	16	33	24	25	23	43	20	40	18	87	35	112	27	130	59	86	62	78	48	42	49	1	0	1 078
Bladder	0	0	0	0	0	0	0	0	0	0	0	1	4	4	6	2	10	2	23	2	22	7	26	3	63	11	79	16	100	17	94	28	65	30	29	38	1	0	683
Prostate	0	-	0	-	0	-	0	-	0	-	0	-	0	-	0	-	0	-	1	-	2	-	16	-	54	-	114	-	173	-	152	-	113	-	57	-	1	-	683
Non-Hodgkin's Lymphoma	2	0	2	3	1	3	3	6	2	6	9	5	8	12	11	24	21	24	23	23	22	16	30	10	43	23	46	33	50	30	35	36	18	24	13	21	0	0	616
Cervix	-	0	-	0	-	0	-	0	-	2	-	5	-	27	-	35	-	53	-	55	-	58	-	25	-	30	-	50	-	38	-	33	-	20	-	12	-	1	444
Others	40	26	19	13	16	18	20	39	35	36	45	69	95	46	81	160	129	194	196	230	237	238	251	193	308	221	417	299	451	342	350	320	227	273	136	265	1	6	6 042
Total:	42	26	21	15	20	20	31	47	49	57	90	122	132	247	293	505	545	768	692	830	832	775	848	569	1 343	775	1 763	978	1 918	1 142	1 531	1 087	969	882	577	792	7	9	21 349

Number of New Cases of Various Types of Cancer by Age Profile and Gender in 2001

Type of Cancer	0-4		5-9		10-14		15-19		20-24		25-29		30-34		35-39		40-44		45-49		50-54		55-59		60-64		65-69		70-74		75-79		80-84		85+		Age Unkn		All ages
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F			
Lung	0	0	0	0	0	1	0	0	1	1	3	5	8	18	19	44	44	109	52	150	62	194	58	300	101	449	152	574	226	403	212	237	143	131	152	0	0	3 822	
Colorectum	0	0	0	0	0	0	0	7	3	4	5	12	16	32	38	59	48	76	75	120	84	119	76	225	110	305	196	343	235	275	215	176	162	80	188	0	0	3 284	
Breast	0	0	0	0	0	0	0	0	1	0	12	0	65	2	179	0	343	0	366	0	214	2	149	1	154	4	139	2	120	4	109	1	86	3	59	0	1	2 016	
Liver	2	1	0	0	2	0	0	0	2	0	5	1	11	4	25	11	87	10	133	15	155	17	139	21	163	33	217	48	181	55	103	48	57	29	31	31	0	0	1 637
Nasopharynx	0	0	0	0	0	1	1	0	5	1	19	6	39	11	69	45	150	48	115	39	128	35	69	18	63	13	60	24	41	9	17	10	13	4	2	4	0	0	1 059
Stomach	0	0	0	0	0	0	0	0	0	0	2	3	5	1	11	9	29	16	30	17	52	26	48	20	61	33	95	35	130	38	108	45	73	46	42	62	0	0	1 037
Prostate	0	-	0	-	0	-	0	-	0	-	0	-	0	-	0	-	0	-	4	-	12	-	20	-	59	-	149	-	193	-	178	-	111	-	60	-	0	-	786
Bladder	0	0	0	0	1	0	0	0	0	0	2	0	3	2	2	2	10	3	11	4	24	2	20	6	41	7	56	16	106	30	89	34	64	26	42	21	0	0	624
Non-Hodgkin's Lymphoma	4	0	3	0	1	1	11	0	4	3	5	5	6	9	9	13	15	15	27	20	30	15	30	7	38	25	47	27	44	26	37	24	20	24	14	27	0	0	586
Cervix	-	0	-	0	-	0	-	0	-	0	-	5	-	21	-	55	-	50	-	49	-	58	-	23	-	37	-	36	-	32	-	38	-	18	-	16	-	0	438
Others	27	24	22	15	29	12	20	21	46	48	44	62	54	84	86	133	122	243	210	247	234	286	240	178	318	195	423	313	442	347	362	318	215	251	148	293	2	4	6 115
Total:	33	25	25	15	33	15	32	21	64	57	82	102	135	221	251	504	516	820	715	884	905	799	881	556	1 269	708	1 805	986	2 029	1 118	1 576	1 053	967	789	553	853	2	5	21 404

Source: Hong Kong Cancer Registry of the Hospital Authority

Term of Office of Chief Executive Elected to Fill a Casual Vacancy

18. **MS EMILY LAU:** *Madam President, Article 46 of the Basic Law stipulates that "The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years.....". In this connection, will the executive authorities inform this Council whether they have assessed if it is in compliance with the Basic Law to specify in the Chief Executive Election Ordinance (Cap. 569) that where a vacancy arises in the office of the Chief Executive before the expiry of a full five-year term, the Chief Executive elected to fill such a vacancy will only serve out the term of office of the preceding Chief Executive; if the assessment result is in the affirmative, whether they will amend the Ordinance to that effect; if they will not, of the reasons for that; if the assessment result is in the negative, of the justifications for that?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Madam President, Article 46 of the Basic Law provides that the term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. Article 53 provides that in the event that the office of the Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of the Basic Law. The Chief Executive Election Ordinance, and in particular sections 3 and 6, gives effect to the above provisions of the Basic Law in respect of the term of office of the Chief Executive and the election to return a candidate for appointment to fill a vacancy in the office of the Chief Executive.

The term of office of the Chief Executive, as prescribed in the Basic Law, is five years. This provision applies to any Chief Executive. There is no exception.

In the light of the above, any amendment to the Chief Executive Election Ordinance which would provide for a term of office other than that of five years is not consistent with the Basic Law.

BILLS**Second Reading of Bills****Resumption of Second Reading Debate on Bills**

PRESIDENT (in Cantonese): Bills. We will resume the Second Reading debate on the Deposit Protection Scheme Bill.

DEPOSIT PROTECTION SCHEME BILL**Resumption of debate on Second Reading which was moved on 30 April 2003**

PRESIDENT (in Cantonese): Mr Albert HO, Chairman of the Bills Committee on the above bill, will now address the Council on the Committee's report.

MR ALBERT HO (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Deposit Protection Scheme Bill (the Bills Committee), I shall address the Council on the deliberations of the Bills Committee.

The Deposit Protection Scheme Bill (the Bill) proposes to set up a Hong Kong Deposit Protection Board (the Board) to establish and maintain a Deposit Protection Scheme (DPS) as well as to manage and administer a Deposit Protection Scheme Fund (the Fund). Unless exemption is granted by the Board, every licensed bank will be a member of DPS. The Fund will be built up mainly by the collection of contributions from member banks. Compensation from the Fund is payable if a winding up order has been made or the Hong Kong Monetary Authority (HKMA) has made a decision that compensation should be paid after consultation with the Financial Secretary. The HKMA's decision to trigger compensation payments is subject to review by the Chief Executive in Council. The compensation limit for protected deposits with a member bank will be HK\$100,000 per depositor.

Regarding the composition of the Board, members of the Bills Committee consider that since the functions of the Board aim to protect small depositors, persons with consumer protection experience should be appointed to the Board.

While agreeing to this principle, the Administration holds the view that if the Government is mandated to do so, its discretion will be weakened. In this connection, the Administration will move a Committee stage amendment specifying that experience in consumer affairs will be one of the factors to be taken into account by the Chief Executive in considering appointments to the Board.

On the membership of the DPS, members of the Bills Committee note that it is linked to an institution's banking licence, but restricted licence banks (RLBs) and deposit-taking companies (DTCs) are not covered by the DPS. There is concern that such an exclusion may adversely affect the business of these institutions. According to the Administration, RLBs and DTCs are not permitted to take deposits below \$100,000 under the current three-tier system of authorization. Given the coverage limit of \$100,000 of the proposed DPS, it is expected that the business of RLBs and DTCs will not be significantly affected if they are excluded from the Scheme. Besides, the authorization criteria for a banking licence have been relaxed since May 2002. A RLB or DTC which wishes to become protected under the DPS may seek to be upgraded to the status of a licensed bank.

Members of the Bills Committee also note that an overseas incorporated bank will be allowed to apply for exemption from participating in the DPS if the deposits taken by the bank's Hong Kong offices are protected by a scheme in the bank's home jurisdiction and the scope and level of protection afforded by that scheme are not less than those offered to such deposits by the DPS in Hong Kong. Members of the Bills Committee agree to this in principle, but opine that an exempted bank should be required to inform its depositors or prospective depositors that it is not a DPS member.

On contributions to the Fund, for a coverage limit of \$100,000 on a "per depositor per bank" basis, a target fund size of around \$1.6 billion or 0.3% of total protected deposits will be sufficient to cover most of the losses that will be sustained by the DPS. Contributions are calculated on the basis of individual member banks and a differential rate system based on the supervisory ratings of individual banks determined by the HKMA. The rates of contributions from member banks during the Fund build-up period will range from five to 14 basis points of the relevant deposits of the banks. After the Fund built-up period, the rates will range from 0.75 to two basis points. To keep the Fund within the

pre-defined range, a rebate and surcharge mechanism will be put in place, under which a surcharge will be levied on member institutions when the balance of the Fund drops below 70% of the target fund size. On the other hand, a rebate will be paid when the balance of the Fund exceeds 115% of the target fund size.

The Bills Committee has questioned the rationale for putting the definition of "protected deposit", which forms the basis of DPS, under the same Schedule of the Bill with other exemptions. Given the importance of the definition, members consider it necessary for the Administration to include the definition in the principal legislation while listing the exemptions in the Schedule. The Administration agrees to such an approach and will move Committee stage amendments to this effect.

On the coverage limit, members generally consider the coverage limit of \$100,000 relatively low and enquired about the effects of increasing the proposed limit from \$100,000 to \$150,000 and \$200,000 respectively. The Government has explained that the proposed limit is consistent with the priority claim limit under section 265 of the Companies Ordinance (Cap. 32). Aligning the coverage limit of the DPS with the priority claim limit will ensure that the DPS can take over from an insolvent member bank an equivalent amount of priority claim payable to each depositor. Any proposal to increase the coverage limit should be accompanied by a corresponding adjustment to the priority claim limit, otherwise the DPS will be exposed to an unacceptably high risk of loss. Besides, to increase the priority claim limit will affect interest of other unsecured creditors. What is more, raising the coverage limit to \$150,000 or \$200,000 will increase the cost of the DPS markedly without bringing significant additional numbers of depositors into the scope of protection. Moreover, the higher the coverage limit is, the greater the risk of moral hazard becomes. Members of the Bills Committee have accepted the Administration's explanation and agreed to maintain the coverage limit at the level of \$100,000.

On the power of the Chief Executive in Council to revoke the HKMA's trigger decision, members are extremely worried that this may create undue confusion, particularly if the revocation comes after compensation has been paid. Although the Administration has explained that the Chief Executive in Council will revoke the HKMA's trigger decision only under exceptional circumstances, members are still worried about the absence of any guidance in the Bill. In this connection, the Administration will move Committee stage amendments to

provide some guidance on the factors which the Chief Executive in Council shall take into consideration in determining whether to revoke the HKMA's trigger decision.

There is also concern among members about the Bill's requirement that a person shall preserve and aid in preserving the secrecy of information obtained in the course of performing his function under the DPS legislation. In the absence of specific provisions on the extent to which a person shall aid in preserving secrecy under the Bill, concern has been raised on how a person can avoid contravening such a requirement. In this connection, the Administration will move Committee stage amendments under which the obligation to preserve or aid in preserving is removed but a relevant person shall not suffer or permit any person to have access to any confidential information that he obtains in performing functions under the DPS legislation. Although the proposed amendments will have a wider scope of application, members still consider that the relevant proposal is clearer and more desirable.

Madam President, since the Administration has accepted most of the Bills Committee's recommendations, I propose the resumption of Second Reading debate on the Bill.

Madam President, I shall ask for your permission for me to speak in my personal capacity. My address in the capacity as Chairman of the Bills Committee shall end here.

PRESIDENT (in Cantonese): Do you wish to continue speaking?

MR ALBERT HO (in Cantonese): Maybe, I shall speak a moment later.

PRESIDENT (in Cantonese): Very well. Dr David LI.

DR DAVID LI: Madam President, deposit protection has a long history in most advanced economies. It helps to enhance confidence in the banking and financial systems.

With the Asian financial crisis in 1997 and 1998, we saw how vulnerable all economies are to sudden and unforeseen events. Although Hong Kong banks weathered the Asian financial crisis exceptionally well, prudence teaches us that we may not always be so lucky.

The Deposit Protection Scheme Bill is a piece of important legislation. It ensures that we have the tools to deal with events which may otherwise destabilize our financial system.

The Hong Kong Government has shown great concern to get this legislation right. Based upon a consultant's report issued in July 2000, the Government embarked upon an extensive consultation exercise with both industry and public stakeholders.

When the Government embarked on this exercise, there was little consensus among banks on the way forward. Many supported the proposal. Many were very much opposed.

Some expressed concern that the Deposit Protection Scheme would create a situation of moral hazard. They argued that some institutions may behave carelessly, knowing that they would not have to bear the full consequences of their actions.

At times, a compromise appeared to be impossible. In the end, we have this piece of legislation which strengthens our banking sector in ways which we did not fully appreciate at the outset of this exercise. This optimum result is due to the diligence and imagination shown by those sections of the Government most responsible for this legislation — the Hong Kong Monetary Authority (HKMA) and the Financial Services and the Treasury Bureau.

As indicated, the Scheme will protect the savings of small depositors. The Bill provides a clear and accepted procedure whereby, if the need arises, small depositors may be compensated with minimum delay. It will provide depositors with peace of mind, ensuring that their deposits remain safe and accessible no matter what may happen.

I here must point out that such peace of mind comes with a cost — banks must pay a levy on deposits in order to fund the Scheme. That is why it is important that the mechanism for administering the Scheme remains as simple

and efficient as possible, with recurrent expenditure kept to a minimum. The more efficient the Scheme remains, the less pressure on banks to pass on the cost to customers.

In its final form, the Bill also lays a strong foundation for the future growth of the banking industry.

As risk-based pricing has been adopted under the Scheme, this legislation will assist Hong Kong banks to meet the requirements of the risk-based Basel II supervisory regime. This will help Hong Kong banks to become both more efficient and more competitive, at home and on the international markets.

Such reform comes at an opportune time for Hong Kong banks, as the Mainland/Hong Kong Closer Economic Partnership Arrangement, or CEPA, opens the mainland market to most Hong Kong banks for the first time.

May I take this opportunity to reiterate our industry's understanding of the Government's position that the HKMA will work with the financial industry in the course of implementing the Deposit Protection Scheme.

Furthermore, may I state for record purpose that our industry understands that the Government will fully consider whether the prevailing interest rate environment is conducive to a smooth run out when framing the launch timetable.

I would like to close with one note of caution. In drafting this legislation, the Government decided to exclude the deposit taking companies (DTCs) from the provisions of this Bill.

The DTCs themselves are divided on whether they should be covered by the Scheme. There are those who would prefer to join; there are others who would prefer to remain outside. In the end, the Government decided that DTCs would not be permitted to join.

This has given rise to concern on the part of some DTCs which argue that they may find themselves at a competitive disadvantage when attracting deposits. I therefore urge the Government to monitor the effects of the Scheme most carefully.

After all, the aim is to enhance the stability of our banking sector. Any loss of business by the DTCs would have the opposite effect.

Thank you, Madam President.

MR HOWARD YOUNG (in Cantonese): Madam President, as a matter of fact, the topic on establishing a deposit protection scheme was once debated in the Chamber on 20 May 1992. The relevant motion was moved by Prof Edward CHEN. I have checked the relevant record and found a most different situation. I note that Dr David LI was against such a scheme. Another Member also belonging to the banking sector, Mr Vincent CHENG, likewise opposed a scheme like this. As for political parties, Mr Ronald ARCULLI of the Co-operative Resources Centre (the Liberal Party had not yet come into being) expressed support with some reservations. Mr Allen LEE abstained, and so did Mr Eric LI. It can thus be seen that the topic was highly contentious at that time.

However, eight years, which is quite a long time, have already elapsed. This morning, I talked with Mr Vincent CHENG over the phone, asking him whether he could still remember the contentions surrounding the issue years back and how his sector looked at it now. Although no Member belonging to the Liberal Party is a member of the relevant Bills Committee, we still want to handle this matter with a serious attitude. Even though we have not taken part directly, we still think that at this very stage, we have to ascertain whether we should render our support, so for this reason I have listened attentively to Dr David LI's remarks. This morning, Mr Vincent CHENG also told me that eight years had already passed, that because of the Bank of Credit and Commerce International incident, everybody seemed so emotional and questioned whether the Government should use any public money to protect depositors, and so on.

Such a long time has passed, and having listened to Mr Albert HO's report on the deliberations of the Bills Committee, I think Members all seem to have reached a consensus. I also note that there are not any particularly controversial issues prompting Members to move any amendments and raise any objection. That being the case, and having looked at the scrutiny process and the documents concerned, we will support the passage of the Bill although we have not taken part directly in the scrutiny work. I so submit.

MR CHAN KAM-LAM (in Cantonese): Madam President, Mr Howard YOUNG has recounted some historical facts about the establishment of the DPS. At one time, there were indeed lots of controversies surrounding this matter. Some large banks, in particular, often said that once a scheme like this was set up, large banks with sound operation might in effect be made to provide coverage for the risks borne by small banks, and large depositors might have to provide coverage for small depositors. It is only natural that dissenting views should exist, and this can aptly explain why the several bankers mentioned by Mr Howard YOUNG just now all held such divergent views — they came from large banks.

There can be no denying that the economy of Hong Kong now is in comparatively good shape, and the local banking system is relatively sound, but risks are forever present, so it may be more beneficial to small depositors if a protection scheme can be put in place to reduce risks or make compensation for the losses resulting from such risks.

For all these reasons, the DAB is basically supportive of such a scheme; we even think that this is a progressive move. At the same time, I agree with Dr David LI that the Deposit Protection Board to be set up must be small in size and highly transparent and flexible in its operation, with a view to further reducing administrative expenses and costs. We also wish to point out that although contributions are to be made by the banks, as we all know, the costs concerned will definitely be shifted onto small depositors or other depositors. As a result, anything that can reduce the costs or operating expenses of the Board or rationalize its set-up will be conducive to the implementation of the DPS.

Besides, while depositors may apparently enjoy some kind of protection following the establishment of the DPS, it must still be noted that the protection will be confined to depositors each with a deposit of not more than \$100,000. Actually, we still need a sound banking supervision system and a social environment conducive to the healthy development of banking business. For this reason, I very much hope that after the completion of this legislative exercise, and following the establishment of the Deposit Protection Board and the formal operation of the DPS, we will continue to strive for further improvement to the supervision mechanism and system, so as to perfect them, to ensure that everybody can go to bed without any worries. With a system that is satisfactory

in its entirety, government officials may sleep without any worries, and so may depositors.

Thank you, Madam President.

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

MR ALBERT HO (in Cantonese): Madam President, I am going to speak as an individual Member belonging to the Democratic Party, as its spokesman on the Bill.

The Democratic Party has all along been advocating and supporting the establishment of a deposit protection scheme. One of the main objectives of such a scheme is the protection of small depositors, but more importantly, it should also seek to enhance the stability of the banking system as a whole.

As a financial centre of the Asia-Pacific Region, Hong Kong should definitely provide against the closure of any of the banks here. Since the closure of the Bank of Credit and Commerce International in 1992, members of the public have been very much worried about the stability of individual banks. As early as that particular year, suggestions on establishing a deposit protection scheme were already put forward. But as mentioned by a Member just now, on the one hand, the banking industry, especially large banks, raised objection in the belief that this might end up subsidizing banks seeking high profits at great risks; and on the other, the Government was unwilling to make any financial commitment; adding to all this was the reluctance of banks to disclose their reserves which also posed hindrance of some kind. As a result, the discussions on the topic were put aside.

But the problem has not vanished with the passage of time. Quite the contrary, it seems that whenever there is anything in the wind, members of the public will feel their nerves being pinched again. This can be illustrated especially by the financial turmoil in 1997, during which widespread rumours even led to a small-scale bank run on a note-issuing bank. Many relatives and friends of mine also hurried to withdraw money from the bank at hearing the rumours, showing how weak their confidence was.

The Democratic Party has since been making even more active efforts, urging the Government to establish a deposit protection scheme, both as a safety net to reduce the possible impact on the banking system, and also as a means of affording small depositors reasonable protection.

Though we support the passage of the Bill, we also wish to put forward the following points:

First, we agree with Members, including Dr David LI, that the administrative costs of the Deposit Protection Board as projected are on the high side. This warrants our concern. According to government statistics, the Board will consist of four part-time employees and one full-time staff member only. But even under normal circumstances, the administrative costs will still amount to as much as \$6.5 million to \$7.2 million. And, in case a medium-sized bank closes down, such costs will soar to somewhere between \$40 million and \$50 million, or as many as seven times the normal costs. The Democratic Party is of the view that the administrative costs, whether at normal times or in case of emergency, are invariably on the high side. We hope that these estimates are just a reflection of the Government's prudence. We also hope that the commencement or smooth functioning of the scheme in the future can eventually prove that the administrative costs can in fact be lowered. That way, the industry will not have to bear too heavy a burden.

Second, according to comparative statistics, the protection under Hong Kong's deposit protection scheme, which is just 50% higher than the Gross Domestic Product, is much smaller than the 160% to 280% found in such countries as Canada, the United Kingdom and the United States. And, while 84% of all depositors in Hong Kong will come under protection, the corresponding percentage in the United States and Canada is between 80% and 99%. I therefore hope that sometime after the implementation of the Bill, Members can conduct further discussions on whether or not the coverage limit can be raised to enhance the confidence of local and international depositors.

Although we think that the protection provided by the proposed scheme is on the low side, we are nonetheless prepared to accept the Government's proposal. We are prepared to let the scheme go ahead first, to let it produce its positive impact for some time, maybe several years, before we carry out a full-scale review.

Lastly, the Democratic Party is worried that banks may well shift the burden of contributions onto small depositors — small depositors, I must stress. Although the Government maintains that due to keen competition, banks will not lightly do so, I still think that it may be too optimistic. The Democratic Party proposes that following the implementation of the relevant ordinance, the Hong Kong Monetary Authority and the Consumer Council should make joint efforts to monitor the situation and try as much as possible to encourage banks not to do so.

I so submit. Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Financial Services and the Treasury, you may now give your reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, first of all, I wish to thank Members for their remarks. Following the closure of the Bank of Credit and Commerce International in 1991 and the subsequent series of bank runs, the Government once explored the possibility of introducing a deposit protection scheme. The proposal on setting up such a scheme was, however, negated mainly because of costs and moral hazard considerations. Then, when the Asian financial turmoil broke out in 1997, the Hong Kong Monetary Authority (HKMA) commissioned a consultancy to conduct a comprehensive review of Hong Kong's banking system and its development. The relevant consultancy report was announced in 1998, and it recommended, among other things, a fresh study on the establishment of a deposit protection scheme in Hong Kong to enhance the stability of the banking system and increase depositors' confidence. Deposit protection schemes are by now an international trend. Deposit protection schemes were already put in place in Canada and the United Kingdom as early as the 1960s and 1970s, and the establishment of deposit insurance companies in the United States can be dated back to 1934. Besides, similar schemes are now

found in many economies in Asia, such as those of Japan, South Korea, Taiwan and the Philippines, and Singapore has also launched the related studies.

The Asian financial turmoil highlighted the destabilizing effects of external impacts and market rumours on individual banks and even the entire banking system. This, together with the increasingly keen competition within the banking industry and the development trend of the world, has turned deposit protection into a significant topic. As a result, in 2000, the HKMA formally commissioned a consultancy to conduct studies on enhancing deposit protection in Hong Kong. Two extensive public consultation exercises were then conducted respectively in October 2000 and March 2002 on the consultant's findings and recommendations. The findings of the consultation exercises indicated that the recommendation on establishing a deposit protection scheme in Hong Kong commanded extensive public support. In December 2000, the Legislative Council also passed a motion on supporting the establishment of a deposit protection scheme by the Government.

Having considered the consultancy findings, the views of the public and professional bodies as well as the experience of foreign countries in deposit protection schemes, the Government eventually submitted the Deposit Protection Scheme Bill (the Bill) to the Legislative Council in April last year, proposing to set up a Deposit Protection Scheme (DPS) in Hong Kong for the purpose of enhancing deposit protection and the stability of the financial system.

The Bill seeks to set up an effective deposit protection scheme, so that whenever the banking system sustains any major impact, leading to the erosion of people's confidence in banks, people can still rest assured that their bank deposits are protected up to a certain limit, and that even when a bank closes down, there will be no need for any panic and any bank runs, as they can receive compensation within a very short time. This will be of immense help to enhancing the stability of Hong Kong's banking system. At present, Hong Kong people do not enjoy any such deposit protection. Under the Companies Ordinance, although qualified depositors are each entitled to a priority claim of not more than \$100,000 during the liquidation of a bank, the asset value of the bank after liquidation may not necessarily be enough to meet the \$100,000 priority claims of all qualified depositors. What is more, winding-up proceedings are very complicated, and in the absence of any special arrangement to ensure the prompt payment of compensation, depositors are completely unable

to know when they can recover their deposits. Therefore, the existing arrangement is not satisfactory. Besides seeking to provide a certain degree of deposit protection and to ensure the prompt payment of compensation, we have also taken account of the need for the proposed scheme to minimize costs and the risks of moral hazard. This view is also shared by the Legislative Council.

The Bills Committee commenced its full-scale scrutiny of the Bill in September last year, having convened 14 meetings in total when it completed its task in March this year. My heart-felt thanks are due to Mr Albert HO, Chairman of the Bills Committee, and all its members for their valuable advice on the contents of the Bill. As a result of their advice, the original policy intent of the Government can be reflected much more clearly in the Bill, and its provisions can also operate more effectively. At the Committee stage later on, I shall move amendments to certain clauses of the Bill, with a view to realizing the consensus reached after thorough discussions in the Bills Committee and to further improving the drafting of the Bill.

As I have just mentioned, the proposed DPS must be able to provide a certain degree of deposit protection, and in addition, its design and operation must also be capable of minimizing the risks of moral hazard and costs. Based on this policy consideration, we propose to cap the amount of compensation payable under the proposed DPS at \$100,000 per depositor per bank. We estimate that this coverage limit can offer protection to 84% all qualified depositors in Hong Kong. According to the guidelines issued by the International Monetary Fund (IMF), a sound deposit protection fund should aim to protect small depositors, because such depositors are often low-income earners who are not familiar with banking operation, and who lack the time, information and means to assess the conditions of a bank. The IMF also points out that the coverage limit should be able to protect the majority, say, 80% to 90%, of all the depositors, though it is only necessary to cover just a small percentage of the total deposits — 20%, for example. In this connection, our proposal is in line with the standards laid down in the relevant guidelines. If we drastically raise the coverage limit, the costs borne by banks will soar correspondingly without bringing significant additional numbers of depositors into the scope of protection. Besides, the risk of moral hazard will also increase as a result. Therefore, the Bills Committee also agrees to our proposal on setting the coverage limit at \$100,000. Once the DPS is geared into functioning smoothly, we will conduct a further review when necessary.

The Bills Committee also agrees to our proposal that the structure of the Deposit Protection Board (the Board) should be as streamlined as possible, so as to minimize costs and avoid duplicating the functions of the supervisory body. The Board shall only play the role of a paybox, and after the implementation of the DPS, its functions will be limited to the collection of contributions, administration of the funds of the DPS, assessment of compensation claims against the Deposit Protection Scheme Fund (the Fund) and the payment of compensation to depositors. We propose the Board not to employ a large number of permanent employees, but to perform its functions through the HKMA, allowing the latter to handle the routine management of the DPS on its behalf. This will reduce its operating costs. In case a bank closes down, the Board can ask service-providers, such as accounting firms, to assist it in handling the payment of compensation to depositors.

The capitals required for deposit protection shall be provided by the Fund built up beforehand through the collection of contributions. The target fund size will be 0.3% of the total protected deposits, or around \$1.6 billion. It is estimated that such a target fund size will be sufficient to cover most of the losses sustained by the DPS. At this level, the Fund will meet the IMF's benchmark of being able to absorb the losses arising from the simultaneous failures of two medium-sized banks. However, such a level may not be sufficient to meet all the anticipated capital requirements; if all such capital requirements are to be met, the scale and costs of the Fund and the DPS will be boosted far beyond the capacity of the banking industry. When it is necessary for the DPS to pay compensation to depositors, it may borrow from the Exchange Fund or the market as a liquidity facility. The Administration believes that a target fund size of 0.3% of the total protected deposits is appropriate. We also propose to put in place an adjustment mechanism for the Fund, whereby if the balance of the Fund drops below 70% of the target fund size, the Board will levy a surcharge on member institutions and a rebate will be paid to them if the balance exceeds 115% of the target fund size.

The Bills Committee has also conducted in-depth discussions on the conditions and procedures of activating the compensation mechanism. Under the Bill, if a winding-up order has been made by the Court in respect of a DPS member or if the Monetary Authority has, after consultation with the Financial Secretary, served on the Board a notice on the appointment of a Manager or provisional liquidator under the Banking Ordinance, the compensation

mechanism of the DPS is activated. In order to provide checks and balances against the Monetary Authority's decision to trigger payment under the DPS and to give the DPS member concerned an opportunity to appeal against such a decision, the Bill provides that the Monetary Authority must consult the Financial Secretary before making a decision, and that after payment under the DPS has been triggered, the Monetary Authority must submit a report to the Chief Executive in Council. The Chief Executive in Council must then determine whether to confirm or revoke the Monetary Authority's decision. In the course of deliberations, the Bills Committee has expressed concern about whether such checks and balances will result in any undue delay in the payment of compensation or render the whole compensation process complicated. We are of the view that it is both appropriate and necessary to empower the Chief Executive in Council to confirm or revoke the Monetary Authority's decision, because this can provide effective checks and balances against the power of the Monetary Authority and give an opportunity to the relevant DPS member to voice its views. And, this arrangement also takes account of some unforeseeable developments such as an offer by a "white knight" to acquire the bank concerned. The proposed mechanism is closely linked to the procedure of dealing with authorized institutions with problems under the Banking Ordinance. We agree with the Bills Committee that the Bill should specify the factors which the Chief Executive in Council must consider when making a decision, including the interests of depositors and the stability and smooth functioning of the entire banking system, and that a decision must be made expeditiously. All this can help us better reflect the original policy intent. I shall move the relevant Committee stage amendments later on.

The objective of the DPS is to protect depositors, especially small depositors. Therefore, we very much agree that if the DPS is to achieve its aim of stabilizing the banking system, it is absolutely necessary for members of the public to have a certain degree of understanding of the DPS, especially the protection and rights to which they are entitled. Members of the public need to know whether their deposits are protected, the scope of coverage. In other words, they also need to know their entitlement to compensation in case a bank fails, when they can receive compensation and what appeal channels are available in case they are not satisfied with the decision of the Board. In this connection, the Board will, after its establishment, join hands with the banking sector to launch a series of publicity activities to enhance public education and increase people's understanding of the DPS.

Following the passage of the Bill, we will draw up the required subsidiary legislation as soon as possible, so that the new ordinance can take effect early. In the course of drafting the required subsidiary legislation, we will certainly continue to consult the public and take on board the views of the market, so as to ensure that the relevant provisions will both be practicable and easy to comply with. We expect that the DPS can start to provide deposit protection in 2006 at the soonest.

Dr David LI has mentioned the views of DTCs. The objective of the DPS is to provide protection for deposits below \$100,000. Since the deposits taken by DTCs must exceed \$100,000, their depositors cannot meet the definition of small depositors. Besides, in order to ensure the practicability of the DPS, we consider it necessary for all banks to join it on a mandatory basis. It will not be appropriate and fair to require the mandatory participation of banks but to allow DTCs to take part on an optional basis. Therefore, we do not think that it is appropriate to allow individual DTCs to join the DPS on an optional basis. We note the worries of some DTCs about the introduction of a deposit protection scheme. After the implementation of the DPS, we will closely monitor market changes and conduct periodical reviews. Regarding Members' worries pertaining to whether or not banks will shift the costs of contributions to depositors, we are of the view that what is involved should be a business decision to be made by banks; it will not be appropriate of the Government to intervene. However, we also believe that market competition should be able to limit banks' ability to shift the costs of contributions onto depositors. We should also note that the DPS itself will lead to keener competition for small deposits in the market, thus enhancing the bargaining power of small depositors.

We also note that given the low interest rates now, some Members are concerned whether it is a suitable time to introduce the DPS. However, as I have just mentioned, it will not be possible to introduce the DPS until 2006. We expect that interest rates will rise closer to normal levels by then. In any case, the Government will definitely listen to the views of the industry and the public before deciding on the time to introduce the DPS.

Finally, I wish to take this opportunity to express my gratitude to all those parties who have offered their advice on the contents of the Bill, including the Hong Kong Association of Banks, the Hong Kong Bar Association, The Law Society of Hong Kong, the Consumer Council and many other professional bodies, academics and members of the public. Thanks are also due to

colleagues in the HKMA, the Department of Justice and my Bureau for their efforts of drafting the Bill. In addition, I also wish to extend my heart-felt thanks to the Legislative Council Secretariat for its valuable advice on the Bill and the assistance it has offered.

Madam President, the early enactment of the Bill will make it possible to introduce the DPS in Hong Kong at a sooner time, thus enhancing deposit protection and the status of Hong Kong as an international financial centre. I hope Members can support the Bill and the various amendments I am going to move at the Committee stage.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Deposit Protection Scheme 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.

(No hands raised)

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

CLERK (in Cantonese): Deposit Protection Scheme Bill.

Council went into Committee.

Committee Stage

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

DEPOSIT PROTECTION SCHEME BILL

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

CLERK (in Cantonese): Clauses 1, 3, 6, 8, 9, 10, 17, 18, 19, 23, 26, 28, 32, 33, 37, 41, 42, 45, 47, 48 and 53.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 5, 7, 11 to 16, 20, 21, 22, 24, 25, 27, 29, 30, 31, 34, 35, 36, 38, 39, 40, 43, 44, 46 and 49 to 52.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that the clauses read out just now be amended as set out in the paper circularized to Members. I shall now highlight the major amendments.

The following amendments are mainly on the establishment of the Deposit Protection Scheme (DPS) and the Deposit Protection Board (the Board):

Clause 2 of the Bill contains provisions on interpretation. The amendment concerned clarifies that a "bank" means a company that holds a valid banking licence or a company the banking licence of which is for the time being

suspended, so as to clarify that a company the banking licence of which is for the time being suspended is still a member of the DPS, and that its depositors are still under protection. Besides, we have also accepted the recommendation of the Bills Committee on moving the definition of protected deposit from Schedule 1 to the principal legislation while retaining the exemptions in the Schedule.

Clause 4 specifies the composition of the Board. We have accepted the Bills Committee's recommendation on adding to the existing provisions those factors which the Chief Executive must consider when making appointments to the Board, namely, whether the persons to be appointed possess any experience and professional expertise in finance, accounting, banking, law, administration, information technology or consumer affairs. The amendment also specifies that a bank director or employee shall not be appointed as a Board member, in order to avoid any conflicts of interests.

Under clause 12 of the Bill, an overseas incorporated bank will be allowed to apply for exemption from participating in the DPS if the deposits taken by the bank's Hong Kong offices are protected by a scheme in the jurisdiction in which the bank is incorporated, and the scope and level of protection afforded by the scheme are not less than those offered to such deposits by the DPS in Hong Kong. The amendment specifies that when considering an exemption application, the Board must ensure that the scope and level of protection afforded by a scheme in the jurisdiction in which the bank is incorporated is not in all material respects narrower and lower than those under the DPS in Hong Kong. The amendment also provides that an exempted bank shall as soon as practicable inform its depositors in writing of the particulars of exemption.

Clause 44 of the Bill is on confidentiality, providing that a person shall preserve the secrecy of the information obtained in the course of performing his function under the deposit protection legislation. The Bills Committee has conducted thorough discussions on this secrecy provision and come to the view that the provision on requiring such a person to "preserve and aid in preserving the secrecy" of the relevant information is not clear enough to specify his secrecy obligation and the extent to which he shall aid in preserving secrecy. We share the Bills Committee's concern and therefore propose to amend the relevant provisions to define more clearly the secrecy obligation required.

The following amendments concern the details and arrangements of compensation payment:

Under clause 21, if a winding-up order has been made by the Court in respect of a DPS member or if the Monetary Authority has, after consultation with the Financial Secretary, served on the Board a notice on the appointment of a Manager or provisional liquidator under the Banking Ordinance, the compensation mechanism of the DPS is triggered. The amendment provides that the fact that the appointment of the Manager or provisional liquidator is reversed does not affect the trigger decision of the Monetary Authority.

We have accepted the recommendation of the Bills Committee and now propose to add a new clause 22A, providing that if the trigger decision of the Monetary Authority is revoked by the Chief Executive in Council or set aside by a court, it is deemed that the specified event triggering off payment from the DPS never occurred but that the legality of the compensation already paid will not be affected. I shall move the new clause 22A later on.

Clause 25 specifies the general criteria on entitlement to compensation, including the types of eligible persons and the amounts of compensation. The amendment provides that only a person who is the client of a depositor's client account shall be entitled to compensation, and that a right of set off exists in the winding up of the bank concerned.

On clause 27, the Department of Justice has taken on board the views of the Bar Association, agreeing that an agent may hold a deposit in his own right, as a bare trustee or a trustee. Therefore, it will not be necessary to specify the entitlement to compensation pertaining to an agent in the ordinance. We agree to this viewpoint and have deleted the provision on an agent's entitlement to compensation from the Bill.

The following amendments are on the setting up, functions and powers of the Deposit Protection Appeals Tribunal.

Clause 38 provides for the establishment of a Deposit Protection Appeals Tribunal, proposing that the Chief Executive shall, on the recommendation of the Chief Justice, appoint a judge to be the Chairman of the Tribunal. The Chief Executive shall also appoint a panel of persons, not being public officers, to assist the Chairman of the Tribunal. The Chairman shall appoint no less than two persons from the panel as members of the Tribunal. We have accepted the recommendation of the Bills Committee on amending the original provision to

clearly specify that the function of the Tribunal is to review a decision or assessment of the Board and the Monetary Authority made under the ordinance. In addition, where the Chief Executive considers appropriate, additional Tribunals may be established to handle several appeals simultaneously in a more effective manner. In addition, we also propose to amend the provisions on appointing Tribunal members, empowering the Financial Secretary to do so on the recommendation of the Chairman of Tribunal.

Clause 39 provides for the scope of review by the Tribunal and the operation of the review mechanism. In order that the appeals of aggrieved persons can be handled more effectively, we propose that the persons concerned may lodge their appeals direct with the Tribunal instead of doing so through the referral of the Board or the Monetary Authority.

Under clause 43 of the Bill, where an applicant is dissatisfied with the determination of the Tribunal, he may appeal to the Court of Appeal against the determination on a point of law. The amendment provides that besides affirming, reversing or varying the determination appealed, the Court of Appeal may also set aside the determination or remit the matter to the Tribunal with any direction that it considers appropriate.

Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex I)

Clause 4 (see Annex I)

Clause 5 (see Annex I)

Clause 7 (see Annex I)

Clause 11 (see Annex I)

Clause 12 (see Annex I)

Clause 13 (see Annex I)

Clause 14 (see Annex I)

Clause 15 (see Annex I)

Clause 16 (see Annex I)

Clause 20 (see Annex I)

Clause 21 (see Annex I)

Clause 22 (see Annex I)

Clause 24 (see Annex I)

Clause 25 (see Annex I)

Clause 27 (see Annex I)

Clause 29 (see Annex I)

Clause 30 (see Annex I)

Clause 31 (see Annex I)

Clause 34 (see Annex I)

Clause 35 (see Annex I)

Clause 36 (see Annex I)

Clause 38 (see Annex I)

Clause 39 (see Annex I)

Clause 40 (see Annex I)

Clause 43 (see Annex I)

Clause 44 (see Annex I)

Clause 46 (see Annex I)

Clause 49 (see Annex I)

Clause 50 (see Annex I)

Clause 51 (see Annex I)

Clause 52 (see Annex I)

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 Financial Services and the Treasury be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 5, 7, 11 to 16, 20, 21, 22, 24, 25, 27, 29, 30, 31, 34, 35, 36, 38, 39, 40, 43, 44, 46 and 49 to 52 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 7A

Board may issue guidelines

New clause 22A

Specified event deemed
never occurred under
certain circumstances.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clauses 7A and 22A be added to the Bill as set out in the paper circularized to Members.

I have given an outline of new clause 22A just now.

New clause 7A seeks to empower the Deposit Protection Board to issue guidelines on its functions pertaining to the execution of this Ordinance, so as to give the banking sector and members of the public an adequate understanding of its functions and powers. The new clause provides that the relevant guidelines are not subsidiary legislation, and that anyone violating them shall not be held legally liable.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 7A and 22A be read the Second time.

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 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clauses 7A and 22A.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that Schedule 1 be amended..... I am sorry.

CHAIRMAN (in Cantonese): Fine.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Which clause should I move? Madam Chairman, I am sorry.

CHAIRMAN (in Cantonese): Fine. Secretary, you should move that new clauses 7A and 22A be added to the Bill.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clauses 7A and 22A be added to the Bill.

Proposed additions

New clause 7A (see Annex I)

New clause 22A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 7A and 22A be added to the Bill.

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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Schedules 1 to 5.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that Schedules 1 to 5 be amended as set out in the paper circularized to Members. I shall now highlight the main contents of the amendments.

Schedule 2 deals with the appointment of members of the Deposit Protection Board (the Board), their tenure, terms and conditions of appointment and conditions of their removal as well as the meetings and proceedings of the Board. We propose to amend section 2 of the Schedule, by adding a provision to specify that if the Chairman of the Board is unable to perform the functions of his office as Chairman, the Chief Executive may appoint one of the appointed members of the Board to be the temporary Chairman in his place. We have also accepted the Bills Committee's recommendation on amending section 6 of the Schedule, increasing the number required for approving a resolution in writing from "a majority" of the members of the Board to all the members "present in Hong Kong", being not less than the number required to constitute a majority of the Board.

Schedule 5 is on the consequential amendments to the Companies Ordinance, the Banking Ordinance, the Securities and Futures Ordinance and the Securities and Futures (Investor Compensation—Claims) Rules necessitated by

the Deposit Protection Scheme Ordinance. Most of the amendments are consequential or technical in nature. We propose to add new sections 3A and 3B, specifying that the Board is a public body within the ambit of the Prevention of Bribery Ordinance, and that the Deposit Protection Appeals Tribunal is exempt from compliance with sections 5, 6, 7 and 8 of the Electronic Transactions Ordinance like courts and appeal bodies in general. We have also accepted the Bills Committee's recommendation on amending section 6 of the original Schedule, specifying that the Securities and Futures Commission shall be required to disclose information to the Board only when the latter is performing its specified functions.

Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex I)

Schedule 2 (see Annex I)

Schedule 3 (see Annex I)

Schedule 4 (see Annex I)

Schedule 5 (see Annex I)

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 Financial Services and the Treasury be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 5 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading

DEPOSIT PROTECTION SCHEME BILL

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

Deposit Protection Scheme 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 Deposit Protection Scheme 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.

(No hands raised)

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

CLERK (in Cantonese): Deposit Protection Scheme Bill.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Broadcasting (Amendment) Bill 2003.

BROADCASTING (AMENDMENT) BILL 2003

Resumption of debate on Second Reading which was moved on 14 May 2003

PRESIDENT (in Cantonese): Mr SIN Chung-kai, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's report.

MR SIN CHUNG-KAI (in Cantonese): Madam President, I now submit the report on the Bill in my capacity as Chairman of the Bills Committee on Broadcasting (Amendment) Bill 2003 (the Bills Committee).

The Bills Committee had held a total of nine meetings to scrutinize the Broadcasting (Amendment) Bill 2003 (the Bill) and considered the submissions from 13 organizations. A detailed account of the deliberations of the Bills Committee is already given in writing in the report of the Bills Committee and so, I will not repeat the points here.

The Bills Committee agreed that the authorities must take measures to effectively combat pirated viewing of pay television programmes. In general, members of the Bills Committee supported the Administration's proposal to introduce civil remedy and criminal sanction for the possession or use of unauthorized decoders for commercial purposes. Members had also discussed with the authorities a number of policy and legal issues involved, such as the scope of the proposed offence, the relevant presumptions, the defence provisions, and so on, and had made reference to the views of the Hong Kong Bar Association on these issues.

One of the most contentious issues arising from the Bill is whether criminal sanction should be imposed on private pirated viewing of pay television programmes, rather than providing civil remedy only as proposed in the Bill. The Bills Committee noted that a number of television broadcasters, especially the Hong Kong Cable Television Limited (HKCTV), have strongly urged the authorities to criminalize pirated viewing of pay television programmes through the possession or use of unauthorized decoders for private purposes, in order to achieve a stronger deterrent effect, thereby protecting the legitimate interests of operators and consolidating Hong Kong's position as a regional broadcasting hub.

The Bills Committee had listened to the arguments of the authorities as well as those of the HKCTV on whether or not digitization can effectively contain the problem of pirated viewing. The HKCTV cited reports in overseas countries to argue that digitization cannot effectively contain the problem of pirated viewing, for unscrupulous merchants would continuously upgrade their technology to decode the HKCTV's periodic changes of its digital key. The Administration emphasized that if pirated viewing remains rampant after completion of digitization by the HKCTV at the end of the year, it would consider criminalizing private pirated viewing of pay television programmes.

The Administration cited some examples from overseas to point out that the arrangement of targetting actions at possession and use of unauthorized

decoders for commercial purposes as proposed in the Bill is appropriate at this stage. The authorities also pointed out that criminalization of private pirated viewing of pay television programmes would involve certain enforcement difficulties. For example, it might be necessary for law enforcement officers to enter domestic premises to collect evidence and this might have implications on personal privacy. The Administration stated that the views collected during public consultation in 2001 had not indicated majority support for criminalization of private pirated viewing of pay television programmes. Members also noted that the Administration's gradual approach of introducing civil remedy as the first step is supported by the Consumer Council and some professional associations.

The Bills Committee appreciated that the Administration and the industry do not share a common view on the criminalization of private pirated viewing of pay television programmes at this stage, and members noted the arguments of both sides. While the authorities had pointed out that the problem of pirated viewing was ameliorated after the digitization of HKCTV programmes, given that pirated viewing of pay television programmes with the use of unauthorized decoders still existed, the Bill Committee had actively discussed with the authorities various options of sanctions in order to eliminate the problem, including the feasibility of immediate confiscation of unauthorized decoders at the place of sale and imposition of a fixed penalty.

The Bills Committee was particularly concerned that members of the ordinary public can buy unauthorized decoders in certain places in the territory and also outside Hong Kong, for this points to unsatisfactory enforcement actions taken by the Administration and so, enforcement must be vigorously enhanced. The Bills Committee also requested the Administration to review and study the levels of penalty imposed by courts on decoder-related offences, such as the amount of fines imposed, and take any follow-up action as appropriate, in order to enhance the deterrent effect on law offenders.

The Bills Committee considered private pirated viewing of pay television programmes a wrongdoing which must be tackled. The Bills Committee also noted that Mr MA Fung-kwok will propose Committee stage amendments in his personal capacity. The Committee stage amendments seek to criminalize private pirated viewing of pay television programmes. Having considered all relevant factors, a number of members expressed reservations about criminalization of private pirated viewing at this stage. However, members

urged the Administration to conduct a comprehensive review one year after the commencement of the Bill, if enacted.

The Administration has undertaken to follow up the concerns raised by members as well as their proposals. It has also undertaken to review the effectiveness or otherwise of digitization in combating pirated viewing, the implementation of the new statutory provisions and enforcement actions and other related issues 12 months after the commencement of the Bill and to report the findings to Members. The Bills Committee was told that the Secretary for Commerce, Industry and Technology would give an undertaking on the Administration's follow-up actions in his speech during the resumed Second Reading debate on the Bill.

The Administration will propose a number of Committee stage amendments to the Bill. The Bills Committee does not oppose these amendments.

Madam President, this is all for the report made by me on behalf of the Bills Committee. Next, I would like to express the views of the Democratic Party on the Bill.

First of all, the Democratic Party supports the view of the Government. That is, we support the criminalization of commercial pirated viewing and imposition of civil sanction against private pirated viewing. But the Democratic Party does not support criminalizing private pirated viewing at the present stage.

Having said that, however, it does not mean that we would not support this change in future. We would consider this option if the enforcement measures taken by the Administration to combat pirated viewing fail to produce any effect. In fact, the Democratic Party has thoroughly listened to the views of the relevant broadcasters, including the HKCTV, and discussed this issue in detail twice within the party caucus, in addition to listening to the Government's proposal in detail.

We, however, consider it imperative for the Government to take actions in several areas. Firstly, the Government must step up actions against black spots where illicit decoders are sold. In fact, everyone knows where these black spots are. The Government should step up enforcement and report to the Panel

on Information Technology and Broadcasting more often on the effectiveness of its enforcement actions.

Secondly, about court judgement. The penalty imposed by Courts on the sale of illicit or unauthorized decoders has in fact been very lenient. The Government has not taken any follow-up action in this regard to look into whether or not the Court should be requested to review the level of penalty. In respect of the sale of pirated CDs, the Government has taken relevant actions, resulting in heavier penalty for the sale of pirated CDs. So, the Government has actually taken similar actions before. With regard to the sale of illicit or unauthorized decoders, the Government should, in fact, consider taking similar actions.

Thirdly, can we really combat illicit decoders effectively after digitization? In fact, this may not necessarily be as easy as imagined by the Government.

From another angle, the codes or keys can sometimes be tracked down more easily after digitization. When changes are made by the relevant broadcaster, some people can very quickly make corresponding changes to their technology. So, with regard to this problem, if the Government cannot effectively control the places of sale, would it be necessary then to consider taking such measures as entering private domestic premises and criminalizing private pirated viewing? It is still not our wish to see these measures. We still hope that the Government can target actions at the vendors and operators, and this is in our view the best approach. In other words, it is most desirable to target actions at operators who sell illicit decoders in Hong Kong.

I also hope that more resources can be injected into this area of work. It is because from another viewpoint, the operation of television broadcasting is very expensive. There are now 600 000 to 700 000 subscribers to the services of the HKCTV, and these subscribers are paying fees. From another perspective, it appears that the subscribers are subsidizing the pirated viewers, and this is unfair to the paying viewers. So, if we look at it from this angle, the Government must really do something. And from another angle, this industry should be protected, so as to create favourable conditions for this industry to grow and thrive. We must also protect the so-called content creators. This is also imperative.

Nevertheless, it is difficult for us to support the proposal on criminalization of domestic pirated viewing at this stage. That said, I hope the

Government can do better in these several aspects in the coming days, in order to effectively combat illegal acts in respect of sale and operation. We hope that this can be achieved.

With these remarks, I support the Government's amendments and the Bill.

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

MR MA FUNG-KWOK (in Cantonese): Madam President, the purpose of the Government in proposing to amend the Broadcasting Ordinance is mainly to effectively curb pirated viewing of pay television programmes, which is a serious problem. Regrettably, the Government has worked half-heartedly during the entire legislative process. As a result, the amendments proposed by it serve only to criminalize pirated viewing of pay television programmes with the use of illicit decoders for commercial purposes or in the course of business operation, and the Government is unwilling to criminalize domestic pirated viewing of pay television programmes which is even more rampant. This cannot in the least tackle the problem at root. Nor can this effectively combat the problem of pirated viewing. Worse still, this may send a message to the public, that the Government is conniving at pirated viewing of pay television programmes, violating the principle of protecting intellectual property rights. This is indeed disappointing.

At present, pirated viewing of pay television programmes is very rampant in Hong Kong. According to non-official estimates, there are about 100 000 illicit decoders currently in use, and according to the findings of a survey conducted by the New Century Forum as commissioned by me, 30% of the respondents admitted that their relatives and friends are engaged in pirated viewing. If calculating on this basis, the actual number of illicit decoders may even exceed 100 000, a vast majority of which are used for domestic pirated viewing. Now, we target actions only at commercial pirated viewing and seek to criminalize such viewing, but merely provide civil remedy against domestic pirated viewing. But when law offenders are required to pay only a very small amount of compensation and operators find it extremely difficult to collect evidence, we can clearly see that it is difficult for civil remedy to become effective.

Madam President, Hong Kong is a society where the rule of law is upheld. Theft for whatever reasons is absolutely not permitted. While pirated viewing does not involve the stealing of articles, it is no different from theft in nature. Why should an act of theft for commercial purposes be severely punished but an act of theft for private purposes, which is actually more rampant, is tolerated leniently under the same piece of legislation? This is grossly ridiculous indeed. What exactly is our principle in making this piece of legislation?

The Government considers that following digitization of subscription television services, pirated viewing of pay television programmes would become more difficult in respect of the technology and consequently, pirated viewing would be curbed. However, we can see in the market that when digitization of the Cable TV's service is in progress, illicit decoders are already available for sale in the illegal market, and such decoders are capable of decoding the digital encryption technology of pay television services. I have also had some personal experience in this regard, as I found that in the illegal market, there are even more advanced decoders equipped with an auto-roll function to track the signals of pay television operators and hence make changes accordingly. In some advanced countries in Europe and in the United States, digitization is found to be inadequate to deter pirated viewing of pay television programmes. Does the Government have justifiable reasons to drag its feet on legislation? This is doubtful indeed. In fact, the Government has also stated at meetings of the Bills Committee that if pirated viewing is still rampant after completion of digitization, it will not rule out the possibility of criminalizing pirated viewing. I do not understand why the Government, fully aware of the actual situation though, is unwilling to face up to it. Over the past decade or so, the Government has often lagged behind the development of technology in its legislation on the protection of intellectual property rights. Its handling of pirated viewing this time around is another case in point.

In recent years, the Government has attached great importance to the development of creative industries, hoping to develop them as the fifth pillar industry of Hong Kong. Moreover, as Hong Kong has also endeavoured to build up its image as a "city of legitimacy", the protection of intellectual property rights has become increasingly important to the economic development of Hong Kong. The amendments proposed by the Government have nevertheless put across a wrong message to the public, giving the impression that infringement of intellectual property rights will not entail any criminal liability. Is this contrary to our policy?

The Government has stressed that it would combat illicit decoders at source by targetting actions at the supply level, including the import, manufacturing and sale of such decoders. But to date, there have been only a dozen or so cases in which prosecution was successfully instituted under the existing legislation, and as the penalty imposed was very lenient, it is difficult to achieve any deterrent effect. Only some 2 000 illicit decoders have been seized so far. Besides, illicit decoders come mainly from the Mainland, but there is no effective control over the carrying of such decoders into the territory. Moreover, as it is an offence only when the illicit decoders are imported for commercial purposes, this has opened up a loophole in law. As a result, many people have openly brought in or carried with them decoders from the Mainland into the territory, thus causing pirated viewing to become rampant. It shows that if actions are taken only at the supply level and against commercial uses, certainly there will not be marked results. Therefore, I will propose amendments later on, hoping to rectify this blunder in the legislation, and I will explain my views in greater detail then.

If my amendments are not passed, I will abstain from voting on the amendments proposed by the Government.

I so submit. Thank you, Madam President.

MR HOWARD YOUNG (in Cantonese): Madam President, the Broadcasting (Amendment) Bill 2003 tabled to the Legislative Council by the Secretary for Commerce, Industry and Technology today seeks to criminalize commercial pirated viewing of programmes of licensed subscription television providers and at the same time provides for civil remedy. In this connection, the Liberal Party considers that the proposals in the Bill deserve our support, having regard for the principles of commercial operation and respect for intellectual and private property.

We consider that the Bill will provide certain safeguards to the business environment, particularly the business environment in which cable TV operators provide their programmes and the business environment for the performing arts and cultural sectors engaging in the production of programmes. It also has a positive effect on the protection of their intellectual property rights.

However, I would like to express some views on the amendments proposed by Mr MA Fung-kwok. We consider that Mr MA Fung-kwok's amendments are well-intentioned. Insofar as the Liberal Party is concerned, we strongly oppose any practice which encourages or does not deter pirated viewing and infringement of intellectual property rights. We agree that such acts be combated and curbed. Nevertheless, there are several issues which still need to be considered and so, at this stage, we have reservations about the amendments.

First, the amendments propose to extend the scope of criminalization to domestic or private pirated viewing. The Liberal Party is of the view that under the Bill, the scope of criminalization has already been extended to commercial premises, such as bars and restaurants. Insofar as these premises are concerned, enforcement will be easier because enforcement officers can enter these premises, which are public places, anytime. They will know immediately if the people there are watching such programmes and if so, they can check if they are engaging in pirated viewing using a decoder. But if the scope of the legislation is extended to households and individuals, enforcement difficulties may arise because we reckon that only those people who do not have an air-conditioner at home or those living in public rental housing will leave their doors open and brazenly commit pirated viewing of cable TV programmes. Insofar as people in this stratum are concerned, perhaps officers can really be sent there to conduct inspections, for it is possible for them to ascertain right at the spot whether anyone is engaged in pirated viewing of cable TV programmes. But in general, people normally watch television at home with their doors closed. It is very difficult to collect evidence or justifications for prosecution without knocking at the door to request entry.

We feel that criminal legislation targeting at things that take place inside private premises, when implemented, is bound to involve many difficulties in enforcement and in corroboration, and this, the Government will not disagree. I trust Mr MA will neither disagree on this point. Law enforcement officers can enter a premises with a warrant only when they reasonably suspect that a person is breaching or has breached the law at a certain place. The authorities had once proposed to criminalize the purchase of pirated compact discs (CDs) by individuals. At first, we thought that there would not be any big problem, thinking that if the seller of pirated CDs is caught, the buyer can be considered as offending the law knowingly and prosecution can hence be instituted. But when we subsequently looked into this issue in depth, we found that many enforcement

and technical complications were involved and so, implementation was difficult. When discussing criminalization of the purchase of pirated CDs, we were very keen on it at first. I hope Members can learn a lesson from it, and criminalization must not be proposed rashly.

Besides, for legislation involving authorization for entry into private premises to conduct search, it is, in our view, a very sensitive issue, for it concerns the freedoms and privacy rights of the public which are all very sensitive. Therefore, the Liberal Party considers that a decision cannot be taken too hastily or rashly. Otherwise, it may cause strong reactions in society and even spark off scepticism and panic among the public, and the consequences will be far-reaching. Furthermore, if law enforcement officers can successfully obtain a search warrant from the Court to conduct search at a residential premises, it may still cause nuisances to the public or private premises when the search is conducted. In the course of discussion, we did ask the Government if it is possible to obtain evidence without entering residential premises. For instance, we have noted that in places such as Britain, a licence is required for watching television, which means that watching television without a licence constitutes pirated viewing, and the authorities only have to send patrol vehicles to patrol on the street and conduct inspections to ascertain whether or not the television is turned on in a house without having to actually enter the house. We did ask whether this is technically feasible in Hong Kong. That is, insofar as cable TV decoders are concerned, is it possible to detect whether or not the people inside a residential premises is engaged in pirated viewing without entering it, so that enforcement officers will enter the premises only when pirated viewing is ascertained? The Government's reply was that even with the use of present-day technology, nuisance will still be caused to the users in any case, because it is necessary to at least enter the premises, unplug the television cables and install a device before the test can be conducted. So, I think this may give people the impression that since this is feasible, other actions may be possible.

Therefore, we appreciate that Mr MA is well-intentioned in proposing his amendments. The industry has also raised this issue with me, and I have received many letters from the industry and many television broadcasters. The broadcasting industry is always concerned about the scrutiny of the relevant legislation and has often lobbied for Members' support on certain issues, drawing our attention to various possible scenarios. On this issue, the industry has issued a joint letter to express support for Mr MA's amendments. But on

the other hand, I have received a letter from a member of the industry saying that "Concern may arise as to the justification for imposing criminal sanctions on the possession and/or the use of unauthorized decoders." He pointed out that much of the controversy revolves around the proposed criminalization of pirated viewing by individuals, which may give rise to many sensitive issues. He made a counter-proposal, suggesting that in case of users' termination of their subscription to a cable TV's service, the cable TV company should disconnect the cables to make it impossible for anyone to view the programmes by buying an illicit decoder and connecting it with the cables. As far as I know, this is really the practice adopted by some cable TV companies. Some users may all along subscribe to the service of a particular television broadcaster and when he terminates his subscription not because he dislikes the service but because he is moving to another place, he will continue to gain access to its programmes at his new home, but the television cables at his old home will not be disconnected. The cables will remain there, only that the decoder is recovered. In this connection, can this suggestion made by this member of the industry, that is, disconnecting the cables, resolve most of the problem? We think that this proposal is worthy of consideration.

Therefore, at this stage, the Liberal Party disagrees that the scope of criminalization be immediately extended to general households and individuals. But we consider that as a compromise, the authorities should review the amended legal provisions and other measures, say, one year afterwards, focusing on the effectiveness of digitization with the support of substantive evidence, since the authorities often say that there will be no problem after digitization despite Mr MA's claim that the digital keys could still be decoded after digitization. If criminalization of pirated viewing by individuals is really proven to be necessary, then we can reconsider this option.

With these remarks, Madam President, I do not support Mr MA Fung-kwok's amendments.

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, pay television services in Hong Kong used to be provided mainly by the Hong Kong Cable Television Limited (HKCTV). Recently, a number of new pay television operators have launched their services one after another, showing that pay television broadcasting is developing rapidly in the territory. With the launch

of digital terrestrial television a few years later, the market is bound to feature greater diversity. However, the problem of rampant pirated viewing, if remains not solved, will constitute a hidden worry to the operators in their investment. This Bill has precisely created a business environment more conducive to the future development of the pay television market in Hong Kong. The Democratic Alliance for Betterment of Hong Kong (DAB) considers it appropriate of the Government to step up regulation over the use and possession of illicit decoders. Moreover, the Government must pull no punches in eliminating the supply and sale of illicit decoders.

The Bill proposes to provide for both civil remedy and criminal sanction against the use and possession of illicit decoders for commercial purposes. But the relevant organizations are concerned about the leniency of the provisions drafted. In fact, the supply of illicit decoders for commercial purposes is already prohibited under the existing legislation. Such being the case, further extending the scope of regulation to the use and possession of such decoders for commercial purposes should not increase the risks of operators being caught unawares. On the contrary, it can more clearly disseminate the message that pirated viewing of pay television programmes is an offence, making business operators understand that the consequence of pirated viewing is criminal liability. The DAB supports the Government in its efforts to step up enforcement against commercial pirated viewing, in order to demonstrate Hong Kong's determination to protect intellectual property rights, thereby giving assurances to businesses in their investment in Hong Kong.

Criminal sanction is a serious punishment. It is, therefore, necessary to provide for defences. We are particularly concerned about the defence provided for employees. The Bill proposes that apart from proving that he was acting in accordance with his employer's instructions, an employee must also prove that he did not know the device in question was an illicit decoder before he can invoke the defence provision. In view of such harsh requirement of the provision, we are concerned that the defence is impractical. While it is very difficult to make a living nowadays, if the employee, in order to protect himself, asks his employer to prove that the decoder is not illicit before he will be willing to work in accordance with his employer's instruction, I am afraid he can no longer keep his "rice bowl" and he no longer has to worry about committing the offence of pirated viewing then. We urge the Administration to ensure the practicability of this defence, so as to prevent innocent employees from being caught by the law and punished.

Next, I would like to express my views on whether criminal sanction should be imposed on domestic pirated viewing, a point on which Members have expressed concern. Regarding the punishment for pirated viewing of pay television programmes, the position of the DAB is this: The DAB supports the provision of both criminal sanction and civil remedy against commercial pirated viewing. In respect of domestic pirated viewing, imposing a fine on purchasers of illicit decoders is an option that can be considered, and imposing a heavier fine to achieve deterrence will not, in our view, constitute a big problem.

We have persistently upheld a principle, that is, we agree that efforts should be stepped up to combat pirated viewing of pay television programmes. Pirated viewing should not be encouraged, whether it is of a commercial nature or committed in domestic premises. However, from the experience of amending the Copyright Ordinance last year, the imposition of heavy penalty involving criminal charges or imprisonment warrants careful consideration. Before a consensus is reached by all sides, it is indeed inappropriate to make domestic pirated viewing a recordable offence or to criminalize it rashly. It will even cause nuisances to the public if law enforcement officers are authorized to enter domestic premises to conduct search, and will give cause to concern over possible abuse of power in the future.

As a common saying goes, "to catch a gang of bandits, one should catch the ringleader first". Pooling resources together to combat the supply and sale of illicit decoders will definitely achieve more significant results than adopting measures targeting end users. As long as the supply of illicit decoders is rooted out, the problem of pirated viewing of pay television programmes will naturally be solved. We, therefore, consider that we cannot accept Mr MA Fung-kwok's amendments at this stage. But as mentioned at the meetings of the Bills Committee, we will keep a close watch on the situation of pirated viewing after the completion of digitization of HKCTV's transmission, and we agree that the Government should follow up the development in its review report to be submitted one year later.

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

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now call upon the Secretary for Commerce, Industry and Technology to reply.

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

To start with, I would like to take this opportunity to thank Mr SIN Chung-kai and members of the Bills Committee on the Broadcasting (Amendment) Bill 2003 (the Bills Committee) for presenting a lot of valuable opinions during the deliberations on the Bill and for their support to the Bill's proposals.

The Bill seeks to amend the Broadcasting Ordinance (Cap. 562) to criminalize unauthorized access to licensed subscription television programme services in Hong Kong. An offender is liable, on conviction on indictment, to a fine of \$1 million and to imprisonment for five years. The Bill has also provided for civil remedy to enable licensed broadcasters to institute civil proceedings against pirated viewing for commercial purposes or domestic piracy viewers.

The Government will not connive at pirated viewing of subscription television programmes. It is necessary for the Government to enact appropriate legislation to protect the interests of licensed subscription television companies. Existing legislation has provided merely for the import, export, manufacture, sale or let for hire of illicit decoders for pirated viewing. The Bill, if passed, will help us exercise more stringent control on pirated viewing.

At the same time, we are of the view that subscription television companies are obliged to take effective measures, such as complete digitization or effective encryption technology, to prevent pirated viewing.

The Bills Committee has held detailed discussions on whether criminal sanctions should be imposed on domestic and individual pirated viewing. In drafting the Bill, the Government has taken into account the severity of pirated viewing, the outcome of public consultation, the effectiveness of complete

digitization of transmission and adoption of effective anti-pirated viewing technology by subscription television companies, feasibility of law enforcement, similar legislation enacted in overseas countries, enforcement of such legislation, and so on. We hold the view that criminalizing domestic or individual pirated viewing will cause difficulties and disturbance to the public in enforcement. We may wait until local subscription television has switched completely to digitization before considering criminalizing domestic and individual pirated viewing if pirated viewing continues to be rampant. We consider such an orderly and progressive approach reasonable, appropriate and the most readily acceptable to the public.

The Bills Committee has requested the department concerned to strengthen law enforcement to combat the sale of illicit decoders. In this respect, staff of the Office of the Telecommunications Authority will inspect black spots on a weekly basis where illicit decoders are sold. They will, apart from stepping up law enforcement, conduct joint operations with the police to combat the sale of illicit decoders.

Subject to the passage of the Bill, we will report to the Panel on Information Technology and Broadcasting of this Council the effectiveness of digitization in combating pirated viewing and the enforcement situation 12 months after the implementation of the Ordinance.

On the other hand, the Bills Committee was concerned about whether the sentence imposed by the Court on cases involving the sale of illicit decoders can achieve deterrence. We undertake to, after the passage of the Bill, examine the sentences imposed by the Court on decoder-related offences and, without prejudice to judicial independence, evaluate the appropriateness of taking appropriate follow-up action on the sentence imposed in individual cases.

In addition, the Bills Committee has proposed some technical and textual amendments to the provisions to enhance the comprehensiveness and clarity of the Bill. I will propose these amendments which are supported by the Bills Committee later at the Committee stage.

Madam President, I hope Members will support the Bill and the Committee stage amendments to be proposed by me later. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Broadcasting (Amendment) Bill 2003 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Broadcasting (Amendment) Bill 2003.

Council went into Committee.

Committee Stage

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

BROADCASTING (AMENDMENT) BILL 2003

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Broadcasting (Amendment) Bill 2003.

CLERK (in Cantonese): Clauses 1 and 2.

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 3, 4 and 5.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam Chairman, I move that clauses 3, 4 and 5 be amended as set out in the paper circulated to Members.

Let me brief Members on the amendments.

There are mainly three amendments to clauses 3 and 4:

First, to add the expression "without lawful authority or reasonable excuse" in the proposed section 6(1A) to enable a person who possesses unauthorized decoders not for pirated viewing, such as scrap iron collectors, to defend himself.

Second, to add "any" before "trade" in proposed sections 6(3)(b) and 7A to make the meanings of the Chinese and English versions of the legislation consistent.

Third, to amend "持牌人" as "特許持有人" in proposed sections 6(5) and 7(3C) to specify clearly the person referred to is the one authorized by the owner to use the relevant premises, so as to avoid confusion with other television service licensees referred to in other parts of the Ordinance.

The amendment to clause 5 makes two amendments to the proposed section 7A:

First, to provide that where a public officer arrests a person under the law, the public officer shall, without delay, take him to a police station to be dealt with according to the law or deliver him into the custody of a police officer.

Second, to provide that a magistrate may, if satisfied that there are reasonable grounds for suspecting that there is an object in any domestic premises that can be seized under the relevant legislation, issue a warrant. Compared to the original provision referring merely to the existence of an unauthorized decoder in the suspected premises, this provision can better reflect the legislative intent. It will also help public officers in enforcement.

The remaining amendments are all consequential amendments.

All the abovementioned amendments are supported by the Bills Committee. I hope Members can support and endorse these amendments.

Thank you, Madam Chairman.

Proposed amendments

Clause 3 (see Annex II)

Clause 4 (see Annex II)

Clause 5 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 4 and 5 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 3A Sections added.

MR MA FUNG-KWOK (in Cantonese): Madam Chairman, I move that new clause 3A be read the Second time. Today, I propose amendments to the Broadcasting (Amendment) Bill 2003 in the Legislative Council to the effect that pirated viewing of pay television programmes through the possession or use of illicit decoders is made a criminal offence. I have proposed these amendments because being a legislator, I think I must always go by principles and promptly reflect any unreasonable situation so that the mistakes can be rectified. In the course of scrutinizing the Bill, I had repeatedly pointed out that in order to curb pirated viewing which is a tort, it is necessary to impose criminal sanctions against such act. Regrettably, the Government had failed to make a decision

resolutely and Members also had reservations about this. Finally, the Bills Committee did not accept my views.

First, I would like to discuss the standard of social behaviour. We already know that over 100 000 families in the community have been engaged in such acts of tort year in year out. I have misgivings about how the elder members of these families will impart to their next generation the basic morals required of a person of integrity, teaching them that "a person who steals a needle in childhood will steal gold when he grows up", and how they can teach their children to become law-abiding citizens, to respect the private property of other people, not to count on luck and particularly, not to harbour the wish to reap without sowing. We must bear in mind that pirated viewing is no different from theft in nature, and what is more, such an act is being committed persistently. That is, those people are like committing theft day after day, month after month, and year and year. The severity even outdoes the general act of theft and the consequences are far-reaching. I remember that in 1995 and 1996, copyright infringement in Hong Kong was rampant. Some university professors had even written articles in newspapers to openly support the illicit reproduction of books. They said that they had earned their academic status by studying pirated copies of books when they were young, sounding as if they were championing for a right cause. Famous talk-show hosts of radio programmes had also brazenly advocated in the airwave that the purchase of pirated compact discs (CDs) was justified because the pirated CDs are "cheap, beautifully packaged and of good quality", which was sheer sophistry. Thanks to the Government's efforts back then and in recent years in the making of legislation and enforcement of law, the problem of piracy has been curbed and more importance has gradually been attached to intellectual property rights. This fully shows that a good and responsible government must have morals and courage before it can take society forward, or else it would only be condoning and encouraging unhealthy practices and wrong perceptions. As a result, society will eventually pay a price for this.

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

Next, Madam Deputy, I would like to discuss this issue from the perspective of the rule of law. The Government said that the major operator,

the Hong Kong Cable Television Limited (HKCTV), is obliged to upgrade its technology so as to protect its own interest. I think it is perhaps understandable if such comment is made by social commentators. But if the Government holds this view, then it shows that the Government is rather irresponsible. It is the same as cases of women being sexually assaulted on their way home alone at night, or thefts in retail stores and supermarkets, or robberies at banks and jewellery shops which happen frequently. While the community may comment that the victims should have the awareness of protecting themselves and should step up their security measures to reduce crimes, the police absolutely should not and cannot refuse to bring the criminals to justice for whatever reasons. In a society where the rule of law prevails, one of the most important responsibilities of the Government is to protect the people's legitimate property from any form of infringement, and to ensure that corporate investments are safeguarded and corporations can operate in accordance with the law. A line must be drawn very clearly on all this and principles must be set to unequivocally distinguish right from wrong. The Government should not evade its responsibility. As to whether pirated viewing can be effectively prevented technically, it is a question that deserves further exploration. The Government stressed that digitization by the HKCTV can stamp out pirated viewing. The HKCTV transmission to my home has already been digitized, and in order to understand the actual situation, I bought at Apliu Street a month ago an illicit decoder which can decode the digital key of the HKCTV at \$1,100. The reception is clear, and it can decode the digital keys of all channels. Besides, it is equipped with various functions to facilitate users' choice of channels, and after-sale services are also provided for these illicit decoders. In the event of changes to the encryption digital key by the HKCTV, the users can simply return the card for a new one to continue with their viewing. While the righteous is mighty, the sinister is even mightier.

Madam Deputy, many advanced countries allow no condoning of pirated viewing of pay television programmes. In 12 advanced countries, including Britain, the United States, Canada and New Zealand, pirated viewing of pay television programmes is already made a criminal offence. In these countries, pirated viewing of pay television programmes with the use of illicit decoders is liable to a fine or even imprisonment. It shows that criminalization of pirated viewing is basically recognized internationally. It also shows that in the era of knowledge-based economy, enacting legislation to protect intellectual property rights is the direction in which all in the international community are jointly working. Hong Kong is an international city which has all along stressed

adherence to international conventions. Why does it choose to act not in line with the general trend on this issue?

Some people consider that there is very strong resistance among the public to criminalization of pirated viewing of pay television programmes. The Government has often invoked findings of public consultations to point out that public views are diverse over criminalization of pirated viewing, using this as a reason to put off legislation on criminalization, but saying at the same time that a review would be conducted in the future, that it would not rule out the need for legislation, and so on. In fact, according to a survey conducted by the New Century Forum as commissioned by me in recent months, criminalization has the support of the public. Among the 1 100 interviewees, as many as 80% agreed that criminal sanction should be imposed on users of illicit decoders; over 10% even considered that imprisonment should be imposed. This shows that pirated viewing is not agreeable to the majority public.

In fact, the penalty proposed in my amendments is very lenient and mild. A person is liable on conviction only to a fine at level 2 or \$5,000 at the maximum; and according to the Rehabilitation of Offenders Ordinance applicable to minor offences, the criminal record will become hidden three years later. In fact, the opinion poll also shows that over 60% of the respondents agreed with this proposal.

Some people said that in the Copyright Ordinance, no liability is imposed on end-users in respect of various kinds of infringement and therefore, the possession or use of illicit decoders should not be criminalized. This view is, in fact, unreasonable. Strictly speaking, both infringements constitute the theft of intellectual property rights of other people, which is an offence. Copyright infringement is not criminalized mainly because consumers, when using or purchasing CDs, may have difficulties in distinguishing legitimate copies from pirated ones and hence may be caught unawares. So, on the premise that the benefit of doubt should go to the defendant, legislation on its criminalization is inappropriate. However, illicit decoders are used for one purpose only, that is, they are used as a tool of theft. The user is committing an offence intentionally and his motive of attempting to engage in pirated viewing of pay television programmes cannot be more evident and hence cannot in the least be refuted. In this connection, I have proposed in my amendments that it will be a defence for a person if he can prove that he did not know the decoder was illicit, in order to prevent the innocent from being caught by the law.

Madam Deputy, the Government has repeatedly stressed that criminalization of domestic pirated viewing would require entry into a premise to collect evidence by law enforcement officers, a process which involves difficulties and will cause nuisance to the public and therefore, the Government is not inclined to agree with its criminalization. This comment is fallacious in principle. If legislation is given up because of enforcement and prosecution difficulties, many criminal laws would not have been enacted. In this regard, legislation relating to intellectual property rights abounds. I think the Government has exaggerated the extent of nuisance caused to the public. As a first step, enforcement can be stepped up against people purchasing illicit decoders or carrying such decoders into the territory. This can obviate the need to enter a premises to conduct search. Second, under my amendments, law enforcement officers, before entering a premises to conduct search, are required to collect the prima facie evidence of pirated viewing before they can apply to the Court for a search warrant, and the magistrate can issue a warrant only when he is satisfied that there are reasonable grounds for suspecting the committal of such an act inside the premises. This will upgrade the standard of law enforcement and hence avoid causing nuisance to the public.

In fact, many other ordinances in Hong Kong, such as the Telecommunications Ordinance, Theft Ordinance and drug-related ordinances, as well as many criminal laws also empower law enforcement officers to enter premises to conduct search without imposing too many restrictions on them. Could this be a nuisance to the people too? In Britain and Canada, their laws against pirated viewing of pay television programmes also empower law enforcement officers to enter domestic premises to conduct search. It shows that this way of law enforcement is accepted internationally and does not constitute a breach of human rights or privacy.

Moreover, is there very strong resistance among the public to entry by law enforcement officers into premises to conduct search? According to the results of the survey, a majority of the respondents said that they could accept law enforcement officers entering premises to conduct search when they have reasonable suspicion and a court warrant. Furthermore, I believe a vast majority of the people is law-abiding. After the enactment of the legislation, most people will not defy the law. Besides, to effectively combat pirated viewing, an extremely small number of prosecution is already sufficient to bring about a strong deterrent effect. I think there will not be many cases of law

enforcement officers having to enter premises to conduct search for the purpose of law enforcement.

Madam Deputy, rampant pirated viewing has already caused the operators to suffer huge losses and as they also have to inject additional capital for the upgrading of technology, their investment sentiments will certainly be affected. Recently, six major television broadcasters in Hong Kong have jointly requested the Government to criminalize pirated viewing, but the Government has taken an indifferent attitude towards this problem. Is it fair to these operators?

Madam Deputy, the Government has stressed time and again in recent years its intention of developing creative industries as the fifth pillar industry. Among the creative industries, films, television production and the music trade have become increasingly reliant on pay television programmes as a channel for investment returns. Profuse pirated viewing will certainly lead to a drop in the revenue of these industries. This, in the long run, is indeed not conducive to their development. The Government hopes that more investors can be attracted to Hong Kong to invest in the media sector and hence Hong Kong can be developed into a regional broadcasting hub. But rampant pirated viewing has already sounded the alarm to these investors. The Cable and Satellite Broadcasting Association of Asia has stated that concern among suppliers of overseas programmes over the impact of pirated viewing on their operation has directly affected their sentiments in developing their business in Hong Kong.

Besides, the Government's reluctance to criminalize pirated viewing has no doubt put across a confusing message to the public, the industry and the international community, that Hong Kong encourages domestic pirated viewing. This is totally disadvantageous to efforts in maintaining our moral standards in society, protecting intellectual property rights, developing creative industries, and establishing a good international image of Hong Kong as, for instance, the city of publishing. In the course of the deliberations of the Bills Committee on the Bill, I gathered a general understanding of the position of various political parties and colleagues. While they generally share my views, they have many misgivings and, given the fact that this year is the election year, they may have to give more weight to the factor of votes in their considerations. Therefore, it is not easy to obtain the support of Members in the vote. Such being the case, I am pursuing an impossible cause knowing that it is impossible. But in proposing these amendments, I do not expect to achieve my objective in one stroke. I firmly believe that this copyright problem cannot be solved by

technology. Even though my amendments are negated today, I believe the need to make legislation will certainly be brought up again in the near future and will certainly be accepted ultimately. Here, I hope that Honourable colleagues here can once again think about the arguments put forward by me, and I hope Members can support my amendments.

I so submit. Thank you, Madam Deputy.

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 3A be read the Second time.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Commerce, Industry and Technology, do you wish to speak?

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam Deputy, Mr MA Fung-kwok's amendment seeks mainly to impose criminal sanction on domestic or private pirated viewing. I would like to reiterate that under no circumstances will the Government connive at pirated viewing of pay television programmes. However, the progressive approach recommended by the Government is more reasonable and desirable.

We must exercise great care in considering criminalizing certain acts. A wide range of issues must be considered. For instance, is the impact of a certain act on the community in general has become so serious that it must be criminalized? Will there be enforcement difficulties? Can other similar or more effective measures be considered?

The legislative proposal of criminalizing domestic or private pirated viewing will be difficult to implement and intrusive. This is because a law enforcement officer must have reasonable grounds to suspect that an offence is being or has been committed in certain premises before he can apply for a

warrant to enter the premises for law enforcement purposes. Taking such enforcement actions in domestic premises will definitely be intrusive.

Earlier in the debate, Mr MA Fung-kwok introduced to us a survey conducted by him recently on pirated viewing. According to the survey, some respondents support the idea of criminalizing domestic or private pirated viewing. Mr MA has given me a copy of the survey findings for reference. While I very much appreciate the serious attitude adopted by Mr MA in handling this matter, I must point out that the questions put in the survey are quite misleading in nature. Moreover, the survey has not mentioned that pirated viewing has been brought under control subsequent to digitization, the responsibility pay television companies should assume, and whether the orderly and progressive approach proposed by the Government is more desirable. In a public consultation conducted in 2001, the Government put forth a legislative proposal and factors for consideration with respect to combating pirated viewing. The outcome of the consultation revealed that the public was greatly divided on the imposition of criminal sanctions on domestic or private pirated viewing. Of the submissions received, the numbers for and against the idea were almost the same. Even people who in principle supported the imposition of criminal sanction on domestic or private pirated viewing indicated clearly the need for the Government to handle the matter carefully to prevent new legislation from causing disturbance to the public. For the public at large, it is considered more easily acceptable for commercial pirated viewing to be criminally sanctioned. Some members of the industry, including the Motion Picture Association, also support the Government's proposal. Even the Consumer Council does not support the idea of imposing criminal liability on end users. Instead, it is considered better for service providers to overcome the problems by digitization or incorporating state of the art encryption technology.

(THE CHAIRMAN resumed the Chair)

Mr MA mentioned earlier that he possessed an illicit decoder. I hope he will not use it at home. The decoder will become useless after the HKCTV has changed its encoding and upgraded its encryption technology. This will greatly reduce the desire of the public — including Mr MA — to purchase illicit decoders. Our proposal is actually in line with the practice of many countries.

For instance, the European Union Commission specifically proposed in 1991 that television service providers be obligated to apply the most effective encryption technology to prevent pirated viewing. Even in a related directive issued in 1998, the European Union (EU) merely demanded its members to formulate measures to sanction commercial activities' unauthorized access to pay television programmes, not receptors. In a report issued by the EU in relation to the implementation of the directive by its members, the above points were reaffirmed. Moreover, relevant legislation passed in Australia in 2000 pinpoints also suppliers, not users, of illicit decoders.

Even in certain countries where domestic and private pirated viewing is criminalized, such as Britain, the United States and Canada, law enforcement actions are taken against suppliers, not users. The Standing Committee on Canadian Heritage, set up under the House of Commons of the Parliament of Canada, once discussed the difficulties encountered in enforcement against end users. The Royal Canadian Mounted Police, being Canada's law enforcement agency, indicated clearly in a hearing that their enforcement actions would not be directed against domestic and private viewers.

While we consider it essential for the Government to devise an appropriate legal framework to combat pirated viewing, it is also necessary for the industry to assume the major responsibility and take appropriate defensive measures to prevent pirated viewing. Although digitization is definitely not an absolutely safeguard against pirated viewing, all previous illicit decoders have turned completely ineffective after the digitization of television broadcasts. Moreover, even if illicit decoders are now available for sale on illegal markets, paid television companies can switch their codes periodically to render these decoders ineffective and make pirated viewing more difficult, thereby raising costs correspondingly. Since the digitization of HKCTV transmissions, pirated viewing has obviously been brought under control. It might be exaggerated for Mr MA Fung-kwok to proclaim that there are still 100 000 illicit decoder users territory-wide.

I would like to stress that it is not true that the Broadcasting (Amendment) Bill 2003 (the Bill) has not done anything at all to strengthen control on domestic or private pirated viewing. After the passage of the Bill, paid television companies may institute civil proceedings and claim compensation against domestic and private pirated viewers. According to my understanding, American pay television companies generally combat domestic and private

pirated viewing through civil proceedings, whereas actions taken by law enforcement agencies pinpoint the manufacture and sale of illicit decoders.

Furthermore, we do not rule out the possibility of criminalizing domestic and private pirated viewing. However, we are of the view that the last resort of criminalizing domestic and private pirated viewing by legislation is only justifiable when other measures which are less intrusive, more radical and more easily acceptable to the public have been implemented and yet pirated viewing is still rampant. At present, pirated viewing has been brought under control due to gradual digitization by the HKCTV. In future, new legislation will provide paid television companies a reasonable legal channel to claiming damages. Under such circumstances, we consider Mr MA Fung-kwok's proposed stringent law not desirable.

We oppose Mr MA Fung-kwok's amendment and the imposition of criminal liability on domestic and private pirated viewing at this stage.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr MA Fung-kwok, do you wish to speak again?

MR MA FUNG-KWOK (in Cantonese): Madam Chairman, I only wish to briefly respond to the Secretary's earlier comment on my possession of an illicit decoder, as he appeared to be saying that I am going to use it. In fact, I wish to point out that I have two legitimate decoders at home. A month ago, I bought this decoder only to ascertain whether digitization can truly stamp out pirated viewing, as suggested by the Government. I wanted to ascertain this point. In fact, my experience is different. Inside the decoder there is a card. In the event of changes having been made to the digital key by the HKCTV, the card can be taken out and brought to Apliu Street for replacement, and the viewer can continue to engage in pirated viewing. In fact, this decoder is already of no use to me. If the Secretary wishes to know more about the situation, I can give it to him as a gift.

Besides, I mentioned the law enforcement situation. The Secretary said earlier that the Royal Canadian Mounted Police has made it clear that they are not prepared to enforce this law. That they are not prepared to enforce the law does not mean that the law *per se* is non-existent. In this connection, I made

two points in my speech earlier. One is about "possession" and the other is about "use". The Government can consider dealing with the illegal act of possession of illicit decoders first. In this regard, actions can be targeted at inspections at border checkpoints and places where such decoders are sold. Enforcement actions at these two places will not cause nuisances to the public. That the Royal Canadian Mounted Police does not enter a domestic premises to conduct search does not mean that the legislation is repealed. This is one point.

On the other hand, can digitization truly contain pirated viewing? I have already spoken on this point earlier. Over the years, the Government has been lagging behind the development of technology in respect of legislation on the protection of intellectual property rights. In fact, in recent years, regarding the HKCTV's decoders or decoders of pay television broadcasters in other countries, despite repeated claims by the manufacturers that their decoders cannot be decoded easily, it invariably turns out that the digital keys have been decoded over and over again and at shorter and shorter time leads. So, on this problem, I dare say that in the days to come, digitization of HKCTV transmissions cannot solve the problem of new versions of illicit decoders keep emerging in the market. In fact, there is now a rumour, which can be proven soon, that a new kind of illicit decoder as mentioned by me just now is already available in the market, and this decoder can track the signals of the operator and make adjustments accordingly and so, it can tune into the signals in a very short time. I think it is unnecessary to argue over this, for we will see if this is true very soon.

Here, the point that I wish to make, and a point which is actually most important and of the greatest concern to me is the moral standards of our community as mentioned by me at the outset. There are now so many families using an illicit decoder. Earlier on the Secretary questioned my remark about 100 000 decoders currently in use. I believe no one can possibly make an accurate estimate of the number. But whether it be over 100 000 or less than 100 000, this is not important. The important thing is that many families are continuously engaging in such tortious act and very often, such an act is committed by the whole family either intentionally or unintentionally. How can we nurture our next generation in such an environment? That is the important issue. In addition, such infringement is persistent and as I said just now, they are stealing day after day, month after month, and year after year, and as a result, they do not think that this is a problem at all. This is the problem that we face now. Why do I say that the proposed legislative amendments are far from harsh and the penalty is only mild and lenient? It is because the maximum penalty

will be a fine of \$5,000 only. A subscriber of the HKCTV has to pay at least \$2,000 to \$3,000 a year. So, this level of penalty is equivalent to only two years of subscription fees at most. Furthermore, the Judge will have discretion over such cases and can even settle a case by imposing a fine of \$500 only. In the meantime, the criminal record will become hidden three years later in accordance with the Rehabilitation of Offenders Ordinance applicable to minor offences. That is, the record will then be cleared. Therefore, the amendments only serve to produce a deterrent effect, rather than imposing harsh punishment on the offenders. I only hope to draw a line in society and set a standard for social behaviour, with a view to distinguishing right from wrong.

Again, I wish Honourable colleagues could seriously consider changing their original position and support this amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 3A be read the Second time. 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): Council now resumes.

Council then resumed

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

BROADCASTING (AMENDMENT) BILL 2003

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

Broadcasting (Amendment) Bill 2003

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 Broadcasting (Amendment) Bill 2003 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.

(Mr MA Fung-kwok raised his hand)

MR MA FUNG-KWOK (in Cantonese): I said earlier that I would abstain in the vote. I hope to put this on record.

PRESIDENT (in Cantonese): Mr MA, if that is your wish, you should have claimed division at the vote, in which case Members could express their stance and your intended abstention in the vote could then be put on record.

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

CLERK (in Cantonese): Broadcasting (Amendment) Bill 2003.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee on the time limits for Members' speeches. As Members already know these very well, I shall make no repetition here.

First motion: Requesting the Chief Executive to submit a supplementary report to the Standing Committee of the National People's Congress.

REQUESTING THE CHIEF EXECUTIVE TO SUBMIT A SUPPLEMENTARY REPORT TO THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS

MR FREDERICK FUNG (in Cantonese): Madam President, regarding this topic for debate today, some Members may think that it is obsolete or behind the times, since the Standing Committee of the National People's Congress (NPCSC) has made a decision already. But if Members take a closer look at it, they will find that our discussion today is based on two circumstances and that is why I still consider this debate necessary.

The first circumstance is that when the Chief Executive, Mr TUNG Chee-hwa, submitted his report to the NPCSC, I already submitted this motion to the Secretariat in the first instance. Today is the day when a slot can be assigned for debate in this Council within the shortest time since the end of this Council's recess in March, only that the speed at which Mr TUNG had submitted his report and the NPCSC made a decision was faster than that of our procedures for conduct of council business, thus making it impossible for us to promptly propose a motion under the existing procedures. It can be said that I was held up by the system.

The other circumstance is reflected in my motion which consists of two parts. The first is about whether the Legislative Council accepts the report submitted by the Chief Executive to the NPCSC, whereas the second part obviously urges that a supplementary report be submitted to reflect Hong Kong people's aspiration for universal suffrage in 2007 and 2008. The first part concerns the attitude and position, and I think these can be discussed in this Council. On the second part, even though the NPCSC has already endorsed the report, my view is that when the NPCSC is about to make a decision, should the SAR Government present to the NPCSC objective views that can practically reflect the public's opinions on universal suffrage in 2007 and 2008 and submit a report based on scientific studies or research? I think this is a point worthy of our discussion.

Madam President, insofar as this motion is concerned, I think it consists of several parts, for this topic actually involves several incidents. The first incident is the NPCSC's announcement on 26 March on the interpretation of the Basic Law on 6 April. The second incident is that our Chief Executive, Mr TUNG Chee-hwa, has proposed two new mechanisms outside the Basic Law in response to the interpretation of the Basic Law. One of the mechanisms is that in order to review the political system of Hong Kong, a report by the Chief Executive TUNG Chee-hwa is required; and the other is that the NPCSC will decide on the basis of this report whether to trigger the process of constitutional review. So, this is the second part. As for the third part, it concerns the decision of the NPCSC and how it is related or unrelated to Mr TUNG Chee-hwa's report, particularly how their views are related. Certainly, the fourth part related to this topic is the possible effects of the decision made by the NPCSC based on the report of the Chief Executive, Mr TUNG Chee-hwa, on the community of Hong Kong.

Certainly, I think these four parts are within the scope of the motion and can therefore be discussed. But I cannot go into all the four parts in detail in my discussion and so, I will particularly focus on the most relevant ones and discuss them in my speech. For those which may be less significant, more remote or more indirect, I will not discuss them here.

Madam President, on the interpretation of the Basic Law, since it is not the most important issue in the context of our discussion today, and as I already spoke on this earlier, I am not going to repeat this point here. On the second

part, that is, insofar as the report is concerned, I remember that during an adjournment debate on 22 April, I actually made some comments and expressed views on items (vi) to (ix) of the report. I am not going to repeat my views today and Members may refer to my remarks on that day. Indeed, many colleagues also put forth their views on items (i) to (v) on that day. Although I may still discuss this in the context of this motion today, I do not wish to repeat the points today. Instead, I think more attention should be given to how our SAR Government dealt with this report after its publication. I think it is worthy of our discussion here.

From the publication of this report to its submission to Beijing, the entire process took less than 48 hours. Although the Secretaries of Department and the Director of Bureau, namely, Chief Secretary for Administration Donald TSANG, Secretary for Justice Elsie LEUNG and Secretary Stephen LAM, who are responsible for the constitutional review, all said that the report was compiled on the basis of previous consultations and their results, I think some of the points were not elaborated in great depth during consultation. This can be seen from the questions put to us by the Task Force. For example, concerning "gradual and orderly progress", were public views sought on whether to include such conditions as "step by step", "should not be too fast", and so on? For another example, on the lack of talents, did they ask for our view on whether talents in Hong Kong were lacking during the consultation? Or were we consulted on the relationship between a democratic system and the economic system? These questions were not put to us to encourage discussion in the course of consultation. So, as these questions are asked only after the publication of the report, I think it will be better if another round of consultation can be conducted; and at least I can see that the NPCSC has done this. It is because after receiving the report from the Chief Executive, the NPCSC responded by convening a meeting of the NPCSC on 25 and 26 April in order to make a decision, and the NPCSC further consulted the views of local Deputies to the National People's Congress (NPC), local members of the National Committee of the Chinese People's Political Consultative Conference, and leaders of organizations on the 21st and 22nd.

Why could the NPCSC make these arrangements within such a tight timeframe? In fact, the date of the submission of the report to the NPCSC should theoretically be controlled by the SAR Government. The SAR Government can submit the report in 48 hours and it can also submit it two weeks later. If the SAR Government decided to submit it two weeks later, then it would have sufficient time to conduct consultations. But if the report would be

submitted in 48 hours, certainly there would not be time for consultation. Is it the reason for insufficient consultation? In our meeting with Mr LI Fei, Vice-Chairman of the Legislative Affairs Commission of the NPCSC, in Shenzhen on the 22nd (of April), we found that the Legislative Council, according to Mr LI, is not included in the advisory mechanism of the NPCSC, because consultation with us comes under the mechanism of the SAR Government. From this, we can see that the Legislative Council appears to have been entirely excluded from this advisory mechanism. It has long been our impression that under the existing system, the NPCSC does not conduct any consultation and that it does whatever it likes and makes decisions on its own. But on this issue, it appears that the NPCSC has done even better than our SAR Government, particularly the three-member team.

The third point that I wish to mention is, in my view, quite important. It is about the relationship between the NPCSC's decision on 26 April and the Chief Executive's report. Let me now provide a chronology of the events to you, Madam President, on what happened from the interpretation of the Basic Law to the making of the decision by the NPCSC.

26 March	We learned from newspapers of the NPCSC's intention to interpret the Basic Law
6 April	Interpretation of the Basic Law
8 April	Publication of report and visit to Beijing the next day, that is, on the 8th (of April)
21 and 22 April	Consultation by the NPCSC in Shenzhen
26 April	Decision made by the NPCSC

To us, these events took place very quickly. They took place so quickly that everything was completed within just 30 days. With regard to the steps taken on these dates, was each step decided only after the previous step had been taken or were all the steps decided right at the beginning of the first step? These two approaches are different. It is because if, in the beginning, a step was decided and after the second step, the third step was decided only then, the Chief Executive actually could have flexibility in timing the submission of the report to Beijing. But if it was decided right from the start that everything must be completed within 30 days, then there would be no room for flexibility. If the report was not submitted in 48 hours but was submitted only two weeks later, how could the NPCSC make a decision on 26 April? So, this is actually a very

important point. I hope that in his reply later on, Chief Secretary Donald TSANG can tell us whether discussion had been held with the NPCSC on the timing and the dates. If not, why not? If these issues had been discussed, why did he not reflect the situation to them and put off the submission of the report to, say, two or three months later?

More amazingly, Mr TSANG Hin-chi, a local Deputy to the NPCSC, had openly told the media that the NPCSC had actually discussed and talked about the Chief Executive's report before its submission and so, the report would very likely be endorsed at the NPCSC meeting to be convened. Certainly, I am just citing from reports by the media and not quoting the exact wording of Mr TSANG Hin-chi. But this is indeed what he meant.

After this was reported in the media, I, being a Hong Kong believer and a Member of the Legislative Council, felt that if what Mr TSANG Hin-chi had said was true, then I thought the events that had taken place in those 30 days were just a play in which the whole of Hong Kong, including we Members of the Legislative Council, had co-starred with the NPCSC. The script was prepared beforehand, the dates were fixed, and everything was decided and arranged. But if Mr TSANG Hin-chi's words are not true and he openly made such remarks on that night only because he liked to, then I think the SAR Government has failed to do one thing, and particularly, Mr TSANG Hin-chi has failed to do one thing, that is, they should come forth to clarify that these were only the personal comments of Mr TSANG Hin-chi, that it was not the case and that what he said was untrue or the report was not published after everything had been discussed and settled. If no clarification has been made, does it mean that his remarks are true? I think they do owe us an explanation.

Madam President, I must thank you for permitting me to move a motion on adjournment for a debate to be conducted on 22 April, so that the report could be discussed without showing of hands. Madam President, you may recall that in his reply on that day, Chief Secretary Donald TSANG gave some very important remarks. He told us that the nine principles were merely rules with no binding effect. However, he told us that if the future proposal was in line with these nine principles, it would stand a high chance of passage; but if they did not meet these nine principles, even though it was not opposed by this group of people, it would highly likely be rejected by another group of people, and the proposal would stand little chances of passage.

Second, he even emphasized that universal suffrage in 2007 and 2008 was entirely permissible in this report and that the door to universal suffrage was not closed. I wonder if Chief Secretary Donald TSANG remembers that he had made those remarks. As Chief Secretary Donald TSANG dared to make such remarks in this Chamber, all I can say now (with the benefit of hindsight) is that I admire such naivety of Chief Secretary TSANG. But I do not like such naivety. I admire him in that he had said something in which he believed but things that will not come true in reality. But he had the boldness to say it. That is what I consider admirable.

What of him is not admirable then? We are members of the political arena and Chief Secretary Donald TSANG has even reached the level of a Secretary of Department. Does he really have to be so naive? In fact, the final outcome is that the NPCSC has not listened to the remarks of Chief Secretary Donald TSANG at all and has completely rejected his views and categorically ruled out universal suffrage in 2007 and 2008. Adding to this the remarks of Mr TSANG Hin-chi, I have come to note many problems. If what Mr TSANG Hin-chi said was true, is it that the SAR Government had already agreed with the Central Government on a collaborated act? If so, Chief Secretary Donald TSANG, in making his remarks on the 22nd (of April), was only reading out what he was supposed to say from the script. It is all because a villain and a hero were required in the play, and Chief Secretary Donald TSANG was playing hero and the NPCSC the villain, for the former still has to face these 60 Members of the Legislative Council of us.

If the remarks of Mr TSANG Hin-chi, a local NPCSC Deputy, are not a reflection of the facts, I would still think that Chief Secretary Donald TSANG, being the team leader, has failed to perform his duties. Why? It is because in the policy address the Chief Executive, Mr TUNG, mentioned that the most important objective of tasking Chief Secretary Donald TSANG with the leadership of this team was to understand the concerns of the Central Authorities in relation to the political system. The conclusion made by the Chief Secretary on the 22nd (of April) has turned out to be in such conflict with the decision made on the 26th. Does it mean that the team has failed to grasp their concerns? Does it mean that the Central Authorities do not trust the Chief Secretary? Did the Chief Secretary contact the wrong persons and was therefore unable to find out the position and attitude of the Central Authorities? Why could there be

such an outcome in just four days' time? If it is not dereliction of duties on the part of the Chief Secretary, the Chief Secretary must be short of authority. That is, his place should have been taken up by the Chief Executive, Mr TUNG.

On the fourth part, Madam President, I said that the NPCSC — I have omitted a point, that is, the third part, and I wish to add that a main point reflected by this report is Mr QIAO Xiaoyang's visit to Hong Kong. Mr QIAO's comments at the Hong Kong Convention and Exhibition Centre were in great conflict with the views of the Chief Secretary. He said that Hong Kong people do not have sufficient knowledge of "one country, two systems" and the Basic Law. But in Chapter 3 of the Second Report, in particular paragraph 3.18, Chief Secretary Donald TSANG said that Hong Kong people had been doing just fine in this regard. He said that "one country, two systems" has been implemented, that Hong Kong people's sense of belonging and their identification with the country have been enhanced, and that under the safeguards of the Basic Law, Hong Kong people like to participate in various affairs for the associated benefits. But then, we have all been bashed over our head, for he said, "No! Sorry. Hong Kong people know nothing about 'one country'!" Why did all this happen? So, Chief Secretary Donald TSANG, this report is not only unacceptable to us; it transpires that not even the NPCSC has accepted it.

Madam President, that is all for now. Thank you.

Mr Frederick FUNG moved the following motion: (Translation)

"That this Council does not accept the report submitted by the Chief Executive ("CE") to the Standing Committee of the National People's Congress, and is dissatisfied with the nine factors proposed therein regarding constitutional reform, as such a move is tantamount to setting up more barricades hindering the implementation of universal suffrage in Hong Kong and hampering the development of democracy; at the same time, this Council urges the CE to consult Hong Kong people immediately and submit a supplementary report which fully reflects the opinions of the public, so as to meet Hong Kong people's expectations of electing the CE and all Legislative Council Members by universal suffrage in 2007 and 2008 respectively."

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

MR NG LEUNG-SING (in Cantonese): Madam President, in discussing this motion, we must above all not depart from the legal basis. With regard to the decision made by the NPCSC on the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008, its constitutional basis is firstly founded on the provisions of the Basic Law governing the constitutional development of Hong Kong, and the relevant constitutional powers and responsibilities of the NPCSC. Secondly, the legal basis comes from the NPCSC's recent interpretation of certain provisions of the two Annexes to the Basic Law. Some people may question that, according to the contents of the interpretation, the NPCSC can only make decisions on the Chief Executive and the Legislative Council.....

PRESIDENT (in Cantonese): Mr Fred LI, do you have a point of order? Mr NG Leung-sing, please sit down first.

MR FRED LI (in Cantonese): May I ask, on the Agenda of the Council meeting today, if it is the Chief Secretary for Administration who should speak first? I have read.....

PRESIDENT (in Cantonese): What do you mean?

MR FRED LI (in Cantonese): I have read page 14 of the Chinese version of the script. After the President has said "That the motion moved by Mr Frederick FUNG be passed", it should be the turn of the Chief Secretary for Administration to speak. Is there a typo or is it because of some other reasons?

PRESIDENT (in Cantonese): Mr LI, I am sorry, we have a new script, which should have been distributed to you. Maybe you have just overlooked it. Please take a look at it first.

Mr NG Leung-sing, before you continue, I would like to remind Members that our motion today is moved by Mr Frederick FUNG who requests the Chief Executive to submit a supplementary report to the NPCSC, and our discussion today is not on the decision of the NPCSC. I think you may be aware that Mr Albert HO has already submitted another motion on the decision of the NPCSC, which is being considered by me.

Mr NG, please continue.

MR NG LEUNG-SING (in Cantonese): Madam President, should I start all over again, or should I just carry on?

PRESIDENT (in Cantonese): It is up to you. You have up to seven minutes.

MR NG LEUNG-SING (in Cantonese): Maybe I just carry on with my earlier speech. This time someone queries the interpretation, thinking that the NPCSC can only decide whether there is a need to amend the methods for selecting the Chief Executive and for forming the Legislative Council, but not specifying how they should be amended. Although the President has reminded us of the need to note that today's question is on the contents of the Report, yet as the contents of the Report have brought up the issue of whether it is necessary for the NPCSC to promulgate an interpretation, I would like to make a brief explanation here.

As stipulated in the two Annexes to the Basic Law, any amendment to the electoral methods and the reporting of the same to the NPCSC for approval and for the record must be proceeded with according to the Basic Law, it is natural that the exercise of this authority would ultimately involve determining whether and how the electoral methods will be amended, and this is the legal authority vested in the NPCSC. We also believe that, in making this directional decision, the NPCSC has helped clear the way forward for the Hong Kong Special Administrative Region (SAR), so that we can make better arrangements without going through a tedious process of arguments and disputes.

As for election universal suffrage — as the Report mentions the conditions for implementing universal suffrage — it is opined that the implementation of universal suffrage will help boost the acceptability of the Chief Executive, which would help solve the prevailing problems in the operation of the constitutional system. Just as Deputy Secretary-General of NPCSC QIAO Xiaoyang had said subsequently, acceptability comes after all from recognition by the Constitution and the constitutional laws. This is the basis of the rule of law or the root of the rule of law. Therefore, if we want to detach such issues from the constitutional system and laws, and challenge the issue of constitutional arrangement brought about by the relevant reports, including the acceptability of the Chief Executive, I think we must pay attention to the issue of legal basis.

Regarding the fact that the NPCSC had made reference to the relevant contents of the Report before making this decision, and as the Report can guide the NPCSC into making a better decision and is helpful in showing us early a clear picture of the path of constitutional development in Hong Kong, there comes at least the benefit of reduced political disputes, be they local or international in nature, caused by different interests or motives, thereby enabling Hong Kong to concentrate its energy on matters related to financial affairs and people's livelihood. This is a development compatible with the long-term interests of Hong Kong.

In fact, the "high degree of autonomy", freedom and democracy enjoyed by Hong Kong after the reunification have not been undermined, but enhanced substantially instead, as compared with the situation in the colonial era. We can see that some local political figures, out of consideration of their personal interests, just stress the "two systems", but resist "one country", refusing to accept the status, authority and responsibilities of the Central Authorities under the constitutional framework of "one country, two systems". But on the other hand, they are enjoying the benefits brought about by the high degree of autonomy in political, legislative and judicial aspects upon the resumption of sovereignty by the State. If we really want to serve the best interests of the people, if we want to allow this Report to bring us better prospects, then do the actions of these people help to make the political and economic development of Hong Kong smoother or are they trying to induce more disputes arising from mutual distrust, thereby making the political situation more complicated and difficult? I believe Hong Kong people with a sensible mind can make a clear comparison.

Many members of the public agree that the democratic development of the SAR must progress in compliance with the Basic Law, that is, it has to progress in the light of the actual situation and in a gradual and orderly manner. And such development must not seek to achieve the ultimate goal in one single step. The Report has already listed out several points to explain the actual situation, from which one can easily see that the conditions are not yet ripe for the implementation of universal suffrage in 2007 and 2008. In the long-term and overall interests of Hong Kong, we must note the two following aspects in our consideration of the actual situation. First of all, the realization of the "one country" principle against the context of "two systems" as well as our good co-operative relation and link with the Mainland. However, in reality, even the legislation on safeguarding national security in the SAR could not be passed in this Council last year. Even for such most fundamental concepts or ideas, there is no mature understanding and acceptance in the SAR. Secondly, the actual situation we must take into consideration also includes this question: On what basis can we guarantee that the original capitalism in Hong Kong can remain unchanged? For example, the success of Hong Kong is attributable to its low tax regime, so how can we address welfarism, which is likely to be brought in by universal suffrage or the future constitutional development as mentioned in the Report? What can we do to guarantee that the commercial and industrial sectors — the commercial and industrial sectors of Hong Kong — which have made very substantial contribution to the local economic development can have a say in the political system? Unlike the allegation made by certain people who aim at polarizing the community, members of the commercial and industrial sectors and middle-class professionals are not seeking to enjoy political free lunches. On the contrary, they contribute the great majority of tax revenue of Hong Kong, thereby making tremendous contribution to public finance. They work hard to provide employment opportunities to the community and promote the development in different aspects of the economy. If this is called a political lunch, it must be a very expensive lunch.

Here, I still want to discuss the Report. This Report, submitted by the three-member Task Force, ensures that the NPCSC will make decisions on the future constitutional development of Hong Kong which will cater more to the long-term and overall interests of the territory. And I also believe that, all the

people who care about the long-term interests of Hong Kong will agree that this decision made by the NPCSC for the SAR is right.

Thank you, Madam President.

DR YEUNG SUM (in Cantonese): Madam President, I speak in support of the motion moved by Mr Frederick FUNG.

The Democratic Party does not accept the Report on constitutional development submitted by the Chief Executive mainly for three reasons. Firstly, before the Report was submitted to the Central Authorities, no extensive public consultation had been held to gauge public opinions. This left us with the impression of a "black box operation". Secondly, the Report had not adequately reflected the mainstream public opinion in Hong Kong, because Chief Secretary for Administration Donald TSANG had said in his report that basically the mainstream opinion of the people was in favour of implementing universal suffrage for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008. Thirdly, this Report had imposed additional barricades to hinder the implementation of universal suffrage in 2007 and 2008. Due to these three reasons, the Democratic Party supports the motion moved by Mr Frederick FUNG in not supporting this Report by the Chief Executive.

Madam President, in fact, this Report of the Chief Executive, apart from making the three above errors, has made us feel that the Chief Executive has surrendered the "one country, two systems" and the "high degree of autonomy" of Hong Kong, betraying the Basic Law which allows Hong Kong people to practise the principles of "one country, two systems" and "high degree of autonomy". That the Chief Executive, together with our three-member Task Force, has surrendered our "high degree of autonomy" makes us feel most sorry. Soon afterwards, the Central Authorities proceeded quickly to endorse this Report. Regarding the contents of the decision of the NPCSC, I shall save my exposition for the next motion debate to be moved by Mr Albert HO. However, I can say briefly that it is the Central Authorities that have ruined "one country, two systems" in Hong Kong with their own hands.

While Premier WEN Jiabao has proposed to implement the economic macro-control measures, it is really unexpected that the Central Government has also implemented macro-control measures in the political context and proceeded at a lightning speed to deprive the people of their rights to selecting the Chief Executive in 2007 and forming the Legislative Council in 2008 both by universal suffrage. Now Chief Secretary for Administration Donald TSANG will soon present his Third Report to ask the people of Hong Kong to submit proposals on constitutional development. Hong Kong people can only make amendments within the parameters of a restricted framework.

Madam President, as we look back on the '80s, a group of friends and I came forth for the first time to support the resumption of sovereignty by China. This was because we thought that the colonial history under the unequal treaties should come to an end, and the time is up and Hong Kong should be returned to China. Of course, what we referred to at that time as China was not restricted to any specific political regime. When my mind turns back to the current time, I find that I still have some emotional ups and downs, though Hong Kong has already been reunited with China for seven years. At that time, when we supported the resumption of sovereignty by China, we also put forward the message of democratic reunification and presented some concepts on the democratic governance of Hong Kong. Subsequently, under the leadership of Mr DENG Xiaoping, some slogans were put forward and the Basic Law was implemented, fully realizing "one country, two systems" and the "high degree of autonomy". Therefore, we can see that, at that time, the Basic Law and the Sino-British Joint Declaration were widely supported by overseas people. It was exactly for this reason that I, together with my friends in United Democrats of Hong Kong and the Democratic Party, had all along supported "one country, two systems" and done our best to pursue the implementation of the "high degree of autonomy", so as to realize the promises pledged in the Basic Law. However, Madam President, by now, I can say that some fundamental values of Hong Kong have already been ruined tremendously.

First of all, the Government does not respect the public opinions of Hong Kong people. The Report of Mr TSANG also mentioned that most of the people supported the implementation of universal suffrage for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008. However, Madam President, please take a look at the Report of the Chief Executive. Has this been reflected in it? Hong Kong people attach great significance to an open

government, and think that it is important to have some reasonable procedures, that is, the due process, as often mentioned by Miss Margaret NG. Let us examine the approach adopted recently. Has the SAR Government or the Central Government ever respected Hong Kong people by adopting an open and reasonable process to handle the issue of constitutional development? Can you feel that a practice is in place that makes you feel that you are subject to an overwhelming opposition force, "power is superior to truth" and a "top-down" dictatorship? Has such a practice ruined the fundamental values of Hong Kong people completely? Once is already too much, Mr TSANG.

Secondly, Madam President, I would like to discuss item (vii) in the Report of the Chief Executive, which says that, (the amendments must) enable different sectors of society to participate in politics through various channels. I feel that this point in fact has highlighted the significance of functional constituencies. Actually I also want to discuss the remarks of NPCSC Deputy Secretary-General QIAO Xiaoyang and Vice Chairman of the Commission of Legislative Affairs LI Fei. However, I shall reserve this part for my speech to be delivered in the motion debate to be moved by Mr Albert HO. Anyway, item (vii) in the Report of the Chief Executive did highlight a kind of privilege enjoyed by the commercial and business sectors in Hong Kong. The privilege is "the rich has the final say". Mr TSANG, such a practice has really dealt a heavy blow to us, the people of Hong Kong because we Hong Kong people attach great significance to one's own "abilities". We never think "family background" is important, nor is "social class". Whoever has the good abilities, he will excel and emerge the winner because we all believe in "meritocracy". However, the Chief Executive — I shall come back to discuss the allegation of NPCSC later — now basically highlights the privilege of the commercial and industrial sectors. They enjoy the best of political free lunches. They do not take part in politics, nor are they prepared to do so. Yet they impede the implementation of universal suffrage. We feel most sorry about this indeed.

Thirdly, I think that the Government has not insisted on adhering to "one country, two systems", and instead, surrendered the lead to the Central Authorities in the constitutional development of Hong Kong. Madam President, in fact, I feel the Central Authorities' endorsement of this Report has led to several major consequences which make Hong Kong people hold an increasingly strong dislike of the Central Authorities. Recently, an opinion poll conducted by the University of Hong Kong reveals that the people's dissatisfaction with the

Central Authorities has obviously escalated. This is indeed rather unfortunate. Besides, I believe what the Central Authorities had done this time will completely deprive China of the chance of making use of "one country, two systems" as a means to fulfil its ideal of a peaceful reunification with Taiwan. Madam President, most important of all, and it is our greatest regret, the governance crisis of the Government will continue. Mr TSANG mentioned in his report that the Chief Executive did not have the co-ordination from Members in the Legislative Council; the lack of co-ordination and harmony between the executive authorities and the legislature remains not solved to date. In other words, the governance crisis of the Government will continue. However, lastly, I just hope that Hong Kong people can rely on themselves in seeking a better future, and insist on pursuing democracy and freedom through peaceful means.

Thank you, Madam President.

MISS MARGARET NG (in Cantonese): Madam President, I speak in support of the motion moved by Mr Frederick FUNG, to express the view that we do not accept the Report submitted by the Chief Executive to the NPCSC.

Certainly, Mr Frederick FUNG has given his reasons in the motion for not accepting the Report, because those nine factors have set up barricades hampering the development of democracy. Needless to say, I agree to this point.

However, I would like to raise another point, that is, this Report of the Chief Executive is actually irrelevant, and has exceeded the scope of the interpretation of Annexes I and II to the Basic Law promulgated by the NPCSC on 6 April, and is illogical. The interpretation handed down by the NPCSC on 6 April deals specifically with the several words "if there is a need". As such, the Report of the Chief Executive should raise only one question, that is, whether there is a need to amend the present methods for selecting the Chief Executive and for forming the Legislative Council. If any supplementary explanation is required, it should go on to analyse the actual reasons for the need to make amendments. In other words, the discussion should be on the problems in the current systems: Why do the existing methods for selecting the Chief Executive and for forming the Legislative Council lead to problems in the present systems, thus making it necessary to make amendments? This is the only question that

should be raised for discussion in the Report of the Chief Executive. Yet, this is an issue that has never been mentioned in the Report of the Chief Executive.

It is alleged that the Report of the Chief Executive was compiled on the basis of the Second Report of the Constitutional Development Task Force. However, neither has the Second Report mentioned the above arguments. Instead, it tries to protect the existing systems, saying how good they are and the problems arising in the past were only caused by some other factors such as the economic restructuring, many structural problems, the financial turmoil, the SARS outbreak, and so on. But nothing has been mentioned on what kinds of problems have arisen in relation to the methods for selecting the Chief Executive and for forming the Legislative Council, so that there is a need to amend them.

Of course, it cannot be like that. What kind of consultation did the Second Report cover in its discussion? The consultation in question did not ask Hong Kong people whether there was a need to change the present systems. Instead, it just invited Hong Kong people to put forward their views on the relevant principles and procedures of the Basic Law. No wonder the respondents would not say whether there was a need to make amendments. Or even if someone did make such comments, they would not be treated as a major issue for discussion. In fact, all the various kinds of principles, frameworks and procedures of the Basic Law, and so on, mentioned in the Second Report do not constitute the major justifications for amendments. They are always there, and will exist permanently, and will remain unchanged for 50 years. Unless changes are made to the Basic Law, such principles will continue to exist, and will stay permanent and remain unchanged. They will not be affected by what you say on whether there is a need to make amendments. Therefore, the only relevant part is paragraph 3.21 of the report of the Task Force. Madam President, let me quote paragraph 3.21, it says, "Against this background, there is a body of opinion in the community which aspires for more room in the political structure, to allow the public to express their views actively, to participate in public affairs, and even to participate directly in choosing the Chief Executive. A number of political groups in the community have transformed these aspirations into calls for the introduction of "two direct elections". Their belief and premise are that introduction of universal suffrage could resolve the present problems of governance. Recent opinion polls have indicated that more than 50% of those polled are in favour of selecting the Chief Executive by universal suffrage in 2007, while around 60% of those polled support election of all members of the Legislative Council by universal suffrage in 2008. At the

same time, considerable reservations exist in the community. There are those who take the view that premature introduction of universal suffrage would not help to resolve the problems of governance; neither would it resolve economic and livelihood issues which are real and substantive. That said, there appears to be a consensus in the community that constitutional development should proceed, and that the methods for selecting the Chief Executive and for forming the Legislative Council should be amended." It means that, though there are discrepancies in public opinions, the mainstream opinion after all is still in support of democratization, and the conclusion is still in favour of the need to make amendments.

In fact, other parts of the Second Report are full of rhetoric which is in essence on how to restrict public opinions requesting for amendments. Madam President, another reason why I object to and do not accept this Report of the Chief Executive is the great haste involved in its submission. It is totally lacking in transparency and accountability, nor has it conducted any public consultation on it. Many Honourable colleagues have already spoken on this point. The Chief Executive relied on the Second Report, but this Second Report, as I have said, was compiled not for consultation on the several words of "if there is a need". After it was released, it served another purpose. Upon its release, there was no opportunity for the public to discuss the relevant report, so as to point out whether the report was correct or otherwise, and then it was finalized. Apart from reflecting the viewpoints expressed by others, the report also included many of its own views, its own analyses. As a result, such analyses were wrong, and the conclusion was also biased.

Madam President, on the supplementary report, according to the interpretation by the NPCSC on 6 April, there is no stipulation to restrict the number of submission of report to one only, nor is there a stipulation that a second report cannot be submitted. However, in my opinion, what should be submitted is not a supplementary report, but an amendment report. This time, the due process should be observed, so that the report can really convey true public opinions. However, Madam President, there is one prerequisite. As this incident has already undermined mutual trust, so the first job that has to be done is to heal the wounds and rebuild trust. I hope the Chief Executive can put forward a series of remedial measures, such as strengthening the direct communication between Hong Kong people and the Central Authorities, and then only after this is done can we start discussing the next step forward. Thank you, Madam President.

MR HOWARD YOUNG (in Cantonese): Madam President, the Liberal Party thinks that it is meaningless and a waste of time for Mr Frederick FUNG to move, after the NPCSC has affirmed the constitutional development report of the Chief Executive, the motion to urge the Chief Executive to consult the people on his report on constitutional development (the Report) and then to submit a supplementary report after that as this is tantamount to overthrowing the established arrangements and starting everything all over again. If this debate should proceed any further, it will only make others feel that this is an outdated issue.

In spite of this, the Liberal Party still wishes to put forward some different opinions on certain viewpoints espoused in the original motion. Firstly, the Chief Executive has already clearly affirmed the aspiration of Hong Kong people for a change in the two electoral methods in 2007 and 2008, and has agreed to make amendments accordingly so as to "enable Hong Kong's constitutional development to move forward". The Chief Executive's move has fully reflected that the SAR Government is concerned about and attaches great significance to public opinions, and he has acted suitably in exercising the power of trigger conferred on him by the NPCSC interpretation of the Basic Law, and there is no reason why we should not accept it.

As for the nine principles mentioned in the Report, that is, any proposed amendment must comply with the Basic Law, must not affect the substantive power of appointment of the Chief Executive by the Central Authorities, must maintain the executive-led system, and that the development towards the ultimate aim of universal suffrage must progress in a gradual and orderly manner step by step and should accord with the actual situation in Hong Kong, and so on, they are just some principles which the Administration hopes that we can take into consideration. We cannot say that these principles are totally meaningless.

Furthermore, we cannot see any of these principles are deliberately setting up more barricades to hinder the implementation of universal suffrage, or to rule out the possibility of any proposed amendment. Therefore, the Liberal Party thinks that there is no reason for any dissatisfaction with these nine principles. If these are described as barricades, I believe such principles have existed for a long time, not just in the Report.

As such, I do not agree with the original motion in seeking to scrap the Report altogether and requesting the Chief Executive to consult Hong Kong people again and to submit a supplementary report on constitutional development,

so as to attain the so-called "realization" of the aspiration of the people for dual elections by universal suffrage. If Members have kept a close watch on the situation, you would surely know that, prior to the release of the Second Report, the Constitutional Development Task Force had already extensively consulted the various sectors of Hong Kong on issues of principle in the Basic Law relating to constitutional development, including the opinions of various parties and factions in the Legislative Council. As far as I can recall, the time slots for consulting and meeting with other parties and factions by Chief Secretary for Administration Donald TSANG were even earlier than the one arranged for the Liberal Party. The Report of the Chief Executive was basically written on the basis of the opinions collected in the Second Report, so we can say that it had aptly reflected the opinions of the public. As such, we cannot see any need or reason to request the Chief Executive to submit a supplementary report.

The pro-democracy camp has always stressed that implementing universal suffrage in the dual elections is the common aspiration of Hong Kong people. But I wish to point out that, while many people support the introduction of universal suffrage or the immediate introduction of universal suffrage, there are also people who oppose the idea or disagree with achieving this ultimate goal in a single stride, or do have worries about this. Should the opinions of these people not be considered? I hope the pro-democracy camp will not discredit the Report of the Chief Executive simply because they are dissatisfied with the fact that the Report does not explicitly support the immediate implementation of universal suffrage, thinking that the Report is not their cup of tea.

Lastly, I would like to discuss an earlier incident in which Mr Martin LEE's proposed amendment to the original motion was ruled out of order. On the one hand, the Liberal Party agrees with the President's decision of disallowing the amendment, and on the other, we also hope to take this opportunity to call on all Honourable colleagues of the Legislative Council — all the Members of different political affiliations — to note that, as the NPCSC has already exercised its authority according to the Constitution of the country and the Basic Law to confirm the electoral arrangements for 2007 and 2008, thus officially activating the legislative process of constitutional reform, we therefore should not waste any more time. Instead, we should make good use of the time, and grasp the opportunity to express our opinions in a pragmatic and rational manner, so as to strive for a consensus on the electoral arrangements for 2007 and 2008. This is the proactive and pragmatic approach.

We in the Liberal Party have said that we will definitely initiate pragmatic and rational discussions both within and without the Party in the hope of seeking a consensus, not just within Hong Kong, but a consensus with the Central Authorities.

I would like to reiterate that, even if universal suffrage is not forthcoming in the dual elections in 2007 and 2008, it does not mean that our constitutional development will remain stagnant in the future. Unless some progressive proposals are negated in the Legislative Council in the future, there is no reason for us to stay where we are indefinitely without making any changes. Just as Chief Secretary for Administration Donald TSANG said, endless hostility and confrontation may lead us to nowhere. I hope we, the different political parties and factions, can look ahead with a positive mentality and strive ahead with our best endeavours and creativity.

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

MR TAM YIU-CHUNG (in Cantonese): Madam President, today's motion is on the Report submitted by the Chief Executive to the NPCSC. In fact, this was discussed in this Council earlier on. However, as we have such a discussion again, we have to reiterate our viewpoints on the relevant issues. The Report of the Chief Executive (the Report) was drafted with reference to the results of the consultation conducted by the Constitutional Development Task Force of the SAR Government.

(Some music was heard in the Chamber)

Madam President, I can hear some beautiful music. Do you intend to do something about it?

PRESIDENT (in Cantonese): Mr TAM, the music has stopped. Please continue with your speech.

MR TAM YIU-CHUNG (in Cantonese): The music has stopped, thank you.

The Report pointed out that there is a need to amend the constitutional system. This is an objective reflection of the general opinion in society. And before the Report was drafted, the Constitutional Development Task Force had spent three months making various initiatives to consult extensively various sectors of society, and subsequently compiled two reports on the issues of legislative process and principle respectively. So, we can see that the whole process has been open and transparent.

The Basic Law stipulates that there should be "one country, two systems", "Hong Kong people ruling Hong Kong", "a high degree of autonomy", and that Hong Kong's constitutional development must progress in a gradual and orderly manner and any amendment must be consistent with the actual situation in Hong Kong. These constitutional principles must be observed by everyone and any changes to the future constitutional system must be proceeded with in strict compliance with these principles specified in the Basic Law. In the Report of the Chief Executive, it is said that, in considering how to determine the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008, we should have regard for nine factors. These nine factors are deduced from and reiterating the principles contained in the Basic Law, and they are the full reflection of different opinions in the entire community, and they are certainly meant not for, as some people put it, setting up barriers for constitutional development.

In the course of this discussion on constitutional development, we believe everyone has gained a better understanding of the Basic Law and a more thorough understanding of "one country, two systems". I recall that earlier on, we have discussed a lot of issues related to "one country, two systems", and understood that "two systems" must be premised on "one country". We cannot just stress the "two systems". On the other hand, "Hong Kong people ruling Hong Kong" refers to patriots forming the main body of people responsible for managing Hong Kong affairs. Hong Kong's "high degree of autonomy" is exercised under the authorization of the Central Government. Therefore, in adopting any suggestions or actions, we must take the Central Government's opinions and concerns into consideration, and we should not always adopt a confrontational attitude.

From the opinions collected by the Constitutional Development Task Force, we can see that there are divergent views in Hong Kong on the pace of constitutional development. On the one hand, there are quite a number of views holding that universal suffrage should be introduced as soon as possible. But on

the other hand, there are also many voices airing worries about implementing universal suffrage on a full scale. As responsible politicians, we cannot ignore these divergent views in society, nor should we create mutual confrontation. We must be pragmatic, respect each other and hold discussions harmoniously. Otherwise, the ones who will ultimately suffer are none other than we Hong Kong people.

With these remarks, I oppose the motion. Thank you, Madam President.

MS AUDREY EU (in Cantonese): Madam President, I speak in support of the original motion of Mr Frederick FUNG. The justifications for my support have already been stated in Miss Margaret NG's speech, so I am not going to rehash them here. A moment ago, Mr Howard YOUNG said in his speech that he felt the motion of today's debate was somewhat outdated.

Madam President, I do not agree to this point. This is because if we accept the nine factors proposed in the Report of the Chief Executive (the Report), then I am afraid the question boils down not to the plain question of whether or not there will be universal suffrage in 2007 and 2008, but whether there will be universal suffrage in Hong Kong after all. This is a more serious question of far-reaching implications.

This involves a lot of factors. If they are accepted, we cannot see when Hong Kong can implement universal suffrage. For example, factor (vii) says, ".....enable different sectors of society to be represented in the political structure, and to participate in politics through various channels". This obviously means that functional constituencies will be preserved permanently. Insofar as parties with vested interests are concerned, they would naturally object to the abolition of functional constituencies. From the decision of NPCSC made on 26 April, we can see that if amendments were to be introduced, not only would the number of directly elected seats be increased, but so would those for the functional constituencies, thereby creating more parties with vested interests. This is a retrogression in democracy, not progress in a gradual and orderly manner. Therefore, I worry that those nine factors will not just have impact on the two years of 2007 and 2008, but carry more far-reaching consequences.

Mr NG Leung-sing said in his speech that everything has to be determined by legal basis. Madam President, regarding this principle mentioned by him, I

cannot agree more. Unfortunately, he went on to say that the legal basis came from the interpretation of Basic Law by the NPCSC as well as the points of law advanced by the NPCSC on 26 April. Madam President I cannot agree with this point. However, I already explained my reasons in the last adjournment debate, and if I go into the details in this debate, I would be speaking beyond the scope of the question. Therefore, I am not going to repeat all those points. All I shall do is to reiterate that I cannot accept Mr NG's point. Mr NG also queried why people should say that the Chief Executive lacked acceptability. In his opinion, as the Chief Executive was elected in accordance with the Basic Law, he naturally commanded acceptance. Mr NG is suspected of "plagiarizing" the remarks made by Mr QIAO Xiaoyang, Deputy Secretary-General of the NPCSC, who once said in one of his visit to the territory, "Why does the Chief Executive lack acceptability? As he was elected in accordance with the Basic Law, he naturally commands acceptance. Otherwise, you must be saying that the Basic Law is not well designed."

Madam President, we have to make amendments to it just because it is not well designed. Otherwise, why do we have to discuss making amendments to it? As the Chief Executive was elected according to the principles of the Basic Law or the rules of the game, or all the provisions, we must of course accept his legitimacy. In other words, he is the legitimate Chief Executive. However, this does not mean that he has the acceptability. If he was elected by 800 persons, those 800 persons will of course support him. Furthermore, he was recently re-elected to a second term by 714 persons, so those 714 persons will naturally support him. However, this does not mean that all the 6 million people of Hong Kong consider him to have acceptability. This is obviously a separate issue. Therefore, I do not understand why Mr NG should mix up the issues of legitimacy and acceptability.

Now we are thinking about how to make amendments and how to amend the methods of election just because the Chief Executive has a very frail public mandate.

Madam President, many Members have said in their speeches today that we should put a stop to endless hostility, that we should look ahead, and that we should act pragmatically. Madam President, I strongly agree to such opinions. However, the crux of the matter is, we do not carry on with the endless hostility just because of our differences in political opinions. We are not acting

deliberately to be at loggerheads with certain people. We are acting in this way just because we want to look ahead pragmatically.

The Chief Secretary for Administration, Mr Donald TSANG, outlined the problems faced by us now in paragraph 3.27 of the report, that is, as the Chief Executive was elected in this manner, he would hold perspectives different from those held by Members of the legislature, who are elected by different methods. That is why there is no co-ordination between both sides. Furthermore, the Chief Executive does not have established support in the Legislative Council.

Therefore, our present problem is how we should make the amendments. If universal suffrage is not adopted, how we should amend the methods of electing the Chief Executive as well as Members of the Legislative Council, so as to achieve the effects of having an executive-led government, and a good relationship between the executive and legislature, which can both co-ordinate with and check each other.

Madam President, if universal suffrage is not pleasing to the ears of certain people, I have not heard of any other amendment methods, other than universal suffrage, that can solve this practical problem. Therefore, I really hope that our pragmatic friends can quickly put forward some effective solutions to the problems faced by Hong Kong now.

Madam President, I therefore feel that the report to be submitted by the Chief Executive should not be a supplementary report, but an amendment report. We have to identify practical solutions that can tackle the present situation of Hong Kong. If we accept the nine principles espoused in the Report of the Chief Executive, I am afraid that not only can the problems not be solved in 2007 and 2008, but also the impasse in the constitutional development of Hong Kong for a long time ahead.

Thank you, Madam President.

MR LAU CHIN-SHEK (in Cantonese): Madam President, today's motion debate is the first such debate after the submission of the report on constitutional development to the NPCSC by the Chief Executive. However, as we examine the content of the motion against the situation of today, we feel that everything has changed and it seems that we are living in a very different world. If this is

the political reality that has been frequently emphasized by Chief Secretary for Administration Donald TSANG, we do feel the full absurdity and tragedy of the reality.

Among the nine principles in relation to constitutional development mentioned in the Report of the Chief Executive (the Report), one of them says, ".....must enable different sectors of society to be represented in the political structure, and to participate in politics through various channels". This principle is in effect tailor-made for the preservation of the functional constituency elections.

I still remember that a pro-Beijing person once said that the Chief Executive had to be busy clearing the mines laid by the British during his term of office. If the British did lay mines before their evacuation, the functional constituency election must be one of such mines.

The sole purpose of such an electoral system is "anti-democracy". Through safeguarding the privileges of a small number of parties with vested interests, the system prevents political parties or organizations representing the interest of the majority from securing control of the parliamentary assembly. In contemporary history, such an electoral system had only been adopted in two places. The first instance took place in Italy in the era of the fascist dictator Benito MUSSOLINI. But when democracy prevailed again in Italy, this electoral system was abolished. Another instance took place in the Municipal Council of the International Settlement in Shanghai before World War II. The Europeans made use of an electoral system similar to the functional constituency elections to ensure their control over the Municipal Council. The Municipal Council of the International Settlement in Shanghai became the symbol of imperialistic oppression against China.

Madam President, we often say that politics is an art of compromise. However, the electoral arrangement of functional constituencies has tightly locked Members with the interests of functional sectors, thereby restricting the room for conciliation and reducing the chances of reaching consensus. The nature of functional constituency elections is to segregate the people according to the interests of different functional sectors, instead of uniting the strengths of the people to strive for their collective welfare.

I have been given to understand that Mr James TIEN intends to take part in a geographical direct election in the next Legislative Council Election. I

believe he will make the people better understand the political convictions of the commercial and industrial sectors through his direct communication with them. If Mr TIEN wins the election, I believe he will be able to do a better job in playing his role as a political leader. The endeavour to be made by Mr TIEN shall serve as a good demonstration: That if one refuses to go into the water, or is unwilling to put away the lifebuoy, he will never learn to swim. Our friends in the commercial and industrial sectors, you absolutely do not have to worry that you are doomed to lose in the elections.

Madam President, be it President HU Jintao, Premier WEN Jiabao, or even Deputy Secretary-General of the NPCSC QIAO Xiaoyang, they all acknowledge that universal suffrage should be a universal goal. Why does the Central Government not trust Hong Kong people, who should be able to choose their own Government, maintain mutual respect and co-exist with the Central Authorities, so as to implement "one country, two systems" together?

The Communist Party of China always regards themselves as engineers of human souls. Is it because the souls of Hong Kong people have not yet been completely re-engineered, so they are not allowed to choose their own leaders? Hong Kong people want to have universal suffrage, are they required to have their brains replaced first? If Hong Kong people cannot make use of their free will and independent thinking, can this place still be called Hong Kong?

Madam President, I was born in Guangzhou and have grown up in Hong Kong. The most precious point about Hong Kong is: People with different political ideologies, of different classes and different races, be they rich or poor, can live harmoniously in Hong Kong where they could call it home. They would not be rejected simply because of their different ideologies and ways of life. Therefore, regarding Mr Vincent LO's remark that people who dislike the Central Authorities may choose to not make Hong Kong their home and live elsewhere, I feel very surprised and saddening. Hong Kong is a tolerant and harmonious society, not the exclusive and private luxurious home of business tycoons. Even if people hold ideological differences, they do not necessarily have to go separate ways.

Madam President, the Central Government ruled against the democracy aspirations of Hong Kong people by adopting a tactic of "overwhelming the opposite side by quicker speed". On the surface, this has demonstrated the

authority of "one country", yet it has really hurt the patriotic feeling of Hong Kong people.

The people of our generation have our roots in the Motherland, and still have very strong patriotic feelings towards it. However, the young people of today belong mostly to the third or even the fourth generations of Hong Kong people who were born and raised locally. They no longer have the same patriotic feeling towards the Motherland. If the locally born and raised Hong Kong people think that the Central Government is an oppressive government, they will become emotionally more detached from the Motherland.

People of our generation participating in democracy movement still have a strong emotional attachment to China. However, ageing is an unavoidable process for all human beings. Some day, we shall have to back off from the front line. I worry that the democracy movement in Hong Kong will become increasingly localized. As a result, China and Hong Kong may move further and further away from each other.

Madam President, the ruling down of universal suffrage in Hong Kong by the NPCSC does not signify the doomsday of democracy. As always, democracy has to be sought through unyielding perseverance of the people. I hope the people can continue to fight for the democracy prospects of Hong Kong and all of us can make contribution in our own way.

I so submit. Thank you, Madam President.

MS CYD HO (in Cantonese): Madam President, since the promulgation of the interpretation of the Basic Law by the NPCSC, the development of events has been quicker even than a through-train. This motion debate is originally on the interpretation of the Basic Law by the NPCSC and the Report, yet by now, the attitudes of the NPCSC and the SAR Government towards democratic constitutional reforms are all too clear. The progress of events is even faster than the conduct of our Council proceedings. No wonder Mr Howard YOUNG considers the wordings of today's motion "outdated" and irrelevant. Madam President, though the opportune moment has been missed, I wish to point out that we must work doubly hard to make up for the lost ground, and rectify the situation expeditiously. Precisely because the situation is developing in a way that is departing further and further away from the aspiration of Hong Kong

people, we now have a greater need to face the problems squarely and rectify them as soon as possible.

Since the declaration of the NPCSC's intention to promulgate an interpretation of the Basic Law on 26 March, the direction of constitutional development has already been fixed within the past one month. After details of the interpretation were announced on 6 April, in the short span of 10 days, the Chief Executive presented his report on constitutional development on 15 April, in which he mentioned the nine principles we should take into consideration when proceeding with constitutional development. He has indeed undergone a fundamental change — ever since 1998, we have been requesting the Chief Executive to conduct a review of the progress of democratization of our political system. During the past six years, the Chief Executive has not listened to our voices. In this Report, such voices have not been reflected. Many public opinion polls had also reflected voices demanding universal suffrage, yet none of them were reflected in this Report.

The Chief Executive told us after 6 April that he had heard many voices requesting him to complete the Report as soon as possible. As a result, he really completed the Report in 10 days. I hope the Chief Secretary for Administration can tell us later whose voices the Chief Executive had heard during those 10 days. Were those voices belonging to Beijing officials, or Hong Kong people? If they were Hong Kong people, were they the voices of those Hong Kong people with privileges? I feel that Hong Kong people have the right to know the answer. For more than six years, there has been a total vacuum in constitutional development. Yet in this short month, it was filled up completely by the colour of black. Now we feel very desperate about constitutional reforms. However, I wish to point out that we shall continue requesting the officials of the SAR to be accountable to the people of Hong Kong. We will not give up, and we must strive for the implementation of universal suffrage in 2007 and 2008.

In the process of this interpretation, the first victim was the Basic Law, because the Basic Law could be interpreted anytime again according to the latest circumstances, and the contextual meaning of the provisions could disappear anytime. And according to the nine factors advanced by the Chief Executive, "to progress in a gradual and orderly manner" is tantamount to "seemingly

forward but actually backward movement". Madam President, why should I say so? This is because the Report, in reference to the functional constituencies said that the amendments must enable different sectors of society to participate in politics through various channels. Various channels naturally referred to some other channels than direct election. And then it evolved into the conclusion of the NPCSC, that is, the proportion between the numbers of seats returned by direct elections and functional constituency elections should remain unchanged, though the number of seats could be increased.

Hong Kong people will soon find out the actual direction, that is, it will just create more political "abnormalities". If we further consolidate the small-circle elections, it will just further restrict the democratic elements of direct elections. So, the progress in a gradual and orderly manner will become "seemingly forward but actually backward movement". The fundamental issue is, if we do not put forward a timetable, and if we only have the nine factors, then direct elections will not be forthcoming not only in 2007 and 2008, but they may also not be forthcoming even by 2047. This is because as long as these nine factors continue to exist, and as long as we do not have any objective standards and timetables, direct elections will only be an indefinitely distant ideal. As such, I hope the SAR Government and the Central Authorities can stop telling us that the ultimate goal is direct election. We hope that we can be informed of the process, the timeframe and the process for the attainment of the goal. I feel that they should discuss all these pragmatically with Hong Kong people.

Very unfortunately, not only has this Report failed to reflect public opinions in its contents, but it cannot even claim that it can reflect public opinions in terms of procedure. This is because, after its completion, the Report had not been given the chance to seek endorsement by the people, and then it was quickly presented to the Central Authorities before we could read through it even for identifying typos. Therefore, I think it is necessary for us to prepare a supplementary report or an amendment report.

Madam President, in a meeting between pro-democracy Members and the Chief Executive, I had already put forward the request of presenting a supplementary report. Both the Chief Executive and the Chief Secretary for Administration told us there and then that it would not be necessary because the consultation had completed and we could not change its results too casually.

However, this is an irresponsible response because the consultation had started only on 7 January. Chief Secretary for Administration, I can quote a lot of figures — that Mr TSANG has just met with 86 organizations and received only about 800 submissions. This is far from being comprehensive. Therefore, we should now try our best to remedy the unfinished work.

The Chief Secretary for Administration once said that his body is filled with Hong Kong blood and he has been drinking the water of Hong Kong. I do not know whether the people of Hong Kong will believe him. However, we shall continue our discussions with officials in this Council and ask them to make commitments. This is not because we are "pretending to be naive". Instead, if the officials keep breaking their promises, distorting meanings of words, failing to honour their pledges to the Hong Kong people, they will only make more young people become determined to fight for democracy.

Madam President, I support Mr Frederick FUNG's motion.

MR HENRY WU (in Cantonese): Madam President, I support the specific proposals contained in the Report by the Chief Executive to the NPCSC on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong SAR in 2007 and for forming the Legislative Council of the Hong Kong SAR in 2008, and I also agree that the nine factors put forward in the Report are formulated in line with the Basic Law and in compliance with the actual situation in Hong Kong and the principle of gradual and orderly progress.

As stated clearly by the Chief Secretary for Administration earlier on, the nine factors originated from the sum-up of the Second Report of the Task Force, and they have blended the opinions of both Hong Kong people and the Central Authorities with the purpose of assisting the different sectors of society in making specific proposals, thereby increasing the chances of reaching a consensus. Such factors are neither prerequisites nor barricades.

Therefore, I hope the different sectors of society can cast aside their differences in opinion, reduce arguments, seek common grounds, adopt a calm and rational attitude, and seek a consensus with joint efforts, so as to attain the ultimate goal of implementing universal suffrage on the premise of complying with the Basic Law as well as the nine factors advocated in the Report.

Madam President, Hong Kong is an economic city. In order to maintain the long-term prosperity and stability of the territory, especially at a time when our economy is recovering, we cannot stand the impact of any turmoil. Therefore, it is absolutely not suitable for us to implement any radical constitutional reforms. I agree with the policy address and the Budget in saying that, at the present stage, we should give the community a respite so that it can rebuild its strength. Therefore, I think we should wait for the community to rebuild its strength before progressing towards the ideal in a gradual and orderly manner in accordance with the provisions of the Basic Law.

As the financial services industry is the main driving force and one of the pillar industries of Hong Kong, in order to ensure that Hong Kong could strike a suitable balance between pursuing feasible long-term political development and maintaining sustained economic and social prosperity and stability, I had earlier on distributed a "constitutional development consultation questionnaire" to members of the financial services constituency, and the results had already been submitted to the Constitutional Development Task Force for reference at the end of March.

The results of the survey reveal that, as a response of the financial services sector on the issue of constitutional development in Hong Kong, over 90% of the members of the sector think that it is necessary for such reforms to progress on a solid social and economic foundation, compatible with Hong Kong being an "economic city" rather than a "political city"; and that such reforms should be made in "a gradual and orderly manner", not seeking to "achieve the goal in one single step", and also "consideration should be given to the interests of different sectors of society". This includes the condition of preserving the groupings of commercial, industrial and professional constituencies in the Legislative Council.

In fact, the Constitutional Development Task Force has already consulted extensively the different sectors of society and summarized their viewpoints in two comprehensive reports. And the Third Report will soon be presented. Therefore, I think the Report submitted by the Chief Executive to the NPCSC is already adequate in presenting a full picture of the realistic situation. There is no need to submit a supplementary report.

Madam President, I so submit.

MS EMILY LAU (in Cantonese): Madam President, I speak in support of the motion of Mr Frederick FUNG.

This motion clearly states that some proposals put forward by the three-member group, or maybe it is known as the Task Force, headed by the Chief Secretary for Administration, have hampered the development of democracy. I believe no one will dispute this point. Regarding those factors, Mr TAM Yiu-chung said just now that they had incorporated the principles contained in the Basic Law. I do not know which articles of the Basic Law stipulate that Hong Kong does not have sufficient political talents.

Madam President, I really do not care to refute them *seriatim* because I have already said on many occasions that those who put forward such factors are prejudiced against democracy. For many years, they have plotted to launch a political system to safeguard a small group of wealthy people. Now they have even put such things down in black and white and let Beijing make use of them to stifle the development of democratic institutions. Should the Government of the Hong Kong Special Administrative Region (SAR) take such actions? Why did so many Honourable Members say in the Legislative Council yesterday and today that what the SAR Government had done was betraying the trust of the people? If the people no longer have trust in the Government, what basis is there for us to work together?

We all thought that there would be a timetable to facilitate our discussion of certain issues. Yet, no timetable was forthcoming, and then, oh, all of a sudden, they released everything — saying that nothing about 2007 and 2008 was negotiable. And then someone said that we should put a stop to endless arguments. Certainly they should say that, because they had got everything. Of course they would ask us to stop arguing.

Madam President, we do not advocate endless arguments. However, with regard to certain matters of principle, which we have supported and fought for for so many years, we would not shut up simply because someone has asked us to put a stop to endless arguments. We will continue to fight in this Chamber, in Hong Kong or even in the international community for what we think is the best development for Hong Kong. Therefore, Madam President, if certain people think that what they have done now, or the recent development during the past few weeks could make us shut up, thereby making Hong Kong continue being an economic city, continue making money, and everyone will become well

fed without caring about anything else, then I believe they must be daydreaming. Therefore, I really do not know, how much this Report can help Hong Kong.

Madam President, the Report has also mentioned the problems faced by Hong Kong, but it has not provided the answers. One answer could be: Everything would be fine if you people would not bring up so many arguments. However, even if we, people in the Legislative Council, are made to shut up, there are still millions of people out there. How can they be made to shut up? Many people have been waiting for many years. They are not waiting for "political free lunches", but balanced participation, which means "one person, one vote" in essence. This does not mean that some wealthy people can have several tens of votes or several hundreds votes because the number of companies they own is equivalent to the number of votes they have. As these companies have many directors, and many Members like to take up the posts of directors, so there are many directors protecting the interests of such companies. However, is this the development direction for balanced participation in Hong Kong? How can we be accountable to the millions of people?

Therefore, Madam President, the so-called endless arguments must go on. There is no way we can help it. They must be endless unless we can convince all the several millions people into accepting that we should continue to serve the several prominent families (or a small group of rich), that we could surrender all our political rights, or even everything to them. Otherwise, we believe such arguments cannot stop, and they will surely go on.

However, we of course hope that our way of pursuing our ideals could be peaceful, rational and non-violent. Yet, for any possible development, we all know that, if people are driven to the extreme, things could become radical. Should that happen, would you feel surprised? Let us take a look at the development of the world, and let us review the historical development, as well as certain behaviour of human beings. Very often, such behaviour was the result of great pressure. Therefore, I really hope that Mr TSANG can identify some ways of responding to the aspirations of the majority in society, and open up the constitutional system to facilitate the active participation of Hong Kong talents.

Lastly, Madam President, I want to say this: Mr TAM Yiu-chung has told us his interpretation of "one country, two systems" and "a high degree of

autonomy", what about the interpretation of these by the many people among us? In 1997, everyone thought that by adhering to "a high degree of autonomy", "one country, two systems" and "Hong Kong people ruling Hong Kong", we could maintain the rule of law, that we could maintain our freedom and way of life. However, the political system must be moving forward. But now it is said that we have nothing to do with the political system, which is now within the scope of authority of the Central Authorities. In spite of what is stipulated in Annex II, the issue is signed and sealed now with no room for any negotiation. Even "reporting for record" has to be approved by the Central Authorities. Now, famous talk show host Albert CHENG dares not make any comments. He says the political pressure suffocates him. Even such an influential person says that he is suffocated by political pressure, what about other people participating in politics? What about the politicians, members of the media and scholars?

Madam President, it has been nearly seven years. We really do not want to see the situation turn out like this, that after seven years "one country, two systems" should evolve into such a state. Where has the "high degree of autonomy" gone? I hope the Chief Secretary for Administration, the Secretary for Justice and the Secretary for Constitutional Affairs can really put the interests of Hong Kong people before everything and play "a good show" for us!

MR MICHAEL MAK (in Cantonese): Madam President, the Chief Executive presented the Report to the NPCSC on 15 April on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong SAR in 2007 and for forming the Legislative Council of the Hong Kong SAR in 2008. He listed, *inter alia*, nine factors regarding the introduction of universal suffrage for selecting Chief Executive in 2007 and for forming the Legislative Council in 2008.

The Government has never conducted a full-scale public consultation on constitutional development. May I ask the Chief Executive how he arrived at these nine factors? Were these factors deduced from the reports of the Constitutional Development Task Force? I have said in this Council in the past that the consultation conducted by the Constitutional Development Task Force was absolutely not adequate in grasping the opinions of the public. For example, the Task Force had set up a website for the public to express their opinions. This was by no means a comprehensive approach because to many

people who did not know how to access the Internet, their views could not be reflected. In addition, even for those who know how to make use of the Internet, they might not be used to expressing their opinions online. Although the Task Force had met with different individuals to collect views from different sectors of society, who can guarantee the people they met are comprehensively representative? I urge the Government to produce evidence to prove how these nine factors were arrived at. If these are really the views of the majority of the people, I will accept them without any complaint.

Regarding the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008, the Basic Law only stipulates that they should be specified in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. But the Chief Executive chooses to "sever his own arms" to create "TUNG's nine factors" — not only imposing multiple barricades to constitutional development, but actually putting nine additional heavy locks to universal suffrage. From now on, universal suffrage will be barred behind multiple gates with heavy locks.

The first heavy lock is: In examining the direction and pace of constitutional development, the SAR must pay heed to the views of the Central Authorities. This means the key of unlocking the gate of universal suffrage is vested in the hands of the Central Authorities, and Hong Kong people have no say on this issue.

The second heavy lock is: Constitutional reforms must comply with the provisions of the Basic Law, and amendments to the Basic Law must not be lightly contemplated. What do the provisions of the Basic Law say? Actually the Basic Law has not closed the door to the introduction of universal suffrage in 2007 and 2008. But the NPCSC had handed down an interpretation on constitutional reform, so the Chief Executive quickly came forward to set up the nine barricades. The two parties have co-ordinated in perfect harmony in closing the door to universal suffrage.

The third and the fourth heavy locks are: No proposed amendments shall affect the substantive power of appointment of the Chief Executive by the Central Authorities, and such amendments must also aim at consolidating the executive-led system headed by the Chief Executive. It means that the Chief Executive must be appointed by the Central Authorities, and Hong Kong people has no say in the process.

The fifth heavy lock is: Constitutional reforms must progress in a gradual and orderly manner. This means that we should not rush too much to implement universal suffrage in 2007 and 2008. Hong Kong people should not have the wishful thinking of implementing universal suffrage in these two years. As for when universal suffrage would be introduced, then we shall have to progress in a gradual and orderly manner. This is really a case of "Hong Kong people have the urgency, but not the Government. So the Government will delay the issue for some time".

The sixth heavy lock is invisible. The Chief Executive says that, in introducing constitutional reforms, we must take the actual situation and public opinions into consideration, and that other factors such as economic development, social conditions and political awareness of the people should also be examined. All these factors sound reasonable, yet nothing has been said on the people's aspiration for universal suffrage in the Report, nor has it reflected that the situation in Hong Kong is suitable for the implementation of universal suffrage.

The seventh and the eighth heavy locks are direct arguments against the implementation of universal suffrage in the Legislative Council, that is, it is impossible to introduce universal suffrage for the Legislative Council election.

The ninth heavy lock is an all-embracing net, extending the scope of the issue indefinitely. It claims that constitutional reforms are related to the systems of economy, monetary affairs and public finance. In saying so, it aims at making everyone unable to move a single step forward.

Although I do not understand what justifications the Chief Executive has in putting forward these nine factors, the aspiration of the people is justifiably founded. Examples are the mass march participated by more than 500 000 people on 1 July of last year, 1 060 000 people cast their votes in the District Council elections, the mass rally participated by 100 000 people on 1 January this year, and then we have some 20 000 people taking to the streets on 11 April this year in protest of the interpretation of the Basic Law and in support of the fight for democracy. The people have repeatedly taken rational actions — we are rational, we have not been involved in some actions like the burning of vehicle tyres, as some people have alleged — to express our request for the return of political power to the people as well as our aspiration for universal suffrage. However, the Government has repeatedly ignored the aspiration of the people.

On top of these, Hong Kong has conducted many Legislative Council and District Board/Council elections since 1982. On 23 November 2003, the turnout rate of the District Council elections soared substantially with more than 1 060 000 people having cast their votes. Besides, Hong Kong has a sound legal system, stable economic development, free flow of information, a generally good education standard of the people, social harmony, and in addition, a host of competent candidates as rulers of Hong Kong. All these can prove that Hong Kong does possess the right qualities for implementing universal suffrage.

Unfortunately, the Chief Executive has not faced the reality. Instead, in a move to bypass the Legislative Council and the people of Hong Kong, he adopts the tactic of "cutting the Gordian knot" in submitting an inaccurate report to the Central Authorities. We feel most sorry about this indeed. I would like to strongly request the Chief Executive to conduct a universal opinion poll on constitutional reform. No matter what the results would be, we shall accept them without complaint. I repeat, we shall accept the results without complaint. The Chief Executive should submit a supplementary report to the Central Authorities in the light of the results of the universal opinion poll, so as to reflect truthfully the aspiration of Hong Kong people for universal suffrage.

I so submit.

MR AMBROSE LAU (in Cantonese): Madam President, at this time when this Council is debating the motion moved by Mr Frederick FUNG, the NPCSC already made a decision on 26 April regarding the report submitted by the Chief Executive to it. The NPCSC has accepted not only the proposal made by the Chief Executive that the methods for selecting the Chief Executive in 2007 and forming the Legislative Council in 2008 "should be amended", but also the nine factors mentioned in the Report to which "we should have regard" when these methods "should be amended". The decision made by the NPCSC makes it clear that it is not appropriate to have dual elections by universal suffrage in 2007 and 2008, and it also mentions that the ratio of seats returned by functional constituencies and direct election shall remain unchanged. This decision made by the NPCSC is in fact implying an interpretation of the text it interpreted earlier on 6 April. The interpretation made by the NPCSC on 6 April has become a constituent part of the Basic Law and both the interpretation and decision made by the NPCSC should be respected by this Council. This is

compatible with the demands of the constitutional position of Hong Kong after the reunification.

The Hong Kong Progressive Alliance (HKPA) is of the view that the interpretation and decision made by the NPCSC have sufficient legal grounds and in the entire process the NPCSC has adhered strictly to the requirements laid down in the Basic Law. It has consulted members of the Basic Law Committee and heard views from all sectors across the community of Hong Kong. Thus it is justified in terms of common sense, reason and legal principles.

Madam President, on 26 February 1999, five Justices in the Court of Final Appeal made an unanimous judgement to this effect: "In our judgement on 29 January 1999 we did not question the right of the NPCSC to interpret the Basic Law under Article 158 and should such an interpretation be made by the NPCSC, it shall be adopted by the Courts in the SAR. We accept that this right to interpretation shall not be questioned. In our judgement we did not question any powers which the NPC or its Standing Committee exercised according to the provisions of the Basic Law and the procedures stipulated in it. We accept that these powers shall not be questioned." Please note that not only is the judgement referring to the interpretations made of the Basic Law but also any power which the NPC and its Standing Committee exercise in accordance with the provisions and procedures as stipulated in the Basic Law. It follows that this includes the decision made by the NPCSC on 26 April.

Mr Frederick FUNG pointed out that the nine factors mentioned in the Chief Executive's Report are "hurdles" which would hamper the development of democracy. This is far from being the truth. The spirit of these nine factors has long been enshrined in the relevant provisions of the Basic Law. It is consistent with the Basic Law and it is not invented by the Chief Executive. The nine factors have been discussed in the Hong Kong community for a long time and there is a certain understanding of these nine factors among the various sectors across the community. These nine factors provide a rational framework for the discussions on and the choice of the methods to select the Chief Executive in 2007 and to form the Legislative Council in 2008. The absence of such a framework would render future discussions on constitutional development out of focus and devoid of direction and there is no way whereby specific plans can be proposed.

Madam President, the Report of the Chief Executive is firmly founded on an extensive consultation of public opinion. The Second Report of the Constitutional Development Task Force pointed out that as at 3 April, the Task Force had met with 86 groups and individuals to hear their views on the related principles and legal procedures. A total of some 660 submissions had been received from the public in the forms of letters, facsimile transmissions and electronic mail. After meeting with the groups and individuals, the Task Force had compiled the views expressed on the 12 questions on the related principles and legal procedures into a draft summary of the meetings. The draft was then sent to the groups and individuals concerned for a verification of the contents and for seeking their consent to make public the record. Since the Report submitted by the Chief Executive has undergone such an extensive consultation, why should the process be duplicated? This would only slow down the pace of constitutional development. Therefore, the HKPA is of the view that there is no need to ask the Chief Executive to submit a supplementary report to the NPCSC.

Madam President, I so submit.

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

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, when Mr TUNG delivered his policy address this year, he said that he would set up a Task Force on Constitutional Development. I pointed out in my presentation of opinions on the policy address that if such a task force was to be set up, attention had to be paid to one issue, and that was, with respect to elections by universal suffrage in 2007 and 2008, pressure from different sectors of society would be felt. Under such pressure, what kind of stand, interest or view would the task force choose to side? How would the various views of society be reconciled? That is the biggest problem and it is also the problem which I care about the most. Unfortunately, however, the kind of work done by the group headed by Chief Secretary for Administration Donald TSANG in the so-called balancing and collecting views is only collecting the views of some groups of vested interests and in the end the wishes of these groups are taken and fulfilled. The aspirations of the majority public for democratic universal suffrage are simply brushed aside, in complete neglect. That is why many people are accusing the group headed by Chief Secretary Donald TSANG of betraying Hong Kong

people and forsaking the principles of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". I think that such criticisms are well-founded and justified, for we cannot see Chief Secretary Donald TSANG having done anything to truly reflect the aspirations and voices of the majority public in Hong Kong.

Madam President, many people are criticizing us for undermining "one country, two systems" and lacking an understanding of the meaning of "one country" in the principle, nor that of "a high degree of autonomy". This is especially the case when Chief Secretary Donald TSANG said that "a high degree of autonomy" is not synonymous with "absolute autonomy". With respect to this view held by the Chief Secretary for Administration, honestly I do not know how he understands by "a high degree of autonomy" and "absolute autonomy". No one has ever called for the independence of Hong Kong, nor insisted that Hong Kong should handle matters like diplomacy and national defence as stipulated in the Basic Law. We have never said such things. We are only talking about "a high degree of autonomy". What we are saying can be found in the Basic Law and in the Sino-British Joint Declaration, that is, Hong Kong should take care of its internal affairs. We have not mentioned other matters. Therefore, I do not understand why Chief Secretary Donald TSANG is always talking about "absolute autonomy". What in fact does he mean? We have no such demands. I really hope that he can explain why he is always saying that the idea of "a high degree of autonomy" in our understanding is identical to "absolute autonomy".

In addition, in the meeting of the Panel on Constitutional Affairs yesterday, Chief Secretary Donald TSANG also lashed his criticisms against Members of the democratic camp all the time. He said that politics was an art. It was the forging of consensus while engaging in rational dialogue and one could not just raise his opinions all the time to the neglect of the views of others. I am very surprised why the Chief Secretary would say these to Members from the democratic camp like us. If he really wants to say these and if he has the courage, why does he not say these to Mr QIAO Xiaoyang? Why does he not say to Mr QIAO that there is a need for communication and understanding what other people are saying? As a matter of fact, throughout the entire process, the Chinese Government is only talking by itself and it has never listened to our opinions. It is only talking about its position and attitude and it does not respect the position and attitude put forward by us. If it is about art, then there is no art in what they have done at all. Besides, what we are discussing is not a question

of art, but some real facts and that is how Hong Kong should put into practice the ideas of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" as provided for in the Basic Law. However, all these are just written off and there is no need to talk about them.

Another thing which I feel so surprised is the kind of role played by Chief Secretary Donald TSANG in this. He has only been telling us things, but not reflecting what we have to say to the Central Government. I am very surprised. He is always asking us to adopt a consensus view, to hear what other people are saying and do not say what we think, but why does he not say these things to the Central Government? This baffles me. Therefore, I cannot help but question the intention of Chief Secretary Donald TSANG and the group led by him. Are they trying to curb the expression of opinions from the people of Hong Kong and suppress their opinions?

Chief Secretary Donald TSANG asks us to put aside our different opinions, saying that within the parameters set by the NPCSC, there would still be room for discussing our future constitutional development, room for expression of opinions. I think this view is really bullying us, cheating us and coaxing us. We can all see that when we discussed constitutional development, we kept asking him a lot of questions and he kept telling us that we should say as much as we want, that they had not set any parameters. But the result is that parameters are imposed, and all these parameters can now be seen. That is, we cannot discuss anything. There is no question of elections by universal suffrage in 2007 and 2008. Talk about some other things. So how can we put our trust in him? How can the people trust him when he says that we can still go on discussing? No wonder, just as an academic said, the so-called consultation conducted by Chief Secretary Donald TSANG was only a show; it was not just a show for we were made to play the role of political fools. If we are to believe in what he says, then we are really political fools.

Chief Secretary Donald TSANG also says that those people in politics now are not mature enough, that they cannot consider these issues from a comprehensive perspective in dealing with them. But the question is, "What is the case of Chief Secretary Donald TSANG himself? Is he mature politically? On the issue as a whole, has he considered things from the perspective of the overall interest of the people of Hong Kong? I fail to see any whatsoever. So, Madam President, I think "a high degree of autonomy" and "one country, two systems" have really been betrayed by the SAR Government.

We can never trust the SAR Government in helping us to achieve any progress in constitutional terms towards a democratic political system. At the present stage, I think I can only call upon the people of Hong Kong not to be discouraged. As for the SAR Government, we can only show our voice and express our views in contention and with the force of the masses. We know that democracy cannot be achieved overnight and it must be achieved through the forces of the masses. At the present political stalemate, some people may choose to become a FAUSTUS and sell their souls, but I am convinced that more will choose not to bow to power, like HAVEL, MANDELA and AUNG SAN SSU KYI. The nine-point Report of Mr TUNG has sacrificed "a high degree of autonomy" and "one country, two systems" and gave the NPCSC a handle to reject dual elections by universal suffrage. But I believe the rational progress of society still prevails and history will see that justice is done to the democratization of Hong Kong.

Madam President, I so submit.

MR MARTIN LEE (in Cantonese): Madam President, when I first looked at the order of speakers, I thought the Government was very responsible, for page 14 of the script says that the President would call upon Mr Frederick FUNG to speak, followed by the Chief Secretary for Administration, then the Secretary for Justice. However, there is a box with words in Chinese, indicating that the order for public officers is subject to confirmation. I thought that the two Secretaries of Departments would perhaps change their order of speaking and that is to be followed by other Members, then finally the Secretary for Constitutional Affairs would speak.

Then there came a replacement sheet for the script and on that sheet of paper it can be seen that the order has changed, such that after Members have spoken, the Secretary for Justice will speak, then the Secretary for Constitutional Affairs, then finally the Chief Secretary for Administration. In other words, these three public officers will speak the latest. They will all speak but they are put at the end, that is, to allow them to speak after all the Members have spoken.

Mr Frederick FUNG has only one minute left to speak. This situation reminds me of the days when I was at school. Three students have done something wrong and they know that the principal has summoned them. So

they rack their brains and come up with this idea, that they will only knock at the door of the principal five minutes before the principal is due to leave his office for home.

In Chinese there is a saying which is like this, the ugliest wife will have to meet with her father-in-law ultimately. The word "ultimately" is really worth our pondering over.

Articles 45 and 68 of the Basic Law also talk about the "ultimate aim" of election by universal suffrage. It is put at the very end. Seeing the principal is put off to the end, so is speaking in the Legislative Council. It may well be that democracy for Hong Kong will also be left to the very end.

Someone said that this is "outdated....."

PRESIDENT (in Cantonese): Mr IP Kwok-him, is there a point of order? Mr Martin LEE, would you please sit down?

MR IP KWOK-HIM (in Cantonese): Madam President, I would like you to make a clarification, that is, under the existing procedures, is it a normal arrangement or a special arrangement to have public officers speaking in the end?

PRESIDENT (in Cantonese): Mr IP Kwok-him, let me answer this question. Having public officers to speak in the end is a normal practice, unless public officers request that they should speak after the Member moving the motion has spoken. I would also permit this. However, as far as I know, in this meeting, public officers have not raised such a request. They only say that with respect to the order of making speeches, they wish to inform us later. So when Mr Martin LEE was speaking just now, I had asked the Secretariat staff at once to find the two replacement sheets in the script.

Mr Martin LEE, I believe there is a misunderstanding here. As far as I know, the public officers have never requested that they should speak first in this motion debate. Even as there are mistakes after the script is found, these are

the mistakes of the Secretariat and as the President, I am also responsible for this.

MR MARTIN LEE (in Cantonese): Madam President, this could be a beautiful misunderstanding. In fact, they should have done this. Honestly, if these three people have so much to say, then why do they have to wait until all Members have spoken before they speak one after the other?

So my criticism still stands. I have been talking about this for a long time and I have been asking the Government all along that if there should be more than one public officer who wants to speak, one of them should speak first and others will provide him with the "cover". This is the practice in Britain, and in the parliamentary assemblies of many other countries as well. It is only that our public officers do not dare to confront Members and they want to speak only at the very end. I think that the way they are doing this warrants condemnation indeed.

Some Members say that the motion moved by Mr Frederick FUNG is "outdated". This is not so. I agree with Ms Audrey EU on the point that these nine items are like nine big plastic flowers in black and they can be used year after year. In every term of the Government when it wants to do something about this, these flowers will be fished out. These so-called factors are in fact hurdles.

The first factor is: "The HKSAR, examining the direction and pace of its constitutional development, must pay heed to the views of the Central Authorities." That is to say, even if people have any thoughts about it, they must pay heed to the views of the Central Authorities.

The second factor: "Any proposed amendments must comply with the provisions of the Basic Law." This is simple. If all the requirements are fulfilled, there will be dual elections by universal suffrage the earliest by 2007 and 2008. But there is another sentence after that: "Amendments to the design and principle of the political structure prescribed in the Basic Law must not be lightly contemplated." What is "lightly contemplated"? If it can be carried out in 2007 and 2008, as stipulated in Annex I and Annex II, then I do not see why these can be called "lightly contemplated". Such wording is rarely seen in Hong Kong. Madam President, I really think that these are words used on the

Mainland. About "lightly contemplated", when does this refer to? If it is a call for universal suffrage in this year, that is, 2004, it can be said that people are contemplating lightly. But the situation now is not like this, for we are saying that there should be universal suffrage in 2007 and 2008.

So this Report of the Chief Executive is, in my opinion, drafted with the ideas found in the report of the Task Force incorporated into it. I really suspect that this is a report made by the NPCSC for itself, only that it was submitted through Hong Kong. So these three people were asked to play the role of a "secret hand" and submit the report to the Chief Executive and then the Chief Executive was also asked to become the second "secret hand" and submit the report to the NPC. But all the ideas in the report came from the NPC itself. I fail to see how our three-person group can be so smart as to think up words and sentences which smack of such a communist flavour. There is no reason they can think these up. This is indeed puzzling and that is where the problem lies.

I would like to ask our three honourable officials — two Secretaries of Departments and one Policy Secretary, when will you stand on the side of the people, on the side of the majority? Or you would prefer to become tools of the Central Authorities now and forever?

Thank you, Madam President.

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

MR ALBERT HO (in Cantonese): Madam President, I agree very much that the motion debate today is not outdated. Though the question of debate is not directed at the recent decision made by the Standing Committee of the NPC (NPCSC), we think that this is a good opportunity for the Chief Executive and the three-person Constitutional Development Task Force (the Task Force) to make a reply.

A reply on what? Given the development of events to date, there are indeed many people who think that the Chief Executive and the Task Force have betrayed the interest of Hong Kong people on the issue of constitutional development, surrendered our "high degree of autonomy" and treated the people of Hong Kong as fools. I hope officials who will reply later can answer the

questions to be posed by me. Do not think that these questions are phrased in such a tricky way to trap them. This is not the case, for I just want to get some specific replies.

I would like to give them a notice in advance: if they do not answer them, I will raise an oral question in the Legislative Council later. First, when did they know that the NPCSC would make the interpretation and did they know anything about the contents? When did they find out that the Central Authorities have a right to scrutinize which later became a right to decide and which led to a trigger mechanism and finally the right to prior rejection? Why have they not concentrated the consultation efforts on Hong Kong people, as words such as "to make it more amenable to revision when necessary" could have so many meanings?

Second, the Chief Executive and the Task Force had refused to consult the Hong Kong people before they submitted the reports. We learn that Mr TSANG Hin-chi, a member of the NPCSC, has said that they had contacted the Central Authorities when they drafted the reports. We have reasons to worry or believe that these papers were finalized on the instructions of the Central Authorities and there was no room for revision at all. Is this the reason why they did not conduct any consultations?

Third, when did they know that the NPCSC had rejected the elections by universal suffrage in 2007 and 2008 and that it would decide that in respect of the progress to democracy, Hong Kong is to remain as it is and the talks about "gradual and orderly progress" towards the goal of universal suffrage is all thrown away?

Fourth, in the entire process, what have the Chief Executive and the Task Force done and what efforts have they made to fight for the right of Hong Kong people, in particular the right of Members as representatives of public opinion, to have a say and engage in dialogue with the Central Authorities? Have they defended the principle of "a high degree of autonomy" to the fullest and insist that we should progress towards universal suffrage?

Madam President, I expect officials to give concrete replies to these questions when they respond later. The report of the Task Force mentioned nine factors. Our colleagues have made some very incisive criticisms of these factors. Undoubtedly, these factors are meant to create hurdles to universal

suffrage. In fact, we will know almost certainly what the results are after reading the report, for the many conservative concepts they contain will invariably lead to some almost inevitable conclusions. As there is not sufficient time for me to go into detail, I would just concentrate on two points and these are what I think should be directly addressed in the replies.

First, the report of the Task Force stressed that there is a lack of political talents in Hong Kong and that many of the people in politics are inexperienced. Such political experience may be referring to the experience of managing government departments or public administration as our experience in the parliamentary assembly should in no way be queried. But the truth is very obvious, if universal suffrage in Hong Kong is subject to such restraints, then any constitutional development will be severely restricted. Political parties will never become ruling parties and they can never exert decisive influence on government policies. The obvious result is that many people will not decide to give up their jobs and go for a full-time career in politics. Moreover, with the Chief Executive coming into office a couple of years ago, he abolished the two Municipal Councils, thus denying us a good training ground for political talents. The various measures exerted by the Central Government and the Government of the Hong Kong SAR on the democratic camp to pressurize and marginalize it have put many people off in the fight for democracy. In fact, our achievements, that is, the achievements of the democratic camp under such restrictions, are really no small feat.

There is this view raised earlier, that those in the business sector should be given special protection, for they have contributed so much to Hong Kong and that they have paid so much in tax. Actually, this shows that these people have made a lot of money and that wealth in our society is overly concentrated and they are given excessive protection. The logic is no different from the case in a feudal society, where the aristocrats and landlords will say that they all pay taxes to the full, so what contribution do the slaves make? Why should they be emancipated? Why should their human rights be respected? Crooked logic like this should never be advanced as an argument. I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I am going to speak on the legal issues concerning today's motion.

On 6 April, the Standing Committee of the National People's Congress (NPCSC) issued an Interpretation of Article 7 of Annex I and Article III of Annex II of the Basic Law, the gist of which is:

first, the phrases "subsequent to the year 2007" and "after 2007" include the year 2007;

second, the phrase "If there is a need" to amend the method for selecting the Chief Executive for the terms subsequent to the year 2007 and the method for forming the Legislative Council and its procedures for voting after 2007 means they may be amended or remain unamended;

third, the Chief Executive shall make a report to the NPCSC and the latter shall in accordance with Articles 45 and 68 of the Basic Law determine whether there is a need to amend in the light of the actual situation of Hong Kong and in accordance with the principle of gradual and orderly progress. Any amendment bills and motions for amendments shall be introduced by the Government of the Hong Kong Special Administrative Region (SAR). The amendments shall be effective only if all the procedures set out in the relevant Annexes have been followed;

fourth, if no amendment is made to the two Annexes, the provision for selecting the Chief Executive stipulated in Annex I and the provision for forming the third term of the Legislative Council and the procedures for voting in Annex II shall be applicable.

The power of interpretation is conferred on the NPCSC by Article 67(4) of the Constitution, which is reiterated in Article 158(1) of the Basic Law. The power of the NPCSC to interpret the Basic Law is not affected by its authorization of the Courts of the SAR to adjudicate cases, nor is it affected by the need of the Courts of the SAR, before making final judgements, to seek an interpretation from the NPCSC in certain circumstances. The power of the NPCSC to interpret the provisions of the Basic Law shall not be challenged by the Courts of the SAR, which shall comply with such interpretation. (see *LIU Gang-rong v Director of Immigration* [1999] 3 HKLRD 788, at 789). According to the People's Republic of China laws, the power of the NPCSC to

interpret laws is applicable to such law which requires further clarification of its actual meaning, but the interpretation must comply with the original meaning of the law.....

PRESIDENT (in Cantonese): Miss Margaret NG, is there a point of order? Secretary for Justice, please stop for a moment.

MISS MARGARET NG (in Cantonese): I wish to raise a point of order.

PRESIDENT (in Cantonese): Miss Margaret NG, please speak louder as I did not catch it very clearly. Please go on.

MISS MARGARET NG (in Cantonese): Madam President, the Secretary for Justice mentioned in her submission the right to interpretation of the NPCSC, but that is not the topic for today. Madam President, if the officials can debate on this topic, then Members should have the right to raise their opinions. I understand that Members do not have the right to give their opinions on that subject today. But if the Secretary for Justice can give her opinions on it unilaterally, then it would be unfair to us. Madam President, please do not be mistaken that I wish to offend the Secretary for Justice. In fact, we are interested in hearing the Secretary for Justice talk about the legal basis on which the NPC has relied in making the interpretations, and so on. However, it seems that this is only unilateral and I do not know if it is part of the topic for debate today. If it is, then why are Members not allowed to talk about it?

PRESIDENT (in Cantonese): Miss Margaret NG, I thought what the Secretary for Justice said was: since the NPC had made an interpretation and so there was the report submitted by the Chief Executive to the Standing Committee of the NPC. I thought what she had mentioned was always about this procedure. That was an interpretation in law. So I allowed her to continue. I thought she would mention that aspect in her speech. As a matter of fact, in the debates we have had, when some Members made very long speeches and I would remind them that they should return to the motion. Miss NG, you did the same before. On one occasion, you were making a speech and it was until the last sentence of

your speech that your speech was related to the motion. But I also accepted your speech and allowed you to continue.

MISS MARGARET NG (in Cantonese): Madam President, then could you invite the Secretary for Justice to explain her point for our benefit.

PRESIDENT (in Cantonese): I think she would explain it. Actually you are asking me to rule if the Secretary for Justice should be allowed to go on speaking or if she should be asked to return to the topic of the debate, but I have made my ruling on it. Mr Andrew WONG.

MR ANDREW WONG (in Cantonese): Madam President, this is also a point of order. After the Secretary for Justice has made her speech, can we speak any more? I am aware that the House Committee has an understanding that the entire procedure is that officials will speak after Members have spoken, then the Member who proposes the motion will speak in reply. However, after the officials have spoken and as new contents are introduced, it would be totally unfair if Members do not have the chance to respond. In this debate, each Member may only speak once, and there are some Members who have not spoken. They should be given the chance to speak as well. I hope the President could make a ruling — a fair one, on this.

PRESIDENT (in Cantonese): This is a very difficult ruling to make, because if I give my permission for you to do so, it would go against the recommendation of the House Committee, but if I refuse to give my permission — in fact, there were points made by government officials while they spoke, which Members here would like to respond to — that is, if I do not allow you to respond, I would at the same time feel that I have not safeguarded the opportunities for you to express yourselves. So, this time, I will give special permission for some Members who have not yet spoken to respond to some of the points made by government officials on which other Members have not yet commented. However, in order to avoid having this debate prolonged extensively, I hope that Members will, as far as possible, respond in a direct and concise manner, but you are allowed to make responses only. Mr Andrew WONG.

MR ANDREW WONG (in Cantonese): Madam President, thank you for making the ruling. However, I would still wish to raise a point of order. The recommendations made by the House Committee are not meant to be restrictive, and they are only meant as reference for the President. The President may accept them or otherwise. As to the decision made by the House Committee itself, I did not agree to it at that time. In my opinion, it should be.....

PRESIDENT (in Cantonese): Mr Andrew WONG, I have to stop you, for what you are saying should have been raised in the House Committee instead of here. I have made a ruling and decided that this would be an exception. Please sit down.

MR ANDREW WONG (in Cantonese): Madam President.....

PRESIDENT (in Cantonese): Secretary for Justice, please continue.

MR ANDREW WONG (in Cantonese): Madam President.....

PRESIDENT (in Cantonese): Please refrain from this and sit down.

MR ANDREW WONG (in Cantonese): Madam President, I would like to raise my point of order. I think as the President you have the right to make such a decision, instead of following the recommendations made by the House Committee at that time. This is because new things have happened. I do not think the recommendations should be observed this time and it may well be that this ruling should.....

PRESIDENT (in Cantonese): Mr Andrew WONG, you are wasting the time of this Council. Being the President now, I will decide on how the proceedings should be conducted. If you still have any opinions, you may raise them to me after the meeting. I will certainly consider them.

Secretary for Justice, please continue.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I mentioned the NPCSC's power to interpret laws because some Members had talked about the legal basis for this. In order not to delay the business of the Legislative Council, and as I am aware that the Government will come back to the Legislative Council on this topic again and again, I will speak as briefly as possible. I will speak on the accusations made by a few Members, namely that the decision of the NPCSC and the nine factors listed in the Task Force's Report are undermining "one country, two systems" and "high degree of autonomy". I will speak briefly in this regard.

Since Members would not like to waste any time on the question of the power of the NPCSC to interpret laws, or as some think that the topic has deviated from the agenda item, and I take it that it has just been discussed by the Honourable Ambrose LAU, I will not speak on this.

Members have also mentioned the decision of the NPCSC on 26 April. Now let me remind them of the decision made on 26 April. First, the election of the third-term Chief Executive in 2007 will not adopt.....

MR ANDREW WONG (in Cantonese): A point of order.

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

MR ANDREW WONG (in Cantonese): Why talk about the decision made on 26 April? The amendment in respect of the decision made on 26 April has been ruled by the President as out of order.

PRESIDENT (in Cantonese): Secretary for Justice, please do not talk about the decision made on 26 April, for this can be mentioned on other occasions in the future.

SECRETARY FOR JUSTICE (in Cantonese): Thank you, Madam President. Some Members talk about "one country, two systems" and "high degree of

autonomy". For that reason, I must mention the role of the Central Authorities in the constitutional development of Hong Kong.

The Central Authorities' concern over the constitutional development of Hong Kong arises from their rights and obligations under the constitutional order. The establishment and the systems of the SAR are decided by the National People's Congress (NPC) in accordance with Articles 57, 31 and 62(13) of the Constitution and the aim of the Basic Law is to prescribe the systems (Articles 5 and 11 of the Basic Law) practised in the SAR in order to ensure the implementation of the basic policies of the State regarding Hong Kong. The establishment of the SAR serves to uphold national unity and territorial integrity, and to maintain the prosperity and stability of Hong Kong, as stated in the Preamble to the Constitution (Appendix 1).

Since the constitutional development of Hong Kong has strong significance to the systems of the SAR, the Central Authorities must be responsible for it. The legal status of the SAR is elucidated in Articles 1, 2 and 12 of the Basic Law, which stipulate that Hong Kong is an inalienable part of the People's Republic of China, its high degree of autonomy is authorized by the NPC and should be exercised in accordance with the provisions of the Basic Law, and that the SAR comes directly under the Central People's Government.

China is a unitary state and its regions have no power whatsoever to decide on or alter their political systems on their own. This was stated in the draft interpretation by Vice-Chairman LI Fei on 2 April — I am sorry, it should be the speech delivered when the bill on the interpretation was presented on 2 April. The Central Authorities therefore play an active role in the constitutional development of Hong Kong. Annexes I and II confer on the NPCSC the authority to participate in the constitutional development of Hong Kong and this is not inconsistent with the high degree of autonomy of the latter. The decision of the NPCSC is therefore based on the law. Members said.....

MISS MARGARET NG (in Cantonese): Sorry, Madam President, I really have no intention of offending the Secretary for Justice, but there seems to be still a.....

PRESIDENT (in Cantonese): A point of order?

MISS MARGARET NG (in Cantonese): Yes. On the decision, the President has said about this earlier and the Secretary for Justice has also agreed, that the decision made on 26 April is not to be included in the debate today. Madam President, we would really love to hear the Secretary for Justice talk about her position and views on this, but a debate on this should only be held on the condition that Members may have a chance to speak on that subject as well.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I have to apologize to you because I was in a hurry and I needed to revise my draft speech. Actually, I wanted to say that, according to Annexes I and II to the Basic Law, the NPCSC has an active role to play and to participate in Hong Kong's constitutional development. It was possible for me to avoid reference to the decision. Besides Miss NG, I have to apologize to the President and Members as well.

MR ANDREW WONG (in Cantonese): Madam President, should this not be retracted?

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I would retract it.

PRESIDENT (in Cantonese): Secretary for Justice, you may continue. Members, I have to tell you that when you rise, you should say, "President, a point of order." You should not say anything to the Secretary for Justice direct. You should say, "President, a point of order." Please follow this rule, for this is something you have passed by vote and this is not made up by me as the President.

The Rules of Procedure is passed by you as you cast your votes, I would like to remind you once again that I am only enforcing the Rules of Procedure.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Excuse me, Madam President, I have several questions. In this motion debate, Members have mentioned, directly or indirectly, the decision. For instance, Mr LEUNG Yiu-chung raised a number of points earlier and described how he had been

frustrated by the decision. Mr Martin LEE also raised a similar issue. Such being the case, how should we respond when we are called upon to do so? Should we completely sidestep these questions? In other words, should we merely express our views and completely sidestep these questions?

PRESIDENT (in Cantonese): Fine. I would like to thank the Chief Secretary for Administration for giving me this piece of advice. I now suspend the meeting because I have to view the video tape to examine whether Members have really said something to those effect. I cannot possibly remember every sentence spoken by Members during this debate lasting almost two hours. As Members wish to discuss a point of order, I have to formally view the video tape first.

8.10 pm

Meeting suspended.

8.46 pm

Council then resumed.

PRESIDENT (in Cantonese): I have viewed the video tape concerned. I think in the speeches made by Mr Martin LEE and Mr LEUNG Yiu-chung, in particular the speech made by Mr LEUNG Yiu-chung, though mention was made of some events which happened after 26 April, Mr LEUNG was not commenting on the decision of the Standing Committee of the National People's Congress. He was only elaborating on his arguments. So I think what he has said can all be accepted. Therefore, I am saying it once again to Members that, in the ensuing debate, Members are to speak to the motion as close as possible. That would be a good thing to all who take part in this debate.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, a number of Members who have just spoken hold that the Reports of the Chief Executive and of the Task Force have led the NPCSC to overrule direct election in 2007 and 2008, thus is inconsistent with the "one country, two systems" principle and

consider that constitutional development is the prerogative of the SAR Government. The "one country" we talk about refers to the People's Republic of China, to which the SAR is an inalienable part (Article 1 of the Basic Law). "Two systems" refers to the socialist system which shall not be practised in Hong Kong and the previous capitalist system and way of life which shall be preserved (Article 5 of the Basic Law). The systems and policies of the SAR, including the executive, legislative and judicial systems, shall be based on the Basic Law (Article 11 of the Basic Law). I have just mentioned that the Central Authorities have the powers and responsibilities to take part in the constitutional development of Hong Kong. Hence, it is necessary for the Central Authorities to participate in Hong Kong's constitutional development and their manner of participation is clarified in the interpretation on both Annexes I and II to the Basic Law. This is part of our system and is also stipulated in the Basic Law. We therefore could not choose the Hong Kong system but refuse to accept the role played by the Central Authorities in the constitutional development of Hong Kong.

Some Members remarked earlier that the Reports of the Task Force and the Chief Executive had caused the NPCSC to decide not to implement universal suffrage for the two elections and that had seriously eroded the high degree of autonomy. The power to exercise a high degree of autonomy is derived by way of authorization by the NPC (Article 2 of the Basic Law), and is implemented in accordance with the provisions of the Basic Law. Given that the power and responsibility of the NPCSC to take part in Hong Kong's constitutional development is stipulated in Annexes I and II to the Basic Law which have been interpreted, we cannot merely accept the power to exercise a high degree of autonomy, but refuse the participation by the Central Authorities.

Lastly, Madam President, today we are debating here whether the Report of the Chief Executive has caused the NPCSC to decide not to implement universal suffrage for the elections in 2007 and 2008 and that has contravened the "one country, two systems" and eroded the high degree of autonomy because we have different understandings of the Basic Law.

The Basic Law has only been implemented since 1 July 1997. It is a national law enacted by the NPC in accordance with the law of China. It is also a brand new concept. From the experience and precedents gathered through the implementation of the Basic Law over the past six to seven years, we are able to gradually grasp the inherent meaning in it. However, the community still has

disagreements over the meaning of some of the provisions of the Basic Law from time to time. Some people attribute that to the differences between the common law and the civil law systems. I am of the view that the common law is a living legal system which is perfected through application. In the course of such process, we have to seriously examine the issues with an open mind. Under the common law, if the Court needs to know or apply foreign law, legal experts from the jurisdictions concerned would be invited to give evidence in court. In understanding the Basic Law, apart from ascertaining the original legislative intent from supporting documents at the time of the legislation, our grasp of the law of China is of great importance. The controversies over the constitutional development stem, to a very large extent, from the conflicts between the two legal systems and cultures. Exchanges with the Mainland and maintaining an open mind would help our understanding of the Basic Law and discussion over the development of a democratic system. The Task Force stands ready to work closely with all parties involved so as to facilitate future work. Thank you, Madam President.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, following the speech delivered by the Secretary for Justice, I wish to respond to Mr Frederick FUNG's allusions to the relationship between the nine factors and the Basic Law as mentioned in his motion.

The Task Force possesses no constitutional powers. Nor will it impose additional requirements under the Basic Law. The nine factors set out in the Second Report, by no means created out of the blue, are completely underpinned by the provisions, concept and original intent of the Basic Law.

Point (i) concerns the power and responsibility of the Central Authorities to oversee and decide on the political structure of the SAR, and in this connection, we must pay heed to the views of the Central Authorities. Articles 31 and 62 of the Constitution have laid a foundation for the National People's Congress (NPC) to decide on the establishment of special administrative regions and the systems to be instituted in such. To this effect, the Basic Law has made provisions specifying the relevant relationship. Article 1 of the Basic Law states that the Hong Kong SAR is an inalienable part of the State; Article 12 states that the SAR comes directly under the Central Government; Article 2 states that the executive, legislative and independent judicial power, including that of final adjudication, exercised in Hong Kong is an authorization. Annexes I and II to the Basic Law

and the interpretation made by the Standing Committee of the National People's Congress (NPCSC) with respect to provisions in Annexes I and II to the Basic Law are all supportive of point (i) of the Task Force's report.

Point (ii) states that amendments to the design and principle of the political structure as stipulated in the Basic Law must not be contemplated lightly. This is because the concept of "one country, two systems", "Hong Kong people ruling Hong Kong" and a "high degree of autonomy" is integral. They also represent the state policy formulated by the Central Authorities in the '80s with respect to the resumption of sovereignty over Hong Kong. The entire system, dealing with various aspects including the economy, politics, Judiciary, society, external affairs, is indispensable to safeguarding Hong Kong's prosperity and stability. As such, amendments to it must not be contemplated lightly. However, this does not mean that we are holding a position that nothing can be changed. The SAR Government has proposed that the methods of conducting two elections to be held separately in 2007 and 2008 may be amended.

Insofar as point (iii) is concerned, the power of appointment of the Chief Executive by Central Authorities is substantive. This has been specified clearly in Articles 43 and 45 of the Basic Law.

Point (iv) is related to the executive-led structure. We have, in the explanatory notes of paragraph 5.11 of the Second Report, set out in detail more than 10 provisions of the Basic Law to explain how the executive-led structure is manifested in the Basic Law. They include: most bills and budgets shall be introduced by the executive to be deliberated and passed by the legislature. This is how the executive and the legislature co-ordinate with each other under the executive-led principle.

We have in point (v) mentioned "gradual and orderly", "step by step" and "the pace should not be too fast". This factor was concluded by the Task Force after listening to the views of various parties. The requirement of "gradual and orderly" has indeed been laid down in Articles 45 and 68 of the Basic Law.

When it comes to the "actual situation" mentioned in point (vi), it has been made clear that public aspirations aside, we have to consider other factors as well. As a responsible government and a responsible Council, serious consideration must be given to other factors in considering whether it is necessary to amend the

methods for conducting the two elections. The factors should include the maturity of political groups, and whether there is an adequate number of political talents and people committed to taking part in politics in Hong Kong.

Madam President, we have in point (vii) mentioned that any proposed amendments must enable different sectors of society to be represented in the political structure, and to participate in politics through various channels. This can be traced back to the explanation given by Mr JI Pengfei on 28 March 1990 in presenting the draft Basic Law to the NPC. His explanation also reflected the legislative intent of the Basic Law.

Today, a number of Members have raised the question, with reference to point (vii), as to whether the functional constituencies should continue to be retained in the Legislative Council in future. I think I have to make it clear that, despite the mention of point (vii) by the Task Force in the Second Report, it does not mean that the functional constituencies will forever be retained in its present manner. Ultimately, all seats in the Legislative Council will be elected by universal suffrage. We will comply with this provision of the Basic Law. Nevertheless, Madam President, regardless of the proposed amendments we will consider, the reality is it is necessary for directly elected Members, political parties supporting direct elections and Members elected by functional constituencies and their supporters to seek consensus on this issue. A consensus has yet to be reached on the retention of functional constituencies seats in the present manner. In pushing for constitutional reform and constitutional development proposals, we need Members to strive to reach consensus. The Task Force has sought merely to point out this fact and the reality by incorporating point (vii) in the Second Report.

Lastly, insofar as functional constituencies are concerned, I have to make it clear that the existing functional constituencies represent more than the business sector. In this Council, there are representatives from the education sector, health care sector and labour unions. It is therefore incorrect to say that the functional constituencies represent the business sector only.

Madam President, having dealt with the issue of functional constituencies, I wish to say a few words on points (viii) and (ix). These two points are actually underpinned by the explanation given by Mr JI Pengfei in the NPC in March 1990. This is why we say that any proposed amendments must ensure the participation of different sectors in the Legislative Council and that

consideration would continue to be given to the interests of different sectors of society within the political structure. We have also mentioned the point that any proposed amendments must not bring about adverse effect on the systems of economy, monetary affairs, public finance and others as prescribed in the Basic Law. In conclusion, Madam President, the nine factors outlined in our Second Report are completely underpinned by the provisions, concept and original intent of the Basic Law.

At the beginning of this motion debate, Mr Frederick FUNG questioned whether the Second Report was drafted in Hong Kong or Beijing. I can tell Mr FUNG in unequivocal terms that the Task Force's Second Report and the nine factors outlined in the Report represent the conclusion made by the Task Force after meeting with more than 80 organizations and individuals. Both the First and Second Reports were written in Hong Kong by my colleagues in the SAR Government.

Madam President, the First and Second Reports presented by the Task Force, completely underpinned by the Basic Law, seek to lay a good foundation and turn a new page for Hong Kong's constitutional development.

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

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, on behalf of the Government of the Hong Kong Special Administrative Region (SAR) and the Constitutional Development Task Force (the Task Force), I would like to respond to the motion moved by the Honourable Frederick FUNG and views expressed by other Members just now, and state the Government's position.

As holders of public office, we stand ready to accept criticisms, since criticisms from different sectors of the community would help us improve the quality of our service. Presently, some Legislative Council Members are disappointed by the decision of the Standing Committee of the National People's Congress (NPCSC) that the universal suffrage shall not be introduced for the elections in 2007 and 2008, and have made certain accusations against us. We can very well understand their sentiments. However, this does not mean that we should ignore some less-than-rational arguments, which prevent our

community from seeking an appropriate solution for constitutional development through consensus building and calm, reasoned discussions.

But since the motion touches on the nine factors put forward by the Task Force, the Secretary for Constitutional Affairs has just responded in detail and, as the representative of the Task Force, I feel obliged to make certain clarifications. It must be pointed out that these nine factors are completely underpinned by provisions in the Basic Law and the principle of "one country, two systems". They have solid backing and are by no means created out of the blue. Besides, since its establishment in January, the Task Force's consultation work has been highly open and transparent, including setting out the issues of legal procedures and principles regarding constitutional development, the presentation of relevant documents to the public and the Legislative Council, the setting up of the Task Force website, and so on. The Task Force also briefed the Legislative Council and the public on the latest situation and progress made, before and after its Beijing visit. All views and opinions gathered by the Task Force are made public and conveyed to the Central Authorities in full. The nine factors are derived from the Task Force's objective and serious engagements with all sectors of the community as well as with the Central Authorities over a three-month period; they are concluded after the completion of a series of transparent and rigorous work. Hence it would be a distortion of truth for some Members, who understand the whole process, to accuse the Task Force of failing to reflect the opinions of the public.

Some people do not understand why the Task Force put forward the nine factors. The truth is, the more clearly we present these issues from the outset, the more we could generate discussions on the constitutional system. This is because the closer a proposal is to these factors, the easier it would be to achieve consensus. As we are all fully aware, any concrete proposal on Hong Kong's constitutional system has to be agreed by three parties, namely, a two-thirds majority support of the Legislative Council, and the consent of the Chief Executive; the proposal must also be reported to the NPCSC for approval or for the record. We cannot proceed without the support of any of them. All our efforts would be futile if we blind ourselves from the fact that we need all of the three parties to set our constitutional development in motion.

Democracy is our common aspiration. The people of Hong Kong generally agree with the ultimate aim of introducing universal suffrage, but there is a considerable divergence of views on the pace of, and the mode for pursuing

this ultimate aim. Such divergence exists not only in the community but also among Members in this very Chamber. For the time being, the only clear consensus is the common wish to improve the electoral methods in 2007 and 2008 and to increase the scope of participation, so that these elections would become more representative.

Under such circumstances, we must recognize that relentless conflict and discord is not the wish of Hong Kong citizens; our citizens expect the Government, the legislature, and concerned groups and individuals to join hands in exploring and discussing how we could promote constitutional development while maintaining the harmony, stability and prosperity of our community.

Some Members have described the inability to introduce the method of universal suffrage in the elections in 2007 and 2008 as the dead end to the path to democracy. This is an overstatement and too pessimistic. In fact, since the reunification, Hong Kong's democratic development has progressed orderly in each election of the Chief Executive and the Legislative Council. In accordance with the NPCSC decision, the two elections in 2007 and 2008 can surely stride forward and set a new milestone in the constitutional development of Hong Kong. We could, for example, consider whether to increase the number of seats in the Legislative Council to allow more committed talents to participate in the political arena. We could consider increasing the number of members in the Election Committee for the election of the Chief Executive, or to broaden the electorate which elect the Election Committee. These are issues which deserve exploration and consideration. I am now drafting the Third Report. It will list out areas which can be amended under the Basic Law in relation to the methods for electing the Chief Executive and for forming the Legislative Council. This would provide reference to facilitate the community in forming proposals in the coming months. We will, of course, listen widely to views of all sectors.

In other words, we have already entered a new phase of discussion on concrete proposals. This calls for even more calm and rational dialogue and discussion, as well as insightful opinions of fellow Legislative Council Members. If we want positive results, the right attitude is to be inclusive in the pursuit of consensus.

There is nothing further than the truth to say that the implementation of "one country, two systems" has failed, as some Members suggested. According to these claims, we are no longer living under the original system that

we are familiar with, and the system has changed to "Beijing people running Hong Kong" under "one country, one system". In fact, all that we need to do is to look at the current situation in Hong Kong and we would find that our way of life, economic structure, legal system, freedoms of speech and the press, and so on, are still what we have been used to. This is the best demonstration of the successful implementation of "one country, two systems" in Hong Kong. The freedoms enjoyed by the people in Hong Kong have not diminished in any way since the reunification.

The Central Authorities have also been extremely cautious in the implementation of "one country, two systems". Not only have they restrained themselves and fully respected the SAR's "high degree of autonomy", they have also been looking after Hong Kong's interests in many ways.

But as far as constitutional development in Hong Kong is concerned, it is not a matter that we can deal with on our own. The Central Authorities have both the power and the responsibility to oversee our constitutional development under the Constitution and the Basic Law. China is a unitary state. The powers vested in local governments, including the SAR Government, are all authorized by the Central Authorities. As a local administrative region, Hong Kong has no power to unilaterally decide or make changes to our political structure. This constitutional arrangement was made during the enactment of the Basic Law. Even so, during the course of discussion on constitutional development, Hong Kong people still play an important role in expressing a wide range of opinions. Before making its decisions, the NPCSC had fully considered the views of the public as conveyed by the Task Force. It had also taken the initiative to meet with various sectors in Hong Kong to listen to their views. This shows that the Central Authorities attach great importance to and care about Hong Kong. What we now enjoy is a political structure different from that of the Mainland under "one country, two systems". We must not distort the picture by saying that this constitutional arrangement of our political development is an erosion of Hong Kong's "high degree of autonomy". Indeed, Hong Kong has been enjoying and will continue to enjoy a high degree of autonomy — we are vested with executive, legislative, independent judicial power, including that of final adjudication.

I understand that some might have different feelings towards the Mainland, given Hong Kong's long-time separation from China and the differences in our systems. However, the Hong Kong SAR is now part of our country. Our

economic activities are closely integrated with that of the Mainland. We are the lifeblood of each other's economy. Our people support democracy, but they long for prosperity and stability at the same time. The people of Hong Kong understand clearly that "one country, two systems" is the arrangement that best meets the long-term good of both Hong Kong and the nation. Our political structure and democracy must develop under the framework of "one country, two systems", so that the solid foundation that we built with our blood, sweat and tears over the years would not be shaken. The people also do not want to challenge our relationship with the Central Authorities with this. Prolonged tension benefits nobody.

Neither an inharmonious relationship between the Central Authorities and Hong Kong nor a troubled mood in our community are conducive to building mutual trust between different sectors within Hong Kong, or that between Hong Kong and the Central Authorities. How can we succeed in pushing for democratic development if we only champion an agenda that is outside of the framework of the Basic Law and the NPCSC decisions? How can a three-party consensus be built? I wish that Members would think twice and be rational and not go to different extremes.

When we publish our Third Report in May, we will invite the public and all sectors to express their views, and we will maintain our transparency and openness. The public would be able to participate in the discussion and to suggest different proposals that are consistent with the consensus of the three parties. Hong Kong people hope to see improvements in our political structure. We must do our best to make this happen. Moreover, I must point out that the freedom of speech is a great Hong Kong asset. It is what we expect in an open and pluralistic society. Much has been said and written about Hong Kong's constitutional development in the past few months. No doubt our free and unfettered media will continue to reflect the full range of opinions of the community in the weeks and months ahead.

The Central Authorities will decide on Hong Kong's constitutional development only after considering Hong Kong's actual situation and the need to balance the interests of different sectors. The two election methods could become more open and more democratic in 2007 and 2008. I hope that Members would calm their emotions, and join hands with other sectors in the community to discuss, in a calm and pragmatic manner, elections methods in 2007 and 2008 which are suitable for Hong Kong.

Madam President, with the above remarks, I appeal to Members to vote against Mr Frederick FUNG's motion.

PRESIDENT (in Cantonese): I made a ruling earlier that Members who have not spoken may respond to the new arguments — I stress new arguments — advanced by the three officials in their speeches.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, I would like to comment on some of the arguments presented by the Secretary for Justice about the interpretation of the Basic Law by the NPC. I would think that this part is something new in the debate today.

The adverse impact of the interpretation is not just limited to the democratic system in Hong Kong but also the rule of law which is the most treasured thing in Hong Kong. The rule of law is of the utmost importance to Hong Kong. A long time ago, Mr ANN Tze-kai said that the idea of Hong Kong people ruling Hong Kong was actually the ruling of Hong Kong laws over Hong Kong. President HU Jintao has recently said a number of times that Hong Kong should be ruled according to the laws. It follows that law is the most fundamental and important pillar in ruling Hong Kong. Now this interpretation of the Basic Law by the NPC carries three major dangers. First, an interpretation of the Basic Law is like amending it. The words "amenable to revision when necessary" alone may develop into two hurdles and the right to trigger action. In this right to trigger action are added two hurdles, that is, a report by the Chief Executive and endorsement by the NPC. These two hurdles are not found in the Annexes to the Basic Law. The mainland authorities have published a book which has a title to this effect: *Expounding the Laws on Legislation* in which it is pointed out that any interpretation of the law which deviates from the spirit of its enactment and where new elucidation is made on the contents and meanings of the law cannot be regarded as an interpretation of the law in question but an amendment. The right to trigger action is one such new elucidation and the report of the Chief Executive and endorsement by the NPC are new hurdles created by such an elucidation. Thus the interpretation is in actual fact an amendment to the law.

However, an interpretation is better than an amendment to the law, for an amendment can only be possible in the annual session of the NPC, whereas an

interpretation is possible through the NPCSC which holds meetings bimonthly and extraordinary meetings at any time. So it follows that an interpretation of the Basic Law is the easiest thing to do while amending the Basic Law is almost an impossibility. We can just look at the interpretation this time. It is complete in two weeks.

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, would you please sit down? Mr Jasper TSANG, do you have a point of order?

MR JASPER TSANG (in Cantonese): Madam President, I seek your ruling on whether or not Mr CHEUNG Man-kwong's speech is compliant with Rule 41(1) of the Rules of Procedure.

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong is responding to the point made by the Secretary for Justice on the interpretation of the Basic Law by the NPC. In this regard, he is expressing his feelings about it. So I will let him go on speaking, but Mr CHEUNG, please be brief. As I said in making the ruling earlier, even if there are new points of view, Members should be as brief as possible in talking about them.

Mr CHEUNG, please go on.

MR CHEUNG MAN-KWONG (in Cantonese): Thank you, Madam President, for your ruling.

Making an interpretation of the Basic Law is the easiest thing to do, and it was completed within two weeks in great speed. But it is an impossible task to amend the Basic Law. It has been seven years since Hong Kong's reunification with China and much discussion has been made in this Council, but to date, it is not certain what the procedures for amending the Basic Law are. But an interpretation made of the Basic Law is part of the Basic Law itself and it enjoys the same position as all other laws. If we refer to the history of the NPC in interpreting laws, as it has been reported, there have only been nine times when the NPC interpreted the laws since 1979, that is within a period of 25 years. But for Hong Kong, in just a period of eight years, the NPC has interpreted the

Basic Law three times, or a third of the total number of all the interpretations it has ever made. Interpretations of laws have been abused and the result of such an abuse is that laws only exist in name, that they do not exist at all. With the interpretations, laws are changed due to political reasons, the leaders, the legal experts, memory, persons in the past or even dead persons.

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, please be brief, for you are almost talking about another topic.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, I will be brief. Thank you for your reminder.

This is not just the rule of man, but the superimposition of dead persons over the laws of Hong Kong. It is a most tragic thing about the rule of law in China and Hong Kong.

Madam President, the conclusion I get is: There are three effects coming out of the interpretation of the Basic Law by the Central Government. The first, it would only choose to have what it wants. Second, things are added afterwards. Third, the "final" victory. It is like a game of soccer, when one side is losing by one goal to nil just before the end of the match, the referee gives two penalties and so the losing team now wins by two goals to one. The final victory approach is like the spiritual victory in *The Story of Ah Q* by LU Xun. It is thought that there is a victory, but it is in fact a humiliating defeat of the rule of law and of Hong Kong. It is like the SAR has been slapped in the face, and so has the idea of "ruling Hong Kong by law" proclaimed by President HU Jintao. The results of these two slaps in the face are: the first spells the dominance of "one country" and game over for "two systems"; while the second spells the dominance of the rule of man and game over for the rule of law.

Thank you, Madam President.

DR DAVID CHU (in Cantonese): Madam President, originally I did not intend to speak, but after hearing the speeches made by Honourable colleagues and sensing the smell of gunpowder in this Chamber tonight, I was inspired to speak. The so-called barriers to the democratic development of Hong Kong are not

confined to the nine points mentioned by the three-person Constitutional Development Task Force, but there is also a tenth one. Madam President, I believe that is a new point of view, is it not?

The tenth barrier is even greater than the sum of the other nine. The tenth is the lack of mutual trust between the SAR and the Central Government. This lack of mutual trust is the greatest barrier confronting the future development of democracy in Hong Kong. Now that it is almost seven years since the reunification, but why is there still a lack of mutual trust between the SAR and the Central Authorities? In this Chamber, I believe there are 22 Members who are best qualified to answer this question.

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

PRESIDENT (in Cantonese): Members, if you have any views and if the officials would like to respond to them, then for the sake of fairness, I will have to allow them to respond. Therefore, though the House Committee is wise, this time I have not followed its recommendation.

PRESIDENT (in Cantonese): Is there any Member who would like to speak?

(Mr Albert CHAN indicated a wish to speak)

PRESIDENT (in Cantonese): Mr Albert CHAN, please be brief and you must speak on new points of view — those new points of view raised by the officials.

MR ALBERT CHAN (in Cantonese): Madam President, often times what is new and what is old is just a question of angle. You may regard a view as old, but it may be a completely new one to us. Fine, I will try my best to make the point I am going to say new to you. Maybe it takes a little bit of political wisdom here.

Madam President, on the issue of the interpretation of the Basic Law by the NPC, Mr CHEUNG Man-kwong has raised many points earlier, but I think the most important point is whether or not the so-called interpretation has

clarified the principles and spirit behind the provisions as they were enacted at that time and according to laws then. But that we do not know, for we did not take part in the enactment. Many of the talks, especially those between China and Britain, were held behind closed doors. The government officials sitting here now may have taken part in such talks at that time, so they may know well in advance that this would have happened. But over the past few years, especially before the NPC interpretation of the Basic Law, they did not disclose anything about the scope of the interpretation known to them and so the remarks they made later misled Hong Kong people, and when eventually the NPC interpreted the Basic Law, it is like an amendment and enactment of a new law. That has led to strong indignation and discontent among Hong Kong people.

PRESIDENT (in Cantonese): Mr Albert CHAN, I have to tell you that what you have said has been mentioned by Mr Albert HO and what he has said is very similar to what you are saying.

MR ALBERT CHAN (in Cantonese): Yes, Madam President. I am no longer a member of the Democratic Party so what Mr Albert HO has said does not represent my views.

PRESIDENT (in Cantonese): I did not mean that, but rather this is not something new. As this is not a new point of view, so please leave it to some other occasion.

MR ALBERT CHAN (in Cantonese): The indignation which Mr Albert HO has referred to may not be the same as the indignation which I am talking about, for the degree of my indignation may be 10 times greater than his.

Madam President, I would like to mention another point. I do not know if other Members have mentioned it before, if they have, then please stop me.

Madam President, it is about the reaction of the people and some other people, especially the officials and their attitude, after the interpretation, and it is this attitude which has made Hong Kong people feel all the more indignant.

PRESIDENT (in Cantonese): What you are now saying is not new. Sorry, Mr Albert CHAN, I have to repeat, the ruling which I made earlier is: If there are some new points of view mentioned in the speeches made by the officials and which have not been mentioned by Members earlier and if Members think that it is necessary to speak on these new points of view, then I would permit them to speak. I am not trying to stop you from speaking, only that I have to be fair and so I cannot do you any special favour. Please continue.

MR ALBERT CHAN (in Cantonese): Madam President, maybe I do not have such profound and clear understanding as you. When the officials I refer to were speaking, there were strong reactions in me and that was because their speeches provoked my thoughts and feelings. So about the question as to whether or not there is any new point of view in my speech, Madam President, it is up to your honourable self to make a ruling and I would respect it. I will try my best to put forward my views with regard to the reactions which I had when I heard the three officials speak earlier.

Madam President, I would like to make a few brief remarks only. I do not want to get myself entangled in the arguments. I think the criticisms against the views of Hong Kong people, especially the democratic camp, which officials made after the interpretation, are a distortion of the facts. They are also a distortion of the intent of the democratic camp. Such remarks have caused even greater conflicts and clashes. As Dr David CHU has said, this is a problem of the existence of a gap. This gap is not just the problem of the democratic camp but also that of the officials in Hong Kong and the Central Authorities. If the responsibility is always placed in one party out of these three parties, that is certainly a distortion. For the interpretation comes from the Central Authorities and those who support it are the officials in Hong Kong and those who are forced to accept it are us, especially the democratic camp. In a certain sense, we have been brutalized. The voices of anger which we want to make after having been brutalized are accused of causing a disruption to social order and development. So what kind of an attitude is this? Now these people are holding the reins of power and they are employing all sorts of tactics and join hands with other people to make the people of Hong Kong and the democratic camp feel aggrieved.

Madam President, Mr Martin LEE said in his speech earlier that the nine barriers are nine plastic flowers in black. I would beg to differ. Those I think

are nine poisonous weeds and they will poison Hong Kong people. They will not just poison us now, but also our next generation. So I hope that these poisonous weeds can be plucked — as the leftists like to put it. Recently, some Chinese officials have also referred to views expressed by the democratic camp in Hong Kong as poisonous weeds. But these poisonous weeds have been placed in Hong Kong by the Hong Kong Government and the Central Authorities and force Hong Kong people to accept them, so plucking these poisonous weeds is the key to solving the problem.

Thank you, Madam President, for bearing with me.

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

(Mr Andrew WONG indicated a wish to speak)

MR ANDREW WONG (in Cantonese): Madam President, I am very sorry. I might have made Members feel somehow annoyed. But I think there may be problems with speeches delivered not to the question, especially those delivered after the ruling was made. Therefore, I must point out this fact.

I just want to make one point briefly, that I support Mr Frederick FUNG's motion because I think the Second Report is not desirable, so is the Report of the Chief Executive. And I also do not agree with the nine factors. In the meantime, I also wish to put this opinion on record. I appreciate very much the remarks made by Dr David CHU just now: Under the present circumstances, it is meaningless to insist now; we must strive for communication; and please do not put on any "political shows" anymore.

As pointed out by me in yesterday's meeting of the Panel on Constitutional Affairs, at a time when chasms have emerged amidst conflicts, we must take the initiative of making some active efforts on our part, instead of just accusing the other party of creating such conflicts. Maybe we also have a part to play in the emergence of the conflicts. Or maybe we are actually responsible for the conflicts. I hope while I am thinking in this way, the other party can also think similarly. No matter which party is responsible, we must act through communication and mutual trust. Besides, there must be trust. This is especially true for the "upline", who must have the tolerance and openness of

mind as a "upline" and should have a higher level of tolerance than the "downlines". This is because the "downlines" could consist of the grass-roots people and the lower tier could well be some uneducated people, or even some small kids who know nothing about the adult world. So the father, the grandfather should tolerate and understand the younger ones. As the son, I shall try my best to put myself into their shoes, so that I can figure out what I would do if I were the father to help my son who is in such a situation? Therefore, it is very important that we can put ourselves in the shoes of other people.

Madam President, my heart is sinking because I feel that, as the Chairman of the Panel on Constitutional Affairs, I might not have done too well, and could make it worse and worse instead. However, I hope my successor in future can do a better job than mine. Similarly, I hope all Honourable Members, local officials as well as Beijing officials can think in the same way, that is, we must make Hong Kong better and better. This is the common aspiration of the people all over China and Hong Kong.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Now I am going to allow government officials a chance to make responses. Secretary for Justice, do you want to respond?

SECRETARY FOR JUSTICE (in Cantonese): Madam President, when I was speaking about the NPCSC's interpretation earlier, the Honourable Margaret NG raised a point of order and I was therefore unable to finish my speech. I do not think I have to finish it. But I would like to make a response as the Honourable CHEUNG Man-kwong has just asked whether "interpretation of the Law" means "amendment of the Law". He also talked about the rule of law. I would also like to respond to that. I would proceed with your permission, Madam President.

I said earlier that the power of NPCSC to interpret the Basic Law shall not be challenged by the Courts of the HKSAR, which shall comply with such interpretation. In accordance with the law of China, the NPCSC's power to interpret laws is applicable to such law which requires further clarification of its actual meaning. But the interpretation must comply with the original meaning of the law. For example, as far as the phrase "If there is a need" is concerned, it is not stipulated in Annexes I and II to the Basic Law who is to clarify the meaning. Therefore, there is a need to make an "interpretation" to clarify the provisions. Interpretation of the Law is different from amendment of the Law. If the original provisions cannot be clarified, an amendment shall then be made. This Interpretation was made in accordance with the rules of procedure of the NPCSC and Article 158(4) of the Basic Law, that is, to consult the Basic Law Committee. This will help the public to have a correct understanding of the Basic Law.

In response to Mr CHEUNG Man-kwong's remarks about the difference between "interpretation of the Law" and "amendment of the Law", I would like to point out that this time it was an "interpretation of the Law", not an "amendment of the Law" because "if there is a need to alter the meaning" is already embodied in the original provisions. But nothing has been mentioned as how to clarify the meaning and define it specifically. Therefore, it is only an interpretation of law.

The interpretation of law has not affected the rule of law. To put it simply, the rule of law means that the power of a government originates from the law and the government must exercise its power in accordance with the legal provisions and proper procedures. As the powers of interpretation by the NPCSC originate from the Constitution and the Basic Law, the process of exercising the powers also complies with the Basic Law and the rules of procedure of the NPCSC. We have to accept the constitutionality of the NPCSC's interpretation. This is the spirit of the rule of law, and it will not affect the rule of law.

Lastly, Mr CHEUNG Man-kwong mentioned that the NPCSC has abused its power by making the interpretation. I would like to point out that the Legislative Council should recognize the constitutional status of the NPC and the NPCSC and should give them due courtesy and respect in the conduct of business. Any accusations against the NPCSC of abusing its power degrade the public

image of the highest organ of state power. This is unacceptable both in terms of courtesy and legality. In terms of courtesy, it is utmost disrespect for the organ from which the Legislative Council derives its power. In terms of legality, the Legislative Council has no power to query the powers exercised by the NPC or the NPCSC in accordance with the Basic Law and the process set out in the Basic Law. This is the ruling of *NG Ka-ling v Director of Immigration* [1999].

This is not tantamount to saying that Honourable Members' freedom of speech has been suppressed. Outside this Chamber, Members of the Legislative Council are just like other citizens and have commented on the act. But they cannot do that in this Chamber. Madam President, a couple of days ago, you made a similar decision regarding the Honourable Martin LEE's proposed amendment to this motion. I would like to conclude my speech here. Thank you, Madam President.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, thank you for giving me one more chance to speak. In particular I wish to, following the speech by the Secretary for Justice, further respond to several arguments advanced by Mr CHEUNG Man-kwong just now.

Actually, over the past several years, a number of pro-democracy Members have, on different occasions, questioned the actions taken by the Central Authorities with respect to the Basic Law and gave vivid descriptions of how such actions would affect and undermine Hong Kong's system of rule of law. These allegations, though appealing, were actually not based on legal principles. Furthermore, their arguments run counter to the legal systems practised in Hong Kong and the Mainland.

To properly deal with Hong Kong's constitutional issue and issues related to the Basic Law, we must, first of all, respect Hong Kong's constitutional order and arrangements. Hong Kong is a unique jurisdiction without sovereignty. It is a special region with a regional government. Before the reunification, however, in order to protect Hong Kong's common law system and to implement in Hong Kong the Basic Law enacted by the Central Authorities specifically for the territory, the power of interpretation of the Basic Law and power of final adjudication over cases were dealt with separately. The fact that the power of interpretation of the Basic Law is vested in the Standing Committee of the National People's Congress (NPCSC) is stated very clearly in the Constitution

and the Basic Law. Yet, in the interest of the common law system practiced in Hong Kong, the absolute power of adjudication over Hong Kong cases is vested in the Court of Final Appeal (CFA), and cases will never be brought to Beijing for adjudication. The vesting of the power of final adjudication in the CFA over Hong Kong cases ensures that the common law system is protected in Hong Kong. The common law principles will continue to evolve and develop only in Hong Kong. The CFA in Hong Kong also possesses the final power of interpretation of the legislation enacted by the Legislative Council in Hong Kong. As such, the constitutional arrangement prescribed in the Basic Law can absolutely protect and uphold Hong Kong's system of rule of law.

Let me come back to the three interpretations given by the NPCSC with respect to Hong Kong. The first interpretation was given as an explanation for the implementation of the Chinese Nationality Law in Hong Kong in 1996. I recall that very detailed discussions were conducted on this issue among members of the community within a couple of years at that time. Eventually, the NPCSC gave an interpretation on the implementation of the Chinese Nationality Law allowing the people of Hong Kong and Hong Kong residents having migrated overseas to return to Hong Kong to take up residence, retain their right of abode, and apply for Hong Kong SAR passports. This approach was widely welcome by the people of Hong Kong and has proven very effective even today.

The second interpretation took place in 1999 for the sake of stipulating clearly the handling of problems arising out of children born to Hong Kong people on the Mainland in connection with the right of abode issue in future. Actually, the Hong Kong community (including this Council) agreed with and supported the handling of this major social issue. Today, not only has this problem been resolved, thousands of people affected by the ruling made by the CFA in late January 1999 have also remained in Hong Kong. As such, I cannot accept the remark made by Mr CHEUNG Man-kwong that the interpretation of the Basic Law by the Central Authorities and the NPCSC will undermine the rule of law. This is definitely not the case. On the contrary, the spirit of the rule of law in Hong Kong and the rights and interests of individuals are protected as a result of the interpretation.

Third, the recent interpretation by the NPC has sought to define clearly ambiguities in Annex I and Annex II with respect to Hong Kong's future constitutional development. I believe, with the passage of time, Members will

definitely see that the NPCSC's interpretation of Annex I and Annex II to the Basic Law in April has not only consolidated the rule of law in Hong Kong, but also determined a clear direction and procedure for Hong Kong's future constitutional development.

For this reason, I wish to raise two points. First, from the very beginning, the NPCSC has had power to decide on the issue of Hong Kong's constitutional development, and such power originated from both the Basic Law and provisions of the Constitution.

Second, I hope remarks running counter to the legal principle will not be heard again, both inside and outside this Council. Today, despite that alarmist talk has been raised for years, the common law system and the system of rule of law are still safe and sound in Hong Kong. Every day, cases are examined and Hong Kong's system of rule of law and judicial system are upheld by Hong Kong courts in accordance with the Basic Law, Hong Kong's common law system and the legislation enacted by Members.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr Frederick FUNG, you may reply and you have one minute two seconds.

MR FREDERICK FUNG (in Cantonese): Madam President, some time before 1997, the Hong Kong Association for Democracy and People's Livelihood (ADPL) met with LU Ping, the then Director of the Hong Kong and Macao Affairs Office of the State Council. At that time, we put forward an important view and that is, recovering Hong Kong did not amount to recovering an area of 400 sq m but the hearts of 6.5 million people.

After 1997, in the days of the Provisional Legislative Council, the ADPL had a meeting with the Chief Executive and proposed that the most important task for the Government was not to build better infrastructure but to make the hearts of the people incline towards the Government. If infrastructure work is sound, but the Government does not common popular support, then the people would chide the Government even though they have money in their pockets.

Yet if infrastructure work is not so sound, but the Government is popular with the people, then even if the people are not well-off, they would tide over the difficulties with the Government. However, some officials have said to us that if the Government only follows public opinion whenever big problems come up, then very often this would not be what a responsible government should do. I think that this view really touches on the issue of acting against popular sentiment.

I think this Report should be written with the inclinations and aspirations of Hong Kong people in mind. However, I think this Report is against the will of most people in Hong Kong. So I would think that it is an acceptable idea if a report is written anew and submitted to the NPCSC.

I so submit.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Frederick FUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Frederick FUNG has claimed a division. The division bell will ring for three minutes.

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

PRESIDENT (in Cantonese): Dr David CHU, please cast your vote.

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

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr Eric LI, Dr David LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok and Mr IP Kwok-him voted against the motion.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 26 were present, five 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, 30 were present, 17 were in favour of the motion and 12 against it. 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.

PRESIDENT (in Cantonese): Second motion: Curbing domestic violence.

CURBING DOMESTIC VIOLENCE

(Many Members exited from the Chamber)

PRESIDENT (in Cantonese): Ms Cyd HO, this does not mean that they are against you. They should be hurrying to some other places. *(Laughter)*

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

Another case of domestic violence has occurred. This time around, a mother, her son and her daughter were involved. But how can we allow such cases to occur over and over again? These are by no means isolated cases, nor are they the result of any individual social worker's negligence. Rather, they are all caused by some underlying structural problems, so how can we still sit here with folded arms every time after a case has occurred?

We in the Legislative Council Panel on Welfare Services have been holding one meeting after another, every time following virtually the same pattern — various concerned organizations will turn up and each speak for five to seven minutes, leaving practically no time for government officials to give any reply, nor any adequate time for Members to take follow-up actions. I am not trying to lay the blame on the Chairman of the Panel; in fact, the Chairman and members have all been working hard and paying great attention to these cases. But due to the constraints imposed by the powers of this representative assembly, this legislature, we are unable to follow up these cases direct immediately after their occurrence, and we can only discuss policy issues. And, in the course of

such discussions, we can never examine the case concerned as an illustration of all the underlying structural problems. In this way, after two or three weeks, we will have to halt our discussions due to the impossibility of taking any further actions. Then, perhaps three months later, another case may occur, and the same pattern will repeat once again.

However, Madam President, this time around, we think that the Legislative Council and society as a whole can no longer watch with folded arms and tolerate the repeated occurrence of such cases. Therefore, the conclusion of this motion debate will not mark the end of our concern. After this debate, regardless of the result of voting, we will still take further actions in the Legislative Council, and concerned organizations in society will also do so. The motion debate today is just the beginning of a new round of actions after the meetings of the Panel on Welfare Services. I very much hope that we can conduct a serious and comprehensive examination to identify the root causes, so that the right remedies can be applied. We do not wish to see any more cases of domestic violence.

There are indeed so many statistics that can bear testimony to the increasing gravity of domestic violence in recent years, so I am sure it suffices for me to refer to just one of them, the number of calls for assistance received by the Women Hotline of the Harmony House, which stood at merely 365 in 1986-87 but soared by almost 300%, Madam President, to 9 542 in 2003. I am very grateful to Members' serious concern about this motion, for I note that as many as four amendments have been put forward. Actually, when I was working on the wording of the motion, my aim was to make it very concise lest Members might vote against it just because of one punctuation mark or one single word. This is something I do not wish to see. Besides, in regard to the amendments, I basically still hope that they can approach the motion from more perspectives and introduce a greater number of topics, such as educating young people to let them know that violence is no solution to problems, or enhancing the co-ordination between government departments and various voluntary agencies, or conducting a comprehensive review of the existing counselling approach, and so on. All these are desirable. But I must admit that Members do have some divergent views on resources. I shall come back to this in greater detail in the later part of my speech, and when I give my reply to Members' amendments, I will also discuss this still further during the five-minute time limit.

Madam President, I wish to discuss first the social welfare policy. Actually, the policy intent is reflected in the enactment of legislation, the deployment of resources and the procedures of enforcement. I very much hope that the Government can first set down a policy direction and adopt it as the basic objective of all relevant legislation, public expenditure items and codes of enforcement.

In the past, the Government's social welfare policy often stressed the importance of the family as the basic unit of society. The aim was to turn the family into a place where various social problems, such as those relating to care for the elderly, the disabled, the chronically ill and even rehabilitating patients (as mentioned in the current health care policy review), were all handled within the family as a centre. Frankly speaking, if the family is capable of doing so, this will be a very desirable policy, because no social worker can possibly replace one's family members in the tender of love and care. However, when the economy is in poor shape, when living conditions are also very poor, if we still seek to centrally handle all these social problems in the family, the only result will be the shifting of the Government's responsibility onto the shoulders of the women in the family. If a woman is unable to tackle all these problems on her own, she herself may become easy victims of domestic violence. Therefore, I hope that while the Government attaches importance to harmonious family relationship and the mutual support among family members, it can at the same time pay heed to women's self-determination and, more importantly, their personal safety.

At the last meeting of the Panel, the Government denied that it was its policy to rely on the family as the basic unit, avowing that such a direction had never been adopted. That is fine, and let us put this on record. But can we further ask the Government to adopt a policy of "zero tolerance" on domestic violence? Some Members are rather apprehensive of "zero tolerance". They simply wonder whether the intention is to tolerate not even one single case. Honestly, Madam President, we cannot possibly exercise any control on how things are going to happen or what consequences there will be. But we do have control over the preventive measures we are going to take. For this reason, I urge the Government to adopt "zero tolerance" as the objective of all its work relating to any comprehensive review, enactment of legislation, resource deployment and manpower training in the future.

Madam President, next, I wish to talk about the enactment of legislation. Organizations concerned about domestic violence have formed a joint conference,

and it has worked with the office of Dr LAW Chi-kwong and mine to draft a submission. I know that Dr LAW Chi-kwong will discuss the submission in detail later at this meeting. For the moment, I may just focus on "stalking", because this forms part of Miss CHAN Yuen-han's amendment. We were frankly very worried in our discussions on the enactment of legislation on stalking because we feared that its total prohibition as recommended in the Law Reform Commission's report might infringe upon journalistic independence, reporters' right to news coverage and people's right to information. That was why we recommended that while the enactment of legislation on stalking could be discussed, prohibition should be restricted to the acts of stalking present in certain specific types of relationship, such as the stalking acts arising from a creditor's dunning actions against a debtor, or those among family members, especially after the breaking up of wed lock. We were of the view that stalking acts should be prohibited only after we had succeeded in defining the scope of prohibition. We very much supported such a viewpoint.

However, the attitude of the Government was altogether dubious. First, even when speaking on the stalking acts arising from a creditor's dunning actions against a debtor, the Security Bureau still said that the matter was very sensitive, that Members might just put it aside for a moment, as thorough discussions were required. Second, the Secretary for Home Affairs and the Home Affairs Bureau have so far failed to say even one single word on the stalking acts relating to domestic violence. We hope that the Government can consider the possibility of adjusting such an over-cautious attitude. We also hope that the Government can give some thoughts to how the stalking acts found among spouses or family members can be prohibited under the Domestic Violence Ordinance, so that targets of stalking can be given a legal basis as early as possible for reporting to the police which can deal with such stalking acts before the eruption of domestic violence.

Next, Madam President, comes the question of resources. I only wish to say a few words on this. Most importantly, I am not just talking about an increase in manpower. Miss CHAN Yuen-han's and Dr TANG Siu-tong's amendments are targeted on communities, especially high-risk communities. I do not know whether there are enough social workers in Tin Shui Wai, but, Madam President, by resources, I actually hope that the Government can equip social workers with the means required for solving problems and check how many means are available to them. We may well cast aside the shortage of

social workers. But even if the ratio of social workers to clients can be lowered, even if social workers have enough time to handle each case, what led eventually to the Tin Shui Wai case would still repeat itself as long as social workers are unable to help their clients apply for Comprehensive Social Security Assistance (CSSA), arrange school transfers for their children to stay away from the stalking former spouses and secure for them any accommodation in refuges for women, or as long as they can only say, after listening to a tearful client for four whole hours, "Go home now. Just be more careful, and ring me up in case anything happens." Therefore, Madam President, I am actually talking about the availability of resources in general, including the availability of accommodation in refuges for women and also housing, that is, whether we can provide enough public housing units to those seeking assistance from social workers to help them stay away from their dangerous family environment. I shall discuss this in greater detail when I give my reply to Members' remarks later on.

Madam President, next comes the question of training. From a recent study conducted by The Chinese University of Hong Kong, we can notice that there is a problem of inadequate ability with front-line workers dealing with cases of domestic violence. The findings show that 29.7% of the police officers covered by the survey think that husbands have the right to "punish" their wives — yes, to "punish". And, 28.4% of the police officers also think that some wives actually deserve being beaten by their husbands; it serves them right, in other words. If our front-line police officers responsible for protecting members of the public think that way, if they still hold such an attitude when victims of domestic violence report to the police for assistance, they will simply be unable to handle such cases. Madam President, I do not intend to turn this problem into a sensitive issue. But I still think there is a question of ability. If a police officer cannot realize that his personal value judgements should not be allowed to take precedence over his duties, he definitely has an ability problem.

And, police officers aside, there may also be problems with social workers. I have learnt this from some social workers. Some organizations have a religious background, so they do not encourage divorce. Precisely because of this, in the course of case handling, these organizations all hope that the assistance seekers can put their marriage before everything else. Besides, since there are not enough resources and means to help their clients, some social workers may have become less alert in risk assessment. Resource constraints

have been frustrating social workers greatly and have stripped front-line workers of adequate ability to assess risks. As a result, cases of domestic violence have occurred over and over again.

Madam President, I hope that through a review of this recent case, we can conduct a serious examination of the entire framework and work out some ways to avoid the recurrence of such cases. Although it is already very late now, I hope Members can still speak enthusiastically later on.

Ms Cyd HO moved the following motion: (Translation)

"That this Council urges the Administration to make every effort to curb domestic violence, expeditiously amend the Domestic Violence Ordinance, allocate more resources and provide training to enhance the ability of front-line personnel to deal with cases of domestic violence."

PRESIDENT (in Cantonese): It is indeed very late now, almost 10 pm. As usual, when it is 10 pm, I will inform Members whether we will adjourn the meeting or carry on. I decided that we should be able to finish the debate on this motion before midnight, so we will continue with the debate.

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

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, Ms Miriam LAU and Dr TANG Siu-tong will respectively move amendments to this motion, and Mr WONG Sing-chi will move an amendment to Ms Miriam LAU's amendment. Their amendments have been printed on the Agenda. The motion and the amendments will now be debated together in a joint debate.

I will first call upon Miss CHAN Yuen-han to speak, to be followed by the abovementioned Members; but no amendments are to be moved at this stage.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, the family tragedy in Tin Heng Estate, Tin Shui Wai, has aroused the grave concern of the

community. Besides being heartrending, the incident also brings home to us that society must adopt an attitude of zero tolerance towards domestic violence, and that all sectors must make concerted efforts before the problem can be tackled.

The direction of Ms Cyd HO's motion today is identical to mine, but since I still wish to add my own viewpoints to her original motion, I have put forward an amendment.

The reason is that at a recent joint meeting of the Panel on Welfare Services and Panel on Security of the Legislative Council, all the 17 organizations in attendance presented some very good proposals on domestic violence. I am therefore prompted to incorporate some of the viewpoints expressed during the discussions into my amendment, so as to increase the diversity of opinions in our debate on the issue today. For example, I have included the opinion of the Hong Kong Council of Social Service, which urges that the Government must adopt a policy of zero tolerance on domestic violence and incorporate it into the policy agenda or policy address by setting down a practicable and consistent direction, targets and effectiveness indicators.

As pointed out by Ms Cyd HO just now, the Panel on Welfare Services of the Legislative Council has been discussing these issues very frequently in recent years. For example, on 11 March 2002, 10 February 2003 and most recently 26 April this year, discussions were held in response to the occurrence of family tragedies in society. We are of the view that if we do not address domestic violence squarely, it will become something like an epidemic disease, hitting us in roughly the same seasons every year, inflicting pain on us and getting more and more serious. Therefore, I hope that the Government can treat this as a major problem requiring urgent attention in administration. This is our hope.

After rounds and rounds of discussions, we can actually see that very often, the views expressed in society are very strong. For example, in the recent joint meeting, all the 17 organizations wanted to express many views in the very limited time available. Many of these views are not new to Hong Kong but have in fact been heard over and over again in recent years. We and also the various sectors of society thus cannot help questioning the executive on what they have done so far. Has any mechanism been put in place to co-ordinate the work of various departments? Are there any ways to address the problem of domestic violence squarely, to solve it and to eradicate it?

Madam President, as early as 2000, the Law Reform Commission (LRC) already pointed out in its report the need to amend the Domestic Violence Ordinance. At present, for example, the relief of an injunction is available to married persons or cohabitants only. If a victim of abuse or molestation has never lived with the abuser or molestor, he or she will not qualify to apply for an injunction. Madam President, during our recent meeting with the 17 organizations, all these problems were mentioned, and these organizations were of the view that as far as these problems were concerned, clear definitions were required. However, over the past four years, the Government has never responded to the voices of society; it can be said that it has been turning a deaf ear to all voices. It is only after the repeated occurrence of such tragedies that the Government says that it will conduct some studies again, and again.

Madam President, it has been 18 years since the Domestic Violence Ordinance was enacted. Society has since changed very rapidly, which is why it is now necessary to amend the Ordinance. We can actually see that non-governmental organizations have put forward many specific amendment proposals. For example, as I have mentioned, the 17 organizations have proposed amendments in several respects: a wider definition of family members to include former spouses, former cohabitants and direct in-laws sharing the same residence; an extended definition of violence to cover emotional abuse, desertion and negligence; the application for an injunction by a third party on behalf of the victim; and, requiring the abuser to receive counselling. All these are the views they have been rehashing over the past few years. But has the Social Welfare Department (SWD) ever conducted any studies on them? How much longer will such studies take? We do not wish to see the taking of follow-up actions only after the occurrence of yet another tragedy.

Madam President, it was stated by the SWD in a Legislative Council paper dated 10 February 2003 that it would carry out a structural revamp to set up an inter-departmental co-ordination mechanism and draw up guidelines on handling cases of child abuse and battered wives. However, the inter-departmental mechanism has not been working as effectively as we may have imagined. The police, for example, are part of the co-ordination mechanism, and they have even drawn up guidelines on handling domestic violence. But we can notice very clearly that in the Tin Shui Wai incident, although the victim had reported to the police and told of the injury she sustained in the dispute with her husband, the police nonetheless did not record her complaint, nor did they notify the SWD immediately, evidencing the very low alertness of front-line police officers to

domestic violence. According to many victims of abuse, the police often ask questions like "Do you want us to lay a charge against your husband?" or "Do you want us to lay a charge against your wife?" I believe that when so questioned, anyone having such a relationship with the suspect will find it hard to say "yes" or "no".

Madam President, some years ago, when the return of many Hong Kong people to the Mainland led to the problem of "second wives", I once visited Guangzhou; there, from the local courts, I learnt that very often, when wives were asked whether they wanted to lay a charge against their husbands, many of them would back out at the last moment. In other words, if the Government still sticks to the practice of not allowing a third party to apply for an injunction on the victim's behalf, it will be difficult to untie the knot, to solve the problem. As a result, cases of domestic violence will only occur over and over again.

Madam President, as mentioned by Ms Cyd HO just now, the attitude of our police officers and even social workers towards domestic violence is rather outdated. Some police officers even think that beating up one's wife or husband is nothing serious, being just a family affair; it also seems that they see nothing wrong with a son beating up his father at home or the other way round. But they do not realize that these are also acts of violence. Maybe, they will not realize this until there is bloodshed. In our society, however, it is always wrong for anyone to beat others up, for everyone is an individual in his own right. It is obvious that some front-line workers responsible for handling cases of domestic violence are very old-fashioned in their attitude; or, perhaps, they simply have not tried to look at the value of an individual from fresh perspectives.

Madam President, I hope that after all these incidents, the Government can really learn a lesson. The police, for instance, should draw up clearer guidelines and provide training with sharper objectives, so as to enhance police officers' alertness to and understanding of this problem. That way, unlike how they handled the recent case, they will not fail to put down on record the report they receive from a victim.

How about the SWD, which consists of so many professionals? In 2000, the SWP redeployed its resources and established the Family and Child Protective Services Unit to handle cases of child and spouse abuse. The Family and Child Protective Services Unit consists of 105 professional social workers,

incurring an expenditure of several dozen million dollars a year. It handled 6 900 cases last year, but its effectiveness has frequently been questioned. Is that because of any shortage of resources or a lack of performance evaluation? Or, is that because monitoring within the SWD is not adequate? The SWD has failed to provide any convincing reason. Besides, the police refer some 1 000 cases to the Family and Child Protective Services Unit a year, but what has the Unit been doing so far? I have not heard any reasonable reply to this question either.

Madam President, besides the police and the SWD, I also wish to say a few words on the Housing Department (HD), with which I am very familiar. Since many Legislative Council Members are also working on the front line, I am sure that many of them should have received such complaints. I notice from lots of information that many cases of domestic violence or abuse actually occur in public housing estates. In 2000, I already asked a question in the Legislative Council on the restrictions faced by women living in public housing estates who wish to apply for conditional tenancy. As can be expected, in response to our question, the HD replied earlier that the restrictions on conditional tenancy had been relaxed for women who were the victims of abuse, especially those who were single-parents, and that the allocation of housing units to divorcees would be speeded up through compassionate rehousing. But I do not know whether the HD has ever learnt from the inter-departmental discussions on domestic violence that those involved in such cases are not restricted to battered spouses but also include children, brothers, daughter-in-laws, fathers, and so on. The number of such cases has been rising incessantly, and whenever we refer a request for solutions to the SWD, it will very often ask whether the case has been reported to the police and whether there are any physical injuries before considering the possibility making any new arrangements. Frankly speaking, if the Government does not put in place a co-ordination mechanism for problems of an inter-departmental nature, such tragedies will only occur over and over again. But this is something we do not wish to see.

Madam President, legislative provisions are meant to regulate people's behaviour. That is why we must proceed very cautiously lest any mishandling may restrict people's freedom. When the LRC published a report and put forward the problem of stalking for discussions in 2000, many people working for the press expressed the worry that a stalking law may adversely affect the freedom of news coverage. Women organizations, in contrast, generally hoped that under some specified contexts, a stalking law could be enacted to forbid the

abuser to molest the victim. Madam President, given the diversity of opinions in society, the Government should proceed very cautiously and seek to strike a balance. But this is not the same as total inaction. The LRC made many recommendations on the problem at that time, so we can actually base our discussions on these recommendations and seek to strike a balance, so as to determine how we can rid the press of its worries while addressing the concern of women organizations about stalking. We may even explore whether it is possible to provide protection in certain specified respects.

Madam President, my amendment also mentions the need to instil into young people, through education, the concept of refraining from using violence to solve family problems.

Madam President, I so submit.

MS MIRIAM LAU (in Cantonese): Madam President, I believe that besides feeling stunned, irate and sorry for the horrible death of Ms KAM and her two daughters in the family tragedy that occurred in Tin Shui Wai last month, all of us do also share one common belief, the belief that one single family tragedy is too many, and, we must take preventive measures before it is too late.

For this reason, the Liberal Party in principle supports the motion proposed by Ms Cyd HO today. But since we still think that the specific details of implementation can be spelled out yet more clearly, we have proposed some amendments.

First, I wish to point out that the recent family tragedy shows that our existing mechanism on handling domestic violence may be plagued with many problems and loopholes, especially in respect of the counselling approach. There is thus a need to conduct a prompt and comprehensive review before it is too late to mend the fold, before we can avoid the repeated occurrence of such tragedies.

Many social service organizations, especially professional family counsellors and therapists, have doubted the wisdom of emphasizing the "family integrity" concept in our existing counselling regime. Very often, the victim is requested to receive counselling and therapy together with the abuser. But it often happens that the problems faced by the abuser and the victim are simply

different in nature, so such a counselling approach may not necessarily be able to offer any protection to the victim; instead, very often, since the victim may be intimidated by the abuser's presence or burdened by the invisible pressure coming from the high-sounding notion of "maintaining a happy family", it may not be possible to work out any ultimate solutions. But still, the victim is forced to continue to live with the abuser, and he or she may not dare to seek any further assistance. Therefore, I maintain that it is high time we examined whether the arrangement is appropriate.

Apart from the counselling approach, the counsellors' competency, practice and attitude should also be reviewed, and this is precisely the consensus underlying the original motion and the amendments today. Precisely because of this, members of the Legislative Council Panel on Welfare Services have almost unanimously urged the Social Welfare Department (SWD) to review the terms of reference of the three-member panel set up to investigate the recent tragedy, so as to broaden the scope of investigation and thus enable us to gain more experience and learn more lessons for the avoidance of similar mistakes.

But I still wish to emphasize that rules and systems are inflexible, but men are not. If front-line workers are not required to raise their alertness, then I believe that however we enhance training, however detailed and thorough the guidelines and codes are, it may not necessarily be possible to avoid tragedies similar to that of Ms KAM and her two daughters. The Liberal Party thus wishes to highlight the importance of this point, in the hope that all those who may come into contact with victims of abuse, including front-line workers, police officers, District Council members and educators, can maintain a high level of vigilance at any time, instead of dealing with these cases just "as a matter of routine".

Madam President, that is why I have put forward another amendment, urging the Government to enhance the co-ordination between government departments and voluntary agencies and to deal with cases of domestic violence through inter-departmental and cross-sector collaboration. The family tragedy involving Ms KAM, for example, was referred to the Family and Child Protective Services Unit of the SWD and police representatives also attended the meetings concerned, but on the day of the tragedy, when Ms KAM reported to the police for assistance, the duty-officer did not offer her any assistance, and not only this, he even failed to record her case. Why did the police fail to attach appropriate importance to Ms KAM's request for assistance?

What is more, prior to all this, Ms KAM did tell the social worker that her husband had put a knife under the bed, intending to harm her and her two daughters. But why did the social worker covering her case fail to pay sufficient attention to her? Why were the two girls still made to live with their father, leading to their unnecessary and heartrending deaths? Why did the SWD so lightly outsource this serious case to a voluntary agency? And, did it ever monitor the case afterwards?

I think the point is that if the various government departments can enhance their communication, co-ordination and follow-up actions in these cases, the incidence of similar tragedies can definitely be reduced greatly. One effective measure is to follow the practice adopted for the handling of child abuse cases, that is, to draw up a list of people who have a record of battering their spouses or family members for the reference of other relevant government departments. The privacy problems involved must of course be studied very carefully. But we still hope that more can be done to facilitate the case follow-up by government departments, as long as there is no adverse effect on privacy.

The points I have mentioned relate to the actions that we can take immediately. Ultimately, the best solution is still the prompt amendment of the Domestic Violence Ordinance to offer better protection to all battered family members. However, as legislative amendments will take time, I am afraid that this cannot be done within a short time.

The Liberal Party agrees that many provisions of the existing Domestic Violence Ordinance are already outdated and in need of improvement. For instance, the definition of family members should be extended to cover former spouses, cohabitants and in-laws, instead of being confined to two people in wed lock, their children, and so on. That way, all battered family members will be given proper protection. Besides, at present, a court injunction is valid for a period of three months only. Application for an extension is of course possible, but even when the extension is included, the total validity period cannot in any case be longer than six months. This may require a review. According to some research findings, in the case of a battered woman who has separated from her spouse, I mean, just separated from her spouse, her chances of being battered again at this very point in time, during this very period, are 25 times that of ordinary married women and 14 times that of battered women who are still living with their spouses. Can we provide better protection in law to these women

who are facing high risks? This should also be examined in the studies on legislative amendment.

In addition, I also wish to point out that the Administration should review the existing deployment of resources in the various districts. Specifically, it should deploy more manpower and community resources to districts with more problems and facing higher risks, such as Yuen Long and Tuen Mun, where the problem of spouse and child abuse is rather serious. That way, we can ensure that requests for assistance can be handled more efficiently and properly. We are of the view that given the huge fiscal deficit now, we must be especially careful with spending resources, instead of lightly asking for a uniform increase in resource allocation whenever a problem emerges. According to some organizations, Yuen Long and Tin Shui Wai are places where the problems of spouse abuse and domestic violence are the most acute. There, a social worker has to handle an average of 90 cases, which is 50% more than the average of 60 cases in other areas.

We do not wish to see a situation under which there is very little work in some areas while others are being stretched beyond capacity. We hope that internal resource deployment can first be improved before any request for additional resources is put forward, so as to ensure the proper utilization of resources. Mr WONG Sing-chi has put forward an amendment to my amendment, proposing to link up "allocate more resources" and "optimize the use of existing resources" with the conjunction "and", so as to form another expression to replace "optimize the use of existing resources before allocating further resources" in my amendment. But there is no great contradiction between Mr WONG's proposed amendment and mine, because my emphasis is on "optimize the use of existing resources". If it can be ascertained that existing resources are already adequate, and there is only a problem with deployment — I mean, if it can be ascertained that resources will be adequate after redeployment, Mr WONG may not necessarily insist on asking for additional resources. Conversely, if it can be ascertained that resources are really inadequate, then, definitely, the Liberal Party will not object to the allocation of additional resources. On the basis of these considerations, the Liberal Party will support Mr WONG Sing-chi's amendment. We of course think that the enhancement of education and publicity as well as efforts to influence the general mindset of society are all ultimate means to help reduce the incidence of these acts of violence and cases of abuse. But it will after all take a very long time before the imperceptible influence of these efforts can be felt, so we cannot expect any instant results. Later on, Mrs Sophie LEUNG,

Chairperson of the Women's Commission and a member of the Liberal Party, will also express her concern and views about this issue.

Lastly, the Liberal Party also hopes that through publicity, education and social mobilization, we can arouse the concern of society as a whole and induce members of the public to make concerted efforts of curbing domestic violence. This is the only means enabling us to foster family harmony and happiness on a larger scale. Later on, Mrs Selina CHOW will speak on the ideas of an "Against Domestic Violence Charter" and social mobilization.

Madam President, with these remarks, I support the idea that ways be worked out to curb domestic violence. Thank you, Madam President.

DR TANG SIU-TONG (in Cantonese): Madam President, the family tragedy that occurred in Tin Shui Wai in April this year is indeed heartrending. The tempo of life in Hong Kong is fast, and its people are subject to immense work pressure. The family has always been regarded as the safest place, an escape from pressure. But cases of domestic violence have been on a constant rise in recent years. When compared with the figures in 1998, spouse abuse and child abuse cases both increased greatly in number last year, at the respective rates of 226% and 17.6%, and matched by an aggravating degree of violence. A University of Hong Kong academic commissioned by the Social Welfare Department (SWD) to study child abuse, spouse battering and domestic violence in Hong Kong has pointed out that, based on the findings of some surveys conducted in a number of small communities, it is estimated that domestic violence has occurred in 10% to 14% of the families in Hong Kong. But according to the academic, these figures are not yet a full reflection of the actual situation. This means that there are many hidden cases of domestic violence in Hong Kong, much to our worry. We must immediately do our utmost in all related areas to curb domestic violence.

One of the victims of the Tin Shui Wai tragedy sought assistance from the police more than once and was also receiving the counselling and other services of the SWD, but in the end, a tragedy still occurred, killing all in the family. One thus cannot help asking whether the attitude and practices of the SWD and the police were appropriate. The authorities should allocate more resources and enhance the ability of front-line personnel to handle cases of domestic violence. When the victim reported to the police on the day of the tragedy, her case was

neither recorded nor handled appropriately; this highlights the fact that the reporting procedures and training of front-line police officers are both inadequate and in urgent need of review and improvement. In addition, the incident also reveals that the definition of domestic violence in the Domestic Violence Ordinance is far too narrow. Madam President, arresting the abuser only after the victim has sustained physical injuries is tantamount to ignoring the various acts of intimidation that may lead to physical injuries.

I support both the original motion and the amendments, but since I still find the various proposals inadequate in one way or another, I have put forward an amendment. Prevention is always better than cure, so I urge the Government to administer the right remedies immediately. Specifically, it should expand the coverage of legislative control and enhance its co-operation with non-governmental bodies and organizations. That way, it will be possible to identify such cases, provide counselling and take appropriate measures at an earlier time, thus curbing the occurrence of violence and tragedies. Besides, the root causes should also be tackled; education and publicity efforts should be made to promote family harmony, proper interpersonal relations and the neighbourhood spirit, with a view to strengthening community support for the family. What is more, education and publicity efforts should not target only on youngsters, but should cover all strata and age groups in society. The fact is that in most cases, the abusers in domestic violence cases are not youngsters; counselling and education efforts should thus target also on the middle-aged and the elderly. In addition, I also maintain that the provision of social services should take account of the characteristics and needs of individual districts. There is a need for the Government to improve its district planning, with a view to avoiding the formation of any environment conducive to the breeding and spreading of domestic violence.

Quite a number of Members have already mentioned the Domestic Violence Ordinance, discussing its loopholes relating to the definition of domestic violence, meaning of family members and handling of abusers. I think that the Ordinance should be amended in all these respects. It is obvious that there can be different forms of violence which all inflict harm on the victim. Besides physical abuse, there are also sexual violence, emotional abuse and acts of intimidation, which may inflict even greater and more profound harm on the mental and physical well-being of the victim. In addition, the existing definition of family members, which covers only spouses, or men and women having a long-term and stable relationship, and also their children aged under 18,

should be expanded to include adult children, siblings, parents and grandparents living together with the abuser. What is more, in regard to follow-up measures and penalties, the authorities should put in place some measures for family members who are deserted or who cannot look after themselves, so as to ensure that during the validity of the injunction against the abuser, the family members concerned can be provided with appropriate care. With respect to the validity of an injunction, I am of the view that it can be extended, taking into account the needs of individual cases. Moreover, allowing a third party to apply for an injunction on behalf and with the knowledge of the victim, as well as the introduction of "mandatory counselling for the abuser", are also stop-gap measures useful in alleviating the problem of domestic violence.

It is certainly true that the understanding of front-line police officers and social workers of the backgrounds of those assistance seekers and also the appropriateness of the measures they take in response are also crucial. According to the police, cards on the procedures of handling domestic violence have been distributed to front-line police officers, and over the past two years, 11 000 police officers have been given basic training on handling domestic violence. However, from the Tin Shui Wai tragedy, we can still see that the duty-officer concerned did not record the complaint of the victim, resulting in no follow-up of the case. I am of the view that the police should thoroughly re-examine the relevant guidelines, with the aim of according priority to the personal safety of the complainant. As a precaution, all complaints should be recorded, and all relevant information must be put on record. That way, the police can take follow-up actions when necessary and may even intervene proactively in cases with the relevant signs and circumstantial evidence, so as to curb the incidence of violence.

Besides plugging the loopholes in the relevant legislation and guidelines, we also need to take a fresh look at some established concepts. These concepts involve our perception of domestic violence, which are more important than any training on handling skills and methods. In traditional Chinese culture, there are some embedded notions which tell people that "it is hard for even an upright official to understand a family quarrel", and that "people should better tell others to chastise their sons than advise them to abandon their wives". Owing to the influence of these concepts, people often interpret domestic violence as a relationship problem between husband and wife or a manifestation of the generation gap. The handling of family quarrels is thus often based on good intentions and a conciliatory attitude aimed at maintaining the integrity of the

family. But in the end, "good intentions may well do harm instead". Actually, violence is at all times an abuse of others, so its commission among members of a family should not be regarded as a less serious crime than when it is committed on strangers. Family integrity is no doubt important, but this concept may not apply in all cases of domestic violence, and the safety of the victim should always be given priority consideration.

According to the survey findings released by the Department of Psychology of The Chinese University of Hong Kong two weeks ago, misconceptions about sexual equality and wife abuse are found among police officers more than other front-line personnel. I certainly have no intention of making any guesses or inferences on the way in which the police handled the events leading up to the Tin Shui Wai tragedy. In fact, the relevant findings also revealed similar misconceptions among the wider community. The proposals in my amendment on promoting family harmony, proper interpersonal relations and the neighbourhood spirit are meant precisely as positive means to prevent the breeding and spreading of domestic violence. To achieve family harmony and good relations between wives and husbands and between parents and children, there must first and foremost be mutual respect among all family members, and only this can bring forth equitable interpersonal relations. All is thus a question of mindset. Traditional concepts about "men being superior to women", "men being the masters of their families" and "wives and children being the properties of men" are in fact one of the root causes leading to various forms of domestic violence such as wife and child abuse. Therefore, we should not only seek to alter the concepts and mindsets of those responsible for handling cases of domestic violence, but also try to correct the misconceptions of the public at large. And, education efforts must be made with this as the specific target, because not much has been done so far to inculcate and discuss these concepts at the community level.

As a matter of fact, the enhancement of neighbourhood and community support networks is of very important to Yuen Long, the very district in which the Tin Shui Wai tragedy occurred, because there are large numbers of single-parent families, ethnic minorities (especially people of South Asian descent) and new arrivals from the Mainland who have not resided in Hong Kong for seven years, and also because the district is situated on the remote northwestern edge of Hong Kong. The Yuen Long District Council and its members have repeatedly urged the authorities to provide more social services in Tin Shui Wai. In the wake of the Tin Shui Wai tragedy, the Yuen Long District

Office, the SWD and the Yuen Long District Council have decided to organize an activity named "Building Harmonic Families Caring Campaign" from May to June to promote community care and establish closer community support networks. I do support activities of this nature, but I am afraid that just by holding an activity for a couple of months, we cannot possibly solve the perennial problems of the family. We need to invest resources on an ongoing basis in education, publicity and provision of care. I hope that the Government can draw up a plan on resource deployment according to the characteristics and needs of individual districts.

Yuen Long and neighbouring Tuen Mun are the worst-hit areas of domestic violence. According to the statistics of the SWD, Tuen Mun and Yuen Long, in that order, ranked first and second on the list of places with cases of spouse abuse and child abuse last year, with the former kind of cases numbering 598 and the latter 347 in Tuen Mun, and respectively 59 and 70 in Yuen Long. The number of spouse abuse cases in these districts represented 30% of the total number of such cases in Hong Kong and had been rising for four years in a row; the situation is thus very critical. And, Yuen Long and Tuen Mun are also described as places with the highest concentration of disadvantaged citizens. The median household income in these districts is lower than the average income in Hong Kong by more than 10%, and the number of CSSA recipients in these two areas is among the top three in Hong Kong. The number of unemployed CSSA recipients in Tin Shui Wai represents 60% of all such recipients in Hong Kong. And, in Tin Heng Estate, where the recent tragedy occurred, one third of the households are new immigrant families. According to a University of Hong Kong academic engaged in studies on spouse and child abuse, the families exposed to the highest risk of domestic violence are those marked by low income, a huge age difference between husband and wife and the prolonged separation of their members. Besides, a man who is fit for employment but forced to receive CSSA for a long time because of unemployment may hence lose their bearings and commit domestic violence. But then, the family services available to these districts are below the average level in Hong Kong, and there is also a shortage of police manpower. That being the case, how can the situation there be tackled?

It is no doubt important to increase the number of social workers and police manpower, but at the same time the authorities should make better use of the offices of District Council members. As a matter of fact, the offices of District Council members often receive many telephone requests for assistance

from residents. That is why the SWD should step up its co-operation and information exchanges with the offices of District Council members. Resources should also be made available to offer training to the staff of District Council members' offices, so as to assist them in handling requests for assistance.

Lastly, I wish to point out that the residents of Northwest New Territories have to incur huge expenses on travelling to and from urban Hong Kong and Kowloon. The Government has proposed to vigorously promote tourism and local community economy, but the Northwest New Territories is not included as a key development area to increase job opportunities for the residents there. The authorities should also review their policy on the distribution of public housing estates, with a view to maintaining an even social profile in each community as far as possible. Tin Shui Wai is part of the Yuen Long administrative district; therefore, as the Chairman of the Yuen Long District Council, I sincerely call upon the Government to attach importance to the various social problems caused by the rapid demographic increase and emergence of new communities in this district. More resources should be allocated, and the Government should join hands with the residents to build up a harmonious community.

Madam President, I so submit.

MR WONG SING-CHI (in Cantonese): Madam President, domestic violence has in fact been a long-standing problem, and a serious one too. The Tin Shui Wai incident is just the tip of the iceberg, which shows that if the problem is not tackled as early as possible, it will only keep on deteriorating until it gets totally out of control one day.

Cases of domestic violence have been on a constant rise over the past few years. In 2003, the Social Welfare Department (SWD) handled a total of 3 298 cases of spouse abuse, a rise of 226% over the corresponding figure of 1998. The number of child abuse cases handled by the SWD last year stood at 481, which was slightly smaller than the corresponding figure of 2002 but still 17.6% higher than that of 1998. But this is all that these statistics can tell. According to the findings of a telephone survey conducted by the Democratic Party earlier on, over 10% of the 500 or so respondents said that they had either personally experienced domestic violence or witnessed its occurrence. And, 13.1% of the

respondents said that some of their relatives, friends and neighbours had been the victims of domestic violence. From these findings, we can observe that domestic violence is indeed a very acute problem, and that the actual number of cases should far exceed those handled by the Government and the relevant organizations.

Faced with the serious problem of domestic violence, society must allocate more resources to provide families with assistance before any more tragedies occur, in the hope that domestic violence can be curbed in good time. In recent years, the Government has been investing increasing resources in family services, but the situation is still very much like "having just nine lids for 10 pots" — resources are barely enough and bound to get increasingly tight. Since family relations are getting more and more complicated, corresponding adjustments should be made to the services required. That is why the Democratic Party maintains that apart from optimizing the use of existing resources, we must keep on allocating further resources in the hope of curbing domestic violence. It is precisely for this reason that I have proposed an amendment to Ms Miriam LAU's amendment. Our rationale is that even if we can optimize the use of existing resources, the level of services may not thus become adequate anyway, for optimization can simply mean the maintenance of services as they are. As a matter of fact, it is of course necessary to maintain the existing level of services, but still, we must seek to improve the services continuously, and there can never be any end to the work of improvement. Hence, we just cannot wait until the use of existing services is optimized before allocating additional resources. The reason is that it is only by improving resource deployment that we can continue to provide the services required. But as far as we can observe, and as pointed out by Ms Cyd HO earlier on, the services provided by many government departments to assist in solving the problem of domestic violence are simply inadequate, so there is a need to allocate further resources in other aspects. Optimizing the use of resources and spending resources on prevention are always more effective than allocating additional resources only after problems have emerged, and the wastage of further resources can thus be avoided.

With respect to tackling the problem of domestic violence, the Democratic Party maintains that the Government is duty-bound. Besides reviewing the relevant legislation, the Government must also re-examine its manpower deployment and strategy on handling family problems. For new towns, especially those plagued with many family problems, such as the worst-hit areas of the North District, Tuen Mun, Tin Shui Wai and Yuen Long, the Government

should explore whether it should take account of their special circumstances and offer more assistance in the provision of service packages.

What is more, the Democratic Party hopes that the Government can reconsider whether it is necessary to put in place a comprehensive case review mechanism. Immediately after the recent Tin Shui Wai incident, the SWD hastened to set up a three-member panel of investigation. The panel is, however, established under the SWD, so its power of investigation is restricted to matters relating to the department. But what the Tin Shui Wai incident has revealed is precisely the need for all types of front-line personnel to be sensitive to domestic violence before this problem can be effectively curbed. For this reason, the Government should reconsider the advice of Members on the establishment of an inter-departmental group on domestic violence.

We cannot depend on just one single government department to tackle domestic violence. Many front-line personnel, especially police officers and health care workers, should also share the responsibility. In the United Kingdom, while guidelines on handling cases of domestic violence are issued to police officers for reference, in many police districts, domestic violence units are established, or police officers are especially appointed to handle these problems and provide more professional advice to victims of abuse. There are also similar arrangements in Australia. In 50 States of the United States, there are laws making it mandatory for all medical personnel to report any suspected cases of child abuse. What is more, in some 40 States in the United States, medical personnel are required to report cases of spouse abuse and elderly abuse. It can thus be noticed that many countries have already realized that instead of relying on one single government department, they must adopt an inter-departmental approach before the problem of domestic violence can be effectively tackled.

The Government aside, we think that the various sectors of society should also provide their assistance in tackling domestic violence. The business sector, for example, can provide a bit more help, one desirable option being the provision of family counselling services. The Democratic Party once interviewed more than 1 000 working adults, and some 800 of them were professionals or employees with tertiary education qualifications. The findings indicate that 76% of these 800 or so respondents said that their heavy work pressure had adversely affected their family relations. Therefore, if commercial organizations can provide some assistance to their staff, the family

pressure of the latter may well be relieved. This can ease their work pressure and help alleviate family problems.

Madam President, the Tin Shui Wai tragedy has aroused widespread concern in society about domestic violence. The Democratic Party hopes that members of the public can continue to pay attention to domestic violence after they have calmed down. Let us not wait for another tragedy to remind us that some tasks are still unfinished, for all will be too late by then. As a matter of fact, there is still plenty, plenty of work to do. That is why more resources must be allocated. Thank you, Madam President.

MR CHAN KAM-LAM (in Cantonese): Madam President, domestic violence is a rather complex social problem. The Democratic Alliance for Betterment of Hong Kong (DAB) conducted a questionnaire survey last month, interviewing more than 1 000 women. The survey has enabled us to realize that domestic violence is mainly caused by: unemployment, financial stress, heavy pressure, the misconception of some people that violence is the solution to problems, living conditions, spouse relationship problems, the inability of newly arrived women to adapt to the living conditions in Hong Kong, and so on.

We are of the view that domestic violence cannot be eradicated simply by providing assistance and counselling services to the victim of abuse and the abuser. We maintain that in order to tackle the problem properly, we must focus on prevention, meaning that we must ascertain the causes of domestic violence and the motives of the abuser before the right remedies can be administered. According to the findings of another survey conducted by the DAB last year on the mental pressure felt by men and domestic violence, 40% of the male respondents said that they were under very heavy work pressure, and nearly 17% of them admitted they had had the intention of abusing their spouses and children because they could not bear the pressure. But only less than 1% of the respondents said that they would seek counselling from social workers. It can thus be observed that the mental pressure of men is often the main cause of domestic violence.

That being the case, we are of the view that we must study domestic violence from many different perspectives and go about the task of preventing and eradicating it with an integrated approach. On this, we have the following recommendations:

First, a multi-disciplinary research and handling team should be set up. The Government may consider the establishment of a team consisting of psychiatrists, psychologists, social workers and academics experienced in conducting studies on this problem. The team may conduct macro-studies on the current state of domestic violence in Hong Kong and make integrated recommendations, such as how social resources should be utilized and the feasibility of amending the existing legislation.

Our second recommendation is on the professional training for social workers. We understand that some victims of domestic violence have complained that even the intervention of social workers to provide counselling is unable to stop acts of violence. Therefore, we are of the view that if we want social workers to provide effective counselling to abusers or potential abusers in domestic violence cases, we must provide them with in-service and professional training aimed specifically at tackling the problem, so as to make them better-equipped and better able to counsel their clients more properly and effectively.

The third recommendation is on the referral mechanism between the police and the Social Welfare Department (SWD). Since most victims of domestic violence are unwilling to let others know their "family scandals", in many cases, no successful referrals or counselling can be possible. We think that a panel consisting of members from both the police and the SWD should be established under the existing mechanism to prepare those involved in cases of domestic violence for the receipt of counselling services. Social workers should be assigned to give those involved a detailed account of the purpose, contents and schedule of counselling, so as to allay their anxieties. The police, on the other hand, should make abusers realize the consequences of refusing to receive counselling. This can increase the latter's acceptance of counselling and greatly enhance the effectiveness of the SWD's counselling work.

The fourth recommendation concerns the manner in which the SWD receives and follows up the cases concerned. The SWD used to be rather passive in its access to these cases. With a view to preventing domestic violence effectively, the SWD should seek to access these cases more actively by enhancing its liaison with subvented welfare institutions and local organizations. It is hoped that through the liaison network constituted by local residents and bodies, individuals and families running potential risks of domestic violence can be identified in good time for assistance.

The fifth recommendation is on the provision of emotion counselling to unemployed persons. Men have always regarded themselves as the bread-winners of their families, so they often think that they should be in control at home. Once a man loses his job, or when he has to rely on his spouse or other sources for financial support, his self-respect as a man will be greatly injured, and he may thus feel that he is no longer the "master of his own house". In order to assert control over his family, he may resort to violence. At present, the counselling services provided to the unemployed are mainly on vocational training and job referrals, with very little regard for the psychological and emotional problems faced by the unemployed. We think that more efforts should be made in this respect.

Madam President, every time when a family tragedy receives extensive media coverage, people's concern about the related problems may increase a little bit. But after a short while, everybody will forget all about them. Therefore, we think that a "community-wide vigilance against domestic violence" is still lacking, which explains why cases of domestic violence are occurring every day. To effectively prevent and eradicate domestic violence, it will be most important to instil in all of us a spirit of maximum efforts from everybody. Men and women alike must persevere with the curbing of domestic violence. Besides, everybody must increase his or her alertness and come to others' aid. If such a spirit can take root in people's minds, I am sure that the Government will find it much easier to solve the related problems.

Thank you, Madam President.

MS LI FUNG-YING (in Cantonese): Madam President, the family tragedy in Tin Shui Wai has aroused renewed concern in society about domestic violence. The police are conducting an internal investigation to examine whether there was any blunder in handling the case concerned; the Government has set up a panel to carry out a comprehensive review of the family services in Tin Shui Wai; and, non-governmental organizations have also made many recommendations. All this can evidence the concern of society about domestic violence and the importance it attaches to the problem. However, if we are really to provide against cases of domestic violence, if we are to prevent family tragedies from occurring again, we must not rely solely on any piecemeal improvements to the family policy. As long as the Government of the Special Administrative Region (SAR) does not alter its lop-sided policy of favouring the business sector, as long

as it does not squarely address the polarization of society into the rich and the poor, similar tragedies will only repeat.

It is no coincidence that areas such as Tuen Mun, Tin Shui Wai and Yuen Long, all being remote from the urban centres, have become the hotbeds of family problems in recent years. Economically, the residents of these three places are mostly grass-roots people. According to the statistics of the 2001 Population Census, the monthly incomes of the households in Tuen Mun, Yuen Long and Tin Shui Wai are all lower than the median income of new town households in general. Geographically, the grass-roots communities there are very much like "isolated islands on land". Since these areas are far away from the urban centres and transportation fares are so exorbitant, the residents there often cannot get any support from friends and relatives. And, also because it is not so easy to get a job in these places, the residents are forced to languish in their local communities, under the heavy pressure of having no income. According to government statistics, Tuen Mun, Yuen Long and Tin Shui Wai have the highest number of Comprehensive Social Security Assistance (CSSA) recipients, unemployment CSSA recipients and battered spouses in Hong Kong. In the case of spouse abuse, for example, there were 3 265 such cases in all the 18 districts of Hong Kong in 2003. But in Tuen Mun alone, there were already 598 cases, not to speak of Yuen Long, where 347 cases were recorded. These statistics depict not only the misfortunes the abused, but also the miseries of the communities concerned.

It is mentioned by the Government in a paper recently submitted to the Legislative Council that there are currently two Integrated Family Service Centres, one Family Service Centre and 28 social workers in Tin Shui Wai. By the end of this year, there will be three Integrated Family Service Centres after the conversion of the existing Family Service Centre, and the number of social workers will also be increased to 41. Resources will be increased, but we must look at the numerous rows of newly completed housing blocks in the vicinity of Yuen Long, all packed so densely together. According to government planning, when the development of Tin Shui Wai is completed, the Yuen Long District will be home to 300 000 people. I therefore fear that the increase in resources may be reduced to a mere drop in the ocean. Will the resources be able to cope with the problems faced by these communities? I think the Review Panel on Family Services in Tin Shui Wai must be visionary enough to reassess, on the basis of the characteristics of Tin Shui Wai, whether the development of its package of family services will be able to cope with future needs.

As a matter of fact, cases of domestic violence in Hong Kong are just a miniature reflection of the polarization of society. This is the case with such "isolated islands on land" as Tin Shui Wai and Yuen Long and also with run-down districts. In Sham Shui Po, for example, the number of child abuse cases in 2003 increased by as much as one third over that of 2002. Some in society have attributed all these family tragedies to our social welfare policy, arguing that as soon as no more new immigrants come here for family reunion, there will be no more wife abuse and child abuse cases. Following the same line of reasoning, I would say that many children living in Sham Shui Po should in fact return to the Mainland. But can this solve the problems faced by the district?

This question really merits our in-depth studies. As mentioned in the paper released by the Government in March last year on the relevance of the Population Policy to social welfare, "the growth of our population relies much on immigration the bulk of which is admitted through the One-way Exit Permit Scheme." If we admit on the one hand that new immigrants can help relieve the pressure of our low birth rate and ageing population, but refuse to meet the expenditure on helping them integrate into society on the other, then we will be contradicting ourselves policy-wise. The ultimate victims will not only be new immigrant families but also society as a whole.

Madam President, our aim is a "zero tolerance" policy on domestic violence; we are definitely not trying to ostracize families facing problems. The original motion and the amendments today contain many recommendations on tackling domestic violence, some examples being amendments to the Domestic Violence Ordinance, the allocation of more resources to communities facing high risks, a review of existing counselling services and even the deployment of police manpower. All these recommendations should merit the consideration of relevant government departments. But prevention should be the best solution. We can see that since nucleus families are the basic components of Hong Kong society, there is often no buffer at all when problems occur. I believe that we can learn from the schemes in other countries on enhancing community awareness and providing family protection through an interpersonal network in the community.

Thank you, Madam President.

MRS SOPHIE LEUNG (in Cantonese): Madam President, the family tragedy in Tin Shui Wai has sparked off widespread concern about domestic violence. Much has been discussed on issues like a co-ordination mechanism, the deployment of resources and the training of front-line staff. As to the specific proposals, later on other members of the Liberal Party will talk about them. I am particularly concerned about some social concepts, and I will make some analysis from the family angle.

Domestic violence is by nature similar to other forms of violence, that is, it inflicts injuries on the body of others. But the difference is that the victims are family members of the abuser. In most cases, it is the male who abuses his female spouse. Not just the victims suffer, but all members of the family as well. This applies in particular to innocent children and the elderly. When they see family members fighting with each other, they will experience a great psychological trauma. They will become frightened and live in constant fear. There will be a permanent scar in their interpersonal relations. They will feel that they cannot concentrate and their studies will be affected. After they have grown up, they are prone to violence. Hence the society is made violent. Some surveys conducted overseas show that children growing up in a family characterized by violence would be much more inclined to committing sexual abuse, drug abuse and suicide. Furthermore, domestic violence is also thought to result in street-sleepers. Lots of social problems are linked with domestic violence and they affect all members of society.

As we rack our brains to find ways to curb domestic violence, I think we should all ponder why so often these persons who have been battering their family members for so long and on purpose are treated so leniently? When a spouse is under pressure financially, in work or emotional stress, why does this often become an excuse to injure their loved ones or inflict violence on their spouses? When a spouse chooses to leave the family which is so full of violence and causing so much physical and mental suffering to her, why do people in the community stigmatize these single-parent families and ostracize them?

All these concepts have in fact served to perpetuate domestic violence. For the victims, they often have the mentality of bearing everything in silence as they can do nothing about the problem. As there is little sympathy and support from the community, these families characterized by violence just continue to exist. It shows that the community holds outdated views on these families and these views must be rectified.

On the one hand, we should cease being self-deceptive, blinding ourselves to the excuse that fights between husbands and wives are commonplace and we should never intervene. We should also abandon the mentality of standing aloof and refraining from meddling with other people's family affairs. I would also like to stress that the problem will not be solved simply because the abuser has been put into prison, for the root of the problem is not tackled. What should be done is to foster a supportive culture among neighbours and entrench the social value of equality between man and woman. Only by these that the unique and independent role of women in the family is recognized by the public. Even if the women are not financially independent, they should be protected by all basic human rights. When they are physically abused, they should not think that they should just have to bear.

On the other hand, through public education efforts, we should promote the idea that a mutually supportive family is an important key to social development. Regardless of male and female members in a family, they should all respect and support each other. Before a couple gets married, they should know clearly what responsibilities they will shoulder in marriage. They must think clearly whether or not they can make the commitments in all aspects, whether they are prepared to grow together and make their family grow so that members of their family can lead a peaceful life. If not, even if there is the back up of a sound legal system and excellent matching facilities, it can never make family relations remain harmonious. What I mean by growth in the family are a supportive attitude, a total commitment to the children and the provision of a loving and harmonious place for them to grow up. The family should be the most peaceful and safest place for its members. It is a source of warmth and protection. It is only when members in a family are helping out each other that a family can truly be called a family.

In addition, I also hope that people can have greater abilities to cope with pressure. Many surveys have pointed out that people who inflict abuses are often under great pressure, so much they cannot dispel it themselves and the only way which they can vent the pressure which they cannot do so through other channels is by inflicting violence on their family members and in a bullying manner. Should society condone such acts then? As I have said earlier, we must never condone such acts of violence. Having said that, the pressure which people experience, be it tangible or otherwise, will only become greater as the economy is undergoing a restructuring. We should know that coping with pressure is everybody's own responsibility and the positive way to look at this is

to enhance our abilities to cope with pressure. If the pressure one experiences is allowed to extend indefinitely to other people, then even one's most beloved ones may never be able to bear it. It is also unfair if they are asked to do so. It is my hope that when families face pressure, they can remain positive and optimistic, that they can look ahead and be calm enough to find a way out, help and support each other and seek assistance appropriately. Of course, such assistance should be readily available for it to be useful in helping people to cope with crisis.

As Chairman of the Women's Commission, I think the Government should make the respective policies and facilities coherent and more closely related to each other so that they will not become disjointed. This is because domestic violence has very complicated causes and many factors are involved. Moreover, domestic violence does not occur in one social stratum alone and so it would be difficult to tackle the problem across the board with one single measure.

In view of this, the Women's Commission has made a number of recommendations, including a review of the Domestic Violence Ordinance, especially on matters like the definition of domestic violence, the validity period for an injunction, the mandatory therapy or counselling which the abuser should receive, legislation to prohibit stalking, enforcing the policy of making arrests and enhancing the training for front-line staff and service providers. The Commission has held meetings with the relevant departments last month to look into how the Government and various organizations can co-operate to raise public awareness of domestic violence, hence achieving the goal of zero tolerance of domestic violence.

It is my conviction that if we can all pitch in to show more care and love, the problem of domestic violence can certainly be alleviated. Madam President, I so submit.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, violence is everywhere around us. Some months ago, incidents of campus violence became the talk of the town. The recent tragedy which struck a four-member family in Tin Shui Wai points to the conflict between zero tolerance and prolonged apathy. Over the past few years, domestic violence and family tragedies have been coming off like time bombs at varied intervals. Every now and then we hear about a gruesome tragedy caused by violence that simply

breaks our hearts. Examples of these are the case of CHAN Kin-hong which made the headlines some years ago, and a most horrendous case of a father in Tsz Wan Shan who killed and injured his three children with a chopper and a hammer. These cases were widely grieved in society, but after a swelling of sympathy and a round of denunciations, the people become as cool and uncaring as before.

Madam President, the Chinese attach great importance to the concept of family. As the popular saying goes, it is better to tell a person to beat his son up than to tell him to divorce his wife. Whenever people come across quarrels between husband and wife or other conflicts in the family, they would look at these events with an uncaring attitude, thinking that the wisest way is to stay away from these events. They may think that they can do nothing about them even if they want to. Even professionals may be cautious and hesitant in one way or another. They wish the husband and wife will stop quarrelling and come to a happy ending, in much the same way as TV viewers would yearn to see a happy ending. The family tragedy in Tin Shui Wai is an illustration of this deep-rooted mentality.

It is not easy to detect domestic violence, but it does have signs and symptoms. In the Tin Shui Wai case, the female victim sought help from her neighbours, a member of the District Council, the police, the social workers and her inmates in a shelter for women. She told them that she had been battered by her husband and her daughter sexually abused. She felt that she was threatened mentally. Although the alarm had sounded off and crisis was lurking around the corner, the woman still had to live under the tremendous fear and also the threat of a chopper which her husband might wield at her any time. She was so frightened and in the end she lost her family as well as her own life.

In fact, the mental torment to which the victims are subject may be more serious than fists and blows. It may be harder to bear and thus warrant greater attention. As every family has its own problems, there could be an untold story behind every incident of domestic violence. Like campus violence, there is no secret formula to tackle it, but it is important that the rights of every person should be respected and protection of their personal safety ensured in the course of handling. Victims of domestic violence, including the battered spouses and the children, are in a most vulnerable and helpless situation. For if not, they would have put up resistance or sought help. So help from a third party, like friends and relatives, teachers, social workers, health care workers, and so on,

should never be neglected. For the community, it would be better to face the issue of violence squarely and stand up to it, rather than expressing sorrow or regret for a tragedy, the professionals must intervene promptly and help those families with potential crisis to turn a new page. Only that would be a positive and meaningful approach.

Last week, I heard in this Council many valuable opinions expressed by groups invited to the joint meeting of the Panels on this tragedy in Tin Shui Wai, including a call for legislation to amend the definition of "family" under existing legislation, and the permission of a third party to apply for an injunction with the knowledge of the victims of abuse in addition to the victims themselves. This proposal will enable a third party to initiate the prevention of violence. Despite the fact that the relationship between husband and wife may never be mended, but if an injunction can serve as a firebreak and give a cooling period to the parties, that might help to prevent the situation from worsening.

Madam President, violence is like a tumour which will grow and get out of control. It will bring disaster to the next generation. Prolonged apathy will only help escalate violence as victims of abuse do not dare to seek help and onlookers are at a loss as to what they can do. This is the vicious cycle which accounts for the surge in violence. The original motion calls on the Government to amend the Domestic Violence Ordinance, deploy more resources and step up training efforts. I hope zero tolerance will not just exist in name or as some policy rhetoric by the Government. I also hope that any third party who is aware of the existence of violence will act out of care and love, helping those in need. I also hope that professional social workers and the police will have a greater awareness of domestic violence and receive more training on it so that the community can be mobilized to join the fight against violence and make zero tolerance a reality.

Madam President, I so submit.

MR ALBERT CHAN (in Cantonese): Madam President, this is certainly a day of violence in the Legislative Council. The previous motion was on political violence, where the Central Government and the Hong Kong Government are brutalizing the people of Hong Kong with their political powers. Now this motion is about domestic violence, where vulnerable women and children are battered and bullied.

Madam President, on this topic of domestic violence, it makes me recall the first job I ever had after graduating with a degree in social work. It was some 24 years ago when I was doing some work on the protection of children back in a small town in Canada. I witnessed many incidents of domestic violence there. Many of these incidents involved a broken family, unemployment or other emotional problems. After returning to Hong Kong more than two decades ago, I also worked as a social worker in various organizations, doing different jobs. It was the eighties then, when I had a deep impression that insofar as family services were concerned, Hong Kong was way behind the world not just in legislation but also in the way problems were handled. Domestic violence typically involves a number of factors, and these are culture, law and services.

With respect to culture, as Hong Kong is a Chinese society, it is very much affected by Chinese culture and in Chinese culture, physical punishment is accepted, so is male chauvinism. It follows that it is right for a man to beat up a woman and women will just have to bear it all when they are battered or bullied by men or their husband. To a certain extent, these acts are permitted by the Government and allowed to exist and continue because of the way they are handled. It is precisely because of the inadequate protection in law that victims are constantly being bullied and battered. Therefore, this cultural issue must be addressed through educational efforts and amendments to the law in order that bullying and battering can be stopped. Victims of bullying and battering are not only confined to women, as children are often victims of domestic violence as well. In fact, child abuse is the most common and widespread problem and its impact is most deeply felt. But for many years, the Government has neglected this problem.

Another cultural issue cannot be more explicitly demonstrated in the indifference shown by the police in handling cases of domestic violence. Findings of many surveys show that in handling domestic violence, the police would treat it as trivial cases of family dispute and do not care about them. As a rule, the police will advise the complainant or the one reporting the case to handle it himself, do not press for charges and try to solve it himself. When handling these cases, the police often say in a half-threatening tone to the women making the complaint that if a charge is laid, the person making the complaint may likewise be charged. So a lot of such cases have not been handled with due justice.

The emergence and unchecked proliferation of domestic violence show the blunders and failures in social services. Madam President, I have worked in the Tin Shui Wai area for almost four years. I have three offices there. More than half of the resources I get from the Legislative Council are put in the Tin Shui Wai area. During the past few years, I have witnessed countless problems there. For almost 20 years I have worked in representative assemblies of all levels and I have done various kinds of work at the district level, but I have never seen a single community like Tin Shui Wai which is so full of problems, where their gravity and extent surpasses any place in Hong Kong.

Tin Shui Wai has a lot of inborn inadequacies. It has problems in transport links. Due to geographical factors, it is an isolated community. In terms of population profile, many of the housing estates are completed at around the same time and in just a matter of one or two years, over 100 000 people may have moved into Tin Shui Wai. Many of these families are new families. As the housing estates there are mainly composed of multi-room flats or large flats, most of the families living there have children or a large number of family members. Another special feature about Tin Shui Wai is that it has a large number of Comprehensive Social Security Assistance (CSSA) recipients. From the figures I got from the Social Welfare Department some years ago, in many housing estates there, the number of CSSA recipients could take up as many as one fifth to one quarter of the total population of a housing estate. The problem of unemployment is acute there. Information from the Social Welfare Department also shows that domestic violence is also a grave problem in Tin Shui Wai.

Another special feature of Tin Shui Wai is that it has a lot of immigrant families with members being new arrivals to Hong Kong. So there are problems in cultural adaptation and language. On top of it is the lack of a support system. How is a support system lacking there? Women in these new immigrant families may have no relatives in Hong Kong and so whenever problems arise, they would have no one to turn to. Problems therefore deteriorate easily, they may also intensify and so tragedies may happen. So when handling such problems, besides making changes and adaptations in law and culture, it is also important to have support services as well.

I recall back in the eighties, there was a family tragedy in Shan King Estate in Tuen Mun and it attracted much attention from the Government. Then an

innovative trial scheme on community-based family services was introduced in Shan King Estate. Now more than a decade has passed but the Government is still using a fragmented and disjointed approach in providing support services and welfare services. Despite the restructuring of some of these family services, basically they are nothing more than old wine in new bottles.

To tackle and curb domestic violence, the Government must reorganize and improve on a full scale its efforts in culture, law, and welfare services. Only by doing so that there can be any likelihood that domestic violence will be reduced. I do not harbour any extravagant hope that there would be zero domestic violence, but in the reduction and prevention of the occurrence of domestic violence, the Government really does have a responsibility. If it continues to stand aloof, it will only become an accomplice to domestic violence.

MR TAM YIU-CHUNG (in Cantonese): Mr Albert CHAN often uses verbal violence, sometimes he also admits that he would lose self-control. But the way he speaks tonight is relatively benign. It seems that our debate today will continue into tomorrow. I hope it will not lead to domestic violence for Honourable colleagues.

The recent family tragedy in Tin Heng Estate, Tin Shui Wai resulting in four deaths has aroused public concern for domestic violence again. After the tragedy, some colleagues in the DAB and I have on different occasions strongly urged the authorities to enhance the services provided by social workers in some new communities such as Tin Shui Wai and Tung Chung, to provide more community amenities, to enhance the training of front-line workers including the review and improvement on how the police will deal with family dispute cases, so as to enhance the protection for the abused.

Apart from these measures, quite a number of voluntary agencies have reflected to us that there is a need to strengthen the work co-ordination between various government departments and voluntary agencies. The prevention of domestic violence depends on a sound social network mechanism. As regards family services at present, apart from various social service agencies, quite a few agencies also provide community services, for instance, the District Co-ordinating Committees on Family and Child Welfare Services, the Steering Committee on New Arrival Services, the Support Teams for the Elderly and other voluntary agencies. They play a positive role in preventing family

violence, helping new arrivals to adapt to the community and giving domiciliary support to the elderly. However, these agencies or bodies will encounter a lot of difficulties in practical operation. First of all, as a result of the complicated government structure, different executive departments are in charge of different jurisdiction areas and the communication among them is inefficient. Therefore, the service agencies often have to waste a lot of time making referrals. Secondly, as a result of the frequent changes in the officers in charge of various jurisdiction areas, a stable liaison mechanism cannot be established between the departments and the agencies, thus slowing down the processing of cases. So all areas of jurisdiction of the various executive departments should be unified early so as to establish a stable corresponding mechanism.

The issue of elder abuse must be mentioned along with the prevention of domestic violence. As one of the family members, the elderly may invariably be victims of domestic violence. To completely prevent domestic violence, sufficient weight must be attached to the prevention of elder abuse.

According to the statistics of Haven of Hope Christian Service and the Caritas — Hong Kong, there were 216 confirmed elder abuse cases over the past three years. Among these cases, 60% involved emotional abuse while 20% involved physical abuse. The actual number of elder abuse cases may be much higher than the figure shown in the statistics. When I visited some elderly, they sometimes would tell us in tears how they had been scolded and battered by their children. Some of them even have their Comprehensive Social Security Assistance payment taken away by their sons for drugs. However, they repeatedly urged us not to report to the Government.

To prevent elder abuse from deteriorating and to prevent it from further evolving into domestic violence, the Government has to take positive measures in various areas such as enhancement of inter-departmental co-operation. The Government should strengthen co-operation among the front-line departments including the co-operation and co-ordination among the Hong Kong Police Force, the Hospital Authority, the Legal Aid Department, the Social Welfare Department and community service organizations so that timely referrals and assistance can be provided to suspected cases to pre-empt tragedies.

One of the reasons for deterioration of elder abuse is the lack of social support for the elderly. Being helpless, what they can do is to continue to tolerate the unfair treatment. To assist old people in overcoming their

difficulties, we must enhance the various types of outreaching services, including the provision of meals, household chore assistance and personal care in respect of home care, and mental support and counselling. The Government should also set up a proper network of community services, so as to encourage more people to serve as voluntary workers; adequate training should also be provided to voluntary workers to equip them with the necessary skills that can enable them to take part in assisting old people in need.

To reduce the cases of elder abuse, we must pay attention to early prevention. Unfortunately, those front-line professionals who come most frequently into contact with old people, such as social workers, doctors, nurses, the staff of care and attention homes, and even the police, are often lacking in the necessary training. The Government should provide more front-line training programmes so that they can discern some indicators from the elderly such as physical injury, chronic eating disorders and depression, so as to reduce the harm and to shorten the duration of abuse suffered by the elderly.

The Government should organize more family life education programmes to disseminate the message on prevention of domestic violence and elder abuse. In addition, it should also set up hotline services to help the people cultivate a correct concept of solving family problems by non-violence means.

Madam President, family harmony is our common goal. If domestic violence is allowed to spread, the spirit of mutual help in our society will certainly be lost, making it a place devoid of love and care for each other. If so, it is still a hollow society however prosperous and affluent it may be.

With these remarks, I support the original motion and all the amendments.

MR MICHAEL MAK (in Cantonese): Madam President, one's family should be his cosy nest. However, some families have become somewhat like a soul-stirring battlefield. In the family tragedy occurred in Tin Shui Wai last month, none of the four family members survived. However, this may be just the tip of the iceberg called domestic violence in Hong Kong.

According to information of the Social Welfare Department, the number of newly reported child abuse cases has increased from 381 in 1997 to 481 in

2003 while the number of newly reported battered spouse cases has increased from 1 009 in 1998 to 3 298 in 2003. If the Government and society do not face the seriousness of family disputes squarely and curb domestic violence in time, it will lead to the recurrence of incidents like the Tin Shui Wai tragedy.

The Tin Shui Wai tragedy has exposed the loopholes in the whole system for handling domestic violence in Hong Kong and the Government has to review comprehensively the inadequacy of the family crisis handling mechanism. In the Tin Shui Wai tragedy, we can see that the police are completely ignorant of domestic violence. The female victim had reported the incident to the police thrice before the tragedy. The first time was in February, the second time was two days before the tragedy occurred and the third time was at noon of the day of the tragedy. Unfortunately, the duty officer, considering that she was not subject to immediate danger, did not put her report on record. It is precisely because of the police's negligence that the tragedy could not be timely prevented.

From a recent survey conducted by The Chinese University of Hong Kong, about 30% of the police officers think that husbands have the right to beat their wives while about 40% of the police officers think that if an abused wife is still living with her husband, then she must have some problem herself. Only 19.7% of the police officers think that wife abuse will have serious impact on society. The survey reflects that some police officers have a misconception about wife battering. It is necessary to strengthen training for police officers in dealing with domestic violence cases and to instill a correct concept in them. They should not handle family dispute cases with outdated personal values such as "a dispute between husband and wife is but a lovers' quarrel which is settled in no time" and "not even good officials can settle family troubles". Only by so doing can the police officers' judgement in this aspect be enhanced.

A lot of family problems have emerged as a result of rapid changes in modern society. According to the statistics of the Harmony House, the number of calls received by the Women Hotline soared from 4 836 in 1997-98 to 9 542 in 2002-03. On the other hand, the number of calls received by Men Hotline, and the number of women and children taken in by refuges for women have increased also year after year. It is necessary for the Government to allocate additional resources for the provision of sufficient hotline services, accommodation services in refuges for women and clinical psychological counselling on top of

strengthening the training for front-line social workers so as to cope with family problems which are on a rising trend.

A two-pronged approach should be adopted in policy concerning domestic violence. Apart from providing appropriate assistance to the victims, the perpetrators should also be punished. I agree that amendments to the relevant legislation such as expanding the definition of "violence" and extending the validity period of injunction are necessary. Furthermore, I think a recommendation made by the Harmony House merits consideration. I would like to quote it for Members' reference.

According to the recommendation of the Harmony House, the Government should make reference to the pro-arrest policy in foreign countries. Under such policy, when the police officers face suspected domestic violence cases, they are required to collect environmental evidence, as well as verbal and physical evidence from the parties concerned according to certain procedures. The law enforcement officers can make arrest if there is evidence of domestic violence having taken place and initiate prosecution accordingly. By following the practice under the Police Superintendent's Discretion Scheme or the bind over order, they may also recommend counselling for the perpetrator. If the perpetrator refuses to receive counselling, prosecution will continue according to the relevant procedures.

As the saying goes, "One should seek medical treatment before one's sickness gets too serious". Under the pro-arrest policy, the perpetrators will have the opportunity of receiving counselling before he has gone too far. This will help reduce the incidence of serious domestic violence cases. I hope the Government will actively consider the recommendation.

Madam President, supplementary measures in terms of legislation or other initiatives are remedies after the incidents. The root cause is the fragile family notion of modern men. The Government should enhance school education and community education so as to instill such values as filial piety, parental love for children and mutual respect between husband and wife into the minds of the people. It will be both a stopgap measure and an ultimate solution to the problem.

I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, it has been nearly one month since the family tragedy in Tin Shui Wai. During the past month, many women's organizations and community organizations have requested the Government to comprehensively review the existing policy in order to prevent similar cases from happening again. Unfortunately, the Government's response was fragmented. In addition to its incomprehensiveness, the Government reiterated that the tragedy in Tin Shui Wai was an individual case. What does it mean? It means that there is no problem in the Government's current policy, and that the incident has nothing to do with the insufficient resources or services provided by the Government. But is it really true? We have to ask if these tragedies, as the Government said, are really individual cases.

For the past few years, we could see or hear similar family tragedies from the media every few months. The contents may be different, for instance, some families committing suicide by burning charcoal due to financial problems, and women going to the nether world with their children in their arms because their husbands were having an affair. These incidents are really shocking, disgusting and have aroused social concern. In spite of social concern, the Government's attitude has remained the same, insisting that these are individual cases and should be handled on an individual basis.

However, Madam President, the examples cited by me are not individual cases at all. Quite a number of Honourable colleagues have just raised some figures. According to the Government's statistics, the number of spouse abuse cases has increased from 3 034 in 2002 to 3 298 in 2003, an increase of about 8.7%. We can see that the rising trend of family violence is very obvious. It also indicates that the occurrence of family violence or similar tragedies is no longer individual instances. Instead, it is a social tendency caused by some existing structural problems. Therefore, we must pinpoint the causes of the problem to find the solution. We should be more than focusing on the problem individually and providing some assistance.

To resolve the problem, I think the first step is to change the attitude. We can see from the Tin Shui Wai tragedy that the linchpin lies in the Government's attitude of often shirking of responsibility. In this incident, the police attitude is the most obvious. Before even trying to clarify the whole event, the police already denied that the victim had ever reported her case. As we all know, it is not true and the result is just the opposite. Obviously, the police were negligent, but it was not that simple. Upon looking deeper, it gives us a feeling or

impression that the police officers did not bother even if there was negligence or inappropriateness in the way they handled family cases because their superior would shield them. This will make those who are in genuine need of assistance doubtful of the use of looking to the police if something really goes wrong. In their mind, they definitely think it is useless. Under such circumstances, the result is that they either do not have the courage or do not want to seek police assistance, which may often lead to some tragedies.

Madam President, there is another reason for the Government to reiterate that these cases are individual examples. It is like alleging that these are family issues *per se* which have nothing to do with government policy. In other words, the Government can indefinitely shirk its responsibility. As a matter of fact, the Government has been either individualizing these problems or shirking the responsibility to the family. What is the consequence of the Government shirking its responsibility? It will make those in need of assistance feel helpless and desperate, which easily ends up in tragedies. As I have just said, the relevant statistics show that family violence is a social tendency, significant enough for us to realize that the actual existence of some problems in our social system or milieu has generalized the problem. So, if we want to solve the problem, I think the first step, as I said earlier, is to face the problem squarely. The next step is to examine if there is anything wrong with the overall social policy. If there is something wrong, we should start from where the problem lies.

Madam President, colleagues holding different political views have proposed various amendments today, reflecting the fact that people from different social strata are all very concerned about family violence. Only that the difference in their approaches has resulted in different methods of handling. We can see that the problem is really very serious nowadays. We cannot ignore it. Many colleagues have made many proposals. I only wish to suggest some simple methods for the Government's consideration.

According to the figures provided by the Government to the Legislative Council, the numbers of spouse abuse and child abuse cases in Yuen Long and Tuen Mun take the first and second places. Compared with the Eastern District or Sha Tin which have the similar population sizes as theirs, the number of cases in Yuen Long and Tuen Mun is one or two times over the numbers of these two districts. From this we can see that the problem tilts towards some districts, meaning that it is more serious in these districts. Some may suggest that social

work resources can be better deployed with a view to solving the problem. But I do not think the problem is as simple as one which can be dealt with by redeployment of resources. Instead, it is a question of how to build up a healthy community environment which should be more important. Just now, Mr Albert CHAN has raised a lot of views and pointed out that the community concerned is packed with problems. This is related to the Government's planning of the community in the first place. For instance, the fact that the new arrivals and the poor are packed together in the same district has resulted in the forming of a special community. Being in the same boat, they cannot see anything positive if they are in trouble and wish to seek help from others. It is also not convenient for them to make contact with the outside world because of the transport problem as mentioned by quite a number of colleagues. Even if they wish to seek help, it is not easy at all. So in my opinion, we have to bring forward some changes to this community in order to get to the root of the problem. Otherwise, the problem can never be solved.

Madam President, I so submit.

MR LEE CHEUK-YAN (in Cantonese): Madam President, it is really saddening to have a debate on domestic violence today again. I think whenever a tragedy occurs, all of us will promptly take a look at what has happened just like what we did this time. In fact, I really do not wish to see that we try to find out what has happened only after a tragedy has occurred. It is always the case that the Government will not thoroughly solve a problem. Instead, it will just tackle the difficult situation confronting it without any follow-up actions. I really hope that the Government, in this incident, will not follow its previous practice, that is, to tackle the difficult situation without any follow-up actions and let bygones be bygones. And then we have to wait for another tragedy to occur to remind us. Even though I say that I do not wish to see that again, it seems that the same approach is being adopted in this incident. Later I will explain why I think so.

First of all, I would like to mention one thing. The whole case is related to the policy area of the Secretary for Security since matters concerning the police fall within this ambit. The Secretary for Security is absent from the meeting, but he should listen to our debate today. The attitude of the police in handling the Tin Shui Wai tragedy is extremely disappointing. From the very beginning, the police's response seemed to tell us that the incident had nothing to

do with them. From the ongoing press reports, we can see that on 14 April, the police still blamed the help-seeker for her wavering attitude which made it difficult for them to handle the case. I really do not understand why the police said so. Neither did the police explain why they said so. Honestly speaking, the help-seeker should have wavered. How could she not waver under such pressure? But the police put the blame on her wavering attitude and then firmly denied that they had received any report about the incident from any help-seeker. It was on 14 April.

However, on 18 April, the police confirmed that somebody had reported the case to the police. But they also made the following statement in their confirmation. It was Mr Stephen Gowan CHANDLER, the Regional Commander (New Territories North) who made the statement — it was reported by the press, I have no idea of the actual situation. He said that somebody came to the police station and asked, "Can you help me?". The police officer concerned then replied, "Yes, I can." However, judging from their conversation, the police officer did not think the person was under immediate danger and considered it not necessary to put it down on record. The Regional Commander then commented that it was a pity not to have a record, but it did not amount to serious negligence.

In fact, this involved a lot of judgement problems. But no account has been given. In our opinion, the police officer concerned should give an account to us in future. He said, "There is no immediate danger judging from their conversation." What conversation had made him conclude that there was no immediate danger? Is it possible that he had failed discern anything? Sometimes when we came into contact with our neighbours, or when we received complaints from some battered women, we found that the police actually had not listened to them. The police always thought that what they complained of were trivial household matters and told them to go home. They did not take it seriously at all. A similar approach was adopted in this incident as the police said that there was no immediate danger. Nevertheless, it is quite plain that a tragedy has occurred. The police now say that an internal investigation will be conducted. But a major problem exists in the internal investigation conducted by the police since it is an investigation conducted by the police themselves. Who will be convinced by it? The case will be closed without any result. So I am really worried that the Government will not do anything after it has tackled the difficult situation.

The second major problem is related to the approach adopted by the Social Welfare Department (SWD) in tackling difficult situations. The simplest and most expedient way of tackling the case is to form a panel. As we all know, after the formation of the panel, Mr Aaron WAN was appointed as the chairman and two more persons, Dr Sandra TSANG and Prof Nelson CHOW, were appointed to assist him. However, when the chairman spoke in public later, he said that these problems were often related to new arrivals in Hong Kong.

If one holds such a viewpoint, the tragedy, which should be a problem arising from the resource deployment of the SWD or from a wider perspective, a problem arising from the failure of various departments in co-ordination to achieve a "zero" objective with respect to domestic violence, has been reduced to one related to new arrivals. Even though the former is a major policy problem, no mention has been made of it. As we had queried it in our lengthy discussion in the Welfare Services Panel, who would be convinced if he was holding such a viewpoint? Who would believe that the chairman would objectively solve the problem, review the policy and resources problem? So it is predictable that eventually two reports will be published, one by the police and the other by the SWD. After some packaging, the case will not be pursued any further. However, the problem still exists and remains not solved. I hope my prediction will not come true. I only hope that the Secretary can make more undertakings instead of just reading these two reports.

Admittedly, there is a lot to do. In my opinion, the first and foremost task is to deal with male chauvinism. According to a survey among police officers, about 30% of them think that husbands have a right to beat their wives while about 40% of them think that a battered wife must have some problem herself if she still stays with her husband. In fact, the police officers do not understand the others' sufferings. A woman who cannot decide whether or not she should leave the man who bullies her is actually suffering tremendously. If the police handle the domestic violence problem in such a manner, no wonder they do not think there is immediate danger and tell the victim to go home on being informed that domestic violence has taken place. If this problem is not solved first, no other problem can be solved.

As regards the SWD or the Health, Welfare and Food Bureau, they are now slashing resources. How can the domestic violence problem be solved if resources are insufficient? Furthermore, the problem of resources does not affect the Bureau alone, it will also affect housing and refuge centres. If more

women can be admitted by these refuge centres and the housing problem can be solved, a lot of problems can be solved too. But we do not see any solution to these problems. So I very much hope that the Government can show us its determination in achieving the objective of "zero" domestic violence instead of just tackling the difficult situation without follow-up actions. Thank you, Madam President.

DR LAW CHI-KWONG (in Cantonese): Madam President, in respect of the motion today, I will focus my discussion on the part concerning legislative amendments. Some Members have mentioned some of these proposals earlier, but for the purpose of record, I would like to make it clear what amendments are desirable under various ordinances.

As a representative of the social welfare sector, I have drafted a proposal in conjunction with some organizations in the sector and some women's concern groups including some other legal professionals and Ms Cyd HO's office. The proposal has been submitted to the Government and Members of the Legislative Council. Now, I would like to explain some important parts of the proposal. Firstly, concerning the definition of "family member", as mentioned by some Members earlier, the existing definition under the Domestic Violence Ordinance includes children under the age of 18, spouses and cohabitants. However, other immediate family members and family members living in the same household are not included. In our opinion, the definition is too narrow and should be expanded to cover cohabitants, spouses, children, ex-spouses, ex-cohabitants, immediate family members and in-laws. Mr TAM Yiu-chung has earlier referred to the elder abuse problem. If the definition is expanded, it should cover the battered elderly and parents living in the same household with the abuser. They should also be protected by this piece of legislation.

Besides, the definition of violence under the Domestic Violence Ordinance is also our concern. It is so narrow that it refers mainly to the actual bodily harm suffered by the victim. In our opinion, the definition should be expanded to include psychological harm, abandonment and neglect of those who do not have the ability to take care of themselves. These people include young children, elderly people who lack self-care ability as well as disabled family members who cannot take care of themselves. By referring to the practice under the Protection of Children and Juveniles Ordinance, the Government has considered the feasibility of authorizing the Director of Social Welfare under the

Domestic Violence Ordinance to take over the care of those who are unable to take care of themselves when they are abandoned or neglected.

Another question mentioned by Members is extending the period of validity of injunction. Under the existing Domestic Violence Ordinance, the validity period of an injunction is three months and can be extended for not more than six months. We think this period is too short because it usually takes time to solve a problem of domestic violence. An application for divorce will often take about nine months. It may take a longer period or more than a year if the custody of children is involved in their dispute. So in our joint proposal, we propose that the validity period of an injunction be extended to six months or further to a maximum of 18 months. Of course, this is subject to the decision of the Court.

There is also another proposal which has also been mentioned by Members. It is about section 3 of the Domestic Violence Ordinance. Under the section, if a party to a marriage has been molested by other party to the marriage, he or she can apply to the District Court for an injunction to protect his or her own self. In our opinion, this will make the battered spouse worry that he or she will continue to be victimized or be subject to even more violence during the process of application. So we think a third party, with knowledge of the victim, should be allowed to apply for injunction on the victim's behalf if the victim does not object. This does not mean that anybody in the street such as "passerby A" or "neighbour B" can make such a application for the victim. As legal proceedings are involved, the Court should be satisfied that the information in the application is credible. It will also assess the restriction imposed on the freedom of the applicant and the person subject to the injunction. So the third party must be someone who has full knowledge of the case and is usually a staff member from a community service organization or from the police.

Another widely discussed issue is the counselling for abusers. Very often, they also need assistance. Many of them could also have been victims of domestic violence when they were young or become violence-prone after having witnessed acts of violence by their parents during childhood. So apart from putting these abusers behind bars, the Court should be given another sentencing option of imposing a counselling order. Of course, appropriate counselling is provided by the authorities concerned only after assessment. For instance, the abuser can be sentenced to probation and required to receive counselling while

on probation. The abuser may be sentenced to imprisonment but the sentence is suspended so that counselling can be provided during that period. These are the possible options of sentencing.

Apart from legislation, I also wish to speak on the issue of zero tolerance. I do not think there is any dispute over this question as society will not tolerate any violence. But why do we urge the Government to formulate a policy on violence, including a policy of "zero tolerance" with respect to domestic violence? It is a matter of message. It is meant to disseminate a clear message concerning the views of the Government and the community as a whole on violence in the implementation and enforcement of different policies. This is also a very important beginning in the cultivation of a "zero tolerance" culture in society.

Besides, one more point I wish to make is that, after the Tin Shui Wai incident, the Government should consider setting up a review mechanism for serious and fatal domestic violence cases. We can see that when such cases occur, the victims can receive services provided by some existing institutions. However, these institutions cannot help these people effectively. We should review thoroughly and explore the underlying causes of the problems to determine what lessons we can learn. In many countries, relevant mechanisms for the review of serious and fatal domestic violence cases have been put in place because complementary measures in terms of legislation are necessary for any review and investigation to be effective.

Thank you, Madam President.

MRS SELINA CHOW (in Cantonese): Madam President, many Members have raised a lot of views on the question under debate today. I fully agree with them and will not repeat these points.

I believe that we have become seriously concerned about the issue after the occurrence of the tragedy. I only wish to point out that in order to effectively curb domestic violence, a passing concern is not enough. Instead, we should join hands to solve the problem through concerted efforts. But unfortunately, there are some preconceived and conservative notions in Chinese tradition. Members have mentioned a few examples, such as maxims like "not even good officials can settle family troubles" and "each family has its own problems".

When caught in a domestic violence problem, some people may feel embarrassed to discuss it with others. If the victims are not financially independent, they will become more helpless. As a result, they do not know how to seek help or even do not dare to seek help. Due to the people's biased and narrow-minded point of view that domestic violence is but a problem between husband and wife, they do not know how to provide assistance and sometimes they may even affect the counselling methods to be adopted. As a result, the problem will become more acute and cannot be solved timely.

The Liberal Party therefore considers that one of the most effective solutions to the problem is to strengthen civic education and publicity so as to change the people's misconception in family relationship and to develop a correct concept of values in handling family problems.

On the basis of this belief, we support the proposal of some concern groups on battered women and are willing to take a lead in the introduction of the "anti-domestic violence charter". We also urge people and organizations in various sectors concerned about domestic violence to sign the charter so as to publicize the anti-domestic violence concept, to educate the public, to push forward the harmonious family relationship and the notion of mutual care and respect, and through active and positive initiatives, to create a social atmosphere which values family harmony.

In fact, there are quite a number of such charters in society such as the Charter for Youth, Patients Charter, Victim of Crime Charter, Occupational Health and Safety Charter as well as the Health Charter, which was introduced in response to the outbreak of SARS last year. Although these charters are not legally binding on the signatories, it is really effective in publicity and education. More importantly, the underlying symbolic meaning has reflected the concern of society and the authorities for the problem and the vulnerable so that the victims will know that they are not alone. The front-line personnel and organizations will also have their awareness enhanced through signing the charter.

Regarding the contents of the "anti-domestic violence charter", I suggest that it should be divided into three parts. The first part is to clearly illustrate the real threat of domestic violence so that the people can understand how it will adversely affect the relationship among family members and the growth of children; and how it will incur heavy costs for the community. The second part

is to induce the public's commitment to anti-domestic violence so that those who have been victimized can get a clear understanding of their rights and the channels to seek help so as to make the right choice for the well-being of their family members. Furthermore, the general public, based on proper understanding of the problem, will also provide help and care. The third part is putting notion into action by the community as a whole about the anti-domestic violence conviction. Efforts will be made to mobilize the community and individuals in different life circles and at different posts to actively initiate and participate in necessary actions.

In order to support the publicity and promotion of anti-domestic violence, to deepen its effectiveness in education and arouse the public's concern, we can encourage and invite people of various bodies, sectors and strata, irrespective of their age and gender, and irrespective of their professions, no matter they are police officers, social workers or celebrities, or even movie stars and idols, to sign the charter. They can also be invited to become anti-domestic violence ambassadors if they wish so that they can demonstrate and promote the correct family concepts and the message of an outright objection to solving family problems by violence.

The Liberal Party hopes that through the promotion of the "anti-domestic violence charter", efforts in the public domain can be put together to get rid of some outworn misconceptions, to set up a social network of mutual help, to completely exclude those who are violence-prone and to protect the unfortunate victims so that they can feel at ease and lead a new life of dignity.

Besides, we understand that there is still some difference between the approach of handling spouse abuse, including domestic violence, and the approach of handling child abuse. In respect of child abuse, through the efforts of relevant organizations and concerned parties, different departments have set up an information exchange system and a name list. If a child abuse case occurs, different departments will inform each other on receipt of report of such a case. But in respect of spouse abuse, as far as I know, there is no such mechanism or system for the time being. So, I hope the Government can face this problem squarely and apply the system which has been proved effective in handling child abuse cases to spouse abuse and domestic violence cases.

Thank you, Madam President.

MR ALBERT HO (in Cantonese): Madam President, the number of spouse abuse cases handled by the Social Welfare Department is 3 034 in 2002. Among these cases, 365 occurred in Tuen Mun, which is the highest among the 18 districts, whereas the total number of such cases occurred in Yuen Long is 364, second only to Tuen Mun. In 2003, the number of spouse abuse cases was 3 298 cases, among which 598 occurred in Tuen Mun, which is still the top among the 18 districts. With a total number of 347 cases, Yuen Long is again second to Tuen Mun. As regards child abuse cases, the numbers occurred in Tuen Mun and Yuen Long respectively are higher than those in other districts, showing that the domestic violence problem in these two areas is particularly serious.

Social problems confronting Tuen Mun and Yuen Long, including Tin Shui Wai, have all along been more serious. Apart from domestic violence, these districts also face other social problems such as drug abuse by youngsters and high suicide rate. There must be some reasons relating to the plight faced by the residents. It must have been due to the lack of long-term strategy in planning and the lack of sufficient support services provided by the Government.

The opening up of new towns has been an objective of the Government's planning policy. A lot of housing, including public housing, will first be constructed in the new towns to accommodate a large number of people before social service facilities are enhanced gradually at a later stage. Because of the remoteness of these areas, it will take much more time and money for the residents to travel between their living places and the urban areas for visiting relatives. In other words, it will easily take several hours or cost tens of dollars to travel on such purpose. It is indeed a heavy burden for the local residents whose household incomes are usually low. Under such circumstances, many residents are confined to their homes. Even though they are confronted with an extremely depressing situation, they have to face it like having a "hedge-in fight". They not only lack sufficient emotional support, but also find it difficult to obtain better or more services and job opportunities. Under such pressure, they sometimes cannot cope with the situation. It is particularly true for women in these districts as they face greater pressure because their spouses work outside on excessively long working hours. Even when some family problems have emerged, they cannot expect their family members or spouses to come home immediately to help. As a result, they have to deal with the difficult situation alone.

According to the statistics of the Census and Statistics Department, the number of households with a monthly income below \$15,000 in Tuen Mun accounts for 43% of the total number of households in the district whereas the relevant percentage in Yuen Long is 45%. Compared with the territory-wise situation, the income levels of residents in Tuen Mun and Yuen Long are undoubtedly low. Besides, the number of households on CSSA, the number of new arrivals and ethnic minorities in these two districts are also higher than those in other districts. Being poverty-stricken, these people have become social outcasts. In view of these various factors, it is not difficult to imagine that residents in these two districts need more support than those in other districts.

It has been the government policy that the provision of various social services and community facilities are planned according to the population ratio. However, as I have just said, new towns such as Tuen Mun and Yuen Long are caught in special circumstances and the support they need should not be calculated simply on the basis of population ratio. Resources should be allocated according to their respective unique situations, circumstances and needs. Particularly, resources for these districts should not be reduced simply because the Government is under fiscal pressure. The Government should review the service package and support in these new towns so that more residents can obtain due assistance and recourse. Then they will not feel isolated and vulnerable when being caught in a plight.

Admittedly, sufficient family services or other support, including police assistance, cannot guarantee that domestic violence will not occur. Family tragedy may still recur because it is difficult to completely pre-empt tragedy no matter how many resources have been allocated for such purpose. But we can at least provide the victims with more recourse options to escape from danger. The police should also thoroughly review their policy, attitude and culture in handling complaints about domestic violence. They should never adopt the traditional notion that "a dispute between husband and wife is but a lovers' quarrel which is settled in no time", thinking that it is the daily lot of a family and police intervention will damage their family relationship. The most serious misconception arises from their failure to recognize that it is difficult to expect a happy domesticity without a safe and violence-free family environment. So, we agree to Honourable colleagues' views that a thorough review of relevant laws and a stronger lead in co-ordinating the efforts of various government

departments are necessary. We look forward to seeing a "zero tolerance" policy and attitude towards domestic violence.

Thank you, Madam President.

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, an unhappy job and unstable emotions are the primary factors leading to conflicts between husband and wife. It goes without saying that life is full of pressure. So, unemployment may be the remote cause of domestic violence. When social environment has deteriorated, individuals and families are also adversely affected. This is a problem that we should face squarely.

However, today's debate focuses on legislation and policy. Some Honourable colleagues have proposed amendments to the motion. For instance, Miss CHAN Yuen-han has proposed to amend the Domestic Violence Ordinance, to introduce legislation to prohibit stalking and to instil into young people, through education, the concept of refraining from using violence to solve family problems. I very much agree with Miss CHAN Yuen-han's views. Both husband and wife may use inappropriate methods to solve family problems. Of course, in many cases, it is the husband who has committed stalking so extremely that the wife does not know how to protect her children. We have to empower the police, through introduction of legislation, to prohibit stalking so as to solve this hidden time bomb.

Someone has also pointed out that emotional abuse should be included in the legislation. This point needs to be examined because the scope of "emotional abuse" can be very wide. Verbal insult may be regarded as a kind of emotional abuse, depending on the psychological conditions of the abused and the abuser. Having said that, we should pay attention to this potential risk because it is probable that domestic violence originates from acts of emotional abuse. If a husband always talks to his wife in a threatening manner, this is certainly a kind of emotional abuse as well as criminal intimidation which is prohibited by law. However, maybe one party has verbally hurt the other, resulting in resort to violence. If legislation is made to regulate this, it seems to be an interference with others' marital relation.

Last month, there was an incident in which the husband hurt his left arm because his wife had laid down very stringent family rules. In that case, the wife had laid down four family rules under which the husband was disallowed to invite his friends to visit them. Failure of observance on the part of the husband led to disputes. This case reminds us that men may also be victims. But what the family needs is counselling by social workers rather than protection by law. So, the Government should provide more family counselling services and educate the people to seek help from the social workers of the Social Welfare Department as soon as possible. If a social worker can help the couple discuss family matters in a cordial way, the husband may not do such silly thing as inflicting bodily injury on himself. The public should look at the meaning of domestic violence from a wider perspective. No doubt it is our duty to protect the women and the children, but it is also necessary to provide counselling and support to the men when they are under pressure and caught in a difficult situation. Only in this way can we get to the root of the problem. Instead of allowing a tragedy occur just because a husband has failed to handle his personal emotions, why do we not try to prevent violence with timely intervention? If the husband had hurt his wife and children instead of himself, then another family tragedy would have occurred.

In fact, some men still wrongly believe that problems can be solved by violence. A survey also shows that 30% of the police officers think that "beating up one's wife" is normal behaviour. As this is a misconception out of fallacies, the Government should step up publicity in order to instil the correct concepts into men, which is the most effective way of reducing domestic violence. It may even stipulate that men who have battered their wives should receive counselling just like drivers who are required to receive training in driving manners. If these measures are ineffective in changing the abusers' attitude, irretrievable tragedies may still occur.

Besides, the police should improve the work style of front-line officers, who should not regard the victims' complaints as their own family problems. Instead, they should learn a lesson from the Tin Shui Wai tragedy and enhance their vigilance and determine if individual families stand a higher chance of incidence of violence incidents. The police, after all, have ultimate responsibility in the prevention of tragedy. We believe no more family tragedy will occur if the abusers can be stopped promptly.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Ms Cyd HO, you may now speak on the amendments. You have up to five minutes to speak.

MS CYD HO (in Cantonese): Madam President, we do have a lot of amendments today. But I would like to focus on the issue of resources.

The amendments proposed by Miss CHAN Yuen-han and Dr TANG Siu-tong pinpoint the community. Just now, I also noticed that the six Members returned by direct elections in New Territories West have all spoken on the issue. The number of domestic violence cases in New Territories West is indeed the highest, but I hope Members will not mistakenly take it as a district issue. Maybe many families in that district are facing financial difficulties. Maybe there are many new arrivals there who have not adapted to the environment, and these may perhaps be the causes of domestic violence, yet a more important issue is the lack of resources which is a problem for all districts in the territory. What we are talking about is not the ratio between services provided by agencies or the number of social workers and the demand arising from these cases. As I said in my first speech, this is in fact a problem of whether or not the social worker has any means to help the assistance seekers. The resources we are referring to include housing, education, Comprehensive Social Security Assistance (CSSA), voluntary agencies, refuge centres, and so on.

Let me talk about CSSA first. The population policy has recently changed the residence requirement for CSSA from one year to seven years. This actually targets on the women who have come to Hong Kong for family reunion. However, these women are precisely a group of people who have no other support from anybody else. When they face the threat of domestic violence, they do not dare to leave their husbands, the abusers, because they are not financially independent. As a result, all of them are really caught in a "hedge-in fight". Eventually they are vulnerable to being victimized in family tragedies.

I also have a few words on housing. In fact, when the social workers try to help the victims, the most crucial step is to separate the victims from the abuser when danger may be imminent. The most effective way is to provide public housing, enabling the abused and their children to move out. But of the 3 000 cases received by the Social Welfare Department (SWD) in the whole year, only 116 cases have successfully applied for splitting of a household, representing just over 0.3% of the total number of cases. This cannot help prevent the occurrence of domestic violence by timely separation of the abuser from the abused in order to avoid further escalation of violence.

Besides, Madam President, there is a problem relating to refuge centres. As regards services provided by refuge centres, I really hope that the Government can conduct a comprehensive review of this. First, as for the children, boys aged 13 or above are not admitted by refuge centres but there is no age limit for girls. If a battered woman has a boy aged over 13, there are only two options open to her when she has decided to leave home and seek asylum: first, not to take the son with her; second, let the SWD provide temporary accommodation for her son in some other place if she wants to bring her son with her. But this is really a difficult dilemma for the mother. So there is room for review in this aspect. Meanwhile, the services provided in refuge centres are insufficient, for instance the provision of food. From this case, we can see that even though the social worker had only provided the woman with a cup noodle, the woman was asked to pay and to pay it on the following day. However, such women often left home on their own without any money. If no emergency aid is provided to them, the battered women will not be bold enough to leave home and seek help.

Finally, Madam President, I would like to point out that there is a need to develop self-help groups in the community. The civil servants of the SWD are duty-bound to ensure no wastage of resources. Their role as a goalkeeper in this aspect is in conflict with their role in showing understanding and empathy to the help-seekers. I believe assistance can be provided to the battered women in a more effective way if the Government can support the development of self-help centres.

SECRETARY FOR HEALTH, WELFARE AND FOOD: Madam President, I am grateful to the Honourable Cyd HO for moving this motion, which enables us

to revisit this very important subject. I am also grateful to Honourable Members for their views on family violence.

Our "Mission" is to build a caring and healthy society, a community which values family solidarity and comprises a network of mutual care, trust, support and reciprocity which embraces all individuals, nurtures their healthy development and enables them to participate in economic and social life with dignity and self-reliance. Family solidarity comes first on our list. An integral part of family solidarity is violence-free families.

We invest substantively in the measures to promote family solidarity. In the social welfare arena, \$1.7 billion is provided for family and children services in the financial year 2004-05. This amount does not take into account the programmes and activities provided for youth and elders, and across other policy areas like health, education, security, and community building which also seek to achieve similar effects of enhancing family solidarity and combating family violence. That said, we are still some way from having a completely violence-free family environment. According to the latest statistics, the total number of newly reported battered spouse cases show an increase of 8.7% when compared with 2002. There were also 481 newly reported child abuse cases in the year 2003, although this was a drop of 7.5% from the preceding year.

To tackle family violence, we need to revisit the nature of family violence and the relevant risks and protective factors identified in researches. A better understanding of the nature of the problem enables us to draw up effective strategic responses and develop targeted measures thereon.

There are many possible ways to define family violence, as Members have said. Regardless of how it is defined, family violence is particularly appalling because it occurs within ongoing relationships which are expected to be protective, supportive and nurturing. Studies have found that victims often feel a sense of loyalty to their abusers, and are often also economically dependent on them. The associated factors and dynamics involved are therefore extremely complex and paradoxes abound. Researches have identified some common risk factors amongst those who applied violence. These include low self-esteem, depression, sense of incompetence, lack of empathy, poor self-control, alcohol or drug addiction, marital problems, and a history of abuse and neglect as a child, social isolation, and lack of support. On the other hand, there are also some

common protective factors which may provide a buffer against family violence. These include education, physical and psychological health, coping skills, the ability to manage stress, no substance dependencies, no past history of violence in one's family, high levels of family cohesion and adaptability, community support and a strong social network.

Such risk and protective factors do not work on their own. It is when such factors interact with precipitating factors, for example, family problems or stress, that results either in creating a coping cycle which would uplift an individual's coping skills, or a cycle of violence. For example, a secure relationship between family members will buffer effects of stress and facilitate the development of coping strategies. A caring and supportive social network can also provide additional strength from outside the family. With such support, constructive resolution of conflict would strengthen family relationship and community network. This in turn increases the resilience of individuals.

The wide ranging nature of these risk and protective factors, from the individual to societal level, and the many permutations from which their interactions can create demonstrate that family violence carries many complicated features, with no simple and straight forward preventive or remedial panacea. It is a multi-faceted problem which requires a multi-pronged response to be implemented by the concerted efforts from all relevant parties and from society. While we may not be able to control many of the precipitating factors which occur in a family, the continuum of preventive, supportive and specialized services which are in place seek to enhance the protective factors and minimize the occurrence of the risk factors which I have just mentioned. I would like to outline some of these measures.

We attach a lot of importance to building up the protective factors at an early stage of life and in response to changing public attitudes, particularly among young people, towards family violence. At the parental level, the Parenting Programme provided by the Department of Health seeks to equip parents of all children attending our Maternal and Child Health Centres with the knowledge and skills to bring up healthy and well-adjusted children. Parenting skills and other support services are also provided through the services in the integrated family service centres and family service centres. Family life education programmes seek to educate on the importance of family life and how it can be sustained.

Education is the key. Much emphasis is placed on the holistic development of students, including building their character, good conduct and inter-personal skills, and nurturing them to become caring and responsible citizens. The Honourable CHAN Yuen-han referred to instilling "into young people, through education, the concept of refraining from using violence to solve family problems." We are indeed adopting such an approach. The present school curriculum places much emphasis on cultivating positive values and attitudes, including family values, in both primary and secondary schools. In addition, various training courses, seminars and workshops are conducted to enhance teachers' competency in cultivating among students such concepts and values. In the social welfare arena, cultivating positive attitudes towards life is a theme which runs through many of the services and programmes rendered by youth service units, including integrated children and youth services centres, outreaching social work teams and school social workers. Through these services and programmes, young people acquire problem-solving and stress management skills, thereby building up their capacity to cope with adversities and stress.

In terms of physical and psychological health, the Adolescent Health Programme enables adolescents, parents and teachers to better understand adolescents' physical, psychological, emotional, and intellectual changes and needs. The aim is to facilitate adolescents to develop proper self image and self esteem which again boost their coping skills.

Community support is an important resilience-building factor. We seek to build community support through publicity and public education, community-building initiatives and investments in programmes to enhance social inclusion. Apart from the publicity campaigns and preventive education programmes supported by the Social Welfare Department (SWD), community-building activities are also provided through the District Councils and non-governmental organizations (NGOs) to promote family and social harmony. In addition, the Committee on the Promotion of Civic Education has designated "upholding family values and enhancing family cohesiveness" as one of its sub-themes of its core activities in the past two years. On a more proactive front, the Community Investment and Inclusion Fund has been providing funding to support community-initiated and neighbourhood-based projects which seek to build the capacities of individuals and groups for self help, mutual help and support, and to mobilize cross-sectoral collaboration for shared solutions to local problems.

The above measures seek to build up individual and community capacities and develop coping skills, to identify at an early stage the risk factors, to strengthen the resilient factors, and to tackle the risk factors. Nonetheless, the Government can only effectively act as the facilitator and enabler. It is well recognized that the effective solutions to social problems are often found in the community itself. Individuals should be proactive and capitalize on what the community network can offer in terms of support and problem solving. This is an interactive process. The stronger the community fabric, the higher the trust and support which in turn reinforces the supportive network.

The services and the programmes which I talked about do not shelter individuals from all vulnerabilities which we would likely face in one form or another at some stages in our lives. In some instances, individual coping skills need to be supplemented by external assistance so that individual and family problems are suitably addressed and individuals are kept away from the adversity cycle. A comprehensive range of mainstream counselling and support services are provided by the SWD and by our NGO partners to ensure that people have sources of advice to turn to.

The Integrated Family Service Centres which comprise Family Resource, Family Support and Family Counselling Units provide a continuum of services with extended working hours to meet changing family needs. In seeking to integrate family services, efforts are being made to redistribute the resources, based on factors like complexity of social problems and district population needs. Where more immediate and intense interventions are called for, they are handled by the Family and Child Protective Services Units. These Units are staffed by experienced social workers and adopt a co-ordinated approach in protecting and assisting victims of abuse and their families. There are now five such units and the SWD is planning to further strengthen manpower by expanding to six teams. These units have also strengthened networking with the NGOs. The four refuge centres operated by the SWD and the NGOs cater for the needs of women and their children with round-the-clock admission, while the 24-hour Family Crisis Support Centre provides temporary accommodation for women, men and children during crisis situation. We will certainly look into the issues raised by the Honourable Cyd HO.

In addition, other forms of social support, like housing assistance, are also available to victims of family violence cases. All these seek to provide support

to victims to rebuild their lives and to provide protection for victims and their families.

As I have indicated earlier, family violence is a multi-faceted problem. On this front, government departments work closely together, and we also collaborate with our NGO partners. In terms of inter-departmental co-ordination, two dedicated multi-disciplinary committees have been set up in the SWD to combat child abuse and spouse battering and sexual violence respectively. At the district level, the cross-sectoral and multi-disciplinary District Coordinating Committees on Family and Child Welfare are in place to co-ordinate service provision relating to family violence, in addition to other family and child welfare issues.

On the issue of counselling methods, different counselling methods are adopted in the intervention process based on the needs and characteristics of the victims and batterers. The SWD reviews counselling services from time to time, with a view to improving the effectiveness of the many approaches it adopts. The clinical psychologists of the SWD work closely with social workers to provide them with consultation and professional support, apart from taking up assessment and treatment of cases of domestic violence themselves. The assessment tools and treatment measures are continuously reviewed to match with the clients' treatment needs and changes in the clinical formulations of the cases.

Members have expressed concern over how family violence cases are handled by front-line staff, and have referred to the practice adopted by the police. The police have clear and detailed guidelines on the handling of domestic violence. The guidelines stipulate the roles and responsibilities of police officers attending scenes of domestic violence. The guidelines also cover details about interviews, arrest actions, serving of the Domestic Incident Notice and Family Support Card, the need for briefing the victim on the process of criminal investigation and court proceeding as well as the availability of welfare services. Front-line officers are reminded to protect the victim and his/her children from attack and ensure that they are not subject to further violence. Firm and proactive action will be taken to investigate any offence which may have been committed. The guidelines also set out the procedures of referring the subjects to appropriate government departments or NGOs for assistance. In

fact, since the year 2003, there has been an enhanced referral mechanism in that the police can refer certain cases to the SWD for follow-up support services, even without the consent of the victim or alleged offender.

Domestic violence forms part of the basic training of police officers. In the past two years, over 11 000 front-line police officers have received a new training package on domestic violence, and further training will be organized.

Since the Tin Shui Wai case, the police have reminded all officers of the need of handling domestic violence cases with care. The police will examine the existing procedures for handling domestic violence cases in consultation with other related agencies with a view to identifying any area which requires improvement, in particular on enhancing communication on domestic violence.

The SWD has continuously conducted different training programmes for social workers as well as other professionals to enhance the skills and knowledge on handling domestic violence. In the past year, 1 000 professionals from various disciplines have attended training programmes conducted by local and overseas experts. In the coming year, such training programmes will be stepped up. Training materials will also be developed as references for related professionals who are unable to attend these training programmes.

As part of our efforts to seek continuous improvements, last year, we commissioned a study on child abuse and spouse battering to enrich and update our understanding of the extent of the problem of child abuse and spouse battering, the profiles of the victims and perpetrators, the essential elements contributing to effective prevention and intervention, and the feasibility of adopting mandatory treatment in Hong Kong. The findings of the study will facilitate further the development of strategies and services to combat family violence. In addition to the findings of the study, local assessment tools for early identification of child abuse and battered spouse cases will be developed to facilitate timely intervention. Part one of the study on the prevalence rate and elements contributing to effective prevention and intervention will soon be completed, and we will implement the appropriate recommended measures as a matter of priority. We will certainly also take into consideration some of the suggestions made by Members here today which would help to improve our services.

We are aware of the concerns on the provisions in the Domestic Violence Ordinance. That is why one of the objectives of the study which I have just mentioned is to identify the essential elements contributing to effective prevention and intervention, including whether the provision of legislative measures can facilitate prevention and intervention, and to study the feasibility and implications of adopting mandatory treatment of perpetrators in Hong Kong with reference to overseas experience. While waiting for the outcome of the study, we are simultaneously examining the legislative provisions and will consider whether, and if so how, the existing legal framework needs to be improved to the benefit of the victims. Members' views expressed today would again be taken into account in this context.

Members have expressed views on the Review Panel set up to review the provision and service delivery process of family services in Tin Shui Wai. The Panel will look into how the case was handled, including any cross-sectoral co-ordination issues. From a wider perspective, the Panel would also make recommendations on how to strengthen the effectiveness, co-ordination and other aspects of service provision and to raise other issues such as resources. Let me reiterate, the two cross-sectoral committees are already operating under the auspices of the SWD to combat child abuse, spouse battering and sexual violence. These committees would of course continue to seek improvements in their work. At the Bureau level, while proceeding with the legislative review, we would also be keeping a close watch over the recommendations to be made by the Review Panel and would seek early implementation of measures to enhance our system.

Madam President, harm and injury inflicted upon family members is something which no society should tolerate. The protective, risk and precipitating factors evolve all the time, and as I said, there is no simple solution. As with many other social problems, government efforts, be it alone or together with NGOs, would not be adequate in the fight against domestic violence. We need to work together and work harder to prevent it from happening or recurring. Every member of the public can and needs to contribute to curbing the problem by taking an active interest in the events in our community and strengthening our community supportive network, building up our own protective and resilient factors, seeking early assistance if in need, and bringing suspected cases to the attention of the relevant professionals. It is only with concerted efforts that we can stand the chance of dealing with the problem effectively.

Thank you.

PRESIDENT (in Cantonese): I now call upon Miss CHAN Yuen-han to move her amendment to the motion.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, I move that my amendment, as printed on the Agenda, be passed and urge Honourable colleagues to support it. Thank you.

Miss CHAN Yuen-han moved the following amendment: (Translation)

"To delete "make every effort to curb" after "That this Council urges the Administration to" and substitute with "formulate a comprehensive policy to curb"; to add "study the introduction of legislation to prohibit stalking relating to domestic violence and instil into young people, through education, the concept of refraining from using violence to solve family problems, as well as to" after "expeditiously amend the Domestic Violence Ordinance,"; to add "to the high-risk communities" after "allocate more resources"; to add "such as social workers and police officers" after "the ability of front-line personnel"; and to add ", so as to prevent further occurrence of domestic violence" after "to deal with cases of domestic violence". "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Miss CHAN Yuen-han to Ms Cyd HO's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

Ms Cyd HO rose to claim a division.

PRESIDENT (in Cantonese): Ms Cyd HO has claimed a division. The division bell will ring for three minutes before Members proceed to vote.

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

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

Functional Constituencies:

Mr CHAN Kwok-keung, Mr Bernard CHAN, Ms LI Fung-ying, Mr Henry WU and Mr IP Kwok-him voted for the amendment.

Dr LO Wing-lok voted against the amendment.

Mr Kenneth TING, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Ms Miriam LAU, Dr LAW Chi-kwong, Mr Tommy CHEUNG and Mr Michael MAK abstained.

Geographical Constituencies and Election Committee:

Miss CHAN Yuen-han, Mr Jasper TSANG, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong and Mr Ambrose LAU voted for the amendment.

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 16 were present, five were in favour of the amendment, one

against it and 10 abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present, six were in favour of the amendment and 13 abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MR FRED LI (in Cantonese): Madam President, I move that in the event of further divisions being claimed in respect of the motion "Curbing domestic violence" or any amendment thereto, this Council shall immediately proceed to such divisions after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you 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 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 motion "Curbing domestic violence" or any amendment thereto, this Council shall immediately proceed to such divisions after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): Ms Miriam LAU, you may move your amendment.

MS MIRIAM LAU (in Cantonese): Madam President, I move that Ms Cyd HO's motion be amended, as set out on the Agenda.

Ms Miriam LAU moved the following amendment: (Translation)

"To add "and thoroughly review the current counselling methods," after "expeditiously"; to delete "allocate more resources and provide" after "the Domestic Violence Ordinance," and substitute with "take a stronger lead in co-ordinating the efforts of various government departments and voluntary agencies, optimize the use of existing resources before allocating further resources, and step up"; and to add "and vigilance" after "to enhance the ability"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Ms Miriam LAU to Ms Cyd HO's motion, be passed

PRESIDENT (in Cantonese): I now call upon Mr WONG Sing-chi to move his amendment to Ms Miriam LAU's amendment.

MR WONG SING-CHI (in Cantonese): Madam President, I move that Ms Miriam LAU's amendment be amended, as set out on the Agenda.

Mr WONG Sing-chi moved the following amendment to Ms Miriam LAU's amendment: (Translation)

"To add "allocate more resources and" after "voluntary agencies,"; and to delete "before allocating further resources" after "existing resources"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr WONG Sing-chi to Ms Miriam LAU's amendment, be passed

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

(Members raised their hands)

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

(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 amendment passed.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Ms Miriam LAU's amendment as amended by Mr WONG Sing-chi, to Ms Cyd HO's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by

functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Dr TANG Siu-tong, as Ms Miriam LAU's amendment as amended by Mr WONG Sing-chi has been passed, I have given leave for you to revise the terms of your amendment, as set out in the paper which was circularized to Members on 4 May. In accordance with the House Committee's recommendation which I have also accepted, when you move your revised amendment, you have up to three minutes to explain the revised terms in your amendment, but you may not repeat what you have already covered in your earlier speech. You may now move your revised amendment.

DR TANG SIU-TONG (in Cantonese): Madam President, I move that Ms Cyd HO's motion as amended by Ms Miriam LAU and Mr WONG Sing-chi be further amended by my revised amendment, as set out in the paper which has been circularized to Members.

My amendment seeks to enhance the contents of the original motion. As prevention is the fundamental solution to domestic violence, we must start with promoting proper interpersonal relations and family harmony through education and publicity. Meanwhile, we have to bring neighbourhood spirit into play and to strengthen community support for families. As community and neighbourhood support is always nearby, follow-up actions and assistance can be closely provided to those who are adversely affected in a more effective and more cordial way. So it is really worth support and promotion. I urge Honourable Members to support my amendment.

Dr TANG Siu-tong moved the following further amendment to the motion as amended by Ms Miriam LAU and Mr WONG Sing-chi: (Translation)

"To add "; at the same time, the Administration should also join hands with non-governmental bodies in promoting family harmony, proper interpersonal relations and the neighbourhood spirit, so as to strengthen community support for families and stamp down domestic violence through concerted efforts" after "to deal with cases of domestic violence"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Dr TANG Siu-tong's amendment to Ms Cyd HO's motion as amended by Ms Miriam LAU and Mr WONG Sing-chi, be passed.

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

(Members raised their hands)

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

(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 amendment passed.

PRESIDENT (in Cantonese): Ms Cyd HO, you may now reply and you have two minutes two seconds.

MS CYD HO (in Cantonese): Madam President, having discussed so many amendments, I hope Honourable colleagues will still remember what motion we have passed today. I also hope that they will remember that all those who have spoken are in support of thorough follow-up actions instead of just a passing concern.

I thank the Secretary for his speech. I heard from the first paragraph of his speech that the focus is on uplifting of an individual's skills, including skills in getting along with family members and parental education. There is no harm in uplifting an individual's skills, but the Secretary has actually evaded the specific timetable for legislative amendments and the problem of insufficient resources in providing housing as an emergency aid. So I hope that Honourable

colleagues will remember what they have said and take a thorough follow-up in due course, such as proposing a Private Members' Bill to amend the Domestic Violence Ordinance in the next-term Legislative Council. If the two reports published by the Social Welfare Department and the police respectively are not satisfactory, I urge Members in the next term to appoint a select committee so as to find out, through an inquiry into this case, the inadequacies in the structural and institutional aspects, and then make every effort to prevent the recurrence of cases of domestic violence. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Cyd HO, as amended by Ms Miriam LAU, Mr WONG Sing-chi and Dr TANG Siu-tong, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 3.00 pm today.

Adjourned accordingly at twenty-two minutes to One o'clock in the morning.

Annex I

DEPOSIT PROTECTION SCHEME BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services
and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1) -</p> <p>(i) by deleting the definition of "applicant" and substituting -</p> <p style="padding-left: 40px;">"applicant" (申請人) means a person who applies to the Tribunal under section 39(1), (2) or (3) for a review of -</p> <p style="padding-left: 80px;">(a) a decision, or an assessment, of the Board; or</p> <p style="padding-left: 80px;">(b) a decision of the Monetary Authority;"</p> <p>(ii) in the definition of "bank", by deleting everything after "means a" and substituting -</p> <p style="padding-left: 40px;">"company -</p> <p style="padding-left: 80px;">(a) that holds a valid banking licence; or</p> <p style="padding-left: 80px;">(b) the banking licence of which is for the time being suspended under section 24</p>

ClauseAmendment Proposed

or 25 of the Banking Ordinance (Cap. 155);";

(iii) in the definition of "bare trustee" -

(A) by deleting "protected deposit" and substituting "deposit or portion thereof";

(B) by adding "or that portion" after "the deposit" wherever it appears;

(iv) in the definition of "director", by deleting ", in relation to a Scheme member or a bank,";

(v) by deleting the definition of "practicable";

(vi) by deleting the definition of "protected deposit" and substituting -

"protected deposit"(受保障存款) means a deposit denominated in any currency and maintained with a Scheme member but does not include those specified in section 1 of Schedule 1;"

(vii) in the definition of "臨時清盤人", by deleting "人。" and substituting "人；";

(viii) by adding -

"authorized institution" (認可機構) has the meaning assigned to it by section 2(1) of the Banking Ordinance (Cap. 155);

"client account" (客戶帳戶), in relation to a depositor, means an account maintained by the depositor with a bank for the

ClauseAmendment Proposed

purpose of holding money held by the depositor for a client of the depositor, whether or not other money may be held in the account;

"function" (職能) includes a power and a duty;

"holding company" (控股公司) means a holding company within the meaning of section 2 of the Companies Ordinance (Cap. 32);

"information system" (資訊系統) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"relevant deposit" (有關存款) means a deposit denominated in any currency and maintained with a Scheme member but does not include those specified in section 1A of Schedule 1;

"subsidiary" (附屬公司) means a subsidiary within the meaning of section 2 of the Companies Ordinance (Cap. 32);".

(b) By adding -

"(1A) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the discharge of a duty.

(1B) If a deposit, or portion thereof, held by a depositor in a client account for a client is also held by the depositor as a trustee or bare trustee

ClauseAmendment Proposed

under a trust or bare trust, the deposit or portion is, for the purposes of this Ordinance, taken as being held by the depositor for the client and not as such trustee or bare trustee."

- (c) In subclause (2), by deleting "語族" and substituting "根".

4

- (a) By deleting subclause (1)(c) and substituting -

"(c) not fewer than 4 and not more than 7 other members appointed by the Chief Executive from among persons who, either because of their experience in finance, accounting, banking, law, administration, information technology or consumer affairs, or because of their professional or occupational experience, appear to the Chief Executive to be suitable for the appointment."

- (b) In subclause (2) -

- (i) by deleting "A public officer is" and substituting "The following are";

- (ii) by deleting everything after "under" and substituting -

"subsection (1)(c) -

- (a) a public officer;

- (b) a person who is a director, or an employee, of -

- (i) an authorized institution;

ClauseAmendment Proposed

(ii) a holding company of an authorized institution;

(iii) a subsidiary of such a holding company; or

(iv) a subsidiary of an authorized institution."

(c) In subclause (3), by deleting "non-executive" and substituting "appointed".

5(g) By deleting "the assets of the failed" and substituting ", or out of the assets of, the".

7(d) By deleting everything after "agreement" and substituting -
"or arrangement -

(i) with the liquidator or provisional liquidator of a failed Scheme member, or with any other person, in respect of its claim against the assets of the failed Scheme member; or

(ii) with any person in respect of its claim against a Scheme member, in relation to which it is deemed under section 22A that a specified event never occurred;"

New By adding -

"7A. Board may issue guidelines

ClauseAmendment Proposed

(1) The Board may issue, for the guidance of banks or depositors, guidelines not inconsistent with this Ordinance, indicating the manner in which it proposes to perform its functions under this Ordinance.

(2) The Board shall publish a guideline issued under this section in the Gazette.

(3) The Board may amend or revoke a guideline issued under this section. Subsection (2) applies to the amendment or revocation of a guideline in the same way as it applies to the issue of a guideline.

(4) A person does not incur a civil or criminal liability only because the person has contravened a guideline issued under this section. If in any legal proceedings the court is satisfied that such a guideline is relevant to determining a matter that is in issue in the proceedings -

(a) the guideline is admissible in evidence in the proceedings; and

(b) proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

(5) A guideline issued under this section is not subsidiary legislation.

(6) In this section, "court" (法院) includes a magistrate and the Tribunal."

<u>Clause</u>	<u>Amendment Proposed</u>
11(1)	<p>By deleting "during the validity of its banking licence." and substituting -</p> <p>"until -</p> <p>(a) the company ceases to be a bank by virtue of section 18(3) of the Banking Ordinance (Cap. 155); or</p> <p>(b) its banking licence is revoked under that Ordinance.".</p>
12	<p>(a) In subclause (4)(c) -</p> <p>(i) by deleting "less" and substituting "in all material respects narrower, and lower,";</p> <p>(ii) by deleting "those deposits were protected by the Scheme" and substituting "the bank were not exempted".</p> <p>(b) In subclause (6), by deleting "可行" and substituting "切實可行的".</p> <p>(c) In subclause (10) -</p> <p>(i) by adding ", as soon as practicable after the relevant time," after "shall";</p> <p>(ii) in paragraph (c)(iii), by deleting "under" and substituting "by".</p> <p>(d) By adding -</p> <p>"(12) In subsection (10), "relevant time" (有關時間) -</p>

ClauseAmendment Proposed

(a) in relation to the bank's depositors, means the time when the bank receives the notice of decision of the Board given under subsection (6);

(b) in relation to a person who is not already a depositor of the bank but has informed the bank that he intends to make a deposit with the bank, means the time when the person so informs the bank."

13(2)(b) By deleting "the assets of failed" and substituting ", or out of the assets of,".

14 (a) By deleting subclause (1).

(b) In subclause (3), by deleting "可行" and substituting "切實可行的".

(c) By adding -

"(3A) A Scheme member shall pay to the Board, in the prescribed manner and within the prescribed period, the amount of contribution assessed by the Board."

(d) By deleting subclause (4).

(e) In subclause (5) -

(i) by deleting "(1)" and substituting "(3A)";

ClauseAmendment Proposed

(ii) in paragraph (b) -

(A) by adding "to the Board" after "pay";

(B) by adding "in the prescribed manner and" before "within".

(f) By adding -

"(5A) The Board shall, on collecting any contribution or late payment fee from a Scheme member, pay it into the Fund.".

15(g) By adding "or in relation to" after "by".

16 By adding -

"(1A) As soon as practicable after the commencement of this section, the Board shall submit to the Financial Secretary, for his approval, estimates of the income and expenditure of the Fund for the first financial year of the Fund.".

20 (a) By renumbering the clause as clause 20(1).

(b) In subclause (1)(d) -

(i) by adding "subject to subsection (2)," before "exchange";

(ii) by deleting "and" and substituting "contracts or";

(iii) by deleting ", which are necessary for hedging purposes".

ClauseAmendment Proposed

(c) By adding -

"(2) The Board shall not place, or invest, money of the Fund in exchange rate contracts or interest rate contracts except for hedging purposes.".

21

(a) In subclause (1)(a) -

(i) by adding "subject to section 22A," before "a specified";

(ii) in subparagraph (ii), by deleting "subject to section 22(5),".

(b) In subclause (2)(a), by deleting "a Scheme member in respect of which" and substituting "in respect of a Scheme member".

(c) By adding -

"(6) If a specified event has occurred in relation to a Scheme member by virtue of subsection (1)(a)(ii), the fact that -

(a) in the case where subsection (2)(a)(i) applies in relation to the occurrence, the appointment of the Manager is reversed by the Chief Executive in Council under section 53(1)(i) of the Banking Ordinance (Cap. 155) or is set aside by a court; or

(b) in the case where subsection (2)(a)(ii) applies in relation to

ClauseAmendment Proposed

the occurrence, the order appointing the provisional liquidator is discharged,

does not affect the operation of subsection (1)(a)(ii) in relation to the Scheme member."

22

- (a) In subclause (1), by deleting "可行" and substituting "切實可行的".
- (b) In subclause (4), by deleting "may, on" and substituting "shall, as soon as practicable after".
- (c) By adding -

"(4A) In determining whether to confirm or revoke under subsection (4) the Monetary Authority's decision, the Chief Executive in Council shall have regard to -

- (a) the interests of the depositors of the Scheme member;
 - (b) the general stability and effective working of the banking system in Hong Kong; and
 - (c) such other factors as the Chief Executive in Council considers appropriate in the public interest."
- (d) By deleting subclause (5).

ClauseAmendment Proposed

New

By adding -

**"22A. Specified event deemed
never occurred under
certain circumstances**

(1) Subject to subsection (3), if -

- (a) a specified event has occurred in relation to a Scheme member by virtue of section 21(1)(a)(i); and
- (b) the winding-up order in respect of the Scheme member is set aside by a court,

it is deemed, with effect on and after the date on which the setting aside takes effect, that the specified event never occurred.

(2) Subject to subsection (3), if -

- (a) a specified event has occurred in relation to a Scheme member by virtue of section 21(1)(a)(ii); and
- (b) the Monetary Authority's decision under section 21(2) that compensation should be paid to the depositors of the Scheme member -
 - (i) is revoked by the Chief Executive in Council under section 22(4); or

ClauseAmendment Proposed

(ii) is set aside by a court,

it is deemed, with effect on and after the date specified in the notice of revocation as the date on which the revocation takes effect, or the date on which the setting aside takes effect, that the specified event never occurred and that the Monetary Authority had never served on the Board a notice of that decision.

(3) Subsection (1) or (2) does not operate to prejudice the legality and effect of anything done in accordance with this Ordinance pursuant to the specified event before the effective date referred to in that subsection."

- 24(b) (a) By adding "a reference to" after "where".
- (b) By adding "by virtue of paragraph (a)" after "the deposit".
- (c) By deleting "of a" and substituting "of that".
- 25 (a) In subclause (1) -
- (i) in paragraph (a), by deleting "or";
- (ii) in paragraph (b) -
- (A) by deleting "or agent, or in a client account,";
- (B) by deleting the comma at the end and substituting "; or";
- (iii) by adding -

ClauseAmendment Proposed

"(c) a depositor holds in a client account for the person as the depositor's client,";

(iv) by deleting "有關" and substituting "所涉".

(b) In subclause (3), by deleting everything after "failed Scheme member" where it first appears and substituting -

"in respect of which -

(a) in the case of the date of the specified event within the meaning of section 21(1)(b)(i), a right of set off exists in the winding up of the failed Scheme member;

(b) in the case of the date of the specified event within the meaning of section 21(1)(b)(ii), a right of set off would have existed in the winding up of the failed Scheme member had a winding-up order been made in respect of it on that date,

plus or minus, as the case may be, the interest accrued on the deposits, or the liabilities, calculated up to and including the quantification date."

27

(a) In the heading, by deleting ", **agencies**".

(b) By deleting subclauses (3) and (4).

(c) In subclause (5), by adding "for a client" after "account".

(d) In subclause (6), by deleting ", principal".

<u>Clause</u>	<u>Amendment Proposed</u>
29	<p>(a) By adding before subclause (1) -</p> <p style="padding-left: 40px;">"(1A) If a depositor of a Scheme member or any other person is entitled, in respect of the depositor's protected deposit with the Scheme member, to compensation under this Division, any such compensation shall be paid to the depositor, but not any other person, in accordance with this Ordinance."</p> <p>(b) In subclause (2), by deleting "received payment that is made" and substituting "been paid an amount of compensation".</p>
30	<p>(a) In subclause (1)(a), by deleting "可行" and substituting "切實可行的".</p> <p>(b) In subclause (1)(b)(i) -</p> <p style="padding-left: 40px;">(i) by adding ", for the purpose of performing its functions," after "may";</p> <p style="padding-left: 40px;">(ii) by deleting "produce to the Board documents" and substituting "supply the Board with information and documents".</p> <p>(c) In subclause (7), by adding "切實" before "可行".</p>
31	<p>(a) In subclause (1), by deleting "This section" and substituting "Subsection (2)".</p> <p>(b) In subclause (2) -</p> <p style="padding-left: 40px;">(i) by deleting "If subsection (1) applies, the" and substituting "The";</p>

ClauseAmendment Proposed

(ii) by deleting everything after "under" and substituting

-

"section 30(5) -

(a) as if the arrangement or any part thereof had not been entered into or carried out; or

(b) in such other manner as the Board considers appropriate to counteract the effect of the arrangement."

(c) In subclause (3), in the definition of "relevant date" -

(i) in paragraph (a), by deleting "has been" and substituting "is";

(ii) in paragraph (b) -

(A) by deleting "a petition" and substituting "the petition";

(B) by deleting "has been" and substituting "is".

34

(a) In paragraph (a), by adding "or" at the end.

(b) In paragraph (b), by deleting the semicolon and substituting a comma.

(c) By deleting paragraph (c).

<u>Clause</u>	<u>Amendment Proposed</u>
35	<p>(a) In subclause (1), by deleting "within a period" and substituting "in a manner, and within a period,".</p> <p>(b) In subclause (2)(b) -</p> <p>(i) by adding "to the Board" after "pay";</p> <p>(ii) by deleting "within a period" and substituting "in a manner, and within a period,".</p> <p>(c) By deleting subclause (4) and substituting -</p> <p style="padding-left: 40px;">"(4) The Board shall, on collecting any such excess or late repayment fee from a depositor, pay it into the Fund.".</p>
36	<p>(a) In subclause (1) -</p> <p>(i) by adding "of a Scheme member" after "a depositor";</p> <p>(ii) in paragraph (a) -</p> <p style="padding-left: 40px;">(A) by deleting "full extent of that payment" and substituting "extent of the net amount of that payment";</p> <p style="padding-left: 40px;">(B) by deleting "on that payment" and substituting "on the net amount of that payment";</p> <p style="padding-left: 40px;">(C) by deleting "failed";</p> <p>(iii) in paragraph (b) -</p> <p style="padding-left: 40px;">(A) by deleting "the full" and substituting "in full the net";</p>

ClauseAmendment Proposed

- (B) by deleting "on that payment" and substituting "on that net amount";
 - (C) by deleting "out of the assets of the failed Scheme member" and substituting "from, or out of the assets of, the Scheme member".
- (b) In subclause (4), by deleting "failed".
- (c) In subclause (5) -
 - (i) by adding "the net amount of" before "a payment";
 - (ii) in paragraph (a), by deleting "failed";
 - (iii) in paragraph (b), by deleting "commencement of the winding up of the failed Scheme member" and substituting "winding-up order made by the Court of First Instance";
 - (iv) in paragraph (c) -
 - (A) by adding "the net amount of" before "that payment and";
 - (B) by deleting "on that payment" and substituting "on that net amount".
- (d) By adding -
 - "(7) In this section, "net amount" (淨額), in relation to a payment of compensation made to a depositor of a Scheme member from the Fund, means the amount of the payment less the amount of excess, if any, that is recoverable by the Board from the depositor under section 35(3).".

<u>Clause</u>	<u>Amendment Proposed</u>
38	<p>(a) By adding -</p> <p style="padding-left: 40px;">"(1A) The function of the Tribunal is to review a decision or assessment the subject of an application under section 39(1), (2) or (3).".</p> <p>(b) In subclause (2) -</p> <p style="padding-left: 40px;">(i) by deleting "The" and substituting "For the purpose of reviewing a decision or assessment, the";</p> <p style="padding-left: 40px;">(ii) in paragraph (b) -</p> <p style="padding-left: 80px;">(A) by deleting "Chairman may" and substituting "Financial Secretary may, on the recommendation of the Chairman,";</p> <p style="padding-left: 80px;">(B) by deleting everything after "review" and substituting "the decision or assessment.".</p> <p>(c) By adding -</p> <p style="padding-left: 40px;">"(8A) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any reviews of decisions or assessments of the Board or of decisions of the Monetary Authority, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal.".</p>
39	<p>(a) In subclause (1), by deleting everything after "may" and substituting "apply to the Tribunal for a review of the decision.".</p>

ClauseAmendment Proposed

- (b) In subclause (2) -
 - (i) by deleting "request the Board to refer the assessment to the Tribunal for review" and substituting "apply to the Tribunal for a review of the assessment";
 - (ii) by deleting "to request" and substituting "to apply for".
- (c) In subclause (3), by deleting everything after "may" and substituting "apply to the Tribunal for a review of the decision.".
- (d) In subclause (4) -
 - (i) by deleting "A request" and substituting "An application";
 - (ii) in paragraph (a) -
 - (A) by deleting "to the Board";
 - (B) in subparagraphs (i), (ii), (iii) and (iv), by deleting "the request" and substituting "the application";
 - (C) by deleting "the Board may" and substituting "the Tribunal may".
- (e) In subclause (5) -
 - (i) by deleting "A request" and substituting "An application";
 - (ii) in paragraph (a) -
 - (A) by deleting "to the Monetary Authority";

ClauseAmendment Proposed

- (B) by deleting "a request" and substituting "an application".
- (f) By adding -
- "(5A) The Tribunal shall -
- (a) deliver to the Board a copy of any application under subsection (1) or (2) that it has received; and
- (b) deliver to the Monetary Authority a copy of any application under subsection (3) that it has received.".
- (g) In subclause (6) -
- (i) by deleting "A request" and substituting "An application";
- (ii) by deleting "the request" and substituting "the application".
- (h) In subclause (7) -
- (i) by deleting "request under subsection (1), (2) or (3)" and substituting "copy of an application delivered under subsection (5A)";
- (ii) by deleting "for review".
- (i) In subclause (8) -
- (i) by adding "do the following" after "determination to";

ClauseAmendment Proposed

- (ii) in paragraph (a), by deleting "or" at the end;
 - (iii) in paragraph (b), by deleting "的裁定".
 - (j) In subclause (11), by adding "切實" before "可行".
 - (k) In subclause (14), by deleting "A document" and substituting "For the purposes of any proceedings in a court of law, a document".
- 40
- (a) In subclause (1)(a), by deleting "庭" and substituting "院".
 - (b) In subclause (3) -
 - (i) by deleting paragraph (b);
 - (ii) in paragraph (c), by deleting "(1)" and substituting "(1)(c)".
- 43(2)
- By deleting everything after "Appeal" and substituting -
- "may, in relation to a determination appealed against, do the following -
- (a) confirm, vary or set aside the determination;
 - (b) remit the matter to the Tribunal with any direction that it considers appropriate."
- 44
- (a) By deleting subclauses (1) and (2) and substituting -
 - "(1) Except so far as it is necessary for the performance of any function under this Ordinance or

ClauseAmendment Proposed

for carrying into effect the provisions of this Ordinance, a specified person -

(a) shall not suffer or permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in the performance of any function under this Ordinance; and

(b) shall not communicate any such matter to any person other than the person to whom such matter relates."

(b) In subclause (3) -

(i) in paragraph (a), by adding "from" before "being";

(ii) in paragraph (f), by deleting "for the purpose of enabling or assisting the Board to perform its functions under this Ordinance;" and substituting "where the disclosure will, in the opinion of the Board, enable or assist the recipient of the information to perform his functions;"

(c) By adding -

"(3A) The Board may attach a condition to any disclosure of information made pursuant to subsection (3)(b), (c), (d), (e), (f) or (j), and shall attach a condition to any disclosure of information made pursuant to subsection (3)(g), that neither -

ClauseAmendment Proposed

(a) the person to whom the information has been disclosed; nor

(b) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (a),

shall disclose that information to any other person without the consent of the Board."

(d) In subclause (4), by deleting "person other than the Board" and substituting "other person".

(e) In subclause (5), by adding "specified" before "person".

(f) By adding -

"(5A) If a person, knowing that the condition referred to in subsection (3A) has been attached to a disclosure of information made pursuant to subsection (3), contravenes that condition, the person commits an offence and is liable -

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months."

(g) By adding -

"(7) In this section, "specified person" (指明人士) means -

ClauseAmendment Proposed

- (a) any person who -
 - (i) is or has been -
 - (A) a member of the Board;
 - (B) a related person of the Board; or
 - (C) a person employed by or assisting a related person of the Board; and
 - (ii) performs or has performed any function under this Ordinance; or
- (b) the Monetary Authority, or a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority."

- 46
- (a) In subclause (2), by deleting "protected" where it twice appears and substituting "relevant".
 - (b) In subclause (5) -
 - (i) in paragraph (a) -
 - (A) by adding ", or portion thereof," after "deposit";

ClauseAmendment Proposed

- (B) by adding "or" at the end;
 - (ii) by deleting paragraph (b);
 - (iii) in paragraph (c), by adding ", or portion thereof," after "deposit".
 - (c) In subclause (7), by adding ", without reasonable excuse," before "fails".
- 49
- (a) In subclause (1) -
 - (i) by deleting paragraph (a) and substituting -
 - "(a) prescribing the requirements in accordance with which Scheme members shall maintain those information systems and other records to which the Board would, on the occurrence of a specified event, have access under section 30(2)(a);";
 - (ii) in paragraphs (b) and (e), by deleting "specifying" and substituting "prescribing";
 - (iii) by deleting paragraph (c) and substituting -
 - "(c) prescribing the manner in which -
 - (i) contributions or late payment fees are to be paid by Scheme members; or
 - (ii) rebates or refunds of contributions are to be paid to Scheme members;"

ClauseAmendment Proposed

- (iv) by deleting paragraph (d).
- (b) In subclause (3) -
 - (i) by deleting "that contains" and substituting "or other records that contain";
 - (ii) in paragraph (a) -
 - (A) by adding ", or portion thereof," after "deposit";
 - (B) by adding "or" at the end;
 - (iii) by deleting paragraph (b);
 - (iv) in paragraph (c), by adding ", or portion thereof," after "deposit".
- 50(a) By deleting "requests" and substituting "applications".
- 51
 - (a) In subclause (1), by deleting "protected" and substituting "relevant".
 - (b) In subclause (2) -
 - (i) in paragraph (a), by deleting "protected" and substituting "relevant";
 - (ii) in paragraph (g), by deleting everything after "requirement" and substituting "to apply to the Tribunal for a review of the decision";
 - (iii) in paragraph (h), by deleting "a request" and substituting "an application".

ClauseAmendment Proposed

52(2) By adding "切實" before "可行".

Schedule 1 (a) By deleting the heading and substituting "DEPOSITS SPECIFIED FOR PURPOSES OF DEFINITIONS OF "PROTECTED DEPOSIT" AND "RELEVANT DEPOSIT" IN SECTION 2(1) OF THIS ORDINANCE".

(b) By deleting "& Sch. 4".

Schedule 1 By deleting section 1 and substituting -

"1. For the purpose of the definition of "protected deposit" in section 2(1) of this Ordinance, the following deposits are specified -

- (a) a term deposit where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
- (b) a deposit the repayment of which is secured either in whole or in part on the assets of the Scheme member;
- (c) a bearer instrument;
- (d) a deposit taken by the Scheme member at any of its offices outside Hong Kong;
- (e) a deposit held for the account of the Exchange Fund;
- (f) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a

ClauseAmendment Proposed

non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit;

- (g) a deposit held by a depositor as a bare trustee for an excluded person, or in a client account for an excluded person as the depositor's client, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit;
- (h) a deposit held by a depositor as a trustee for an excluded person only.

1A. For the purpose of the definition of "relevant deposit" in section 2(1) of this Ordinance, the following deposits are specified -

- (a) a term deposit where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
- (b) a deposit the repayment of which is secured either in whole or in part on the assets of the Scheme member;
- (c) a bearer instrument;
- (d) a deposit taken by the Scheme member at any of its offices outside Hong Kong;

ClauseAmendment Proposed

- (e) a deposit held for the account of the Exchange Fund;
- (f) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit."

Schedule 1, section 2 (a) By deleting the definitions of "authorized institution", "holding company" and "subsidiary".

- (b) In the definition of "excluded person", by deleting paragraph (e) and substituting -

"(e) in relation -

- (i) to the definition of "protected deposit" in section 2(1) of this Ordinance for the purposes of Part 5 of this Ordinance, an officer of the Scheme member or its related company on -

(A) the date immediately preceding the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is appointed in respect of the Scheme member under section 52 of that Ordinance; or

(B) the date on which the petition for the winding up of the Scheme member is presented,

ClauseAmendment Proposed

whichever is the earlier;

- (ii) to the definition of "protected deposit" in section 2(1) of this Ordinance for any other purpose and to the definition of "relevant deposit" in that section, an officer of the Scheme member or its related company;".

- (c) In the definition of "non-excluded person", by deleting paragraphs (a) and (b) and substituting -

- "(a) in relation to the definition of "protected deposit" in section 2(1) of this Ordinance for the purposes of Part 5 of this Ordinance, a person who is not an excluded person within the meaning of paragraph (a), (b), (c), (d) or (e)(i) of the definition of "excluded person";

- (b) in relation to the definition of "protected deposit" in section 2(1) of this Ordinance for any other purpose and to the definition of "relevant deposit" in that section, a person who is not an excluded person within the meaning of paragraph (a), (b), (c), (d) or (e)(ii) of the definition of "excluded person";".

- (d) In the definition of "related company", in paragraph (c), by deleting the semicolon and substituting a full stop.

Schedule 1, section 3 By deleting "section 1(b)(i) and (ii)(A) and (c)(i) and (ii)" and substituting "sections 1(f) and (g) and 1A(f)".

Schedule 2, section 2 (a) In the heading, by deleting "**non-executive**" and substituting "**appointed**".

ClauseAmendment Proposed

- (b) In subsections (1) and (3), by deleting "A non-executive" and substituting "An appointed".
- (c) In subsection (2), by deleting "a non-executive" and substituting "an appointed".
- (d) By adding -

"(3A) If the Chairman of the Board is absent from Hong Kong or is for any other reason unable to perform the functions of his office as Chairman, the Chief Executive may appoint another appointed member of the Board to be the temporary Chairman in his place during his absence or incapacity.".

- (e) In subsection (4) -
 - (i) by deleting "any non-executive" and substituting "an appointed";
 - (ii) by deleting "including" and substituting "other than";
 - (iii) by deleting "exercise the powers or discharge the duties" and substituting "perform the functions";
 - (iv) by deleting "or Chairman, as the case may be" where it first appears;
 - (v) by deleting "or Chairman, as the case may be,".
- (f) By adding -

"(5) If a person is appointed as the temporary Chairman, or a temporary member, of the Board, the person may perform all the functions of the Chairman, or member, in whose place the person is appointed.".

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 2, section 4	<p>By deleting paragraph (b) and substituting -</p> <p>"(b) has become -</p> <p>(i) a public officer; or</p> <p>(ii) a director or an employee of -</p> <p>(A) an authorized institution;</p> <p>(B) a holding company of an authorized institution;</p> <p>(C) a subsidiary of such a holding company; or</p> <p>(D) a subsidiary of an authorized institution,".</p>
Schedule 2, section 5	<p>(a) In subsection (1), by deleting ", or the person acting as the Chairman,".</p> <p>(b) In subsection (2), by deleting "5" and substituting "4".</p> <p>(c) By deleting subsection (4) and substituting -</p> <p>"(4) At a meeting of the Board -</p> <p>(a) the Chairman of the Board shall preside;</p> <p>(b) each member of the Board present has one vote; and</p> <p>(c) every question for decision shall be determined by a majority of votes of the members of the Board present and, in</p>

Amendment Proposed

Schedule 2, By deleting "by a majority of the members of the Board" and
section 6 substituting "in writing by all the members of the Board present in
Hong Kong (being not less than the number required to constitute
a majority of the Board)".

Schedule 2, By deleting "two-third" and substituting "two-thirds".
section 7(b)

Schedule 3, section 2

(a) In subsection (1), by adding "or appointed to act in relation to any specified review" after "years".

(b) In subsection (2), by deleting everything after "for reappointment" and substituting a full stop.

Schedule 3, section 4(1)

(a) By deleting "Chairman of the Tribunal" and substituting "Financial Secretary".

(b) By deleting "Chairman" and substituting "Financial Secretary".

Schedule 4 By deleting "& Sch. 1".

Schedule 4, (a) In subsection (1), by deleting the definition of "balance of
section 1 protected deposits" and substituting -

"amount of relevant deposits" (有關存款款額), in relation to a Scheme member, does not, subject to subsection (2), include -

ClauseAmendment Proposed

- (a) where -
- (i) the amount of one or more relevant deposits held by one person, as a depositor, with the Scheme member in his own right exceeds \$100,000;
 - (ii) the amount of one or more relevant deposits held by a depositor with the Scheme member as a bare trustee under one bare trust exceeds \$100,000;
 - (iii) the amount of the relevant deposit held by a depositor with the Scheme member in one client account exceeds \$100,000; or
 - (iv) the amount of one or more relevant deposits held by a depositor with the Scheme member as a trustee under one trust exceeds \$100,000,
- the amount in excess of \$100,000;
or
- (b) any amount of interest accrued on relevant deposits."
- (b) By deleting subsection (2) and substituting -
- "(2) In the definition of "amount of relevant deposits" -

ClauseAmendment Proposed

- (a) a reference to a relevant deposit includes a portion of the deposit;
- (b) for the purposes of paragraph (a)(i) of that definition, if a depositor consists of 2 or more persons -
 - (i) subject to subparagraph (ii), each of the persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the Board;
 - (ii) in the case where the persons carry on business in partnership, those persons are a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership; and
- (c) for the purposes of paragraph (a)(ii) and (iv) of that definition, if the depositor consists of 2 or more persons, those persons are a single and continuing body of persons as distinct from the persons who may from time to time be the bare trustees or trustees."

Schedule 4, section 2(1) By deleting "balance of protected" and substituting "amount of relevant".

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 4, section 3	<p>(a) In subsection (5), by deleting "balance of protected" and substituting "amount of relevant".</p> <p>(b) In subsection (6) -</p> <p>(i) by adding "such portion of" after "particular year is";</p> <p>(ii) by deleting everything after "subsection (5)" where it secondly appears and substituting "that such amount of excess bears to such aggregate amount.".</p>
Schedule 4, section 4(3)	By deleting "balance of protected" and substituting "amount of relevant".
Schedule 4, section 5	<p>(a) In subsection (3) -</p> <p>(i) by adding "a specified portion of" after "year is";</p> <p>(ii) by deleting everything after "to that year" and substituting a full stop.</p> <p>(b) By adding -</p> <p>"(5) In this section, "specified portion" (指明部分), in relation to the amount of build-up levy that would have been payable for a year, means the portion that the aggregate amount of surcharges payable by all Scheme members for that year, calculated in accordance with subsection (4), bears to the aggregate amount of build-up levies that would have been payable by all Scheme members for that year, calculated in accordance with subsection (4)(a)(i).".</p>

ClauseAmendment Proposed

Schedule 4, By deleting "balance of protected" and substituting "amount of section 6(1)(a) relevant".
and (2)

Schedule 4, (a) In subsection (2) -
section 8

- (i) by adding "such portion of" before "the aggregate amount";
- (ii) by deleting everything after "subsection (3)," and substituting "that the amount of net contribution by the Scheme member during the relevant period bears to the aggregate of the amount of net contribution by each of the Scheme members during the same period."

(b) By deleting subsection (4) and substituting -

"(4) In this section -

"amount of net contribution" (供款淨額), in relation to a Scheme member during a period, means the amount of contribution paid by the Scheme member during the period less the amount of rebate received by the Scheme member during that period;

"relevant period" (有關期間) means the period of 10 years immediately preceding the year in which the rebate is required to be made by the Board or the period since the commencement of this Schedule, whichever is the shorter."

Schedule 5, (a) In paragraph (a) -
section 1

- (i) by deleting the proposed section 265(1)(db)(iii);

ClauseAmendment Proposed

- (ii) in the proposed section 265(1)(db)(v), by deleting "個" and substituting "項".
- (b) In paragraph (c) -
 - (i) in the proposed section 265(5F)(c), by deleting "or agent, or in a client account, for an excluded person" and substituting "for an excluded person, or in a client account for an excluded person as the depositor's client";
 - (ii) in the proposed section 265(5H)(b) -
 - (A) by deleting ", principal";
 - (B) by deleting ", (iii)";
 - (iii) by adding -

"(5HA) If a deposit, or portion thereof, held by a depositor in a client account for a client is also held by the depositor as a trustee (whether a bare trustee or not) under a trust (whether a bare trust or not), the deposit or portion is, for the purposes of this section, taken as being held by the depositor for the client and not as such trustee.";
 - (iv) in the proposed section 265(5I) -
 - (A) by deleting paragraph (a)(iii);
 - (B) by deleting ", (iii)" where it twice appears.
- (c) In paragraph (d)(iii) -
 - (i) in the definition of "excluded person", in paragraph (b) -

ClauseAmendment Proposed

- (A) by adding "being wound up" before "or its";
- (B) in subparagraph (i), by deleting "has been" and substituting "is";
- (C) in subparagraph (ii) -
 - (I) by deleting "a petition" and substituting "the petition";
 - (II) by deleting "has been" and substituting "is";
- (ii) in the definition of "specified date" -
 - (A) in paragraph (a), by deleting "has been" and substituting "is";
 - (B) in paragraph (b) -
 - (I) by deleting "a petition" and substituting "the petition";
 - (II) by deleting "has been" and substituting "is";
- (iii) by adding -
 - "client account" (客戶帳戶), in relation to a depositor, means an account maintained by the depositor with a bank for the purpose of holding money held by the depositor for a client of the depositor, whether or not other money may be held in the account;".

ClauseAmendment Proposed

Schedule 5 By deleting section 2 and substituting -

"2. Official secrecy

Section 120 of the Banking Ordinance (Cap. 155) is amended -

- (a) in subsection (5), by adding after paragraph (g) -

"(gaa) to the disclosure of information by the Monetary Authority to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (of 2004) for the purpose of enabling or assisting the Board to exercise its functions under that Ordinance;"

- (b) in subsection (5C), by adding ", (gaa)" after "(fa)".

Schedule 5 By adding immediately after section 3 -

"Prevention of Bribery Ordinance

3A. Public bodies

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding -

ClauseAmendment Proposed

"101. Hong Kong Deposit Protection Board."

Electronic Transactions Ordinance

3B. Proceedings in relation to which sections 5, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance

Schedule 2 to the Electronic Transactions Ordinance (Cap. 553) is amended -

(a) in paragraph (zm), by repealing the full stop at the end and substituting a semicolon;

(b) by adding -

"(zn) the Deposit Protection Appeals Tribunal established by the Deposit Protection Scheme Ordinance (of 2004).".

Schedule 5, section 6 In the proposed section 378(2)(ea), by adding "section 5(a), (d) and (e) of" before "that Ordinance".

Schedule 5, section 7(b) In the proposed section 4(1A), by deleting "received payment that is made out of" and substituting "been paid an amount of compensation from".

Annex II

BROADCASTING (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary
for Commerce, Industry and Technology

<u>Clause</u>	<u>Amendment Proposed</u>
3	<p>(a) By deleting paragraph (a) and substituting -</p> <p style="padding-left: 40px;">"(a) by adding -</p> <p style="padding-left: 80px;">"(1A) A person shall not, without lawful authority or reasonable excuse, for the purpose of, or in connection with, any trade or business, possess or use, or authorize another person to possess or use an unauthorized decoder.";".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(aa) in subsection (2), by adding "or (1A)" after "subsection (1)";".</p> <p>(c) In paragraph (b) -</p> <p style="padding-left: 40px;">(i) in the proposed section 6(3)(b), by adding "any" before "trade";</p> <p style="padding-left: 40px;">(ii) in the proposed section 6(4), by deleting "(1)(a) or (b)" and substituting "(1) or (1A)";</p> <p style="padding-left: 40px;">(iii) in the proposed section 6(5), by deleting "持牌" and substituting "特許持有";</p> <p style="padding-left: 40px;">(iv) in the proposed section 6(6), by deleting "(1)(a) or (b)" and substituting "(1) or (1A)";</p>

ClauseAmendment Proposed

- (v) in the proposed section 6(7)(a), by deleting "(1)(a) or (b)" and substituting "(1) or (1A)".

4 In the proposed section 7(3C), by deleting "持牌" and substituting "特許持有".

5 (a) In the proposed section 7A -

- (i) by deleting "6(1)(a) or (b)" wherever it appears and substituting "6(1) or (1A)";
- (ii) in subsection (1)(a)(ii), by adding "any" before "trade";
- (iii) by adding -

"(1A) Where a public officer referred to in subsection (1) arrests a person under paragraph (b) of that subsection, the public officer shall, without delay, take him to a police station to be dealt with there in accordance with the Police Force Ordinance (Cap. 232) or deliver him into the custody of a police officer for that purpose.";

- (iv) in subsection (3), by deleting "an unauthorized decoder or a decoder" and substituting "anything liable to seizure under subsection (1)(d)".

(b) In the proposed section 7B(1) and (2), by deleting "6(1)(a) or (b)" and substituting "6(1) or (1A)".

Appendix 1

REQUEST FOR POST-MEETING AMENDMENTS

The Secretary for Justice requested the following post-meeting amendment

Line 6, first paragraph, page 139 of the Confirmed version

To amend "Constitution" as "Basic Law" (Translation)

(Please refer to line 10, second paragraph, page 5723 of this translated version)

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Home Affairs to Miss CHAN Yuen-han's supplementary question to Question 3**

As regards whether the football betting licensee had kept statistics regarding the number of persons who refused to provide age proof and those who were under 18 among the 75 000 persons who were refused entry into off-course betting centres, we have approached the licensee (HKJC Football Betting Limited) for the information. According to the licensee, it does not keep such statistics. In this connection, we are not able to provide such information.

Appendix II**WRITTEN ANSWER****Written answer by the Secretary for Home Affairs to Mr YEUNG Yiu-chung's supplementary question to Question 3**

As regards the number of persons under 18 who were arrested in the police enforcement action against illegal football gambling activities, according to the police, they do not keep statistics about age distribution of arrested persons, but they keep statistics about the person who have been charged for offence under the Gambling Ordinance. From August 2003 to March 2004, there was no person under 20 who had been charged for offence related to bookmaking or placing bets with illegal bookmakers.

Appendix III**WRITTEN ANSWER****Written answer by the Secretary for Security to Mr Henry WU's supplementary question to Question 5**

As regards the countries or regions having assisted in shutting down fake websites of banks and other financial institutions, according to police records, from 2003 to April 2004, 16 fake websites, whose servers were hosted in the United States, mainland China, Taiwan, Thailand, South Korea and Canada, were shut down in connection with the investigation by the police.

Appendix IV

WRITTEN ANSWER**Written answer by the Secretary for Financial Services and the Treasury to Mr CHAN Kam-lam's supplementary question to Question 5**

As regards whether there are differences in the legislative regime of various jurisdictions governing the regulation of fake websites, currently, the authorities have not done any detailed study or comparison of the legislative regimes in this respect, and therefore, we would not be able to provide further information on the subject. The police and regulatory agencies have maintained close co-operation and exchanged intelligence with the mainland and overseas law enforcement and regulatory bodies, with a view to combating criminals and strengthening the security of Internet banking. The authorities will continue to monitor the situation.