

# **OFFICIAL RECORD OF PROCEEDINGS**

**Friday, 9 July 2004**

**The Council continued to meet at Nine 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, S.B.S., 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, S.B.S., 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, J.P.

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

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

THE HONOURABLE WONG YUNG-KAN, J.P.

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., J.P.

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, G.B.S., 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, G.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, B.B.S., 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, J.P.

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

THE HONOURABLE LAU PING-CHEUNG, S.B.S.

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

THE HONOURABLE MA FUNG-KWOK, S.B.S., J.P.

### **MEMBER ABSENT:**

THE HONOURABLE HUI CHEUNG-CHING, S.B.S., J.P.

### **PUBLIC OFFICERS ATTENDING:**

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

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

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

**CLERKS IN ATTENDANCE:**

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**BILLS**

**CHAIRMAN** (in Cantonese): We shall continue to scrutinize the Adoption (Amendment) Bill 2003.

Council went into Committee.

**Committee Stage**

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

**ADOPTION (AMENDMENT) BILL 2003**

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

**CLERK** (in Cantonese): Clauses 1, 2, 3, 5, 6, 11, 14, 15, 20 to 23, 25, 26, 28 and 33.

**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 4, 7 to 10, 12, 13, 16 to 19, 24, 27 and 29 to 32.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**

(in the absence of Secretary for Health, Welfare and Food): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members. All proposed amendments have been scrutinized and endorsed by the Bills Committee.

Clauses 4(f)(ii), 10, 27, new section 23A in clause 29, clause 31 and new Schedule 4 in clause 32 together set out the system of accrediting entities to undertake intercountry and local adoptions; they also stipulate how such Accredited Bodies would take part in making adoption arrangements. The system was drawn up in consultation with the relevant welfare sector NGOs and endorsed by members of the Bills Committee.

The amendments to clause 31 (that is, sections 26 to 29, sections 31 and 32) seek to empower the Director of Social Welfare to accredit bodies in relation to both intercountry and local adoptions in accordance with the principles set out respectively in Articles 10 and 11 of the Hague Convention and in new Schedule 4 which are adapted from the former. Revocation and suspension of accreditation are also provided for under the new section 26A. The Director will keep an updated register of Accredited Bodies which will be made available for public inspection.

Prospective adoptive parents may approach either the Social Welfare Department or an Accredited Body to make adoption arrangements. Section 27A imposes a mandatory criminal check on prospective adoptive parents and amendments to section 27A(3) are proposed to provide that in the case of local adoption, where the prospective adoptive parents' assessment is conducted by an Accredited Body, the outcome of the criminal record check would be passed directly by the police to the Accredited Body. Furthermore, a new section 29A is added in clause 31 to clearly provide that in the case of local adoption where specific consent for the adoption of an infant has been given, that is, where the birth parent has designated the adoptive parents in respect of the child, no matching would be necessary and subject to the assessment of the suitability of the prospective adoptive parents, the Department or the Accredited Body, as the adoptive parent may choose, may proceed with making the placement arrangement. This clarification is necessary to address the concern raised by Bills Committee members that specific consent cases should be dealt with separately from general consent cases and the child needs not undergo the matching process.

New section 29B sets out the arrangements for infants where "general consent" for adoption has been given. These infants would undergo a matching process to identify the most suitable adoptive parent. New section 29B provides that all Accredited Bodies that have proposed prospective adoptive parents for a particular child would become involved in the matching process overseen by the Director. The proposed provision is also wide enough to allow independent persons to become involved in the matching process as necessary. Following the matching process, the Director or the Accredited Body, as the case may be, may proceed with the placement of the child. New section 29D empowers the Director to terminate the placement if he opines that to continue with such placement would not be in the best interest of the child. An Accredited Body would also be empowered to terminate a placement that it oversees.

The Bill provides that persons and Accredited Bodies who are aggrieved by the Director's decisions may lodge an appeal with the Administrative Appeals Board. Since Accredited Bodies will also be empowered to assess the suitability of a person to be an adoptive parent and terminate a placement arrangement, new section 29E empowers the Director to review, on application of the aggrieved person, such decisions made by an Accredited Body.

New section 32 also empowers the Secretary for Health, Welfare and Food to make regulations to provide for matters pertaining to accreditation, including grant or renewal, suspension or revocation, assessment of suitability of applicants and placement of a child with adoptive parents.

Other minor amendments include the changes made to clause 27 to provide that the schedule of fees to be charged by Accredited Bodies in respect of their adoption services should be subject to the Director's approval. This amendment is proposed in response to comments made by the Bills Committee.

### *Clause 8*

As mentioned earlier, the amendments to paragraph (a) in clause 8 is proposed in response to comments made by the Bills Committee; it seeks to reinstate the original provision in the Ordinance about the prohibition on adoption of a female infant by a sole male applicant.

We also propose, in response to the comments made by the Bills Committee, to amend section 5 in clause 8 to allow a step-parent to apply as a



sole applicant to adopt the child of his/her spouse who is the birth parent of that child born out of wedlock, unless the illegitimate father does not have parental rights in the first place. Such an arrangement ensures that step-parent adoptions, regardless of the status of the child, would generally be subject to the same treatment and have the same effect under the law.

Amendments are also proposed in clause 8 to clarify the meaning of "continuous actual custody" to the effect that in addition to the scenarios described in the new section 5(8), the Court also has the discretion to determine what other circumstances may constitute unbroken continuous custody.

The other amendments to clause 8 relate to minor technical and textual changes.

#### *Clause 24*

Amendments are proposed in clause 24 to add a new section 20J to empower the Secretary for Health, Welfare and Food to make an order in the Gazette to declare that certain adoption orders will not be recognized as adoptions made under the Hague Convention.

Article 25 of the Hague Convention provides that any contracting state may declare that it will not be bound under the Convention to recognize adoption orders made in accordance with an agreement under Article 39(2) which derogates from certain procedural requirements of the Convention. When the People's Republic of China becomes a Contracting State to the Hague Convention and makes such a declaration that is applicable to the HKSAR, corresponding action also needs to be taken in Hong Kong. The empowering provision is therefore necessary.

Other proposed amendments to this clause are purely technical and consequential in nature.

#### *Clause 29 (other than the amendments to section 23A that relate to Accredited Bodies mentioned above)*

Section 23A under clause 29 imposes a criminal sanction on those making arrangements for adoption of an infant by unrelated persons, other than the

Director, Accredited Bodies or persons acting in pursuance of an order of the Court. Members of the Bills Committee have suggested that we should adopt a minimalist approach. In line with this spirit, we propose to simplify new section 23A by removing the subsection that seeks to outlaw the taking part in the management or control of any body of persons which exists for making prohibited adoption arrangements. We have also proposed to amend section 23A to tighten the definition of "making arrangements".

As briefly explained above, arrangements in relation to intracountry adoption is outside the ambit of the Bill. Amendments to clause 29 are therefore necessary to clearly stipulate in section 23A that the restrictions on arranging adoption and placing of an infant for adoption would only apply to local and intercountry adoption, but not intracountry adoption.

New section 23C in clause 29 requires that an order be obtained from the Court if a child is taken out of Hong Kong for adoption purpose, unless the child is to be adopted by his/her parent or relatives. For better protection of the child, we propose to narrow down the definition of "relatives" for the purpose of this particular section so that they would only be confined to those relatives who have blood relations with the child. However, for an illegitimate father without parental rights, his blood relations would not be covered.

In addition to the above, we have also put forward some minor textual amendments to clause 29.

*Clauses 4 (other than clause 4(f)(ii)), 7, 9, 12, 13, 16 to 19 and 30*

Other amendments to clause 4 and amendments to clauses 7, 9, 12, 13, 16 to 19 and 30 are mainly miscellaneous and textual in nature. Two amendments relate to the Court. The amendment to clause 7 removes from the Bill the requirement to commence an application for rectification of errors for particulars in the Adopted Children Registry from the District Court if the relevant adoption order was originally made in the Court of First Instance. Revisions are also made to clause 4 to require that the orders for removing a child out of Hong Kong to another place for adoption by an unrelated person should be made by the Court of First Instance, instead of the District Court. This is necessary in view of the severity of the matter.

All the above amendments are put forward after thorough discussions and are supported by the Bills Committee. I hope Members will support the passage of the relevant amendments. Thank you.

*Proposed amendments*

**Clause 4 (see Annex IV)**

**Clause 7 (see Annex IV)**

**Clause 8 (see Annex IV)**

**Clause 9 (see Annex IV)**

**Clause 10 (see Annex IV)**

**Clause 12 (see Annex IV)**

**Clause 13 (see Annex IV)**

**Clause 16 (see Annex IV)**

**Clause 17 (see Annex IV)**

**Clause 18 (see Annex IV)**

**Clause 19 (see Annex IV)**

**Clause 24 (see Annex IV)**

**Clause 27 (see Annex IV)**

**Clause 29 (see Annex IV)**

**Clause 30 (see Annex IV)**

**Clause 31 (see Annex IV)**

**Clause 32 (see Annex IV)**

**CHAIRMAN** (in Cantonese): Does any Members 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 Health, Welfare and Food be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 4, 7 to 10, 12, 13, 16 to 19, 24, 27 and 29 to 32 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 9A      Freeing infant for adoption

New clause 31A      Sections added.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**

Madam Chairman, I move that new clauses 9A and 31A, as set out in the paper circularized to Members, be read the Second time.

New clause 9A seeks to provide Accredited Bodies with similar powers as the Director of Social Welfare in respect of making placement arrangements, subject to the provisions of the Ordinance. This provision would enable Accredited Bodies to take up their roles in respect of local adoptions.

New clause 31A aims to provide for transitional arrangements to cater for certain types of adoption cases that are at different stages of the adoption process on the commencement of the relevant provisions of the Bill. Our main objective is to minimize the disruption to the child who may have been placed with the prospective adoptive parent on the commencement of the relevant provisions.

These amendments are proposed with the support of the Bills Committee. I hope Members will support the passage of these amendments. Thank you.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 9A and 31A 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 9A and 31A.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**  
Madam Chairman, I move that new clauses 9A and 31A be added to the Bill.

*Proposed additions*

**New clause 9A (see Annex IV)**

**New clause 31A (see Annex IV)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 9A and 31A 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): Schedule.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**

Madam Chairman, I move the amendments to the Schedule as set out in the paper circularized to Members. All proposed amendments have been scrutinized and endorsed by the Bills Committee.

The amendments to the Schedule seek to introduce consequential amendments to the other Ordinances which explicitly refer to adoptions made in a place outside Hong Kong and recognized under the Adoption Ordinance. This ensures that in the future, adoption orders made in pursuance of the Hague Convention and recognized under the Adoption Ordinance will be included.

In construing the parent and child relationship, some Ordinances currently treat an adoptive child as the child of the adoptive parent(s) and not the child of anybody else (including the birth parents). Since joint adoption in the case of step-parent adoption will no longer be mandatory as the Bill will provide an option for the step-parent to adopt the child of his/her spouse as a sole applicant, new provisions are required to ensure that these Ordinances would continue to preserve the position of the birth parent who is the spouse of the relevant step-parent.

There are also some other minor changes to the prescribed forms in the Schedules.

The Bills Committee has agreed to these changes. I hope Members will support them as well. Thank you.

*Proposed amendment*

**Schedule (see Annex IV)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for the Environment, Transport and Works 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): Schedule as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.



**Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**

Madam President, the

Adoption (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 Adoption (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.

(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): Adoption (Amendment) Bill 2003.

**Resumption of Second Reading Debate on Bills**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Human Organ Transplant (Amendment) Bill 2001.

**HUMAN ORGAN TRANSPLANT (AMENDMENT) BILL 2001****Resumption of debate on Second Reading which was moved on 20 June 2001**

**PRESIDENT** (in Cantonese): Dr LO Wing-lok, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

**DR LO WING-LOK** (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Human Organ Transplant (Amendment) Bill 2001 (the Bills Committee), I would like to report on the deliberations of the Bills Committee.

The Human Organ Transplant (Amendment) Bill 2001 (the Bill), which was submitted to the Legislative Council on 20 June 2001, seeks to amend the Human Organ Transplant Ordinance, in order to improve the definitions of "organ" and "payment", appoint temporary members to the Human Organ Transplant Board (the Board), enable the transplant of organs previously removed for therapeutic purposes not to have to go through the procedures prescribed in section 5 of the Ordinance which stipulates the restrictions on the transplant of organs between live persons, and refine the drafting of the existing section 5 of the Ordinance.

The Bills Committee has held six meetings with the Administration. It has also met with representatives of six organizations, and received 10 written submissions.

The Bills Committee supports the proposal of the Bill to amend the definition of "organ", in order to clearly define which human bodily tissues should fall within the regulation of the law. Those human bodily tissues like blood and bone marrow, which cannot be used in commercial dealings but are not subject to the regulation of sections 5 to 7 of the Ordinance, will be listed in a new schedule. However, members consider that amendments to the Schedule should be subject to positive vetting by the Legislative Council. The Administration has accepted members' suggestion.

In view of the rapid pace of technological advancement, individual products may fall within the definition of "organ", while the aim of production is

for transplantation use. The Bills Committee views that their commercial dealings should not be prohibited. It has thus discussed how the commercial dealings of these products could be allowed. Finally, the Bills Committee agreed with the Administration's proposal that the Director of Health (the Director) be empowered to grant exemption, upon application, for an organ/product to be exempted from the prohibition against commercial dealings and transplantation. When vetting the exemption applications, the Director will consider many factors, including the safety of the product for transplantation purpose and the impact on public health, whether the donation of the organ donor is made under coercion or inducement and whether the donor has received any payment in the supply of the human bodily tissue.

The Bills Committee also considers it necessary to set up an appeal mechanism in the granting of exemptions to individual products for transplantation. The Administration has explored the suitability of dealing with these appeals by the Administrative Appeals Board (AAB) or the Judiciary. However, after much discussion, the Administration concluded that it was necessary to set up an independent Appeal Board under the Ordinance. Its members would comprise of a registered medical practitioner, a legal professional and another person. The Secretary for Health, Welfare and Food would appoint an Appeal Panel. When there is a need to set up an Appeal Board, suitable persons would be selected from the Appeal Panel to form an Appeal Board. The Appeal Board may reject an appeal in its judgement or remit the application for exemption to the Director for reconsideration. In case the applicant is still dissatisfied with the decision of the Director after reconsideration, he can appeal to the Appeal Board. The Administration will move a Committee stage amendment in regard to this proposal.

As regards the provisions in the Bill concerning the transplant of organs previously removed for therapeutic purposes, members were concerned that the registered medical practitioners responsible for the transplant do not directly know the source of the organs. Therefore, they should not be required to make a statement that no payment prohibited by the Ordinance has been or is intended to be made, and that the organs were removed for the therapy of the donors.

The Government agreed that the provisions concerned might be unfair to the registered medical practitioners responsible for the transplant. It thus required the medical practitioner who removed the organ which was subsequently stored in the organ/tissue bank to declare that the organ/tissue, at

the time when it was removed from the donor, was intended for the therapy of the donor. Besides, the Administration also accepted the proposal of the Bills Committee to stipulate in the Bill that a medical practitioner would be considered to have satisfied the requirement of the Bill, if he declares that he has read the certificate and declaration made by the medical practitioner who removed the organ of the donor. The Administration will move a Committee stage amendment in respect of this proposal.

In regard to the minimum age of donor, members requested the Administration to consider deleting the provision which allows persons who have reached the age of 16 years and are married to be donors.

After review, the Administration considered that a person who is 16 and married is not necessarily more mature than a person who is 18. Furthermore, a person who is not yet 18 but wishes to be a donor may circumvent the requirement by entering into a marriage, and it is very difficult to disprove the *bona fides* of a marriage. Therefore, the Administration will move a Committee stage amendment to delete from the Bill the provision allowing persons who have reached the age of 16 years and are married to be donors.

Ms Cyd HO has asked the Administration to put it beyond doubt in the Ordinance that same sex marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed and domestic partnerships registered overseas should be treated on an equal footing with the marital relationship referred to in the proposed section 5A(a)(ii).

The Administration pointed out that in accordance with the existing provisions, for the marriage of the persons concerned, whether it is opposite sex marriage or same sex marriage, only if it is celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed, the marriage relationship can be confirmed by the medical practitioner responsible for organ transplant on the basis of their marriage certification documents. The Administration made an undertaking that in the speech of the Secretary for Health, Welfare and Food on the resumed Second Reading of the Bill, it will reaffirm the proper interpretation of same sex marriages of the provisions in the Bill. A proposed organ transplant between two persons in a partnership would therefore require the prior written approval of the Board.

As the Administration does not agree to her request to put it beyond doubt that same sex marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed should be treated in the same manner as marital relationship referred to in the proposed section 5A(a)(ii), Ms Cyd HO will move a Committee stage amendment to that effect.

Madam President, I so submit.

**MRS SOPHIE LEUNG** (in Cantonese): Madam President, human organ transplant is an area which involves not only the medical profession, but also social ethics. If it is not properly dealt with, there will be profound adverse impact. As early as mid-1990s, the Administration already formulated the Human Organ Transplant Ordinance (the Ordinance). It seeks to prohibit commercial dealings in human organs intended for transplantation, to restrict the transplantation of human organs between living persons who are not genetically related, and to regulate the import of human organs intended for transplantation.

This amendment is to mainly allow the organ transplantation of human bodily parts without being subject to the restrictions of the Ordinance. The Government has already added some provisions to empower the Director of Health to consider exercising the power of exemption in the light of individual conditions upon receipt of an application from the recipient, so as to exempt the human organ concerned from the restriction of the Ordinance. This move is, no doubt, more flexible in the sense that the Ordinance can assist the patients in receiving treatment, especially under special conditions. The Liberal Party thinks that it is worth supporting. In regard to other related amendments, they are also supported by the Liberal Party.

As one of the members of the Bills Committee and the Chairman of the Human Organ Transplant Board (the Board) in the first term, I have times and again put forward a number of views to the Bills Committee. Although the Administration has already shelved the deliberation on the amendment for nearly two years, which has thus delayed the progress, I am glad that the Government resubmitted the amendment in June this year and has accepted a number of proposals made by the Board.

It shall be noted that the work of the Board involves life saving on the one hand, and ensuring compliance with the provisions of the Ordinance in absolute prohibition of commercial dealings on the other. Therefore, it is very important that the duties and powers of the Board be clearly set out. I thus proposed in the Bills Committee that the Government has to add a new provision to clarify the expectations of the Administration for the duties and powers of the Board. This can prevent the credibility of the Board from being tarnished unnecessarily. At the same time, I believe the interests of the patients will also be better protected. I am very glad that this proposal is recognized not only by the Board, but also accepted and amended by the Government.

I believe that after clarification, it is not possible that any legislator would have lost his memory again.

With these remarks, Madam President, I support the passage of the Human Organ Transplant (Amendment) Bill 2001.

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

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, I speak on behalf of the Hong Kong Federation of Trade Unions and the Democratic Alliance for Betterment of Hong Kong.

The formulation of the Human Organ Transplant Ordinance aims to prohibit commercial dealings in human organs. At that time, we agreed that we had to adopt a serious attitude towards organ donors and recipients. As commercial dealings might be involved during the whole process, when formulating some of the provisions, the requirements might have been made too strict and rigid that some unexpected and unfortunate events had occurred during the subsequent implementation of the provisions.

In 1999, the Government made an amendment to deal with an urgent issue, to the effect that the organ recipient can still undergo the operation legally when he is in a coma or does not have the ability to understand the explanation made to him necessitated by law. The present amendment represents a comprehensive

review of the Ordinance so as to render the implementation smoother and more flexible. Generally speaking, we support this amendment.

Among the various amendments to the Ordinance, a rather controversial one is the definition of "organ", particularly the definition of medical products consisting of human organ or bodily tissue. The Government proposes that these products be incorporated, through a vetting procedure, into a Schedule for exemption purpose. And an appeal mechanism is also set up. We consider that this is an acceptable approach.

Ms Cyd HO is going to move an amendment at the Committee stage, proposing that it should be prescribed in the Ordinance that equal treatment be given to same sex and opposite sex marriages which are legally performed. We view that the Ordinance mainly seeks to prevent commercial transactions of human organs, while marriage relationship is regarded as one of the strongest evidence to prove that no commercial dealing is involved in the organ donation between the donor and the recipient. Although the legal status of same sex marriages is not yet recognized in Hong Kong, and there is still a great controversy over whether same sex marriages should be allowed, only if we have reasons to believe that the marriage concerned is legally performed, under the principle of life saving, we cannot see a need to make such distinction under the Ordinance. In regard to same sex and opposite sex marriages legally performed, according to the Government, the existing amendments have already a hidden recognition that under the Ordinance, these two kinds of marriages enjoy the same status.

Madam President, after the operation and review over the years, the existing Ordinance already has sufficient stringent measures to prevent commercial dealings in human organs. Besides, there is an appropriate level of flexibility to deal with individual special cases. We can say that it has already satisfied the requirements of the Government and the public. However, I have to point out that the Ordinance is only part of the entire policy on human organ transplant. Anyway, to the donor, a certain level of risk will be involved in the organ transplant of living persons, and there will be a lot of restrictions, too. Therefore, the medical sector always encourages the living persons to sign organ donation cards so that they can, after passing away, donate their organs to persons in need through transplantation, so as to change the concept of society that the whole corpse should be kept intact after death. I opine that in this aspect, the Government has to do more while the community also has to put in

more efforts. When such problems arise, a large controversy will be aroused in the community, as using the organs of living persons and using the organs of the deceased are very different. I hope that the Government can do more and invest more resources in this regard. Although the Government mentioned in the Panel on Health Services again that this issue was a concern to the Government, the promotion of it was rather difficult. Nevertheless, I still hope that the Government can co-operate with the community in doing more promotional work in this regard.

Madam President, since the closure of the Liver Transplant Centre of the Prince of Wales Hospital, people outside the medical sector have become very concerned about whether the investment of the Hong Kong medical system in human organ transplant is sufficient or not. And they are also worried about the long-term development of technology and personnel training. We understand that organ transplant is a very costly medical service. As the Hospital Authority (HA) is facing a serious budget deficit, it has to use its resources very carefully. This we understand. However, precisely because the general public could not afford the exorbitant medical fees on organ transplant that the public medical system thus becomes the only recourse to them. It is also reasonable that the public require the HA to maintain sufficient services.

Besides, Madam President, I would like to emphasize that the problem concerning Hepatitis B carriers is very serious in both China and Hong Kong. Given the changing situation in the future, what should we do? On this issue, we think that even though the resources are stringent, in considering the need to set up two centres, the Government should not adopt any approach imprudently.

Madam President, this issue has been the bone of contention on many occasions in this Chamber, and we have also relayed our views to the Government from time to time. However, taking this opportunity, I would like to remind the Government again not to deal with the existing situation with its consistent ideas and concepts. I hope that the Government can really accept the views of the community. A lot of people from the community opine that since Hong Kong is a place where there are a great number of Hepatitis B carriers, we must have sufficient supporting measures to solve this problem.

Madam President, I do not want to see the recurrence of incidents concerning discarding of livers, and I hope that the Government can prudently



deal with the problem concerned. With these remarks, Madam President, I support the Second Reading of 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 the Environment, Transport and Works to speak.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in the absence of Secretary for Health, Welfare and Food): Madam President, I would like to take this opportunity to thank the Honourable Dr LO Wing-lok and all members of the Bills Committee for their valuable comments and suggestions in respect of the Human Organ Transplant (Amendment) Bill 2001 (the Bill) and for enabling the Administration to resume Second Reading debate before the conclusion of the current Legislative Session.

The purpose of the Bill is to improve on the definition of "organ" and "payment", streamline the appointment of temporary members to the Human Organ Transplant Board (the Board), set out the requirements for transplanting organs for therapeutic purposes and clarify the role of the Board in relation to imported organs. These amendments are intended to enable the Board to discharge its duties more effectively.

In the course of scrutinizing the Bill, the question about how to enable organ products to be used for transplant purposes was discussed. Recent advances in medical technology have resulted in the commercial production of certain products made from human tissues which are intended for transplant purposes. These commercial products fall under the definition of "organ" and accordingly, their commercial dealings are prohibited under the Human Organ Transplant Ordinance (the Ordinance), thus depriving the Hong Kong medical field of the opportunity to use these products for treatment. To overcome the problem posed by this unintended effect of the statutory prohibition against commercial dealings of organs, the Administration agreed with the Bills Committee that an exemption mechanism should be established under the

Ordinance for the Director of Health to exempt these products from the prohibition against commercial dealings on a case-by-case basis. In granting an exemption, the Director shall satisfy himself, amongst other things, that the use of the product for transplant purposes is safe and has no adverse effects on public health, that the donor has consented to the removal of the tissues for producing the product without coercion or financial inducement, that no payment has been or intended to be made to the donor for supplying the tissue, and that all applicable laws of the place where the tissues were obtained or processed have been complied with. In accordance with the general requirements of the Hong Kong Bill of Rights, we also propose that an independent Appeal Panel should be established under the Ordinance to handle appeals lodged by applicants aggrieved by the decisions of the Director of Health. I shall move Committee stage amendments to introduce a new clause covering these matters.

The Ordinance currently provides that any person who wishes to become an organ donor must be either over 18 years old or over 16 years old and married. During the deliberations at the Bills Committee, members suggested that the Administration should consider changing the minimum age requirement to 18 years old irrespective of the donor's marital status. The purpose of setting a lower age limit is to ensure that a potential live donor is capable of fully understanding the implications of his decision to donate an organ, and of making that decision independently. We have reviewed this lower age limit and have come to the conclusion that a person who is 16 years old and married is not necessarily as mature as a person who is 18 years old. There is also practical difficulty in disproving the *bona fides* of a marriage if someone who is not yet 18 years old attempts to circumvent the requirement by entering into a marriage. We thus agree with the Bills Committee that a Committee stage amendment should be moved to impose a uniform minimum age requirement of 18. In other words, if Honourable Members support the amendment, a person, whether married or not, must reach the minimum age of 18 to become an organ donor in the future.

At present, the responsibilities of the Board are set out in various parts of the Ordinance. The Bills Committee suggested that the functions and purview of the Board should be summed up and set out more clearly in the Ordinance. We agree that by adding a clause about the Board's functions and purview, it would be easier for members of the medical field and of the public to understand what the Board is empowered to do. I shall move Committee stage amendments in this regard later.

Members of the Bills Committee and the Administration have also agreed on a number of minor changes to address two questions, namely, operational difficulties concerning the submission of the original import certificate of imported organs to the Board and the requirement on the medical practitioner who is to transplant an organ previously removed for therapeutic purposes to declare that he is satisfied that the organ was removed for the therapy of the donor and that to the best of his knowledge no payment prohibited by the Ordinance has been or intended to be made. I will explain the changes that need to be made later when I move these Committee stage amendments.

During the deliberations at the Bills Committee, the Administration has clarified the status of same sex marriages celebrated outside Hong Kong for the purpose of section 5(1)(b)(ii) of the Ordinance, which provides that organ transplants between living partners in a marriage are allowed if the marriage has subsisted for not less than three years. Pursuant to section 2A of the Human Organ Transplant Regulation (the Regulation), if a same sex marriage was celebrated or contracted outside Hong Kong in accordance with the law in force at the time of the jurisdiction where the marriage took place, then the relevant marriage documents issued by the overseas authority concerned can be used to establish a marital relationship for the purpose of section 5(1)(b)(ii). To ensure that doctors who may perform organ transplants have a correct understanding of the status of same sex marriages in this regard, the Administration would liaise with doctors' associations and the Hospital Authority on ways to inform medical practitioners of the proper interpretation of section 2A of the Regulation as soon as possible.

With these remarks, Madam President, I appeal for Members' support for the passage of the Bill.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Human Organ Transplant (Amendment) Bill 2001 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): Human Organ Transplant (Amendment) Bill 2001.

Council went into Committee.

### **Committee Stage**

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

### **HUMAN ORGAN TRANSPLANT (AMENDMENT) BILL 2001**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Human Organ Transplant (Amendment) Bill 2001.

**CLERK** (in Cantonese): Clauses 2, 8, 9 and 11 to 17.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 1, 3, 4, 6, 7 and 10.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**

Madam Chairman, I move the amendments to clauses 1, 3, 4, 6, 7 and 10 to the Bill, as set out in the paper circulated to Members. The amendments to clauses 1, 3, 7 and 10 are all technical in nature.

Clause 4 of the Bill provides for the establishment, membership and procedure of the Human Organ Transplant Board (the Board). I would like to move amendments to include in this clause the functions and purview of the Board. These amendments are proposed in response to the suggestion of the Bills Committee that the functions and purview of the Board should be summed up and clearly set out in the Ordinance.

Clause 6 of the Bill seeks to set out more clearly the role and functions of the Board in respect of imported organs. One of the proposals in clause 6 of the Bill is to require the medical practitioner who transplanted an imported organ into a recipient in Hong Kong to supply to the Board the original of the certificate containing all the necessary statement and information within seven days after the transplant. The Administration has reviewed this clause and concluded that the proposal may present practical difficulties in the case where a single certificate covers more than one imported organ, each of which is to be transplanted into a different recipient. To resolve this problem, we propose to amend this clause to the effect that apart from the original of the certificate, the medical practitioner who transplanted the imported organ may also be allowed to submit a copy of the certificate certified to be a true copy of the original. The certification should be done by the registered medical practitioner who imported the organ, and should be accompanied by a declaration of the transplanting practitioner that, to the best of his knowledge, the medical practitioner who certified the copy is the person who imported the organ. We have proposed to extend the time limit for the submission of the certificate from seven days to seven working days, in accordance with members' suggestion.

With these remarks, Madam Chairman, I urge Members to support the above amendments.

*Proposed amendments***Clause 1 (see Annex V)****Clause 3 (see Annex V)**

**Clause 4 (see Annex V)**

**Clause 6 (see Annex V)**

**Clause 7 (see Annex V)**

**Clause 10 (see Annex V)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for the Environment, Transport and Works 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 1, 3, 4, 6, 7 and 10 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): Clauses 5.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**  
Madam Chairman, I move the amendments to clause 5 of the Bill, as set out in the paper circulated to Members.

Clause 5 of the Bill seeks to restructure the existing section 5 of the Human Organ Transplant Ordinance (the Ordinance) so that the different requirements applicable to different situations of live organ transplant are set out under more distinct categories. The clause also provides for simplified requirements for the transplant of organs previously removed for therapeutic purposes. Under the simplified requirements, this type of transplant operation would not require the prior written approval of the Human Organ Transplant Board. However, as a safeguard against possible abuse, it is proposed that the registered medical practitioner who is to transplant the organ should be required to declare, to the best of his knowledge, that the organ was removed for the therapy of the donor and that no payment prohibited by the Ordinance has been or is intended to be made. Members of the Bills Committee were concerned that such a requirement would be unfair to the transplanting practitioner who might not have personal knowledge of the matters which he was required to declare. To overcome this problem, the Administration and members of the Bills Committee agreed to amend clause 5 to the effect that the medical practitioner who is to transplant an organ previously removed for the therapy of the donor should be allowed to rely on documents issued by the medical practitioner who removed the organ in determining whether the organ had been removed for therapeutic purposes and whether payment prohibited by the Ordinance had been made. The documents issued by the medical practitioner who removed the organ should include:

- a certificate certifying that the organ is removed for the therapy of the donor and not for transplant into any specific recipient; and
- a declaration in writing that to the best of his knowledge and belief, no payment prohibited by the Ordinance has been made or is intended to be made.

Apart from the amendment to the requirements concerning the transplant of organs previously removed for therapeutic purposes, we also propose to change the minimum age requirement of live organ donors to the age of 18 irrespective of the donor's marital status, as I explained earlier.

With these remarks, Madam Chairman, I urge Members to support the above amendments.

*Proposed amendment*

**Clause 5 (see Annex V)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for the Environment, Transport and Works 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 amendment passed.



**MS CYD HO** (in Cantonese): Madam Chairman, I move that clause 5 be further amended. In 1998, a patient was desperately in need of a human organ transplant to save his life. But unfortunately, he lapsed into a coma and could not sign the consent form. Due to the provisions of the law, the patient could not receive the organ transplant and he passed away.

In view of this unfortunate event, the Administration immediately reviewed the legislation. In 1999, the first-stage amendment was carried out. This Human Organ Transplant (Amendment) Bill 2001 (the Bill) is the second-stage amendment which aims to further delineate the terms of reference of the Human Organ Transplant Board (the Board). To this, I extend my welcome. However, since this Bill does not address the interest of same sex marriages, I submitted an amendment to the Legislative Council with a view to ensuring the rights of same sex marriages.

In order to prevent commercial dealings in human organs, a Board is set up under the legislation. Organ transplant operations have to be vetted by the Board to determine whether commercial transaction is involved. If the Board considers that commercial dealing is involved, the operation will not be approved. Under section 5 of the Ordinance, some conditions can be exempted from vetting by the Board, and the transplant operation can go ahead if the medical practitioner is aware of the existence of the relationship: firstly, the donor and the recipient are genetically related, such as parents, brothers or sisters; or secondly, at the time of the transplant, the recipient is the spouse of the donor and the marriage has subsisted for not less than three years.

Madam Chairman, the Marriage Ordinance (Cap. 181) has defined marriage as the legal and voluntary union of a man and a woman for life, as husband and wife, not allowing the intervention of other people. Therefore, according to this narrowly defined definition, same sex marriages which are recognized by the laws or courts of some countries are not included. Although Hong Kong, being a member of the international community, has the obligation and responsibility to recognize marriages celebrated in other jurisdictions, it is not written as such in our Chapter 181. For the avoidance of doubts, I have thus proposed an amendment to the proposed section 5A of the Bill as follows: "'marriage' includes one in which the parties are of the same sex and which was celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed."

In fact, currently only four countries in the world recognize same sex marriages, which include Canada, Finland and Belgium. The amendment seeks to ensure that the rights of people with different sexual orientation in donating and receiving human organs will not be subject to discrimination.

The Hong Kong Special Administrative Region is a member of the international community. I hope that it can honour its responsibility and obligation and be integrated with the international arena. In order to facilitate Members not belonging to this Bills Committee to have a deeper understanding of the whole issue, I would like to quickly read out paragraph 44 of the Report of the Bills Committee on Human Organ Transplant (Amendment) Bill 2001.

"The Administration has advised that the means for establishing the fact of a marriage are provided in section 2A of the Human Organ Transplant Regulation. The section provides that the fact of a marriage shall be established by means of any document or documents –

- (a) issued under the Marriage Ordinance (Cap. 181) or the Marriage Reform Ordinance (Cap. 178) which shows or show that the two persons are the parties to (i) a marriage celebrated or contracted in accordance with the provisions of the Marriage Ordinance; (ii) a modern marriage validated by the Marriage Reform Ordinance; or (iii) a customary marriage declared to be valid by the Marriage Reform Ordinance;"

Madam Chairman, the above are marriages recognized in Hong Kong at present, whether they are registered in the marriage registry or celebrated according to Chinese wedding customs and traditions or Ching Dynasty conventions. For the latter, although they are not formally registered, they are marriages recognized by society under the old system. The other item is:

- "(b) equivalent to any document or documents issued under the Marriage Ordinance or the Marriage Reform Ordinance which shows or show that the two persons are the parties to a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed."

This is the stipulation sought by the amendment. Government papers also tell us that the Government will recognize marriages celebrated outside

Hong Kong in accordance with the law in force at the time when the marriages were performed or marriages recognized by the Court, in order to ensure that these marriages contracted outside the territory will also be recognized in Hong Kong. However, our law carries no distinction between opposite sex marriages and same sex marriages, and has not specifically stated that both enjoy the same legal status. Therefore, Madam Chairman, I am afraid that there may be some emergencies when one party of a couple is seriously ill and has to undergo an organ transplant operation. However, the medical practitioner or the Board concerned may not fully understand the international obligation of Hong Kong, not aware that we have the responsibility to recognize marriages contracted outside Hong Kong, thus creating some obstacles to the life-saving of the patient.

In view of this, Madam Chairman, I hope that when dealing with these possible emergencies, and when the persons concerned have no time to further study the laws and international obligation of Hong Kong, they will know what to do simply by reading these provisions in the Ordinance. The Secretary also mentioned this point in her speech just now, saying that she would ensure that the associations of medical practitioners and medical doctors of all levels under the Hospital Authority would know the accurate interpretation of the provisions concerned. Nevertheless, Madam Chairman, this is what we say during this meeting today, and only a few dozens of people here know such an interpretation. When a large number of medical practitioners in Hong Kong are involved, while no one knows who would be the members of the Board in the future, there will be problems. Therefore, for the avoidance of doubt, I very much hope that this can be clearly written in the provisions.

Indeed, under the existing legislation and policies, people with different sexual orientation in Hong Kong are not being equally treated, and different Policy Bureaux have different practices. For instance, there is a same sex couple in Hong Kong who have already registered in Canada. They filed an application to the Inland Revenue Department of Hong Kong for married person's allowance together with the tax return, but it has not been approved yet. We can thus see that different Policy Bureaux may have different handling methods. Therefore, with the Secretary simply saying during the Second Reading of the Bill in this Chamber that she would ensure we know how to interpret and implement the policy is not enough, I think.

The other example is about another same sex couple who are not Hong Kong residents but come from a foreign country. One of them has already

come to work in Hong Kong. When he applied for his spouse to come to Hong Kong on the grounds of family union, he could only get a travel visa. After staying here for a period of time, his spouse has to leave, and a travel visa has to be applied again. This is a very discriminative practice which does not protect the equality of rights of people. Therefore, Madam Chairman, I hope that if we already have an intention, in terms of policy and implementation, to protect the rights of people with different sexual orientation, I hope this can be clearly spelt out in the provisions. I do not want to see that at times of emergency, people have to dig out the speeches of today before they know what to do.

A moment ago, I heard Miss CHAN Yuen-han say that she was concerned about the rights of people with different sexual orientation. However, I could not hear whether she would give her support or not. It is not enough just to show concern, support is more important. The reason was given by me just now. If we only make it clear here, there are only a few dozens of Members listening. If the persons concerned have to retrieve the Hansard in the future in order to understand the intention and the interpretation of the law in enforcement, this may cause a delay. Therefore, Madam Chairman, if we are concerned about the equality of rights, the rights of people with different sexual orientation, I hope that we can take one more step forward and have it clearly written in the provisions. I urge Members to support this amendment. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 5 (see Annex V)**

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, since Ms Cyd HO mentioned my name earlier, I have to explain a bit.

The Government told us that the Bill actually has this effect. My premise is to save life, I would not bother what their relationship is. If it has been accepted overseas that a same sex relationship is also counted as a family, it should follow that this relationship exists even in Hong Kong. The Government then stated that the Bill has this implication and that the operation would be impeded because of this. Since Ms Cyd HO said I have to state it more clearly, I am now giving an account of the views of the organization behind me. The

FTU has a Women Affairs Committee, whose members support gender equality and the confirmation of the positions of homosexuals. That is, whether it is male with male or female with female, if they prefer to live it that way, we very much respect and support their preference.

Talking about the definition of family, in the past, certain legislation did mention this but there were different views. However, if it is about suffering from diseases, since it has been accepted overseas, why does the Government have to be so rigid? Therefore, I very much like to talk about my views on this. Everyone has the freedom to decide how he would like to live, and when difficulties arise, I wish the Government can respect the certified identity these people have secured overseas. Thus, at that time, I accepted the explanation given by the Government. Nonetheless, I hope that later, Secretary Dr LIAO, who is standing in today, can give me a direct answer in this regard. Thank you.

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

**MRS SOPHIE LEUNG** (in Cantonese): Madam Chairman, regarding this amendment, our views are the same. First, the Bills Committee has not spent a lot of time discussing this amendment of Ms Cyd HO. In my opinion, the issue of marriage of the same sex should not be discussed by the Bills Committee. Rather, it should be discussed by the whole society. As regards the transplant of human organs, we should also interpret matrimonial relationship more leniently. The Secretary and the Government have expressed their views. Personally, as Hong Kong laws have not formally stated the meaning of marriage includes marriage of the same sex, if we hastily introduce marriage of the same sex into our literal legal interpretation, I do not think that is appropriate. On the contrary, I hope that the Government can take note of our voices as to whether a more lenient interpretation of matrimonial relationship can be applied and convey all these to the Human Organ Transplant Board. As the Board has a so-called guideline, it should include a detailed explanation. Therefore, I think that is more appropriate and everyone will gain a better understanding. Instead of hastily introducing into our literal legal interpretation an item which has not yet been fully accepted in Hong Kong laws, I consider this to be more appropriate. Therefore, we will oppose this amendment. Thank you, Madam Chairman.

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

(No Member indicated a wish to speak)

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**

Madam Chairman, I would like to respond to the amendment moved by the Honourable Cyd HO to clause 5 of the Bill. As I have stated earlier, it is clear from the wording of section 2A of the Human Organ Transplant Regulation that "marriage" for the purpose of the proposed section 5A(1)(a)(ii) should include all forms of marriage legally celebrated outside Hong Kong, which may include forms of marriage which may not be legal in Hong Kong. The current wording of section 2A of the Regulation is unambiguous. Therefore, there is no need to insert an express provision for same sex marriage to that effect in the Bill. In my opinion, there are other forms of marriage which I have just mentioned, such as muslim marriage which includes polygamy which is not allowed in Hong Kong, but certainly very legal in a large population in the world. So, I would ask Members to consider that this Bill is focusing on organ transplant. We should leave marriage legality to another discussion rather than confusing the issue here.

Madam Chairman, I urge Members not to support this amendment. Thank you.

**MS CYD HO** (in Cantonese): Madam Chairman, as the Bills Committee has shelved the Bill for some time, we have not held a lot of meetings. The issue of marriage of the same sex was deliberated in the earlier stage, but afterwards, as the Bill was revisited, the time spent on deliberation was actually not much. Despite this, I think there has been sufficient discussion earlier. Actually, this is not just a matter of policy, but also a matter for the whole society. My amendment is very minor. If I want to expand the application of the legal status of marriage of the same sex to all the Policy Bureaux, I should amend the Marriage Ordinance instead of proposing an amendment here.

Insofar as this amendment is concerned, I have deliberated with the Legal Adviser and finally, the application of the approved status is narrowed down to the situation of a transplant of human organ. Human organ transplant involves human life, not a second is to be lost. Therefore, I do not wish that in case something happens, we then slowly search for international responsibility and

turn to the law books. I hope by then, we can have very clear definitions to show to the medical staff and the Human Organ Transplant Board. It is due to this reason that I have proposed this amendment. However, I understand that this is a very contentious amendment. The attitude adopted by Members may be one which is: I am not standing in your way, but I also will not actively stand out to take care of the equal rights of those with different sexual preference. This is exactly why a lot of discrimination in society cannot be resolved promptly.

I hope Members can understand that the rights of the minority may not be accepted by the majority, but I hope that, as legislators, we can realize that the interests of the minority also require our attention. Although there is no guarantee that speaking it out will win the acceptance of the majority, this is nevertheless our responsibility.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Ms Cyd HO be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Cyd HO rose to claim a division.

**CHAIRMAN** (in Cantonese): Ms Cyd HO has claimed a division. The division bell will ring for three minutes.

(When the time limit of three minutes was about to expire, Mr Frederick FUNG entered the Chamber)

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

**CHAIRMAN** (in Cantonese): Mr FUNG, do you intend to vote? If yes, please do so quickly.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Eric LI, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong, Ms LI Fung-ying and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Mrs Selina CHOW, Mrs Sophie LEUNG, Dr Philip WONG, Ms Miriam LAU, Mr Abraham SHEK and Mr Henry WU voted against the amendment.

Mr WONG Yung-kan, Mr LEUNG Fu-wah, Dr LO Wing-lok and Mr IP Kwok-him abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr SZETO Wah and Mr Albert CHAN voted for the amendment.

Mr Martin LEE, Mr Jasper TSANG, Mr WONG Sing-chi, Mr Frederick FUNG, Mr NG Leung-sing and Mr Ambrose LAU voted against the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung abstained.

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



THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, six were in favour of the amendment, eight against it and four abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 18 were present, eight were in favour of the amendment, six against it and three 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.

**CHAIRMAN** (in Cantonese): Since the Committee has earlier on passed the amendment to clause 5 moved by the Secretary for the Environment, Transport and Works, the question put now is: That clause 5 as amended stand part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clause 2A      Part heading added

New clause 3A      Part heading added

New clause 4A      Sections and Part heading added

New clause 5A      Part heading added

New clause 6A      Parts and part heading added.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**

Madam Chairman, I move that the new clauses 2A, 3A, 4A, 5A and 6A read out just now be read the Second time.

The new clauses 2A, 3A and 5A are technical amendments for the addition of Part headings so as to improve readability. The new clause 4A is also a technical amendment, which contains subsections 4(2) to (12) removed from clause 4 of the Bill.

The new clause 6A seeks to establish the mechanism for the granting of exemptions for organ products from the prohibition against commercial dealings as well as the mechanism for the handling of appeals. As I explained earlier, under our proposal, the Director of Health shall have the power to grant exemptions to products made from human tissues from the prohibition against commercial transactions provided in the Ordinance. The Director is empowered to prescribe the form and manner in which an exemption application must be made, require the applicant to provide additional information and documents as are reasonably necessary for the determination of the application, limit the validity of the exemption to a specified period or a specified person or class of person, and attach such conditions to the exemptions granted as he considers appropriate. The Director may suspend, vary or revoke an exemption upon a breach of the conditions or on the basis of such grounds as the Director considers appropriate. Furthermore, the Director may specify different consequences for the breach of different conditions.

In respect of the handling of appeals, we propose that an Appeal Board should be established with members selected from an Appeal Panel. The purpose of establishing an Appeal Panel is to ensure that there will be a sufficient pool of members to handle the appeals at any time. The Appeal Panel shall be appointed by the Secretary for Health, Welfare and Food and comprise members from three categories, namely, registered medical practitioners, legally qualified persons and other persons not belonging to these two categories. Applicants aggrieved by a decision made by the Director of Health may appeal against the decision by giving notice to the secretary of the Appeal Panel. Where such a notice is given, the Secretary for Health, Welfare and Food shall appoint, from the Appeal Panel, an Appeal Board consisting of three members, one from each of the three categories mentioned above. The Appeal Board may uphold the Director's decision or remit the matter under appeal to the Director for his reconsideration. The Secretary for Health, Welfare and Food may determine

the rules of appeal by regulation. We will present our proposals in this regard to the Legislative Council for vetting in the next legislative year. We propose that the Amendment Bill will come into force together with the subsidiary legislation and will present a commencement notice to the Legislative Council in due course.

With these remarks, Madam Chairman, I urge Members to support the addition of the above new clauses.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the new clauses read out just now 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 raise)

**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 2A, 3A, 4A, 5A and 6A.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:** Madam Chairman, I move that the new clauses read out just now be added to the Bill.

*Proposed additions*

**Clause 2A (see Annex V)**

**Clause 3A (see Annex V)**

**Clause 4A (see Annex V)**

**Clause 5A (see Annex V)**

**Clause 6A (see Annex V)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses read out just now 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.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

**HUMAN ORGAN TRANSPLANT (AMENDMENT) BILL 2001****SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**

Madam President, the

Human Organ Transplant (Amendment) Bill 2001

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 Human Organ Transplant (Amendment) Bill 2001 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): Human Organ Transplant (Amendment) Bill 2001.

**Resumption of Second Reading Debate on Bills**

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

**COMPANIES (AMENDMENT) BILL 2003****Resumption of debate on Second Reading which was moved on 25 June 2003**

**PRESIDENT** (in Cantonese): Ms Audrey EU, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

**MS AUDREY EU:** Madam President, as Chairman of the Bills Committee on Companies (Amendment) Bill 2003 (the Bills Committee), I wish to report on the work of the Bills Committee. I shall focus on the major issues considered by the Bills Committee.

The package of proposals in the Companies (Amendment) Bill 2003 (the Bill) seeks to achieve a number of objectives: first, to improve the prospectus regime to facilitate market development; second, to align the definition of "subsidiary" with the International Accounting Standards for the purposes of preparing group accounts; third, to modernize the registration regime for overseas companies; and fourth, to enhance corporate governance standards by strengthening remedies for shareholders. The proposed amendments to the Companies Ordinance are grouped under four Schedules, that is, Schedules 1 to 4, while Schedule 5 of the Bill contains the consequential amendments. The Bills Committee has been able to complete the scrutiny of Schedules 1, 3 and 4 and the related consequential amendments. As regards Schedule 2, which contains amendments relating to group accounts, the Administration has decided not to take forward the proposals in view of time and resource constraints. It will move Committee stage amendments to delete Schedule 2 and the related consequential amendments from the Bill.

One major proposal in Schedule 1 of the Bill is to provide certainty as to the types of offers which can be made without triggering the prospectus regime. The types of offers exempted from the prospectus regulatory regime (so called "safe harbours") are specified in a new Schedule of the Ordinance, the

Seventeenth Schedule. Under one of the safe harbours, a company may offer shares or debentures of the company to persons who are qualifying persons in respect of the company or another company of the same group. The proposed scope of "qualifying persons" include employees, directors, officers, consultants, and their dependants. Some members are concerned that employees and their dependants who do not have sufficient knowledge of the financial conditions of the company may be exposed to risks not made known to them in subscribing the shares or debentures of the company without a prospectus. A deputation has also drawn the attention of the Bills Committee to the proposed inclusion of "consultants" of the offeror as "qualifying persons".

According to the Administration and the Securities and Futures Commission (SFC), the proposed scope of "qualifying persons" is consistent with the current practice of the SFC in granting exemption under the Companies Ordinance and the understanding of the market. The SFC's past experience is that the risk of abuse is minimal. Moreover, sections 107 and 108 of the Securities and Futures Ordinance provide the statutory safeguards against misrepresentation and untrue statements. However, in view of the concerns raised, the Administration and the SFC agreed to include the operation of this safe harbour in the SFC's Phase III review on the regulatory framework for offers of shares and debentures.

At present, the SFC may grant exemption from compliance with the prospectus-related requirements on the ground that compliance with such requirements would be either irrelevant or unduly burdensome. The Bill proposes to provide the SFC with an additional ground of exemption, that is, the grant of exemption would not prejudice the interest of the investing public. We are of the view that in principle, any exemption granted by the SFC must not prejudice the interest of the investing public. We however appreciate that apart from the circumstances where compliance would be irrelevant or unduly burdensome, there may also be circumstances where compliance is unnecessary or inappropriate. The Administration concurs with us and will move Committee stage amendments to the effect that any exemption granted by the SFC must not prejudice the interests of the investing public, and exemption may be granted if compliance with any or all of the specified requirements would be irrelevant or unduly burdensome, or is otherwise unnecessary or inappropriate.

Under the existing Companies Ordinance, the SFC may by notice published in the Gazette grant exemption in respect of a class of companies or

prospectuses from compliance with the requirements specified in the relevant provisions. The Bill proposes to empower the SFC to amend the list of "relevant provisions" by order published in the Gazette. Although the relevant notice or order published in the Gazette would be subject to negative vetting of the Legislative Council, the Bills Committee considers that the SFC should be obliged to conduct prior consultation with the public. In view of the Bills Committee's comments, the Administration agrees to move Committee stage amendments to oblige the SFC to conduct public consultation on draft orders on class exemption and on subsidiary legislation to amend the list of provisions containing prospectus-related requirements.

With regard to the proposed mechanism to facilitate amendments to prospectuses, the Bills Committee notes that in Australia, there are provisions specifying the detailed arrangements to deal with the consequences of material deficiencies in a prospectus to safeguard investors' interest. The Administration explains that unlike the arrangement in Hong Kong, there is no pre-vetting of prospectuses by the regulatory authority in Australia. The Australian model is thus not readily applicable to the Hong Kong situation. The SFC confirms that in pre-vetting amendments to a prospectus, it may impose conditions in its authorization to oblige the issuer to allow investors to withdraw their applications or to return the shares or debentures obtained. At the Bills Committee's request, the SFC agrees to review the need for statutory provisions in this regard in its Phase III review on the regulatory framework for offers of shares and debentures.

Schedule 3 of the Bill aims to modernize the registration regime for overseas companies by simplifying the registration requirements and enhancing the disclosure requirements in respect of overseas companies. It is also proposed to replace the existing term "overseas company" by "non-Hong Kong company" and to streamline the incorporation procedure for Hong Kong companies. On the registration of charges by overseas companies, the Bill proposes that a charge which applies to property situated outside Hong Kong at the time of creation or acquisition of the charge but is subsequently brought into Hong Kong should be required to be registered. At present, an overseas company is not obliged to register a charge if the relevant property is not in Hong Kong when it creates the charge, or when it acquires the property subsequent to the creation of the charge. The Bills Committee shares the concern of a deputation that the concept of a property being "brought into Hong Kong" is unclear and it may give rise to uncertainties about the registration requirement. According to the



Administration, the concept originates from the United Kingdom, where a major review of the system for registering company charges is ongoing. In view of the concerns raised, the Administration proposes to put on hold the introduction of the concept but undertakes to review the provisions on the registration of charges in the light of developments in the United Kingdom.

Schedule 4 contains amendments to enhance shareholders' remedies based on the recommendations made by the Standing Committee on Company Law Reform (SCCLR) in Phase I of its Corporate Governance Review.

The Bill proposes to entitle any member of a company to apply to the Court for an order to inspect the records of the company. The applicant must satisfy the Court that he is acting in good faith and the inspection is for a proper purpose. The Bills Committee is concerned whether the two conditions of "good faith" and "for a proper purpose" are sufficient to safeguard companies against unscrupulous shareholders accessing company records for frivolous reasons, harassment or other ulterior purposes. After deliberation, we consider it appropriate to impose an additional condition in terms of minimum shareholding or minimum number of shareholders. The Administration concurs with the Bills Committee and will move Committee stage amendments accordingly.

Under existing section 168A of the Ordinance, a member of a company is entitled to make an application to the Court for appropriate orders where members' interests are unfairly prejudiced. The Bill proposes to explicitly provide that the Court may award damages to the members (including past members) of a company where it is found that their interests have been unfairly prejudiced. It is also proposed to extend the application of section 168A to overseas companies.

We note the common law position that under unfair prejudice claims, a shareholder cannot recover a loss which is merely reflective of the company's loss to prevent double recovery or the shareholder being awarded damages at the expense of the company's other shareholders and creditors. This common law position is however not reflected in the proposed amendments. To address members' concern, the Administration agrees to add a doubt-avoidance provision to make it clear that the proposed amendments will not have the effect of entitling

any member to recover by way of damages any loss which only the company concerned is entitled to recover under the common law.

The Bill proposes to provide for a statutory derivative action (SDA) procedure whereby a member of a company may without leave of the Court, bring proceedings on behalf of the company; or with the leave of the Court, intervene in any proceedings to which the company is a party for the purposes of continuing, discontinuing or defending those proceedings on behalf of the company.

On the proposal that a shareholder may bring proceedings on behalf of a company without the leave of the Court, the Administration explains that the "no leave" arrangement is to implement the SCCLR's recommendation that there should not be a "trial within a trial" for the purpose of determining the standing of an applicant to bring the proceedings. The proposed striking-out mechanism in the Bill, in addition to the one under the Rules of the High Court, would serve as a balancing measure.

A majority of the members of the Bills Committee consider that there should be a leave requirement such that there would be a preliminary hearing mechanism for the Court to determine whether it is proper to continue with the SDA proceedings and, if the Court considers it appropriate, to also make an order as to the costs of the SDA. Ms Emily LAU considers that imposing a leave requirement would place additional hurdles before minority shareholders in bringing derivative actions. She supports the SCCLR's recommendation that the bringing of an SDA should not be subject to the leave of the Court.

In the light of the majority views of the Bills Committee, the Administration has prepared draft Committee stage amendments with the inclusion of the leave requirement. At the request of the Bills Committee, the Administration has further consulted the SCCLR and other relevant parties on the draft Committee stage amendments. The SCCLR considers that the scope of proceedings actionable under the SDA should be expressly limited to the grounds stated in its consultation paper, which include fraud, negligence, default in relation to any law or rules and breach of any duty whether fiduciary or statutory. The SFC and the Hong Kong Bar Association also opine that the applicability of the SDA should be expressly defined. There are very diverse views on whether the bringing of an SDA should be subject to a leave requirement.

After further deliberation, the Bills Committee agrees that the grounds for the proposed SDA should be specified as suggested by the SCCLR. As regards the leave requirement, members of the Bills Committee except Ms Emily LAU maintained the view that the bringing of an SDA should be subject to the leave of the Court but, as the scope of proceedings actionable under the SDA has been defined, the conditions that have to be satisfied for the grant of leave should be meaningfully low.

The Bills Committee feels that the fact that there are divergent views amongst legal experts, the business sector, professional bodies, and so on, about the scope of proceedings of the SDA, the propriety of imposing a leave requirement and other related issues reveal that the SDA is a complicated area of the law. Moreover, there is little practical experience from which the Bills Committee can draw reference. As advised by the Administration, the laws on SDA in other common law jurisdictions were only enacted in the past decade or so, and only a few relevant reported cases can be identified. The Bills Committee has therefore requested the Administration to review the operation of the SDA provisions around 2006-07, taking into account the relevant experience in other common law jurisdictions.

With regard to the proposal of expressly retaining the common law right to derivative action upon enactment of the SDA provisions, Ms Miriam LAU has stated her view that the arrangement should be reviewed in future, given that the same arrangement is not found in the overseas jurisdictions studied by the Bills Committee. Other members of the Bills Committee concurred that the arrangement should be reviewed in due course. The Administration has agreed to review this issue when an overall review of the SDA provisions is undertaken and will make clear this position at the resumption of the Second Reading debate.

Madam President, with these words, I would recommend support to the Second Reading of the Bill, and I turn now to add a few words of my own.

Even with the passage of this Bill, the law on corporate governance and shareholder protection is far from perfect. In fact, we have a sorry history of long and costly consultations, which proved ineffective in the end, because by the time legislation is proposed, such proposals are already out of date, and even after much hard work by the Legislative Council to pass such laws, these new laws have to be changed even before they are to commence operation.

In dealing with the various sections or Schedules of this Bill, I detected a distinct difference in relation to Schedule 1 on the issue of the prospectus with the various other Schedules. In the former, that is, Schedule 1 on prospectus, market players as well as the SFC were heavily involved. This resulted in less problems being encountered in the Committee stage than the other parts of the Bill, which were prepared by those with little practical experience. Although the proposals in the other Schedules were based on the recommendation of SCCLR, there is still a wide gap between implementing these principal recommendations by the SCCLR and translating them into operable provisions in the legislation. As a result of this very wide gap and a lack of practical experience of those involved in drawing up the Bill, the Bills Committee has to make extra rounds of consultation and propose some major revisions. Many original provisions were ill thought out and the consultees as well as Bills Committee members spotted quite a number of problems that might arise if the proposed law were to be passed. Thus, I would like to make a plea to the Administration: if we are really earnest in keeping Hong Kong as a major financial centre with adequate protection to investors, we need to:

1. invest more resources and vastly, and I stress the word vastly, speed up company law reform; and
2. involve practitioners at an early stage while preparing for legislative proposals.

Finally, I would like to thank the Legal Adviser to the Bills Committee and members of the Bills Committee, and in particular the Honourable Miriam LAU, Albert HO, and Emily LAU, who have diligently participated in all the meetings, despite the fact that this is in fact a very dry and technical piece of legislation. Thank you very much.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, the Democratic Alliance for Betterment of Hong Kong (DAB) supports the Companies (Amendment) Bill 2003 tabled today. As a matter of fact, notwithstanding Hong Kong's long-standing status as an international commercial and trading centre, certain provisions in the Companies Ordinance are so outdated that some adjustment must be made. We of course also welcome the Government to conduct a more comprehensive review of the Companies Ordinance in the

coming Legislative Session. In the course of deliberations, the issue of statutory derivative action (SDA) is one of the areas which caused the Bills Committee enough headaches. In spite of the strenuous efforts exerted by the Bills Committee in striking a proper balance, there are divergent views amongst legal experts, the business sector, professional bodies and members of the Bills Committee about the scope of proceedings of SDA, whether there should be a preliminary hearing for obtaining the leave requirement, the co-existence of SDA provisions and common law right to derivative action, and so on. It reveals that SDA is indeed a complicated area of the law.

At the same time, although the laws on SDA in other comparable common law jurisdictions were enacted in the past decade or so, only a few reported cases on SDA could be identified. Consequently, no reference or substantive analysis could be made about the experience of these jurisdictions on SDA by the Administration and the Bills Committee. It is indeed an ordeal for members of the Bills Committee. During the scrutiny, we have been thinking over and over about handling such issues.

As regards the amendment recommendations on SDA made by the Standing Committee on Company Law Reform (SCCLR), the most important spirit behind them is to tackle the practical difficulties for shareholders, particularly minority shareholders, to initiate a derivative action in Hong Kong against defaults on behalf of the company under common law, including the access to information and the enormous costs of the action. As such, in the interest of enhancing shareholder protection in Hong Kong, SDA is deemed necessary.

The DAB is of the view that, after all, the SCCLR is an expert in company law. To enhance shareholders' right to statutory remedy against unfair treatment, they have all along maintained that the scope of proceedings actionable under SDA should be expressly limited to the grounds of fraud, negligence, default in relation to any law or rules and breach of any duty whether fiduciary or statutory. That being the case, they must have rationale in maintaining this scope. It may even be the experience deeply felt by these legal experts.

Thus, we consider that it is more advisable and appropriate for the Bill to maintain the scope of the proposed SDA as recommended by the SCCLR. This

will ensure that the scope of the proposed SDA will not be extended too wide to get out of hand, while providing a clearer mode of operation for the amended legislation.

The existing arrangement of the Bill not only provides for a definitive scope of the proposed SDA, but also the threshold for the applicant to obtain leave at a preliminary hearing, to satisfy the Court that there is a serious question to be tried and that the action is brought in the interest of the company. The DAB anticipates that a proper balance between the interests of shareholders and companies can be struck under the provision. Also, when making an application to inspect a company's information and records, a minimum shareholding requirement or a minimum number of shareholders requirement have to be met. Thus, we need not worry too much about the provision being abused.

As there is in fact little practical experience on SDA in other jurisdictions, and upon enactment of the SDA provisions, the common law right to derivative action will be retained at the same time in Hong Kong, the Government of the Hong Kong Special Administrative Region should thus closely observe the practical situation of enforcement in future, taking into account the relevant experience in other common law jurisdictions, with a view to conducting a proper and timely review.

With these remarks, Madam President, the DAB supports the Bill.

**MS MIRIAM LAU** (in Cantonese): Madam President, following China's accession to the World Trade Organization, Hong Kong as the most internationalized city in China must move with the times to update and improve our laws, with a view to maintaining its position as an international city and playing the role of bridging China and the world. The Companies (Amendment) Bill 2003 (the Bill) seeks to improve certain provisions and arrangements of company law, such as improving the prospectus regime, enhancing remedies for shareholders and modernizing the registration regime for oversea companies, so as to further improve the company law of Hong Kong and our business environment and help to enhance Hong Kong's position as an international financial centre. The Liberal Party supports all of these.

Just now, Ms Audrey EU, Chairman of the Bills Committee has reported on the scrutiny work of the Bills Committee. From the report, we can imagine that the Bill is indeed very complicated. Due to the time constraint, the Bills Committee has in effect not been able to complete the scrutiny of certain provisions of the Bill, that is, amendments in Schedule 2 relating to group accounts. However, under the leadership of Ms Audrey EU, Chairman of the Bills Committee, we have finally managed to complete the scrutiny of the bulk of the Bill and the major credit should go to Ms Audrey EU. As the contents of the Bill are very complicated, I will not go into every detail, but just highlight a few salient points.

In the course of deliberations, the issue on statutory derivative action (SDA) has been one of the most controversial subjects. According to the principle established in the case of *Foss v Harbottle* (1843) in the United Kingdom, where a wrong has been done to a company, only the company itself can initiate proceedings. However, limited circumstances are exceptions to the rule in *Foss v Harbottle* where minority shareholders are allowed under limited circumstances to sue on behalf of the company. The most common of these exceptions is an act which constitutes a fraud on the minority and the wrongdoers hold a controlling stake of the company. Given that this kind of actions is rather conceptual without express stipulation in the legislation, and considering that in practice there would normally be difficulties in application, the Administration has taken on board the recommendations of the Standing Committee on Company Law Reform (SCCLR) in introducing SDA, thus forming the basis of SDA and rendering the concepts clearer and more stable. The Liberal Party supports this.

The original provisions proposed by the Administration allows shareholders, both majority and minority shareholders, to bring proceedings on behalf of the company without any qualification or precondition. Moreover, the proposed provisions will permit a shareholder to intervene in any proceedings to which the company is a party. The Liberal Party is of the view that if the proposal is passed, it may be open to abuse. The reason is that the proposal permits all shareholders, including those minority shareholders who hold a small amount of shares in major listed companies to easily bring proceedings or to intervene in any proceedings on behalf of the company on any grounds, even unreasonable grounds. The Government has of course proposed the addition of a striking-out mechanism to allow companies to apply leave from the Court to strike out the relevant proceedings, but it will inevitably cause disruptions to the

operation of the company, and the frequent proceedings will also add to the operation cost of the company. The situation will become even worse if some people with ulterior motives take advantage of SDA to affect the share prices of listed companies, with a view to manipulating the market. Of course, I am not saying that many people may do that, I am just saying that the law should not allow any possibility for such cases to emerge. From an overall prospective, the proposal of the Administration may adversely affect our investment and business environment. As such, the Liberal Party considers it necessary to specify some qualifications, to prevent the provision from being abused. After the Bills Committee had conducted a few rounds of consultation and discussion with stakeholders and the Administration, the Administration agreed to move amendments to specify a leave requirement for bringing SDA, including the establishment of a preliminary hearing mechanism for the Court to determine whether it is proper to continue with the SDA proceedings and to make an order as to the costs of the SDA. In addition, the Administration will define the scope of SDA as per the recommendation made by the SCCLR. The Liberal Party considers that the arrangement can basically strike a balance between the rights of minority shareholders and the interests of companies to ensure that the right of minority shareholders to bring SDA will not be undermined and also protect the company against harassment caused by undue SDA. Thus, the Liberal Party supports the amendments.

Also, on the subject of inspection of company records by shareholders, the original proposal of the Administration does not subject applicants to any conditions as long as the applicant makes an application to the Court and is able to satisfy the Court that he is acting in good faith and the inspection is for a proper purpose. The Liberal Party is concerned that it may not be sufficient to protect companies against unscrupulous shareholders accessing company records for frivolous reasons, harassment or other ulterior purposes. Once this precedent is set, the operations of many companies may be disrupted, which is not conducive to the business environment. The Liberal Party is very much concerned about the original proposal of the Government. We consider that a minimum shareholding requirement for applicants of inspection and a threshold for the number of applicants must be set. The Administration eventually agreed to amend the relevant provisions to require that an application for an inspection order can only be made by at least five members, or member holding shares of not less than \$100,000 or representing not less than one fortieth of the total voting rights at a general meeting. The Liberal Party supports the amendments of the Government in this area.



Apart from the above amendments, the Administration has taken on board the views of the Bills Committee and agreed to move a number of amendments in other areas to address members' concerns about these provisions and improve the drafting of the Bill. The Liberal Party believes that the enactment of the Bill will help to address the inadequacies of the existing company law; we therefore support the Second Reading of this Bill.

Madam President, I so submit.

**MR AMBROSE LAU** (in Cantonese): Madam President, I support the passage of the Companies (Amendment) Bill 2003 and its amendments on behalf of the Hong Kong Progressive Alliance (HKPA). The Bill seeks to improve the prospectus regime, the registration regime for oversea companies and to enhance remedies for shareholders. We are of the view that these proposals have a positive effect on promoting investment and consolidating the position of Hong Kong as an international financial centre.

Relevant amendments to the prospectus regime in the Bill are made in response to the suggestions of market players and professional bodies. The relevant amendments will enhance the clarity and rationality of the legal provisions which involve the prospectus regime and strengthen investor protection. With regard to the suggestions advanced by the Bills Committee and various organizations, the Government has accepted most of them and will move Committee stage amendments. Moreover, with regard to individual issues of concern to certain members and bodies, the Government has also made an undertaking to examine them in the Phase III review on overhauling the existing regulatory framework for offers of shares and debentures. We welcome this approach of accepting more different views.

Another major issue of the Bill is the enhancement of remedies for shareholders. Members were concerned about SDA. SDA is a newly introduced mechanism that involves complex issues, while experience in the international community in this respect is also quite limited. Despite the fact that the Government has taken on board the views from various sectors and members and made amendments to improve the provisions, we still have to wait

and see what practical problems will occur in implementation. The HKPA urges the Government to watch closely on the implementation after the Bill is passed and to conduct a comprehensive review in due course.

Madam President, I so submit.

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

**MS EMILY LAU** (in Cantonese): Madam President, I speak in support of the Second Reading of the Companies (Amendment) Bill 2003.

Madam President, this company law amendment has indeed walked a long and arduous road. On this Monday, Secretary Frederick MA attended the meeting of the Panel on Financial Affairs. Of course it was because he was requested by members to come to this Council before the end of this term and explain what he would do in the next term. In fact, Secretary Frederick MA did not say much, other than indicating that he would consider asking someone to redraft the entire Ordinance, of course he has to come and ask for money, but he declined to say how much funding would be required. Nevertheless, it would not be as much as what they had asked for in the papers they sent us last time concerning a provision of \$100 million to the Standing Committee on Company Law Reform (SCCLR). (That is the same amount of money spent by the Harbour Fest, Madam President). Now that the Secretary said he would not need \$100 million, perhaps just half of that, but he could not tell the exact amount, and he did not know whom he can entrust the job, and he did not know the time it would take. It is reported that that it will take eight or nine years to complete the task, whence the Secretary would have left his office, or he would have become the Chief Executive, that is something I cannot foretell.

For that reason, the question is, before he leaves his office, the most important thing is to complete the task. Therefore, Secretary Frederick MA should also explain in his reply later that this process, which was started 10 or 20 years ago, should come to a satisfactory ending. For that reason, I feel very angry for Hong Kong, especially for the relevant business sector and the trade. We always say that Hong Kong is an international financial centre or whatsoever, but we will be extremely sluggish when there are tasks we should deal with.

Hong Kong always follows the practice of the British, and during the scrutiny of the Bills Committee, our Chairman, Ms Audrey EU also knew that the British would not adopt some of the practices, but we just adopted them without knowing the reason for that. Thus it can be seen that the situation was really confusing.

Madam President, if we were to follow the British, we should know that the White Paper of Britain will only be issued next year, and after its issuance, honestly speaking, nobody really knows how long it will take before it is passed by the British parliament. Madam President, you also know that in our Legislative Council, even a Bill relating to education can be debated for 13 hours, and we have been dealing with it for so many years.

In fact, I do accept that we can follow the practice of the British. After all, we are led by the British to a large extent and we will follow its practice. Nevertheless, what about the practice in Britain? The Secretary said that it was unrelated, as we would start the work in the middle of next year. I then asked, "Would anything of ours be different from the British? Which of them could be started first?" Because I was hoping that we could start the whole thing as soon as possible.

Madam President, anyway, I support the Second Reading of the Bill. Firstly, of course, I have to praise Chairman Audrey EU, she was working so hard that some of the members of the Bills Committee gave her their support, but in fact there were only very few of them. Sometimes, we need to tell the truth. Nobody would know that once in a while nobody had attended those meetings, especially the topic under discussion was company law. Honestly speaking, I do not know that very well, I was just learning that from Chairman EU. Despite the small attendance at those meetings, the press did not report anything about it. More than 30 meetings were convened, nobody had reported them no matter any meeting was convened or not. Had any meeting been aborted, the press would report that these baddies were lazy, would they not? However, some members had signed up for membership of the Bills Committee but rarely turned up, and they would not speak even if they were present. Recently, I also noted that the press had reported which Member had attended which meeting and so forth. I urge them to look at the meetings of the Bills Committee which scrutinized the Bill relating to company law, if the media is fair, then the press should come and take a look at the situation of the meetings of each Bills

Committee. Ms Miriam LAU was the most "outrageous", for while she was reluctant to join the Bills Committee, she simply came and attended our meetings, which had caused us some troubles in terms of quorum.

In all, I consider Ms EU has done a great job, because she is well-versed in the matter, thus she could lead us to carry out the task. But in this process, I think, first of all, the Secretary was indeed too ambitious, for he wanted to achieve too many things. Just as Chairman EU said just now, some of the tasks were impossible to accomplish. Secondly, as I mentioned yesterday, if their preparatory work was adequate, we should not have spent so much time on it.

I do not wish to talk about other issues, I just wish to speak on SDA, because my view of this is different from that of the Bills Committee. Some people may question, "What do you know about this, Emily LAU? SDA?" I was just learning all along. We know that the SCCLR definitely understands that, but with regard to things proposed by others, the Government accepted some but declined some, thus we just put some odds and ends together. Then I said, wait a minute, since the Secretary felt concerned so much, and Ms Miriam LAU said that she was concerned about abuse, in fact the entire rationale of the Secretary was to give minority shareholders more rights to take legal actions, he should therefore not put so many hurdles in the way. The SCCLR also suggested that the Government should not place any hurdle to impede the application for leave. A consensus was also reached among members, and this point is clearly stated in the report of the Bills Committee.

Subsequently, the Government raised no objection as long as members of the Bills Committee considered it appropriate, since members were the ones backed up by ballots. The SCCLR considered the leave requirement unnecessary. Why? Because if leave is required, then the situation will become "a trial within a trial" as the English idiom says. (I just translate it as "審訊內再加審訊" in Chinese) In fact, colleagues also agreed that it was likely to happen. Some members considered that more provisions should be added, such as the relevant party may apply for costs, then the Bill might deal with them altogether. Some people told me that it was not necessary to get the money according to the provisions, that is, it would not be necessary to do it in that way. For that reason, I can say that I feel sorry for that, I am not saying that I feel sorry for colleagues. I just feel sorry that after the authorities had conducted a review of company law and the SCCLR had provided the information, yet the authorities suddenly said that they had a lot of ideas, and said that they have to

take a look at overseas practices, then they adopted some of practices and ignored some others, which had made we members of the Bills Committee sit here and do a lot of consultation in addition to many other tasks.

Madam President, how did the situation develop subsequently? After discussing the matter for a long time, a new issue emerged. When did that issue pop up? It was this March. The authorities thought that some kind of consensus could be reached after the introduction of this new issue. Some members suggested, "Could consultation be conducted first?" Actually, the set of proposals brought up by others was now scrapped by the authorities and now a consultation had to be conducted. After the consultation, replies were received in May. How was that? There was a divergence of views. That was not surprising at all. Then, it should be up to the Bills Committee to decide. Perhaps it was necessary to leave it that way.

Nevertheless, Madam President, I have to mention one thing, and that is, during this entire process, we have mentioned that some of the cases might have to be referred to the Court, since the Court has to enforce these regulations, then the Court should also be informed. Later on, I felt strange about the responses obtained by the authorities. It was because the responses did not only indicate that the Court had no disagreement with the fact that it had to enforce those regulations, each Judge had also expressed his own view of that matter (that is, whether applications for leave should be made). At that time, I felt strange when I learnt this news from the meeting of the Bills Committee, because our workload was extremely heavy already, and we thought that it was all right to carry on with the scrutiny anyhow. But the fact was there was a divergence of views among Judges. Nevertheless, Madam President, I must say that Judges should not express their views as far as policy is concerned. Subsequently, I inquired the Secretariat about this matter, because the matter had swiftly passed and no papers were submitted, and the authorities only stated that they had inquired the Court and the Court had made such responses and so forth. For that reason, my question was, "On what ground should they be asked to express their views?"

Anyway, I believe the Secretary should explain it, that is, whether or not the authorities had asked the Court (the Judiciary): Will there be any problem to enforce these regulations? Or whether or not the authorities took the initiative to ask the Court: As the issue of the granting of leave is controversial, will you Judges please give us your opinions? Did the authorities take the initiative to

inquire them? If the answer is positive, then they had made a serious mistake. If the answer is negative, despite they had given their opinions, the authorities should tell them, "This is none of your business, and you don't have to say all this." Nevertheless, I feel that since the authorities had done what they should not have done, and what should not happen had happened, I only hope that the Judiciary will understand that the powers and responsibilities are separated, that is, if anything involves the Court, then the Court should enforce those regulations, and the Court's view should be gauged. If the Court says it is all right, it is another story. However, as to a policy issue so controversial in nature, I believe it is not necessary for us to ask the Judiciary to express its views of this manner (and I feel that the Judiciary should not have done it) in that way.

Madam President, our colleagues eventually decided that leave must be obtained, but the decision on requirement of leave was not proposed by the SCCLR. Nevertheless, the authorities followed the scope recommended by the SCCLR. Initially, the authorities simply scrapped the scope proposed by the SCCLR, then drafted a similar scope subsequently. Some members said that since a scope was in place, and leave should be obtained, then it would be fine, however, the so-called threshold, as the Government put it, should be set at a lower point, in order to balance the interests of all parties concerned. For that reason, the current Bill is written in this way.

Despite we members have a divergence of views, we all agreed that the matter was complicated, and the views were so different. With regard to the views we obtained, no matter they came from the legal sector, the business sector or professional sector, they were very different, thus the Secretary said that he had to conduct a consultation.

Nonetheless, since I disagree with that, why have I not proposed an amendment? Madam President, you may say that anybody who disagrees with that may move an amendment. However, I have only one vote, thus in order not to waste time, I should admit defeat. Besides, I also accept the fact that many members of the Bills Committee have said that it should be done in that way. However, I wish to elaborate my own views here. I disagree with the views of the authorities because I consider the SCCLR was right. Why should so many hurdles be put in place? Madam President, honestly speaking, how many people are willing to spend so much money and efforts to take these legal actions? In fact, the entire reform proposed by the authorities seeks to facilitate minority shareholder in bringing SDA. Nevertheless, colleagues have their own wisdom thus the decisions were made.

Nevertheless, I really wish to put down a reminder here. We agree that this issue is very complicated, and relatively new, and if we take a look at countries which have similar arrangements in place, such as Australia and Singapore, we will find that there have been few cases during the last decade. Thus there is very little experience we can draw from. Therefore, the Bills Committee requested the Secretary to review the implementation in 2006-07. The Secretary undertook to reiterate this pledge in today's Second Reading. The Secretary also undertook that he would draw reference from other common law jurisdictions to examine what had happened there, then he would study all the information gathered. Honestly speaking, a review in 2006-07 is a bit too remote, if possible, I definitely hope that we can start discussing it earlier. Provided that anyone of us can be so lucky as to be elected and come back to this Council in October and join the Panel on Financial Affairs, I think we should follow this issue up. It is excellent that our Assistant Secretary General is here, for she is responsible for this subject.

In fact, with regard to the entire matter, I have a feeling that something has stuck in my throat all along, Madam President. The SCCLR would not have made those recommendations as if it has just awoken from a dream. It should have conducted consultations and summed up everything before making those recommendations. But the authorities considered them not suitable and hastily conducted a consultation within two to four weeks. Should we make the law in that fashion? Madam President, in fact, we also hope that we could have this Bill properly dealt with, thus Chairman EU said that we should speed up and convene as many meetings as we could. Nevertheless, some of the issues were complicated indeed and they involved a lot of things, thus we had to conduct more consultations, then we could follow the guiding principle after that. Who knows, when the Bill came before the Bills Committee, we had to start discussing the guiding principle all over again, and insofar as I am concerned, I am not convinced even today that so many hurdles should be imposed in the provisions of the Bill. I also feel that so doing will not help the entire situation, for this reason, I consider that we cannot achieve the legislative intent, and there will be trials within trials when they are brought to the Court in future. I do not consider that a good thing. I find this most unfortunate, but there is nothing we can do as the authorities decided to deal with this Bill in such a manner. With regard to Phases II and III in future (I do not know how many phases will be conducted), I think that it has dragged on for too long and taken too much time for discussion.

Of course, Secretary Frederick MA should not take all the blame. But, Secretary, you can do nothing, too, because you have taken this office and you have to do your job. The Secretary knows very well that if he wishes to do it in full swing, he would get the full support from this Council, and nobody would get in his way. But the fact is that the Secretary does not know what has gone wrong within his own department. Tony MILLER was in charge of this issue at the beginning, now Tong MILLER has gone, I do not know who is going to take charge of that. Nevertheless, this is his problem, we just wish to see the outcome. The Secretary said that he needed a funding of \$100 million, \$1 billion or \$40 million after he had studied the issue behind closed doors. But nobody will care about that, if the Secretary has any specific proposals, he should spell them out before he could do it in full swing. If he says that he can do it only after seven or eight years, just as I said on Monday, notwithstanding the fact that the Bill can be passed in seven or eight years, it will already be outdated. At that time, what kind of financial centre can we become and how can we say that we could gear to international standards. For that reason, Secretary MA cannot get it right even if he has decided not to sleep in the next few years. I think he has a lot of important tasks to accomplish. As to this SDA, I also hope that he can successfully deal with it and will not attract too many complaints, not making people feel that the provisions enacted fail to meet their legislative intent.

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

**MS MIRIAM LAU** (in Cantonese): Madam President, I just wish Ms Emily LAU could give a brief explanation, because she just said that Ms Miriam LAU was the most "outrageous". In what way was Ms Miriam LAU "outrageous"? I wish Ms Emily LAU could explain that more clearly. Thank you.

**MS EMILY LAU** (in Cantonese): Madam President, that "outrageous" is just a pet phrase of mine. My apologies to Ms Miriam LAU if my tone was too strong. I just wish to say that we should not be too anxious about protecting the interests of major shareholders. We just wish to protect minority shareholders and give them a chance of filing proceedings. Madam President, that was the impression I get from the scrutiny of the entire Bill. Nevertheless, I am a fair person, I said that she was not the only person, other members also agreed what I



said. I feel that the current problem is that we cannot find the point of balance, thus it is hard for minority shareholders to file proceedings. I feel that there are hurdles. However, if she feels that she has been offended. Madam President, I am most sorry about that.

**MS MIRIAM LAU** (in Cantonese): Madam President, I believe Ms Emily LAU must have forgotten in which respect she made such comment. Undoubtedly, I have had heated debates with Ms Emily LAU in the meetings of the Bills Committee when we argued about the issue of whether or not the provisions were too lax and some people might abuse them. I also mentioned it in my speech earlier. However, I was not so worried that many people would abuse it. I was just saying that if the mechanism allowed people to do it, then I considered that there was a problem.

However, just now when Ms Emily LAU mentioned that Ms Miriam LAU was very "outrageous", she was not talking about that issue. She was criticizing a lot of colleagues for not attending the meetings, and she said Ms Miriam LAU was the most "outrageous", or she had even caused the meeting to abort. Can she elaborate in what way Ms Miriam LAU was "outrageous"?

**MS EMILY LAU** (in Cantonese): Madam President, with regard to that comment, I was actually praising her. It is most unfortunate that it was mistaken. Although Ms Miriam LAU was not a member of the Bills Committee, she simply attended our meetings, of course that was her own decision, and perhaps it was because she is a member of the Liberal Party. Besides, even she came and attended our meetings, she could not be counted and could not make a quorum, on the other hand, other members are obviously members of the Bills Committee, but they did not attend the meetings. For that reason, it was a slip of the tongue, the ones who were "outrageous" were members who failed to come to attend our meetings. As to the reason why she was "outrageous", it is because we had been inviting her to join the Bills Committee all along, if she joined the Bills Committee, then she would be counted and she could make a quorum, but she had been reluctant to join right from the start, it was not until the final stage that she agreed to join the Bills Committee. Since her participation, whenever we counted the quorum, we could easily make the quorum. Madam President, this is why I said that she had been "outrageous". Thank you.

**PRESIDENT** (in Cantonese): In that case, I had better let Chairman of the Bills Committee say something. Ms Audrey EU.

**MS AUDREY EU** (in Cantonese): Madam President, please allow me to do some clarification here. Madam President, it was just like what Ms Emily LAU has said, although a lot of members had signed up for membership of this Bills Committee, but when meetings were convened, we often had a quorum problem, perhaps it was because the Bill was dull and dry or it was due to its technicality, thus a lot of members did not show up.

With regard to representative from the Liberal Party, originally, Mrs Sophie LEUNG had signed up for membership of the Bills Committee. Since she had signed up, Ms Miriam LAU did not join the Bills Committee at the beginning. Nevertheless, Ms Miriam LAU had been following up the legislative process of company law, be it last year's legislation or those in the past. Thus I told Ms Miriam LAU that we hoped she could join the Bills Committee. She was concerned about a certain part of the Bill, that is, Schedule 4. As to other parts of the Bill, such as the part relating to prospectus, perhaps she considered that it would be adequate to leave it to Mrs Sophie LEUNG to deal with in the Bills Committee.

As to the part of concern to her, she attended our meetings frequently, therefore, Madam President, you may recall that when I delivered my speech earlier, I extended particular thanks to three members of the Bills Committee who were often present at our meetings and actively discussed with us and provided a lot of input, and I mentioned Ms Miriam LAU in particular. In fact, the Bills Committee did invite her to join us. But, Madam President, as you are aware, due to the regulation, she did not apply for the membership at the beginning, thus if she wished to join the Bills Committee, she should apply for the membership, and we would approve of her application. But Ms LAU was very unassuming and said that she just came to give her opinions with regard to various provisions, she would definitely come to our meetings, she was diligent in attending our meetings, but it was not necessarily for her to sign up for the membership. Nevertheless, until the very late stage, we really had no other alternatives because our attendance was diminishing, for each time, only one or two members would attend our meetings, so we made every effort to persuade Ms Miriam LAU to sign up for the membership. It was not until the final stage

that she finally requested to sign up for the membership after she had industriously attended numerous meetings. It could be said that we were pleased beyond expectations. We approved of her application immediately and welcomed her joining us. She has been attending our meetings all along, for that reason, Madam President, I have to extend thanks to her in particular.

**PRESIDENT** (in Cantonese): Originally, the Rules of Procedure prohibits such a lengthy clarification, but this is a special case, because I was also baffled. When I heard Ms Emily LAU say Ms Miriam LAU would cause the meeting to abort as she was not actively taking part in the meetings, I was also baffled by that. For that reason, in the interest of fairness, I consider that we should give members an opportunity to make clarification in order to avoid unnecessary misunderstandings. However, I have to state clearly that this should not be repeated or serve as a precedent, otherwise the debate of this Council will become very lengthy. However, I also request Ms Emily LAU to speak with clarity and not to speak hastily.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I now call upon the Secretary for Financial Services and the Treasury to reply.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, the aims of the Bill are manifold, including making improvements to the prospectus regime to facilitate market development; to strengthen remedies that can be adopted by shareholders for their own protection, in particular minority shareholders; to amend the definition of "subsidiary" for the purpose of preparing group accounts with the International Accounting Standards and to modernize the registration regime for oversea companies.

I am heartily grateful to the Chairperson of the Bills Committee, Ms Audrey EU, and its members, in particular, those who attended the meetings

frequently, for their hard work over the past several months. This is because I too agree that the Bill is very technical in nature and did not receive the attention that it deserved from the media. I am also grateful to the individuals and groups who have submitted representations to the Bills Committee. Their constructive views have contributed to the discussions of the Bills Committee.

I will move amendments to some provisions of the Bill at the Committee stage. All the amendments have been considered and discussed by the Bills Committee. I also wish to give a brief account on the main contents of the Bill and its amendments, as well as responding to some issues raised by Members in the earlier discussion.

All the proposals in Schedule 4 of the Bill seek to enhance the remedies that minority shareholders can consider taking in the face of unfair prejudice. Our major proposals include the introduction of statutory derivative action (SDA), revisions to the remedies that shareholders can take if they are subjected to unfair prejudice, empowering shareholders to inspect company records and applying to the Court for an injunction order. The aim of all these amendments is to implement the recommendations of the Standing Committee on Company Law Reform (SCCLR).

When considering the provision in the Bill relating to bringing an SDA before the Court on behalf of the company by a member of the company, the Bills Committee was concerned mainly about two major issues relating to the provision, namely, whether leave should be applied from the Court for bringing an SDA and the circumstances to which the SDA should apply.

In accordance with the recommendations of the SCCLR, the Bill provides that a member of a company may without leave of the Court bring an SDA but has to serve a notice on the company concerned. In addition, we also propose that the Court may strike out a proceeding on the grounds that the proceeding is not in the best interest of the company or brought in good faith.

Earlier, we have heard Members explain that some members of the Bills Committee were concerned that the proposal to dispense with leave from the Court may give rise to rash or unreasonable proceedings. They are of the view that the onus should be placed on the member bringing the action rather than placing the onus on the company by putting in place a striking-out mechanism.

Some members also held the view that practically, upon the bringing of a derivative action by a shareholder, the Court would very likely order a preliminary hearing to determine whether it is proper for the SDA proceedings to continue. The Bills Committee noted that in other similar jurisdictions that have put in place mechanisms for SDA, leave from the Court is required before proceedings can be brought.

In response to the suggestions of the Bills Committee, we conducted a consultation on whether leave should first be obtained from the Court, and that is the consultation mentioned by Ms Emily LAU just now. Just as Ms Emily LAU said, the responses we received include supporting and opposing views. However, I wish to point out that the consultation was conducted in response to the views of the Bills Committee. After we commenced the consultation, the Judiciary subsequently conveyed its views to us. Therefore, it cannot be said that we had not conducted any consultation beforehand and did so only afterwards, nor can it be said that we conducted a consultation for no apparent reason. As far as I understand, this consultation was conducted in response to the suggestions of the Bills Committee.

After detailed deliberations, most members of the Bills Committee agreed that a shareholder should be required to obtain leave from the Court to bring an SDA on behalf of his company. As Ms Emily LAU has said, this is at variance with the views of the SCCLR. However, this is precisely the task for bills committees and the spirit of establishing them. We put forward proposals according to the recommendations of the SCCLR and took them to the Bills Committee. After a series of debates, the Bills Committee finally arrived at different views. Of course, we respect the spirit of legislation and the legislative system. Therefore, I feel that this in fact shows that we have an excellent system and any difference in opinion may not necessarily be bad.

I wish to talk further about the conditions that the Court should consider in deciding whether to grant leave to bring proceedings. Most of the representations we received stated that the threshold must be set at a meaningfully low level.

In view of the majority view in the Bills Committee — and I stress the majority — the Government agreed to move an amendment to provide that a shareholder is required to obtain leave from the Court before he can bring an

SDA on behalf of his company and the conditions have been lowered to "it appears to be *prima facie* in the interests of the company", "the shareholder is required to serve a notice before taking proceedings", and so on.

In a common law derivative action (CDA), the scope of such an action is not defined. In other jurisdictions, there is also no such restriction on SDA. Therefore, we did not impose any restriction on the scope of SDA in the Bill.

Some people requested that SDA be restricted to certain wrongdoings and the Bills Committee subscribes to the same view. Therefore, we will propose amendments to limit the scope of SDA so that they are applicable only to fraud, negligence, breach of duty or default.

SDAs will be applicable to Hong Kong incorporated companies and non-Hong Kong companies. In order not to deprive shareholders of rights otherwise available to them under common law, the Bill proposes the co-existence of CDA and SDA, so as to give shareholders one more option to initiate an action. The Bills Committee agreed with such an approach. Members however are still concerned that this may give rise to procedural problems. For instance, a shareholder may seek to take derivative actions respectively under common law and the statute, hoping to increase his chances of success. In view of this concern, the Government has agreed to propose an amendment to include express provisions to empower the Court to dismiss any right of a shareholder to bring any CDA in respect of the same matter that exists simultaneously or overlaps in two proceedings, including any leave granted for any SDA brought by a shareholder, and *vice versa*.

I believe that the SDA provisions after amendment can already strike a balance between protecting the interests of shareholders and preventing any abuse of derivative actions. However, on the scope of SDA and such issues as whether shareholders should obtain leave from the Court before bringing any proceeding, as Members have heard, the views of various groups are divergent. In addition, a member opined that in the long term, to allow SDA and CDA to co-exist is not a satisfactory arrangement.

In view of the requests of the Bills Committee, I agreed to make an undertaking here to review the implementation of the SDA provisions in 2006-07, including whether CDA should be retained and the relevant review will take into consideration the relevant experience in other common law jurisdictions.

Therefore, I urge Ms LAU to rest assured because I will definitely do so, since I will still be in office in 2006-07.

Based on the views of the Bills Committee and people who have written to the Bills Committee, I agreed that amendments be proposed to improve the operation of the other remedies in the Bill for the protection of the rights of shareholders, and one of the major amendments is related to making an application for inspection of the records of a company by its shareholders. The Bill provides that on condition that the Court is satisfied that "the application is made in good faith" and "the inspection applied for is for a proper purpose", it can order a member or a representative of the company to inspect the records of the company. The Bills Committee is of the view that in order to strike a proper balance between the rights of minority shareholders and the interests of companies, it is appropriate to impose a minimum shareholding requirement or a minimum number of shareholders requirement, in addition to the two aforementioned criteria, so as to establish that the applicant for an order to inspect a company's records has a substantive interest in the company. In view of the opinions of the Bills Committee, I agree to propose an amendment to specify the relevant requirements.

In order to consolidate Hong Kong's position as an international financial centre, we are striving to promote the diversified development of Hong Kong's financial market. In this connection, one of the focuses of government policy is to promote the development of the bond market. In this regard, Members all know that we have made a lot of effort, including making improvements to the financial infrastructure, providing tax concessions, encouraging public organizations to take the lead in issuing bonds, and so on. This also includes the Government setting an example by issuing bonds. The proposals in Schedule 1 of the Bill all aim to streamline the procedures for issuing bonds to facilitate the development of the bond market.

After listening to the specific demands of market participants and making reference to the views of the Securities and Futures Commission (SFC), we made the proposals in Schedule 1 with the main aim of simplifying the procedures for the registration and issue of prospectuses, thereby facilitating the issue of retail bonds and other financial products.

One of the major proposals in Schedule 1 is to exempt 12 types of offers from the requirement of issuing prospectuses. These include offers made to

professional investors, offers made to not more than 50 persons, offers in respect of which the total consideration payable shall not exceed HK\$5 million and offers in respect of which the minimum consideration payable by individual investors is not less than HK\$500,000, and so on.

In addition, the Bill proposes that prospectuses be allowed to be made up of more than one document and permission for them can be obtained from the SFC separately, and they can be issued to the Company Registry and the investing public separately to facilitate programme offers, that is, offers on a repetitive, continuous basis or by batches. Under this system, issuers can register with the SFC a programme prospectus setting out the issuer's business and other financial and basic information. Subsequently, the issuer only has to draft an offer prospectus setting out the details of individual sales such as interest rates and matters relating to settlement. This will serve to reduce the burden of the issuer in registration and issuing prospectus.

Another measure is to provide clearly that it is permissible for issuers to issue awareness advertisements to set out the basic facts and information on the relevant procedures concerning an offer. This measure can raise the awareness of investors of the offers concerned and allow investors more time to make financial arrangements.

While we facilitate issuance, we have also taken this opportunity to amend other provisions concerning prospectuses to enhance protection for investors. For example, we propose it be clarified in the Bill that crucial omissions in prospectuses will be regarded as misrepresentation in prospectuses and the relevant persons, such as company directors or those authorizing the issue of the prospectus, will have to bear the same civil or criminal liabilities.

We are also fully aware of the importance of enhancing the transparency of the SFC. Therefore, one of the proposals in Schedule 1 is to require the SFC to, when exempting a company from compliance with any or all of the requirements of specific provisions, publish on its website the details of the exemption, so as to enable market players to understand why such an action is taken.

I wholeheartedly thank Members for their support of the proposals on the new prospectus regime as well as their valuable views on how to improve the prospectus regime. The proposals in Schedule 1 include various improvement



measures on the prospectus regime made under the existing legal and regulatory framework. We believe that, as the market develops, there will still be room for improvement in the existing regime. Therefore, the SFC is now conducting a comprehensive review of all local laws and procedures governing public offers of securities by making reference to other jurisdictions, with a view to introducing an efficient, competitive and equitable regulatory framework for market participants.

When scrutinizing Schedule 1, the Bills Committee expressed a number of views. Some of them cannot be incorporated into the amendments to the Bill due to restrictions under the existing framework. We have requested the SFC to consider and examine these views in the context of the aforementioned review, which include:

First, whether the prospectus regulatory regime should be "document-based" or "transaction-based". The former regulates documents of offer and the latter, acts of offer, and the regulatory requirements involved are not confined to documents of offer.

Second, whether the term "company" referred to in the prospectus provisions in the Companies Ordinance should be amended to align it with the definition of "company" in other provisions in the Companies Ordinance or other related ordinances.

Third, whether different regulatory requirements should be stipulated for offers made by a company to its employees or their family members.

Fourth, whether the issuer should assume any legal responsibility to notify and compensate the shareholders concerned and whether the offer should be nullified if any amendment is made to a prospectus after issue.

We have obtained the undertaking of the SFC to consider the above suggestions made by Members when conducting its review.

The amendments to Schedule 3 of the Bill are mainly related to overseas companies. These amendments include replacing the term "oversea company" by "non-Hong Kong company", simplifying the registration requirements for non-Hong Kong companies and enhancing the disclosure requirements of non-Hong Kong companies.

Schedule 3 also introduces some miscellaneous amendments, including enabling the electronic incorporation of a company and streamlining the incorporation procedures, as well as removing the upper limit on the number of partners in a partnership.

The Bill proposes to simplify the existing definition of "place of business" applicable to overseas companies by using common law cases to illustrate what is considered "place of business".

However, some deputations have raised the concern that the proposal to remove the element of share transfer/registration office from the definition of "place of business" could have a significant impact on the amount of information available in respect of companies listed in Hong Kong which are not incorporated in Hong Kong and do not have any operations in Hong Kong except for the maintenance of a share registration office. They also pointed out that there is no requirement under the Listing Rules of the Hong Kong Exchanges and Clearing Limited (HKEx) for a place of business to be established before a company can be listed in Hong Kong.

In view of the concern raised, we further consulted the SFC and HKEx. We agreed to move a Committee stage amendment to retain the element of "share transfer or share registration office" in the definition of "place of business" in order to clarify the meaning of the text.

We also propose to introduce an amendment relating to the registration of charges by "non-Hong Kong companies". One of the amendments is made in view of the report of the SCCLR and proposes that companies must submit to the Companies Registry the details of charges on property brought into Hong Kong. The Bills Committee and some groups expressed their concern on the concept of "brought into Hong Kong". The concept of property being "brought into Hong Kong" originated from the United Kingdom but has not been put into practice there.

In view of the comments of the Bills Committee, we propose to delete the concept of "brought into Hong Kong" and will further review the criteria to be adopted in the registration of charges by "non-Hong Kong companies" in the light of developments in the United Kingdom. We will propose the amendments later.

The amendments in Schedule 2 of the Bill are related to group accounts. Since the Bills Committee did not have sufficient time to scrutinize this Schedule, I will propose an amendment to delete Schedule 2 and the consequential amendments to Part 2 of Schedule 5. It is our plan to propose the relevant amendments again in the next Legislative Session.

Madam President, the enactment of the Bill will make Hong Kong's company law more business-friendly and ensure that the Companies Ordinance continues to provide Hong Kong with the commercial legal infrastructure commensurate with its status as a major international commercial centre. Improving the prospectus regime will facilitate market development, enhancing the protection to shareholders will raise corporate governance standards and modernizing the registration regime for oversea companies will lighten the burden of companies in complying with requirements.

Ms Audrey EU and Ms Emily LAU have raised issues relating to the review of the Companies Ordinance. First, I have heard Members convey their attitudes and views concerning the Administration. In fact, to put it very simply, the Companies Ordinance is very important to Hong Kong as an international commercial and finance centre. Therefore, I agree totally with the views expressed by Members, that the provisions relating to certain aspects in the Companies Ordinance have to be rewritten as soon as possible. I can assure Members that I will endeavour to make a good job of this even if I have to sleep less. However, there are some issues which cannot be resolved merely by sleeping less because I have to rely on the assistance of many people, including legal experts. Therefore, if sleeping less will enable me to complete the task, then I would rather sleep two hours less each day. However, this is not a matter of sleeping more or less. Nevertheless, I can pledge to Members that I will exert my utmost.

In addition, in the meeting of the Panel on Financial Affairs held on Monday, Ms Emily LAU also asked me why it had taken such a long time. I have already explained this and do not wish to repeat here. However, since some Members did not attend the meeting of the Panel on Financial Affairs on that day, I wish to take this opportunity to explain a little bit. This was because it is necessary for us to find the right persons as we did not wish to see a repetition of the mistake in the '90s, that is, although I would not say nothing has been achieved, in the final analysis, nothing much has been achieved after a long period of time. This is what I understand to be the case. Therefore, we have to find the right persons, and do so as soon as possible. I am also confident that

we will be able to find the right persons to assist us in this task, therefore, the timetable proposed by us is an extended one, so much so that it will not be concluded even after the accountable officials of the present term have left office. This is the fact, and this task can be completed only after 2007. However, I believe the Government will definitely carry on the work in this area and this will have nothing to do with whether so and so is in office.

Second, there is the issue of money. According to the information obtained by the SCCLR, \$100 million will be required, that is, \$100 million will be required to rewrite this piece of legislation. However, from the viewpoint of the Government, of course we hope that as much resources can be saved as possible. Therefore, Members may rest assured that we will use as little resources as possible in carrying out this task.

Ms Audrey EU rightly reminded us that as a financial centre, corporate governance is of the utmost importance. Members will remember that in January 2003, I proposed a programme of action for enhancing corporate governance in a meeting of the Panel on Financial Affairs of the Legislative Council. Most of the tasks proposed at that time have already been completed. Even if this is not the case for some of them, timetables have already been set down and they are now in progress.

I totally agree with Ms Audrey EU's comment that the programme of action on corporate governance should be completed as soon as possible. I can say that, in this regard, our wish is entirely the same as that of Members. Since we have to consolidate Hong Kong's position as a financial centre, it is necessary to achieve the best in corporate governance. Here, I also wish to assure Members that my colleagues and I will exert our utmost. Thank you, Madam President.

**MS AUDREY EU** (in Cantonese): Madam President, I am sorry, I wish to clarify a point, which is related to consulting the Judiciary.

**PRESIDENT** (in Cantonese): Do you wish to clarify your own comments?

**MS AUDREY EU** (in Cantonese): No, because when the Secretary made his response to Ms Emily LAU.....

**PRESIDENT** (in Cantonese): Then do you wish the Secretary to make the clarification?

**MS AUDREY EU** (in Cantonese): Madam President, no. Just now Ms Emily LAU criticized the consultation with the Judiciary and she asked the Secretary to respond, but the Secretary responded that it had nothing to do with him, and said that it was the Bills Committee which had requested the authorities to consult the Judiciary. For that reason, I wish to clarify this point.

**PRESIDENT** (in Cantonese): Fine, please go ahead with your clarification.

**MS AUDREY EU** (in Cantonese): Madam President, Ms Emily LAU commented that she did not understand why the Judiciary had been consulted. She said that was a matter of policy, thus the Judiciary should not have been consulted. Secretary Frederick MA explained that it was not requested by the executive, but they just did it at the request of the Bills Committee.

Madam President, in fact the relevant issue was about SDA, and what we requested the authorities to consult the Judiciary or seek clarification from the Judiciary was the issue in terms of technicality, and that was reasonable, because SDA is different from common law, and it would cause a technical problem, especially in respect of disclosure of document. Madam President, I shall leave the technical issue alone now, but since we have these technical problems and the Judiciary ought to make certain rules for the Bill, we therefore considered whether or not we should consult the Judiciary and ask them if the provisions would be made impracticable because of the technical problem involved in making those rules. We did seek the advice of the Legal Adviser of the Legislative Council in particular, and he told us that there was a precedent, that is, we should consult the Judiciary on that matter. For that reason, we requested the authorities to conduct the consultation. However, perhaps the consultation paper included all of the matters, that is, besides the rules and technical problems that were related to the question, the question of leave requirement was also included in the consultation paper sent to the Judiciary. The subsequent response comprised views of the Judiciary as well as views of

some Judges with regard to whether a Court's leave should be required, and therefore the resultant incident. This is all I wish to clarify.

I agree with Ms Emily LAU, that on matters of policy, we should not consult the Judiciary. I also wish to explain that the reason for the Bills Committee having requested the consultation is the Court has to make certain rules, whilst the modification of SDA would give rise to some problems, that is, problems which would be caused by the disclosure of information and the making of certain rules, therefore we have to consult the Judiciary, and that was the only point we wish to consult the Judiciary. I wish to thank the President for allowing me to make the clarification.

**PRESIDENT** (in Cantonese): This should indeed not serve as a precedent. As members of the Bills Committee, you should have a clear understanding within the Bills Committee, and you should not seek clarification in Council meetings. Secretary, your colleagues should also have a clear understanding of.....

(The Secretary raised his hand and indicated a wish to speak)

**PRESIDENT** (in Cantonese): You have to make a clarification? Then please go ahead with your clarification.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): It is not the case that I want to clarify, but I just want to thank Ms Audrey EU for explaining to everyone the actual circumstances. I make an undertaking to Members that I will do some work internally because I also want to understand what has happened. Thank you, Madam President.

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

Council went into Committee.

### **Committee Stage**

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

### **COMPANIES (AMENDMENT) BILL 2003**

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

**CLERK** (in Cantonese): Clause 1.

**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, 3 and 4.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(7) thereof be suspended in order that this Committee may consider Schedules 1 to 5 ahead of clauses 2, 3 and 4.

**CHAIRMAN** (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

**PRESIDENT** (in Cantonese): Secretary for Financial Services and the Treasury, you have my consent.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I move that Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Schedules 1 to 5 ahead of clauses 2, 3 and 4.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Schedules 1 to 5 ahead of clauses 2, 3 and 4.

**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.

Council went into Committee.

### **Committee Stage**

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

**CLERK** (in Cantonese): Schedules 1 to 5.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, I move the amendments to Schedules 1, 3, 4 and 5 and the deletion of Schedule 2, as set out in the paper circularized to Members. I will now briefly explain the main points of the amendments.

Schedule 1 spells out the provisions concerning the prospectus regime. One of the major amendments is related to the exemption from compliance with specific provisions granted by the Securities and Futures Commission (SFC) to certain types of companies or prospectuses. According to the existing Companies Ordinance, the SFC may by notice published in the Gazette exempt certain types of companies or prospectuses from compliance with specific provisions in the Ordinance.

Clause 16 in Schedule 3 seeks to empower the SFC to amend the scope of exemption from specific provisions by publishing an order in the Gazette. The aim of this arrangement is to allow the SFC greater flexibility in making timely adjustments in response to market developments and needs.

Some members of the Bills Committee suggested that we add a requirement in the Bill stipulating that public consultation be conducted on a class exemption notice or an order concerning the scope of exemption from a specific provision before granting exemption to certain types of companies or prospectuses or amending the scope of exemption from specific provisions. Although the existing Companies Ordinance does not require the SFC to conduct public consultation, the SFC will usually conduct consultations on relevant exemption proposals, so as to cater more closely to the needs of the market.

In response to the suggestions of the Bills Committee, we will propose amendments to incorporate the existing practice into the legislation and provide clearly in law that the SFC has to conduct consultation before publishing an exemption notice or amendment order in the Gazette.

The amendments in Schedule 2 are related to group accounts. Since the Bills Committee did not have sufficient time to scrutinize this Schedule, I propose an amendment to delete the Schedule and the consequential amendments.

Schedule 3 sets out the provisions relating to the registration regime for oversea companies. I have already explained the major amendments and will not give a detailed account on them here.

Schedule 4 sets out the provisions relating to the remedies to protect the interests of shareholders. The amendments to clause 3 of the Schedule are aimed mainly at imposing a minimum shareholding requirement or a minimum number of shareholders requirement in respect of applications to inspect company records and improving the operation of the inspection mechanism, for example, to require that the information or documents obtained as a result of an inspection order should be used only in relation to the purpose for which it was sought unless otherwise ordered by the Court. The purpose of the amendments to clause 4 is mainly to clarify that the provisions in the Schedule will not have the effect of entitling any shareholder to recover by way of damages any loss which only the specified corporation is entitled to recover under common law, and to add a transitional provision to stipulate that before the commencement of the provision, applications made according to the existing section 168A will be dealt with according to the existing section 168A. The aim of the amendments to clause 5 in the Schedule is to implement the matters to which I have responded concerning SDA. The amendments to clause 6 seek mainly to improve and

clarify the provisions concerning the operation of the injunction mechanism, for example, to provide clearly that the Court may grant interim injunction orders on such terms and conditions as it considers appropriate.

Schedule 5 sets out the consequential amendments and other amendments related to the Bill, two of the major amendments being deleting the consequential amendments in Schedule 2 and other consequential amendments made in view of other new legislation.

Thank you, Madam Chairman.

*Proposed amendments*

**Schedule 1 (see Annex VI)**

**Schedule 2 (see Annex VI)**

**Schedule 3 (see Annex VI)**

**Schedule 4 (see Annex VI)**

**Schedule 5 (see Annex VI)**

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

**DR ERIC LI** (in Cantonese): Madam Chairman, please allow me to speak on Schedule 2 of the Bill. Schedule 2 seeks to amend the provisions relating to group accounts, but this time around the amendments will be removed.

Ms Emily LAU was right. Hong Kong has to bring its company law in line with the world, and the amendment to group accounts is one of the areas which lags behind international accounting standard. Just as Ms Emily LAU said, while we have not made any amendment, a number of improvement has already been made in the international community. As we are lagging behind in that way, I would like to express my disappointment for not being able to solve the problem because of the time factor this time around. But such amendment is a matter of urgency.

I have to tell Chairman of the Bills Committee, Ms Audrey EU, that it was one of the major reasons for me joining the Bills Committee. With regard to other issues, of course I also wished to participate, but the meetings of the Public Accounts Committee had to change from time to time due to the lack of quorum, which had made it even more difficult for me to attend the meetings of the Bills Committee. Perhaps the Bills Committee has more lawyers or members who are concerned about interests of minority shareholder, thus as far as priority is concerned, they would rather discuss SDA first, and members have spent quite a lot of time on the issue. They might have thought that accounts were very complicated and needed a long time for discussion, thus they did not give this item the priority it deserves.

An accountant is of course no match for so many lawyers, but I am fortunate today to have invited the chairman and senior members of the Hong Kong Society of Accountants to take the seats above the Secretary (on the public gallery), and I hope this will give him some pressures to revisit these issues which have been lagging far behind in the Legislative Council in the next Session, so that this Council could have more time to discuss them, because we are falling far behind our international peers. As a lot of oversea companies will be listed in Hong Kong, it is necessary for us to deal with the accounts issue by aligning it with the international standards as soon as possible.

I hope the Secretary has listened to what I have been saying. We do not need too many experts to solve this problem, because the Hong Kong Society of Accountants has been co-operating with the Government for a long time, and by and large, the technical problems have already been dealt with. I think the accounting sector can finish the job expeditiously if he sleeps less. The only regret that I feel is the fact that two pieces of legislation relating to company rescue under company law could not be completed in my term of office in this Legislative Council.

I hope the Secretary will give us a response. Thank you.

**MS AUDREY EU** (in Cantonese): Madam Chairman, in fact, I wish to state it clearly that the Bills Committee has actually reserved some time to deal with Schedule 2, and we have the intention to deal with Schedule 2. Had other problems not emerged at that time, we should have been willing to convene

additional meetings to deal with Schedule 2. For that reason, it was not the case as Dr Eric LI put it, that since too many lawyers had put their focus on the interests of minority shareholders, the issue concerning accounts or international regulations in Schedule 2 was ignored. The situation was, by the time we were prepared to deal with issues relating to Schedule 2, we received news that the Hong Kong Society of Accountants had other views, and other bodies had some other views and they would like to take a closer look at the relevant development. Moreover, just as Dr Eric LI said earlier, our international peers had also gained certain progress in that respect. For that reason, the final conclusion was, if we convened additional meetings to deal with this issue, while the international community was also scrutinizing the relevant regulation, the time might not necessarily be used effectively. We were also aware that if the Bills Committee was to deal with these issues after conclusions were made by experts, then we needed not spend much time on them.

Therefore, under that circumstance, we agreed to wait until other bodies, experts and international community have gained a clearer picture on these matters, before it is introduced to the Legislative Council for scrutiny. Even if we are unable to complete the task within this Legislative Session, whoever are elected in the next term, this part of the issue should be left to them and they may not need to spend much time on it. Because according to my understanding, the international community will only implement the new set of regulations by next year, thus we would absolutely not slow down the amendment process of that part. Madam Chairman, I hope I have clarified the relevant question on this point.

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

(No Member indicated a wish to speak)

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, I wish to thank Dr Eric LI for his comments and Ms Audrey EU for her clarification. I undertake here that we will table further amendments in the next term of the Legislative Council. Unfortunately, Dr Eric LI has decided to leave the legislature. Nevertheless, I can assure Dr Eric LI that no matter whether you will still be in the legislature or not, we will continue to deal with this problem. What is more, we have members of the

Hong Kong Society of Accountants sitting up there. Although I cannot see them, I can still feel the pressure. Thank you.

**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.

**CHAIRMAN** (in Cantonese): As the amendment to Schedule 2, which deals with deletion, has been passed, Schedule 2 is deleted from the Bill.

**CLERK** (in Cantonese): Schedules 1, 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.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, I move the amendments to clauses 2, 3 and 4, as set out in the paper circularized to Members. These amendments are consequential amendments made as a result of the deletion of Schedule 2. Thank you, Madam Chairman.

*Proposed amendments*

**Clause 2 (see Annex VI)**

**Clause 3 (see Annex VI)**

**Clause 4 (see Annex VI)**

**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, 3 and 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **COMPANIES (AMENDMENT) BILL 2003**

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

Companies (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 Companies (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.

(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): Companies (Amendment) Bill 2003.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Supplementary Appropriation (2003-2004) Bill.

### **SUPPLEMENTARY APPROPRIATION (2003-2004) BILL**

#### **Resumption of debate on Second Reading which was moved on 16 June 2004**

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Supplementary Appropriation (2003-2004) 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): Supplementary Appropriation (2003-2004) Bill.

Council went into Committee.

### **Committee Stage**

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

### **SUPPLEMENTARY APPROPRIATION (2003-2004) BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Supplementary Appropriation (2003-2004) Bill.

**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): Schedule.

**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.

### **SUPPLEMENTARY APPROPRIATION (2003-2004) BILL**

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

Supplementary Appropriation (2003-2004) Bill

has passed through Committee without amendment. 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 Supplementary Appropriation (2003-2004) 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): Supplementary Appropriation (2003-2004) Bill.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Criminal Procedure (Amendment) Bill 2004.

### **CRIMINAL PROCEDURE (AMENDMENT) BILL 2004**

**Resumption of debate on Second Reading which was moved on 17 March 2004**

**PRESIDENT** (in Cantonese): Miss Margaret NG, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

**MISS MARGARET NG:** Madam President, as Chairman of the Bills Committee on Criminal Procedure (Amendment) Bill 2004, I wish to report on the main deliberations of the Bills Committee.

The Bill seeks to provide for a revised scheme for the determination of the minimum term to be served by a prisoner who is being detained at Executive discretion, or serving mandatory life sentence in respect of the conviction of murder committed under 18 years of age, or serving discretionary life sentence with minimum term previously determined by the Chief Executive. In studying the Bill, the Bills Committee is particularly concerned about whether the rights of the prescribed prisoners would be protected.

The proposed section 67C(1) of the Criminal Procedure Ordinance requires the Secretary for Justice to apply to the Court of First Instance for a determination of sentence by a Judge in respect of each prescribed prisoner within six months after the commencement of the section. However, under the proposed section 67D(1), the Judge may extend the period on an application by the Secretary for Justice. The Bills Committee has queried the need for the proposed section 67D(1). The Bills Committee is concerned that by providing the right of the Secretary for Justice to apply for an extension, the requirement under the proposed section 67C(1) would be meaningless.

To safeguard the rights of prisoners, the Bills Committee has suggested that the prescribed prisoners concerned should be given the right to compensation should delay be caused to the hearing of their cases as a result of the Secretary for Justice applying for an extension, or alternatively, they should be allowed to apply, at public expense, to the Court for a determination if the Secretary for Justice does not submit an application within six months.

To clearly reflect its policy intent and to address the Bills Committee's concern, the Administration has agreed to move amendments to the effect that the Secretary for Justice must apply to the Court for a determination of sentence in respect of each prescribed prisoner as soon as practicable, and in any event within six months after the Bill comes into operation. If the Secretary for Justice fails to do so, a prescribed prisoner could apply to the Court for a determination. The proposed section 67D(1) will be deleted. Since payment of fees is not required for such an application, at the request of the Bills Committee, a provision will be made to clearly set this out in the Bill.

The Administration has assured the Bills Committee that the Secretary for Justice will comply with her obligation under the proposed section 67C(1). The Secretary for Security has undertaken to give an assurance on this point when he speaks later on today.

In response to the Bills Committee's concern about the need to protect the rights of prescribed prisoners, the Administration has agreed to add provisions to require the Secretary for Justice to serve a copy of the application on the prescribed prisoner, to require the Registrar of the Court to provide to the prescribed prisoner the record of proceedings relating to the prescribed prisoner's sentence and any report concerning the prisoner which was before the Court which passed the relevant sentence where the application is made by the prescribed prisoner, and to allow the prescribed prisoners to apply to the Judge for further records or documents after the case has been listed for hearing.

Madam President, the Bills Committee is also concerned about the proposed section 67F(2). Under the proposed section 67F(2), the previous conditional release order made by the Long-term Prison Sentences Review Board will cease to have effect when the Judge has given a fixed term sentence for the prescribed prisoner under the proposed section 67C(3)(b), and the prisoner concerned will be recalled to prison to serve the remainder of the sentence, if any. The proposed section 67C(3)(b) provides the Judge a discretion, subject to the consent of the prescribed prisoner, to quash the original sentence and substitute a fixed term sentence of imprisonment.

The Bills Committee has expressed doubt about the need for the proposed section 67F(2). The Bills Committee has pointed out that the purpose of the proposed section 67C(3)(b) is to address the concern that some prescribed prisoners would be faced with prolonged and open-ended uncertainty as to when they could be released. However, if a prisoner who has been released on conditions consents to a determination by a Judge under the proposed section and the Judge has imposed a fixed term sentence, he may be recalled to prison to serve the remainder of the sentence. The Bills Committee is concerned about the adverse consequence on the prescribed prisoners.

The Administration has informed the Bills Committee that so far, the Board has not made any such conditional release order in respect of the

prescribed prisoners. However, the possibility for such orders to be made by the Board before the Judge makes a determination under the proposed section 67C(3)(b) could not be completely ruled out.

Since no such conditional release order has been granted by the Board, the Bills Committee has asked the Administration to consider, as a transitional arrangement, suspending the power of the Board to order conditional release, or alternatively allowing a conditional release order to remain valid even after determinate sentence is imposed by the Judge.

The Administration has explained why it considers that these suggestions are not appropriate. Having considered the Administration's explanations, the Bills Committee accepts that there are sufficient safeguards in the Bill to protect the interests of the prescribed prisoners. First, a prescribed prisoner on conditional release order can have the choice of whether he would like to be subject to the discretion of the Judge to give a determinate sentence instead of a minimum term. Second, even if the prisoner consents, the Judge will still retain the discretion to fix a minimum term. The prisoner will be legally advised and will be able to make an informed choice regarding the risk of giving the consent. Third, the prisoner, if aggrieved by the decision of the Judge, can appeal against the sentence passed. The Bills Committee therefore agrees to the retention of the proposed section 67F(2).

The Bills Committee supports the resumption of the Second Reading debate on the Bill today, and the Committee stage amendments to be moved by the Secretary for Security.

Thank you, Madam President.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, more than 100 pieces of legislation were scrutinized within the second term of the Legislative Council. To colleagues of this Council, the Criminal Procedure (Amendment) Bill 2004 is just one of the many Bills which have been scrutinized and the last one in this Session. To me, the objective of this Bill is actually what we have

been fighting for over the years. If Members still remember, we did seek to achieve some progress and results on this issue in 1996 and 1997. Unfortunately, we could see some improvement only after almost eight years.

Anyway, with regard to this Bill, many people would ask: Why do we have to fight for just a handful of people — in fact there are only a little more than 20 people? Actually, they are not ordinary people, not even ordinary prisoners, but persons convicted of grave crimes. Why should we fight for these people who are convicted of grave crimes? Why do we not spend more time and efforts in other areas?

Madam President, just because we often think that there are other important things to do, and just because we feel that they are prisoners and convicted of grave crimes, many people would therefore overlook their interests and rights. It also demonstrates that our society shows very little concern about certain social groups and seldom cares about their rights. Today, the rights we are talking about are not ordinary rights, but human rights.

Since the contemporary society is a society of human rights, we should not just talk about the protection of fundamental human rights. Even though these people are prisoners, they are people kept behind bars, and despite they have committed grave crimes, we still have to give attention to their due rights.

However, it is unfortunate that this issue has not received proper recognition from society or the Government over the years. The Government has been insisting on the fact that these people are prisoners. So with regard to the rights to which they are entitled, the Government has done everything due and no more additional considerations should be given. For that reason, the past eight full years have been wasted.

Anyway, the issue in the Bill under discussion today is the issue of minimum term. Before 1997, these young offenders were given a sentence at Her Majesty's pleasure. The meaning of the so-called "Her Majesty's pleasure" is, since capital punishment was still in force in Hong Kong before 1993, but to young offenders under the age of 18 who have committed serious criminal offences, the Court could not sentence them to death on the ground that they were not mentally mature enough, thus the Court would give them a sentence at Her Majesty's pleasure. The meaning of the so-called "Her



Majesty's pleasure" is to give these people a chance of rehabilitation and reintegration into society.

However, the downside of this practice is that the imprisonment term of these young offenders is open-ended. Besides receiving the punishment in prison, they have to suffer the mental ordeal. Why? It is because they have no idea when they could leave the prison, they have to keep waiting. Being kept waiting is cruel. In fact, in 1991, the European Court of Human Rights suggested that an indeterminate sentence of confinement or detention was inhuman. Unfortunately, the Government simply ignored it.

It was not until the time shortly before the 1997 reunification that the then British Hong Kong Government introduced a piece of new legislation. The legislation provided for better treatment to these prisoners by determining a minimum term, so that they would have an idea of the number of years they would have to serve in prison. If they are aggressive enough, they can seek early release. Nevertheless, as far as release is concerned, the Long-term Prison Sentences Review Board (the Board) would consider the performance of the prisoner and other aspects before determining a term. This is in fact "old wine in a new bottle" when we compare it with the "Her Majesty's pleasure" practice. Actually, these people still have to wait. This is a mental ordeal to them, and the problem is not solved.

The Government stated that it was significant improvement. While in the past these prisoners would be like drifting in the ocean for years, having no idea when they could come ashore, the minimum term came just like a raft to them. They could at least reach the raft and keep afloat. But as to when they could come ashore, it would really depend on the efforts of each individual. In fact, is this raft in the middle of the ocean or near the shore? Nobody knows. To these prisoners, this is still inadequate.

Besides, it is in fact a violation of human rights as long as these prisoners are still serving an indeterminate sentence. Although after the law was enacted in 1997, the Chief Justice recommended the term according to the law in 2000 and then recommended it to the Chief Executive for confirmation, these young offenders still considered it disrespect for them and a deprivation of their rights. Eventually, they applied for judicial review. The result of the judicial review was unexpected: This 1997 enactment was actually inconsistent with the Basic

Law. Since it is expressly stated in the Basic Law that the executive, legislative and judicial powers in Hong Kong are separated, the Judiciary should therefore be independent and a decision should not be made by the executive. For that reason, the enactment was determined inconsistent with the Basic Law.

After this determination was made, the Government reckoned that a problem might occur, thus it agreed to propose a new piece of legislation to deal with the problem in the last Legislative Session. Nevertheless, the Government did not make any new law and had been delaying the matter only. Until the beginning of this year, a new legislation was proposed.

Insofar as this new legislation is concerned, the Government insisted on the same viewpoint initially, that is, since the Chief Executive had no power to set the minimum term, it would be better to adopt a simple and easy approach by transferring the power to the Court. However, the problem mentioned by me just now remained not dealt with, that is, even if the Court deals with the minimum term, it is still an indeterminate term, and they still have to wait, it still means no respect for human rights. Fortunately, many colleagues have been continuously discussing the matter with the Government and they consider that giving a determinate sentence is a reasonable approach.

Eventually, we are happy that the Government has readily accepted our advice by adding a provision in the Bill, that is, if the prisoner wishes to make such a request and upon the making of such a request, the Court has the discretion to determine a determinate sentence. Even if the Court fails to give a determinate sentence, the prisoner is still entitled to making an appeal. I consider this approach is comparatively fair and just. It is vastly different from the past practice of the absence of an appeal mechanism after an executive decision was made. In the meantime, when the Court hears a case and gives a determinate sentence, the prisoner still has the chance to defend. I consider that a more humane and reasonable approach, which is also an improvement over the past practice. I definitely hope that this approach can show our continued respect for human rights and humanity. I also hope that this message can be carried throughout this legislation.

In fact, a lot of people have questioned whether it would be good to the victims. Since the prisoners can stand a retrial for once or twice, will it be not so satisfactory to some of the victims? It is because they had thought the ordeal was over, but now a trial would be conducted again. I hope Members can

understand the intent of the law, that is, it originally encompasses forgiveness, an intent of giving an opportunity to young offenders to rehabilitate, hoping they can reintegrate into society after they have conducted retrospection in the prison.

The most inhumane element of the practice in the past was that no definite time was given, they were therefore unable to plan their own future. The practice was not satisfactory. For that reason, they are now given a chance of retrial. It is not only meant to be fair to them, it is also meant to enable them to make their own plans for the future because of the result of the retrial. We should not lock them up and treat them as scum because they have committed offences. I believe the imprisonment term is meant to enable them to reflect on their own mistakes and correct themselves. When they are given the opportunity to reintegrate into society, they can achieve greater improvement for society and their own selves.

I think if we just put them behind bars and keep them waiting, their mood of gloom and despondency will definitely erode their spirit of enterprise, because they have no idea when they could leave. In all, it is sad. Despite the Government telling them as long as they work hard and make improvement, they naturally can leave the prison earlier. However, a determinate sentence can only be prescribed on condition that the Board has conducted a review and made the approval.

Nevertheless, how does the Board operate? This is the problem. It only convenes four meetings in a year, and it has to deal with more than 200 cases in each meeting. Since the meeting time is not long on every occasion, it will only be a half-day meeting, so how can it deal with the problem objectively, impartially and thoroughly? This is questionable.

In fact, young offenders have shown us letters from the Board. They were told that their conduct was good, they had the determination to rehabilitate, their academic results were good, but the final comment was, you just keep on rehabilitating yourselves! Nobody told them when they could leave the prison, nor were they told their shortcomings. They were just kept waiting. To these young offenders, it was indeed ruthless. Nobody told them what and how to make improvement. All they could do was waiting. Till when should they wait? Gloominess and despondency will soon entrap them, causing immense impact on their future development.

At the same time, I can also feel that despite we in society always claiming that we attach importance to rehabilitation, but how can anyone feel the rehabilitation in view of this circumstance? I hope that after this Bill is enacted today, we can rethink the whole issue. As far as those wrongdoers are concerned, how should we give an opportunity to them? If we give them the opportunity, how should we help them grasp it to rehabilitate? Should we treat them as others did in the past by locking the wrongdoers up and simply ignoring their existence? Or should we act in a more positive way, thus they could face themselves and society squarely when they have the opportunity to reintegrate into society in future? That would be a big help to us. For this reason, I support today's Bill and the proposed amendments.

Lastly, I wish to say that although I have been fighting for the rights to which these young offenders are entitled, I also wish to advise everyone in society not to commit crimes, because one has to bear the serious consequences after he has committed a crime. Despite we attach importance to those rights, it does not mean the wrongdoer should be immune from due punishment. In fact, when I was helping those young offenders, I told them clearly that I could only fight for the rights that they are entitled to, but I could not help them get away from the punishment they deserve. Of course, they understand very well that since they have committed a crime, they have to receive the punishment, and the trauma of the punishment is immense. I therefore advise everyone to observe self-discipline, and not to commit any crime, for the consequences are very serious. I so submit, Madam President.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, the Hong Kong Federation of Trade Unions (FTU) and Democratic Alliance for Betterment of Hong Kong (DAB) support the relevant Bill and proposed amendments.

Since these underage murderers or convicts of grave crime were under the age of 18 at the time they committed the offence, thus in the past when the Ordinance was yet to be amended, they were given an indeterminate sentence. In the past, they had to wait until Her Majesty's pleasure was known, and after the reunification, until the discretion of the Chief Executive was given.

Just now Mr LEUNG Yiu-chung has explained the background in detail. I personally consider that when we speak for these people, we should not deny that they have some problems, including the commission of a crime or murder. We consider that they should be punished by the laws of Hong Kong. Nevertheless, the problem is that there is unfairness in the treatment they received in the entire course of proceedings.

As to this problem, just now Mr LEUNG Yiu-chung has mentioned the history from the British Hong Kong Government era to the SAR Government after the reunification. Originally, I intend to speak on the same topic, but I have decided not to speak on that. Nevertheless, I wish to talk about my feelings. Since 2000, it seems that it was 2001, I started to receive letters from young prisoners. By 2001, I was appointed Justice of the Peace and I chose the prison visit duty. I received more letters from that time onward. When I saw those young people or their relatives, I started to think, "Who would do no wrong? In particular, people in their adolescence, under various circumstances, would be influenced by their peers." I also took note of the fact that many of these offenders had come from poor neighbourhoods, in fact, they were influenced by a number of factors. Certainly, they have to bear the responsibility, but the question is that they are still at a tender age.

In the past, the relevant provision shattered over and over again their expectation of having their indeterminate imprisonment term dealt with. The Bill should have been tabled before the reunification, but it fell through and their case was not dealt with. After the reunification, the problem was not dealt with either. Actually, they kept sending out letters. I am of the opinion that these young people, teenagers, have already received the punishment for their own wrongdoings in the past. Today, they hope society could forgive them in view of their remorse. Why could they not be given a chance?

The prisoners I have met have been jailed for quite a long time. Some have been kept behind bars for eight to 10 years, while others have been in jail for more than a dozen years, and they have no idea of how long they would be kept behind bars. Any person who comes across this situation will ask why we cannot give them a definite date. For that reason, we have written to the SAR Government again and again and demanded the SAR Government to address this problem squarely. Unfortunately, those demands fell through one after another. When we meet with their families, we would tell them how good they have performed in prison and what awards they have won. But why can we not tell

them how long these people will be kept behind bars? Since they have been kept behind bars for quite a long time, why can we not tell them how much longer they have to serve in prison?

We will not deny the fact that wrongdoers should be punished, but the question is, at a certain point, they should be informed of the things that they are supposed to know. However, the SAR Government informed us, no, and subsequently said that it had nothing to do with the Chief Executive, as it was a matter for the Court. After following up the issue for so many years, I have received many letters about this. For that reason, I joined the Bills Committee on Criminal Procedure (Amendment) Bill 2004, which was proposed by the SAR Government, on purpose. Although I am very busy, I have to join the Bills Committee in order to witness the entire scrutiny process personally. I welcome the attitude adopted by the Government this time around. After waiting for seven long years, everybody is expecting a more reasonable arrangement.

Those who have been punished may continue receiving the punishment, but they should be informed that how much longer they have to wait and they should be given a chance to appeal. Since there were many formalities in the past, a prisoner would have no chance to appeal if he was unable to pass these procedures. I consider that the amendment proposed this time around is a proper move. For this reason, Madam President, I wish that the SAR Government will think over the matter in light of this incident. I have written to the Chief Executive, and I found that he has answered similar questions raised by many Members over the years. For that reason, I hope the pace can be accelerated so that they do not have to wait for seven long years.

I began to receive their letters since the reunification, nevertheless, the message had already been conveyed to me before the reunification. I really hope that the matter can be settled. Since we know there is a grey area in the law which is unfair to them, why can we not speed up the whole process? This is the question I wish to ask. I also hope that the community at large and the Government will address this matter squarely.

Certain people in society may not necessarily support the idea as they may consider that these convicts of grave crimes are getting the punishment they deserve. But there is this consideration after all. Even though these people belong to the minority in society, are they receiving fair treatment? No matter

how many people support the Government, when we weigh the question, we should propose some amendments of greater effectiveness.

With these remarks, Madam President, I support the Bill and the amendments. Thank you.

**MR IP KWOK-HIM** (in Cantonese): Madam President, in a judgement made by the Court of First Instance in 2002, it was declared that sections in the Criminal Procedure Ordinance concerning the power of the Chief Executive to determine the minimum terms of imprisonment at executive discretion are inconsistent with Article 80 of the Basic Law. In this connection, the DAB considers that in order to abide by the stipulations of the Basic Law, it is necessary for the Government to amend the law to expressly define the power is vested in the Judiciary. The DAB supports the Criminal Procedure (Amendment) Bill 2004 and other amendments proposed by the Government to deal with the matter.

The correctional system in Hong Kong comprises correction and retribution. It does not only include locking the offenders up for a certain period of time, in order to let them bear the responsibility of the offence they have committed, but also includes allowing them a chance to receive correction and training, so that they could rehabilitate, adapt themselves to society and make contribution to society when they reintegrate into society in future. In order to perfect the operation of the entire correctional system, prisoners should serve a determinate imprisonment term, so that they could understand the wrongs they have done and develop the willingness to rehabilitate, in addition, it will give them hope and an objective. For that reason, to give each and every prisoner a determinate imprisonment sentence is a must, and it is a necessary move. Otherwise, if there are prisoners (especially young prisoners) who have to wait helplessly because they have to serve an indeterminate sentence, then it will show that the entire correctional system is not comprehensive enough. For that reason, the DAB supports the Bill which requires the Secretary for Justice to apply to the Court for determination of a minimum term of imprisonment by a Judge.

The DAB considers that we should strike a right balance between the rights of prisoners and the feelings of the relatives of victims. Just now I have listened to the speech of two Members, we also feel that we should express our

understanding of the loss of family members, and so a balance should indeed be struck. For that reason, according to the proposed arrangement this time around, the previous recommendation or determination in respect of a minimum term should not be taken into account by the Judge in determining the new minimum term. The Judge may give new and independent recommendations on the length of term. At the same time, the Court may adopt this approach to deal with the term these youngsters (especially young murderers) have to serve. In this respect, the DAB considers that the relevant proposal can give these young offender a chance to rehabilitate and reintegrate into society, whilst a new and independent determination made by the Court could prevent relations of the victims from feeling that the new determination is biased.

The DAB considers the six-month requirement is appropriate with regard to requiring the Secretary for Justice to apply to the Court for a determination of the minimum term in respect of each of the prescribed prisoners within six months after the commencement of the Bill. Nevertheless, we are somewhat concerned about the power of the Secretary for Justice to apply for an extension, for in this case the six-month period would become unrealistic, whilst the right of prisoners to obtain a determination on the minimum term of imprisonment or sentence by a Judge could enjoy no protection. To address members' concern, the Government would move amendments to remove the requirement concerning the right of the Secretary for Justice to apply for an extension, and to provide that a prescribed prisoner may apply to the Court for a determination by a Judge if the Secretary for Justice does not make an application in respect of the prisoner within six months after the commencement of the Bill. The DAB supports the amendments.

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): I now call upon the Secretary for Security to reply.



**SECRETARY FOR SECURITY** (in Cantonese): Madam President, first, I wish to thank the Chairman, Miss Margaret NG, of the Bills Committee on Criminal Procedure (Amendment) Bill 2004 (the Bills Committee) and its members for offering many constructive ideas in scrutinizing the Criminal Procedure (Amendment) Bill 2004 (the Bill) and for their support of the proposals in the Bill. The Government has taken into consideration the views and suggestions of the Bills Committee in studying the Committee stage amendments.

The aim of the Bill is to amend the Criminal Procedure Ordinance to empower the Judges of the Court of First Instance to determine the minimum terms to be served by a group of prisoners serving indeterminate sentences, and with regard to prisoners who were under 18 years of age when they committed murder, to empower Judges of the Court of First Instance, with the consent of the prisoner concerned, to exercise discretion by substituting a minimum term with a determinate sentence.

In March this year, when the Bill was read for the First time, 25 prisoners were covered by the Bill. Because the sentence of one of these prisoners has since been converted from indeterminate sentence to determinate sentence by the Chief Executive on the recommendation of the Long-term Prison Sentences Review Board, a total of 24 prisoners are now affected by this Bill, including 12 prisoners who are being detained at executive discretion for murders committed when they were under 18 years of age, two prisoners serving mandatory life sentences for having committed murder under the age of 18, and 10 prisoners serving discretionary life sentences.

We are concerned that determinations should be made in respect of these 24 prisoners as soon as possible. Therefore, the Bill provides that the Secretary for Justice shall make an application to the Court for a determination by a Judge within six months of the commencement of the Bill. Meanwhile, we also agree with the suggestion of the Bills Committee to provide in the Ordinance that if the Secretary for Justice fails to make an application within six months, the prescribed prisoners are entitled to make an application to the Court for a determination by a Judge.

In addition, we are of the view that if the Bill is passed, it should come into operation as soon as possible to enable the prescribed prisoners to obtain a determination from the Court as soon as possible. In order to avoid delays as a result of the Legislative Council recess and the procedures involved in the

publication of the commencement notice, we will make an amendment to bring the Bill, when enacted, into operation upon its gazettal. Meanwhile, we undertake that we will apply to the Court for determinations by Judges as soon as practicable after the commencement of the Bill.

The Bills Committee has also held discussions on providing in the Bill that prisoners can request records or documents. We believe that the right to apply to a Judge for further records or documents after the case has been listed for hearing should be given to both the Secretary for Justice and the prescribed prisoners. We will move an amendment to this effect.

Apart from the above, we will also move some technical and textual amendments to improve the Bill and make it clearer. All the above amendment proposals are endorsed by the Bills Committee.

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

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Criminal Procedure (Amendment) Bill 2004 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): Criminal Procedure (Amendment) Bill 2004.

Council went into Committee.

**Committee Stage**

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

**CRIMINAL PROCEDURE (AMENDMENT) BILL 2004**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Criminal Procedure (Amendment) Bill 2004.

**CLERK** (in Cantonese): Clauses 5 to 10.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 1 to 4.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move the amendments to clauses 1, 2, 3 to 4, as set out in the paper circularized to Members.

I will now briefly introduce the amendments.

The aim of the amendment to clause 1 seeks mainly to delete the proposed clause 1(2) so that the operation of the Criminal Procedure (Amendment) Bill 2004 (the Bill) can commence on the day of its gazettal.

The main points of the amendments to clause 2 are as follows:

- (1) to provide in the proposed section 67C(1) that the Secretary for Justice must apply to the Court for a determination by a Judge for each prescribed prisoner as soon as practicable within six months after the commencement of this Bill and to delete the proposed section 67D(1) to cancel the original proposal of allowing the Secretary for Justice to apply to a Judge for extension of the six-month period;
- (2) to add section 67C(1A) to provide that if the Secretary for Justice does not make any abovementioned application in respect of any prescribed prisoner within six months, the prescribed prisoner may also apply to the Court for a determination by a Judge;
- (3) to merge the original proposed section 67C(3) and (4);
- (4) to amend the original proposed section 67C(5) to add section 67C(5)(a) to empower a Judge to consider any information he considers relevant to the determination submitted by the Secretary for Justice or the prescribed prisoner;
- (5) to add section 67D(2A) to provide that no charge shall be payable for any application under section 67C(1) or (1A);
- (6) to add section 67D(2B) to provide that as soon as practicable after the Secretary for Justice has made an application in respect of a prescribed prisoner under section 67C(1), the Secretary for Justice must serve a copy of the application on the prescribed prisoner;
- (7) to amend the original proposed section 67D(3) and add section 67D(3A) to allow the Secretary for Justice or the prescribed prisoner to apply to the Judicial Administrator and a Judge for a copy of the record, if available, of the proceedings concerning the prescribed prisoner and other documents; and

(8) other amendments are consequential amendments.

The amendments to clause 3 and 4 are all technical or textual in nature.

All the proposed amendments have been scrutinized and endorsed by the Bills Committee. I hope Members will support and pass these amendments.

Thank you, Madam Chairman.

*Proposed amendments*

**Clause 1 (see Annex VII)**

**Clause 2 (see Annex VII)**

**Clause 3 (see Annex VII)**

**Clause 4 (see Annex VII)**

**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 Security 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 1 to 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **CRIMINAL PROCEDURE (AMENDMENT) BILL 2004**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the

Criminal Procedure (Amendment) Bill 2004

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 Criminal Procedure (Amendment) Bill 2004 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): Criminal Procedure (Amendment) Bill 2004.

## **MOTIONS**

**PRESIDENT** (in Cantonese): Motions. Two proposed resolutions under the Interpretation and General Clauses Ordinance.

First motion: Amending the Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004.

## **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in the absence of Secretary for Health, Welfare and Food): Madam President, I move that the motion under my name, as printed on the Agenda, be passed.

The purpose of this Amendment Regulation, which was made by the Director of Food and Environmental Hygiene, is to introduce improvements to the existing composition and labelling legislation as part of our effort to enhance food safety for the protection of public health. Amendments made in the Amendment Regulation include:

- (i) food labels should declare in the list of ingredients the presence of eight types of substances, if any, which are known to cause allergy in some individuals;
- (ii) food labels should specifically indicate the name or code of the food additive used;
- (iii) the format required for marking the "best before" or "use by" date should be improved to make the date clearer to consumers;
- (iv) wines, fruit wines and other drinks with an alcoholic strength by volume of 10% or more should be subject to all labelling requirements apart from the listing of ingredients and durability;
- (v) drinks with an alcoholic strength by volume of more than 1.2% but less than 10% should be subject to all labelling requirements apart from the listing of ingredients; and
- (vi) restrictions on the inclusion of additives in condensed or evaporated milk and butter should be relaxed.

We consulted the public on the proposed amendments from October to December 2000 and the views collected indicated that there was general support on the proposals.

The Amendment Regulation was gazetted on 14 May 2004. It is expected to come into operation on 9 July 2004. Except for the relaxation of additives in certain milk products and butter, a grace period of 18 months was allowed for all other amendments in the Amendment Regulation.

The Amendment Regulation was tabled in the Legislative Council on 19 May 2004. A Subcommittee was subsequently formed by the Legislative



Council to examine the Amendment Regulation. The Subcommittee has now completed its scrutiny of the Amendment Regulation.

In the course of its deliberation, the Subcommittee expressed its support for the policy objectives underlying the Amendment Regulation. However, the Subcommittee also made several comments on the practical issues relating to its implementation. During this same period, the Administration also received similar comments from the trade on the Amendment Regulation.

The trade representatives were of the view that they would face practical difficulties in complying with the requirements of labelling allergens in pre-packaged food. As a considerable proportion of the food consumed in Hong Kong was imported from countries which might not have similar requirements to label allergens, importers and retailers in Hong Kong were concerned that they would not have information about the presence of allergens in those food. The possibility of cross-contamination during the production process would also make it difficult to tell whether certain allergenic substances were present in the food they manufacture, import or sell.

The Subcommittee shared the concern expressed by the trade and considered it appropriate that more specific defences should be provided to protect the trade in situations whereby they might have breached the labelling requirements of allergens under circumstances which were out of their control.

As many of the alcoholic drinks sold in Hong Kong are imported from non-English speaking countries, the Subcommittee and trade representatives expressed concerns over the practical implications to label alcoholic drinks with alcoholic strength of 1.2% or more in either English or Chinese. They considered that these alcoholic drinks should continue to be exempted from all labelling requirements. However, the trade accepted that alcoholic drinks like beer should be required to label their durability as the quality of these drinks might deteriorate over time.

The Subcommittee and trade representatives also requested a longer grace period to allow more time for the trade to adapt to the changes.

After careful consideration of the views and suggestions raised by the Subcommittee and the trade, we propose to introduce several amendments to the Amendment Regulation to address their concerns.

For offences under the relevant part of the Public Health and Municipal Services Ordinance (Cap. 132), sections 70 and 71 of the Ordinance provide that it will be a defence if the defendant has used all due diligence or relied on a warranty. Regulation 5(3) of the existing Food and Drugs (Composition and Labelling) Regulations also provides that it will be a defence if the defendant has "taken all reasonable steps" to ensure that the food was marked and labelled in accordance with the Regulations. Notwithstanding these existing safeguards, we propose to add a new paragraph to Regulation 5 of the Food and Drugs (Composition and Labelling) Regulations to clarify the circumstances under which a local company could defend its position if it breaches the labelling requirements of allergens. We propose that it shall be a defence to show that the defendant, in labelling his products, has reasonably and in good faith relied on the information provided by the importer or manufacturer as to whether the food consisted of or contained any allergenic substances specified in the Amendment Regulation. In addition, it shall also be a defence if the defendant has in good faith marked on the food that he had no information if allergenic substances were present in the food, provided that he has already used his best endeavours to obtain such information from the importer or manufacturer and such information is however not available.

We also propose to allow wines, fruit wines and other drinks with an alcoholic strength by volume of 10% or more to be exempted from all labelling requirements, as they currently are. As regards other alcoholic drinks with an alcoholic strength by volume of more than 1.2% but less than 10%, the durability period will need to be labelled on the drinks. Apart from this, they will be exempted from all other labelling requirements.

To allow the trade more time to adapt to the changes, we propose to extend the grace period of the Amendment Regulation from 18 months to 36 months. However, the relaxation of control over additives in certain milk products and butter will be effective on 9 July 2004.

Separately, we will prepare a set of guidelines in consultation with the trade to assist them to adapt to the changes brought about by the Amendment Regulation, particularly on the labelling of allergenic substances. A voluntary code of practice for labelling drinks with an alcoholic strength by volume of 1.2% or more will also be prepared in consultation with the trade. This voluntary code of practice will be reviewed after one year of implementation.

I trust that the above proposals would help address the concerns raised by the Subcommittee and the trade. They also strike a proper balance between the need to protect public health and to minimize the impact on the trade.

In addition to the proposed amendments I set out above, I would like to elaborate on a few fine points as to the policy intent of our Amendment Regulation and our proposed amendments on the labelling of allergenic substances.

Our primary aim for introducing labelling requirements on allergenic substances is to protect public health. Consumers should be made aware of the presence, if any, of the eight most common allergenic substances in food products as identified by Codex. Clinically, a very minute amount of food allergens could cause allergic reaction in highly susceptible individuals. Where a pre-packaged food is found not to have been labelled properly when such allergenic substances are confirmed to be present in the food products, the Food and Environmental Hygiene Department will contact the importer and retailer concerned and ask for the situation to be rectified within a reasonable period of time. This is in line with our existing practice for dealing with food labelling irregularities.

In this regard, some trade representatives were unsure of their liability under the Amendment Regulation if importers and manufacturers could at best advise them that the pre-packaged food concerned may contain certain allergens.

We have examined and sought legal advice on this issue. In our proposition, as long as our local companies have reasonably and in good faith relied on the information provided by the importer or manufacturer as to the presence of any allergenic substances in the food, our local firms could rely on one of our newly proposed defence clauses against liability. In other words, if the importer or manufacturer informs a local company that the product may contain fish and no other allergenic substances as stipulated in the Amendment Regulation, and the local trader then labels the product as "may contain fish" in good faith, the local company will be protected by one of our proposed defence clauses even if some other allergenic substances, say, peanuts, are found in the food subsequently. The rule of thumb is: local companies should, in good faith, keep consumers informed about any information on allergenic substances they get to know from importers and manufacturers.

Some local manufacturers are worried that they might inadvertently breach the Amendment Regulation if the raw materials they imported were contaminated with allergenic substances without their knowledge and that their products were not labelled properly. They were also concerned that allergenic substances might be mixed into their food accidentally during the production process.

We have also sought legal advice on this issue. The meaning of "food" is defined in section 2 of the Public Health and Municipal Services Ordinance and it covers, amongst others, "articles and substances used as ingredients in the preparation of food". In sub-paragraphs (3A)(a) and (3A)(b) of Regulation 5 in our resolution, the defences so specified are offered to all kinds of persons who are in the position of a defendant. A local manufacturer may invoke such defence if he imports raw material ingredients from overseas and he has relied upon the information provided by the importer of the raw materials.

We are also aware of the concerns of some importers that they might not be able to reach overseas manufacturers for information on allergenic substances. According to these trade representatives, they usually deal with some other middlemen companies in sourcing their products overseas.

We have already explained to the trade that should a defendant need to invoke the defence provided in sub-paragraph (3A), he must prove that he has "used his best endeavours" to obtain the information. It is our view that a reasonable court would take into account the trading practice of the middleman company and the limitation faced by the local retailer, wholesaler or manufacturer to obtain information from the source country. To further allay this concern, it would be useful for me to set out clearly our enforcement policy on this issue. If there is documentary evidence to show that access to overseas manufacturers is only available from the middlemen companies, and that such access is denied by those middlemen companies, it should serve as proof that our importers have used their best endeavours to obtain the information from the manufacturers.

As I have mentioned, we will prepare a set of guidelines on the labelling of allergenic substances in consultation with the trade. Detailed arrangements would be spelt out in the guidelines.

All the proposed amendments that I set out in the motion have been endorsed by the majority of the Subcommittee. I would like to thank Dr LO

Wing-lok, the Subcommittee Chairman, and the other members of the Subcommittee for the valuable comments they made during the scrutiny process.

Thank you, Madam President.

**The Secretary for the Environment, Transport and Works moved the following motion:**

"RESOLVED that the Food and Drugs (Composition and Labelling)(Amendment) Regulation 2004, published in the Gazette as Legal Notice No. 85 of 2004 and laid on the table of the Legislative Council on 19 May 2004, be amended -

(a) by adding -

**"2A. Offences and penalties**

Regulation 5 is amended by adding -

"(3A) Without affecting paragraph (3), in any proceedings for an offence against paragraph (1) in relation to any prepackaged food which is not marked or labelled in accordance with paragraph 2(4E) of Schedule 3, it shall be a defence for the defendant to show that he -

- (a) reasonably and in good faith relied on information provided by the importer or manufacturer as to whether the food consisted of or contained any substance referred to in that sub-paragraph; or
- (b) (i) has used his best endeavours to obtain such information from the importer or

manufacturer but  
such information is  
not available; and

- (ii) has in good faith  
marked on the food  
that he does not  
know whether the  
food consists of or  
contains any such  
substance."."

(b) in section 5 -

- (i) in paragraph (a), by repealing "Paragraph 2" and substituting "The whole Schedule except paragraphs 3 and 4";
- (ii) in paragraph (b), by repealing "Paragraphs 2 and 4" and substituting "The whole Schedule except paragraph 3";

(c) in section 6, by repealing "January 2006" and substituting "July 2007".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for the Environment, Transport and Works, be passed.

**DR LO WING-LOK** (in Cantonese): Madam President, in my capacity as Chairman of the Subcommittee on Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004, I now report on the deliberations of the Subcommittee.

The Subcommittee has in total held five meetings, including one with the representatives of the affected trades, the medical sector and the Consumer Council.

The Subcommittee generally supports the principle of providing more information in food labels to enable consumers to make informed choices, and to reduce health risks caused by allergenic substances in food. The Subcommittee also supports the relaxation of labelling requirements for condensed or evaporated milk and butter, and the more flexible date marking format on food labels. However, the Subcommittee has also noted the practical difficulties faced by the trade in complying with the new labelling requirements concerning additives, allergenic substances and drinks with alcoholic contents.

Trade representatives have stated that many countries or places supplying food products to Hong Kong, such as the Mainland and Southeast Asian countries, have not implemented similar food labelling requirements for allergens, and the suppliers or manufacturers may not have the information. Therefore, there will be practical difficulties in compliance with the new requirements.

Noting the difficulties of the trade, the Subcommittee has urged the Administration to look for ways to address as far as possible the trade concerns while protecting consumers' rights and public health, for example, to consider providing a defence provision in the Regulation or to allow the addition of a disclaimer on the food labels. The Subcommittee has also urged the authorities to formulate a code of practice to facilitate trade compliance with the new Regulation.

After discussions with the Subcommittee, the Administration has agreed to add a defence provision in the Amendment Regulation, that is item (a) of the government motion. Also after discussions with the trade, the Administration has agreed to extend the grace period for the majority of the new requirements, from the original 18 months to 36 months (that is, until 9 July 2007), in item (c) of the government motion. The Subcommittee has in general accepted the amendment proposals of the Administration.

Regarding the labelling requirement of alcoholic drinks, in the light of the difficulties expressed by the retail trade, the authorities have agreed to continue the exemption of wines, liquor wines, fruit wines and other drinks with an alcoholic strength by volume of 10% or more, from all labelling requirements. As for drinks with an alcoholic strength by volume of more than 1.2% but less than 10%, they will be exempted from all labelling requirements except that on

durability. The Subcommittee welcomes this amendment, that is, item (b) of the government motion.

The Subcommittee has noted that the Administration will continue to discuss with the trade and formulate a code of practice to assist the trade in complying with the new labelling requirements. The majority of the members of the Subcommittee support the motion proposed by the Government.

Madam President, I so submit.

**MRS SELINA CHOW:** Madam President, first, I would like to make it clear that there is absolutely no difference in opinion between the trade and the public. Indeed, there is strong consensus among them regarding the need to protect public health by providing as much information as it is available to consumers so they can take their own initiative to choose what is the best for their own health. I therefore take great exception to the way that officials responsible for the policies relating to food labelling had been tackling this issue. In my view, officials have shown a continuous reluctance to understand and recognize the real difficulties and problems that the trade faces regarding compliance. In fact, the way that the department concerned has repeatedly ignored the views put forward by the trade has given rise to much frustration and even anger. Instead of recognizing such difficulties and helping the trade to overcome them, those responsible had chosen to skim over consultation, ignore submissions and objections made to them in good faith, and stop dialogue dead. Furthermore, they have fanned controversies rather than look for workable and acceptable compromises that would achieve the best solution for consumers. I think it is fair to say that representations from advocates and opponents of labelling have recognized that Hong Kong, being a very very small market, relies heavily on imports, and therefore, due regard has to be given to the practicability of any regulation that is to be enforced.

And what about the RIA, the Regulation Impact Assessment, that the Government has promised it would conduct to make the proper decisions based on a clear understanding of all circumstances in effect of any regulation? Its conspicuous omission here leaves a big gap between the actual market situation and the decision on which the original regulation has been based. I therefore welcome the amendments that are being moved today.



Notwithstanding the amendments introduced for passage today, this Council has to be aware that although the Subcommittee has managed to find a compromise that mandates labelling for eight allergens, the trade is still unconvinced that the problems relating to implementation and compliance have had disappeared altogether. In order to appreciate the misgiving, allow me to set out two main concerns that would be put to the Subcommittee.

First, at this point in time, most of the source markets from which food is imported to Hong Kong have not passed legislation requiring the same labelling as the regulation before us. Specifically, the Mainland that supplies over 30% of pre-packaged food has not had any legislation for this purpose today. The European Union will not be implementing similar requirements until late 2005. The United States has yet to pass similar legislation in the House of Representatives. Canada is still in a planning stage of a mandate labelling laws. Japan only requires four out of the eight allergens that our Government prescribes. As these are the main source markets of our pre-packaged food, the concern of our food trade is totally understandable. In fact, the question that is constantly being asked is why our Government is insisting on leading the world when we, as one of the smallest markets, are certainly not in a position to control the practice of our manufacturers.

Second, the absence of allergen management systems both here and in many of our source markets means that retailers could unwittingly find themselves on the wrong side of the law if products were to contain traces of allergenic substances as a result of accidental mixing or cross-contamination in the production chain. Initial discussions with the official in-charge of the regulation did not get us anywhere.

But thanks to the intervention of the Secretary for Health, Welfare and Food and the Director of the Food and Environmental Hygiene Department, and the support of the Subcommittee, we are able to persuade those concerned to introduce amendments before us. There are still those in the trade who are not totally satisfied that we should put the cart before the horse, that is, we are leading instead of following most of our source markets. But given that the regulation now recognizes the difficulties that retailers face in obtaining the relevant information, and therefore provides the appropriate defence by passing the responsibilities upstream to manufacturers and importers, it does afford a certain degree of comfort to retailers. They have, however, raised the point that there may be other parties such as exporting agents on the other side in the

source markets, and suppliers between them and the importers and the manufacturers, and they are not at all sure that the exclusion of these titles from the regulation will give them adequate safeguard against prosecution.

As for the concern regarding to possible traces of allergenic substances, the Administration has undertaken to address the form of the disclaimer the trade should adopt within six months. I hope this will be confirmed here and now as the trade will need time before the end of the grace period to take steps to prepare and implement the labelling requirements.

Madam President, I urge the officials concerned to start meeting with the trade, to work out the guidelines relating to the implementation of these labelling requirements as soon as possible, so as to remove uncertainty that would stop the trade from proceeding with the necessary operation. I also urge that in considering further future labelling requirements, thorough and genuine consultation as well as RIAs must be conducted as promised before final decisions are made on actual measures to be prescribed by regulation so that the community, the trade, consumers and officials included will be fully conscious of the problems and costs concerned.

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

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, very often, we hear our friends complain of symptoms of food allergy, such as developing rashes on their skin after consuming seafood, or feeling unwell after eating peanuts and nuts. To the ordinary people, food allergy may only be a minor issue, but serious allergic reactions may be fatal. The cause of food allergy is not yet known, and there is no complete cure for it. The avoidance of allergenic food becomes the most effective precaution for patients. Unfortunately, at present, there is no requirement in Hong Kong that pre-packaged food must have labels indicating allergens, making it all the more difficult for patients in selecting food. Now, the Government is proposing to amend the legislation, requiring labelling for packaged food if it contains the eight allergens suggested by the Codex Alimentarius Commission so that consumers can identify them. The Democratic Alliance for Betterment of Hong Kong (DAB) supports the legislative intent of the Government.

During the deliberation process, the Subcommittee has in principle agreed to the principle that consumers should have more information on food. However, the trade has pointed out that under the circumstances that the major food suppliers, including the Mainland and the Southeast Asian countries, have not yet made laws on the labelling of allergens, it is very difficult or even impossible for the trade to obtain the relevant information. As a result, they can hardly comply with the proposed legal requirements when importing food. The DAB understands that consideration for the consumers' right to know and food safety is very important and should be accorded priority, but we should also address the difficulty faced by the trade seriously. This is because in order to fully protect food safety, co-operation among the Government, the trade and the consumers is essential. Therefore, the Subcommittee has spent a lot of time on addressing the worries expressed by the trade.

Regarding the resolution proposed by the Government, it has set out clearer defence provision together with the extension of the grace period to 36 months by the Administration to allay the worries of the trade, the DAB thus extends its support. However, the adoption of defence provision is only a temporary solution, the Government of the Hong Kong Special Administrative Region (SAR) should do its best within the grace period of some two years under the legislation to discuss with the major food suppliers on the Mainland and in Southeast Asia, and promote Hong Kong's imminent enforcement of legislation on the labelling of allergens so that local food product manufacturers can actively act in compliance. On the other hand, to assist local food product manufacturers to adapt to the new requirements, it is necessary for the Government to open discussions with the trade expeditiously in order to draw up operation guidelines for the system of tracing and monitoring allergens. Food product manufacturers can then effectively avoid the mixing of allergens into food products, and provide agent or retailers with accurate information on allergens.

Madam President, regarding the labelling of alcoholic drinks, the DAB already conducted a survey as early as 1999. It was discovered that some beer carried a durability label, some carried the date of manufacture, but some did not carry any relevant information. The situation was a bit confusing. Moreover, consumer protection was also inadequate. Of course, the DAB made a proposal on the provision of a common durability label for low alcoholic content drinks, such as beer. Although it has been five years since before law can be enacted to

implement this measure, it is after all a good thing for consumers. The DAB supports the relevant proposal.

As for the Government's proposal to discuss with the trade in future and encourage the trade to voluntarily provide other food information through the formulation of a code of practice, the DAB supports this arrangement and considers that this can temporarily resolve the argument between the trade and the Government. However, the Government should also review from time to time the effectiveness of the voluntary labelling system. Once it is discovered that the effect is not desirable, it is necessary to report to this Council and reconsider the necessity of mandatory labelling.

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

**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 the Environment, Transport and Works to reply.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:**

I would like to just address one point on the issue of Regulatory Impact Assessment (RIA). Unlike the labelling of genetically modified (GM) food and nutrition information, there is significant importance and health concern for the labelling of allergenic substances and additives. We believe the trade would know what ingredients they use in their products, and so the cost incurred would be the relabelling cost. Therefore, the cost impact would not be as complicated as that for the labelling of GM food and nutrient information, so it is considered that RIA is not necessary for this exercise. Thank you.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Second motion: Amending the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004.

## **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I move that the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 (the Amendment Regulation) be amended as set out on the Agenda.

The Amendment Regulation was tabled before the Legislative Council on 19 May 2004 and subsequently scrutinized by the Subcommittee on Subsidiary Legislation. The Subcommittee has now completed its scrutiny.

The Amendment Regulation, made by the Electoral Affairs Commission (EAC), has three main objectives as follows:

- (a) providing for a decentralized counting arrangement for geographical constituencies (GC);
- (b) improving the existing procedures for the handling of questionable ballot papers; and
- (c) deleting all references to the Election Committee in view of the change in the overall composition of the Legislative Council as from the third term.

The Amendment Regulation also makes consequential amendments to two other pieces of subsidiary legislation related to Legislative Council elections.

In scrutinizing the Amendment Regulation, the discussion of the Subcommittee focused mainly on two issues, namely the secrecy of votes and the decentralized counting arrangement, and views were put forth on the relevant provisions of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (the Regulation).

The Subcommittee noted that earlier there had been media reports on the alleged use of duress against electors with a view to influencing their voting preferences. The Committee expressed concern about the protection of secrecy of votes. Some members suggested that the EAC should adopt further measures to prevent electors from using camera-equipped mobile telephones to take photos of ballot papers inside a polling station.

The Government of the Hong Kong Special Administrative Region (SAR) is committed to maintaining the fairness, openness and impartiality of all elections. The existing legislation expressly prohibits any corrupt conduct related to elections. Section 45(1) of the Regulation also provides that if, within a polling station, a person uses a mobile telephone, paging machine or any other device for electronic communication contrary to a direction of the Presiding Officer not to do so, he commits an offence. Moreover, under section 45(2) of the Regulation, a person shall not take photographs within a polling station without express permission. The EAC will, as in the past, continue to work closely with the Independent Commission Against Corruption to ensure that the Legislative Council elections in September will be fair and honest.

In response to the concern of the Subcommittee, we propose increasing the penalty under section 45(2) of the Regulation to achieve added deterrence. Currently, a person who commits an offence under section 45(2), namely filming or taking photographs or making any audio or video recording within a polling station without express permission, is liable on conviction to a fine of \$5,000 and to imprisonment for three months. Having considered the views of the Subcommittee members, we propose increasing the term of imprisonment for offences under section 45(2) from three months to six months. We also propose to increase from three months to six months the imprisonment term under the provision safeguarding the secrecy of votes (that is, section 96). An offence under section 45(1) of the Regulation, namely using within a polling station a

telephone or any other device for electronic communication, will remain punishable by a fine of \$5,000 and imprisonment for three months.

The EAC will implement administrative measures to encourage electors to switch off their mobile telephones inside polling stations. When issuing ballot papers to electors, polling staff will advise them to switch off their mobile telephones. More prominent signs will also be posted at the polling stations to remind electors to switch off their mobile telephones.

To supplement the above measures, the EAC will also remove the curtains in front of the voting compartments so that polling officers, candidates and their agents can monitor generally the conduct of electors inside the voting compartments. A yellow line will be marked on the floor, outside the voting compartments, beyond which no other electors will be allowed to enter or stay when an elector is marking the ballot paper inside the voting compartment. The yellow line will generally be marked at least 1 m from the voting compartments and, if the configuration of the polling station so permits, the distance will be extended to up to 2 m.

The Government will continue with its publicity efforts to promote public awareness of various arrangements and legislative provisions protecting the secrecy of votes, in order to enhance public understanding of measures against corrupt and illegal conduct in elections, including relevant provisions in the Elections (Corrupt and Illegal Conduct) Ordinance. Under the Elections (Corrupt and Illegal Conduct) Ordinance, a person who offers, solicits or accepts an advantage as an inducement for another person to vote or not to vote for a particular candidate, or uses force or duress against another person to induce the other person to vote or not to vote for a particular candidate, commits an offence and is liable upon conviction to a maximum penalty of a fine of \$500,000 and imprisonment for seven years.

At the Subcommittee meetings, a few members expressed concern that the proposed decentralized counting arrangement for the GCs might enable others to find out easily the preferences of voters of individual polling stations, but most members supported the proposal. The EAC does not consider that the secrecy of votes will be compromised as a result of the decentralized counting arrangement. Nonetheless, to address the concern of some members, the EAC has agreed to raise the threshold for the purpose of defining "small polling

stations" from 200 registered-electors to 500 registered-electors. Ballot papers cast at polling stations with fewer than 500 registered electors will be delivered to a main counting station and mixed with the ballot papers of the main counting station before the votes are counted. It is estimated that there will be about 17 polling stations with fewer than 500 registered electors in the Legislative Council elections in September. The EAC considers that the operational implications associated with the transportation of ballot boxes from these 17 polling stations to the main counting stations manageable.

The proposed resolution also includes other amendments, for example, those which aim at improving the arrangement for the recounting of votes for the GCs and also some technical amendments.

The proposed amendments moved by me are supported by the Subcommittee. I would like to express my sincere gratitude to Mr Andrew WONG, Deputy Chairman of the Subcommittee, and other members for the invaluable suggestions made during the scrutiny process. I would also like to take the opportunity to thank Mr HUI Cheung-ching, Chairman of the Subcommittee, for steering the earlier work of the Subcommittee, and to wish him a speedy recovery.

With these remarks, I implore Members to support the amendments. Thank you, Madam President.

**The Secretary for Constitutional Affairs moved the following motion:**

"RESOLVED that the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004, published in the Gazette as Legal Notice No. 84 of 2004 and laid on the table of the Legislative Council on 19 May 2004, be amended -

- (a) in section 2(a)(iii)(A), by repealing "" (視何者適用而定) " and substituting " (視何者適用而定) "";
- (b) in section 14, in the heading, by adding "某" before "地方選區";
- (c) in section 19(a), in the new section 28(1B), by repealing "200" and substituting "500";



(d) in section 19(a), in the new section 28(1C), by adding "any of the small polling" before "stations,";

(e) by adding –

**"27A. Presiding Officer to exhibit  
at polling station notice  
providing information for  
the guidance of electors**

Section 39 is amended by adding –

"(1A) The Presiding Officer of a small polling station must ensure that, before the commencement of the poll, a notice providing information of the main counting station designated for counting the votes of the small polling station is exhibited outside the small polling station." .";

(f) by repealing section 29(a) and substituting –

"(a) in subsection (1) –

(i) in paragraph (a), by repealing "(17)(a)" and substituting "(17)";

(ii) by adding –

"(aa) conduct any activity for canvassing for votes, so that the sound of the activity can be heard in the no canvassing zone;"

(iii) in paragraph (ca) –

(A) by repealing "(17)(b)" and substituting "(18)";

- (B) by adding "or wear" after "display";
- (C) by repealing "or clothing" and substituting ", clothing or head-dress";
- (D) by repealing subparagraph (ii) and substituting –
  - "(ii) makes direct reference to –
    - (A) a body any member of which is standing as a candidate in the election; or
    - (B) a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election; or";";
- (g) by repealing section 32(a) and substituting –
  - "(a) in subsection (1), by repealing "Presiding Officer" and substituting "Returning Officer, Assistant Returning Officer, Presiding Officer or any polling officer";";
- (h) in section 32(b), in the new section 45(2)(b), by adding "或界別" after " ) 有關選區";
- (i) in section 32(d), by repealing the full stop and substituting a semicolon;
- (j) in section 32, by adding –

"(e) in subsection (7), by repealing everything after "an" and substituting –

"offence –

(a) under subsection (2) is liable to a fine at level 2 and to imprisonment for 6 months;

(b) under subsection (1), (3), (4) or (5) is liable to a fine at level 2 and to imprisonment for 3 months.".";

(k) in section 36, in the new section 53A, by adding –

"(8) In this section, references to "elector" are to be construed as including an authorized representative.";

(l) in section 37(c), in the new section 54(3)(a), by repealing "內";

(m) in section 37(c), in the new section 54(3)(b), by repealing "內" where it secondly appears;

(n) in section 42, in the new section 63A(3), by repealing everything after "boxes" and substituting ", the sealed packets and the ballot paper accounts prepared by that Officer to the Presiding Officer of the main counting station.".";

(o) in section 49(b), in the new section 69(2), by repealing everything after "of the counting" where it first appears and substituting –

"station,

the Chief Returning Officer or the Returning Officer, as may be appropriate, may order the person to leave the

counting station or the vicinity of the counting station, as the case may be, immediately.";"

(p) by repealing section 50(a) and substituting –

"(a) in subsection (1), by repealing everything after "power under" and substituting –

"section 28(9)(a) –

- (a) the Presiding Officer of a GC polling station which is also designated as a counting station (other than a main counting station) must deliver or arrange to be delivered to the central counting station the ballot boxes for the FC ballot papers from that Officer's polling station, together with the sealed packets under section 63 and the ballot paper accounts prepared by that Officer for the functional constituencies; and
- (b) the Presiding Officer of a GC polling station which is also designated as a main counting station must, in addition to the ballot boxes, sealed packets and ballot paper accounts referred to in paragraph (a), deliver or arrange to be delivered

to the central counting station the relevant ballot box or boxes, sealed packets and ballot paper accounts delivered to that Officer under section 63A(3) for the functional constituencies."";

(q) in section 55(c), by adding –

"(ia) in paragraph (a), by repealing "Chief Returning Officer or to the";";

(r) in section 63, in the new section 79A(1), by adding "recorded on the GC ballot papers for a geographical constituency (other than those recorded on the GC ballot papers to be handed over to the Returning Officer under section 74(8)(c))" before "are counted";

(s) in section 63, in the new section 79A(3), by repealing "completion of the count or re-count," and substituting "completion, of the count or re-count";

(t) in section 63, in the new section 79A(5), by adding "under subsection (4)" after "constituency" where it first appears;

(u) in section 63, by repealing the new section 79A(6), (7), (8), (9) and (10) and substituting –

"(6) After the Returning Officer has been notified of the results of the counting of votes of all the counting stations for the geographical constituency under subsection (5), that Officer must make known the results to the candidates or their election agents or counting agents at the place specified by the Returning Officer. If a candidate or the election agent of the candidate who is present at the specified place makes a request to the Returning Officer for a re-count of the votes of all the counting stations for the geographical constituency, that Officer must comply with

the request unless the Officer is of the opinion that the request is unreasonable.

(7) After the Returning Officer has made known the results under subsection (6), that Officer must also make known the estimated number of GC ballot papers to be handed over to him under section 74(8)(c) for the geographical constituency (if any) to the candidates or their election agents or counting agents at the place specified by the Returning Officer. A candidate or the election agent of the candidate who is present at the specified place may make a request to the Returning Officer for a re-count of the votes of all the counting stations for the geographical constituency and the votes recorded on the GC ballot papers to be handed over to that Officer under section 74(8)(c) for the geographical constituency.

(8) Where there is no request for a re-count of the votes of all the counting stations for the geographical constituency under subsection (6) or such request is rejected by the Returning Officer, that Officer must add together –

- (a) the results made known under subsection (6); and
- (b) the result of the counting of the votes recorded on the GC ballot papers handed over to that Officer under section 74(8)(c) for the geographical constituency (if any),

and make known the aggregate result to the candidates or their election agents or counting agents at the place specified by the Returning Officer. If a candidate or the election agent of the candidate who is present at the specified place makes a request to the Returning Officer for a re-count of the votes referred to in paragraph (b), that Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(9) If the Returning Officer decides to comply with the request referred to in subsection (6), that Officer must require all the Assistant Returning Officers to instruct the Presiding Officers of the counting stations in their respective charge to conduct a re-count at the relevant counting stations forthwith.

(10) The Presiding Officer of each of the counting stations for the geographical constituency must make known the result of the re-count at the counting station to the candidates or their election agents or counting agents who are present at the counting station and must report that result to the relevant Assistant Returning Officer.

(11) After the Assistant Returning Officer has been notified of the results of the re-count of all the counting stations in his charge for the geographical constituency under subsection (10), that Officer must make known the results to the Returning Officer for the geographical constituency.

(12) After the Returning Officer has been notified of the results of the re-count of all the counting stations for the geographical constituency under subsection (11), that Officer must add together -

- (a) such results; and
- (b) the result of the counting of the votes recorded on the GC ballot papers handed over to that Officer under section 74(8)(c) for the geographical constituency (if any),

and make known the aggregate result to the candidates or their election agents or counting agents at the place specified by the Returning Officer. If a candidate or the election agent of the candidate who is present at the specified place makes a request to the Returning Officer for a re-count of the votes

referred to in paragraph (b), that Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(13) Subject to subsection (14), if the Returning Officer decides to comply with a request referred to in subsection (7), that Officer must conduct a re-count of -

- (a) the votes of all the counting stations in accordance with the steps as described in subsections (9), (10) and (11); and
- (b) the votes recorded on the GC ballot papers handed over to that Officer under section 74(8)(c) for the geographical constituency,

and make known the final result to the candidates or their election agents or counting agents at the place specified by that Officer. When the final result has been made known, the counting of the votes and re-counts are completed for the purposes of section 83(1).

(14) The Returning Officer must not conduct a re-count under subsection (7) -

- (a) unless the request for such re-count is made immediately after that Officer makes known, under that subsection, the estimated number of GC ballot papers to be handed over to him under section 74(8)(c) for the geographical constituency; or
- (b) if the estimated number of GC ballot papers to be handed over to that Officer under section 74(8)(c) for the geographical constituency is less than the difference between the numbers of



remaining votes cast for any 2 lists of candidates for the geographical constituency, as determined in accordance with the counting system under section 49 of the Legislative Council Ordinance (Cap. 542).";

(v) by adding –

**"72A. Enforcement of provisions  
as to secrecy**

Section 96(10) is amended by repealing "3" and substituting "6".";

(w) in section 78, by adding –

"(ba) in section 5(1) and (5), by repealing "or section 18 of Schedule 2 to that Ordinance";";

(x) by repealing section 78(c)(i) and substituting –

"(i) in subsection (1) –

(A) by repealing "or section 18 of Schedule 2 to that Ordinance";

(B) by adding "or the Presiding Officer, as may be appropriate," after "Returning Officer";". "

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

**PRESIDENT** (in Cantonese): Mr Andrew WONG will move an amendment to this motion.

I now call upon Mr Andrew WONG to speak and move his amendment.

**MR ANDREW WONG** (in Cantonese): Madam President, I move that the Secretary for Constitutional Affairs' motion be amended, as set out on the Agenda.

In preparation for the Legislative Council Election 2004, the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 (the Amendment Regulation), seeking to amend the original procedures related to the Legislative Council elections, was gazettied and tabled before the Legislative Council on 19 May 2004.

The present motion of the Secretary for Constitutional Affairs seeks to amend the Amendment Regulation in respect of the newly added subsection (1B) to section 28 of the original Regulation, to increase the number of registered electors for a small polling station from 200 to 500. This is the part I seek to amend. My amendment is very simple, involving only paragraph (c) of the resolution, by amending the number "500" to "7 000".

Madam President, I think you and the other Members may probably recall that last year, this Council accepted the arrangement of the Electoral Affairs Commission (EAC) in respect of the counting of votes of the 2003 District Council Election. Under the arrangement, the long-established regional centralized counting arrangement was altered; polling stations had to be converted into counting stations after the close of poll. At that time, the EAC initially proposed that every polling station should be converted into a counting station. However, the EAC accepted the suggestion of certain Members to amend the relevant Regulation, so that polling stations with less than 200 registered electors were regarded as "small polling stations" and would not be converted into counting stations. Ballot papers cast at these polling stations would be delivered to the nearest polling stations called the "main counting stations" and be counted together with ballot papers cast at these main counting stations that were also converted from polling stations.

Last year, I also opposed the arrangement; however, my attempt was unsuccessful. This time around, it is decided that the counting arrangement for the 2003 District Council Election would be adopted under the Amendment Regulation for the procedure of the Legislative Council Election. That means votes counting will not be conducted in polling stations with less than 200 registered electors, while all polling stations with more than 200 registered electors will be converted into counting stations.

According to the figures provided by the Government on the 2003 District Council Election, there were altogether 526 polling stations in the District Council Election held in 2003, among which there were seven polling stations with less than 200 registered electors. That is to say, in last year, a total of 519 polling stations (that is, 526 minus seven) were converted into counting stations. That means, mixed counting was adopted only in seven counting stations among these 519 counting stations but not the remaining counting stations.

Regarding the Amendment Regulation, the Government has conducted four meetings with the Subcommittee on subsidiary legislation relating to 2004 Legislative Council elections. Some members suggested that the qualifying number of registered electors for a small polling station should be changed from "200" to "500", and some suggested that it should be "1 000". But I have always insisted that mixed counting must be adopted. At the meetings, I proposed that only one counting station should be set up in each GC. The coverage of the GCs of the Legislative Council Election may be very large; however, decentralized counting arrangement should at least be scattered to the administration district under every District Council of each GC. Take the Hong Kong Island GC as an example, four counting stations can be set up accordingly in the Eastern District, Wan Chai District, Central and Western District and the Southern District.

However, my proposal has not been accepted by the EAC and the Constitutional Affairs Bureau. The Government has only agreed to increase the number of registered electors for a small polling station from "200" to "500", as in paragraph (c) of the government resolution. Again, I would like to refer to the figures for the 2003 District Council Election. The number of polling stations with less than 500 registered electors is 17. As there are 526 polling stations in total, with 526 minus 17, 509 polling stations are converted into counting stations, among which mixed counting can only be applied to 17 counting stations.

I have obtained from the Government the following figures related to the polling stations of 2003 District Council Election. In implementing the arrangement that small polling stations are not converted into counting stations, if the number of registered electors of a small polling station is set at:

- less than 200, the number of counting stations can be reduced by seven,
- less than 500, reduced by 17;
- less than 1 000, reduced by 36;
- less than 2 000, reduced by 79;
- less than 3 000, reduced by 121;
- less than 4 000, reduced by 160;
- less than 5 000, reduced by 204;
- less than 6 000, reduced by 259;
- less than 7 000, reduced by 335; and
- less than 8 000, reduced by 404.

The detailed analysis is at the schedule I have sent to Members. Members will please refer to the schedule at the back of my speaking notes.

It can thus be seen from the analysis that if the number of registered electors for a small polling station is set at less than "200", only seven counting stations can adopt mixed counting. That means mixed counting cannot be adopted in 512 counting stations, that is, 526-7-7. If the number is set at less than "500", the number of counting stations that cannot adopt mixed counting will amount to 492, that is, 526-17-17. If the number is set at less than "1 000", the number of counting stations that cannot adopt mixed counting will be as high as 454, that is, 526-36-36. If it is set at less than "5 000", mixed counting cannot be conducted in as many as 118 counting stations. If it is set at a level less than "6 000", there will be eight counting stations (526-259-259) where mixed counting cannot be adopted.

Therefore, only if the level is set at less than "7 000" registered electors, can it be assured that mixed counting can be adopted in every counting station.

For the ballot papers of the 335 polling stations with less than 7 000 registered electors will be delivered to the remaining 191 main counting stations converted from polling stations.

Madam President, let us not be shocked by the drastic increase from "200" to "7 000". To the candidates, 191 counting stations are an enormous figure. If divided by five GCs, there will be around 38 counting stations in each constituency. But now, we have 526 counting stations; that means each GC will have more than 100 counting stations. Candidates on each list of candidates still have to assign 38 counting agents or 38 teams of counting agents, composing of a lawyer and another person who is not a lawyer, for example, to monitor vote counting. This is a practical problem in standing for an election. It is a cause of concern even for big political parties. More so, it is a matter of principle of mixed counting.

It should be noted that neither the EAC nor the Government has abolished the principle of mixed counting. Under section 75 of the Regulation as amended, the requirement of mixed counting is still maintained. However, if the Government sets the number of registered electors for a small polling station at the level of 200, or even at 500, an overwhelming majority of counting stations (about 500 out of the 526 counting stations) will not be able to adopt mixed counting. The principle of mixed counting exists only in form but lacking in substance. They are utterly doing the opposite of what they are reporting. This is amounting to a pack of lies.

I propose to set the number of registered electors for a small polling station at "less than 7 000". By doing so, a right balance can be struck between (1) the principle of confidentiality in mixed counting, which I insist, and (2) the principle of enhancing efficiency through decentralized votes counting, which the Chairman of EAC, Mr Justice WOO Kwok-hing, insists.

The principle of mixed counting which I insist has not been given up by the Government and the EAC. And my proposal to set the number of registered electors at "7 000" may at the same time fulfil the principle of enhancing efficiency through decentralized vote counting.

Many records of the discussion between the Subcommittee and the Government are quite meaningful. I would like to take this opportunity to share with Members all those records, for the report of the Subcommittee is not

submitted to the Legislative Council for record. I now cite various paragraphs from the report of the Subcommittee submitted to the House Committee on 25 June:

Paragraph 35: "Hon Andrew WONG has stressed the importance of upholding the principle of mixing of ballot papers from polling stations within a geographical constituency in order to safeguard the integrity of the electoral process. Under the principle, if more than one polling station is used for polling within a geographical constituency, ballot papers from two or more polling stations must be mixed before counting the votes in respect of the geographical constituency. This would safeguard the integrity of the electoral process within a geographical constituency, and minimize the chance of intimidation and reprisals, or other illegal and corrupt conduct at elections."

Paragraph 36: "Hon Emily LAU raises strong objection to the proposal and has expressed serious concern that the preferences of voters of individual polling stations might be easily revealed under the proposed counting arrangement, in view of the small number of ballot papers handled by each polling cum counting station under the proposed decentralized counting arrangement."

Paragraph 37: "Hon CHEUNG Man-kwong considers the proposed arrangement for counting of geographical constituency votes might need to be reviewed in the light of the recent speculations about acts of intimidation aimed at influencing the outcome of the 2004 Legislative Council election. He suggests that for polling stations with less than 1,000 registered electors, the ballot papers should be delivered to a main counting station where the ballot papers cast at the small polling station and the main station would be mixed before the votes were counted."

Paragraph 38: "Hon IP Kwok-him and Hon Howard YOUNG support the proposed decentralized counting arrangement for geographical constituencies which would enhance the efficiency of the vote counting process. However, they have no objection for ballot papers from polling stations with less than 500 registered electors to be mixed before counting."

Paragraph 44, I quote: "Hon Andrew WONG has reiterated the importance of the principle for ballot papers from different polling stations

within a geographical constituency to be mixed before counting, regardless of the number of electors in the polling stations. This was a long-standing arrangement until counting of votes was decentralized to individual polling stations for the first time in the 2003 DC election. Mr WONG has cautioned members that giving up of this important principle would result in illegal and corrupt conduct at elections in the long run."

I am baffled by all these. I cannot understand why major parties of this Council, including the Democratic Party, the DAB and the Liberal Party, supported or at least accepted setting the number of registered electors for a small polling station at less than 500 during the deliberations of the Subcommittee, and at the same time accepted fully the principle of mixed counting. However, they probably have overlooked the fact that for a large number of polling stations, there will be no mixing of ballot papers at counting. Do they see that, under the present arrangement, there will be 509 counting stations all over Hong Kong — if the number remains the same, by subtracting 17 from 526, there would be 509 counting stations? If divided among the five GCs, there will be around 100 counting stations in each constituency on average. Any party standing in the election in one constituency will have to assign 100 counting agents or 100 teams of agents, if they run in five constituencies, 500 agents or 500 teams of agents have to be assigned to monitor vote counting.

I only wish the Government can understand the rationale of the whole analysis. I hope the Government, Secretary Stephen LAM, will indicate in the final response that the Government will accept this arrangement. I also hope that the Democratic Party, the DAB and the Liberal Party have not formed an unholy alliance, which seems most unlikely in view of the fierce debate last night. Thus, again, I implore all Members to vote for my amendment.

**Mr Andrew WONG moved the following amendment:**

"RESOLVED that the motion to be moved by the Secretary for Constitutional Affairs under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) at the Legislative Council meeting of 7 July 2004 be amended in paragraph (c) by deleting "500" and substituting "7,000"."

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

**PRESIDENT** (in Cantonese): This Council now proceeds to a joint debate.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam President, the Democratic Party supports the proposals in respect of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 (the Amendment Regulation). The decentralization of votes counting may reduce the time and risk involved in centralized vote counting. The increase of the level of penalty to prohibit electors from using electronic devices to film or communicate in the voting compartment will prevent corrupt conduct at elections. To be corruption-free is the core value of Hong Kong; we should step up our effort to ensure that our elections are fair and clean.

The Democratic Party supports the counting of votes at counting stations. The reason is simple. Centralized vote counting is time consuming. Candidates and the public, both eager to know the results, are kept waiting for a very long time, for the results will come very late. Vote counting is done slowly despite prompt actions are warranted. To open ballot boxes at counting stations and count votes *in situ* is efficient and appropriate, synchronizing with the pace of a city like Hong Kong. The only issue we need to pay attention to is the quality of counting supervisors. However, it is a training issue that can be solved. No matter how, the arrangement is better than keeping the entire city waiting and wasting their time. In the District Council elections held last year, polling stations were converted into counting stations. Despite the disputes at individual counting stations, which were inevitable in an election, the result was more or less satisfactory. The Government has laid down new requirements in respect of vote counting at counting stations by increasing the number of electors for small polling stations from "200" to "500", involving 17 polling stations. The arrangement is adequate to prevent vote rigging. It is true that if the number of electors of a polling station is too small, the problems of "vote planting" and "bribing of votes" may easily arise. The Democratic Party considers that by increasing the number of electors for small polling stations from "200" to "500", it is already sufficient to prevent candidates from identifying the voting preference of electors, and indirectly reduce the chances of



corrupt conduct at elections. The arrangement may, at the same time, enhance the efficiency of vote counting and reduce the time and risk incurred in centralized vote counting.

Regarding Mr Andrew WONG's amendment which seeks to amend the government amendment by raising the "500 electors" threshold for polling stations where ballot papers have to be mixed with votes at main polling stations before counting to "7 000 electors", the Democratic Party does not agree. We consider the amendment will fail to achieve the anticipated advantage of decentralized vote counting. More so, most of these small polling stations are located in rural or remote areas where the adoption of Mr Andrew WONG's amendment will make it necessary for the Registration and Electoral Office to mix the ballot papers of more polling stations for counting. Such an arrangement is time consuming and inefficient, reducing the amendment of the Government to nothing. The Democratic Part thus opposes Mr Andrew WONG's amendment.

It is worrying that during the past few months, there were many reports revealing that the integrity of election was under threat. For instance, corruption related to election was reported. Electors were bribed and required to prove which candidates they had voted for. Those electors were asked to use their mobile phones or other devices to take the photographs of their ballot papers when they voted. Whether or not these reports are true, the Government and the Legislative Council have the responsibility to uphold the integrity and fairness of elections. Therefore, the Democratic Party supports the proposal of the Government which seeks to prohibit electors from using camera-equipped mobile phones in voting compartments, so as to prevent electors from using mobile phones, cameras or other devices to conduct electronic communication.

We propose that in enforcing this provision, the Government should take into account that the public, not familiarized with the new legislation, may answer their phones in polling stations. Therefore, the Government must take adequate measures to encourage electors to switch off their mobile phones at polling stations. Otherwise, electors may answer their phones inadvertently when their mobile phones ring, rendering them suspected of committing an offence. It is noteworthy that in view of the advances in technology nowadays, many things, watches, personal digital assistant and even a pen, can be used for filming or taking photographs and the use of these devices to film or take photographs can be done unnoticed. Therefore, in enforcing the legislation,

Returning Officers and staff at the polling stations should step up patrol beyond the yellow line to observe reasonably the conduct of electors for any irregularities.

We consider the above measure and the removal of the curtains in front of voting compartments adequate to prevent the series of hearsay conduct, "votes bribing", corruption at election, or other acts requiring electors to prove whom they have voted for out of any other reasons. The arrangement can safeguard the integrity and fairness of election on the one hand, while causing not much nuisance to the public on the other.

Moreover, the Democratic Party has made a suggestion to increase the level of penalty by extending the imprisonment term upon conviction from three months to six months to enhance the deterrent effect of the legislation. The Government has accepted the proposal. This arrangement may also enhance the deterrent effect.

We also agree to the recounting arrangements proposed by the Government. We consider the government proposal reasonable, for it can save time without undermining the fairness of election.

Madam President, the Democratic Party supports the proposals and amendment of the Government. The Democratic Party opposes Mr Andrew WONG's amendment.

**MR HOWARD YOUNG** (in Cantonese): Madam President, I, as a member participating in the scrutiny of this motion and on behalf of the Liberal Party, support the proposal of the Government in amending the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004.

During the discussion, Members showed greater concern about the vigorous enforcement of requirement on voting in polling stations, the protection of the secrecy of votes and the efficiency of vote counting. As we all know, in the last District Council Election, the unprecedented arrangement of counting votes at polling stations was implemented. Despite the problems arisen in individual counting stations, the operation was smooth generally. I consider the arrangement able to cater for the demand of the public, electors and even

candidates for a highly efficient vote counting system. This arrangement is much better than the previous practice of centralized vote counting, which sometimes demanded officers to count votes overnight but failing to provide any result even in the afternoon the day after polling day. For this reason, we support this motion.

Recently, there are rumours claiming that electors have been asked to take photographs of their own ballot papers in polling stations to prove or account for the votes they have cast for certain candidates. In view of this, the Government now proposes to take measures to prohibit strictly the use of filming devices or cameras inside polling stations, and to increase the level of penalty in this respect. We support and accept these measures.

However, I would like to point out that, in addition to these legal provisions, it is most important that officials of each polling station are well trained. This is particularly so in the case mentioned by Mr CHEUNG Man-kwong earlier, that staff at polling stations should remind electors to switch off their mobile phones upon their entry to the voting compartments. As almost everyone in Hong Kong possesses a mobile phone, if electors are not reminded, problems may really arise. Even we Members sometimes will forget to switch off our mobile phones while we are in the Chamber. This has happened time and again. Therefore, we really hope that the procedure will actually be implemented in each polling station.

Regarding the amendment proposed by Mr Andrew WONG, we have to thank Mr WONG for explaining clearly his justifications last night. He explained why he had proposed to raise the threshold for small polling stations proposed by the Government to require mixed counting from 500 registered electors to 7 000 but not 8 000. I have read the table provided and found it easier to understand what he means. If the threshold is raised to 7 000, mixed counting can be adopted in every counting station, while decentralized vote counting can still be conducted in more than a hundred polling stations. Certainly, mixed counting renders it more difficult to assess the turnout rate of electors and the distribution of votes in each station. However, I think the focus of our discussion falls mainly on the protection of the secrecy of votes of individual electors. Regarding the analysis of the distribution of electors, some consider that political parties with sufficient resources may be able to analyse in future the result and identify the base of their votes, facilitating them to draw up better deployment strategies for the next election. This may happen.

However, political parties in many countries of matured democracy around the world are doing this. Thus, I think it is not necessarily a bad thing. After all, if Hong Kong is to attain democracy, it will be heading towards party politics. So, I think it must accept this as part of the culture and mode of election of a modern society.

Initially, the Government proposed that mixed counting must be adopted for polling stations with less than 200 registered electors. Subsequently, after discussion, it was decided that the threshold should be raised to 500 or 1 000 registered electors. Finally, the Subcommittee concluded that the threshold should be pitched at 500. For it is recognized that if only a small number of counting stations can adopt mixed counting, it does pose a problem in protecting the secrecy of voting preference of individual electors. On the other hand, the increased threshold also helps to address the efficiency concern of decentralized vote counting. However, if the threshold is set at 7 000, it will remind us of an English saying that it is "neither here nor there". It is not necessarily "wishy-washy", for a derogatory remark it is. However, by adopting this higher threshold, I think the entire territory is no longer divided into five districts but more than a hundred districts instead. By then, more resources have to be spent on delivering ballot papers, and the transferring of ballot papers among different polling stations may be more chaotic than centralized vote counting. Therefore, the Liberal Party does not support Mr Andrew WONG's amendment.

**MR IP KWOK-HIM** (in Cantonese): Madam President, the DAB supports the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004.

During the deliberations of the Subcommittee, members expressed concern for the protection of the secrecy of votes and the integrity of election. In response to the feedback of the community, the Government proposed some amendments to the Subcommittee for its deliberation. I consider the relevant discussion constructive. It is through these discussions that we managed to remove the worries of the public, including the use of mobile phone, which Mr Howard YOUNG has also mentioned earlier. As we all know, mobile phone technologies are very advanced nowadays, and camera-equipped mobile phones will undermine the secrecy of voting and fairness of election. In the light of this, the Government considered imposing regulation through administrative measures,

stipulating in law that everyone on entry into a polling station should switch off his/her mobile phone, and anyone failing to do so commits an offence. Offenders would be subject to a \$5,000 fine and six months' imprisonment. These measures caused a great uproar in the community. In the course of discussions, it was recognized gradually that the thrust of the problem lay with filming and photo-taking. The issue is regarded as a cause of concern, and the Government accepted our opinions to increase the penalty in respect of filming and photo-taking by extending the imprisonment term from three months to six months. Regarding the use of mobile phones by electors, the established approach proven effective all along will be retained. That means electors will be reminded first, and if they still fail to comply, appropriate actions will be taken to enforce the law.

These discussions, I consider, will help to remove the worries of the public without creating the so-called "white terror". The desire of electors to cast vote will be enhanced.

The Government has also mentioned the issue of curtains. It is proposed that curtains in front of voting compartments should be removed, and the distance between voting compartments and the waiting area will be extended from 1 m to 2 m. These measures, though seem to be trivial at first glance, indicate that the Government has taken on board different opinions to make amendments accordingly.

Certainly, at the later part of the discussions, our focus shifted to the amendment proposed by Mr Andrew WONG today. Actually, the issue has not only been discussed in the Subcommittee. In the course of the scrutiny of the principal Ordinance, strong views were already expressed. All along, Mr WONG insists that it is a very important principle, for he worries that the preference of electors for different candidates may be revealed under the regional vote counting arrangement. He considers this unacceptable, for it is a matter of principle. He supports the arrangement of mixed counting. The DAB has all along held a different view. We have reservations about mixed counting. Actually, in the past, upon the completion of regional vote counting, ballot boxes were delivered to the central counting station for recounting, and it was there where the ballot papers were mixed. Why should this be done? As this is time consuming and inefficient, why should this be done? There is a reason for this, indeed. We will not object to the arrangement if it is for the purpose of security and protection of secrecy. However, in the last District Council Election, we

consider the combination of several small polling stations into a larger counting station is adequate in addressing the fear about the disclosure of voting preference of electors.

There is a solution to the problem. On the same grounds, the principle is applicable to the elections of the Legislative Council. We consider that by increasing the number of registered electors of a constituency from 200 to 500 will precisely solve the problem. The principle is to ensure that the secrecy of votes in an election will not be compromised, and that problems will not arise in this regard. On this point, we find it acceptable.

Regarding the worry of Mr Andrew WONG about the possible disclosure of the voting preference of electors for various candidates, the DAB does not share his views and does not consider the amendment necessary. In respect of the voting preference of electors, even in the case of a constituency in the District Council, we do not see the possible occurrence of illegal conduct under the Prevention of Bribery Ordinance or corruption in election. Thus, we disagree with this opinion.

Therefore, the DAB opposes the amendment of Mr WONG. Thank you, Madam President.

**MS EMILY LAU** (in Cantonese): Madam President, I rise to speak in support of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 proposed by the Secretary. However, I will also support the amendment of Mr Andrew WONG, albeit this is cold comfort to him. For, Madam President, he mentioned the unholy alliance, which I do not know for sure if it should be regarded as holy or unholy. Madam President, whether it is holy or not, the Government has to handle this properly. Anyhow, I support the amendment of Mr WONG.

Madam President, when the Subcommittee discussed the amendment to this Regulation, a lot of worries were expressed in the community. The timing was very good, for the Subcommittee could discuss those issues.

Just now, colleagues mentioned that some members of the public felt worry for they had received requests of all kinds, including taking photographs in polling stations. They were not only asked to take photographs but were also requested to send the photographs to others to prove whom they have voted for

real time. Some people called the radio stations to express their worries, and my office has also received some complaints of this kind. Most of them work in the Mainland or have business ties with the Mainland. They said that they had been contacted by some influential people who required them to provide the names and telephone numbers of electors in Hong Kong. Some of them said that they had even been asked to sign an undertaking to vote for certain candidates in the election on 12 September, and they would lose their jobs if they failed to do so.

At that time, I find this most strange. How can those people know whether the electors have really voted for certain candidates? Why will there be such problems? The relevant citizens have already lost their confidence in polling stations staff, fearing that they may have conspired with certain people. Those electors also doubt the secrecy of votes; they cannot rest assured that secrecy is protected.

I believe the developments over the past few weeks have aroused our concern over the views of the public on the entire election. Even though we may consider the election system not a fair one, all along we think that the people of Hong Kong are confident about the voting procedure and consider its implementation satisfactory. However, struck by the recent blows, people became worried. Therefore, we did hold discussions in this respect during the meetings of the Subcommittee. We are glad to know that the Secretary has accepted the proposals of Members to increase the level of penalty for taking photographs in the polling station to ease our worries. Since the fine for the offence cannot be further raised, but the term of imprisonment can be doubled, the imprisonment term is thus extended from three months to six months. I believe this will strike home a very clear message to every stratum of society, that unauthorized photograph taking inside polling stations can lead to very serious consequences.

Also, I have to thank the Secretary for agreeing to increase the penalty relating to the protection of secrecy of votes to six-month imprisonment. I hope this will give a very clear message to members of the community, informing electors what should and what should not be done. Of course, I urge that from now on until 12 September, any citizen being intimidated or receiving any request in this respect should make it public. I also hope that the people of Hong Kong will now understand what they should and should not do. When someone make such unreasonable requests to them, they should rebuke those people in their face, and report the case to the Independent Commission Against Corruption or relevant authorities, as the Secretary urged.

I hope that the reliability of the voting system can be maintained, so that the people of Hong Kong are confident about the system, including the removal of the curtain in front of voting compartments. As I just said, some people worry that the removal of the curtain is intended for watching them. As I said earlier, some electors do not have faith in the fairness and independence of polling station staff, so the issue has to be handled cautiously. Should the 1 m distance be reviewed to see if it is adequate? A longer distance should be kept as far as possible to remove their fear that they are being watched for whom they have cast the vote. On the other hand, they should also know that they would be seen if they take photographs with their mobile phones. I believe a right balance has to be struck in this respect.

Certainly, if anyone continues to intimidate electors, it is not a problem to which we can find a solution here today, Madam President. We have mentioned this issue on a number of occasions, including the occasion on which we, the Power for Democracy, met with Justice WOO Kwok-hing. The issue was raised on that occasion; however, Justice WOO told us there was not much he could do if those incidents occurred outside Hong Kong.

Therefore, I would like to take this opportunity to urge the authorities to state clearly to the mainland authorities the rules of election in Hong Kong. We do not like to see our voting being affected or the confidence of our citizens in voting being hampered by any acts. Neither do we wish to see any influential people or any individuals imposing pressure on the electors of Hong Kong, directing them how to vote.

Madam President, the 1 July march, in particular, gave a full demonstration that the people of Hong Kong know what they are up to; I believe we can also see that they are not easily manipulated. However, some people do worry about this. This is particularly the case if their means of living is at stake. When they are asked to sign an undertaking to vote for certain candidates and are told to face dire consequences if they fail to do so, they feel worried. Therefore, I think the Secretary has the responsibility to give a clear explanation to all parties, urging them not to challenge the system. The Secretary should also send a clear message to the public, reminding them of the serious consequences to which one may be liable in challenging the system.

In this regard, I support rigorous enforcement by the authorities, for we cannot tolerate these incidents. We cannot tolerate anyone intimidating,



threatening or seducing electors of Hong Kong to change their voting preference. Moreover, it should be made known to the public that the secrecy of their votes is protected. No one, not even his or her boss, knows whom he or she has voted for. More so, I hope that officials in polling stations are impartial. As electors enter polling stations to vote, they need not worry that officials in polling stations have conspired with others. In respect of ballot papers, no marking is allowed, so electors can be rest assured in voting.

In this connection, I believe, from now on until September, the Secretary has a great responsibility to disseminate this message to electors and those intending to challenge our system. Therefore, we have asked whether more advertisements should be placed to disseminate the message. But I believe the Secretary must enhance communication with the parties concerned in the Mainland, to let them know how the Hong Kong system works. They should be reminded not to act recklessly, or else, they will be in big trouble. Though the public may not be very willing to speak aloud of this openly, we support them to report the case. However, since they may make calls to radio programmes, Members' offices or other organizations, the incidents will somehow be made know to the public.

Madam President, fortunately, the incident seems to have died down after several weeks. I am glad to see that. I hope what have been done will prove to be effective. I will continue to urge the public to report such cases, if any, immediately; they should call to make public those cases. Some people have proposed that press conferences be called, for reporters are keen to interview those people. However, many of them do not dare to do so. Nonetheless, that they dare not call press conferences does not mean that they are lying. They just fear that they may be in big trouble if they really disclose all they are told by those influential people.

Exactly because of the duress problem we are facing, I urge the Secretary to do his level best to tackle the problem. He should not turn a blind eye to the situation or just regard them as apocryphal stories on the excuse that no one has ever come forward to describe the incidents. As we all know, the police are now processing some 500 cases of this nature. Perhaps the Secretary may provide us with the latest figures later. We are gravely concerned about the complaints related to registration of electors; we worry about this.

Is anyone trying to interrupt the registration of electors? These incidents may also undermine the confidence of electors. Why are registrations filed on their behalf? Why are registrations filed again for those who have already registered? There is something wrong about this. The same cases might have happened in the past, but the scale might not be as large as this time. Madam President, I urge every organization to be cautious and not to act recklessly. If anything happens, I implore that the Secretary and the authorities must handle it in a rigorous manner.

On Mr Andrew WONG's amendment, I support it for electors are also worried about this. Should the protection of the secrecy of voting preference or the collective preference of votes be further enhanced? I think this is a very good question. Mr WONG also questioned if inadequate protection of the secrecy of votes would breed corrupt practices in future. I think this is a question that warrants consideration. At this moment, we may not have much evidence, but other places do have the experience of converting polling stations into counting stations. The amendment proposed by Mr WONG may be doomed to fail. However, I believe the authorities or the Legislative Council Secretariat may conduct some studies in future to examine if other places that have adopted the same practice also have problems. Of course, it depends on whether similar studies have been conducted in those places. Nevertheless, I believe Mr WONG will feel more assured if studies have been conducted and reference to the experience of other places shows that nothing has happened after several elections. Certainly, if studies show that people have strong views about this in general and consider the arrangement may encourage corruption and bribery actions, it is natural that the Government should cease to insist on its implementation.

Thus, I think the Secretary may explain later whether such studies have been conducted. Will studies of this nature be conducted? I think it is worthy for the Secretary to make it clear.

Finally, Madam President, I would like to talk about the arrangements for the polling day, about which discussions have also been held at meetings of the Subcommittee. We do not know the turnout rate this year. However, we are glad to see that so many people have registered as electors. I believe in the days to come, different organizations or the candidates themselves may mobilize electors to cast their votes. The turnout rate of the last election exceeded 40%; in 1998, it exceeded 50%. However, Madam President, perhaps you may

recall that in 1998, there was a report that one of the polling stations seemed to have run out of ballot papers, and the disclosure of this indicated in certain sense that Hong Kong enjoyed high transparency. Actually, the ballot papers of that polling station had not been used up, but only a small number was left, and it was certain that staff of the polling station would fetch ballot papers from polling stations nearby.

The incident is no big deal indeed. However, it serves to indicate that hearsay as trivial as shortage of ballot papers can cause a stir. In fact, the turnout rate in that election was slightly above 50%.

Recently, I have read some surveys and studies predicting that the turnout rate of the coming election may be as high as 85%. If the turnout rate really turns out to be 85%, it is quite astounding, Madam President. I believe we will do our level best to encourage more electors to vote. The Secretary should also be thinking the same. If the turnout rate can really reach 85%, the Secretary will also be glad, for he will be granted a Bauhinia medal eventually. However, in case the turnout rate can be as good as 85%, will the authorities have sufficient resources to handle the situation? By that time, electors may be waiting in long queues; will there be sufficient supply of ballot papers? Will there be sufficient staff? I think the Secretary must make careful arrangement in respect of all these issues. I wish not to see any blunders then.

On the issue of converting polling stations into counting stations, I believe many candidates, particularly independent candidates, do not have the capacity to appoint so many agents to monitor vote counting for them. This is particularly the case for the elections in GCs. If there are 100 counting stations, they will have to appoint 100 teams of agent to monitor vote counting. In this connection, I have interviewed some candidates. Many of them have already thrown in the towel; they simply give up. As we all know, it is no easy task to find 100 teams to work from day to night. How could it be possible to ask them to, after working for 10 to 20 hours, stand for another four to six hours to monitor vote counting?

Some political parties may not necessarily have such capability. This is particularly so for those running for election over the whole territory, for they have to find some 500 teams of agents to monitor vote counting in some 500 counting stations. I really wish them good luck.

However, if it is unlikely that candidates may have so many agents to monitor vote counting, the focus of the question will then be shifted to the credibility of officials in the counting stations. Are those officials reliable? I have asked the Secretary this question several times. If it is really impossible for a candidate to appoint so many agents to monitor vote counting at counting stations, which location should be the best to station? At that time, he said the candidate had better return to the central counting station for the candidate would be able to learn about all the information incoming into it, so that should be the best location. However, as a candidate, if he knows clearly that he can only stay in the central counting station to monitor vote counting, that he can spare no other people to monitor vote counting at other counting stations on his behalf, he will certainly be gravely anxious. This is particularly so when the ballot boxes are opened and he finds that his number of votes is so low.

I do not know how their worries can be dispelled. Of course, the Secretary may probably say that it is tough luck that they cannot find or fail to deploy 100 teams to counting stations; they thus have to bare the consequence. But why should there be such arrangement, rendering candidates incapable of appointing 100 teams of agents feel being discriminated against and ill treated? I do not know what can be done to set the minds of those candidates at ease. For instance, the authorities should suggest them to seek the help of others or employ more staff. No matter how, there should be some arrangement for them, be it favourable or not. Actually, someone has raised this point during the discussions on the amendment, but the Secretary simply brushed it aside.

I believe problems in this respect will surface one after another. When those candidates start to zoom in, they will naturally notice this. They will bemoan that they have only 10 teams. As there are 100 counting stations now, they can deploy no one to the remaining 90 counting stations. Who will be arguing the questionable votes, the Q votes, for them? Who will be monitoring vote counting? The answer is no. After all, will candidates consider the voting procedure fair and impartial?

I so submit.

**MR FREDERICK FUNG** (in Cantonese): Madam President, a democratic system should naturally include a very important element, that the people of

Hong Kong are allowed to exercise their own free will to elect their own representatives and decision makers at the highest echelon within a specific period. Today's motion is about the amendment of provisions on electoral procedures, focusing on the system of voting. In this connection, there are only several points I would like to highlight.

I would like to express my opinions on two issues here. The first one is the system of electors. At present, we have an elector registration system in place. However, in view of the incidents that happened during the pre-election period this time around, the registration system of electors is beset with problems. All kinds of problems are revealed, including: Who should submit the elector registration form to the Government? Who should be filling in the form? Who should sign on the form?

Actually, there are two ways for elector registration. One requires a person to register first to qualify as an elector. Another method allows any official citizen of Hong Kong, holder of Hong Kong Identity Card (whose registered address is revealed in the information of the Identity Card) who has resided in Hong Kong up to seven years, for example, to automatically qualify as an elector. Of course, this is not the subject of our discussion today. However, regarding the definition of registered electors under a democratic system, I have some suggestions for the reference of the Government. I think it should consider whether people are required to register once more before they can qualify as electors, or should holders of Hong Kong Identity Card who have already met the residence requirement become qualified automatically? The Government should consider this in future.

The second issue is the voting method. In respect of voting, I would like to draw the attention of the Government to the following two aspects. First, as I have said earlier, under a democratic system, the emphasis should fall on allowing people to make decisions of their own free will in selecting the representatives of their own choice. During the entire process, one point that should be achieved is how to manifest that electors can exercise their own free will in voting. This is a very important point in this respect.

I think, insofar as this voting process is concerned, there are two crucial procedures closely related to today's resolution. First, it is the procedure of voting. Second, it is the vote counting procedure after voting. In respect of

the course of voting, we know that much discussion has been held in the community on the protection of secrecy of votes. For it is only when the secrecy of votes is protected, when electors know that they alone know whom they have voted for, that one's free will can dominate, that electors can exercise their own free will to select their representatives. We should do our level best to make the best arrangement to achieve this aim. So, electors may genuinely follow their will in selecting candidates, choose whoever they prefer. They are required to report or answer to nobody, but their own preference.

Against this background, I think a balance should be struck in the arrangements in respect of polling stations. Some people say, given the technology today, where mobile phones can be used for taking photographs and sending out photographs, those electors who may have been asked to notify certain people whom they have voted for may try to do so. Thus, I think we have to strike a balance, so that facilities at polling stations should on the one hand enable electors to exercise their own free will, as I mentioned earlier, to vote for the candidates preferred by them, a purpose that should be achieved first. But, on the other hand, the secondary purpose of preventing electors who for any reason are compelled to use advanced technology to inform others of their decisions from doing so should be achieved. However, I consider that ensuring electors to be able to vote of their own free will is of the utmost importance.

Regarding the facilities in the polling station, technically speaking, should the distance be set at 3 ft or 1 m? I, as a Member but not a professional or expert in this field, certainly do not know what the best distance is. Thus, I think I should leave this to the Government, and indeed to the professionals. My real concern is whether the principle can be upheld.

Of course, penalty can serve as another point of reference. That is, if any elector is found using this method to announce his own decision, I agree that increased penalty should be imposed. This is one way to achieve deterrent effect. Certainly, the penalty will not only deter the electors but also those requiring the electors to act so. This will let them know that the political culture in Hong Kong may be different from that of their places. The severe penalty may also let them know that it is an offence to make such a request on the electors of Hong Kong. Though these people may not necessarily be punished, for they may not be the people of Hong Kong or may not reside in Hong Kong, this can at least let them know the importance of the issue.

I urge the Government to give a hand in the process. That is to say, our Government should at least publicize this important issue via possible publicity means to the Mainland, such as reflecting some memorandum to some officials or media of the Mainland. More so, we can distribute leaflets to mainland travellers visiting Hong Kong under the Individual Visit Scheme to give them a brief account of those regulations. It is hoped that through this, every party involved, mainlanders in particular, will be able to grasp the difference between Hong Kong, under the "one country, two systems", and the Mainland.

The second issue related to the voting procedure is vote counting. How should vote counting be conducted in order to ensure that the identity of the elector of a certain vote cannot be recognized, or that electors cannot by any means report to anyone whom he has voted for or whom he has not voted for? I think this is a cause of concern. Actually, I agree to Mr Andrew WONG's opinion that, the lesser the number of electors a polling station has, the greater the chances the identity of an elector be revealed. Our concern over the disclosure of the identity of electors is not only limited to what the Liberal Party just said, that it would be difficult for political parties to locate which polling station was their base of votes. In fact, despite the mixing of votes from other stations, I can make similar analysis, that is exactly what Mr Howard YOUNG mentioned. For instance, if the votes of three constituencies at three counting stations are mixed before counting, I can conduct an analysis to find out the percentage of votes I have secured in these three constituencies. I can know how many percent of votes are voted for me. I can conduct such an analysis.

However, I think this is not the thrust. The most important point I would like to get across is that the lesser the number of votes cast at a polling station, the easier the identity of electors is being recognized. The greater the number of votes cast, the smaller the chances the identity of electors is being recognized. This is important. It is exactly related to the free will mentioned by me earlier. If the identity of electors can be recognized through the votes they cast, this may enable some people to inform others whom they have voted for. And, for whatever reasons, some people may want to know which candidates certain people have voted for, thus, under such circumstances, the identity of electors can be recognized. I think if this situation can be prevented, we can uphold one principle, which should be our ultimate goal. It is the principle of ensuring that electors may exercise their own free will to vote for the candidates they prefer, cast their votes under no threat or enticement. This is most imperative. Moreover, if electors can cast their votes under no threat or enticement, then,

unless one is compelled to think of some ways to let certain people know whom he has voted for, the arrangement should be able to prevent electors from letting others know whom they have voted for even if they deliberately want to do so. This is the most desirable result the principle should achieve.

For these numerous reasons, Madam President, I support the amendment proposed by the Government as well as Mr Andrew WONG's amendment.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Secretary for Constitution Affairs, you may now speak on Mr Andrew WONG's amendment.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, Mr Andrew WONG's amendment has proposed to substantially raise the threshold for the purpose of defining "small polling stations" from 500 to 7 000 registered electors. This proposal will result in a substantial increase in the number of small polling stations and lead to more complicated operational issues. Some 500 polling stations will be set up for the Legislative Council Election in September. It is estimated that there will be 335 stations with fewer than 7 000 registered electors. The transportation of ballot papers from 335 stations to some 100 counting stations for counting will affect the efficiency of the whole counting procedure, for the transportation of ballot boxes and the process of delivering ballot boxes and verifying ballot paper accounts are time-consuming. At the same time, the transportation of a large number of ballot boxes might pose potential security risks. In conclusion, Mr Andrew WONG's amendment will probably leave us between stools. On the one hand, the expected benefit of decentralized counting cannot be achieved, while on the other, much operational difficulty and confusion will possibly be caused.

This is actually not the first time in Hong Kong for vote counting to be conducted in polling stations where the votes are cast. Last year, during the District Council elections, the first attempt to conduct vote counting in the polling stations was made without compromising our principle of secrecy. We



actually share two common goals. One is to maintain vote secrecy. We believe the threshold for the purpose of defining "small polling stations" at 500 registered electors can already further protect the voting preferences of individuals in small polling stations from being exposed and such risk is greatly minimized. On the other hand, despite an increase in the benchmark for the number of registered electors from 200 to 500, we believe the operation and efficiency will in general not be affected. For these reasons, our proposal to set the threshold for the purpose of defining "small polling stations" at 500 registered electors will not change.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr Andrew WONG to the Secretary for Constitutional Affairs' motion, 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 Andrew WONG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Andrew WONG has claimed a division. The division bell will ring for three minutes.

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

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

**Functional Constituencies:**

Dr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mr Bernard CHAN, Mr Abraham SHEK, Ms LI Fung-ying, Mr Michael MAK and Dr LO Wing-lok voted for the amendment.

Mr Kenneth TING, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr Howard YOUNG, Ms Miriam LAU, Dr LAW Chi-kwong, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

**Geographical Constituencies and Election Committee:**

Ms Cyd HO, Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr Andrew WONG, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU and Mr MA Fung-kwok voted for the amendment.

Mr Martin LEE, Mr Fred LI, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr NG Leung-sing and Mr YEUNG Yiu-chung voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 21 were present, eight were in favour of the amendment and 13 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present, eight were in favour of the amendment and 11 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 amendment was negatived.

**PRESIDENT** (in Cantonese): I now call upon the Secretary for Constitutional Affairs to reply.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I would like to take this opportunity to respond further to the views presented by several Members.

Ms Emily LAU has made particular reference to the need to ensure the fairness, openness and impartiality of the election and that no electors will be subject to duress with a view to influencing their voting preferences. I believe this has been the principle supported and adhered to by all Members who are sitting here in this Chamber, all political parties and the Government over the years. In this respect, we have reminded the general public to make immediate report to the Independent Commission Against Corruption and the police should they come under any pressure.

As regards the question raised by Ms Emily LAU concerning the progress of police investigations into the suspected forged registration forms, today I can tell Members that, as far as I understand it, follow-up action is being taken by the police and no further details can be provided for the time being.

Third, Ms LAU asked whether we have anticipated a high turnout rate in this election, and whether further corresponding arrangements will be made by the Electoral Affairs Commission (EAC) and the Registration and Electoral Office (REO). I can confirm that, in every election, we will make our best endeavours, make the best arrangements, and supplement the efforts of Members in the hope that the September 2004 Legislative Council Election will be held smoothly as usual and the best arrangements be made according to law. Numerous rounds of briefings and training sessions will be organized for all polling station staff. In this year's election, a new ballot design will be adopted. Not only will the ballot papers become bigger in size, the logos of the candidates and their political parties will be printed on the ballot papers as well. As this is a new arrangement, extra care will be taken to familiarize everyone with the operation.

Ms LAU has also raised the point that, as a result of the decentralized counting arrangement, individual independent candidates may not be allowed to arrange for enough helpers to monitor vote counting in the polling stations of the candidates' constituencies. We are fully aware of this. Therefore, appropriate arrangements will be made at counting stations by the REO to ensure that members of the public can conveniently and directly monitor the counting procedures. All candidates, whether candidates with political party background or independent candidates, will be treated equally with great respect because they all seek to serve the public.

Madam President, I see that Mr Andrew WONG is not in the Chamber now. He has indeed made a great effort and formed a small alliance. Yet, I maintain the view that the big alliance belongs to all Members sitting here and their representatives. Not only do Members very much support this fair, open and impartial electoral system, this long-established and proven system is also greatly cherished by Members. The moving of this amendment today is supported by the majority of Members after discussions in the Subcommittee. I believe the amendment is able to reflect the suggestions advanced by Members in various aspects. I also hope the amendment, after passage, can be put into implementation and the system can continue to work effectively. I believe Members will cherish this system, which is expected to continue in coming years and in future. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Constitutional Affairs, as set out on the Agenda, 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 of the Members present. I declare the motion passed.

## **MEMBERS' BILLS**

### **Second Reading of Members' Bills**

#### **Resumption of Second Reading Debate on Members' Bills**

**PRESIDENT** (in Cantonese): Members' Bills. We will resume the Second Reading debate on the Professional Accountants (Amendment) Bill 2004.

## **PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 2004**

### **Resumption of debate on Second Reading which was moved on 24 March 2004**

**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 on the Bill.

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Professional Accountants (Amendment) Bill 2004 (the Bills Committee), I shall address the Council on the main deliberations of the Bills Committee.

The main objective of the Professional Accountants (Amendment) Bill 2004 (the Bill) is to enhance the element of oversight in the self-regulatory mechanism of the accountancy profession in Hong Kong. A series of measures are proposed in the Bill to further open up its governance structure and improve the present regulatory processes enshrined in the law. The major proposals include:

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

1. increasing the number of lay members in the Hong Kong Society of Accountants Council (HKSA Council) (from a maximum of four to six);
2. reforming the investigation and disciplinary mechanism of the HKSA, including the expansion of the membership of an Investigation Committee appointed by the HKSA Council (from three to five), and altering the composition of a Disciplinary Committee appointed by the HKSA Council, with the majority of members (including the chairman) being lay persons in both cases; and
3. broadening the powers of the HKSA Council and the Investigation Committee and the sanctions available to the Disciplinary Committee.

In addition, the HKSA has also put forward other amendment proposals on certain operational matters and changing its name in English.

In regard to the enhancement of lay members' role in the self-regulatory regime of the accountancy profession, the Bills Committee has studied the lay member representation in the governing councils and the investigative and disciplinary bodies of the medical profession and legal profession in Hong Kong and of the accountancy bodies in the United Kingdom and Australia. The Bills Committee notes that four out of the 21 members of the Medical Council of Hong Kong are lay members. The ratio of lay membership in its Preliminary Investigation Committee is one in seven. There is no lay member in the Council of The Law Society of Hong Kong nor in the Council of the Hong Kong Bar Association. In the Solicitors Disciplinary Tribunal Panel and the Barristers Disciplinary Tribunal Panel, lay members form a minority. As regards the accountancy bodies in the United Kingdom and Australia, there are no lay members on their governing councils, but lay members are included in their disciplinary committees.

The Bills Committee agrees that increasing the number of lay members in the HKSA Council and introducing a majority of lay members into the Investigation Committee and Disciplinary Committee will provide further assurance to the public on the transparency and objectivity in HKSA's

investigation and disciplinary processes. The Bills Committee therefore supports the initiative of the HKSA to open up its governance structure.

The Bills Committee notes that there are no provisions in the Bill specifying from which sectors the Chief Executive will appoint the lay members to the HKSA Council and the members to Investigation Panel A and Disciplinary Panel A. In this connection, the Administration has advised that as there are already some lay members in the existing Disciplinary Panel, the Administration will discuss with the HKSA on the suitability of their continued appointment in Disciplinary Panel A. The Chief Executive will appoint other lay members from the academia, the business sector, the relevant regulatory bodies, and professionals of relevant sectors having regard to the respective functions of the HKSA Council and the Panels.

There are other proposals in the Bill which are aimed at enhancing the public accountability and public oversight of the accountancy profession. Under the relevant proposals, a complainant aggrieved by the HKSA Council's decision not to refer a complaint to the Disciplinary Panels may request the Council to refer the complaint to the Panels. The HKSA Council shall heed the request unless it is of the opinion that there is no *prima facie* case for the complaint, or that the complaint is frivolous or vexatious.

At present, the HKSA's Disciplinary Committee normally does not hold its hearings in public. The Bill however provides that every hearing of the Disciplinary Committee shall be held in public unless the Disciplinary Committee determines that in the interest of justice, a hearing or any part thereof shall not be held in public.

Concern has been raised by a Bills Committee member that public hearings may subject the accountant concerned to premature publicity and this may tarnish the reputation of an innocent accountant. The HKSA advises that the proposal is supported by most HKSA members. It also considers that the public expect to see greater transparency in the HKSA's disciplinary proceedings. Besides, it is also of the view that opening the disciplinary proceedings to public scrutiny will also serve to protect the accountant concerned and is consistent with the Hong Kong Bill of Rights Ordinance.

The Bills Committee basically supports the HKSA's proposal, but some members point out that the proposal should not be presumed as setting an

example for other professions, as the holding of disciplinary hearings in public or camera for other professions may be subject to certain considerations that are not relevant to the accountancy profession.

Members have raised concern on whether the proposals in the Bill would give rise to increases in the costs and expenses for investigation and disciplinary proceedings, which would in turn increase the costs to be borne by the accountant concerned. The HKSA does not anticipate that the proposals in the Bill on their own would give rise to substantial increases in the costs of proceedings. In particular, the proposals would not necessitate substantial increases in staffing support of the HKSA for investigation and disciplinary proceedings. According to the existing practice, the HKSA would not recover the costs and expenses from accountants who are not convicted. Moreover, the costs and expenses awarded against a convicted accountant only represent partial recovery. No recoveries are made on the HKSA's internal staff costs or use of its own premises for hearings. The HKSA has informed the Bills Committee that it has no intention to change the existing practice.

As regards the proposed provision to enable the payment of fees to members of Disciplinary Committees, the HKSA advises that despite the existing provision for the payment of fees to members of Investigation Committees, such payment has never been made in the past; all the persons have offered their service free. The HKSA has no plan to change the existing practice, though the possibility of making such payment in future cannot be ruled out. When the need for such payment arises, the HKSA will make reference to the practices adopted by comparable bodies.

Members have raised concern that the power conferred on the HKSA Council to require an accountant to give an explanation of any act or omission of the accountant in relation to his conduct or practice as an accountant is too broad, as the power is not qualified by any specified grounds or circumstances in the proposed provisions. The HKSA appreciates members' concern and agrees to amend the provisions by adding a Schedule to narrow the scope within which the HKSA Council may direct an accountant to give explanation.

Madam Deputy, the Bills Committee supports the various proposals of the Bill and accepts the Committee stage amendments to be moved by Dr Eric LI. It supports the resumption of Second Reading debate on the Bill.



Madam Deputy, I shall now say a few words on the Bill for the Democratic Party.

To begin with, the Democratic Party welcomes the HKSA's initiative of putting forward all these proposals, which are all aimed at increasing the accountability and transparency mentioned by me earlier. Frankly speaking, the Democratic Party did at one time put up a very vigorous fight against the black sheep of the accountancy profession, but our target was not the entire profession but just the black sheep. Then, as we wanted to do something, to push on, Dr Eric LI acted before us and came up with this Members' Bill. I must say that his efforts are really commendable.

Some of the measures, honestly, when compared with those under the governance frameworks of many other professions — and I must say there are many professionals in this Council — are even more open, or modernized, in modern-day parlance. I support this.

When just two or three months were left, when we were debating whether a Bills Committee should be established, I was caught in a dilemma — I was worried that if the work could not be completed in time after the establishment of the Bills Committee, the commencement of a very good piece of legislation would have to be deferred. But I also thought that it would not be so good either if we did not have enough time to study all the clauses. Of course, it will be perfect if we can catch the last train and let Dr Eric LI fulfil his last wish in his term of office.

However, this is only just a good beginning. I am so pleased to see that Secretary Frederick MA is here now. I hope that he can follow up the Oversight Board. It is all settled with this name by now, isn't? I do not know whether it is really called the Oversight Board. And, the issue of fees payment is also settled, I suppose. I hope that the Ordinance can be implemented as soon as possible to provide a legal basis to support and enhance the work of the entire profession in clamping down on the black sheep. I hope that Secretary Frederick MA can speed up his work.

With these remarks, I support the Bill.

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

**MS EMILY LAU** (in Cantonese): Madam Deputy, I rise to speak in support of the Professional Accountants (Amendment) Bill 2004.

Madam Deputy, yesterday, we learnt from the news that former Enron chief executive Kenneth LAY had surrendered to the Federal Bureau of Investigation. Enron used to be one of the top 10 enterprises in the United States, but in December 2001, it applied for bankruptcy protection, thus bringing forth the biggest bankruptcy case in the history of the United States and heralding the exposure of a series of other corporate financial scandals in the country.

Madam Deputy, the Bill under discussion today is definitely related to all these developments. Following the Enron case, other corporate scandals have been uncovered; there may also be similar scandals in Hong Kong — of a smaller scale may be, and we really do not know when a really big scandal may be uncovered. But we are sure that when there is really one, Secretary Frederick MA will definitely become very busy. He certainly does not wish to see any such scandals. But sitting there with folded arms cannot possibly prevent the occurrence of similar scandals. That is why we must enhance corporate governance.

Accountants play a very significant role in corporate governance. And, accountants also matter very much to me personally. Why? Madam Deputy, for one thing, I respect the profession, and besides that, my two elder brothers are both accountants. I therefore support this Bill and have raised a number of issues. What are these issues? Well, following the exposures of all these scandals, our Panel on Financial Affairs immediately convened several meetings, and the authorities also requested the accountancy profession to do something.

The relevant information shows that as early as January last year, the accountancy profession already submitted a series of recommendations to the authorities, recommendations that have been mentioned by Mr SIN Chung-kai, such as increasing the lay members in the HKSA Council, expanding the membership of an Investigation Committee instigated by the HKSA Council even with the majority of members being lay persons, and altering the composition of the five-member Disciplinary Committee instigated by the HKSA Council, also with a view to enabling the participation of more lay persons.

Madam Deputy, all these are excellent recommendations. I am sure that the Deputy President's own professional sector will find itself lagging far behind. This is no innuendo, but I do hope that if one profession can make it, others can do the same as well. As already disclosed by Mr SIN Chung-kai, during our discussions in the Panel on Financial Affairs, the authorities were able to give us all the required information right away — they were well-prepared, for they knew that questions on these issues were definitely be asked. The authorities have been doing a better and better job over here. They are so quick to tell us what they know, presenting the situations in different professional sectors. When compared with others, the accountancy profession has indeed made a lot more progress. I am very happy about all this.

But although I am very happy, I must still talk about the Independent Investigation Board (the Chinese name of which Mr SIN Chung-kai could not recall just now). It was a recommendation made by the accountancy profession. What task is the Board supposed to perform? I think this should be our most important concern. The Board is supposed to deal with alleged accounting, auditing and/or ethics irregularities related to the audit of listed companies. This is the task of the Board, a task that makes it necessary for the Board to possess huge powers.

Just before this meeting, I rang up the clerk of the Panel on Financial Affairs, saying that because we last discussed the matter in April, I would like to enquire about the progress of the matter since then. Mr SIN Chung-kai said just now that there was good news, because things had already been "settled". But what the Legislative Council knows is that in April, discussions on the funding, set-up and functions of the Board were still underway, and that the Securities and Futures Commission, the Stock Exchange of Hong Kong, the HKSA and other persons concerned will have to be consulted. I believe that you people in the legal profession cannot possibly avoid being consulted, Madam Deputy. But the question is: How long will it take to handle all these issues?

I think it is already very good to have the several proposals today because they represent the first step. Accountants should be very happy because they can say to other professions, "We are more advanced than you. When are you going to catch up?" Do not be afraid to say so, Dr Eric LI. Madam Deputy, one should not be afraid to say so, because the most important thing is comparison. Members of the public would naturally wish to see how the

various professions are regulating themselves, how they are opening up the various aspects of their operation. Therefore, since the accountancy profession can make it, I hope that other professions can also do the same. I am not trying to exert any pressure on them, but I just wish to say that this is the aspiration of the public at large. That is why I very much appreciate what the accountancy profession has done. As for the actual increase in the number of HKSA Council members, I really do not want to talk about it any more, because Mr SIN Chung-kai has already dealt with it. But I must say this is an excellent step.

I also wish to praise the HKSA for another initiative, the conduct of public hearings. This is a very good system, to be adopted by its Disciplinary Committee. To put it simply, in general, all hearings will be held in public except when its Chairman and members decide otherwise on the basis of the issues raised. Just now, I heard Mr SIN Chung-kai say that views were still divided in some relevant respects. But still, I really think that the HKSA's recommendation is excellent. But if hearings are held in public before the facts are ascertained, will such premature publicity prejudice the interests of the defendants concerned? Such a doubt sounds reasonable. But what is the reply of the HKSA? It says that the interests of the defendant will not be prejudiced because a disciplinary hearing is the same as a court trial. The Court also follows such a practice, that is, after the suspect has been arrested, he will be charged in Court for murder, rape or other offences. If the suspect pleads not guilty, the Court will proceed with the trial of his case. The procedure is just the same. Therefore, I must say that this recommendation of the HKSA is really superb. Accountants are just great, worthy of our commendation. They are certainly an example for other professions.

Madam Deputy, now that accountants have already made it, other professionals such as medical practitioners and lawyers who enjoy a high status in society, who used to be appointed in large numbers to the Executive Council and the Legislative Council, should now all declare voluntarily, "Our self-regulatory mechanism should be acceptable to our own consciences and those of others". Medical practitioners must do so in particular, because I have received many complaints about them. But, Madam Deputy, we are not talking about medical practitioners today. Anyway, I am extremely delighted at the recommendations of the HKSA although I also know that some members of the Bills Committee did raise their concern about the conduct of public hearings, pointing out that the proposal should not be presumed as setting an example for other professions.

It does not matter whether they presume that way, because I myself will certainly do so. And, I must say that this is actually the very best of all examples, an example that every profession should follow, because members of the public have all sorts of expectations. First, they expect maximum openness and high transparency, because with transparency, there can be accountability. Second, they wish to see the addition of lay persons to professional bodies. I mean, how can people have any confidence when professionals are always monitored by their own peers, or even monitored by their own peers behind closed doors? The medical profession, for example — anyway, I must still talk about it despite my reluctance — is really plagued with problems. Therefore, though Secretary Frederick MA has nothing to do with it, I must still offer a piece of advice to the next Secretary for Health, Welfare and Food — I do not know who will take up this post. Some say LAW Chi-kwong will be appointed. But I really do not know who will fill this post. But no matter who the person is, he or she must try to tackle the problems with the medical profession properly.

I strongly support the Bill today. But leaving my humour aside for the time being, I wish to advise Secretary Frederick MA that if the Independent Investigation Board cannot be set up promptly, people will lose confidence in the entire package of measures to enhance corporate governance. For this reason, I hope that when he speaks later on (I do not know whether he will still have any chance to do so), the Secretary can tell us the progress. I think it is really necessary for the authorities to do so. The authorities must not simply say that the accountancy profession has already fixed the problems itself. Honestly, when it comes to fixing problems, the HKSA has told us that it actually completed the drafting of the Bill a long time ago, and that it fails to see why the authorities should have deferred its actions for so long, almost making it impossible for us to catch the last train. I think I should really clarify on their behalf what has been going on.

Madam Deputy, I support the Second Reading of the Bill. But I must add that this is only the first step, or perhaps just a very small step. Anyway, an example for all professions in Hong Kong has been set. I hope that every profession can follow the example of accountants and seek to enhance their transparency and self-regulation, so as to foster public confidence. I also hope that there will not be so many scandals in Hong Kong. This is the most important concern conversely. I hope the accountancy profession can really

demonstrate to the public that it is a dedicated guardian of Hong Kong in the prevention of financial scandals.

I so submit.

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

(No Member indicated a wish to speak)

**DEPUTY PRESIDENT** (in Cantonese): I now call upon Dr Eric LI to reply. This debate will come to a close after Dr Eric LI has replied.

**DR ERIC LI:** Madam Deputy, I would like to begin by thanking all Members of the Legislative Council for their assistance, goodwill and time devoted to the amazingly smooth passage of the Professional Accountants (Amendment) Bill 2004 (the Bill).

As clearly explained by the Chairman, Mr SIN Chung-kai, and further articulated by Ms Emily LAU, the Bill seeks to amend a number of provisions in the Professional Accountants Ordinance (the Ordinance) and the Professional Accountants By-laws (the By-laws) to:

- (a) improve the existing regime on the regulation of accountants;
- (b) broaden the scope of powers and sanctions available to the Hong Kong Society of Accountants (HKSA) and to provide certain technical amendments to the Ordinance and the By-laws in the light of actual operational requirements;
- (c) set out an immunity provision covering the acts of persons performing statutory functions under the Ordinance in good faith; and
- (d) change the title of the "Hong Kong Society of Accountants" to the "Hong Kong Institute of Certified Public Accountants" and the

designation of its members from "Professional Accountants" to "Certified Public Accountants" (CPA).

This Bill will be a significant step, voluntarily taken by the accountancy profession, to lay down a solid groundwork for the HKSA's regulatory reform proposals in meeting heightened public expectations. It will further enhance the already well-established oversight regime on the conduct and work of professional accountants in order to better safeguard public interests. The proposed changes to the name of the HKSA and its members' designations will update and align the collective corporate brand of Hong Kong's accountants with other well-recognized international designations. Other miscellaneous amendments to the Ordinance and the By-laws will also improve the efficiency and effectiveness of the HKSA's operational and regulatory processes.

I would be failing my duty, Madam Deputy, if I am to let this momentous occasion of the accountants pass without expressing my sincere gratitude to Mr SIN Chung-kai, Chairman of the Bills Committee, and members of the Bills Committee such as Ms Emily LAU for their hard work, their meticulous scrutiny of the Bill, as well as their helpful comments offered to me on how the Bill could be refined. The efforts and time that they devoted to the deliberations at the four Bills Committee meetings were well spent and are also much appreciated. It would also be remiss of me, if I do not thank warmly the many helpful officials of the Financial Services and the Treasury Bureau and the Department of Justice, so ably led by Mr Frederick MA, Mr Tony MILLER, Mrs Clarie LO, who is on leave today but who still came to support me, Ms Susie HO, who has left but has also done a lot of work for the Bill, Ms Shirley LAM and Ms Annie KONG, in assisting and guiding us through every step of this challenging mission in true partnership spirit.

In response to Ms Emily LAU's comments, I am very sure this partnership spirit will continue as we strive to work with the Government to further enhance our regulatory framework in the form of the Independent Investigation Board. I am sure Mr Frederick MA would soon be the bearer of good news, as the new Session of the Legislative Council comes in, for this next important move. I am sure that all the minor differences of the negotiation has practically been finished, and I think they are working on the logistics of making this important step, I am sure that this partnership spirit will continue.

I will be moving a number of Committee stage amendments and the Bills Committee has already considered all of them. I would like to take this opportunity to give a brief account of the major amendments and address some of the more important issues over which the Bills Committee has deliberated.

The proposed new section 18B empowers the HKSA Council to give directions either generally to CPAs or to any one or more CPAs in connection with the discharge of any of its functions or duties or the exercise of any of its powers. Penalties may be imposed by the HKSA Council against a CPA for any failure to comply with its direction.

The Bills Committee has expressed concern that the power conferred on the HKSA Council to require a CPA to give an explanation under section 18B(1)(c)(i) might be too broad, as the power is not qualified by any specified grounds or circumstances. To address such concern, the HKSA has agreed and I will propose an amendment to section 18B(1)(c) to clearly define the application of this power. The proposed amendment has now narrowed the scope within which the HKSA Council may direct a CPA to give explanation in respect of any conduct which appears to the HKSA Council to be unbecoming of a CPA, or which may affect the reputation, integrity and status of the HKSA, or which may fall within the disciplinary provisions in section 34(1)(a)(iii) to (xii) of the Ordinance.

The Bills Committee has accepted an amendment to section 22(3) of the Ordinance pursuant to the proposal of the Privacy Commissioner for Personal Data. Section 22(3) is now amended to follow similar provisions in section 136 of the Securities and Futures Ordinance that specifies the purpose in making the register of certified public accountants available for public inspection. A proposed new subsection (1C) has also been added to section 22 to provide that the register may be maintained in a form other than documentary form to cater for the use of new technology for recording information on the register and for providing on-line access to the register by the public in future.

The Bills Committee has devoted considerable time and efforts in considering the legislative amendments to enhance lay members' role on the HKSA's Council, the Investigation Committee and the Disciplinary Committee. The Bills Committee has studied the lay member representation in similar structures of the medical profession, the legal profession and the accountancy bodies of the United Kingdom and Australia. I am now pleased that the Bills



Committee supports the initiative of the HKSA to open up its governance structure after noting that the main purpose of introducing a majority of lay members into the Investigation Committee and the Disciplinary Committee is to provide further assurance to the public on the transparency and objectivity in these due processes.

In order to address the concerns of the Bills Committee on the choice of lay members, the HKSA shall be pleased to discuss with the Administration the suitability of the continued appointment of existing lay members in the Disciplinary Panel A. We understand that the Administration will also appoint lay members from the academia, the business sector, the relevant regulatory bodies, and professionals of relevant sectors, having regard to the respective functions of the Council and the Panels.

With regard to the proposal in the Bill to make public the hearings of the Disciplinary Committee except in exceptional circumstances, the Bills Committee has raised concerns that public hearings may subject the CPA concerned to premature publicity and this may tarnish the reputation of an innocent CPA. The HKSA considers that the proposal is consistent with the community's expectation for greater transparency in the HKSA's administration of quasi-judicial functions in respect of its members. The risk of premature publicity adversely affecting an innocent member is no greater than the risk inherent in the publicity surrounding open court hearings. The HKSA considers that CPAs should not be treated differently from other members of the general public, and therefore respectfully maintains that the hearings of the Disciplinary Committee should be held in public as a norm. However, we took note of, and concurred with, the Bills Committee's views that the proposal should not be presumed as setting an example for other professions, as the holding of disciplinary hearings in public or camera for other professions may be subject to other considerations that are not relevant to the accountancy profession.

The Bills Committee has also raised concern as to whether the exercise of the power to cancel or suspend the practising certificate of a CPA under the proposed section 30(8) and 30(9) will be subject to due process and sufficient safeguards for the CPA concerned. I would like to point out that the relevant requirements for the issuance of a practising certificate are already specified in the Ordinance. CPAs are well aware of these requirements. Moreover, the CPA concerned would be given the opportunity under section 30(9) to make

representations before the HKSA Council suspends or cancels his practising certificate.

Madam Deputy, the Bill when enacted will provide the statutory body of the accountancy profession in Hong Kong with a clear and recognizable brand name that reflects the integrity, ethics, skills and knowledge and I wonder whether I should add the word "modern" after Ms Emily LAU's speech, that are expected of today's accountants. It will also put in place a transparent regulatory framework of the local accountancy profession and equip the HKSA with the independence, objectivity and accountability required for regulating its members. I urge Members to support the Bill and the amendments that I will propose at the Committee stage.

Thank you, Madam Deputy.

**DEPUTY PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Professional Accountants (Amendment) Bill 2004 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**DEPUTY 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.

**CLERK** (in Cantonese): Professional Accountants (Amendment) Bill 2004.

Council went into Committee.

**Committee Stage**

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

**PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 2004**

**DEPUTY CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Professional Accountants (Amendment) Bill 2004.

**CLERK** (in Cantonese): Clauses 2 to 9, 11 to 15, 18 to 21, 23, 24, 26, 27, 30 to 36, 38 to 53, 55 and 56.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 1, 10, 16, 17, 22, 25, 28, 29, 37 and 54.

**DR ERIC LI:** Madam Deputy, I move the amendments to the clauses read out just now. The Bills Committee has considered them. I just wish to briefly elaborate on the major amendments.

I propose to amend clause 1(2) to specify that the general provisions of the Bill, when enacted, will come into operation on 8 September 2004 instead of the original effective date of being 30 days after the Gazette date of the Ordinance. This would enable the HKSA to give earlier notification to its 22 000 members so that they may have adequate time to prepare for the changes in their designations. The change will also now tie in with the official launch of the HKSA's re-branding campaign to inform the public of these significant changes.

I propose to delete clause 10(b)(ii) which specifies the total number of the Council members of the HKSA as 21. The amendment is necessary since the actual number of Council members may be 20 only, in case the immediate past President of the HKSA is also elected as a Council member in his own right.

I propose to amend clause 16 to limit the scope within which the Council may require a CPA to give explanation of his act or omission. After the amendment, the Council can only require explanation in respect of any conduct which appears to the Council to be unbecoming of a CPA, or which may affect the reputation, integrity and status of the HKSA, or which may fall within the disciplinary provisions in section 34(1)(a)(iii) to (xii) of the Ordinance.

The purpose of the amendments to clause 17 is to specify the purpose of making the register of certified public accountants available for public inspection, and to provide that the register may be maintained in a form other than documentary form to cater for on-line access to the register by the public in future.

Clause 22(e)(ii) and 25(a) are amended for the purpose of specifying the designation of "certified public accountant (practising)" in singular and plural forms.

The purpose of the amendment to the Chinese version of clause 28(e) is to improve the drafting to reflect more accurately its English version.

The proposed amendment to clause 29(b) is to rectify an error since the exemption from complying with the specified requirements for issue of a

practising certificate applies only to a "public accountant" registered by virtue of the repealed section 24(2) of the Ordinance and not to a "professional accountant".

The purpose of the amendments to clause 37(c) is to designate the relevant paragraphs under section 35(1) to make them consistent with the existing drafting style of the Ordinance.

The proposed amendment to clause 54(7) is to delete a paragraph, which has since become redundant.

The above amendments are made primarily on the basis of the comments contributed by the Bills Committee. I hope Members would support these amendments.

Thank you, Madam Deputy.

*Proposed amendments*

**Clause 1 (see Annex VIII)**

**Clause 10 (see Annex VIII)**

**Clause 16 (see Annex VIII)**

**Clause 17 (see Annex VIII)**

**Clause 22 (see Annex VIII)**

**Clause 25 (see Annex VIII)**

**Clause 28 (see Annex VIII)**

**Clause 29 (see Annex VIII)**

**Clause 37 (see Annex VIII)**

**Clause 54 (see Annex VIII)**

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

(No Member indicated a wish to speak)

**DEPUTY CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Dr Eric LI be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 1, 10, 16, 17, 22, 25, 28, 29 37 and 54 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedules 1 and 2.

**DR ERIC LI**: Madam Deputy, I move the amendments to Schedules 1 and 2.

I propose to add a new section 5A to Schedule 1 to rectify a logistic error. The amendment is to extend the period of notice of a general meeting of the HKSA to be given by the HKSA from 21 days to 28 days before the date of the general meeting, since members are given 21 days before the meeting to propose resolutions unrelated to the ordinary business of the general meeting. The proposed amendment to Schedule 1, section 23(7) is consequential to the proposed amendment to add the new section 5A to Schedule 1.

The proposed addition of clause 8A to Schedule 2 is necessary to change the existing name of "Hong Kong Society of Accountants" appearing in item 16 of Schedule 13 to the Inland Revenue Ordinance to its new name "Hong Kong Institute of Certified Public Accountants".

It is necessary to amend Schedule 2 by adding clause 15A to change the existing designation of "certified public accountant" appearing in Forms 4 and 5 of the Second Schedule to the Travel Agents Regulations to the new designation of "certified public accountant (practising)".

I propose to delete section 20 of Schedule 2 for the reason that the term "professional accountant" in section 68(2)(b)(i) of the Occupational Retirement Schemes Ordinance is used as a generic term and would not be interpreted as meaning "professional accountant" as defined in the Ordinance.

The addition of section 29A to Schedule 2 is necessary to amend the definition of "auditor" in section 2(1) of the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and

Payment Procedure) Regulation to refer to the new designation of "certified public accountant (practising)".

The amendment to Schedule 2, section 52(b) is to rectify a drafting error in the definition of "certified public accountant (practising)" in section 2 of The Orthodox Metropolitanate of Hong Kong and South East Asia Ordinance.

The addition of section 55 to Schedule 2 is necessary to change the term "certified public accountant" in section 13(3) of the Hong Kong Sports Development Board (Repeal) Ordinance to the new designation of "certified public accountant (practising)".

These Committee stage amendments are primarily technical in nature and I hope, with great gratitude in mind, that Members would support them.

Thank you, Madam Deputy.

*Proposed amendments*

**Schedule 1 (see Annex VIII)**

**Schedule 2 (see Annex VIII)**

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

(No Member indicated a wish to speak)

**DEPUTY CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Dr Eric LI be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)



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

**CLERK** (in Cantonese): Schedules 1 and 2 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**DEPUTY CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Members' Bills**

**DEPUTY PRESIDENT** (in Cantonese): Members' Bill: Third Reading.

**PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 2004**

**DR ERIC LI:** Madam Deputy, the

Professional Accountants (Amendment) Bill 2004

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

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Professional Accountants (Amendment) Bill 2004 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

**DEPUTY 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.

**CLERK** (in Cantonese): Professional Accountants (Amendment) Bill 2004.

**Resumption of Second Reading Debate on Members' Bills**

**DEPUTY PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Wing Hang Bank, Limited (Merger) Bill.

**WING HANG BANK, LIMITED (MERGER) BILL**

**Resumption of debate on Second Reading which was moved on 9 June 2004**

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

(No Member indicated a wish to speak)

**DEPUTY PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Wing Hang Bank, Limited (Merger) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**DEPUTY 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.

**CLERK** (in Cantonese): Wing Hang Bank, Limited (Merger) Bill.

Council went into Committee.

**Committee Stage**

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

**WING HANG BANK, LIMITED (MERGER) BILL**

**DEPUTY CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Wing Hang Bank, Limited (Merger) Bill.

**CLERK** (in Cantonese): Clauses 1 to 15, 17, 18 and 19.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 16.

**DR DAVID LI**: Madam Deputy, I move the amendment to clause 16. The existing clause containing a reference to a section of Landlord and Tenant Ordinance was repealed by the Landlord and Tenant (Consolidation) (Amendment) Bill, which was passed by this Council at its meeting on 30 June 2004. The Committee stage amendment will delete such a reference. This would have no effect on the contents of the Bill as the amendment proposed only to amend the Bill to conform with the amended Landlord and Tenant Ordinance.

*Proposed amendment***Clause 16 (see Annex IX)**

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

(No Member indicated a wish to speak)

**DEPUTY CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr David LI be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 16 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Preamble.

**DEPUTY CHAIRMAN** (in Cantonese): I now put the question to you and that is: That this be the preamble to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Members' Bills**

**DEPUTY PRESIDENT** (in Cantonese): Members' Bill: Third Reading.

**WING HANG BANK, LIMITED (MERGER) BILL**

**DR DAVID LI:** Madam Deputy, the

Wing Hang Bank, Limited (Merger) Bill

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

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Wing Hang Bank, Limited (Merger) Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

**DEPUTY 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.

**CLERK** (in Cantonese): Wing Hang Bank, Limited (Merger) Bill.

**MEMBERS' MOTIONS**

**DEPUTY PRESIDENT** (in Cantonese): Members' motions. Four motions with no legislative effect.

**DEPUTY PRESIDENT** (in Cantonese): First motion: Report of the Select Committee.

The mover of the motion will have up to 15 minutes to speak on each occasion for moving his motion and giving reply. Other Members will each have up to 15 minutes for their speeches. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

I now call upon Dr LAW Chi-kwong to move his motion.

**REPORT OF THE SELECT COMMITTEE**

**DR LAW CHI-KWONG** (in Cantonese): Madam Deputy, in my capacity as Chairman of the former Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority (the Select Committee), I move the motion as printed on the Agenda.

It has been more than a year since the outbreak of SARS last year. The outbreak was unprecedented in the modern history of Hong Kong in terms of its severity and magnitude, causing 1 755 cases of infection and killing 299 unfortunate victims, eight of whom being health care workers. As the Chairman of the former Select Committee, I extend condolences to the families of the deceased and wish the surviving patients a speedy and full recovery. The Select Committee would also like to take this opportunity to thank the staff of the Hospital Authority (HA), the Department of Health, other government departments and all the health care workers in Hong Kong. Their professionalism, as demonstrated by their tireless and fearless efforts in containing the epidemic and treating SARS patients, must be commended.

During the SARS outbreak last year, the Government, the HA, the two universities and many others all contributed to the fight against the epidemic with



total dedication. As a matter of fact, the Select Committee is of the view that the way in which all Hong Kong people conducted themselves during the SARS outbreak last year should be commended and regarded as a source of pride for society as a whole. The solidarity and the spirit of mutual assistance and care demonstrated by the entire society at that time should all be fondly remembered and carried forward in the future.

The Select Committee acknowledged that the public had high expectations of its work, and it also knew that the public would want to find out the truth. But the Select Committee was subject to one constraint right from the beginning of its work, time. It was supposed to table its report at the last meeting of the Legislative Council in the current term, that is, the meeting today. During its initial discussions on the work ahead, the Select Committee was obliged by the time constraint to do some screening of the various areas of study, and a scope of investigation comprising a number of matters we deemed to be more important was then set down.

The Select Committee held 94 meetings in eight months, spending a total of 449 hours. Thirty of these meetings were public hearings that lasted 180 hours, and a total of 73 witnesses were summoned to give evidence. Arrangements were made for Dr Margaret CHAN FUNG Fu-chun, former Director of Health, now working for the World Health Organization in Geneva, to fly back to Hong Kong to give evidence. The Select Committee also met with the Chief Executive to ask him direct for information on the handling of the epidemic.

The terms of reference of the Select Committee was to inquire into the handling of the SARS outbreak by the Government and HA in order to examine their performance and accountability. The focus of investigation was on the handling of individual incidents, and analyses and comments on the problems caused by the decision-making process were made on the basis of the information and evidence gathered.

The Select Committee's report already gives a detailed account of its selected areas of study, that is, the causes of epidemic outbreaks in the hospitals concerned. And, all the investigation findings concerning individual incidents and issues are also analysed in detail in our report. I shall make no repetition here.

I wish to point out here that the establishment of the Select Committee was meant for a purpose different from those of the other two reports on the SARS outbreak. The SARS Expert Committee appointed by the Government and the HA Review Panel on SARS Outbreak studied the institutional issues, but as pointed out clearly at the very beginning, the Select Committee's study was to focus on the performance of the individuals, organizations and units concerned and also their responsibility. However, during the investigation, the Select Committee also identified some structural problems with the health care system that affected the fight against the epidemic. The Select Committee felt obligated to release the relevant findings and put forward its recommendations to the Government.

The Select Committee sought to make independent and impartial comments based on the facts gathered in the course of its investigation. The approach it adopted was to obtain information from the Government and the HA and conduct public hearings in which witnesses were summoned to testify or give evidence under oath. The Select Committee fully understood that at the initial stage of the epidemic outbreak, little was known about SARS. Therefore, in its analysis of evidence, the Select Committee constantly reminded itself that it must take account of the knowledge or information then possessed by the individuals concerned, so as to avoid any judgement based on hindsight. Therefore, when discussing or commenting on all the related issues, we invariably asked ourselves whether our judgement was based on hindsight. This was the very question we kept asking ourselves as a reminder. Recently, some people have still criticized us for basing our judgements on hindsight. But I must say that at that time, at every single moment, we always reminded ourselves that we should do the best we could to prevent our judgement from being influenced by our hindsight.

The analyses and comments of the Select Committee are all based on the evidence gathered and on whether the evidence is conclusive. Where credit is due, it is given. Where criticisms are justified, they are made. In regard to accountability, the Select Committee has focused solely on the performance and accountability of the officers at policymaking and management levels in the handling of the epidemic, and its comments are also restricted to individual incidents and issues within its areas of study.

In the light of the investigatory nature of the Select Committee's proceedings and in order to enhance fairness of the proceedings, persons named in the Select Committee's Report were given an opportunity to comment on those

parts of the Select Committee's draft Report relevant to them. The Select Committee had taken their comments into consideration seriously before it finalized its Report.

Madam Deputy, the Select Committee is aware that some witnesses and other persons concerned have questioned the analyses and comments of the Select Committee since no expert assistance was commissioned. I wish to take this opportunity to point out that in accordance with the Select Committee's terms of reference, its investigation did not seek to examine clinical issues *per se* or any treatment protocols. This explained why the Select Committee had decided not to seek the assistance of any experts. Nor did the Select Committee intend to play the role of an expert. When analysing the evidence gathered and making any comments, the Select Committee simply adopted the normal standard of prudence as a yardstick of assessing the handling of the epidemic by the persons concerned. To put it simply, the types of accountability we had in mind were professional accountability, administrative accountability and political accountability. The Select Committee opined that its main focus should be administrative accountability instead of political accountability and professional accountability.

Madam Deputy, the Select Committee was formed by a resolution of the Legislative Council. Its major objective was to study the performance and accountability of the officers at policymaking and management levels in the handling of the epidemic. I wish to reiterate that the task of the Select Committee was to look into events, to conduct analyses and make comments based on the evidence gathered and also to pinpoint responsibility. As for who should be disciplined, condemned, or required to step down, for example, it must be said that all this is already beyond the scope of what the Select Committee could do with the evidence gathered. The disciplining of civil servants should be left to the Government, and that of accountability officials should be an issue to be discussed and decided by all Legislative Council Members and the public at large. Since the release of the report, there have no doubt been criticisms that the Select Committee should have made recommendations on disciplining those responsible, but at the same time, there have also been comments that the approach of the Select Committee is appropriate. In order to eliminate the influence of political considerations, achieve procedural fairness and impartiality and make sure that all comments are based on concrete evidence, I will recommend to the Legislative Council that the same approach be adopted for all its select committees in the future.

I would also like to take this opportunity to say a few words in response to the HA's queries about our report. I am not going to spend any time of this motion debate on any details. But I do wish to speak on two points which I consider very important. The HA criticizes that the Select Committee failed to consider the terrible consequences of Princess Margaret Hospital (PMH) not being turned into a SARS hospital. If Members have a copy of the report with them now, they may wish to refer to the beginning sentence of paragraph 10.66, which reads "The Select Committee does not find the decision to designate PMH as a SARS hospital unreasonable." It can thus be seen that we do not criticize the wisdom of the decision itself. What the Select Committee criticizes are, however, the overestimation of the expandability of the Intensive Care Unit (ICU) of the PMH and the underestimation of the demand for ICU care arising from new SARS cases. Our criticism is therefore strictly restricted in scope. And, this is also due to our emphasis on facts and evidence as the basis of judgement.

Another important point concerns the HA's allegation that the opinions of the Select Committee are completely at variance with those of the Expert Committee appointed by the Government. What the HA refers to is Ward 8A, because it argues that according to the Government's Expert Committee, in view of the conditions in the PWH at that time, and also since little was known about the disease, it was a reasonable arrangement to turn Ward 8A into a cohort ward for suspected atypical pneumonia patients in the evening of 13 March 2003. This is the opinion of the Government's Expert Committee.

The Select Committee has not negated this opinion. But I would also like to draw Members' attention to the comment of the Select Committee. As a matter of fact, as pointed out in paragraph 6.100 of our report, the Select Committee considers that it was prudent to close Ward 8A to admission, discharge and visits on 10 March 2003. The HA accepts our comment. That being the case, it was obviously not prudent to allow visits and reception of new patients later on. Our comment is actually very mildly worded. We simply point out, I mean, paragraph 6.104 of our report simply says that it would appear not prudent to admit new patients to Ward 8A, which was a "dirty" ward. We simply say "it would appear not prudent".

Madam Deputy, if there is still any time left, I would like to brief the Council on the improvement recommendations that the Select Committee puts forward in its report for the Administration's consideration.

The authority to exercise statutory powers to control and prevent infectious diseases is vested with the Director of Health. However, the Select Committee observes that during the SARS epidemic, public health officials in the Department of Health (DH) were not involved in the making of decisions to close and re-open hospital wards where an outbreak had occurred, such as Ward 8A mentioned just now. The Select Committee considers that a review of the respective roles and responsibilities of the HA and the DH is called for. It is also of the view that the DH should be involved in deciding whether or not to close and subsequently re-open a hospital ward, if there are public health considerations.

The Select Committee recommends the Government to review where the statutory powers for carrying out public health functions should be more appropriately vested within the structure of the Government. The Select Committee also recommends the Government to improve the information system on contact tracing and medical surveillance, so that it can promptly alert any hospital, public or private, at which a contact of an infected person under medical surveillance is seeking treatment.

Besides, the Select Committee also recommends the Government and the HA to put in place a territory-wide contingency plan to deal with large-scale outbreaks of infectious diseases. The contingency plan should cover a command structure, an action plan, patient movement, manpower and expertise deployment, and guidelines for closing or suspending certain services in a hospital.

Lastly, on behalf of the Select Committee, which has been dissolved, I would like to extend my thanks to all the witnesses who attended the hearings. Thanks are also due to the Health, Welfare and Food Bureau, the DH and other organizations and persons for providing information and assistance to the Select Committee. I must also thank the staff of the Legislative Council Secretariat for assisting the Select Committee in accomplishing this almost impossible mission. I am sure that all members of the Select Committee are sincerely grateful to the Secretariat for the professionalism of its staff.

Madam Deputy, I do commend this motion to Members.

**Dr LAW Chi-kwong moved the following motion: (Translation)**

"That this Council endorses the Report of the Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr LAW Chi-kwong be passed.

**DEPUTY PRESIDENT** (in Cantonese): Dr YEUNG Sum will move an amendment to the motion as printed on the Agenda. The motion and the amendment will now be debated together in a joint debate.

I now call upon Dr YEUNG Sum to speak and move his amendment.

**DR YEUNG SUM** (in Cantonese): Madam Deputy, I rise to speak in support of the report of the Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority (the Select Committee); besides, on the basis of the report, I also propose to deal with the culpable officials and condemn former Director of Health Dr Margaret CHAN FUNG Fu-chun.

Established after the SARS outbreak last year, the Select Committee commenced its work in October the same year. In order to complete a report before the end of the current term, the 11 members of the Select Committee and the staff of the Legislative Council Secretariat literally raced against time, summoning almost all important witnesses and completing an impartial and well-grounded report that depicts the operation of major government departments and the performance of major government officials and public officers before the very eyes of the general public, all within a short span of just eight months. The report is marked by both "praises and criticisms"; credit is given to front-line health care workers, and the blunders committed by a number of key government officials are highlighted. I would like to express my heartfelt thanks to the Select Committee and the staff of the Secretariat for their hard work.

The performance of key government officials during the epidemic outbreak is assessed in the report, but members of the public expect much more than this, and they all hope that the Select Committee can make further recommendations on dealing with the culpable officials.

When it comes to determining the culpability of the key officials responsible for combating SARS and how they should be punished, in addition to evidence and facts, value judgements and political decisions are also involved. The various political parties in the Legislative Council will have different viewpoints, so Members belonging to these different parties should be left to make their own judgements on the basis of the report. The position of the Democratic Party is that the investigation findings warrant the removal of Dr YEOH Eng-kiong as Secretary for Health, Welfare and Food as well as the condemnation of former Director of Health Dr Margaret CHAN FUNG Fu-chun. My amendment today, which seeks to amend the motion moved by Dr LAW Chi-kwong as Chairman of the Select Committee, aims precisely to state this position of the Democratic Party in the legislature.

Initially, my amendment also requested the Chief Executive to uphold the spirit of the Accountability System for Principal Officials by removing Dr YEOH as Secretary for Health, Welfare and Food. But then, on Wednesday, the Chief Executive and Dr YEOH held a press conference, in which it was announced that the latter had tendered his resignation to the former as a show of political accountability and the resignation had been accepted. I have therefore deleted the relevant request from my amendment today.

Dr YEOH's resignation from office of Secretary for Health, Welfare and Food is the first ever resignation tendered by an accountability official for performance reasons. The resignation is both reasonable and appropriate, an act that manages to prevent the Accountability System for Principal Officials from being reduced to a nominal existence. Although it is pointed out in the report that the administrative blunders made by Dr YEOH were not the most serious, it must still be borne in mind that the SARS outbreak claimed a total of 299 lives in Hong Kong, plunging the lives and health of Hong Kong people into grave risks and dealing heaving blows to the local economy. For this reason, his resignation as the Bureau Director in charge of public health is the only way to fulfil the spirit of accountability for Principal Officials.

Actually, the Chief Executive should have responded to the demand of society a year ago, but he simply tried to shield the faults of his subordinate instead of taking any decisive action to uphold the Accountability System for Principal Officials established by himself. The matter thus dragged on until quite recently, when even the Democratic Alliance for Betterment of Hong Kong (DAB) must change its position amidst the grievances voiced by the families of SARS patients. On Monday, Mr IP Kwok-him, Vice-Chairman of the DAB, when explaining his party's position, was still saying that the DAB did not seek the resignation of Dr YEOH. However, on Wednesday, the DAB finally announced its request for the resignation of Dr YEOH. The deferment of the resignation until there was mounting political and public pressure from all sides has definitely done harm to Dr YEOH, the Chief Executive and even the Special Administrative Region Government.

According to the report of the Select Committee, former Director of Health Dr Margaret CHAN FUNG Fu-chun should be held even more directly responsible for the inadequacies in combating the epidemic. Under the law of Hong Kong, the Director of Health is vested with statutory authority to enforce measures for the control and prevention of infectious diseases. But Dr Margaret CHAN failed to discharge her duties. After the World Health Organization (WHO) had named the disease as SARS, she should initiate actions to amend the law and add the disease to the Quarantine and Prevention of Disease Ordinance for the isolation of SARS patients. But she did not do so.

More importantly, though she was the chief adviser on public health in Hong Kong and was thus responsible for providing public health advice to Secretary for Health, Welfare and Food Dr YEOH Eng-kiong, she did not attach sufficient importance to "soft intelligence" on the atypical pneumonia epidemic in Guangdong. When the Deputy Director of Health raised the question of whether the DH should send a team or an official to Guangdong to learn more about the atypical pneumonia epidemic there, Dr Margaret CHAN did not take up the matter any further. As a result, Hong Kong failed to take adequate precautionary measures, and when the virus spread to Hong Kong from Guangdong, our health care system was caught totally unprepared. She should bear the greatest responsibility for this to a greater or lesser extent.

In view of the serious nature of Dr Margaret CHAN's blunders and also the grave consequences that ensued, we maintain that although she has already



left the Government and is working for WHO, she still deserves condemnation by the Legislative Council.

With these remarks, I beg to move.

**Dr YEUNG Sum moved the following amendment: (Translation)**

"To add ", and condemns the former Director of Health, Dr Margaret CHAN FUNG Fu-chun" after "the Hospital Authority". "

**DEPUTY PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr YEUNG Sum to Dr LAW Chi-kwong's motion be passed.

**MRS SOPHIE LEUNG** (in Cantonese): Madam Deputy, before turning to the report of the Select Committee on SARS, I must declare that I started to be a member of the Provisional Hospital Authority in the 1980s and continued to serve on the Hospital Authority (HA) in the same capacity until November 2002. During this period, I also served as a Hospital Governing Committee member or Board Director of a number of hospitals, including Queen Mary Hospital, Yan Chai Hospital, Castle Peak Hospital and Tsan Yuk Hospital. Apart from still being a Permanent Adviser to Yan Chai Hospital, I no longer held any of these posts by the time of the SARS outbreak.

(THE PRESIDENT resumed the Chair)

Thanks to the active participation of its 11 members, the Select Committee managed to complete its onerous investigation work over a short span of just eight months, producing a report that offers an analysis of the facts and blunders during the SARS outbreak and pinpoints the culpability of the officials concerned. Although members of the community do not agree to the conclusions set out in the report, I only wish to stress, as the Deputy Chairman of the Select Committee, that the investigation was entirely based on the facts and evidence collected and was not influenced by any political considerations whatsoever.

Dr LAW Chi-kwong has given an account of the basis and perspective of our investigation and also the areas that must be tackled with caution. The report has in fact taken account of the element of unforeseeable factors at that time, and members were well aware that since the situation was very critical and pressure was mounting every single day or even every single hour, there was absolutely no room for anyone to extricate himself from the situation, so that he could calm down and conduct a rational analysis. Members also understood that the lack of any forecast information had also restricted the surge capacity of every segment in the system. The only objective of the report is to find out whether there could still have been any possible areas of improvement despite such a chaotic situation. I hope the relevant organizations and individuals can appreciate that the analysis of the report is simply directed at events instead of any individuals. I also hope that those reading the report can do away with the mentality of criticizing others or being criticized and put themselves in the situation, asking themselves what they should do under similar circumstances in future. I hope they can do so because I believe that the significance of the report should lie more profoundly in its ability to take society forward, to properly equip everybody for even greater crises in the future.

SARS claimed 300 precious lives and impaired the health of some 1 000 people. The outbreak was indeed a very tragic experience for all of us. In regard to the resignation of Secretary Dr YEOH Eng-kiong, I would say, as his former colleague in the HA and also his old friend, that his decision is appropriate. When I say so, I am not thinking about whether he has made any achievements or committed any blunders but about just his willingness to fulfil the spirit of political accountability, to assume all political responsibility for the blunders of his subordinates. Madam President, I am not saying that Dr YEOH did not make any errors in the handling of the epidemic; I am simply saying that his resignation is a manifestation of political accountability.

It can be seen clearly from the papers of the Select Committee that at the initial stage of the SARS outbreak, Dr YEOH actually trusted his subordinates entirely. He also repeatedly urged the department in overall charge of policy execution to provide him with information, hoping to get a picture of the epidemic situation in Guangdong, and he did not realize until sometime later that the facts obtained from his subordinates might not have been exhaustive. Obviously, at that time, while he was responsible for handling the outbreak, he did not have any power of execution. Such was a defect of the system, a loophole that led him to put the main tasks of execution under his personal charge

midway in the outbreak, in the hope of centralizing responsibility and power. All these are facts. He was thus put under immense pressure, and so was society.

Let us be objective. If anyone else was placed in a similar situation, a situation marked by an unclear line of power and responsibility, various system defects and all the uncertainties surrounding a new virus, could he have managed to reduce the incidence of blunders? Could he have done any better? I think no one can be sure, and some people have even said publicly that he has been aggrieved. Well, anyway, his resignation has marked the first stride in perfecting the accountability system.

As for Dr LEONG Che-hung, I have worked with him in the HA for many years, and our friendship goes a long way back to the time before we started to work together in the HA. Those who know him all know that he has always been devoted to his work, and that he is a person with immense political wisdom. No one can possibly say that he did not exert his utmost during the SARS outbreak. But does this mean that we should not offer him any advice on his handling of the epidemic or point out his inadequacies? I do not think so. This explains why there is such a comprehensive review in the Select Committee's report, explaining how everybody in their respective capacities could have done better. Frankly speaking, the HA did play an indispensable role in overcoming the virus. A couple of days ago, several people in charge of the management of private hospitals told me that had the HA not taken up the responsibility of handling all SARS cases regardless of what consequences there might be, had even just one SARS patient been left in private hospitals, their operation would have completely collapsed.

As a result of the attempt to affix culpability for the SARS outbreak, our health care system has seen the loss of two profoundly experienced and dedicated professionals. I hope, I sincerely hope, that we can now put a full-stop to the issue of SARS.

Regarding the criticisms levelled at the HA, I must speak as one of its past members and express the hope that everybody can appreciate the zeal and sense of mission of HA members in very much the same way as I do, for they are all the cream of society appointed in their personal capacity to render service on an honorary basis. Under the law, they must jointly perform the task of the HA Board of Directors, and they may also have to undertake the heavy management

workload of their respective hospitals. I can still remember that when I was in office, all HA members attached great importance to establishing a sound culture of governance in the health care system, and it was precisely because of such an emphasis that the support of the best people from the business and academic sectors could be enlisted. Although it is pointed out in the report that the performance of the HA during the SARS outbreak was marked by some inadequacies, I nonetheless remain convinced that it is a successful organization. Given its good intentions and emphasis on upgrading corporate governance, I am sure that as long as all in the HA can work with one heart, it will be able to play a yet greater role and continue to contribute to the well-being of Hong Kong people.

I must also take this opportunity to offer special commendation to all those health care workers who still managed to ignore the threat of virus infection and work so tirelessly, doing all they could to save the lives of others, though hard-pressed by the panic and chaos resulting from the rapid spread of the disease as well as resource and manpower shortage. Some selfless health care workers even sacrificed their own lives in saving others. Their contribution is definitely great and deserves the esteem of all in society.

Madam President, the SARS outbreak was at the time something entirely new to us, something that probably no one wanted to experience. I hope that those who still keep on criticizing others can regain their conscience and try to imagine the plight of all those battered by SARS, including our front-line health care workers. I believe the authorities must have learnt the lessons and will implement the various recommendations made in the Select Committee's report and the other relevant reports. What has happened cannot be reversed; I hope that everybody can try to understand each other's situation because there is no such thing as a perfect system in this world, nor is there any perfect person either. The important thing is that despite the never-ending pressure, all have done their utmost, have tried to make the "finite" prevail over the "infinite" and to turn the "impossible" into the "possible". I hope that the agonies caused by SARS can be transformed into an impetus of forward movement. Let us all join hands to perfect our public health policy in the 21st century, so that we can overcome any virus threats in the future. Let us all make sure that the dear price we have paid will not be wasted.

Madam President, I so submit.

**MR FRED LI** (in Cantonese): Madam President, I shall focus on the problems emerged in the Amoy Gardens during the SARS outbreak and also some related areas which I think the Government should review. All these are not given any detailed treatment in the report. The Amoy Gardens is inside my constituency. According to the report, as early as March last year, from 21 March to 23 March, SARS cases already started to emerge in Block E of the Amoy Gardens. Then, during the period covering 25, 26, 27, 28, 29 and 30 March, there were 190 cases in the Amoy Gardens. In the end, more than 40 residents of the Amoy Gardens died of the disease. One can therefore say that the Amoy Gardens was the worst-hit area in the SARS outbreak in terms of the number of infected cases and deaths. The grief of the owners and residents of the Amoy Gardens can thus be easily imagined. Even now, whenever I go to the Amoy Gardens, vivid images of what happened at that time will still come up in my mind.

Today, after all is over, the owners' committees of the Amoy Gardens want me to disclose something for them. At that time, I talked to the owners over the phone and met with them several times. The owners and I also called at the DH to meet with the then Director of Health, Dr Margaret CHAN FUNG Fu-chun. What problems did we raise to her? We said to her that while the number of infected cases in the Amoy Gardens was released every day on 25, 26 and 27 March, those blocks with records of infected cases were not mentioned (We, however, subsequently knew that most cases were found in Block E). The Amoy Gardens comprises some 20 residential blocks, and most residents therefore did not live in Block E at that time. As a result, when the residents saw the number of infected cases in the Amoy Gardens soaring like the Hang Seng Index but failed to know in which blocks these cases were found, they naturally wondered whether their own blocks were also affected. To put it simply, there were several dozen fresh cases in the Amoy Gardens every day, and without any information about the blocks affected, everybody could only speculate. Members can easily imagine the fear and panic among the residents of the 20 or so residential blocks in the Amoy Gardens at that time. Besides, since these residents lived in the Amoy Gardens, many of them were dismissed once they went to work. In many cases, their employers would first tell them not to go to work. This was what made them so helpless, because they were not dismissed. The Labour Department advised that since they had not been dismissed, it could do nothing to help. We therefore made an appointment to meet with Dr Margaret CHAN FUNG Fu-chun. I can remember that on 1 April, District Council member YIP Hing-kwok, the Amoy Gardens Owners'

Joint Committee Chairman, the Chairmen of the various Owners' Committees of the Amoy Gardens and I called at the DH to meet with Dr Margaret CHAN. We requested her to release information about the blocks with records of infected cases, cautioning her that if she did not do so, the Amoy Gardens would be plunged into the dire danger of desertion, as many residents would "flee" and there would be widespread fear and panic among all residents. The Government eventually heeded our advice, very late in the whole course. But the damage and harm sustained at the earlier times were irrevocable.

Moreover, the owners were also very dissatisfied with the Government's action to seal off the Amoy Gardens in the morning of 31 March, for the residents of Block E had been kept in isolation for more than 30 hours before they were eventually evacuated to four camps. Why must they be locked up in Block E for more than 30 hours instead of being moved to the four camps at an earlier time? It was later ascertained that the design of the water pipes of the buildings was the cause of infection. Well, do not forget that the residents all had to bathe. Admittedly, the report does not contain any related evidence, and so far there has been no medical evidence to prove that more people were infected during these 30 hours or so. People might indeed get infected at other times, but we must not forget the incubation period. Although it is impossible to prove whether any resident of Block E was really infected by SARS during these 30 hours of confinement, it remains a fact that the residents inside were all plunged into great fear, because they were suddenly forbidden to go out, and then the whole of Block E was sealed off in a hurried fashion, as if a war was coming. But in spite of this, infection in Block E continued, and more residents had to be sent to hospital. Then, after some 30 hours, all the residents were hurriedly moved to four camps, again as if a war was coming. I also went to the Amoy Gardens at the risk of my own life to watch how they were evacuated. The process was very slow, and it was not until well past midnight that the residents arrived at the camps, adults and children huddling together, only to find that there were no pillows and mattresses. Inside these camps, several families had to cram into one big room. Nobody knew whether any members of the other families were in the latent period, whether any healthy people would thus be infected after their arrival. I myself also visited some of my friends in these camps at the risk of my own life. I now look so calm in describing their worries and anxieties. But what I saw at that time was a sense of despair after being forced to move by a callous government. And, what happened afterwards?

The owners' committees and I then tried several times to ask Mr TUNG or Secretary Dr YEOH Eng-kiong to visit the residents, so as to boost the morale of the owners' committees and the families concerned. We even requested Shelley LEE, then Director of Home Affairs, to visit the residents. But none of the government officials approached by me was willing to go, and they all avoided us, thus exerting great pressure on the owners' committees. They once hoped that top government officials could show some concern about them, because they were fighting a very hard battle for the Government at the front line. But they were all disappointed. And, practically nothing was done until Premier WEN Jiabao himself visited Mr KWOK, accompanied by Mr TUNG. Why did Mr TUNG not pay the visit at an earlier time? What were the reasons for all this? The report does not deal with this question, but I wish to point out that in failing to visit such a seriously hit area after the outbreak of such a grave disaster, the top levels of the Government have only shown how heartless and indifferent they are. I must appeal to the top levels of the Government that in case any serious disasters happen in the future (I certainly do not hope so), they must immediately go to the disaster area to boost the morale of people. This is very important, not because of any medical needs, but just for morale reasons. One more thing is that many residents of the Amoy Gardens fled to the Lower Ngau Tau Kok Estate, but the Estate itself was subsequently hit by an outbreak. This was probably because the residents had already been infected by the time they fled to different places.

I still wish to say a few words on the United Christian Hospital. I maintained contact with its Hospital Chief Executive, Dr TSE, every day during the outbreak. The report commends the United Christian Hospital because its staff was under very pressure, having to accept several dozen SARS patients every day. They really had a very difficult job. I must now publicly commend Dr TSE and all the front-line health care staff of the hospital. They really did a very good job.

Lastly, some owners of the Amoy Gardens have started to suffer from Avascular Necrosis, which is caused by the drugs used in the course of treatment. They all hope that the Government can offer them follow-up treatment of this sequela. I maintain that the efforts to assist rehabilitated SARS patients must not be slackened. It is hoped that the Government can learn a lesson and review its contingency mechanism. I certainly do not wish to see the establishment of

any more select committees by the Legislative Council to investigate any similar incidents.

I so submit.

**DR TANG SIU-TONG** (in Cantonese): Madam President, after months of hard work, the Legislative Council Select Committee has finally completed the SARS investigation report before this Legislative Session comes to an end. Unlike other SARS reports, this report focuses on finding out whether any persons should be held accountable. Today's debate, on the other hand, focuses on accountability.

I gather from the report that, among a number of officials being criticized, Dr Margaret CHAN, the former Director of Health (D of H), should bear the greatest culpability for the SARS incident. Given that the DH is responsible for infectious disease prevention and control in Hong Kong, the D of H must therefore be held responsible for her negligence of duty in performing these two tasks during the SARS outbreak.

Between January and February last year when there was extensive media coverage on the people in Guangdong Province scrambling to buy medicine, and even resorting to boiling vinegar with the result that the price of vinegar was pushed to \$100 per catty, the then D of H, apart from repeatedly emphasizing that the boiling of vinegar was not scientifically founded, paid no attention at all to these reports and failed completely to take proactive measures to find out what was actually happening. As head of an epidemic prevention organ, she demonstrated a complete lack of alertness. After her futile attempt to grasp the developments of events entirely according to the established guiding principle, the D of H left the matter unsettled and, as a result, missed the golden opportunity to prevent the invasion of SARS. These criticisms were certainly not made with the benefit of hindsight. During the same period, the Department of the Microbiology of the University of Hong Kong sent its staff to collect samples from patients in Guangzhou for investigation within a day and even took the initiative to "report" to the D of H. Furthermore, Dr Margaret CHAN turned down a proposal made by the Deputy D of H, Dr LEUNG Pak-yin, to send staff to Guangzhou to collect first-hand information. These facts show that an early understanding of the outbreak was certainly not impossible. Nor was it because no one had raised any proposals. It was only that such attempts were curbed. The one impeding the collection of information on the epidemic



was the D of H, who was responsible for preventing infectious diseases and collecting information on the epidemic. For these reasons, I personally hold that Dr Margaret CHAN should be held wholly responsible for losing the first line of defence.

Secondly, Dr Margaret CHAN was the only government official empowered by the Quarantine and Prevention of Disease Ordinance (Cap. 141) to exercise the power of disease prevention, including ordering mandatory quarantine and issuing the Isolation Order. However, the report shows that Dr CHAN time and again delayed bringing SARS into the scope of Cap. 141, thus making mandatory quarantine impossible. Among other things, she failed to take immediate action to activate the mechanism for enacting legislation to add SARS to the Fourth Schedule to Cap. 141 even after the WHO had named the disease SARS and published its signs and symptoms. Enactment of legislation was still put on hold even after repeated calls by Prof Sydney CHUNG, and even Dr YEOH Eng-kiong. Rigorous actions to prevent the spread of the disease must be taken, for even a delay of one day can be disastrous. However, there was a delay of 12 days between 15 March when SARS was named by the WHO and 27 March when legislation was enacted. Because of the delayed enactment of legislation, coupled with factors relating to equipment and manpower, the measurement of body temperature of passengers departing at the airport in Hong Kong commenced only on 17 April. Not only was the battle against the epidemic impeded, the Special Administrative Region was made a laughing stock in the international community as well.

Even though SARS was eventually incorporated into Cap. 141, Dr Margaret CHAN still appeared to be reluctant to enforce the Isolation Order issued in respect of Block E of the Amoy Gardens. Although the Chief Executive decided on 29 March to issue an Isolation Order in respect of Block E, it was not implemented until 31 March because of the delay caused by Dr Margaret CHAN. The fact that Dr Margaret CHAN repeatedly delayed the exercise of her crucial powers to check the spread of SARS has eventually made her miss the second line of defence. Consequently, the epidemic went out of control. The consequence would be unimaginable if not for the resolution demonstrated by front-line medical personnel in guarding the last line of defence. Since the purpose of today's debate is to find out whether any persons should be held accountable, Dr Margaret CHAN should be held accountable for failing to exercise her powers even though she held the authority of exercising all powers by repeatedly impeding and delaying the work of disease prevention and combating the epidemic.

As her superior, Dr YEOH Eng-kiong should naturally be held accountable for Dr Margaret CHAN's serious negligence of duty. However, it is no longer meaningful for us to discuss Secretary Dr YEOH's future and how he should be held accountable as he has already tendered a resignation to Chief Executive and it has been accepted. However, the problems with the accountability system as exposed in the SARS incident have given the Government much food for thought. Although the accountable Director of Bureau was nominally the highest person in charge of the relevant policy and executive organ, the one holding the actual powers in the SARS incident seemed to be the D of H, who was in control of everything, from deciding whether to include SARS in Cap. 141, implementing various preventive measures, to issuing the Isolation Order. The Secretary was essentially given responsibilities but no powers. So long as this situation leaves unattended, executive orders will continue to go unheeded. The accountability system will exist in name only, and administrative blunders will ultimately make the Government lose all its credibility. For these reasons, a clear delineation of powers under the accountability system is called for. The degree of accountability and ways to achieve it must be examined in an in-depth manner too.

SARS is a serious infectious disease never seen before. To handle such a gravely dangerous disease, we can only move forward slowly and cautiously. Hong Kong was fortunate to tide over the difficulties; but Hong Kong people have paid dearly with the loss of almost 300 lives and incalculable economic losses.

Lastly, I would like to pay tribute to those health care workers, hospitals and cleansing workers who have shown no fear of life and death and attention to duty. I would also like to express my deep condolences to members of the public who have lost their beloved in the epidemic and wishing those who are still receiving treatment an early recovery.

Madam President, I so submit.

**MR ALBERT HO** (in Cantonese): Madam President, in combating epidemics and protecting public health in a civilized society, we must make persistent efforts as if we are fighting endlessly to curb violence and crime and maintain peace. During the process, our society is constantly confronted with new problems, new challenges, and new setbacks. While some of our problems will

be overcome and success gained, despite setbacks, constant improvement and reform will bring us unpredictable problems and challenges never seen before. Hence, we have to understand that pursuing a disease-free society is like pursuing a perfectly safe society. This ideal is, despite our best endeavours, not attainable. However, we must not relax our vigilance. We must maintain alertness at all times to prevent us from being plunged into another crisis and disaster brought about by the invasion of disease.

As Members are aware, this investigation was conducted by a Select Committee set up by this Council in response to public opinion and expectations. I very much believe the report compiled by the Select Committee is independent and impartial, and provides additional and more comprehensive information and facts. Our main purpose of finding out the truth is to learn lessons and improve the entire public health system and facilities. In order to find out the truth, we must not harbour any fears and show any bias. Most importantly, all facts must be uncovered in their entirety. We seek improvement so that lessons can be learned from our mistakes. In the course of doing so, we certainly understand that someone has to assume responsibility and a willingness to do so precisely demonstrates that we are willing to learn lessons and are eager to face the whole truth.

In the course of digging out the truth of the entire incident, we certainly believe the Select Committee will see that there must be a reason for all mistakes and it is therefore necessary for the one who made the mistake to be held responsible. Only in doing so can we, as I pointed out earlier, truly learn a lesson and become more mature, and this in turn enables our system to improve.

I understand that the Select Committee has analysed the accountability in several aspects: first, the political accountability of officials appointed under a political-accountability system; second, the administrative accountability of leaders of public health care institutions; and third, the professional accountability of professionals. Nevertheless, it should be understood that the Select Committee should strive to, and has managed to, avoid making professional judgements when it might not be in the position to do so or when sufficient information is not available. As such, I believe more discussions might be required for a number of issues relating to professional accountability and judgement. Perhaps it is more appropriate for more authoritative decisions and judgements to be made in other venues. Insofar as this incident is concerned, the political and administrative accountability is more apparent.

According to my understanding, after the submission of the report, Secretary Dr YEOH Eng-kiong expressed his willingness to be held politically accountable for the serious consequences of the entire incident and the blunders made by his subordinates. I certainly believe he is aware of his own inadequacies. His willingness to step down in order to assume his political responsibility actually sets a precedent for the political accountability system established by the Chief Executive, Mr TUNG Chee-hwa, because the Secretary was the first government official who made it very clear that he had offered to step down to fulfil his political accountability. In our opinion, there are indications throughout the report that the Secretary, as an accountability official, has had inadequacies and made mistakes, apart from being held accountable for his subordinates' blunders and the serious consequences of the entire incident.

As the highest accountability official in charge of the entire public health and hygiene structure, the Secretary obviously showed insufficient alertness to the danger of crisis in response to the outbreak in Guangzhou in February last year. More importantly, he failed to demonstrate full awareness of the fact that a comprehensive and permanent system for preventing a large-scale outbreak of infectious disease had not been put in place in Hong Kong. Neither were there any infectious disease hospitals for isolating infected patients. Despite the high density of the Hong Kong population, the proximity of the places where the outbreak was detected in Guangzhou to Hong Kong and the heavy flow of travellers between the two places, the Secretary failed to demonstrate sufficient awareness of the danger by expeditiously setting up a contingency system and putting in place corresponding measures. Besides understanding the cause of the disease, it is equally important for an improved communication channel to be established between hospitals and the DH, more preventive instructions to be given to health care workers, adequate protective gear to be procured, and so on. Yet, as Director of Bureau, he failed to do all this. Furthermore, even after the confirmation of an outbreak at the Prince of Wales Hospital (PWH) on 12 March and the subsequent notification of the international community, the Secretary kept sending messages considered by us to be misleading in press briefings on 13 March and 14 March, thus giving us an impression that he was not sufficiently alert to deal with situations of such a serious nature. Despite the listing of SARS as an infectious disease in Singapore on 17 March, it took nine more days for Hong Kong to follow suit on 26 March. The entire medical system was later thrown into a state of chaos as a result of having to cope with such a large-scale epidemic, with inadequate communication leading to poor

morale among the staff. Many patients also felt that they had not been taken care of properly then. In my opinion, had there been sufficient alertness at the beginning of the outbreak between February and March, the problem might not have worsened to such an extent that more than 200 lives were lost and some 1 000 people infected in Hong Kong.

When it comes to the work of prevention discussed earlier, the legal responsibility should lie with the D of H, Dr Margaret CHAN. She should have known it very well that she had to be directly responsible for finding out more of the outbreak in Guangzhou, instead of watching it with indifference like some Hong Kong people. What is more, she should have acted promptly to include SARS in the list of infectious diseases to demonstrate the readiness of the entire medical system to take preventive measures. However, she failed to do so and, worse still, not acted swiftly to adopt comprehensive preventive medical measures to, among other things, trace the source of the infection, isolate suspected patients, discuss with the HA the desirability of closing certain wards and ways to raise alertness in the community to strive to prevent members of the public from being infected through various channels in the community. The fact that the investigation suggests her failure to fully discharge her duty has convinced us that we should show our dissatisfaction with the performance of the former D of H, even though she has already left the post.

In its earlier internal report, the HA has given a detailed explanation of its accountability, and I consider the report fair in a number of areas. According to its internal investigation, there were inadequacies in much of its internal work. Moreover, there was confusion with the system and facilities because of poor co-ordination. It can be seen from the report that even the senior level of the HA seemed to admit that it should be accountable.

It is certainly needless to elaborate from the angle of patients. Many of the patients we have come into contact with are filled with grievances. I have been told by some family members of patients that it was simply impossible for them to visit their loved ones who had been hospitalized after contracting the disease. When they finally saw each other for the last time in the ward, the patients, probably inserted with tubes all over their bodies, might no longer be able to talk. Even their faces were beyond recognition. Yet, not a single word of explanation from hospitals was ever heard. I have certainly tried my best to explain to them the burden imposed on the hospitals at that time and that the

prime task for the hospitals was to try their best to administer treatment and save dying patients.

The health care employees were caught in the same situation. We would hear many health care workers call into the radio programme "Teacup in a Storm" in March complaining in tears to the host of extreme low morale. The HA was subsequently forced to set up an internal hotline to pacify its health care workers. This was followed by a "one person, one mask" campaign to show the support of the community for health care workers. In brief, the HA should learn lessons from this incident. We hope the resignation of the Chairman of HA, Dr LEONG Che-hung, reflects his dignified and courageous commitment. What is more, we hope the HA can learn lessons from the incident and the entire Government (including the D of H and the relevant bureaux) can make proper and comprehensive planning to prevent the outbreak of epidemics in the future.

The professionalism and lofty virtues demonstrated by front-line health care workers warrant our highest respect. Many of them took care of dying patients in the most risky wards without regard to their personal safety. Many thus scarified their own health, and even their lives, leaving a page of heroic and moving deeds in Hong Kong history, and even the history of mankind. I was deeply moved when I read from the report that when the senior level of the HA appealed to other health care workers for assistance because of severe manpower shortage in the PWH, some 40 health care workers volunteered to perform the most front-line tasks in the PWH. I was deeply touched that our health care workers had not run away from their hospitals; on the contrary, they even volunteered to walk into the SARS wards. *(The buzzer sounded)*

**PRESIDENT** (in Cantonese): Mr HO, your time is up. Please sit down.

**MR ALBERT HO** (in Cantonese): With these remarks, I support the amendment.

**DR RAYMOND HO**: Madam President, first of all, I declare that some members of my family are in the medical field.

SARS is a new epidemic. When it broke out last year, Hong Kong became the centre of world attention. During its outbreak, it not only dealt a big blow to Hong Kong's economy, but also its social stability. Now, the disaster has been over for a year and the nightmare is gone, I hope all of us, including the Government, can learn from this bitter experience.

Last year, when SARS first broke out in Hong Kong, no one knew the source of the problem, and consequently, the Government could not take timely measures to suppress the spread of the disease. As a result, in order to avoid being infected, foreigners preferred not to come to Hong Kong and Hong Kong citizens preferred to stay at home. Consequently, various industries and businesses, including travelling, tourism and retailing, and so on, were disastrously affected. In the meantime, many people were infected and some of them even died from the epidemic. SARS was one of the worst disasters in the history of Hong Kong. However, fortunately, with the dedication of the medical staff, including doctors, nurses and other front-line workers, the epidemic was finally under control. They definitely deserve our highest respect.

During that period, the Hong Kong Institution of Engineers set up a task force, of which I was a member, and came up with proposals which were submitted to the Hospital Authority, the Department of Health and Team Clean which is under the control of the Chief Secretary, as well as the panel of international experts. These proposals included: (i) air-conditioning systems for SARS wards; (ii) domestic household drainage systems for the prevention of the spread of viruses; and (iii) infra-red thermal scanners. This demonstrated the significance of the social functions of a number of engineering disciplines.

The SARS epidemic is now over. The Legislative Council set up a Select Committee to inquire into the matter. I hope both the Government and the citizens can learn from the lesson, so that we are more prepared for any future outbreak.

Madam President, I so submit. Thank you.

**DR DAVID CHU** (in Cantonese): Madam President, on the surface, the SARS incident will soon be over. However, I hope the Government can remember that there are still several thousand affected people who will continue to suffer

from both physical and mental pains for a long time, or even for the rest of their lives. In the next decade, the Government will spend up to several billion dollars on building a hospital for treating infectious diseases as well as improving other medical facilities. I hope a small portion of this funding can be set aside for assisting these affected people, especially those medical and health care personnel, to resume a normal life. Thank you, Madam President.

**MS CYD HO** (in Cantonese): Madam President, starting from 10 March 2003, Hong Kong went through the 100 days of SARS. During this period, the health care workers and Hong Kong people faced the critical subject of life and death and experienced fear together, and there was also the display of the spirit of selflessness. All health care workers were dedicated to their duties, and Hong Kong people displayed strong solidarity. Many of the forgotten human qualities surfaced once again. Although we were separated by face masks, we actually felt very close to each other. I must extend my thanks to the health care workers, and I should also take pride in the people of Hong Kong. Here, I must send my best regards to those who are still suffering from certain diseases because many are still being plagued with avascular necrosis. I also hope that the families of deceased patients can recover from the traumas of losing their loved ones and start a new life for themselves.

SARS made 1 700 Hong Kong people fall ill, and claimed 299 lives; among them, many were health care workers. The fear at that time and the sorrow afterwards combined has marked many deep wounds in us. However, if we want Hong Kong to recover from these wounds, we must face the facts bravely and get to understand them in their proper perspectives. If we just want to tone down the severity of these wounds, they will develop into some ulcers in our hearts, causing some even worse sequelae ultimately.

The Government had appointed an Expert Committee to conduct an investigation and the HA had also appointed Mr Ronald ARCULLI to conduct a separate investigation. However, both reports could not make the public feel satisfied. Therefore, the people had a higher expectation of the Select Committee of the Legislative Council. In comparison with the other two teams conducting investigation, the Select Committee of the Legislative Council was vested with greater power, and was protected by the Legislative Council (Powers and Privileges) Ordinance; we could summon witnesses; and the witnesses had to give evidence under oath. Madam President, the most important difference was



that our hearings were open, of which nearly 100% were broadcast live by the media. The people could watch the whole process of the hearings, and the written evidences of witnesses were also distributed to the people during the period of the conduct of hearings. Such an open and transparent process was intended to enable the public to witness the collection of evidence and to arrive at their own judgement. This is the major difference between this Report and the other two earlier reports.

Madam President, during those 100 days, the media made many reports, named ones or otherwise. People from different sectors all had their first-hand feelings. As such, from his own perspective, everyone must have some kind of judgement. As a member of the Select Committee, I had personally tried to maintain a neutral stance as far as possible and tried to avoid being affected by subjective information, and I had also tried my best to detach myself from emotional judgement. In fact, this was rather difficult because in each of such hearings, we could see that some health care workers were still suffering from avascular necrosis, and some really had a narrow escape from death. We had to maintain a neutral and rational perspective by all means. It was really difficult. Our investigation did not intend to rub salt into the wounds. On the contrary, we hope, by facing this incident bravely, everyone can find out the inadequacies at that time. It will not only facilitate our early recovery, making our wounds heal up more expeditiously, but also make us more capable of facing future epidemics, making it easier for us to handle them.

Some have criticized the Select Committee of making our judgement with the benefit of hindsight. In fact, right at the very beginning, we had already discussed this point. So, in our deliberation, we had tried our best to put ourselves in the shoes of the health care workers at that time, and to examine the decisions they made then by using the information available to them at that time. On this point, I feel that we had the agreement of members of the Select Committee, and we had tried our best to achieve this. With the assistance of the Legal Adviser of the Legislative Council, we had been adopting a rather high standard in taking evidence. We issued a questionnaire to the witnesses concerned; we informed the witnesses beforehand of the areas in which they would give evidence. We hoped to collect evidence from them specifically on that incident, and then after asking them questions, we would prepare a draft which would be sent to the relevant persons by mail so as to provide them with a chance to respond to it. This process was very good because in case a witness

did not know too well about the areas in which we would raise questions, and in that case, he still had enough time to provide supplementary information after having read our first draft. After receiving supplementary information from the witnesses, the Select Committee has held meetings for nearly 18 hours per week during the past three weeks to prepare the final Report. Here, I would like to extend our most heartfelt thanks to staff of the Secretariat, because they have been working tirelessly and around the clock to prepare documents for us. They are really very professional.

In the process, many enthusiastic members of the public as well as many health care workers had provided us with a lot of information. But many of them did not provide their names, that is, they were anonymous. We fully understand that they were all very enthusiastic, hoping that this Select Committee could explore into greater depths in our investigation. However, I must state clearly that we can only accept comments made by people with their names attached, those who were prepared to take responsibility for what they had said. I hope those who had provided information to us in anonymity can summon greater courage and come forward to say again what they had wanted to say. I feel that the public would have enormous respect for such behaviour.

In this connection, I must mention Dr Stephen NG. As Dr Stephen NG realized that we were conducting an investigation, he took the initiative of writing to us to inform us that he had participated in the process and that he had suggested to the Secretary that he must provide his viewpoints on the rat as the animal vector for transmitting the virus. The evidence given by Dr Stephen NG was substantially different from that provided by the official representatives, and this had made the Select Committee unable to conclude which version was more credible. However, he did show his courage in coming forward because in case his evidence was found untrue, he would be criminally liable after having testified under oath. His initiative had won great respect from us, and eventually the Select Committee decided to include both versions of the evidence to become one of the chapters. I believe the public and people of the various sectors can make their own judgement after reading them.

When we were compiling this Report, we were fully aware that everyone had too much emotion and sad feeling about this outbreak. Therefore, we had, as far as possible, adopted a plain and straightforward approach to present the facts. I believe Members will agree that this Report is very boring without any colour. In the Report, whenever writing techniques such as comparison or

personification were used in our description, we would delete them as far as possible. Therefore, the words Members would come across most frequently are "adequate", "inadequate", "reasonable", and "unreasonable". Sometimes, we also found it quite boring when we were writing it. However, in order to achieve impartiality, I hope Members can accept such a descriptive approach.

Next, Madam President, I would like to discuss, after learning the experience gained from the work of this Select Committee, what we should do in future when select committees have to be formed to conduct investigations. It is better for persons not good at keeping confidential information to stay out of select committees because we have, in an unprecedented manner, had many occurrences of leakage of confidential information in the work of this Select Committee. Reporting is the vocation of reporters, whereas it has been a most usual practice among Members, especially directly elected Members, to provide reporters with information. However, in this incident, we really have to follow some codes of practice strictly. Sometimes, certain reporters might have drawn their own conclusions after attending our open hearings, and then they might vaguely mention the names of some members of the Select Committee, and then treated the report as if it had been confirmed. However, I can tell Members, very often, if they had been closely monitoring the open hearings, it would be possible for them to write a report on it. Of course, some acts of leakage of confidential information did occur. It was really very unfortunate. Therefore, I would like to suggest that, in the next term of the Legislative Council, we must formulate some confidentiality guidelines on whether members are still allowed to contact the witnesses especially when the report is being drafted. If the operation of select committees is considered semi-judicial proceedings, then I believe all members must be very careful with their words and actions. This is really difficult because as members of a select committee, we may still maintain co-operative relations with many witnesses in many other areas of business. Therefore, in future, for Members having joined a select committee, should their duties in other panels be temporarily suspended, so as to enable them to, as far as possible, focus on handling the heavy workload involved in the investigation in an independent and impartial capacity? I hope Members can take this into consideration.

Another problem faced by the Select Committee was the time constraint. Time was really our worst enemy. Unfortunately, it was impossible for us to carry our work forward to beyond October 2004. Therefore, we had only been able to conduct investigation into a few areas of what happened last year, and this

must not be the full picture of the whole SARS outbreak. I hope in future some organizations or the next Legislative Council can carry on with our work to investigate those areas that we have not looked into yet. Although the witnesses were giving evidence under the protection of the Legislative Council (Powers and Privileges) Ordinance, members of the Select Committee were not vested with the investigative functions. So all they could do was to ask written and oral questions, and uncover evidence from the answers made in response to such questions. Therefore, even though we may have some doubts or assumptions on our minds over certain issues, we would not be able to draw such conclusions if we could not obtain any quality evidence to support them. I believe this is also the reason accounting for many of the public criticisms against this Report. This is because many would feel that a lot of events had already been reported in newspapers, why were they not included in the Report? This is because any points incorporated into the Report must be substantiated by evidence collected by us. Therefore, I would like to say this to all those who have criticized this Report: All the facts listed in the Report were provided by the witnesses. You may challenge whether the Secretary should be held accountable; or whether the Chairman of the HA should be held accountable. However, I believe you cannot challenge the evidence presented by us because we have provided sufficient time and space for the HA and all other parties to provide us with evidences, be they written or oral.

Finally, Madam President, I must say a few words about Secretary Dr YEOH Eng-kiong who has stepped down for accountability. Secretary Dr YEOH has stepped down from his office just because of his official capacity as an accountability official, who should be held accountable for the harm done to Hong Kong by the SARS outbreak. His stepping down was absolutely not because of his personal errors in administration. His act of stepping down has given play to the spirit of the accountability system, and it should deserve our acknowledgement. However, I hope that the family members of those who were affected by the SARS outbreak can release their grievances because lives belong to the living. The deceased have already passed away. No matter how aggrieved we are, we still have to face the way forward in our lives. Hatred and grievances cannot help us in the least. I hope everyone can expeditiously release the grievances in his heart, and display once again the rationality, civilized qualities, selflessness and solidarity of Hong Kong people which we saw last summer, and let us take pride in all such attributes. In the summer of 2003, we had some very good reasons for loving Hong Kong more.

**MS EMILY LAU** (in Cantonese): Madam President, I speak in support of Dr LAW Chi-kwong, and I also support the amendment moved by Dr YEUNG Sum.

The SARS outbreak last year was really a major catastrophe, in which 299 persons died and 1 755 persons were infected. I believe such heavy casualties were quite rare in the contemporary history of Hong Kong. Of course, it was also a heavy blow to our economy. We have seen the release of one report after another, yet none of them could make the people feel that the investigations have found out the ultimate truth, as well as who need to come forward to assume responsibility.

With regard to this report compiled by the Legislative Council Select Committee, I must first pay tribute to all the Honourable colleagues who have taken part in it because it has really been a tough task, on which they have worked for so many months with 94 meetings held. And I believe the staff members of the Secretariat have also professionally assisted Members in the process. However, the report produced (.....someone reminded me that they have worked for 447 hours. Thank you very much. They have worked really hard in the process. We fully understand that. That is why I have to pay tribute to them) initially makes some members of the public feel that: Is that all? The harshest comment is just "the Secretary's performance not satisfactory". This comment was also cited by me many times yesterday. Madam President, but it was used for commenting on the Education Ordinance. Yesterday, I asked what actually had this comment conveyed. That was why I had requested that the line be written in clearer terms. Today, I also find myself at a complete loss as to what this comment is trying to convey. However, dissatisfaction is dissatisfaction.

But, why do the people feel dissatisfied? Very simple, it is because "no blood is drawn". But why must "blood be drawn"? It is because so many people died, and so many people were infected. Besides, some members of the public have also mentioned that the Report of the Public Accounts Committee (PAC) released in June urged the Administration to consider taking disciplinary actions against the Director-General of Investment Promotion according to the extent of seriousness of his negligence of duty. Both being reports issued by the Legislative Council, why could the PAC report recommend disciplinary actions, but not the one on the SARS incident?

Madam President, in fact, I would like to tell the public that there is only one Member, namely, Dr David CHU, who has served in both of these two committees. All the other members of the two committees are different. And the backgrounds of the investigations are also different. Although I cannot explain on behalf of Members why it has turned out like this, I can understand why the people have such a doubt on their minds. Madam President, some people want to redress injustice in the incident. I also understand why Mrs Sophie LEUNG was so miserable just now. It is because many of the persons involved are our long-time acquaintances. That is why I passed a note to her just now, saying that we are targeting our criticisms at the issue, not the individuals. Madam President, we feel that someone should step down. As Ms Cyd HO said just now, as the head of an organization or a department, should that person be held responsible? Therefore, I feel that it is only appropriate that someone has to step down, though it is already a bit late.

As for Dr LEONG Che-hung, he was our colleague in the past. A few days ago, I told the media that I felt someone in the HA should step down. Although many doctors, nurses and many people of different levels in the HA had been dedicated to their duty and had done a lot. However, a lot of problems still occurred. And among those infected, more than one fifth were health care workers. Was that not proof that some people must have omitted some work? Just now a radio station had conducted an interview with me, in which they said that two top officials had now stepped down. At that juncture, I told them one of them was not a top official because he was not remunerated; he was just a volunteer. Madam President, is it really necessary to see an official step down? I really hope that the HA can think twice about it and give an explanation to the people. We are not really very "blood-thirsty", not really yearning to see someone receiving very "fatal" punishment before we feel happy. However, sometimes, something has happened, some problems have taken place, do not ask me, do not ask the people, but ask the HA: What has to be done? I wish to see more HA people telling us how angry they are. Yes, people of the HA have won the respect of people from different parts of the world, that they were not soldiers fleeing from the battlefield. But when they saw what some of their senior officials had done, they would feel very unhappy. Therefore, I feel that it is necessary for the HA, for the sake of patients, their families, medical and health care workers, to make some responses? I hope the HA can consider this. Of course, the option taken by Dr LEONG Che-hung now has commanded great respect from me. But I also feel that: Would it not be even

better if this option is taken earlier? Everyone will find it more appropriate if this is done earlier.

As for the criticisms made against Dr Margaret CHAN, I agree with the approach taken by the Democratic Party. Some members of the public may not understand why the Select Committee could not make stronger criticisms against her. Maybe later on Dr LAW Chi-kwong can answer the questions on the minds of me and some members of the public. I notice that Dr LAW had said on certain occasions that the Legislative Council could decide on the approach for itself. Of course this can be done. But as a Member of the Legislative Council but not a member of the Select Committee, I expect the Select Committee to make some more suggestions for us, instead of just providing such remarks like ".....(the Select Committee) finds the Secretary's performance not satisfactory" and then asking the Legislative Council Members to arrive at some more severe conclusions.

However, in spite of all these, the Report of the Select Committee has already caused great repercussions in society and led to results not even anticipated by the Select Committee itself, and such results still may not have come to an end yet. I strongly agree with what Ms Cyd HO said just now, that we should put aside our sorrow and look forward to the way ahead of us. This is what we hope to do. However, as regards certain matters that entail accountability, I hope certain organizations should face them squarely and do what they should do of their own initiative. Do not give the public the impression that some people have blundered and they could get away in this way.

Madam President, we should all look forward to the way ahead, and we should also look forward to the money aspect, for I noticed that the SARS Fund has recently held a press conference, in which it was mentioned that they have only \$250 million left. This is insufficient because there are over 500 people receiving assistance from this fund. I believe that most people, the vast majority of Hong Kong people would feel that the Administration should do its best to help these people. These people are all very innocent. They absolutely do not understand what happened and why the situation went out of control with so many people being infected. There are also over 70 children who have lost their parents. I believe the infected people who have survived this disaster still have to face the disease of avascular necrosis and problems in many different

aspects. May I speak on behalf of many Hong Kong people: That these people should be taken care of.

I hope the authorities can show great concern about how they feel now, and when they need money, I believe whoever are elected to this Council in future must agree to allocate some money to take care of these people. I hope the Chief Secretary for Administration can later tell us clearly the commitment of the Administration in this regard because I have come across some reports which mentioned that the Administration had turned down the requests for carrying out magnetic resonance imaging (MRI) screening for certain rehabilitated SARS patients. If there are some cases to be followed up in connection with their health, I believe the Administration is duty-bound to take care of them. These people are part of society. We all support them very much, and we strongly hope that the Administration can take care of them with the same supportive attitude.

Lastly, Madam President, I would like to discuss the issue of leaking confidential information. The recent incident of Dr LO Wing-lok was not the only episode; such incidents have already happened many times before. I felt very shocked on each such case of leakage — and I was so shocked that you may say that I had actually become angry. I was not a member of this Select Committee, but feel that it is unfair to its members. The conclusion of the review was leaked in an improper manner, so there had been rampant speculations such as this doctor or that professor was severely criticized, so the persons affected suffered from insomnia and felt miserable, and eventually criticized the Legislative Council in return, and this has undermined the credibility of both the Legislative Council and the Select Committee. Therefore, I would like to severely denounce those Members who did not act in accordance with the rules and regulations. However, on the other hand, we also do not have a very good mechanism in place to deal with such incidents. When something like this has happened, what would the Chairman and the Vice Chairman do? So they would go and discuss with Members. But in doing so, we would be criticized as deploying our own people to investigate a case involving our own people. If so, what are the differences between Dr YEOH Eng-kiong and us? Why should the investigation be conducted by the Chairman and the Vice Chairman? Does it mean to say that the Chairman and the Vice Chairman would definitely not make such errors of leaking confidential information, thus they can make enquiries with other Members? I feel that there are many such questions, which I cannot provide any explanation, and the



public also finds them very strange. However, in the end, the truth is still missing.

However, in fact someone did leak the confidential information, and the media do know who they are. But they will not disclose the identities of such culprits as they also have their professional ethics. I hope Honourable colleagues can respect the process because if the process is affected, the results will also be affected, and this will undermine the credibility of both the Select Committee and the Legislative Council. This will definitely drive me crazily angry.

As such, Madam President, I agree with Ms Cyd HO's suggestion that we must identify a way of handling such issues in the next term of this Council for we will definitely form more select committees for investigations in future. I would like to propose again we must deal with such issues in the most stringent manner. Madam President, on certain occasions, even among Members, we have also had some private discussions on how this issue should be handled. We would like to let the Administration know that we are also concerned about our own business. Insofar as discipline is concerned, we would not be loose with ourselves, but strict with others.

I do not know how the Administration would handle the incident of leaking confidential information, but some of us have suggested that we must of course amend our Rules of Procedure, and so on. I have one more suggestion, that is, from now on, whoever decides to join a select committee, together with all staff members involved in its work, must make a sworn declaration that they would not leak any confidential information, and any such leak is tantamount to an act in breach of the Basic Law. However, all this is just a suggestion. Madam President, I do feel that this incident is very serious. And what should we do if someone still leaks confidential information in future after having made a sworn declaration? I do not think that we should deploy our own people to investigate ourselves. Maybe we should, through the House Committee, or rather the House Committee itself should, appoint some outsiders to conduct the investigation. These persons charged with such responsibilities should possess the abilities, and have engaged in the actual work of investigation, or even have previously worked in the disciplined forces. All these could be open to discussion in future meetings of the Legislative Council. I feel that we should discuss these rules, and the purpose of such discussions is to demonstrate that we cannot tolerate people not working according to the rules, we cannot tolerate the

acts of certain people, for their own personal pursuit, affecting the work of the Select Committee, as well as the reputation of the Legislative Council.

As for the approach adopted by Dr LO Wing-lok, I was extremely shocked to the extent that I nearly fell down from my bed when I heard a report on it at 7.00 am in the morning. Why could he not wait for just several tens of hours more? "What is wrong with him?" How could he send out the report as early as Friday, so that some people could receive it earlier? I wish to ask, "What was the purpose of doing this? What was the whole point of doing it? Right before the report of the Legislative Council was released, is it true that no one should be able to get any copies? Why could he get them on Friday?" I really do not understand it. The Report of the PAC to be submitted to the Government will be locked up by the Chairman, and everyone will get a copy of it only after it has been officially released. Therefore, several hours after the occurrence of this leakage of confidential information, some members of the public said angrily to me, "Wow! How can this be done? Is this person still suitable to be a Member of the Legislative Council?" I very much agreed with this comment. Therefore, I called up the Assistant Secretary-General at 9.00 am and asked her to inform the Chairman of the Select Committee. Although the Select Committee had already been dissolved, I still addressed him as the Chairman.

Madam President, I feel very angry about the incident. I think we are not claiming absolute significance just because we have been working very hard, or that we have worked for several hundred hours. But I do feel that the procedure is important. We believe in the rule of law. We have our professional integrity. Therefore, I have to reiterate here that I hope Honourable colleagues can acquit themselves well in any committees. If I have the honour of continuing to serve in the Legislative Council in the future, I will definitely put forward some suggestions, and I hope I can have the support of Honourable colleagues, so as to prevent such incidents, which would disgrace the Legislative Council, from recurring in future.

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG, do you wish to.....

**MRS SOPHIE LEUNG** (in Cantonese): Madam President, I would like to make a clarification.

**PRESIDENT** (in Cantonese): You wish to clarify your earlier speech?

**MRS SOPHIE LEUNG** (in Cantonese): It is because Ms Emily LAU mentioned my name just now, saying that I was emotional because of some of my very good friends. In fact, I think everyone should be emotional. In this incident, 300 persons died, over 1 000 still have not fully recovered to date. This is a catastrophe of the century. I just wish to clarify this point.

Thank you, Madam President.

**MS LI FUNG-YING** (in Cantonese): Madam President, ever since the Select Committee has released its report, I have been pondering how I should speak in this debate. The most difficult thing to decide is how to ask the officials responsible to be accountable. This difficult problem seemed to be solved when Secretary Dr YEOH Eng-kiong announced his resignation. However, I would think that there is still a need to talk about my views.

It is never easy to assess the responsibilities that should be borne and the penalties commensurate with them. I have looked up the resolution passed under the Interpretation and General Clauses Ordinance in June 2002 by the Legislative Council. At that time, the Secretary for Constitutional Affairs said the following on delineating the powers and responsibilities of principal officials. I quote: ".....They will be accountable to the public and the Legislative Council, and will answer questions from them. In extreme cases, they may have to resign over major policy failures." End of quote. It is as simple as that. So, I know very well that the SARS epidemic has taken its toll on 299 precious lives, and more than 1 000 patients who have recovered from the disease are still suffering from the after-effects in various degrees. Some of these patients have lost their dear ones and their emotional devastations can still be felt today more than a year after the epidemic was over. This kind of pain and sorrow can never be healed and removed. So it is understandable that the accountable Director of Bureau concerned has been under calls for his resignation owing to the improper handling of the epidemic.

With respect to the resignation of Secretary Dr YEOH, I can only see it like this: Since the Accountability System is characterized by political appointment, whether an official should remain in office or not would have to be

considered not only against his success or failure or the right or wrong he has done.

Madam President, it is never easy to shoulder the responsibility for medical and health services in Hong Kong. I respect the contribution which Secretary Dr YEOH has made to medical and health services. As a matter of fact, Hong Kong has been plagued by various epidemics over the past few years. Before the outbreak of SARS or even to this date, we have the avian flu, dengue fever and Japanese encephalitis. During the past few days, in some of our neighbours such as the Mainland and Thailand, some chickens were found to be infected with the H5N1 virus. So our fight with viruses of all kinds has never stopped. The resignation of the Director of Bureau and even the resignation of the Chairman of the HA do not mean that all the problems associated with SARS are now solved. However, at least the Select Committee has made many constructive recommendations on epidemic prevention and these are to be put into practice. There are compensation claims from those affected as well as the treatment of the patients which still remain to be done. I hope the Government can attend to the reasonable demands from these unfortunate people and handle their treatment properly.

Lastly, I hope that we can all learn a lesson from this experience. I also hope that the Government of the Hong Kong Special Administrative Region can find a distinguished candidate to fill the vacancy of the Secretary for Health, Welfare and Food. Thank you, Madam President.

**MR NG LEUNG-SING** (in Cantonese): Madam President, the Legislative Council passed a motion last October to establish a Select Committee to conduct an inquiry into the SARS outbreak. Before that, as the medical and health care sector was still doing a tough task in making preparation to meet the challenge that may arise from the possible return of SARS, and as the government-appointed Expert Committee was still in the process of identifying ways of improving the public health care system, and in order to avoid overlapping meetings and possible interference during that period of time, and to provide a good environment to facilitate the work of the experts, I formed the opinion that we should wait until the completion of the report of the Expert Committee before deciding whether we should establish our select committee for the purpose. Later, as the Government failed to appoint an independent commission of inquiry by last October as suggested by this Council, I had no

alternative but to support setting up an authorized select committee by this Council. However, in the meantime, I also proposed that, due to the time constraint, the Select Committee should adopt a pragmatic approach in identifying the responsibility of the relevant parties.

After working hard for more than half a year, the Select Committee has just submitted its Report. The Select Committee has been working under a very tight schedule, whereas the time left for us to study the Report, which we have just received, and to make preparation for this debate has also been very tight and limited. As we review the work of the Select Committee, we can definitely commend its work. However, in the meantime, I also feel that the working approach of the Select Committee, or even the confidentiality issue as mentioned by certain Members, and so on, can provide some very precious experience for us in the course of work of the Select Committee. And such experience can be used as reference for the work of this Council in the future. Doubtless the Legislative Council does have a role to play in monitoring the performance of the Government in administration. However, it must exercise great prudence in deciding whether a select committee should be established because we have to strike a balance between the time constraint and the optimal utilization of the resources. Besides, for certain issues, the truth is already all too evident, and there are not too many issues that may require any investigation. However, any action taken by this Council may lead the public to hold certain expectations or demands, and they hope to see judgements more than verifications. Therefore, a select committee should be very careful with its working approach. If a select committee makes too many value judgements and verdicts, its professionalism and impartiality could be subject to public queries. However, if a select committee just makes an investigation and confirmation of the incidents, just as in the present case, it will trigger certain public reactions and make the people feel that we have based our judgement on hindsight, and that the practice of not passing any verdict will lead to certain disappointment.

My primary view on this Report is that, in the entire SARS outbreak and the process of the common struggle of the Hong Kong community against this epidemic, it has positively recognized the eventual outstanding teamwork produced by front-line health care workers and the management — of course this includes certain medical officials and the authorities concerned; a series of objective facts have been duly presented and recognized in this Report. Even though the Report does pass some criticisms, I still agree to a remark made by a

columnist who wrote, "SARS heroes will only become even more solid and true than before after the criticisms are made in the Report." Obviously, we must confess one point, that the Report has not made any major amendment to what the public has already known; and in areas of the SARS outbreak which the public wish to gain more understanding, the Report has not provided any material and important supplementary information.

From the perspective of this Council, it is commendable that the Select Committee has managed to base its observations on facts and to adhere to the principle of objectivity. I appreciate that some sectors of society have expressed dissatisfaction over the intensity of the conclusion of the Report. Anyway, this Select Committee, which was established under a tight schedule, has only been able to complete its investigation and the confirmation of facts. On the issue of the political responsibility of accountability officials in the incident, it should be left to the Administration to make its political judgement.

We may review the incident in an objective manner. Before the investigation was launched, many political organizations and many people in society had already expressed the view that there was sufficient evidence to question and challenge the political responsibility of the accountability officials. Of course, the release of this Report will not stop people inside and outside this Chamber from making judgements even further than those contained in the Report on the political responsibility of accountability officials. However, in spite of this, I think that this Report should command respect from Honourable colleagues of this Council. As such, the value of its conclusion should also be given due weight, and it should not be amended or supplemented by way of other motions, and so on. Otherwise, it will appear that the conclusion of the Report is insufficient, and eventually it will undermine the credibility of this Select Committee authorized by this Council. Therefore, I hereby say that I respect and agree with one of its viewpoints, that is, how the Administration should handle the issue of the political accountability of the relevant officials is ultimately a political decision to be made by the Administration after considering the issue prudently. With regard to political decisions and the treatment of the officials concerned, it will be necessary for the Administration to formulate different credit and punishment mechanisms according to different circumstances: Where credit is due, it should be given; where punishment is justified, it should be meted out. Stepping down is one of the possible punishments, but it is not the only panacea. The Administration should pragmatically maintain the authority of the executive-led administration and the relative stability of the

ruling team, so as to enable the political accountability system to continue making improvement with time.

Madam President, I so submit.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, it was the spring of 2003, well, you may say it was the winter. It was an unforgettable year, a year which everyone in Hong Kong can never forget. That is human nature — the more unhappy our memory of something is, the more unforgettable it becomes, and it will leave a particularly deep impression in our mind. In this battle against SARS, apart from its substantial financial impact on Hong Kong, everyone in Hong Kong people has some strong feelings about it. The bosses had no business and the workers were jobless. At that time, the blow suffered by everyone was very heavy. Generally speaking, the situation of Hong Kong workers then was described by some as "working from hand to mouth". And for family members of those who died in the epidemic, we can deeply feel their trauma in losing their loved ones. Even to date, I can still feel the pain in my heart when scenes of such tragic episodes were shown again on the screen of the television.

The SARS outbreak claimed 299 lives; such statistics could be calculated, but how can the impact brought about by the epidemic be calculated? A friend of mine has given me a book on the situation after SARS — how some children missed their homes, their deceased family members; some of them lost their parents, some lost their relatives or friends, and some even lost their beloved spouses who should otherwise keep them company for the rest of their lives. For us, the people of Hong Kong have lost eight brave medical and health care workers who served in either the public or private sectors. The battle against SARS demonstrated the professionalism of Hong Kong medical and health care workers who dedicated themselves to duties in a most courageous manner. Their tireless and fearless spirit and their bravery in risking their own lives to save others in the front line made them the heroes in this battle against SARS.

Everyone in Hong Kong was deeply touched by their noble spirit, which made us more united than ever to fight the battle against this formidable epidemic which had attacked Hong Kong all of sudden. Therefore, the noble spirit of the medical and health care workers deserves our admiration and they made worthy examples for us all. Among them, apart from the front-line medical and health

care workers, as far as I can see, there were also cleaning workers, the relevant disciplined forces, such as officers of the Fire Services Department, the teams of ambulancemen as well as some front-line disciplined officers of volunteer services.

I had once recommended a young man, at his request, for admission to a certain nursing school. On that day, he volunteered to go to the infected area to provide assistance to staff members there. He became infected with SARS and now he is still suffering from avascular necrosis. However, he has not been frightened. Last week, when I met him, he said that he still had the courage to face SARS, and that he would face himself, including the avascular necrosis problems left by SARS.

Madam President, all these heroes, nameless or otherwise, did a lot for Hong Kong in the battle against SARS. We deeply appreciate this. I have taken part in the inquiry of this Select Committee. In the past, I have participated in the inquiries of two select committees: One on the importation of foreign labour in the new airport, and the other on the substandard piling works of public housing projects. But I have never experienced such great pressure as in this inquiry. Therefore, in the process of the inquiry, all Honourable colleagues had exercised exceptionally great prudence in handling the facts of each incident, and we also kept asking ourselves whether we had made the judgements with the benefit of hindsight. We fully understood that it would be much easier for us to comment on an incident afterwards. But we still hoped that we could find out the truth from the facts because many Hong Kong people hoped that the Legislative Council could conduct this inquiry. Although the HA and the Expert Committee had already conducted their investigations, the people still hoped that the Legislative Council could conduct the inquiry. Therefore, we, the group of Members, had come forward to undertake a tall task. I, for one, could feel the great pressure that emerged in the process of the inquiry. I believe other members of the Select Committee must have also felt the existence of such pressure.

I strongly hope that the Government can learn the lessons from this incident, so that it can improve its capabilities in crisis management, thereby preventing such tragedies from recurring. From the performance of the Government in handling the SARS crisis, we can see that there were many aspects in which the Government should do some rethinking.



First of all, we can see that there were communication problems between Hong Kong and the Mainland. As a matter of fact, when the phenomenon of "boiling vinegar" started to emerge in the Mainland, some experts in Hong Kong already began to feel concerned. Therefore, very obviously, there were some problems in the communication mechanism at that time. However, apart from problems in official communication, actually a lot could be done on an unofficial level. How much had the Government done? In respect of soft communication as said by us, how much had the Government done? The Government should be able to do them all. Admittedly, due to various reasons, there was inadequate communication between Hong Kong and the Mainland. For example, such information on the epidemic was considered national secret in the Mainland. However, this does not mean that we should go all-out to try many different channels in order to gather such information. In this aspect, we do think that there were problems.

Today, whenever we have a Health Services Panel meeting, I would ask the Government whether it has really straightened out the communication problem. This is because our country has a population of over 1 billion, and there are busy exchanges between the two places. If our officials continue with their old way of handling the communication problem, I believe the requirement for close communication between the two places cannot be fulfilled. I very much hope that the Government can really explore its own inadequacies in an in-depth manner. Do not simply claim that "We have done it, we have communication now" in every meeting you attend.

Madam President, I can see that the Government did have its communication problems with the Mainland. Apart from that, a lot of problems also exist in the communication and co-operation among the different departments. In the process of the inquiry, we could see that the officials did have certain problems in their overall management of the crisis. Strictly speaking, even though some officials could see the presence of certain problems, they would act as if such problems did not exist at all. In the process of collecting evidence, we could not get any information from our questions. For example, we asked: Do you know the Director of Health had a communication problem with the Mainland? No, I do not know! Do you know that there was an outcry of public anger among the staff of the Prince of Wales Hospital (PWH) when they had to face the problem that emerged on 10 March? No, I do not know! When all the answers were "I do not know", we could not take them to

mean they knew these incidents. However, I do not believe it was the case. In normal management culture, I feel that such situations should not occur.

Madam President, the FTU has many affiliated associations, which include the staff unions for medical and health care personnel from different levels and this includes officers of the medical system of the Government. We also have some acquaintances who are doctors in private practice. I can remember that, in this process, doctors from PWH, Tuen Mun Hospital, Kwong Wah Hospital as well as many different medical and health care workers, and so on, had told us a lot of incidents that had taken place. We came to know that 11 staff members of PWH had suffered from upper respiratory tract infection due to the attack of some unknown virus on 10 March. On 11 and 12 March, members of the staff felt that the situation could not continue anymore. They could no longer accept any further new cases, so they requested the hospital to close some of the services. In the evening of 12 March, there were waves of anger in the hospital. Many people surrounded the management of PWH as well as Dr KO from the HA. And yet, some officials told me that they had no knowledge of this.

Madam President, they said they did not know the occurrence of such incidents in the hearings. However, if you ask me, or ask colleagues belonging to certain doctor associations, is such an answer credible? On 15 March, some doctor associations went to meet Dr FUNG Hong to discuss the issue. They thought that the emergency and accident department should be closed because the staff could not cope with the situation anymore. The development in the morning was still normal; it seemed that it was possible to close the hospital. However, the answer became negative in the afternoon. Of course, there were rampant speculations and rumours at that time. The medical and health care workers in the hospital had to fight a battle in the front on the one hand, but on the other, as they turned around to look over their shoulders, they found that there was no one to protect them. But they still had to carry on with the fight at the front. Madam President, you can imagine the anger of the front-line workers!

This afternoon, I had a chat with a group of friends from disciplined forces. When we came to this issue, we had many different viewpoints. Madam President, a lot of the grievances are still unresolved to date. Obviously, there was a communication problem between the former Director of Health and the

Secretary. Apart from the controversy of closing PWH and their indifference to the strong tides of discontent among the doctors, what about the situation in Amoy Garden? In a meeting of the Steering Committee chaired by Mr TUNG and attended by various Directors of Bureaux, he had obviously proposed on 25 March the isolation of patients and identifying a venue as the isolation centre, but no one seemed to pay heed to it. When he brought up the proposal again on 26 March, still no one paid heed to him. When we raised questions in this regard in the hearings, we seemed to have obtained some information, and learnt that there had been some contradictions and it had been difficult to implement.

Madam President, in the face of such circumstances, everyone still care about managing their respective kingdoms, thus leading to the phenomenon of communication breakdown among the different parties. Today, the Government cannot simply treat the matter as if nothing unusual had ever happened. The situation then was: You thought I would take the action, and I thought you would, so at the end of the day, the situation just described by us happened. All the above serves to illustrate that there was inadequate communication among the various government departments.

Madam President, this afternoon, I heard something about the situation in a department which we did not have the chance nor the time to invite them to give evidence. Today, I have chatted with some unionists. Someone told me, "Yuen-han, our ambulancemen's union knew as early as early March that the epidemic in Guangzhou was a very formidable one. So we proposed to the Deputy Director of Fire Services that we must have the protection gear in face of such an unknown virus." The Deputy Director of Fire Services was very nice. Having skipped all the bureaucratic procedures, he managed to equip all the staff members working in ambulances with proper protection gear by mid-March. With sincere communication between the staff and the management as well as mutual respect, they fought this battle. In the entire SARS outbreak which had come so suddenly, the Fire Services Department (FSD) had handled more than 4 000 suspected cases. However, that staff member said proudly, "Only two of our staff members were infected." If they were the workers in PWH or Princess Margaret Hospital, the situation could have been much worse. However, due to the solidarity of all the staff members in the FSD, they managed to overcome the predicament with good communication, co-operation and respect. I feel that the Government should really draw some conclusions and

ask the Director of Fire Services how they could do it. As a matter of fact, their approach has won praises from their staff members even to this day.

Madam President, very obviously, during the course of the inquiry, we discovered that problems did exist in the division of duties and responsibilities among the Health, Welfare and Food Bureau, the Department of Health (DH) and the HA. There were no communication channels, nor the willing attitude on the part of the management to listen to the opinions of staff. I very much hope that the Government can act seriously to solve the problems that exist among the Health, Welfare and Food Bureau, the DH and the HA.

Madam President, in this inquiry, I had repeatedly asked Mr LAM Woon-kwong why no one seemed to pay heed to Mr TUNG when he proposed to implement quarantine and isolation measures on 25 and 26 March. And on 26 March, he finally said that he needed to seek advice from international experts. Throughout the inquiry, we found that Mr TUNG had been very sensitive in this regard. However, what he requested to be done was not met with proper responses. I asked LAM Woon-kwong whether they had intended to bypass him or whether it was because he could not give orders to others in the meetings. This story just serves to drive home the point that Mr TUNG is much too kind and benign. I told my friends that very often Mr TUNG would not make such demands as, "You must do this." If he could enforce his request on 25 March, I feel the situation in the Amoy Gardens could have been much better.

Madam President, I very much hope that the SAR Government, including Mr TUNG, can draw conclusive lessons from this incident and find out why the situation would turn out like that. Madam President, during the past few days, ever since the release of the Report, there has been a common voice of the people demanding for the stepping down of the Secretary. On that day, I had personally asked some front-line health care workers, they were unanimous in demanding for the stepping down of Dr YEOH in the interest of accountability. In retrospect, I think that, apart from that perspective, the people's grievances actually had not ceased. As long as no one steps down, such grievances of the people will remain. Therefore, the Government must provide a political solution to this issue.

Of course, I would not dispute the fact that Dr YEOH has been working very hard and in a most dedicated manner. But this did not imply that he had

managed to play a significant role and exercise his leadership in the battle against SARS. If he could take early actions to act on inaction by someone in much the same way as he did on 30 March, I think the problems in PWH could have been solved at a much earlier stage, and the problems that arose subsequently would not have happened at all.

Madam President, in my opinion, the lessons learnt from this inquiry are worthy lessons for the Government in drawing its own conclusions. They can also enlighten some Directors of Bureaux appointed from the private sector in examining whether there is a clear division of powers and responsibilities between top-level and mid-level officials; whether communication is sufficient; and whether there is mutual respect. All in all, is there such a culture?

Madam President, coming to this point, I hope ..... (*The buzzer sounded*)

**PRESIDENT** (in Cantonese): Miss CHAN, your time is up.

**MRS SELINA CHOW** (in Cantonese): Madam President, I have participated in many select committees. The work of all select committees is invariably tough and challenging. However, I believe the work of this Select Committee has been much tougher than that of any other previous ones as the pressure in fact came from many different sources and it is also an impossible task to compile a report that can satisfy all the different parties. In fact, the victims or the families of deceased patients can never forget their traumas. So no matter what kind of conclusion it has drawn, they would still find it unable to compensate their losses. Therefore, they would definitely find the Report inadequate.

On the other hand, in the SARS epidemic broke out in Hong Kong, all the people who had done their parts in the battle against this epidemic, including the front-line medical and health care personnel, all the cleaning workers, all those who had looked after the patients, must have the feeling that they had fought a battle and done a lot, which made them very tired both physically and mentally. However, there is no serious affirmation in the Report of their effort. Some of them may even feel that, although they have made their contribution, they still have to shoulder a heavy burden like an offender. This may explain why, after

the release of the Report, medical and health care personnel and people taking charge at different levels have come forward to clarify and even question the validity of the Report. I think this is inevitable, no matter how hard the Select Committee has worked. There is not the least doubt in me that they have worked every second to the best of their abilities in order to find out the truth for the public. Certainly, they have also been subject to limitations — some practical limitations in such aspects as time, resources and information. It is impossible for them to achieve 100% excellence. Therefore, no matter how the Report is written, there must be some people who feel that they know 10 times more than others, yet what they know or feel has not been truthfully reflected. As such, these people will think that the Report is not truthful enough. Even if they are told that the objective is to find out the truth, they would still insist that this is not the truth, not the truth that they know.

This illustrates that there is no ideal in this world. Each of us is in search of the ideal, but it does not exist. This was exactly the case when SARS first emerged. In fact, we all hope that everyone knew how to handle the situation right from the first case on the first day of the outbreak; that everyone who had a part to play in handling the situation knew what to do in his respective post; and that we had all the necessary materials and resources and knowledge to handle and prevent the outbreak. This is the ideal.

But what actually was the situation? It was: No one knew it, no one understood it. It was all in a mess, especially in the early stage of the SARS outbreak. We absolutely did not know what to do. In the meantime, at the worst moments, there were certain problems in the system or the structure. It was not due to the negligence of anyone or any mistake of any person. In fact, all the people who had taken part in the battle against SARS had already contributed more than 100% of their capacity, might be as much as 200%; yet we could not change the harsh reality, we could not prevent the death of nearly 300 people.

I believe many people must have shed tears for this outbreak, and I believe Secretary Dr YEOH Eng-kiong must have done this many times as well. In fact, from last year to this year, I have talked with Secretary Dr YEOH on the issue of his stepping down. Of course, insofar as an accountability official is concerned, we all feel that as he is the person expected to be accountable, so ultimately he

has to shoulder the responsibility. I believe it is most unlikely that he has not considered the issue. But in the meantime, he also has to attend to many other duties in his capacity as the Secretary for Health, Welfare and Food. For example, he has to next consider issues such as the avian flu as well as other medical and health issues and the welfare issues. He has to constantly pay close attention to such issues. He has never neglected his work, nor has he slowed down his pace of work. He has been exerting his utmost in a most dedicated manner.

As we take a retrospective view, we can see that Secretary Dr YEOH had already made great contribution to Hong Kong before the SARS outbreak. Let us not mention other issues, but concentrate on his work in the HA. When Sir Sze-yuen CHUNG was still the Chairman of the HA, Dr YEOH had already succeeded in changing the entire hospital culture and structure. I believe all Hong Kong people could realize this change, and Secretary Dr YEOH was the Chief Executive of the HA at that time. His contribution cannot be dismissed. This is a point to which everyone agrees.

Therefore, he has actually done a lot of work and he has done his best for Hong Kong before and after the SARS outbreak in different roles he has played. But why do people still want him to step down? Why did he eventually step down? This is because the majority of Hong Kong people think that he was the commander-in-chief in the medical and health care sector during the SARS outbreak. Was he? In fact he might not be. This is because not all policy decisions were made by him. As far as I understand it, and as clearly pointed out in the Report, the Director of Health possessed a lot of statutory powers. She had also done a lot of work. She had also stated clearly before the Select Committee that, on the one hand, she was the public officer vested with statutory power to carry out infection control and implement preventive measures, and she was also responsible for the control and prevention of infectious diseases, including investigating and controlling epidemic situations, monitoring diseases, tracing contacts, enforcing public health legislation, maintaining liaison with the medical and health care sector, promoting public education, and so on. So, all these are included in the terms of reference of the Director of Health.

So why on earth should Secretary Dr YEOH be held accountable? It was because structurally he was the supervisor of the Director of Health. It is as simple as that. If this Director had not done well, or if she had not performed her duties in a really competent manner, if she had not lived up to the

expectations of the public, the Secretary would be held accountable. This is a way of giving play to the spirit of the accountability system. Therefore, if you ask whether this is fair to him, I am afraid no one can give an answer. It all depends on your point of view. However, coming back to the issue of the accountability system, as he was the CEO, he was the chief, and as he possessed the powers, he also had the responsibility. As a matter of fact, was this true? We all know the situation of that time, and it was actually not true. But since this is the view of the people, so at the end of the day, they do not accept that he does not have to step down for accountability.

Therefore, though I admire Secretary Dr YEOH very much, and I have never thought him as someone who is reluctant to let go of power or high positions, and irrespective of how we view his resignation (many feel sorry for his departure because they find him a man of commitment and competence, so they feel sorry about his resignation), I absolutely support his decision, and I think that his resignation is entirely meant to give play to the spirit of accountability.

As for the Director, I definitely agree with the motion moved today in the Legislative Council to condemn her, and the reasons are exactly as what I have just said. All her duties have been read out, but did she fulfil them all? We all have the answer in our heart. I believe many people also feel that she has failed our expectations and demands on her.

However, there is one thing which is very important to the Government, and the Government must do something about it, that is, the accountability system. Regarding the accountability system, we all have some expectation of it, especially us in the Liberal Party. We are all very concerned about whether Secretary Dr YEOH should resign just because we have some expectation of the accountability system. However, if the accountability system should continue in the present manner, we are really worried. If the powers and responsibilities are not delineated properly, then this person whom everyone refers to as the CEO, as the chief officer and in fact he does carry the responsibilities, does not have the powers in his hand. On the one hand, this is very unfair, and on the other, it will not achieve any good results. In order to have the functions clearly defined and to make the situation readily comprehensible to the public, the office bearer should be entrusted with both the responsibilities and the powers.



Some may say that the resignation of the Secretary may cause to worries on the minds of the elites. As there is political accountability, they may no longer be willing to come forward to serve the public anymore. Actually I am worried too. What I worry is: The professionals may have very different views about public service, and such views could be totally unrelated to political accountability. However, this may not be the case if we adopt another perspective because sometimes it may not be really so politicized. For example, in the Mainland, such examples have been frequently quoted, that is, for some so-called professionals, if they think that they could not fulfil their duties, they would resign or be dismissed. Even if the accountability system is not adopted there, the situation calling for accountability may still arise. Even at certain levels with responsibilities assumed by the professionals, such persons may still be held accountable at the end of the day.

How best can we make the elites, especially the professionals, stop worrying that in accepting such challenges, they do not have to be held accountable for something they cannot possibly assume direct responsibility? I feel that we should address this point squarely and discuss it, because actually we should not mix up professionalism with politics. This time, why did some medical workers react strongly towards the Report? It may be attributable to this mentality, that is, they are the professionals, and they should not accept political accountability.

Regarding the accountability system, another point is also noteworthy, that is, the Bureau Director is not a civil servant, but all his subordinates are. Will this lead to such a situation: the Bureau Director is held politically accountable, but civil servants are not accountable at all? Now we are dissatisfied with the performance of the Director of Health, so we condemn her, yet she is no longer in Hong Kong. But what would happen if she is still in Hong Kong? What would happen if we condemn her? Even if we think that the performances of certain top officials are not satisfactory, just as what Ms Emily LAU has read out, all we can do is no more than condemning them. Is it necessary for the Government to review this aspect under the accountability system?

Than you, Madam President.

**MS AUDREY EU** (in Cantonese): Madam President, first of all, I would like to extend my thanks to Dr LAW Chi-kwong and his Select Committee. Of course, my thanks are also due to all the staff of the Secretariat who have worked so hard.

Just now Mrs Selina CHOW mentioned that, of all the numerous select committees set up by the Legislative Council throughout the years, she thought none could match up to the level of complexity and difficulty as this Select Committee on SARS. Earlier, when Dr LAW Chi-kwong delivered his speech, he said it was a job that could never be completed, and it was nearly a mission impossible. His job was to make criticism, pointing out who should be assuming the responsibilities and what such responsibilities were. It would inevitably attract a lot of negative criticisms.

Madam President, I would like to discuss the resignation of Secretary Dr YEOH on Wednesday. I believe he must have done his best already in the battle against SARS. When he met the press to announce his resignation, he disclosed that he had served in the Government for 33 years. As a matter of fact, he had really made great contribution in improving the public health care system in Hong Kong. This was especially true when he was in charge of the Hospital Authority (HA). During this period of time, he had substantially improved the service level of public hospitals. He faced strong criticisms from doctors in private practice, who thought that he was robbing them of their "rice bowls". Yet, in the face of such criticisms, he displayed a courageous attitude of insisting on doing what he thought was right and ignoring all such voices of objection. But as a matter of fact, from the perspective of political accountability, Secretary Dr YEOH had no other alternative but to bow and step down. As an accountability official, he had to step down because in such a fatal incident as the SARS outbreak, 300 or 299 human lives had been lost, and also our Government had responded to it with a slower pace than other neighbouring countries. Later, Mr TUNG even insisted on appointing an independent committee to conduct an investigation on the Government's performance in the SARS outbreak. This move also triggered a lot of discontent among many people. So, if Secretary Dr YEOH should choose not to step down, I believe the people's grievances will be further intensified.

Madam President, upon the stepping down of Secretary Dr YEOH, a personal realization dawned upon me, that is, the power of the people cannot be underestimated. The Government or some members of the public used to accuse the Legislative Council of being highly "politicized", thinking that a Legislative Council SARS inquiry would definitely lead to a highly politicized outcome as well as critical results, and that such a report would produce all kinds of unfair criticisms. However, the Report of the Select Committee had taken many people by surprise. They were of the opinion that the Report had avoided

using many commonly used words such as "condemn", "regret", and so on. Many criticized this Report as being excessively mild. However, shortly afterwards, there was a growing common voice in society demanding the Government to assume accountability. In particular, a Mr Kwok — Mr KWOK Sin-hung, a SARS victim who said YEOH Eng-kiong had taught him the meaning of "shamelessness". After he made this remark, the situation changed drastically. Within a very short time, we witnessed the miserable stepping down of Secretary Dr YEOH, and shortly afterwards, of course we also witnessed the stepping down of Dr LEONG Che-hung.

I hope that, from the development of events in the past few days, the Government can come to realize a fact, and I think that all along the Government has looked at the incident from a twisted angle. Government officials or some usually pro-government Members often criticize the pro-democracy camp of being the opposition party who always stirs up troubles and causes chaos in society. But this is actually putting the cart before the horse. The Report issued by the Legislative Council this time is very mild, and it does not demand the stepping down of anyone. But the response of the public was so strong. In fact, this also illustrates that the pro-democracy camp is actually keeping closer tabs on public opinions. They know that there are really some heavy grievances in society; there are loud voices of opposition. For example, the 1 July march could not be organized by some individuals or a few persons. This reflects an objective fact in society: If the Government cannot face squarely its own governance crisis, and make timely reforms to its system, it will lead to even greater problems in the future.

Secondly, I hope that the Government can learn this lesson: That the stepping down of Secretary Dr YEOH has been overdue by one year. Sometimes, protection accorded to a certain person may have put him into an even more disadvantageous position. He did not tender his resignation until his reputation had really been tarnished in a most disgraceful manner. This was unfair to Secretary Dr YEOH, and this was also unfair to the whole Government.

Madam President, the third point I would like to mention is: Today I have read an article in *Hong Kong Economic Journal* entitled "The stepping down of YEOH Eng-kiong is an issue of political system". I think this may serve as a response to the speech delivered earlier on by Mrs Selina CHOW because she mentioned the accountability system. She said that the whole incident was a consummate illustration of the shortcomings of the accountability system, and

that the Government must do something about it. What does that article say? It says: First of all, it must be pointed out that the accountability system involves the issue of power. With greater power, comes greater responsibility. The ways in which power is conferred may be different in China and the Western countries, but the ultimate source of that power is society. The power is only safe if it is recognized by society. Even communists or socialists dare not dispute this point. The article goes on to say: The present conferral of power under the accountability system in Hong Kong does not have the recognition of society. Although the method for selecting the Chief Executive is stipulated in the Basic Law, the Basic Law also admits that the present method for selecting the Chief Executive is just temporary and transitional. Otherwise, the Basic Law will not give the undertaking that the Chief Executive will ultimately be elected by universal suffrage. As the Chief Executive is not elected by universal suffrage on a one-person-one-vote basis, its source of power cannot be considered as having been authorized by society; therefore, it does not carry the general recognition of society. This can be substantiated particularly by the phenomena that emerged after the reunification: The incessant voices of disapproval of the TUNG Administration and the two mass demonstrations on 1 July for two consecutive years. As the Chief Executive fails to win the recognition of society, so it is very easy for unexpected events to happen to the Directors of Bureaux who are appointed and authorized by the Chief Executive with the accountability power.

The latter half of the article also mentions this: As the President of the United States is elected by his voters, his confidence in governance will not waver easily. Given the strong mandate for the President, the Ministers recommended by him can enjoy the benefit of a protection umbrella. The same happens to Ministers in the United Kingdom. Though they are not directly elected by the people, their power is authorized by the Prime Minister of the Cabinet with royal consent. With the recognition of power, the Cabinet is supported by the majority gained in the parliamentary election, therefore, the Ministers can enjoy the collective protection of the Cabinet. Furthermore, it is a cabinet system recognized by election, so its social mandate has a solid foundation. In comparison, the Chief Executive of Hong Kong is not elected by universal suffrage, so the Directors of Bureaux appointed by him will not enjoy any social recognition. Also, as the Legislative Council and the Chief Executive cannot achieve the harmony of "the executive authorities leading the legislature", the Legislative Council cannot carry out its function of monitoring the Government properly. Every single move by the Directors of Bureaux is

closely monitored by the media and political organizations. And there are also the enthusiastic boos and jeers in society. All these prove that the political awareness of Hong Kong society is already very high. If the Government still does not proceed to review the political system, I am afraid divergent views will keep on emerging in society, and the work of Directors of Bureaux will become increasingly tough, and no one will be able to solve this problem. Madam President, I hope this is a message that can be conveyed to the Government by this SARS inquiry and the accountability system.

Madam President, I would also like to mention that the controversies that took place in this SARS inquiry have undermined the credibility of the entire Legislative Council. Madam President, the first point is, the Select Committee possesses the power to summon any witness or document. This is the ultimate weapon of the Legislative Council to be employed in monitoring the Government. However, it was regrettable that Mr TUNG had refused to abide by the law. He used the pretext that it was constitutionally inappropriate to decline attending an open hearing of the Select Committee. According to Article 73(10) of the Basic Law, the Legislative Council may summon, as required when exercising its powers and functions, persons concerned to testify or give evidence. Besides, according to section 9 of the Legislative Council (Powers and Privileges) Ordinance, the Select Committee may order any person to attend before it and to give evidence or to produce any documentary evidence. The Ordinance does not mention that anybody can be exempted.

Some Members or some people in society may say that, as Mr TUNG had already agreed to meet the Select Committee in the Government House behind closed doors, and members of the Select Committee also had the opportunity to ask him questions in the meeting, why could we not accept the compromise and stop entangling ourselves in meaningless arguments? However, I think the crux of the matter is, everyone is equal before the law, and no one should be given any special treatment. As the head of our Government, he should act in such a way to make himself serve as an example for others. The way Mr TUNG had acted would convey a negative message to the people, and many will think that some people can enjoy certain special privileges in law. Article 64 of the Basic Law stipulates that the SAR Government should be accountable to the Legislative Council, and the underlying spirit of this article is that there should be mutual checks and balances between the executive authorities and the legislature. The refusal of Mr TUNG to attend an open hearing did not have any legal

justifications and also it had politically failed to give play to the spirit of accountability, setting an extremely strange precedent.

The second point of regret has already been mentioned by Ms Emily LAU, that is, the numerous occurrences of the so-called leakage of confidential information. Some medical and health care workers were unhappy with the criticism passed on them. So before the release of the Report, they had taken the early action of striking back first, alleging that if the comments of the Report were unfair, they would consider seeking redress through judicial review. The front-line health care workers did not trust that the Legislative Council would act fairly, and such comments would undermine the credibility of the Select Committee and its Report. We cannot blame the health care workers because in fact the Legislative Council did make some errors in the first place. In fact, there were some people, Members and staff members alike, who did not abide by the rules by leaking details of the discussion of the Select Committee to the media. This had really caused unfairness to all the parties concerned. Therefore, I strongly agree with the earlier speech delivered by Ms Emily LAU who proposed that we must study the subject and formulate a convincing and independent mechanism to facilitate the investigation of cases of leakage of confidential information on the one hand, and to formulate some impartial punishments or mechanisms on the other. Any persons, be they Members or staff members, having violated these rules will really receive the punishment, so as to restore the credibility of the Legislative Council.

Finally, Madam President, I would like to thank all the front-line medial and health care workers for having worked in such a dedicated manner during the SARS outbreak. They displayed their professionalism through risking their own safety to serve the Hong Kong people. We hope the Government can take note of the morale problem of the medial and health care workers. In view of the measures adopted by the HA in cutting expenditure, as well as the severe blows dealt by the SARS outbreak, I believe the front-line medical and health care workers do have a morale problem which we should note and pay attention to. This is particularly so because recently we have two resignations. I hope the Government can expeditiously appoint the right candidates to take up the posts of the Secretary for Health, Welfare and Food as well as the Chairman of the HA, and I hope that the overall medical and health care system in Hong Kong can continue to progress and see even greater improvement.

Thank you, Madam President.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, this is the last meeting of the Legislative Council. While Ms Miriam LAU will propose a valedictory motion only later, we now have an early valedictory motion to bid farewell to Dr YEOH Eng-kiong and Dr LEONG Che-hung.

In fact, the resignations of Secretary Dr YEOH Eng-kiong and Dr LEONG Che-hung are belated acts of accountability. The environment for this belated accountability to arise is very special — a contrast between moderation and intenseness. A moderate report has nevertheless incited intense public sentiments and rage. Under such circumstances, I think no one could have thought that the Report would stir up such torrents of public anger and discontent. Nor could anyone have fathomed the enormity of the impact and public rage which still exist even one year after the outbreak of SARS. Therefore, Secretary Dr YEOH Eng-kiong and Dr LEONG Che-hung have been obliged to resign.

I said that it is belated accountability. In fact, had they been accountable one year ago, public grievances and anger would not have accumulated for a year, and everyone could have moved forward earlier. Regrettably, in terms of accountability, Mr TUNG was not as resolute as he was described in the Report. Rather, he had dragged his feet on this issue for one year. Certainly, Secretary Dr YEOH would step down not because of his own performance, but dissatisfaction with the overall performance of the Government. He, being an accountable Bureau Director, has to step down in order to realize accountability on behalf of the Government.

Speaking of unsatisfactory performance of the Government, I believe the people still have a vivid memory of what happened last year and the many scenes before their eyes back then: the poorly equipped medical and health care personnel, and that remark by Secretary Dr YEOH of "there is no outbreak in the community". Although Secretary Dr YEOH had explained to me many times subsequently that he did not really mean that, the fact that he had made such a remark had left a deep imprint on the memory of the people. The authorities had tried to trace the source of the epidemic, but to no avail; and the selfless sacrifices by the medics were in stark contrast to the Government being at its wits' end. All these have left a deep imprint on the minds of the people. One year has lapsed, and the people are totally unconvinced that no one is held responsible. If nobody is to step down eventually, this matter would only

linger. So, I think the stepping down of Secretary Dr YEOH Eng-kiong is actually a solution to the problem, which should have come one year ago.

Just now I heard Mr NG Leung-sing make a remark which I consider very unreasonable. He said that the stepping down of someone is not a panacea. Then he spoke at great length on "executive-led" and team spirit. That he has made such a remark is actually indicative of his complete departure from the people's sentiments. He does not in the least understand what public anger and grievances are. Stepping down is certainly not a panacea. No one has said that it is. But stepping down is at least a piece of medicated plaster which can serve to ease the pain. When members of the public and the entire community are given this medicated plaster or pain killer, their dissatisfaction with the Government's performance can at least be alleviated and the wound of the public can eventually be soothed.

Then he mentioned "executive-led" and team spirit. I really think that all is gibberish. We are talking about accountability-led. Why did he still talk about "executive-led"? It appears that anyone who touches the executive authorities will be guilty of a monstrous crime. In fact, the Hong Kong community has very high demands and expectations. The people want an accountability-led system.

I have read from newspapers about Prof LAU Siu-kai's comment that the resignation of officials will deter people from taking part in politics, but at least Prof LAU Siu-kai has not been deterred. Perhaps it is because he is always hiding, conducting opinion polls without revealing the findings. Yet, he had brought up an issue of greater depth and that is, "an incompetent Government has put Bureau Directors in perils".

Ms Audrey EU has just read out an article from today's newspaper. Sometimes I am quite sympathetic to the Government, for it is rather lonely. But this lonely Government had sought to form a ruling coalition, and after forming this ruling coalition, it brought its allies into the Executive Council. What good can this coalition do? Do we not also hear Mr TAM Yiu-chung say that actions are taken too late and that it is too late to realize accountability? In fact, the DAB has been late too. A year ago the DAB was not as bold and courageous as it is now. Why has it become so bold and courageous a year later? Perhaps it is because of the impending election! I think the Government is really very lonely. What is the point of appointing the DAB to the Executive



Council? What is the point of appointing the Liberal Party to the Executive Council? But comparatively speaking, I think sometimes the Liberal Party is more loyal than the DAB. But insofar as constitutional system is concerned, this problem has always been there. If this problem is not addressed, it will always be that "an incompetent government will put Bureau Directors in perils", and this will only go on and on.

Regarding Dr LEONG Che-hung's resignation, we consider it respectable and necessary, for it can give play to the spirit of accountability. But insofar as the response to his resignation is concerned, I hope that members of the public can work to achieve harmony again. What is the response to his resignation? The HA has given me the impression that it is adamant, refusing to accept the comments of the Select Committee of the Legislative Council. Some medical and health care personnel have placed a statement in *Ming Pao* today, stating that the report is too harsh and unfair. But at the same time, some families have questioned why senior HA officials are still paid bonuses and refuse to resign. There are different voices in the community.

I very much hope that after the resignation of Dr LEONG Che-hung, we can work to revive solidarity among us. Concerning the HA, I hope that the HA would not remain adamant. Regarding the criticisms made in the Report of the Select Committee of the Legislative Council, Mr Ronald ARCULLI has also criticized the HA to a certain extent, pointing out problems with their system. Why can the report of a HA-appointed committee make criticisms, but not the Select Committee of the Legislative Council? Can we look at the Report more objectively with a cool head, instead of feeling being besieged on hearing of criticisms, or to borrow Dr LO Wing-lok's comments earlier, creating an atmosphere of being besieged. I think we should not create an atmosphere of being besieged.

To the medical and health care personnel, I hope they will understand that the Select Committee of the Legislative Council in fact hopes to pinpoint the system as a start. We hope that the system can be reviewed in the future and then an explanation can be made on the whole incident and to the public. If there are mistakes, they must not be whitewashed. If something is right, we will say so; if it is wrong, we will point it out. I hope that the medical and health care personnel will understand that the Legislative Council has been highly appreciative of their spirit of selfless sacrifice. The community as a whole and members of the public will certainly join us to take pride in our

medical and health care personnel. However, the problems with the HA's management system and crisis management do give cause for criticisms. I hope the medical and health care personnel will understand that our criticisms purely aim to identify the shortcomings in the entire system.

To the families, insofar as this incident is concerned, since a Bureau Director of the Government has resigned and Dr LEONG Che-hung, being the Chairman of the HA, has also resigned, I hope they will understand that this is already a realization of accountability. I hope the wounds of parents, families and victims can gradually be healed, so that they can move on with their life. Regarding what happened in the past, we do appreciate their feelings, but I believe the Hong Kong community will have to move on.

Finally, in this incident, I hope that everyone can see that the Hong Kong community is in fact a very resilient community. We displayed strong resilience during the SARS outbreak. We in the community have a strong sense of cohesion and solidarity, which are attributed not to the Government, but our own efforts in the community. Similarly, one year after the SARS outbreak, we hope that this sense of cohesion and solidarity can continue to be brought into play. Whether it be medical and health care personnel, the victims or their families, all in the community must continue to face the days and challenges ahead more courageously. I believe this will be the best ending of the entire SARS incident.

Finally, I would like to say that let us forget the past and work hard for the future. Let us all run dauntlessly towards a healthier community of Hong Kong.

Here, I wish to say goodbye to Secretary Dr YEOH Eng-kiong. I wish to bid farewell to him in a more beautiful way: Adieu, E.K., and Adieu C.H.. Looking back, Secretary Dr YEOH might not have seen eye to eye with us over some policies, including the charging of fees at the accident and emergency departments, the Comprehensive Social Security Assistance, and so on. But I can recall a minor incident. He had once met with a group of CML patients, that is, patients suffering from leukaemia, and a kind of medicine for this disease, as Dr LAW Chi-kwong knows clearly, costs more than \$10,000 a month. After E.K.'s meeting with these patients, it was found that all HA funds cannot be of any help. Later, E.K. said that he would straighten this out for them. But then, we did not hear anything from him. When I subsequently

approached E.K. to follow up the matter, he said that a philanthropist had agreed to foot the drugs bill for one year. This payment for one year's drug was of great help to the patient. In this incident, I think he was very responsible and had cared for the feelings of the patients. Who is this philanthropist? He has not told me, but I always suspect that it is E.K. himself, for that was the easiest way to solve the problem. This, I really do not know. It will remain a secret forever, and I will keep this secret forever. From this incident, I do admire him for honouring his words. Although this is just a minor incident, it shows that he had ultimately fulfilled his responsibility for a person. I very much admire him. Thank you, Madam President.

**MR ALBERT CHAN** (in Cantonese): Madam President, first of all, I would like to extend my thanks to the Select Committee. Dr LAW Chi-kwong, Chairman of the Select Committee, together with the other 10 members, have spent a lot of time and efforts on preparing the inquiry report. I believe this must be the inquiry committee demanding the greatest amount of energy and efforts in all the different terms of the Legislative Council throughout the years, and it was possibly a task subjected to the greatest amount of political pressure. I believe the work of the inquiry must be a tough but thankless job that will not please anybody because no matter how the Report is written, at the end of the day, a certain group of people would definitely feel dissatisfied. As proved by what has actually happened in reality, many people, especially the health care workers, did raise strong objection to the Report.

However, this Report has also achieved a result, that is, it has led to the resignations of two persons, namely, Secretary Dr YEOH Eng-kiong and HA Chairman Dr LEONG Che-hung. I think such a development is a full realization of the legislature's role in monitoring the executive authorities because many reports in the past, though having made similar condemnations, failed to bring about the stepping down of any culpable officials. For example, the select committee on the short-piling incident failed to make the Director of Housing step down. However, under the following circumstances, namely, the development of the accountability system, the rising tides of public sentiments, the two mass demonstrations on 1 July for two consecutive years and the imminent elections to be held on 12 September, many political parties have undergone obvious changes in their concepts and attitudes towards the accountability system. This is especially so for the royalists. After the release of this inquiry report, all political parties, including some traditional royalists,

wanted to see "the drawing of blood" — they wanted to see the stepping down of Secretary Dr YEOH. After the royalists had changed their stance, the Government had no other options, and eventually Secretary Dr YEOH was forced to step down. This might well be described as a healthy development of the democratic political system in Hong Kong, and this was also a mature step forward for the accountability system.

On the stepping down of Dr YEOH Eng-kiong and Dr LEONG Che-hung for assuming responsibility, some think that as they have made great contribution in the past, it is unfair to demand them to resign. Some even mention that since they have the responsibilities but not the relevant powers, it is unfair to hold them accountable for these responsibilities now as they did not have the powers to do many things.

I would like to highlight one point: The accountability system does not draw a conclusion only after a person has finally died, nor does it assess your work on proportional scales like 70%: 30% or 60%: 40% for your credit and discredits. Accountability is a simple and straightforward concept. If you make mistakes, then you have to take the responsibility, regardless of how great your past achievement was. Even if you once had greater achievements than your boss, you still have to take political accountability once you have made some major mistakes in your policy areas. If the accountability in question is substantial, then you have to resign. This is very explicit. Once this culture is established, we hope the concept and the spirit of the accountability system can be implemented and carried forward into the future.

Some Honourable Members mentioned that it is unfair to ask them to step down as they had the responsibilities but not the powers. This is exactly the major contradiction that exists in our present accountability system, a major error. This was also a problem caused by TUNG Chee-hwa because when he formulated the accountability system, he did it too carelessly, and this is a major policy error of TUNG Chee-hwa. He always considers problems in simplified terms, and he often engages himself in some false, big and empty ideas when he puts forward some proposals; and when such proposals are implemented, they would end up in a mess. The same happens to the accountability system. He knew the political framework very well, and he also knew a lot about the operation of the Government. But he appointed someone from the private sector to become the top official. Yet, as this official did not have his

supporting team of officers, it was extremely difficult for him to enforce and implement the policies. In spite of this, he still insisted on implementing this so-called accountability system. In the past, his accountability system existed only nominally. A certain top official was allowed to remain in office even after he had committed errors. He said that the official concerned was a man of noble attributes, working in a most dedicated manner for Hong Kong and had been trying very hard in his work, so he should be allowed to stay without stepping down. This was a complete departure from the realization of the spirit of the accountability system.

Of course, at that time, with the full support of the royalists, this mode of operation allowing such officials to stay can continue. Therefore, if we really want to put the accountability system into practice, and intend to implement a mode of operation that would ensure that the relevant official would be entrusted with both the responsibilities and the powers, then the mode of the accountability system must be revamped completely. In the past, I had mentioned to some government officials that, if the accountability system was to be implemented genuinely, the Secretary must be given the powers and he must bring in his own team of staff officers to the relevant Bureau, so as to assist him to promote and enforce the relevant policies. In this way, the accountability system would be able to operate more smoothly. Otherwise, if the Permanent Secretary and the Director of the Bureau have to engage in more arguments than work, then it is virtually impossible to implement the accountability system.

Therefore, as the accountability system was carelessly formulated by TUNG Chee-hwa, it is naturally easy for Directors of Bureaux to fall from horseback. This happens because the saddle has not even been placed properly. So after the horse has galloped for a while, the Director of a Bureau will naturally fall down. This is a natural phenomenon. This incident illustrates once again the incompetence of TUNG Chee-hwa in governing Hong Kong.

Insofar as the SARS incident is concerned, up to now, we can say that everyone in Hong Kong is the loser, and no one is the winner. During the SARS outbreak, not only 299 persons were killed, but Hong Kong economy also plummeted to its lowest point; the problem of negative-equity properties worsened; the unemployment rate surged to a record high and the authority of the SAR Government severely diminished. Therefore, though the emphasis of the Report is on the whole SARS incident, the problems exposed by it under such

circumstances actually reflect that the entire community was in a rather poor and miserable state.

Among those 299 persons who lost their precious lives, some of them were innocently infected, some had sacrificed their own lives in trying to save the lives of others and some had volunteered to go to the front line of the battle against SARS. Their noble quality of selflessness is most admirable. They deserve our highest respect and recognition.

Regarding the SARS outbreak, I have recently retrieved the minutes of the meeting on 14 March 2003. On that day, the relevant Panel held a meeting to discuss the problem. At that time, I was not a member of that Panel. However, due to the seriousness of the problem, I attended the meeting on that day. In that meeting, I joined other members in denouncing the Government for deliberately toning down the enormity of the SARS problem. We also criticized the Government for not giving a full account of the information to the public, but its officials repeatedly denied this allegation. Let me read out the relevant part of the minutes of that meeting. "It is..... not easy to be spread in the community." And the Government went on to say, "the hospitals have formulated effective control measures". As we look back, if the Government had really fulfilled these two points, the problem would not have deteriorated to such an extent afterwards. The suggestion of the Government at that time was, "The Secretary for Health, Welfare and Food advises the people to take preventive measures at the present stage." This was said on 14 March. What were the measures? For example, the suggestions at that time were "enhancing one's own physical resistance, maintaining a good personal living habit and preventing respiratory tract infection would be sufficient". The Report of the Select Committee basically has reflected that many of the problems were caused by the negligence of duty on the part of the Government. It has also reflected the Government's failure to grasp the full picture of the situation.

In March last year, I had some discussion with many top government officials on this problem. A discussion with Dr Margaret CHAN on the subject had left a deep impression on me. During the discussion, it appeared that the top medical people of Hong Kong did not hold high opinions of the medical standards of their counterparts in the Mainland. At that time, there were already very serious outbreak incidents in the Mainland, but the health care workers in Hong Kong still held a rather arrogant attitude which led to the thinking: The medical standards of Hong Kong are first-class and we have the

superior medical skill and know-how, so we are absolutely capable of handling any diseases; the problems in the Mainland are just the problems of the Mainland, and we in Hong Kong absolutely have the abilities to handle and tackle such problems. After talking to the medical and health care personnel of Hong Kong in March last year, I really had the above strong feelings. They did not make it a point to trace and find out more about the incidents that had taken place in the Mainland, nor had they made an effort to understand the conditions of such a disease. Due to their arrogance, due to their conceited attitude, due to their excessive pride, and because they looked down on the professional level of certain mainland professionals, it led to the occurrence of this major tragedy in Hong Kong. Therefore, will you say that Hong Kong officials should not be held accountable? I absolutely do not think so. They must take the full responsibility for these 299 lives as well as the serious economic downturn at that time in Hong Kong.

If you ask me, is the stepping down of Dr YEOH Eng-kiong and Dr LEONG Che-hung enough? I think that is not enough, because one of the most significant or seriously negligent officials was Dr Margaret CHAN. However, she was very shrewd, she fled in anticipation of bad news and managed to find a way out for herself and stay a long distance away from Hong Kong. I think if we let her get away with it and escape from the responsibilities, it is unfair to those who died or became unemployed or bankrupt due to the SARS outbreak. Regarding how we could pursue her and make her take the responsibility for her own mistakes, the Legislative Council may not be able to achieve this on its own. We must identify a way to make the person take the responsibility for what she had done.

After the Report had been released, some health care workers expressed strong anger and dissatisfaction. I would hereby call upon these health care workers openly: I hope you can think about the feelings of the families of the deceased patients, think about how they face the harsh reality of having lost their loved ones just because of a blunder of the Government and certain medical problems. Please think about the feelings of the families of patients who died of infection in hospital wards. If a few words of criticism can make health care workers strongly dissatisfied, how should such families of deceased patients feel? Can health care workers under criticism say with assertion that the deaths of these patients were totally unrelated to how they handled the epidemic? I hope in all conscience they can ask themselves this question, and think about the feelings of the 299 deceased patients as well as their families.

As I said just now, insofar as the SARS incident is concerned, all Hong Kong people were the losers, with no one being the winner. The HA was the loser, the accountability officials were the losers, people of the lower class were the losers, negative-equity property owners were the losers and the families of deceased patients were also the losers. I hope, through this major tragedy, the Hong Kong Government can learn a valuable lesson, and in return it can build up a better system for the accountability system, so that a system combining powers with responsibilities can be set up in all government frameworks and statutory organizations; and on the other hand, I hope that an improved system can be formulated for the notification mechanism on relevant diseases between Hong Kong and the Mainland.

I hope such tragedies will not happen in Hong Kong again. I hope Hong Kong people will not have to suffer from economic and financial losses or even losses of human lives again just because of the arrogance and carelessness of certain officials.

Thank you, Madam President.

**MR JASPER TSANG** (in Cantonese): Madam President, on behalf of the DAB, I will first echo the Report and a number of Members who have spoken in expressing the greatest respect to the front-line health care workers who fought valiantly against the epidemic.

Furthermore, I wish to echo the Report that the epidemic also highlighted the finest qualities of Hong Kong people. During the SARS epidemic that lasted for three months, all strata of the community displayed courage, solidarity and compassion, with all people making contribution in their own ways. Madam President, I had some personal experience of such excellent qualities of the Hong Kong public in the community. After the outbreak of the epidemic, on the one hand, many members of the public showed their support and encouragement for health care workers by various means, and on the other, everyone was prepared to assist one another in the community. In particular, many warm-hearted people in society took the initiative to offer help to the disadvantaged social groups. The DAB received wish-well cards, flowers, fruit and even soup from members of the public who requested us to forward them to the front-line health care workers in hospitals. As there was a lack of masks at



the early stage of the outbreak, many warm-hearted people managed to procure a large number of masks through various channels and requested the DAB to distribute them to people in the neighbourhood for free. We also received cleaning items such as bleach from some warm-hearted people, who requested us to deliver them to high-risk areas for them. Many volunteers also responded to the calls made by the Government and the DAB by taking part voluntarily in cleaning campaigns. In these activities, we could deeply feel the fine qualities that emanated from members of the public in the face of the threats by the epidemic and adversity.

After the epidemic, we felt it most worthwhile to keep a record of all such display of benevolence by the Hong Kong public and publicize them. Therefore, we organized an essay-writing activity, in which many health care workers and students submitted their articles. Many of these articles described a lot of personal feelings during the SARS epidemic. Here I will pick one of them randomly and quote a few lines from it. It was written by a secondary school student: "It is in misfortune that real sentiments show through and in adversity that solidarity is revealed. The behaviour of everyone at such a time (that is, during the SARS epidemic) has really inspired the utmost respect in a girl like me and I take pride in being a member of the Hong Kong public. We show care and support for one another and never deserted or abandoned patients and relatives who had contracted SARS. The great care administered by health care workers showed us the love people have for one another. Government officials and the public showed an understanding for each other and worked in concert, and being in the same boat, assisted each other and equality and love come through to us. The support, encouragement and praises of the public for health care workers made us feel the beauty and goodness in the world. We extend our hands to people buffeted and affected by the epidemic, with volunteers helping elderly people living alone clean up their homes and various types of funds and charitable donations being collected. Such scenes abound in every corner of Hong Kong and people in distress received substantial and practical help. All these tell us in clear terms that Hong Kong is a paradise on earth."

We read such articles one after another. This is a good form of education. We feel that this disease called SARS was not just a disaster but also a cleansing of the whole society. From it, our young people gained a lot of new experience, and I believe it is valuable for their future life.

Madam President, the responsibility of the Select Committee is to investigate the Government and the HA, in particular, the performance and responsibilities of their senior managements in handling the SARS epidemic. This is what the Report is about. Actually, I think we should prepare a report in another vein on the excellent qualities hidden in Hong Kong society among members of the public and through what means they will find expression or play. This is not just a sentimental question.

Prof LEUNG Ping-chung of the Faculty of Medicine of The Chinese University of Hong Kong, who served as the adjudicator of our essay-writing competition, wrote a foreword for our compilation of essays after reading the essays. He wrote in the last paragraph of the foreword, "The participants of this essay-writing competition all happened to point out that although science and the development of the professions have indeed their own values and are absolutely necessary, a more important thing is that it is still necessary to respect, cherish and rely on the value of emotions. The noble altruism of the health care sector is a true human value that will vanquish anything. One has to believe that it is in times of crisis that reason coupled with true sentiments is developed. One has to believe in the value of human beings and develop this positive force in various areas, dimensions and directions." Prof LEUNG also gave the following warning: "One cannot one-sidedly boast about management and the achievements of efficiency management. In times of disaster, what we have greater need of are flexibility and care." Therefore, I feel that this report of another nature should in fact be a necessary supplement.

Madam President, in his speech just now, Mr Albert CHAN said that the royalists had changed tack. I do not mind that in the least, nor was I surprised. If one of these days, Mr Albert CHAN were to stop castigating his political opponents or criticizing TUNG Chee-hwa, then ivory would grow in a dog's mouth. When Dr YEUNG Sum spoke, he also stamped on the DAB. I am, however, somewhat disappointed by this. There is in fact no need for him to raise the issue of changing tack at the beginning.

Madam President, whether a principal official should step down or not is of course not a simple matter and cannot be decided rashly. I believe a responsible political party and a responsible Member will definitely experience complex mental conflicts in making such a decision. Dr YEOH Eng-kiong is not a mediocre official, nor does he lack talent or the desire to progress, or is he someone who feasts at the public crib. All the people who work with him

understand very well Dr YEOH's commitment and his ardour for work. Mr LEE Cheuk-yan has also said that Dr YEOH takes even small things to heart. He is a man of sensibility and all those working with him have this strong impression. In particular, in Hong Kong nowadays, we have to prevent any further epidemic outbreaks and infectious diseases. The entire engineering process is ongoing and there is a dearth, not a glut, of officials and talents with professional knowledge and hands-on experience. Therefore, in the case of Dr YEOH, should he leave his present post? This is of course an issue that we have to ponder carefully.

Two Honourable colleagues from the DAB have taken part in the work of this Select Committee. They were very responsible and did not disclose anything confidential to us. Therefore, we were not privy to the contents of the Report before its release. We all agree that it is necessary to look at the contents of the Report seriously. The Report directs criticisms at Dr YEOH, maintaining that he should be held responsible. If we solely consider the nature of this responsibility and in particular, given that at the onset of the epidemic, everyone did not quite understand what was happening, the judgements made may miss the mark. We think that one cannot say he is incompetent or neglected his duty merely on account of this. However, on the other hand, we also understand that the SARS epidemic indeed had a tremendous impact on Hong Kong society and led to quite serious losses among the Hong Kong public. As an accountable and principal official in charge of hygiene and health care, he should assume political responsibility. Therefore, on this issue, we did not jump to any conclusion rashly. It was not until Wednesday that members of the DAB had the opportunity to sit down together to discuss how to deal with this matter, after the Members concerned had read the report. In the end, the party caucus formed the unanimous view that it was appropriate for Dr YEOH to resign and that this would be in line with the spirit of accountability. This is the view of the DAB. Of course, prior to this, individual Members had expressed some personal feelings and made some comments to the media, however, this does not mean that the DAB has been wavering or has made any change of tack, or anything of the like, on this matter. It is a painful decision. Even today, if we were to consider the opposite views and argue that Dr YEOH should stay, there would still be good reasons for this. Anyway, this is our final decision.

Madam President, I believe the aim of releasing this Report is not to induce a situation of mutual accusations and complaints. I am sure this is not what the Chairman of the Select Committee, Dr LAW Chi-kwong, wishes to see.

However, at the end of the day, this is a report that seeks to ascertain responsibility. It inevitably has to evaluate the performance of the officers in different areas involved in the entire process of disease prevention, including the health care personnel that fought truly valiantly and selflessly at the front line. If the responsibility of various parties is to be ascertained, of course some people may find the outcome difficult to accept. Therefore, I wish to salute the Honourable colleagues in the Select Committee for the time and energy they have spent. The tasks that they had to do were not enviable at all.

The Report has been published and I appeal to people in all sectors, including the personnel in the various fields mentioned in the Report, to adopt a positive and forward-looking attitude, give play to the excellent quality of solidarity shown in combating the epidemic last year when considering the recommendations of this Report, so that these recommendations can become the impetus in propelling Hong Kong forward. Thank you, Madam President.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, many Honourable colleagues have lavished praises on our front-line health care workers earlier and I think they are right. Indeed health care workers in Hong Kong have shown a dauntless spirit in saving those affected by SARS and checking the spread of the epidemic. However, I would feel that apart from a need to pay more attention to the past efforts put by the front-line health care workers, we should also do the same to the large number of people who took part in the work on a community level. I wish to make use of this opportunity to show my gratitude and appreciation to these people.

The cleaning workers at the district level are one such example. When the epidemic was found in a certain area, there would be some cleaning workers in that area doing some disinfection work. They risked their lives doing the cleaning and disinfection work. So if we are to sing praises, the praises should not just go to the front-line health care workers alone but also to a far greater number of nameless heroes and people in the community.

On the Select Committee of this Council, likewise, I would like to express my admiration for these colleagues. Why do I use the word "admiration" instead of "gratitude"? It is because, as we know, before Members decided to join this Select Committee, they were psychologically prepared in that they were going to meet a challenge which was very great and pressure from the political

side as well as from everywhere. The burden was great, but Members were willing to bear it. I myself have the experience of joining an inquiry before and I know that the workload is great and the work is not easy to handle. Despite this, many Members did not hesitate joining it and I would think that this attitude is worthy of our admiration.

In any case, the results of the Report are to point out some good and bad areas in coping with the epidemic. The inquiry this time is not really the first inquiry. With respect to this epidemic, this is already the third inquiry we have. However, why is the social impact created by this third and the last inquiry greater than the previous two? Are many reasons involved? The first reason is that our colleagues were willing to spend their time on it. As Ms Cyd HO has said earlier, Members spent a total of more than 400 hours on discussion and this amount of time cannot be said to be small. I believe the previous two inquiries have not taken up so much time. Besides long hours, a possibly more important thing is that during the hearings, not just those at the top were investigated, but those working at lower levels and even some patients and their family members were also investigated and questioned. So the scope involved is really very large. Also, the hearings were held mostly in public and could be heard and seen by the public. That is the most important thing. For we are not doing things behind closed doors because open discussions are made. As a result, the transparency and hence the reliability and credibility are very high. That is something worth our attention. I hope the Government can also realize that should anything happen in the future and when the Government conducts hearings and inquiries, it should try to be just, fair and open and highly transparent in order that these hearings and inquiries can be effective. For if not, they would not be meaningful at all. I hope the Government can learn from this experience.

As a result of this inquiry, two persons at the top management have tendered their resignation one after the other. These people are Secretary Dr YEOH Eng-kiong and Dr LEONG Che-hung. Many people may say, "Good, now that we can all be happy, for blood has been drawn and that should make everyone happy." Even Dr LEONG Che-hung said yesterday that he hoped that his resignation would draw the disputes centred around SARS to a close. I do not understand too well what Dr LEONG said about drawing the disputes centred around SARS to a close. I think all the people of Hong Kong will wish that SARS will really come to an end and that it will never strike Hong Kong

again. That is certain. But if the disputes centred around SARS are going to come to an end, I would think that this is not too satisfactory. Why? It is because we have a lot of problems now, like Japanese encephalitis, avian flu and other diseases. They are lurking around the corner or posing a threat to Hong Kong. If we do not learn a lesson from our experience and make it our guiding direction for the future, then the sacrifices that these anonymous heroes have made and the lives they have given would all be in vain. So we think that the curtains should not be drawn at this point. I dare not say that they should be raised now. But at least there is a need to dig into places where improvement is due, learn the lessons and strive forward.

I do not wish to see a phenomenon of giving another kick to someone who is down and out in this debate, for it is not a good thing and it is also not proper in terms of political ethics. When we discuss such problems, we really hope that people will talk with reason and present the facts. People should focus on the facts instead of targeting other people. Take Secretary Dr YEOH as an example, I would think that his case should be looked into more closely. In this regard, I hope Dr LAW Chi-kwong can give a detailed explanation later. I do not understand why the Report has downplayed the important event of Dr YEOH's denial in last March that there was an outbreak of the epidemic in the community by saying that it was just caused by a lack of skill and poor communication. I think that this is a grave problem. As a matter of fact, denying an outbreak of the epidemic in the community is really a grave matter. In the case of the Mainland, when officials said that there was no outbreak of the epidemic, they were suspected of covering up. What was the result? They were all fired. Did Dr YEOH say something wrong at that time simply because of a lack of skill? Even if this is true, we must address the problem. We must consider whether or not this is a problem of personal ability. We are not pinpointing anyone, but he was the person who was supposed to lead Hong Kong to face the SARS problem. If his abilities are in doubt and we just pretend that we do not see it, I would think that this is improper. If I were Dr YEOH, when I read the Report describing me like that, I would think that my faults were not so serious as to warrant a resignation. For the lack of skill can be improved by training. This is as simple as that. So I feel that Dr LAW Chi-kwong or the entire Select Committee could give us a detailed explanation as to where the problem lies and why that is done. If it is decided that no further investigations are necessary, I think that this is unfair to the public as well as to everyone.

On the other hand, Mrs Selina CHOW has said that it is meaningless to criticize people now. The former Director of Health, Dr Margaret CHAN, for example, is not in Hong Kong and there is no point condemning her. I do not think so. Madam President, we cannot say that we ought not criticize people when they are no longer in Hong Kong or have left their office. Actually there is another important point, for she is presently holding a vital position, and she is working with the World Health Organization (WHO). The work of the WHO affects not only Hong Kong, but the whole world. If we cannot say clearly what is wrong with her, then we are just being irresponsible. For what she is doing may have a greater impact. That is why I think today's motion is worthwhile and meaningful. It is extremely important that the Select Committee can go a further step by pointing out clearly the way she handled the crisis, her mentality as well as her objectives in it. The Report mentions, for instance, that during the SARS outbreak she did not make an early decision to isolate the infected people and that she did not do enough in controlling the spread of the epidemic across the borders, and so on. That is really a problem. Time and again she missed the opportunities of curbing the spread of the epidemic. Now the question is: Was she not being alert enough or was there anything wrong with the strategies she devised? As someone working in the WHO now, if she is not being alert enough, I have worries about how she can cope with the demands of such a vital job. So I think that is a great problem. A more important thing is her attitude towards this Report. She told us not to be guided by the benefit of our hindsight. I do not think we want to be like that. We hope that we can make things clear as soon as possible. She was the person holding that position at that time. So she was the one to handle the problem. It is true that she had her difficulties and we do not believe that there were no problems, but she had to face them. She had to because she was holding that position. Her attitude now is questionable. Some people have described Dr YEOH as being shameless. I think that this adjective would better fit Dr Margaret CHAN. Her saying that people are guided by their hindsight is evident that she is unwilling to face the reality as well as her mistakes. So it is an apt description of her.

Mr LEE Cheuk-yan has said earlier that he disagrees with Mr NG Leung-sing when Mr NG says that stepping down is not a panacea. Mr LEE Cheuk-yan criticized Mr NG for failing to appreciate the sentiments of the people. But I conversely think that Mr NG is quite far-sighted. He knows where the problem lies, for asking people to step down is really not a panacea.

Why? For when officials have stepped down, if nothing is changed, then the problem will not be solved. If by an unfortunate turn of events other problems appear in the future, we will still have to face the problems. So the problems will not all go with officials stepping down. But at least, as Mr LEE Cheuk-yan has said, when officials step down, at least this will give vent to the grievances and anger in the people and that their expectations are fulfilled. So it can be considered a good thing. The only problem is that this is not enough. Why? Because it does not serve the purpose of accountability. Many Members and some public opinions are praising Dr YEOH Eng-kiong and Dr LEONG Che-hung, saying that their resignations have displayed the essence of accountability. It is not that I disagree with this idea. It is just that the most important thing in any accountability system is the question of who is to be held responsible. While the accountability of these two persons is important, what is most important is the person who has built this accountability system. As Mrs Selina CHOW has said, the problem with the accountability system is that officials have the responsibilities but not the powers. And as Mr Albert CHAN has said, how can an accountability system be said to be truly accountable when officials have the responsibilities but not the powers? That is really a problem. For if an official does not have his own group of workers and the powers to do what he wants, then how can he be held accountable and how can he do anything? What should be done if there is any conflict between the head of a department and an accountable official, that is, a Director of Bureau? Conflicts indeed happen between the two. That is why I think that the meaning of the sentence "stepping down is not a panacea" is that we should make a fresh review of the accountability system devised by Mr TUNG. That is the most important point.

I also agree with what Ms Audrey EU has said when she points out that the Report has praised Mr TUNG. I do not object to praising Mr TUNG, for there may be something that he has done that deserves our praises. But why is he not criticized at all? That is most strange. Actually, the way Mr TUNG handled the crisis should be criticized in many respects. At least the things which Ms Audrey EU has talked about would have deserved criticisms. Why did Mr TUNG not come to the Legislative Council for a public hearing? Is this not his responsibility? Is this not within our powers to request him to do? Is this not something we should do? Had we not made a concession when we said the hearing could be held in camera? Often times when the matters to be investigated are highly confidential and it is undesirable that they be made public, we would hold meetings behind doors. But why did he not come even



when meetings were held behind doors? What does it mean? Does it mean that he has prerogatives? But the Select Committee accepted this and made no criticism. It would be easier for me to take this if you say that nothing could be done and even though that was not intended and his action was not approved of, and he should be reprimanded. But the Select Committee has not made any criticism of Mr TUNG at all. That I would think is inadequate. I hope the Select Committee or Dr LAW Chi-kwong will give an explanation on that. For I think this is most improper. Why do we have to give in to Mr TUNG like this? If in future people say why do you not give in and why do you not come to my office, then there is no point asking him in the first place. For where will our prestige go? Where is the credibility of the Legislative Council in conducting inquiries? This I really cannot take.

Madam President, I so submit.

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam President, a person's character and abilities can best be tested when he is faced with adversity. No one would wish that SARS will make a comeback. The outbreak of SARS last year bore excellent testimony to the professionalism of our front-line health care workers, the tireless efforts they put over sleepless nights and the selfless service they rendered in critical situations. These were truly exemplary of the noble character of Hong Kong people.

Here we should express our condolence for the 299 people who lost their lives in the SARS battle. We should also offer our respect to the front-line health care workers. As for the Government, it should help those recovering from SARS as well as the families of the dead to turn a new leaf. The Select Committee of this Council has used 447 hours and held 94 meetings before this Report is compiled. We have done our best and fulfilled our duty to the community and all those affected.

I have the privilege of serving in this Select Committee. The Report lists out the successes and failures of the Government in tackling the epidemic. This serves not only to remind our decision-making authorities but also each and every public officer that they should be dedicated and offer their best when faced with emergencies. For if not, disasters may ensue and the consequences will be tragic.

As the Report has commented in detail on the performance of each principal official in the crisis, so I would not repeat it here. The Report is in a way a realization of the spirit of accountability and that is, mistakes should be admitted. I think the resignation of Secretary Dr YEOH Eng-kiong is proof of his courage to be accountable for what he has done. However, I feel also sad in noting how a wrong word said or a wrong move made could have led to such grave consequences for senior officials as we can all see.

I am very sorry to see Dr LEONG Che-hung resign from his office. I still recall last April when I met with Dr LEONG, then Chairman of the HA, together with some colleagues from the Hong Kong Federation of Trade Unions. We went to talk with Dr LEONG on the insufficient protective gear of the front-line staff. We got a prompt response from Dr LEONG, but even with that, the response from the authorities at that time was always slow. The cost we paid for SARS was the greatest lesson we have learned and the belated responses showed that the officials were wrong. This is not just a warning for the senior officials; it is also something which Members should bear in mind. In future, should any serious problem appear in the community, we should respond swiftly to it. At least, we should convey the information to the authorities right away and urge them to take corresponding action.

The Report of the Select Committee can be said to be a daunting task undertaken by the Legislative Council in its current term. Apart from the number of days of meetings which is exceptionally large, the number of meeting hours is likewise impressive. All these are due to the fact that culpability had to be identified for the loss of nearly 300 lives in these hearings, be they officials or institutions. However, since the blunders have been made and that the objective of the Report is not to penalize officials who have made such blunders, so we can only expect that this review will serve to prevent the occurrence of similar incidents in future.

The SARS epidemic has been over for one year and there are people who say that the resignation of Secretary Dr YEOH would put a full stop to the incident. But some patients, people who have lost their loved ones and some health care workers, many of these people are still living under the shadow of SARS. From time to time we would receive complaints from those who have recovered from SARS or others affected by it. I hope that the Government will really care about their needs and help them the best it can so that they can turn a new leaf. In addition, it is simply not possible for Hong Kong to sustain

another disaster like SARS and survive. I hope that the Government will truly learn a lesson and make improvements as necessary. The Government has put forth many proposals and grandiose plans in the wake of SARS, but concrete action, instead of empty words, has to be done. There is a saying which we hear so often and it is, a physical injury can be healed, but a psychological trauma is beyond cure. I wish all patients who have suffered from SARS and their families can overcome the hardships and live with a strong will. I also hope and wish that Hong Kong will fare better in the days to come and that there will not be any need to set up a select committee of this sort to investigate into anything like SARS.

Thank you, Madam President.

**MR FREDERICK FUNG** (in Cantonese): Madam President, I wish to share with Members my views on three areas in the Report compiled by the Select Committee.

Admittedly, SARS is a new epidemic. Health care workers in Hong Kong and the entire world faced it for the first time. Actually, as compared to their counterparts in Taipei and even Beijing, the health care workers in Hong Kong could best demonstrate their selfless sacrifice when they held fast to their posts and attended to the SARS patients professionally. And this is something seen by the whole world, something that should indeed be praised.

Apart from these praises, the incident has also revealed some of the inadequacies in the health care system in Hong Kong. I think the Government should really ponder over them seriously. Several reports have pointed out the many problems existing in our health care system. The Government can make use of this SARS incident and conduct a major operation to scrutinize the areas where improvement is due. Now I would like to point out some areas for the Secretary's consideration.

I would describe the existing health care system in Hong Kong as a troika. It is composed of the Health, Welfare and Food Bureau, the Hospital Authority (HA) and the Department of Health (DH). These three departments bear responsibilities related to three different health care areas and each of these departments has its own powers. When leadership is required to co-ordinate the entire health care system and all the health care workers to fight a deadly battle

against SARS, the division of labour may not be possible. Certain efforts in the division of labour may have led to many problems in carrying out the work, such as the problems and loopholes in communication. I hope the Government can give serious thoughts to this.

I do not think the information I have gathered is more than that in the hands of other colleagues in this Council, especially those who are tasked with the writing of this Report of the Select Committee. However, information on problems in the entire incident, such as the internal operation of the health care departments, the amount of supplies and stocks, the use of the supplies, the question of why some people did not have the supplies and why some front-line health care workers did not have enough protective gear and masks, and so on, should all be sorted out in one go. I am sure that colleagues compiling this Report must have a lot of views and these should be considered by the Government in depth.

The next part which I would like to discuss with Members is something which I am more interested in and that is, some political issues related to the accountability system for senior officials. I do not know if Members would feel that during this past couple of days, especially today, the entire community seems to have breathed a sigh of relief. Last year when two reports were released in the wake of SARS, we all became nervous when issues of health care and SARS were brought up. There was a grudging feeling in some people towards the improper handling by the Government. But after yesterday, or during these two days rather, when Secretary Dr YEOH Eng-kiong and Dr LEONG Che-hung have tendered their resignations, the sentiments in our society seem to have changed. There are fewer hostilities and less acrid criticisms are heard. People are now holding less of the mentality that some people should be crushed and ousted. On the other hand, those who have stepped down have earned some praises. Some people are now saying that the Secretary has nothing to do with the events and he is a man of talent. Also some people say that Dr LEONG should be praised, for he is stepping down only to bear some political responsibility and that his action is exemplary of the system which he has done a part to build.

I do not know if Members have sensed the kind of reaction which the community has to the resignation of these two persons. This is actually a political effect behind the accountability system for senior officials. I do not know if Mr TUNG Chee-hwa, the Chief Executive, and other accountability officials would think on the resignation of senior officials over some political

issues. But if we do not trust this system, then this system of accountability for senior officials should never be put into practice in the first place. We got to have some confidence in it if we are to put this into practice. The first person who must have confidence in it should be Mr TUNG Chee-hwa, the next ones should be the three Secretaries of Departments and the 11 Directors of Bureaux.

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

I recall when we discussed the topic of the accountability system for senior officials, I was the only one from the pan-democratic camp who voted in favour of it. Others all thought that the system would not work. Actually, some Members from the pan-democratic camp had talked with me and urged me not to support the system. But even up to this day I still lend my support to it, because I believe there are a few merits with the system and I think the Government should think about them. These are: First, if these senior posts are not filled by civil servants, the quarry from which suitable candidates can be chosen would become much wider and the chances of finding suitable persons would be much greater; second, the powers and responsibilities would become clearly defined and that means the person who is the final decision-maker on a certain policy is known; and third, I do not know if the Government has thought about it or not, but this system can be regarded as a political tactic in which pawns can be abandoned to preserve the king as in a game of chess. If there is no such thing as the accountability system, all major political issues would be directed at the ultimate decision-maker or TUNG Chee-hwa, the Chief Executive. When this system is in place, matters which fall into the portfolio of an accountable official will end there. This is the practice used throughout the world. So why should Hong Kong not adopt this system when Mr TUNG proposed it? But I do not think we have really adopted this system.

Ever since this system was launched, apart from the two persons this time who say that they resign of their own accord, the previous three, included the former Chairman of the Housing Authority, Ms Rosanna WONG and two other senior officials, have all resigned under circumstances not of their own choice or that they have denied their resignation is due to any political consideration. In any Western country, if a senior official resigns owing to some political issues, that person is considered to a certain extent a responsible person and his act is a kind of honour. But in Hong Kong, resignation seems to be a terrible thing,

something that you would cry over, feeling that you are a failure or you have done something wrong. So many kinds of negative values have become the values behind a senior official's resignation. This is wrong. This kind of mentality is wrong. For senior officials, the system means that for matters within their policy portfolio, if serious problems arise, the official concerned will bear the political consequences. The incident may have nothing to do with the official concerned, but he still has to bear the responsibilities.

When I studied in Britain many years ago, a train accident happened and more than 100 people were killed or wounded. The minister in charge of traffic and transport matters resigned because of the incident. What actually had the accident to do with the minister? He was not the person who built the railway. He was not in control of the train. He was not the driver of the train. What had he done wrong that he should resign because of it? He has done nothing wrong in the entire event. But he felt that he should assume the political responsibility for the injuries and deaths and even the losses. So even if an official has resigned, no derogative impact should have created on that official. If our Chief Executive is really to take this accountability system forward, I hope he would act in a clear and resolute manner. He should never gloss things over or say something but never put it into practice.

On the other hand, our Principal Secretaries and Directors of Bureaux should understand the nature of the accountability system better. They should never look at the system in a negative light, or think that things can be done only if they remain in office. They should know that things will only backfire if they choose to stay and things cannot be done.

Madam Deputy, the last point I wish to talk about is about our Report. Our colleagues have really worked very hard and they have spent much time and compiled this Report within very tight schedules. The fact-finding part of this Report is objective and unbiased. Seen from this perspective, I would think that this Report is commendable.

In Chapter 15 of the Report, the Select Committee names and criticizes five officials and officers of the HA. These include Dr YEOH Eng-kiong, Secretary for Health, Welfare and Food and other public officers in the Civil Service or HA, including the former Director of Health, Dr Margaret CHAN, the Chairman of the Board of the HA, Dr LEONG Che-hung, the Chief Executive of the HA, Dr William HO and the Director (Professional Services &

Public Affairs) of the HA, Dr KO Wing-man. The Report also presents many reasons and evidence that these people should be named and criticized. However, the only thing which I think is not very appropriate is that the wordings used are vague and the assessment made does not touch on a political level, that is, the accountability system for senior officials and whether anyone should be held responsible at this level.

Paragraph 15.9 of the Report talks about the press briefings given by Dr YEOH on 14 and 15 March last year and that "His messages to the public at the briefings, however, were confusing and misleading, and so they also gave the impression that he was trying to downplay the severity of the outbreak." The Select Committee therefore is of the view that Dr YEOH "did not show that he had the communication skills expected by the public of a policy secretary." Another example is found in paragraphs 15.11 and 15.12. It is pointed out by the Select Committee that Dr YEOH as the immediate supervisor of the Director of Health and in his monitoring role on the daily operations of the HA, he should be held responsible for the failings of these two institutions during the SARS outbreak.

In fact, examples such as the above can be readily found in the Report. In my opinion, the Select Committee has been acting too prudently in its conclusions on the performance of the public officers, and one is left with the impression that the Select Committee does not dare to pass a judgement which is forceful and reasonable.

Actually, according to the practice of this Council, for officials who have been named and criticized, often a definite assessment will be made and even specific penalties will be recommended.

The Legislative Council has in fact established its own practice of investigating into and scrutinizing the performance of public officers and making an assessment. This includes the use of words ranging from a mild to a severe nature and the reaching of conclusions on the performance of officials being investigated into. But why does it appear that this Report on SARS has abandoned this approach? Though this system of assessment is an unwritten practice of the legislature, does it mean that a report compiled by the Select Committee can fail to mention the penalties that should be imposed on public officers who have been named and criticized? Regardless of whether or not those criticized should be punished or punishment is not necessary, we expect

that the report should at least pass some kind of judgement. Again, that is absent.

If the task of the Select Committee only touches on the technical level and the details, such as whether or not any health care workers were involved in any acts of professional or common negligence, there would certainly be a justification for the Select Committee to arrive at a conclusion that no one is to be blamed. As SARS struck all of a sudden and health care workers at that time knew nothing about its source, channels of communication and impact on humans, so it may be too harsh to require public officers to bear responsibilities for all these. It may also be unfair. The scope of investigation which this Select Committee was tasked with should have been wider than these purely technical matters. Things like the disease reporting system between Hong Kong and China, the contingency plans and administrative measures which the Hong Kong Government had in place to deal with SARS, and so on, should also have been included. With respect to these issues, I think certain people who were placed in certain positions or vested with certain powers should bear some political responsibility if the decisions they made gave rise to any political consequence.

Lastly, insofar as I am concerned, as this Report has not made any recommendations in this regard, if the amendment later is passed, I will support the amendment. But if it is not passed, Madam Deputy, I would vote against it. I oppose it not because the facts presented by the Report are not true, nor is it because the members of the Select Committee have not done well. It is just because I think this Report lacks in some part which it should and must have. I hope all Honourable colleagues will also lend their support to the amendment.

Thank you.

**MR ANDREW CHENG** (in Cantonese): Madam Deputy, the Legislative Council Select Committee inquiring into SARS released on Monday its Report and it has named many officials and public officers for criticism. There is a general feeling in society that the wordings of the Report are too mild and there is dissatisfaction that no official has been named and urged for resignation.

In just a few days after this mild Report has been released, Dr YEOH Eng-kiong, Secretary for Health, Welfare and Food and Dr LEONG Che-hung,



Chairman of the Board of the Hospital Authority (HA), have resigned to show their responsibility for the epidemic last year. So two top officers in our health care system have resigned and this would help pacify the discontent of the families of the SARS patients and, more importantly, they have shown that they will bear the responsibilities. This is a realization of the spirit of accountability and it will help the Government learn a lesson and make improvements in future.

With this it can be said that the objectives of this Council in setting up a select committee to inquire into the handling of SARS by the Government and the HA have been achieved. What follows is that the Government and the health care sector can learn the painful lessons and, besides taking up the responsibilities, as seen in the recommendations made in the Report which I am going to talk about, they should join hands to improve the health care system in Hong Kong.

The Report compiled by the Select Committee has named many persons from the health care sector and criticized them for their failings. This will unavoidably touch the nerves of some people. Despite the general feeling that the Report is mild, some doctors from public hospitals have initiated a signature campaign and issued a statement to condemn the Report of the Select Committee.

Madam Deputy, I am one of the 11 members of the Select Committee. During the investigation, the Select Committee has really strived to make the Report fair and impartial and that all the conclusions made are founded on facts. Persons named all have all been given opportunities to respond to the contents of the draft Report. At the same time, we have also avoided trying to be wise after the event in seeking to ascertain the responsibilities.

The Select Committee is deeply appreciative of the performance of the front-line health care workers and Hong Kong people during the SARS outbreak. Those persons named in the Report for criticism are mostly from the management of the Health, Welfare and Food Bureau, the HA and the Department of Health (DH). As for Chief Executive TUNG Chee-hwa, since he refused to attend the meetings of the Select Committee, therefore it is not possible to make a full-scale assessment of his performance during the battle against SARS.

Madam Deputy, ever since the release of the Report of the Select Committee, there has been a general misunderstanding of the Select Committee's view of the performance of the Chief Executive in the battle against SARS. It is believed that the comments made by the Select Committee show that there is no failing on the part of the Chief Executive in the battle against SARS. However, the fact is, as the Chief Executive had refused to come before the hearings, the Select Committee therefore had no way to know how he had performed in the period.

In the battle against SARS, the Chief Executive had set up and personally taken charge of a Steering Group tasked with commanding and co-ordinating the overall combat efforts put up by the Government. He can be said to be the overall commander, the commander-in-chief in our battle against SARS. In view of this, the Chief Executive should be the first one to co-operate with the Legislative Council. He should have sworn an oath before the public as he appeared before a public meeting. He should have testified under oath, so that the Select Committee could gather clearer evidence. We hoped that Mr TUNG could swear an oath and testify before the Select Committee so that it could have a fuller picture of the combat efforts against SARS and that a thorough and proper assessment of the Chief Executive could be made, instead of just a few words in paragraphs 15.2 and 15.5 of the Report and a limited conclusion arrived on the strength of only the minutes of meetings of the Steering Committee and its meetings held in camera and lasted for just a few hours. Unfortunately, this limited conclusion is regarded by the public to be tantamount to lavishing extravagant praises on Mr TUNG. It seems that people now think that not scolding the Chief Executive is the same as lavishing extravagant praises on him. This is the greatest irony for Mr TUNG who has been the Chief Executive for seven years. He has never dreamt of getting extravagant praises from the Legislative Council. As a matter of fact, the Select Committee has not rated Mr TUNG so highly. The Select Committee had invited Mr TUNG to testify before a public hearing and as I have said, the Chief Executive refused on the ground that it was "constitutionally improper" for him to do so. Despite the fact that the Select Committee was convinced that it had the powers to summon the Chief Executive, as time was limited, it could only ask the Chief Executive to respond in writing and to hold meetings in camera.

Given such constraints, the Select Committee was unable to meet with the Chief Executive face to face and learn about his performance during the entire battle against SARS in order to find out whether or not he had any failings.

Even if the Chief Executive had any fatal failings, it would not be difficult for him to cover them up.

The Democratic Party therefore deeply regrets the Chief Executive's evasion of the inquiry and his failure to face up to the Select Committee of this Council, the media, and the public. On the question of whether or not it is "constitutionally improper" for the Chief Executive to come before a hearing held by the Legislative Council, we hope that Members of the next term of the Legislative Council will follow this up in detail and effectively.

Madam Deputy, with respect to the Health, Welfare and Food Bureau, the merits and failures of Dr YEOH Eng-kiong, the Director of Bureau, have been discussed in public and views of the people and the patients have also been expressed. Such discussions should come to an end with the resignation of Dr YEOH as an accountable Director of Bureau.

What we should attach more importance to is how best those conditions which affected the operation of the health care system during the SARS epidemic can be improved. Findings of the Select Committee show that the working relationship between the Health, Welfare and Food Bureau and the DH was always evolving at the time of the epidemic. After the outbreak at Amoy Gardens, the Bureau began to involve directly in work at the operational level, with the Director of Bureau taking the initiative of joining the work of the DH at the operational level and a committee under Bureau co-ordination being tasked responsibility for the implementation of many initiatives aimed at containing the spread of SARS. These show that there was no clear-cut division of labour at the command structure for the contingency plans.

We hope that the Health, Welfare and Food Bureau will adopt the recommendations made by the Select Committee and clearly define the command structure of the territory-wide contingency plans, the working relationship between the Government, the HA and other related bodies.

In addition, though the accountability official responsible for health care policies is the Secretary for Health, Welfare and Food, the statutory powers for discharging duties in public health are vested in the Director of Health (D of H). When the Health, Welfare and Food Bureau Task Force decided to issue an isolation order to the residents of Block E of Amoy Gardens on 30 March 2003,

the D of H had reservations about this decision and it was only after the Steering Group headed by the Chief Executive had intervened that a final decision was made to issue an isolation order. We hope that the Health, Welfare and Food Bureau should expeditiously review how best in the Government the statutory powers for the discharge of duties related to public health should be vested.

Madam Deputy, with respect to the HA, when SARS raged last year, all the staff of the HA, especially the front-line health care workers touched the hearts of countless people in Hong Kong when they risked their lives in total dedication and commitment to save SARS patients as they braved many sleepless nights at such critical moments.

With respect to the contribution made by the front-line staff and management of the HA, we do genuinely appreciate their efforts and we agree that they have made enormous contribution during the battle against SARS. But gratitude and appreciation aside, as Members of the Council and members of the Select Committee, we must discharge our monitoring duties, find out whether there were any failings and ascertain the responsibilities.

A total of 386 health care workers were infected during the epidemic, with eight deaths. We cannot pretend that we do not see such grim realities and the Select Committee is tasked to find out who should be held responsible.

At the time when SARS raged, health care workers were engaged in a battle with the disease and every day on radio programmes we heard front-line workers say exasperatedly that they did not get the protective gear. Their pleas are still ringing in our ears. So it can be seen that there was confusion in the distribution of supplies. This served to undermine the morale of the health care team at that time. However, as the Chairman of the Board of the HA, Dr LEONG Che-hung seemed to see nothing. He was of the view that the management should concentrate their efforts on fighting this battle. For the period from 27 March 2003 to 26 April 2003 when SARS was making its most devastating attack, the HA did not hold any Board meetings. This pre-empted the Board of the HA from scrutinizing the performance of the management of the HA at such critical times, taking part in making important decisions or doing anything to boost staff morale and to ease their discontent and alleviate their concern about the shortage of protective gear. With respect to this, we believe Dr LEONG can never shirk the blame.

On top of that, in a meeting of the HA on 26 March 2003, it was decided that Princess Margaret Hospital (PMH) was to be designated a specialized hospital for SARS and to admit 1 000 SARS patients. This decision was made without taking into consideration many related issues and Dr LEONG, who was present at the meeting, should bear the responsibilities for this decision.

Failings also abound in the management of the HA during the epidemic. For the period from 15 March 2003 to 23 March 2003, the Head Office of the HA monitored the situation through regular meetings of its chief executives and these meetings were chaired by Dr William HO. But for meetings held during the 10-day period up to 25 March 2003, it was surprising to find that there were no minutes of these meetings. So it seems that the attitude and abilities of the senior management of the HA in coping with the epidemic do not match well with the amount of bonus they get.

Madam Deputy, all these problems and failings of the HA management are listed in the Report of the Select Committee and they are substantiated by facts found during the inquiry.

As lessons learned will light up the way forward, I hope that those management staff and executives of the HA who choose to stay, as well as the chief executives of its clusters, can all learn lessons from the SARS epidemic. They should take on board the recommendations made by the Select Committee and join hands to make our health care system better.

With respect to the Board of the HA and its Chairman, their respective roles in coping with epidemics should be clearly defined. If the Chairman of the HA is to act on behalf of the Board in supervising and overseeing the executives of the HA in tackling epidemics of far-reaching impact on public health, then he should be properly empowered to discharge such duties.

The HA should improve its risk management efforts. Each hospital should appoint designated staff to undertake risk assessment work and before a hospital launches any new initiative, it should engage in risk assessment from clinical, management and operational perspectives, including making estimations on the resources of the hospital to determine if they can cope with the new work, the amount of risk involved and its reductions and when should review be made, and so on.

Madam Deputy, the SARS epidemic also served to expose regionalism in the HA. There was no attempt at making concerted efforts in the fight against the epidemic. Take PMH as an example, when Dr Lily CHIU, Cluster Chief Executive (Kowloon West) was assigned the task of handling the first 1 000 SARS cases at PMH, she got a pledge from the Head Office of the HA that support would be forthcoming, but when she asked hospitals from other clusters to send in more health care workers to man the intensive care unit, no prompt support was given by the other clusters.

In April last year, the number of beds in the intensive care unit of PMH was increased from 14 to 64. But co-operation from many areas was required to enhance the capacity in treating patients, including the deployment of health care workers experienced in intensive care to the expanded intensive care unit. However, at that time PMH had a problem of not having enough experienced intensive care personnel. In such circumstances, with respect to help offered by other clusters to this problem experienced by PMH, as far as we know, it seems that it was only until 5 April when PMH had already been plunged into a crisis that each cluster agreed to deploy 10% of its experienced intensive care nurses there.

Madam Deputy, now I turn to the problems with the DH. The DH is the department charged with the task of tackling communicable diseases. The raging of an epidemic in Hong Kong last year was attributed to the lack of alertness and caution on the part of the DH as it had failed to withhold the virus beyond Hong Kong borders and trace the source patient promptly.

It is therefore an important task to build an effective information system to track down those who have contacted the disease and conduct health surveillance. In addition, it would not be sufficient to rely on official information to oversee the functioning of communicable disease systems effectively. Unofficial channels should also be made use of to exchange, gather and analyze information.

The performance of Dr Margaret CHAN during the SARS outbreak was extremely disappointing. As the principal consultant of public health affairs in the Government and being responsible for the provision of public health advice to Dr YEOH Eng-kiong, Dr CHAN did not give due attention to unofficial

information on atypical pneumonia which appeared in Guangdong Province during the period from January to early February 2003. She ignored the situation of some residents in Guangdong boiling vinegar at that time and she did not send any officials there to find out the facts. That unfortunately sowed the seeds of the disastrous invasion of SARS into Hong Kong.

As D of H, Dr CHAN was vested with statutory powers, but after the World Health Organization had finalized on the name of the disease and issued an emergency travel advisory on 15 March 2003, it was only in 26 March 2003 that Dr CHAN sensed the need to include SARS in the schedule of the relevant legislation. This is totally unacceptable. So, Madam Deputy, I support the amendment moved by Dr YEUNG Sum and I hope to make use of the amendment today to condemn Dr Margaret CHAN, the former D of H. I so submit.

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

**MR MICHAEL MAK** (in Cantonese): Madam Deputy, first of all, I have to declare my interest. I am a salaried employee of the Hospital Authority (HA), and I am also a member of the Select Committee.

On Monday, the Select Committee released its Report on its inquiry into SARS. Despite the disappointment expressed by some people for the Report for its silence on how officials who have acted in dereliction of their duties are to be punished, the Report is in fact an *expose* of what the officials did during the SARS epidemic. The Report is a penetrating look into the professional arrogance, insensitivity and belated responses of two major officials who assumed leadership in our battle against SARS last year. It also lays bare before the Select Committee the professionalism and courage of health care workers fighting this battle against SARS. Earlier on, many Members have already paid their tribute to the health care workers and may I also make use of this opportunity to pay my tribute to them, many of whom are my colleagues at work.

In this unprecedented battle against SARS, the commander and other leaders were all so self-righteous and arrogant. They looked with contempt the signs of atypical pneumonia as it first broke out in Guangdong Province. They

missed repeatedly the golden opportunities of putting the epidemic under control. They were narrowed-minded and slow in response. They failed to provide enough protective gear to front-line health care workers. As a result, health care workers were sent to the battlefield practically unarmed. As many as 386 health care workers were infected and eight of them lost their lives. My colleagues were the ones first hit by this unknown disease and extremely deadly virus. In circumstances characterized by manpower shortage and crowded conditions in hospitals, they had nevertheless exerted their utmost to fight the disease and help the patients. Their selfless sacrifice is exemplary of their noble and professional spirit. They deserve the highest tribute.

The SARS attack has dealt a severe blow to our society. Though the Government and the HA have released two reports respectively, it seems that these two reports still fail to offer an acceptable explanation to the public. As a matter of fact, my office conducted a survey last October among my fellow health care workers. The survey was a review of the way in which the epidemic had been handled. More than 90% of the respondents thought that these two reports failed to make a fair and impartial review of the way in which SARS was handled. More than 90% of the respondents opined that an independent commission be set up to inquire into the incident. Another 80% of the respondents were convinced that some people had mishandled the SARS crisis. Of these respondents about 500 people wrote letters to me pointing out that Dr YEOH Eng-kiong was the prime culprit. This is not an option I gave them in the questionnaires. They wrote it down themselves. The former Director of Health (D of H) was also named by my fellow workers as the prime culprit. Secretary Dr YEOH announced on Wednesday that he would resign. When compared with officials in charge of public health matters on the Mainland and Taiwan who were fired or forced to step down due to their improper handling of SARS, this resignation by Secretary Dr YEOH has come more than a year too late. This is an extremely belated resignation. Does that really give play to the spirit of accountability? Why does he hold himself accountable only after such a long time? The Chairman of the Board of the HA, Dr LEONG Che-hung, though not an accountability official, likewise announced yesterday that he would resign in line with the spirit of accountability. I think that Dr LEONG's courage to shoulder the responsibilities should be commended. Another person named in the Report for criticism is Dr Margaret CHAN. But from first to last, she did not offer any apology in public over the SARS incident, to our great regret. She has left Hong Kong to work in the World Health Organization, holding an important position there. Since SARS has made such



serious devastations in Hong Kong, I do not know why Dr Margaret CHAN does not offer us an apology in public. It looks as if she needs to do some soul-searching, then make a wise decision in response to the demand of the people, instead of saying that all these are just wisdom after the event. I do not think our Report is just trying to be wise after the event at all.

We have based our judgement on facts and available information, also made some comments accordingly. In the great march held on 1 July last year, I organized people from the health care sector to join the march. Our aim was to urge the Government to set up an independent commission to inquire into the SARS epidemic. But the Government did not accede to our request and in the end we were forced to set up a select committee to carry out some very tough work. This is really tough. I do not want to name and criticize my colleagues and many of the officials are good friends of mine. I often say that Dr LEONG Che-hung is my mentor, for he has given me a lot of advice on how I can become a better Member and person. He certainly has given me a lot of inspirations. However, as a member of the Select Committee, I can tell Members that I have made my judgement with impartiality and in good conscience.

As an employee of the HA and someone familiar with the way in which my colleagues have handled SARS, I find it unfortunate to note the HA make a response today to the Select Committee, saying that there are many inadequacies in the contents of the Report of the Select Committee and that many of the views expressed are not fair and impartial. The HA also says that it does not agree to the views expressed by the Select Committee. I am very disappointed about this. For we have shown them the facts and everything said in the Report about analyses, responsibilities and performance. They have made their responses and we have made our revisions. There are things which we were not so clear about at that time, but as we tried to look closer into the events, our criticisms then become unbiased. I hope people in the HA would really hear what I am saying now. The 11 members in the Select Committee, as our Chairman Dr LAW Chi-kwong has said, have all been fair and impartial and our opinions are based on facts. The most important thing is that they are based on available facts. For if there are facts that we know nothing about, how can we make any criticisms? So I really hope that the HA will be fair to the Select Committee and the hard work it has done over these few months.

Alas, Madam Deputy, apart from dealing a heavy blow to Hong Kong, sinking business and trade deep into depression and making Hong Kong pay a

heavy price, the SARS attack always comes alive in my mind as I see pictures after pictures of my colleagues succumbing to it and falling. Some even died. Many more, I mean those who have survived, hope that they can recover quickly. But things do not turn out as they would have wished. Many of them are suffering from bone degeneration known as avascular necrosis. They get short of breath as they walk and they are prone to emotional upsets like feelings of sadness and fear. I do not really know how they can ever truly recover. Nonetheless, we must throw our sorrows behind us. We must learn the lessons — painful lessons as they are, and put in our best efforts to rebuild society after the epidemic is over and through.

On many occasions I have talked in this Council over these four years that there are lots of problems in our health care system. In terms of manpower, for example, our resources are never enough. Earlier a Voluntary Retirement Scheme was introduced and many people, at least from my profession, more than 1 000 of them in the public sector, have left. But how are these vacancies to be filled as there are more than 1 000 of them? It seems that neither the Government nor the authorities have come up with any good plans.

Moreover, with respect to the so-called isolation facilities, around the SARS outbreak, that is, during the outbreak and in the later stages, I visited hospitals frequently and I found that though hospitals did have isolation facilities, they were far from satisfactory. The purpose of such facilities is to minimize the chances of cross-infection at the entrances and exits. But last week when I visited Tuen Mun Hospital, I found that this purpose could not be served at all. The place was very crowded, but the utility rate was over 100%. Some metal beds were placed in the corridors. Many of our colleagues have accumulated many days of annual leave. What I mean is that the days of annual leave they have earned at the beginning of the year are still not taken now. Why is it that, despite my urges and pleas about the manpower problem, I can get no response?

As a member of the Select Committee, I gained a profound understanding of the great conflicts in the course of the inquiry. For I had to face my colleagues, and I also had the chance of learning the truth about many matters. But there are some matters the truth of which can perhaps never be known. For example, Dr Stephen NG Kam-cheung once said that Secretary Dr YEOH once chaired a meeting and Dr YEOH said that some people should be sacrificed and that could not be helped. I reckon Dr Stephen NG Kam-cheung would have no cause to make such a defamatory remark, but after asking all the people who

were present at that meeting, the answer I got from them was no one had ever heard this remark. Why?

Another point which I have great regrets is that the Chief Executive, as the leader of Hong Kong, should have shocked everyone when he paid no respect to the Select Committee and its powers. He had stood here and said that he would co-operate with the Select Committee. But I cannot see why he refused to attend the public meetings of our Select Committee by putting up the excuse that it would be "constitutionally improper" for him to do so. He should be condemned.

Thank you, Madam Deputy.

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

**MR MARTIN LEE** (in Cantonese): Madam Deputy, I am a member of this Select Committee. From the outset I had a feeling that time was not enough, for we had to complete this Report in eight months and if we failed, the next Legislative Council would have to start the inquiry from scratch if it wanted to conduct an inquiry. So we were worried that work could not be completed in time. Fortunately, our colleagues in this Council worked very hard and after holding many meetings, we managed to compile the Report. However, I have an impression that there is still some room for improvement. Speaking from a professional perspective, even if the Report is read for another time, for twice, thrice or 10 more times, there would still be places where amendments are due. But we have just read the Report a few times and we have to submit it.

I would also like to stress one point and that is, the Select Committee is not a court of law. So there are no attorneys for the plaintiff or the defendant who will submit all the documents which in their view are pertinent for our perusal and that the witnesses will subsequently be cross-examined by both parties. Therefore, it would be very hard for us to uncover the truth of the matter, and it would not be an easy task at all. As we summoned witnesses, we would choose persons from hospitals whom in our view should be able to assist us by virtue of the positions they held. Then we would summon them and they were all very co-operative. However, with respect to each hospital, the number of persons who could be summoned would be very limited and so how could we find out all

the truths? Besides, we had to trust them for whatever remarks they made. We had to do so, for there was no reason why we should not trust them. Some people wrote us a note or a letter but remained anonymous. They said a lot but they refused to be witnesses. So there was no way that we could verify the validity of their remarks. With regard to documents of that sort, we simply ignored them.

In addition, I would like to point out that our Report is in no way a judgement. For the Select Committee is not a court of law and we will not say which persons have committed what kinds of acts of negligence and hence should be liable for compensation, and so on. It is because should any civil action be instituted, that would be the work to be done by the Court. What I can say is that, for myself and I believe for many members in the Select Committee, we had all along held an open attitude and even if we might have some preconceived views of certain issues, they would not be regarded as evidence. All the evidence we admitted was well-grounded. In addition, at times our stand would change because our stand would evolve in accordance with the new evidence that had come to our knowledge or when we discovered that no evidence was available. During discussions, at times we would quarrel — but we never came down to pulling punches. Some people criticized Dr LAW Chi-kwong, Chairman of the Select Committee and they queried why Dr LAW was always addressing the other two Members from the Democratic Party when he spoke. There were contentions all the time. But at last we came to a consensus and it was only on the issue of the Chief Executive's refusal to come here and testify as an ordinary witness that there was a divergence of views among us. And I might say that the difference in opinions was marked. But with respect to other matters, we had all reached a consensus.

Many members of the Select Committee, including the Chairman, have pointed out an important principle to which we adhered and that is, we must remind ourselves, each and every time, that we could never criticize other people when we are guided by the benefit of hindsight. It remains, of course, that even if we do have the benefit of hindsight, that is because we cannot help taking this approach for we are only setting our eyes on the matter and for the simple reason that things will get better in future. This is like what a Judge in Canada did. He was responsible for conducting an inquiry into the SARS outbreak in Toronto. He is called Mr Justice Archie CAMPBELL. His report was released on 15 April. He said,

"It is easy with the benefit of what we now know to judge what happened during SARS. It is easy now to say which systems were inadequate, and which decisions were mistaken. That is the great benefit of hindsight. As one military historian noted, once a dramatic event takes place, it always appears to have been predictable, because hindsight tells the historian which clues were vital, which insignificant, and which false. The unfortunate general who must act without the benefit of hindsight is much more likely to err."

We subscribe to this view. So if we are to criticize a person and say that he had erred or done something not appropriate, the yardstick we used was we would look at what facts that were in his grasp or possibly in his grasp. If he had got hold of certain facts but he had not done what he should have done, then it would be inappropriate. When we were to criticize a person, we had to be very careful and we had to ask ourselves all the time, especially when we came to the final stages of the inquiry, we still had to ask ourselves, "Would it really be correct if we criticize him like that?" We kept reminding ourselves this way. But was what we did perfect? I dare not say that it was. For time was really very short and I can only say that we had actually tried our best to complete this task.

Madam Deputy, now two persons have resigned. When Dr YEOH Eng-kiong, Secretary for Health, Welfare and Food came to our meetings, the first thing he said as he sat down was that he would assume full responsibility for the inadequacies of his Bureau during the SARS epidemic. Of course, what he meant was to assume the responsibility under the Accountability System for Principal Officials, instead of admitting that he had any personal failings. Dr LEONG Che-hung, the Chairman of the HA, also said that with respect to the whole incident, as he was the Chairman of the HA, he should bear the responsibility for anything done by the HA which was not perfect or undesirable. In the Report, we also think that they should bear the responsibilities in certain matters. For these two gentlemen, it was after the release of the Report that they said openly that they wished to make an apology, that is, they were sorry. But the question remains: Is this really an Accountability System for Principal Officials or a system whereby senior officials say they are sorry.

After the release of the Report, many people criticized us right away and they asked why there was nothing on imposing punishment on these two persons and other doctors and officials. Actually, we thought about this very carefully

and we discussed whether or not any punishment should be recommended. Our conclusion was we should not because our aim is to state the facts and those which we think we know. On analysing these facts, if we thought that some people ought to be criticized, then we would write down these criticisms and if some people ought to be praised, then we would also write the praises down. But we thought that it would be unnecessary to write down clearly who should resign, and so on, and we should not do so. For resignation is a kind of political responsibility and what we should do is to present this Report to all the Members of this Council and after they have read it, then both Members from the political parties and independent Members can make their own decision on who should assume the political responsibilities. In other words, we thought that would suffice. Certainly, some Members may not agree to that but I can assert that this is the right thing to do. After the release of the Report, many people criticized us right away. I remember someone say in a radio programme that Dr LAW Chi-kwong, the Chairman of the Select Committee, was always inclined towards the royalists and the Government, but there were also people like Martin LEE, Andrew CHENG, and so on, in the Select Committee who loved scolding people and there was also Cyd HO the hot chili. The caller then asked why the Report was so mild. But after Dr YEOH Eng-kiong and Dr LEONG Che-hung announced their resignations, some other people were saying that perhaps the Report was too harsh. Madam Deputy, I think that what we have done is appropriate.

Then what do those people who have read our Report think? If I were one of the SARS patients and I have recovered, but I have lost part of my lung functions or I am suffering from severe bone degeneration known as avascular necrosis, I might on the one hand be thankful to the doctors who have healed me or the nurses who have helped me and cared for me. Yet I may also feel very angry, and I may ask why I should have to come to this and why the Report does not hold the people concerned to be responsible. If I were a family member of someone who died of SARS, I would ask why it should have come to this, that my father, child or wife has died while the people concerned could get away with it. If I were a doctor or a nurse, I would say, "I have worked so hard and I have done so much. I have not had enough sleep and I have worked like hell while fearing that I might pass on the disease to my families. But the Select Committee has not summoned us to ask us anything. They do not pick us to come to the hearings. Sometimes we are so mad and we want to tell them something, but they do not summon us. The Report is being unfair when the head of our hospital is criticized. Why are some other hospitals not criticized

when what they have done is worse than us? That is not fair." If I were a decision-maker in the Government, I would become exasperated when I found myself being criticized. I would say, "I had to make so many important decisions day in, day out. When I look back, they were all right decisions. It is only in one or two of them that I have not done so well and they are criticizing me for them and holding me accountable. That is not fair."

Madam Deputy, I am just a member of the Select Committee. I feel that I have too many inadequacies and time has barred me from digging deeper in our studies and meeting more people. Besides, there is nothing I can do to make amends for the physical and mental pains which the sick and the dead have suffered or caused to their families. Such wounds can never be healed. All I can do is to give them my sympathies and best wishes.

Madam Deputy, when we were hearing the testimonies, there was an occasion when we learned that at one time Dr YEOH did not like the word SARS, for it looked very much like the abbreviation of the Special Administrative Region of Hong Kong. So he took the letter "A" from it and the word became SRS. At that time I asked why he had done that. Can we not make ourselves proud of SARS? What should be the spirit behind SARS? Some of our colleagues have talked about it already. It is the spirit of unity of the people of Hong Kong, the entire community, in fighting this battle which is so tall. Our health care workers have played their part — they gave their lives and risked great dangers. They fought for us to the very end, until SARS was overcome. That is the SARS spirit which we are so proud of and there is no reason why that letter "A" should be taken away.

Madam Deputy, I am a man of advanced years. All along I have never given much care and attention to washing of my hands, but now things are different. Whenever I wash my hands, I would remember what Mrs TUNG has said, and I would take up a bar of soap and rub my hands for at least 10 seconds. And whenever I wash my hands, these 100 days would come to my mind. They are the toughest moments that we have gone through, but they are also the proudest in our lives. Thank you.

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

**DR LO WING-LOK** (in Cantonese): Madam Deputy, first of all, I would like to present the fruits of my labour over the past eight months or so to the people of Hong Kong. The territory has suffered from very great damages ever since the outbreak of SARS. The people of Hong Kong managed to pass these most painful and unforgettable 100 days as they gnashed their teeth and united as one. The Legislative Council was tasked with conducting an inquiry and writing this Report and one of the reasons it has done these is to enable the people of Hong Kong to learn the lessons that they should get after paying a hefty price so that when a similar situation occurs again, things can be done better.

Many people may ask why there is a need to conduct an inquiry for the third time and write a report for the third time as well. What is the greatest difference between this Report and the previous two reports? In my opinion, this is the most comprehensive and accurate report among the three. As some Members have said already, our schedules were very tight, but in terms of the process of verifying the facts and admitting evidence, I believe the Report that we have compiled is the most comprehensive and accurate of all. Before this inquiry began, there were many criticisms that it would be very political and there were even remarks that those who took part in it were merely seeking to gain political grounds. After the release of the Report, it has been proved that such criticisms and speculations were totally unfounded. The Report fails to meet the expectations of some people as no stern words are used to criticize officials in dereliction of their duties. It has not proposed any punishment either. It has adopted a highly transparent approach in the admission of evidence and the verification of facts by holding public hearings. A most objective method was used in making the analyses before any criticism was made on the performance of the officials. So at the initial stage when this Report was released, it was criticized as being too mild, but when after Dr YEOH and Dr LEONG had resigned, some people made the criticism that the Report was too harsh. Some of the persons who were criticized and their colleagues were very agitated and very angry. As a representative of the medical sector, why did I have to take part in a job that made some of my voters unhappy? There is one and only one answer to this question, and that is, to find out the truth. To find out the truth, efforts must be made consciously to make the hearings objective and fair. To achieve this aim, the criticisms made by the Select Committee must be founded on objective evidence instead of the feelings or preconceived views of its members. An extremely rigorous standard is applied before any evidence is admitted. If in doubt, the benefit of doubt will go to the person who may be criticized.



In addition, for criticisms that are permitted as they have solid evidence, if the matters concerned are trivial, these criticisms are struck out in the Report. I believe this approach taken by the Select Committee may explain why some people think that this Report is too mild. As a member of the Select Committee, I have kept a close watch of the entire process and my colleagues and I have done our best to ensure that the hearings and the writing of the Report will not be affected by any political considerations. The politicization has happened after the release of the Report. After the release of the Report, the widespread media coverage of the criticisms made by the Report of the officials and the top management of the HA, plus the high-profile actions of the SARS victims and the families of those died of SARS who came out and demanded the resignation of the officials concerned, all these made the three largest political parties in the Council agree to revise the wording of this motion and to urge Secretary Dr YEOH to resign. In the face of such insurmountable pressure, Dr YEOH and Dr LEONG had no other choice but to resign.

The resignation of these two top executives has served to instil a sense of uneasiness among the health care workers. One reason is that there may be a feeling that the public will think that political accountability is applicable to front-line professionals as well. When treating patients, doctors should be free from any kind of political accountability. For if the effects of the treatment turn out to be unsatisfactory and if the patient can exert political pressure on the doctor and ask him to resign, then how could a doctor carry out his work? The treating of patients is a professional responsibility for doctors, not their political responsibility. There are many well-established mechanisms to deal with matters related to professional responsibilities and there is no need to resort to public opinion or slogan chanting. I wish to say to the public that doctors are very worried about this and if this situation is allowed to deteriorate, the quality of health care services is bound to suffer. To put the mind of front-line workers at ease, the HA must make wise use of the accountability mechanisms that are already in place to reduce the use of political pressure by the public to direct their grievances to the institutions so that some officers who should be free from political accountability are not subject to political pressure or even forced to resign.

That the public has acted in this way cannot be said to be too harsh, and this cannot be said to be completely unjustified. The reason is that the Board of the HA did not want to use its statutory powers to look into the performance of its executives. After the Report was issued, the HA denied categorically that no

failings were committed by any member of the HA or its management in dealing with the SARS outbreak. This would only serve to intensify public discontent against the HA and add fuel to their grievances. Hence the political pressure experienced by the HA, including its front-line staff, is increased and as a result, everyone in the HA is feeling uneasy.

I implore the HA to deal with the criticisms made by the Select Committee wisely. It should divert public discontent and reduce the pressure confronting its staff. In a bid to ensure the quality of our health care services, the HA must take appropriate actions to stabilize the morale of its staff. It should accept all reasonable and justified criticisms humbly and sincerely. Only by so doing can it obtain an understanding from the community and help make progress in society, in the quality of medical services, the governance of the HA as well as that of the Government. But if reasonable and justified criticisms are ignored, and if defences are put up and backed up by lame and arbitrary excuses, while denigrating the criticisms made to it, the effects caused will be exactly the opposite. Grievances in society will intensify, adding to the political pressures experienced by medical institutions, and people working there will think that there will be drastic changes in the HA and they will never have any peace of mind. The HA should understand this simple fact. The HA management is formed by community leaders and they should know how to handle public feelings and pacify their employees. I hope they can take immediate actions instead of just putting up self-defence.

(THE PRESIDENT resumed the Chair)

Let me cite some criticisms we often hear about the Select Committee, for example, that it is guided by hindsight. Earlier on, many members of the Select Committee have explained the approach adopted by us to ensure that we would not be guided by hindsight. Actually, there are many principles and protocols on coping with infectious diseases or containing infection which are well-proven to be effective, and they were there before the SARS outbreak. For example, when the source of an unknown epidemic has appeared and when nothing is known about it and there is no way to control the risks which patients are exposed to, but a rash decision is nevertheless made to admit new patients, thereby exposing them to risks beyond control — when the Select Committee makes a criticism about this, it is not definitely guided by hindsight as it is the

most fundamental protocol in infection control that should be followed. This protocol has existed since the 1970s, the 1980s, the 1990s and 2000. Some people tried to denigrate the criticisms made by the Select Committee by saying that it had not hired independent experts to give advice to it. But it must be noted that when the Legislative Council handles different social issues or professional issues, all along it has adopted some prudent methods to pass judgement on some obvious facts, like the one which I have cited as an example. The conclusions so drawn with or without international and independent expert advice would be exactly the same. In some cases, the hiring of independent experts may lead to comments which are far harsher than the criticisms made by the Select Committee.

That is why, Madam President, this Select Committee has taken such a long time conducting inquiries and writing this Report. I hope the judgement to be passed by the community eventually on our piece of work is that it affirms what is right and what is wrong and that it is mildly phrased. I believe, at the end of the day, it will be the one report which best stands the tests. May I pay my tribute to all the health care workers in Hong Kong once again. The selfless sacrifice they have made in the SARS epidemic, their hard work and achievements will certainly be recognized by all the people of Hong Kong and I would think, by all the Members of this Council without any reservations. The stringent criticisms made in the Report on some persons are motivated more by love and concern than anything. Thank you, Madam President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Dr LAW Chi-kwong, you may now speak on the amendment moved by Dr YEUNG Sum.

**DR LAW CHI-KWONG** (in Cantonese): Madam President, I moved this motion in my capacity as Chairman of the former Select Committee. The Select Committee did not make any recommendation on disciplinary action. The condemnation of the former Director of Health, Dr Margaret CHAN, is clearly part of the recommended disciplinary action. Therefore, concerning this

amendment, I do not have any view in my aforementioned capacity. Thank you, Madam President.

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, I have listened very attentively to the views expressed by Members on the Report of the Legislative Council Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority (the Report).

The Government is grateful to members of the Select Committee for the strenuous efforts they made over the past eight months in conducting the investigation. The Government has fully co-operated with the Select Committee. Apart from the provision of detailed information on the handling of the SARS epidemic, a number of senior colleagues have testified in the public hearings held by the Select Committee. The Chief Executive has personally met with members of the Select Committee and provided information to assist them in their work.

Last year's SARS epidemic was a tiring experience for all Hong Kong people both physically and mentally, and has brought great agony to those who have lost their loved ones. To date, we are still immensely saddened by the fact that so many people unfortunately died during the SARS outbreak. We would like to, once again, express our deepest condolences to those who have lost their loved ones and those who have been traumatized both physically and mentally because of SARS.

Ms Emily LAU raised the point earlier that the Trust Fund for SARS (the Fund) might not be sufficient to meet the legitimate needs of the families of deceased SARS patients and recovered SARS patients. In applying to the Finance Committee for the establishment of the Fund, we pledged to Members that we would, if necessary, apply to the Legislative Council for additional funding. Therefore, I can assure Ms LAU that, in the months to come, there will still be sufficient fund to take care of the needs of the families of the deceased SARS patients and recovered SARS patients. The clearest evaluation is being conducted to enable us to make an immediate report on grants under the Fund to the Legislative Council as soon as its new term commences. If the Fund is anticipated to be insufficient, we will come to the Legislative Council for

supplementary provision to ensure the relevant persons can continue to receive assistance.

In the battle against the epidemic, we were faced with a new, unknown disease in full fury. All people taken part in the fight, whether they be public health, medical management or front-line staff from the public or private sectors, have done their utmost in rising to the challenge of battling the disease. As pointed out in the report published by the SARS Expert Committee appointed by the Chief Executive in October, after gaining a better understanding of the SARS epidemic in Hong Kong, the Committee was greatly impressed by the extraordinary service, hard work, attention to duty and acceptance of responsibility shown by numerous people during the outbreak. As remarked by the international experts, "we also wish to express our deep respect for the health care workers of Hong Kong. Their selfless dedication, professionalism and sacrifice were an example to others".

A very detailed, professional review of the work of the Government and the Hospital Authority (HA) in handling and controlling the SARS epidemic has been completed by the Expert Committee appointed by the Chief Executive. As pointed out by 11 internationally renowned medical experts, overall, the epidemic in Hong Kong was handled well, although there were clearly significant shortcomings of system performance during the early days of the epidemic when little was known about the disease or its cause. In retrospect, there is much in the health care system that needs to be reviewed and improved urgently. The Expert Committee has not found any individual deemed to be culpable of negligence, lack of diligence or maladministration in handling the SARS epidemic.

The report compiled by the Legislative Council Select Committee is a very detailed one. Although the Government does not entirely agree with the analysis made by the Select Committee of individual incidents cited in the Report and its evaluation of the performance and responsibility of government officials, the facts and evidence listed in the Report have shown that our colleagues in the HA and the Department of Health (DH) have indeed done their level best with full dedication. Even if there are deficiencies, there is no evidence of negligence, lack of diligence or integrity problems on the part of any public officer in fighting this new, unknown epidemic. The Government is convinced that, like other public officers participating in the fight against SARS, the former Director of Health, Dr Margaret CHAN, did her level best with full dedication

during the fight against the epidemic in very difficult circumstances. The criticisms levelled by the Report against Dr CHAN have revolved around her judgement in respect of the development of the epidemic. The Government is of the view that such criticisms do not justify the moving of an amendment by Dr YEUNG Sum demanding for condemnation of Dr CHAN. Having served Hong Kong for 30 years, Dr CHAN has done her level best and made tremendous contribution to improving public hygiene in the territory. Given her resignation from her government post last year, the Government is actually incapable of taking any appropriate follow-up action against Dr CHAN.

It has been more than a year since the SARS epidemic was brought under control. So far, three reports have been published to review the work related to the handling and control of the SARS epidemic from different angles. The Government has all along adopted the attitude of learning lessons, conducting review humbly and taking precautions in advance for the purpose of properly carrying out its work of preventing and controlling infectious diseases.

At the beginning of the epidemic, as the causes of the epidemic were unknown and the epidemic was spreading rapidly, Secretary Dr YEOH, empowered by the Chief Executive, involved himself personally in the actual operation of the HA and the DH in order to expeditiously overcome the shortcomings of the health care system by such means as setting up a real-time system to facilitate information exchange between the DH and the HA, strengthening the ability of the DH in tracking contacts and carrying out environmental surveys, and improving the system and mechanism of hospitals, and so on.

During the past year, a lot of follow-up work has been carried out by Secretary Dr YEOH and the relevant departments to implement the recommendations of the Expert Committee to improve Hong Kong's health care system and its ability to protect against infectious diseases, including setting up a new organ, the Centre for Health Protection (CHP), tasked with the integration of various parties for more vigorous prevention and control of infectious diseases. Other measures include strengthening the infectious disease notification system between Hong Kong and Guangdong Province as well as other parts of the Mainland, signing an agreement with the Health Protection Agency in the United Kingdom on forming a strategic alliance; strengthening the information system on infectious diseases to enable the CHP, the HA and other health care service providers to share surveillance data on infectious diseases in a

more systematic manner; mapping out an overall mechanism for contingency; providing additional isolation beds and facilities for hospitals; obtaining funding from the Finance Committee of the Legislative Council to enable a new infectious disease centre to be built at Princess Margaret Hospital, and so on.

Corresponding measures have been adopted by the HA to upgrade its ability in preventing and controlling infectious diseases. These measures include setting up an emergency executive committee under the Hospital Authority Board to be responsible for monitoring emergencies of public hospitals and managing crises; formulating contingency plans for the Head Office and hospital clusters of the HA and at different levels of hospitals to handle the outbreak of infectious diseases and conducting regular exercises; setting up a training centre for control of infectious diseases and beefing up in-hospital personnel for infection control; mapping out strategies to enhance staff communication and appoint personnel in various hospital clusters and hospitals to facilitate communication and co-ordination; strengthening its communication with public hygiene personnel through collaboration with the CHP, and so on.

SARS was an unknown, ferocious and invisible virus to us when Hong Kong was hit by it last year. Unfortunately, Hong Kong was the first to meet its attack and severe impact. It was eventually brought under control thanks to Secretary Dr YEOH, Dr CHAN, Dr LEONG and all health care workers for their dedication, courage, perseverance and professional expertise. Their efforts have not only been affirmed, but also won high acclaims from international medical experts.

Actually, compared with a year ago, Hong Kong is now better and more rigourously prepared to confront a possible invasion of infectious diseases. Despite a weakening of the immediate threat posed by infectious diseases, the Government will still maintain its alertness at all times and endeavour to combat major infectious diseases that might possibly arise in future.

Madam President, thanks to the personal involvement of Secretary Dr YEOH in promoting improvement to Hong Kong's health care system, the entire system is supported by a more solid foundation after the SARS outbreak to ensure more effective and smoother operation. The Secretary deeply shares the grief of members of the public affected by SARS. Facing criticisms from all sides in a composed manner, he fully appreciates the fact that the social

sentiments triggered by SARS can easily bring political challenges to and doubts about the accountability system.

His decision to step down from his post has, apart from demonstrating his bold acceptance of responsibility, shown that he would rather step down to calm down the community as soon as possible in order to prevent a political turmoil from diverting the community from focusing its attention on strengthening its defence against epidemic. In the same spirit, Dr LEONG Che-hong has also offered to resign from his post as Chairman of the HA.

I notice that public opinions have responded differently to the resignation of Secretary Dr YEOH. While some considered his move appropriate, some pointed out that it was unnecessary for the Secretary to quit. In any case, there has been more in-depth consideration and discussion of the so-called "accountability culture", as put by some critics, as a result of the incident. It is the hope of the Government to, through the implementation of the accountability system, move in a more democratic and open direction by keeping in tune with the entire political system. The Government should be fully responsible to the public and explain its administration to them at any time. It is also the hope of the Government that Members and various sectors of the community can look at the performance of officials with a rational and open attitude and make objective, fair judgements with consideration to the impact of these judgements on the public service organizations served by these officials. Furthermore, the transparency of the entire administration process and whether the relevant officials have acted with diligence merit consideration too.

The Government is prepared to accept criticisms. While we sincerely hope to foster a partnership relationship with Members and various sectors of the community, we also hope Members can look at any issue in a constructive, interactive and proactive manner rather than go to extremes in everything, and make concerted efforts in the overall interest of the community.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Dr YEUNG Sum to Dr LAW Chi-kwong's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)



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

(No hands raised)

Ms Emily LAU rose to claim a division.

**PRESIDENT** (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes.

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

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Kenneth TING, Mr James TIEN, Dr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Ms Miriam LAU, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Michael MAK, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the amendment.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr TANG Siu-tong, Mr Frederick FUNG, Dr David CHU, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted for the amendment.

Mr NG Leung-sing abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present and 17 were in favour of the amendment; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 18 were present, 16 were in favour of the amendment and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was carried.

**PRESIDENT** (in Cantonese): I now call upon Dr LAW Chi-kwong to reply.

**DR LAW CHI-KWONG** (in Cantonese): Madam President, I intend to make my speech as brief as possible and it will take less than 15 minutes. Several Members have raised some issues and I wish to respond to them now.

Ms Emily LAU and Mr Frederick FUNG both asked why the Select Committee had not made any recommendation on any so-called disciplinary action at the end of the Report. The Select Committee believes that disciplinary action involves making value judgements and very often, they fall into the realm of political judgements. This is precisely the case in respect of the condemnation mentioned in the amendment carried just now and this is already a kind of disciplinary action. Whether disciplinary action should be taken against a person involves the question of value judgement. Why did the Select Committee not consider making any recommendation in this area? This is because in the early stages, and as early as 29 October last year, when I spoke on behalf of the Subcommittee on the occasion when the Legislative Council passed a motion, I raised a core issue, namely, if it was necessary to make political judgement, then it may not be necessary for a select committee to conduct any investigation at all. This is because, as far as making political judgements is concerned, a lot of people, including I myself in my capacity as the spokesman on health care policies of the Democratic Party, had already given our views on political judgement last year. Meanwhile, this is already the third investigation report on this incident and many comments voicing the belief that we would

make this a highly political affair had already been made in society then. However, it is by invoking the power conferred on us by the Legislative Council (Powers and Privileges) Ordinance that the Select Committee summoned the witnesses to this Council to give evidence. Therefore, when exercising this privilege, we hoped that a balance could be struck in a responsible manner, in the hope that the facts can be uncovered by exercising this privilege as far as possible and, using the facts as the point of departure, comment on the issues, eliminating all political considerations in doing so. From day one until the very end, we eliminated any political consideration from the work of the Select Committee and from our minds. Therefore, from the beginning to the end, as a fundamental principle of the Select Committee, we eschewed making any political judgement. We understand that other previous Select Committees have also met similar comments. However, when carrying out its work and in the face of doubts that we may become politicized, I think we must avoid becoming political if we were to ensure impartiality and fairness.

As a committee of the Legislative Council, we have to submit our report to the Legislative Council. Obviously, all of us know that the Legislative Council is a political arena and it is perhaps more appropriate for the whole Council to determine what disciplinary action should be taken, and this is what today's amendment is about. Therefore, I have stressed right from the beginning that future Select Committees should strive in this direction in conducting investigations and carrying out analysis and should make comments from an impartial and fair point of view, eliminating all political considerations in the process. Although I am subjected to criticisms even now, I will still make such a recommendation to the Legislative Council.

Of course, in the report concerning the Harbour Fest on the last occasion, we recommended that the Government take disciplinary action against Mike ROWSE. However, the report did not specify what or how disciplinary action should be taken. This is because I believe the Civil Service already has a yardstick of its own to deal fairly with the question of what disciplinary action should be taken against civil servants who have made mistakes. In fact, I believe such disciplinary actions should be decided by the authorities according to the civil service system. When responding to the mass media, I also said that the only thing we had not done was to state the obvious by requesting the Government to take disciplinary actions. If any official had made mistakes, obviously, appropriate disciplinary action should be taken.

Therefore, on the comments made by the Chief Secretary for Administration on the performance of Dr CHAN, I have to respond to two points, even though the amendment has already been passed and the Council has made its comments. I only wish to raise two points. On 10 February, when Hong Kong became aware of the outbreak on the Mainland, Prof YUEN Kwok-yung of the University of Hong Kong immediately sent two colleagues to the Mainland to collect samples for research purpose, but Dr CHAN, as the Director of Health in Hong Kong, believed that it would not be possible to obtain any information even if people were sent to the Mainland. We only have to compare the judgements of Dr CHAN and Prof YUEN to note a world of difference. If it is possible for an insignificant professor — this was how he described himself — to send someone there to obtain information, then why would it have been impossible for our Director to obtain any information if someone had been sent there? However, I must stress that we did not comment on this in the Report. We stated this fact but did not make any comment because even though this judgement made by Dr CHAN may be wrong, we had no evidence to prove that she was wrong because she did not send anyone there at all. We had no way of knowing if it would have been possible to obtain the information if she had indeed sent someone there. Therefore, we did not comment on this judgement based on "possibility". However, I think the Chief Secretary for Administration can consider if such a course of action was correct.

Secondly, on 19 March, after the Department of Health had concluded its investigation on Hotel M, it knew for sure that the disease had spread from Hong Kong to Vietnam, Singapore and Canada. It was obvious that we had to exercise our power in respect of immigration control. However, it was not until 24 March and 25 March, when some patients were found to have returned from the Mainland that it occurred to her there were problems in immigration control. When the first index patient sought consultation at Kwong Wah Hospital at the end of February, it was already very clear that the case was an imported one. How could she be unaware of the problems in immigration control and the need for legal backing until 25 or 26 of March? Why was it necessary to wait until such a late stage to amend the legislation, and even so much later than the World Health Organization? If the Chief Secretary for Administration does not even consider this a serious mistake, then I am simply lost for words.

Although Mr LEUNG Yiu-chung is not in his seat now, he asked us earlier why we had not criticized the Chief Executive. I can only reply briefly. Concerning the arrangement to hold a closed-door meeting with the Chief

Executive in Government House, at that time most members agreed to it and the Chief Executive also attended the meeting. Since this arrangement was agreed upon by everyone, I do not think there is any reason to criticize an arrangement that one agreed to. I can only respond like this.

In addition, I have to respond to Mr NG Leung-sing's remark that the Select Committee's report has not added anything much in the way of facts. I hope Mr NG can read through this Report of several hundred pages and what is more, I hope he can read through the report of the SARS Expert Committee established by the Government and the report on the internal review conducted by the HA before making this conclusion, since the criticism that this Report has not added much in the way of facts is extremely unfair to the 11 members and numerous staff members. Throughout the whole inquiry, personally I felt that there were many eye-openers in many aspects and I realized that there were still many things that we did not know even though we had read the two reports. These are my personal views.

I thank Members for expressing their views on this motion. However, I believe, whatever the criticisms, what we have heard most frequently today were not words of criticism but words of praise. I hope all of us will bear in mind the most important points. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Dr LAW Chi-kwong, as amended by Dr YEUNG Sum, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Dr LO Wing-lok rose to claim a division.

**PRESIDENT** (in Cantonese): Dr LO Wing-lok has claimed a division. The division bell will ring for three minutes.

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

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Kenneth TING, Mr James TIEN, Dr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr Michael MAK, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Frederick FUNG, Dr David CHU and Mr Ambrose LAU voted for the motion.

Mr NG Leung-sing abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present and 20 were in favour of the motion as amended; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 17 were present, 15 were in favour of the motion as amended and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion as amended was carried.

**PRESIDENT** (in Cantonese): For the second to fourth motions, I have accepted the recommendation of the House Committee. Members are well aware of the limits on speaking time. It is now 8.43 pm. I am of the view that we can proceed to the second motion, and I intend to suspend today's meeting at about ten o'clock.

We will now deal with the second motion: Facilitating communication between the Central Government and the pro-democracy camp in Hong Kong.

### **FACILITATING COMMUNICATION BETWEEN THE CENTRAL GOVERNMENT AND THE PRO-DEMOCRACY CAMP IN HONG KONG**

**MR JAMES TIEN** (in Cantonese): Madam President, we have debated several hours on the Report of the Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome (SARS). The atmosphere has been somewhat oppressing, so hopefully the motion I am going to move can help brighten things up what.

Madam President, the motion I am going to move is "facilitating communication between the Central Government and the pro-democracy camp in Hong Kong". On the face of it, the scope of this subject is very narrow; however, I believe that if this motion can be put into practice, the governance of Hong Kong as a whole will witness significant improvement. The stability and prosperity of a society is to a great extent founded on a stable and harmonious social environment.

Madam President, many Members in this Chamber began to work in the former Legislative Council in the '80s. During that era, many Members were appointed Members when they joined the Council and this was also the case with me. At that time, as a matter of fact, little importance was attached to listening to public opinion. Down the years, we have made gradual and orderly progress from holding functional constituency elections to holding general and popular elections. In this connection, we feel that the greatest difference lies in the fact that after the introduction of elections, the Hong Kong Government, be it that under the former British Government or the present Central Government, has attached greater importance to listening to public opinions. Furthermore, for the process of communication to be successful, it is a must for the parties

concerned to be on talking terms and maintain a relatively harmonious relationship.

Several years ago, in the economic realm, the financial turmoil erupted and last year, the SARS incident occurred. These issues were in fact hot potatoes. However, in spite of them, the Government and Members of all factions feel that a good work relationship and foundation should be established. Recently, our attention has been drawn to glitches that have all along existed in the relationship between the Central Government and people of the democratic camp in the past several years. We are therefore very pleased to see the recent improvements in the political sentiment. From Mr LAU Chin-shek's appeal for reconciliation to the motion moved by Mr Martin LEE on 23 June calling on Hong Kong people to join hands with the Central Authorities and co-operate, through to the positive responses from the leaders of the Central Authorities, these developments have served to defuse to a considerable extent the tense atmosphere created by the division and confrontation. The Liberal Party has always stressed rationality, pragmatism, enhancement of communication and the quest for consensus in the discussions on constitutional development. Since various sides are all talking about communication now, we in the Liberal Party will be happy to contribute to this cause.

Madam President, talking about positive communication, I think there are three things that can be done in the short term. Firstly, it is necessary to support stability and prosperity in society. Persistent political tension will definitely have an adverse effect on economic development, and the confidence of local and overseas investors will be eroded in the long run. For example, one month ago, the rating given by Standard & Poor's on the prospect of Hong Kong Dollar was negative, the reason being that should the democratic camp win more than half the seats in the next term of the Legislative Council, it will become more difficult for the Government to eliminate the fiscal deficit. However, with the political atmosphere becoming more peaceable, Standard & Poor's has immediately raised the long-term rating of Hong Kong Dollar to stable. I think this episode is an excellent illustration.

Secondly, I think that it is very much a necessity to seek a consensus on constitutional reform. Although the Standing Committee of the National People's Congress (NPCSC) has decided not to introduce universal suffrage for the dual elections in 2007 and 2008, there is still a lot of room for discussion concerning the arrangements for future constitutional development in Hong Kong,



for example, on how the electorate base can be enlarged, how many seats should be added in the legislature, the agenda of universal suffrage in the future, and so on. I also very much agree that if we remain at loggerheads with one another, at the end of the day, this would only slow down the progress of constitutional development in Hong Kong and make it stall. We will get nowhere and achieve nothing. Therefore, we think that as far as constitutional development is concerned, if it has been said we can only do so much in 2007 and 08, is it possible to strive to do better on the nine points of concern raised by the Government and the business sector, so that universal suffrage can be introduced in 2012 as soon as possible? This is the expectation of the Liberal Party.

Another point that I wish to raise is that recently, the Liberal Party conducted an opinion poll from 2 to 4 July by randomly polling about 1 000 members of the public. It was found that 60% of them considered the division and confrontation in Hong Kong at present to be very serious and only 14% considered the division in Hong Kong not serious. The results of the survey also indicate that 63% of these members of the public believed that the request of the pan-democracy camp for communication and reconciliation with the Chinese side would be conducive to attenuating the division and only 20% considered that it would not be. Therefore, it is clear from the opinion poll that many members of the public hope that there can be improvement in the relationship between the Central Authorities and the pro-democracy camp.

Madam President, under these circumstances, what does the Liberal think can be done? Two weeks ago, we sought the help of a member of the Executive Committee of the Liberal Party, who is also a member of the National Committee of the Chinese People's Political Consultative Conference, to go to Beijing and meet with officials of the Hong Kong and Macao Affairs Office and the United Front Work Department to convey the message that all sectors in Hong Kong are appealing for communication. The response we got was most positive, therefore we proposed this motion. In fact, there are two parts in today's motion: first, to assist the Central Authorities and the pro-democracy camp to communicate; second, to issue Home Visit Permits to people in the pro-democracy camp where necessary.

Madam President, I wish to talk about the remarks made by the Central Authorities of late. Recently, the Liaison Office of the Central People's Government in the SAR ("the Liaison Office") made a statement through the Xinhua News Agency, "We suggest that communication be enhanced, that we sit

down and talk face to face and this is more conducive to harmony and stability. To communicate rationally, to seek consensus and create a peaceable environment is the common wish of the Hong Kong public and this is also our wish." The Liaison Office also stressed that the major common ground of "one country" should be sought and the differences between the "two systems" should be allowed to exist. The Vice-President of State, Mr ZENG Qinghong, also said that more communication can reduce misunderstanding. As long as all of us support the principle of "one country, two systems" and stability and prosperity in Hong Kong, he would be happy to communicate with people in any sector and any stratum. The Liaison Office also said that it was a positive move that the motion moved by Mr Martin LEE had passed without any hiccup and stressed that the doorway of communication between the Central Authorities and people who uphold "one country, two systems" and the Basic Law, including those holding different views, remains open.

The Liberal Party believes that the swift, positive and friendly response of the Central Authorities to the appeals of the pro-democracy camp demonstrates a high degree of sincerity on the part of the Central Authorities. Since both sides are willing to communicate, the SAR Government, being a natural bridge between Hong Kong people and the Central Authorities, should provide more proactive assistance and serve as a go-between to promote communication between both sides.

We suggest that meetings between more moderate members of the pro-democracy camp and officials from the Central Authorities, for example, officials of the Hong Kong and Macao Affairs Office, can first be arranged. I cannot emphasize too much that we are not trying to sow division among the ranks of the pro-democracy camp. We only feel that it will be better to start with the easier part than with the difficult part or than to do everything in one stroke. Regarding the manner of communication, we think it is feasible to adopt either a closed-door or open approach. However, we think that it is not desirable for both sides to lay down any precondition because if everyone does so, we are worried that the first contact will fall through.

Madam President, concerning the issue of Home Visit Permits, we feel that there has to be a process in communication. The first step is to enable people in the pro-democracy camp who cannot visit the country at present to do so. Therefore, we think that they should be given their permits as soon as possible. The survey conducted by the Liberal Party, which I have mentioned

earlier on, also touched on this matter. Among the general public, 40% of the respondents also considered that the pan-democracy camp does not have an adequate understanding of the conditions in China nowadays and many of them believed it is necessary for them to gain an adequate understanding of the general state of our country. We also found that one sixth of the members of the public polled considered that if the Central Authorities can allow people of the pan-democracy camp to visit the country, that is, to get their Home Visit Permits, this will be conducive to communication between the two sides.

We also understand that it has been many years since people of the pro-democracy camp last visited the country (they could do so in the past). In the past few years, our country has undergone the most rapid development in modern history. We think that if we have the opportunity to go back and witness the developments in the economy, infrastructure and politics of China, we will better appreciate why China commands such a high evaluation in the international community nowadays. There are reasons for this.

We also noticed that after meeting with the Chief Executive earlier on, the pro-democracy camp also praised the Chief Executive for his much more proactive attitude with regard to their request to get back their Home Visit Permits. From this, it can be seen that both sides can find further co-operation. Of course, in terms of strengthening the governance and administration of Hong Kong, we have always been of the view that after the Central Authorities and the pro-democracy camp have established mutual trust and the Central Authorities have given recognition to the pro-democracy camp, and in addition, after the Legislative Council elections and after the pro-democracy camp has gained approval and established communication with the Central Authorities, the Chief Executive can consider inviting them to join the Executive Council. Should this be realized, we think that the administration of Hong Kong will see real improvement.

Madam President, finally, I wish to talk about my motion and Mr SZETO Wah's amendment. First, why does my motion talk about "facilitating" better communication between the Central Government and the pro-democracy camp in Hong Kong, instead of "striving for"? In fact, we think that if the words "strive for" are used, it would appear as though the Central Authorities and the pro-democracy camp were not inclined to talk to one another and that is why it would be necessary to "strive" to make them talk. However, we believe the Central Authorities and Honourable colleagues in the pro-democracy camp are

both apparently very much inclined to talk to one another. This is why we think it would only be necessary to "facilitate" them a little, that is, the SAR Government should facilitate this a little and things should then fall in place. That is why the words "strive for" were not used. Of course, Mr SZETO Wah thinks that the words "strive for" are better and that is why he has used these two words instead. I do not have any view on this and I support using these two words to amend the motion.

Secondly, concerning the part in which I mention assisting the democrats, where necessary, in obtaining Home Visit Permit for Hong Kong and Macao Residents, Mr SZETO Wah has deleted the words "where necessary". In fact, as far as I understand it, of the nearly 7 million people in Hong Kong, only a small minority do not have Home Visit Permits. I think they are only in the order of a few dozen or slightly more than a hundred people (this is my own conjecture). Many people in the pro-democracy camp in fact have Home Visit Permits, therefore, what I propose is "to assist the democrats, where necessary", since it is not necessary for us to assist those who have already obtained Home Visit Permits. If Mr SZETO Wah wants to delete "where necessary" so that "all democrats" are involved, I do not have any particular view on this. Regarding the last sentence in the amendment, namely, "in order to safeguard the right of Chinese nationals in Hong Kong to return to their home places", the word "in" has been added. I wish to wait until Mr SZETO Wah has moved his amendment and expressed his views, thus enabling us to understand more before I make further comments.

Madam President, I beg to move my motion. Thank you.

**Mr James TIEN moved the following motion: (Translation)**

"That, in order to maintain the long-term prosperity and stability of Hong Kong, this Council urges the HKSAR Government to actively facilitate better communication between the Central Government and the pro-democracy camp in Hong Kong with a view to eliminating the division and polarization in the community, and to assist the democrats, where necessary, in obtaining Home Visit Permit for Hong Kong and Macao Residents so that they can go to the Mainland to find out for themselves the economic, social and political developments etc. of our country over the years."

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

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

I now call upon Mr SZETO Wah to speak and move his amendment.

**MR SZETO WAH** (in Cantonese): Madam President, my amendment to Mr James TIEN's motion consisted of three points originally.

First, regarding the phrase "to actively facilitate better communication between the Central Government and the pro-democracy camp in Hong Kong", I proposed that "facilitate" be amended to "strive for", and "the pro-democracy camp in Hong Kong" be amended to "people of various social strata in Hong Kong". However, the President only permitted the substitution of "facilitate" by "strive for", but not the substitution of "the pro-democracy camp" by "people of various social strata".

Second, regarding the phrase "to assist the democrats, where necessary, in obtaining Home Visit Permit for Hong Kong and Macao Residents", my proposal of substituting "democrats" with "Hong Kong citizens" was not permitted by the President.

Third, I also proposed to add after the above phrase "to safeguard the right of Chinese nationals in Hong Kong to return to their home places", and this amendment has been permitted by the President.

I wonder if it is because I learned of the President's ruling only through another person's account that I do not quite understand it and yet, I have accepted it still. That is how my amendment has developed to the current version as now printed on the Agenda.

Yesterday, Mr James TIEN asked me whether "Chinese nationals in Hong Kong" included Chinese nationals who are not Hong Kong citizens but only stay in Hong Kong at the time, such as people engaged in the pro-democracy

movement who had lived overseas but are now in Hong Kong. I said that they were not included, because the Government of the Hong Kong Special Administrative Region (SAR) has no duty to do anything for them. Then he said that in that case, the Liberal Party would support my amendment.

Under Article 43 of the Basic Law, the head of the SAR shall represent the SAR. Since he represents the SAR, it is his unshirkable duty to enhance communication between people of various social strata in Hong Kong and the Central Government. Therefore, communication should not be confined to the "pro-democracy camp". Is it that there is entirely no problem in the Central Government's communication with people of various social strata in Hong Kong, and that there is problem only in its communication with the pro-democracy camp? I do not think so. Mr James TIEN may think that the democrats represent people of various social strata in Hong Kong. But the democrats can indeed reflect the opinions of a majority of Hong Kong people and communicate with them. They can also hear the views of a majority of Hong Kong people. So, I do not mind not being able to propose an amendment in this regard.

As regards assisting only the democrats in obtaining Home Visit Permit, I proposed an amendment to this point because I was not sure if there are Chinese nationals in Hong Kong other than the democrats who also cannot obtain the Home Visit Permit. So, again, I do not mind not being able to propose an amendment in this connection.

I am very glad that the President has accepted that it is "a right of Chinese nationals" to obtain the Home Visit Permit.

Recently, news about the Central Government issuing of Home Visit Permit to the democrats has kept coming out one after another and today, I learn that John SHUM has obtained a Home Visit Permit but on a one-off basis, similar to the case of "Long Hair". I was asked by reporters how I would respond to this. I have a number of views. First, this is neither a grace nor a concession, and it is not a condition for communication. Rather, it is an inalienable right of Chinese nationals, and it has nothing to do with communication.

Second, now that the Permit is issued to some people, but not to others. Under such circumstance, should they ask for the Home Visit Permit? This is basically an inalienable right. Why should they decline it? However, we still

have to continuously strive for it for those people who are not issued with the Home Visit Permit.

Third, will they go to the Mainland after they have obtained the Home Visit Permit? It depends on the situation of different people. They may not necessarily have the time to make an immediate visit. Since the Home Visit Permit is valid not only for a certain period of time, it does not matter whether or not they will visit the Mainland immediately.

Fourth, some Chinese officials have said recently that the door to communication is always open. While it is said that the door is open, one can enter only with a ticket. If one does not even have a ticket, that the door is open carries no meaning at all.

Fifth, the Chief Executive, Mr TUNG, said that it took more than one cold day to freeze three feet of ice. The day when the mass rally took place was the hottest 1 July in the records of the Hong Kong Observatory. Under such a high temperature, I think the "three feet of ice" should be going to melt sooner or later.

With these remarks, Madam President, I beg to move.

**Mr SZETO Wah moved the following amendment: (Translation)**

"To delete "facilitate" after "the HKSAR Government to actively" and substitute with "strive for"; to delete ", where necessary," after "to assist the democrats"; and to add "in order to safeguard the right of Chinese nationals in Hong Kong to return to their home places," after "Hong Kong and Macao Residents"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr SZETO Wah to Mr James TIEN's motion be passed.

**MR IP KWOK-HIM** (in Cantonese): Madam President, communication is always the one and only way to alleviate serious division and polarization in society and to maintain and facilitate the stability and prosperity of Hong Kong.

The Democratic Alliance for Betterment of Hong Kong (DAB) all along supports communication between the Central Government and people from all sectors of the community, including members of the opposition camp. It is worth mentioning that owing to historical factors, there are inherent differences between Hong Kong and the Mainland in respect of law, culture and institution. Without mutual communication and exchanges, the gap between Hong Kong and the Mainland can never be eliminated and this is not in keeping with the general trend that the people of the two places should reunite to become one family after Hong Kong's reunification with the Motherland. We firmly believe that as long as there are good communication and exchanges between the Central Government and all sectors of the community, it will definitely do good but no harm to the successful implementation of "one country, two systems" and to maintaining and facilitating the prosperity and stability of Hong Kong.

The DAB supports the motion proposed by Mr James TIEN today. For those in the opposition camp who have not been issued Home Visit Permits by the mainland authorities, the DAB considers that even though many of their opinions may not be agreeable to the Central Government, this should not be a reason for they not being allowed to go to the Mainland to visit their relatives and friends or for vacation and business, unless they are proven to have done something in contravention of the immigration laws in the Mainland or to have broken the laws in the Mainland.

In fact, to achieve effective communication, there must be an opportunity for both sides to come into contact with and understand each other in the first place. Some members of the opposition camp cannot visit the Mainland in person because their Home Visit Permits have been confiscated. They, therefore, lack perceptual knowledge of the national social and economic development as well as developments in respect of the people's livelihood, and this will, to some extent, affect their mutual understanding and knowledge. The DAB considers that if mutual trust can be established between the Central Government and some members of the opposition camp, it will certainly be conducive to Hong Kong. If the Government of the Hong Kong Special Administrative Region (SAR) can assist them in obtaining the Home Visit Permit, the DAB will throw weight behind this and we believe all Hong Kong citizens aspiring for stability and harmony will be happy to see this.

Certainly, there must be a basis for communication. The position and opinions of the two sides can be different, but as long as both sides are sincere,



we can certainly achieve harmony while preserving differences. The DAB sincerely hopes that members of the opposition camp who have always taken a hostile attitude towards the national affairs and who invariably oppose China in all circumstances can put forward their opinions in a more objective manner and demonstrate their sincerity more often. In that case, communication can naturally be fostered.

The DAB has, on various occasions, stated to participants from the Mainland, including those from the Central Government, that people who hold different political views but do not violate the laws of the Mainland should be given an opportunity to go to the Mainland, so that they can understand how their country and home places have been developing by leaps and bounds. This will be conducive to communication between the two sides and hence eliminate mutual hostility due to the lack of understanding of each other. Mr SZETO Wah proposes to amend Mr James TIEN's motion by, among other things, adding "in order to safeguard the right of Chinese nationals in Hong Kong to return to their home places". The DAB, however, holds that stipulations on who should be allowed entry to the Mainland should be made by the Mainland in accordance with the mainland laws. Under the Regulations of the People's Republic of China on Exit and Entry Frontier Inspection, the state security department of the State Council and state security organ are empowered to disallow certain people, including Chinese nationals, from entering and leaving the Mainland. So, under the laws of mainland China, not all Chinese nationals enjoy as a matter of course the right to enter the Mainland. Under the principle of "one country, two systems", even though we may not agree with the laws in the Mainland, it is still inappropriate for this Council to urge the SAR Government to challenge mainland laws. The DAB, therefore, will not support Mr SZETO Wah's amendment.

Madam President, I so submit.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam President, after the 1989 pro-democracy movement, I have not returned to my country for 15 years. As the saying goes, "nothing will be the same in 10 years' time", let alone 15 years, and all the rapid changes in China over the last 15 years.

Over the last 15 years, when I think of returning to my country, my mind has been in a state like stagnant water. I am fully aware that, as Mr James

TIEN has said, I am a political dissident in support of the pro-democracy movement in 1989 and democracy in Hong Kong. I cannot return to my country. Nor am I allowed to return to my country. I know deep in my heart that China still cannot accommodate dissidents, not to mention that I hold posts in the Hong Kong Professional Teachers' Union, the Democratic Party and the Hong Kong Alliance in Support of Patriotic Democratic Movements of China.

Over the years, many kindhearted friends of mine have said to me in good faith that I am still young and I have a bright future ahead, so why I could not just leave some sensitive organizations and strive to return to the country.

I thank them for their good intentions, but I will not do what they have suggested. I think we must have our own convictions, and convictions are the incentive for our love for the country. When I was young, I eagerly hoped that our country could become prosperous and strong, and I had also participated in student movements. But I gradually realize that while prosperity and strength are important, democracy and freedom are equally important. Prosperity is measured not only in a material sense, but also in terms of civic virtues. To become strong refers not only to guns and cannons, but also spirits. Democracy and freedom reflect prosperous and strong civic virtues and spirits, and serve as the foundation of a mentality prepared for reform and liberalization.

After my graduation from university, I saw scenes after scenes of the suppression of democracy in China: the suppression of WEI Jingshen; the suppression of *The Spring of Beijing*; the suppression of the 1986 student movement; the downfall of HU Yaobang. I found it more and more difficult to remain silent, and I felt more and more strongly that if such suppressions continued, the people's rage would erupt, because fire could never be wrapped up in paper.

Nevertheless, the fire eventually came, for there came the 1989 pro-democracy movement. Through the pro-democracy movement I had seen the hopes of the young people in China, and I had seen a young China making its people burn with enthusiasm. I had thought about the suppression of the 1989 pro-democracy movement, but I had never thought that it would be suppressed by tanks and machine guns. My heart was broken. In all sadness, I could only organize the Hong Kong Alliance in Support of Patriotic Democratic Movements of China, in order to do something within my ability for the pro-democracy movement in China. It has been 15 years now, and I have not given up. On

4 June every year, I will hold up a candle at the Victoria Park, waiting for democracy to dawn in China.

I have also participated in the pro-democracy movements in Hong Kong. When China sought to recover the sovereignty over Hong Kong, ZHAO Zhiyang had said that in the future, "Hong Kong would be ruled by Hong Kong people in a democratic manner". But after the 1989 pro-democracy movement, the hopes of democracy were dashed, and democracy became a symbol of dissidents and worse still, a label of being unpatriotic. This is so saddening. We are not allowed to support democracy in China. Nor are we allowed to strive for democracy in Hong Kong. Democracy is nowhere to be seen and beyond the reach of both China and Hong Kong. As a result, many friends who support the pro-democracy movement and who fight for democracy and I have been refused entry to our country for 15 years.

Over the last 15 years, I have harboured no regret. I hold the conviction that China will be on the path to democracy, and I profoundly believe that democracy will not come to a halt in China. When the reform and opening up of China encompass a globalized vision, when China has moved away from an impoverished society to become moderately well-off, when the Internet has penetrated every corner, when China can no longer keep its door shut, and when Chinese nationals have already set foot in all parts of the world, the ideas of human rights, rule of law, democracy and freedom will naturally be incubated in China. Democracy may not necessarily be achieved through a campaign. Its realization may be achieved through economic reforms and ideological progression. I know that this day will come, and I hope that this day will not be too far away. When this day comes, we will recover our right to return to our country, and the deadlock and iceberg that have existed for 15 years will eventually be broken.

Recently, communication has begun. But I am afraid that there is still a long way to go from communication to returning to the country. I hope that there are no strings attached to our return to the country, just as there are no strings attached to communication. I think returning to the country is the right of all Chinese people and should be unconditional. To become open and liberal, China must first be lenient towards dissidents by incorporating dissidents into its institutions with the ultimate objective of establishing a democratic system whereby dissenting views are considered no anomaly. This will be a very long process, a process which complements the liberalization of the economy of China.

All Chinese people should work hard for this day; the business community and the democrats should work hard for this day!

Madam President, I thank Mr James TIEN for his goodwill, and I also support the amendment of Mr SZETO Wah. Not to feel happy about gains and not to feel sad for any loss; that is a philosophical view of life. China has a very long history and so, what are these 15 years when compared to its long history? As long as there is tomorrow, there will be hope in China. I do not wish to change myself. Nor will I give up my convictions. To enable China to become prosperous and strong, we need to love our country and stand by convictions. To love our country does not mean a Home Visit Permit, and convictions are not a mere tool to achieve one's aim. Our love for the country keeps us going in our endeavours, and convictions make us persevere. To persevere with democracy and to build up China are what we should do for love of our country.

Madam President, I so submit.

**DR DAVID CHU** (in Cantonese): Madam President, as the saying goes, "harmony in a family leads to prosperity in all undertakings". The Mainland and Hong Kong are one family and should communicate with each other properly. For this reason, I very much support today's motion.

Communication is very important to eliminating misunderstandings and narrowing differences. I believe each and every colleague in this Chamber, and each and every Hong Kong resident will agree that in making decisions for Hong Kong, whether in the past, at present or in the future, the Central Authorities have only one objective in mind and that is, all decisions are made for the good of Hong Kong. The reason is simple, because Hong Kong is part of the country, and the success of Hong Kong will mean the success of the country. So, it is a fundamental state policy to maintain the prosperity and stability of Hong Kong. Since everything that the Central Authorities do is for the good of Hong Kong, why do many people (particularly the democrats) not understand the good intention and the painstaking efforts of the Central Authorities? This phenomenon reflects major problems with the communication between the Central Authorities and the pro-democracy camp. As channels for genuine bilateral communication are lacking, each side merely expresses their own views.

Madam President, as for the ways to facilitate communication between the Central Authorities and the democrats, I have three suggestions to make.

Firstly, mutual respect. Under the principle of "one country, two systems", Hong Kong and the Mainland must respect each other, understand each other and accommodate each other. We must understand and accept the differences between the Mainland and Hong Kong politically, socially and culturally. To achieve effective communication, we must understand the culture and thinking of the Mainland and refrain from doing anything that will hurt the feelings of the Mainland. If we adopt an accommodating and understanding attitude, we can seek common grounds while preserving differences and make co-operation possible.

Secondly, we have to establish multi-level channels for communication. Not only should political parties and organizations in Hong Kong communicate with various government departments in the Mainland, I think it is all the more necessary to communicate with the Communist Party of China. Moreover, regular exchanges between the Legislative Council of Hong Kong and the National People's Congress and the Central Government are also necessary, in order to enhance mutual understanding. Whether core members of the pro-democracy camp can obtain the Home Visit Permit is part and parcel of communication and co-operation. I am very concerned about this and prepared to contribute my efforts to bring this into fruition. If the democrats are issued Home Visit Permits, this could enhance their understanding of and sense of belonging for the country.

Thirdly, on the substance of communication, we must seek a common ground. I think the "core values of Hong Kong" recently discussed by various sectors of the community represent the spirit of Hong Kong. I believe the Central Government will support that these values be maintained in Hong Kong. So, these core values of Hong Kong can serve as a basis for communication between Hong Kong and the Mainland.

Madam President, with regard to facilitating communication between the democrats and the Mainland, I have made a lot of effort, for this is very important to the future of Hong Kong. I firmly believe that only when there is continued communication can mutual trust be established with the Central

Government and co-operation be made possible. I firmly believe that communication and co-operation between Hong Kong and the Mainland are the cornerstones of the success of Hong Kong.

With these remarks, I support the original motion

**DR YEUNG SUM** (in Cantonese): Madam President, recently, Vice-President ZENG Qinghong has said that between the Central Authorities and the democrats there is no question of "reconciliation", but "communication". We believe this remark will lay a good foundation for future communication between the Central Authorities and the democrats. As we mentioned in the debate on a motion proposed by Mr Martin LEE on co-operation with the Central Authorities, the Democratic Party would not seek communication purely for the sake of communication. Nor would it communicate for votes. We strive for communication with the objectives of enabling both sides to establish new consensus on the premise of "one country, two systems", making concerted efforts to find a way out for the problems now faced by the Central Authorities and Hong Kong in such areas as constitutional reform to resolve the current political crisis in Hong Kong, and truly implementing "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy".

On these major premises, the prerequisite of communication should be mutual respect with no strings attached. There is a view that if the Democratic Party wishes to communicate with the Central Authorities, it must first deal with two issues. Firstly, the issue of the Democratic Party severing its tie with the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (the Alliance); secondly, the Democratic Party's connection with foreign powers. Madam President, I would like to give some response. The vindication of the 4 June incident is clearly stated in the party platform of the Democratic Party and so, it is only natural for members of the Democratic Party to participate in the work of the Alliance. Moreover, the vindication of the 4 June incident is a question of conscience. We will not change our stance on the vindication of the 4 June incident for immediate benefits. In fact, many commentators have suggested that the Democratic Party should put aside the burden of the 4 June Incident. But have the people and the Central Government ever put aside the burden of the Incident? The Democratic Party is sincere in seeking

communication with the Central Authorities. If the Central Authorities can provide an opportunity for communication, we will grasp it properly and I believe this is what the public would wish to see. Besides, I wish to reiterate that the Democratic Party is a political party which is concerned about local affairs and operates on funds raised locally. The Democratic Party has no association with foreign powers. Nor has it accepted funding from foreign powers. Madam President, the Democratic Party hopes that communication is unconditional. We will work on the rational and practical principle of "doing what is right and condemning what is wrong", and we will not give up the principles of the Democratic Party for communication. I hope that through communication, we can work with the Central Government to solve the problems of social division and instability.

Madam President, since Vice-President ZENG Qinghong has said that between the Central Authorities and the democrats there should be communication rather than reconciliation, I believe the new generation of leaders will certainly understand that it is natural and normal for different opinions to exist in the community or for political parties to criticize the Government in parliamentary assemblies in this pluralistic international society of Hong Kong. It is precisely because there are differences between the two places in terms of culture, history and even values that when Hong Kong people hold different views on the policies of the Central Authorities on Hong Kong, it does not mean that they are challenging the governance of the Central Authorities. We firmly believe that after the mass rally on 1 July this year, the Central Authorities and the Government of the Hong Kong Special Administrative Region (SAR) now understand that Hong Kong people are rational and peaceful, albeit they hold very strong aspirations for democracy.

The Central Government, if it should care to look at the 500 000 Hong Kong people taking great pains to express their aspirations for democracy so peacefully and resolutely in a sweltering summer day, will know how earnestly the democrats and the general public would wish to have an opportunity to express their aspirations for democracy to the Central Authorities and the SAR Government, hoping that both sides can have an opportunity to sit down and engage in communication and dialogues face to face and then arrive at a consensus on the governance of Hong Kong as far as possible, thereby implementing "a high degree of autonomy". We hope that through communication, the differences between the two sides can be resolved and hence

mutual understanding enhanced. But no high-handed approach, such as interpretation of the Basic Law, should be adopted to suppress the aspirations of Hong Kong people for democracy. We also hope that the SAR Government and the Central Government will re-examine Hong Kong people's aspirations for universal suffrage in 2007 and 2008.

Since the 1989 pro-democracy movement, many in the Democratic Party, including myself, have been refused entry to the Mainland. I have not been able to visit the Mainland over the last 15 years. Despite the close ties between China and Hong Kong economically and socially, and even when many Hong Kong people who work and live in the Mainland encounter problems, the Democratic Party cannot do anything for them. We just do not have the ability to help them despite our wish. The relationship between the Mainland and Hong Kong has been an inter-dependent one. But the Central Government or even the local governments have not established formal work relationship with the democratic camp in the Legislative Council. This is abnormal and indeed, rather ridiculous. If the situation continues, we, being Members of the Legislative Council, cannot give play to the duty and role expected of us.

The Democratic Party strongly believes that it is a fundamental right of Hong Kong people to return to their home places, and this right should carry no conditions. Even though the views of the Central Government may be different from those of some Hong Kong people, it should not go so far as to deprive our right of setting foot on home soil. Only a civilized and liberal society can accommodate dissidents and solve social problems through consultation. Madam President, the objective of communication is to foster co-operation with the Central Government, in order to maintain the stable development of "one country, two systems". This can promote the well-being of Hong Kong citizens on the one hand and enable the SAR to make greater contribution to the country on the other. Madam President, I am convinced that our country will gradually move towards democracy and liberalization. Therefore, I am positive and optimistic about communication between the Democratic Party and the Central Authorities. I must say that the Democratic Party will insist on the direction of standing by principles and preparing for communication.

Madam President, I so submit.



**MR LAU WONG-FAT** (in Cantonese): Madam President, as the songs of peace and harmony are sung in high spirits, and with the interaction between the two sides expressing goodwill to each other, the political climate now tends to be more harmonious. I believe Members will feel that the mass rally which took place a week ago on 1 July was obviously less confrontational but more harmonious.

This development of events has been encouraging. At present, it is generally the wish of the people to see communication between the pro-democracy camp in Hong Kong and the Central Government, thereby promoting harmony and unity in society. Therefore, the motion proposed by Mr James TIEN is timely, and it is the unshirkable duty of the Government of the Hong Kong Special Administrative Region (SAR) to implement the proposals in the motion. Otherwise, how can the Government be considered as people-oriented and keeping close tabs on the sentiments of the people?

We must bear in mind that the public have eagerly hoped for communication between the two sides not only because they are tired of the din of quarrel and therefore hope to have peace for their ears, but also because they do understand the value of harmony, for harmony in a family leads to prosperity in all undertakings. "Prosperity in all undertakings" certainly includes the flourishing and prosperity of Hong Kong economy and social stability, on which our well-being hinges. As regards facilitating mutual communication, the Chief Executive, Mr TUNG Chee-hwa, is certainly in a position to play an active role given his close relationship with the Central Government.

Madam President, that the Central Government loves Hong Kong and sincerely wishes to contribute to the well-being of Hong Kong is unquestionable. At this critical moment, the position of the democrats is most important. In fact, a good opportunity similar to the one before us now will not be here all the time. I believe members of the public all hope that the democrats can adopt a practical, tolerant, flexible and harmonious attitude and grasp this opportunity to start the "ice-breaking expedition". Otherwise, no matter how hard the SAR Government led by Mr TUNG has worked to play the role of a bridge, all the efforts will only be futile.

Madam President, the "three feet of ice" is no insurmountable hurdle, for it is actually internal conflicts among the people. The meeting between the

democrats and Mr TUNG in the morning a few days ago is a continued move in the direction of communication. As long as everyone can consider this from a broader perspective and work in the overall long-term interest of Hong Kong and the country, I believe it would not be long before the ice melts and the mist clears. With these remarks, Madam President, I support the motion.

**MR ALBERT HO** (in Cantonese): Madam President, I am a Chinese national born in Hong Kong. My home town is Zhongshan in Guangdong Province. It is my fundamental right as a Chinese national to return to my home place to visit my relatives, and to go to the Mainland for sightseeing and field inspection. This right should be protected by law. So, I will not consider it a magnanimous imperial favour to have this right returned to me or react ecstatically about it. Yet, I will not feel extremely distressed and shameful about having to be deprived of my right to return to my home place continuously. It is because I know that since we resolutely upheld our aspiration for the vindication of the 4 June incident in 1989, our right to return to our home places have been taken away. Like many democrats, I have been suppressed and rejected because of my conscience and convictions. Indeed, it is a disgrace to the country and to the Government if their authority in immigration control is used to punish and suppress the dissidents. I very much hope that the Central Authorities, particularly the new generation of liberal Central leaders, will rectify this mistake and reinstate this right to which we are entitled as nationals.

We very much support this motion proposed by Mr James TIEN, Chairman of the Liberal Party. We entirely agree that communication between the Central Government and the Democratic Party should be enhanced, in order to eliminate unnecessary misunderstanding and conflicts between them. In fact, over the years, we in the pro-democracy camp have clearly expressed our wish to engage in communication and dialogues with Central Government officials on the basis of mutual respect with no strings attached. Over the years, and up till today, we are still waiting for the positive and well-intentioned response from the Central Authorities. But as I mentioned earlier in this Chamber, I personally will not accept any precondition for communication. So, I do not expect anyone to ask me to give up my aspiration for the vindication of the 4 June Incident, my aspiration for putting an end to one-party dictatorship, and so on. I will not accept any suggestion that I should withdraw from the work of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (the Alliance), work with which I have persevered for years. It is because I

would rather be rejected and suppressed than allowing my conscience and convictions to succumb. However, I will not mind or oppose other colleagues who focus on the affairs of Hong Kong and friends who are not engaged in the work of the Alliance striving for every possible opportunity to engage in communication and dialogues with the Central Government officials. But I wish to call on comrades in the pro-democracy camp to bear in mind that they must not give up the beliefs and principles which they firmly uphold, because if they could easily give up some fundamental beliefs or principles only for communication and dialogue, it is possible that for the same strategic considerations in the future, they would be forced to unceasingly retreat and ultimately losing their footing.

Over the last decade or so, Madam President, I have eagerly hoped to return to the Mainland, my Motherland. I long for the day when I could climb up the magnificent and enchanting Mountain Taishan, and enjoy the spectacular and unpredictable natural scenery at Mountain Huangshan. I have already missed the opportunity to see the Three Gorges before the Dam Project at Yangtze River, but I still wish to make a tour to Chibi, immersing myself in the fanciful thoughts of SU Shi for celestial fairies. I long for the day when I could return to my home town to visit my relatives and pay tribute to my ancestors, and I wish that I could view and study the development in the Pearl River Delta as well as the economic development in Pudong, Shanghai, so as to understand the latest outlook of the economic take-off in these places. But, what is more, Madam President, I wish that I could return to the Motherland and see that my compatriots are living with freedom, human rights and dignity, that they are free from the bullying of bureaucrats, and that they are not tortured by poverty. I wish I could return to the Motherland and enjoy the warm breezes of democracy and freedom and see that human rights and the rule of law are blossoming on the land of our country.

Madam President, being a Member of the Legislative Council, I hold that Members of the Legislative Council should be allowed to conduct official visits to the Mainland, so as to discuss with mainland officials issues of common concern, such as cross-boundary infrastructure development, measures against cross-boundary crimes, bilateral economic co-operation, and so on, and also to conduct in-depth and comprehensive communication and exchanges. Unfortunately, owing to the problem of Members from the democratic camp not being able to return to their home places, the Legislative Council has not organized any visit or deputation to the Mainland over the years, to our great

regrets. If the Central Government refuses the formation of an official deputation by this Council, which is a constitutional organ established under the Basic Law, to visit the Mainland and to perform its duties because it refuses entry of Members from the democratic camp to the Mainland, that the Central Government should handle it this way is, in my view, sheer impropriety and constitutes a laughing stock. I sincerely hope that the new generation of liberal leaders can review this policy. I hope that in the not too distant future, I can hear good news from the north in respect of communication. I earnestly look forward to this day. Thank you.

**MR MICHAEL MAK** (in Cantonese): Madam President, it has been seven years since Hong Kong's reunification with the Motherland. Over the last seven years, Hong Kong has experienced countless hardships. Since the Asian financial turmoil in 1997, the economy of Hong Kong has remained in the doldrums. Coupled with the impact of the outbreak of SARS and avian flu, the interpretation of the Basic Law by the National People's Congress, and the Central Government's vetoing of elections by universal suffrage in 2007 and 2008, not only is the atmosphere in society depressing, division and polarization have begun to take shape.

I absolutely believe that it is the wish of the Central Government to see continued prosperity and stability in Hong Kong. In fact, the Central Government has continuously introduced policies, such as CEPA, the Individual Visit Scheme, and so on, to promote the economic development of Hong Kong. From all these initiatives, Hong Kong people do feel the Central Government's care and love for Hong Kong, and it appears that we ought to be grateful to it.

Nevertheless, Hong Kong people have very strong aspirations for democracy. We, as human beings, do not only look for enjoyment of food and enjoyment in a material sense, for there are demands of higher levels. That is why Hong Kong people have been pursuing freedom and democracy, hoping that their fundamental human rights can be respected. In this regard, the democrats have been standing together with Hong Kong people through all adversities, and we vow to adhere unswervingly to this cause.

As the aspirations and sentiments of Hong Kong people may not reach the ears of the Central Government direct, it is therefore unknown as to whether

anyone has made irresponsible remarks or confused right and wrong in front of the Central Government, causing the Central Government to harbour misunderstandings about the democrats and this may explain why the Central Government has all along rejected entry to the Mainland by the democrats. Today, I wish to take this opportunity to clearly tell the Central Government, and to put down in the Official Record of Proceedings, that the democrats only have a genuine heart for freedom and democracy, wholeheartedly striving for the election of our Chief Executive and Members of the Legislative Council by "one person, one vote" under an open, impartial and fair electoral system. The democrats are absolutely not campaigners for the independence of Hong Kong and for secession of the country.

Why is it that mutual trust has not been established between the Central Government and the democrats over the years? In the final analysis, the reason is the lack of mutual communication. The Home Visit Permits of some democrats have been confiscated, making it impossible for them to return to their home places throughout the years. Such being the case, how can they communicate with the Central Government? Moreover, it is also impossible for them to see for themselves the dynastic changes that have taken place in the Mainland in recent years.

In recent years, those in the democratic camp, such as Mr LAU Chin-shek and Mr Martin LEE, have extended goodwill to the Central Government, hoping to forge co-operation with the Central Authorities. Communication must be two-way, and I hope the Central Government will give a positive response. The SAR Government must give play to its role as a bridge between the Central Government and the democrats and assist the democrats in the most basic issues, such as helping them to obtain Home Visit Permits, and see how it can act as a bridge to facilitate the commencement of mutual communication. This will certainly be helpful to eliminating division and polarization in society, and will certainly be conducive to the long-term prosperity and stability of Hong Kong.

Thank you, Madam President.

**MR HOWARD YOUNG** (in Cantonese): Madam President, a very important part of this motion proposed by Mr James TIEN today is the wish that assistance

can be provided to more democrats in need, so that they can have an opportunity to visit the Mainland in person and hence understand the country's economic, social and political developments over the years.

I wish to particularly point out that the last decade or so has seen fundamental changes in various aspects of society in the Mainland, and each of the changes is closely related to us. As Members of the Legislative Council, we are tasked to make plans and put forward proposals on the future development of Hong Kong. If we do not have an accurate understanding of the changes that have taken place in the Mainland, how can we accomplish this important task entrusted to us by the people? To obtain a concrete and accurate understanding of the situation in the Mainland, I think mere reliance on reports in the printed or electronic media or loads of analyses and statistics will only give us the "hows" but not the "whys". In order to know the "whys", the most direct and effective way is to go to the Mainland to study the developments there in person and get in touch with the people and things in the Mainland, and from these two-way exchanges, we will gain insights.

On the economic front, for example, following Hong Kong's gradual integration with the Mainland, the two places have gradually developed into an integrated community. Particularly after the signing of CEPA and the Pan-Pearl River Delta Regional Co-operation Framework Agreement between the Hong Kong Special Administrative Region (SAR) and the Mainland, our development and that in the Mainland, particularly in the South China Region, have become all the more interdependent.

The investment by Hong Kong businessmen in the Mainland, particularly in the Pearl River Delta Region, has not only created abundant job opportunities for the people there, but also produced a synergy effect in Hong Kong as plenty of logistics posts have been created in Hong Kong in tandem. Following our further integration with the economy of the Mainland, more and more Hong Kong people have chosen to live, work and study in the Mainland. To understand their needs and provide assistance to them, it is necessary to get in touch with these people in person in the Mainland, in order to gain a good understanding of their working and living environment in the Mainland.

Over the past decade or so, the Mainland has come a long way in improving the quality of living of the people, and there have been significant changes in this regard. At present, the Mainland has become comparatively

well-off, with the per capita income reaching US\$1,000 yearly. While we can feel the changes in the standard of living of the mainlanders only by looking at the spending made by mainland tourists in Hong Kong under the Individual Visit Scheme, I think it is still better to personally visit the Mainland to understand the actual situation of their living.

Politically, changes have also taken place in the Mainland to quite a large extent. For example, in the meeting of the National People's Congress which has just been held, amendments to the Constitution were endorsed, incorporating such provisions as "protecting human rights" and "ensuring protection against infringement on legitimate private property". Moreover, governments at various levels in the Mainland have gradually implemented the accountability system for government officials. Last Thursday, the mainland authorities officially implemented the Administrative Licensing Law which shall apply to government officials of all levels, explicitly providing for the powers and responsibilities of the administrative authorities, with a view to preventing abuse of powers by government officials.

Given the pro-democracy camp's appeal for reconciliation and the positive and cordial response from the Central Authorities, we hope that both sides can seek common grounds while preserving differences and exchange opinions sincerely and honestly. Particularly, as some democrats have not returned to the Mainland for so many years, they should, riding on this new harmonious atmosphere, seize the opportunity and personally visit the Mainland to see the developments of the country. I believe they will be greatly enlightened by what they will see. Besides, this can help them think about the way forward for Hong Kong and to keep abreast of the time.

Madam President, today, a film producer who has participated in pro-democracy movement, Mr John SHUM, is the first to be issued with the Home Visit Permit and is prepared to pay a visit to the Mainland. This is a very good beginning. We hope that in the future, many more democrats can be allowed to go to the Mainland to study the developments there in person. As a Central Government official has said, let us "seek common grounds as one country while preserving differences between the two systems". I believe as long as we genuinely wish to strive for the interests of the country and Hong Kong, everything will be open for discussion.

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

**MS EMILY LAU** (in Cantonese): Madam President, I speak in support of Mr James TIEN's motion and Mr SZETO Wah's amendment. Madam President, Mr James TIEN's motion mentions facilitating better communication between the democrats and the Central Authorities, which is well-intended. So, I very much support it, and I am grateful to Mr James TIEN for his goodwill.

Mr IP Kwok-him of the DAB did not properly address the Democratic Party and instead, he called them the opposition camp, because he said that they had invariably opposed China. Fortunately, Madam President, the Secretary is here and he can say something on how many proposals have met our opposition and how many have been supported by us in the past four years. If we are truly the opposition camp, we should have opposed everything or at least, we should have opposed 70%, 80% or 90% of the proposals. The Secretary can tell us among the Bills proposed in the last four years, how many of them have met opposition from the opposition camp. And of the many Appropriation Bills, how many of them have been opposed by us? Colleagues from the DAB can, of course, go on making this allegation, since they still have their people here. But this is a place where only the facts count. No one can wrong another person as he pleases.

In fact, I should not have said these things today, for everyone is showing goodwill here. But I can hardly put up with it. Obviously, everyone is showing amity here, but when he spoke, he blatantly referred to us as the "opposition camp" time and again and even went further to say that we "opposed China in all circumstances". What does he mean by "opposing China in all circumstances"? In fact, the Democratic Party and many other people have supported many policies of the Central Authorities. Certainly, they may point out that the opposition camp did raise opposition over certain policies. But most of these issues involved different opinions about democracy, human rights, freedom and the rule of law, and we certainly should raise opposition over them. If they do not raise opposition even on these issues, they should not be called the Democratic Party and should "fold up" instead.

I, therefore, really hope that the DAB, in particular, the best speaker, Mr Jasper TSANG, can say something to explain the meaning of "opposing China in all circumstances". All accusations must be substantiated by facts. If they can point out that the opposition camp has opposed each and every of the Bills proposed, then "opposing" is the right word. If the opposition camp has opposed every proposal irrespective of what it is about, then "opposing" is the



right word. But if there is simply no such proof, then there is a problem about putting this label on us.

But in any case, Madam President, I still wish to thank the DAB for expressing support for our communication with the Central Authorities. This is what we all wish to achieve. Even for us in The Frontier, we have never said that we do not need communication. But we feel that communication does not mean how far we should retreat. What we have been doing and saying are of no problem and so, we will not retreat. We think that it is best if we can take one step forward together. Mr James TIEN has made a good point, saying that communication should be unconditional. But he added that we must take an easier course, not the difficult one. This, I think, is very difficult for me still. Then he said that it should start with the moderate democrats. I hope he can explain this a bit further later on. As to whether I am a moderate democrat, I do not know. Well, Mr TIEN keeps shaking his head, which means that I am not. Madam President, if I am considered radical, I am radical only in terms of my speech at most. *(Laughter)*

What is radical? Going to my office and setting fire to it, and even dropping things which I cannot name here are considered to be truly radical. Could it be that making a few remarks to criticize the DAB for "wronging" us is considered radical? That is really too much.

Therefore, the question remains: What is easy and what is difficult? Madam President, I hope I can convince Mr James TIEN that all in the democratic camp are actually moderate democrats. I understand that Mr TIEN does not intend to cause divisions. He had made this clear and I feel that he genuinely meant it. But if we intentionally divide a group of people into small groups as if they are ducks, I will certainly be put in one of the small groups. In that case, even if Mr TIEN has no intention to cause divisions, divisions will exist anyway and so, I hope that Mr TIEN can further think about this.

Madam President, Mr IP Kwok-him remarked that he could not support Mr SZETO Wah's amendment because whether or not the people are allowed to leave the country lies within the authority of the Government. But Article 31 of the Basic Law stipulates that we have freedom to enter or leave, and this is a fundamental right. We certainly hope that all Chinese nationals can enjoy this right. Some people may say that the mainland authorities are too tyrannical for not allowing the people to enjoy this right. But we are here asking the Secretary

to fight for this right for us and yet, Mr IP said that this was not a right thing to do, for this would mean asking the Secretary to challenge the law or the Central Authorities and so, he told the Secretary not to do it. Madam President, Mr IP Kwok-him should tell the Central Authorities instead that it is a fundamental right of all people, including all Chinese nationals, to enter and leave the country and so, the Central Government should allow all the people, including us, to enjoy this right. He should not tell the Secretary not to challenge the mainland laws. How possibly will the Secretary have the guts to challenge the Mainland? It is simply impossible for a man like him to be brave enough to challenge the Mainland. He is only asked to tell the Mainland that this is our fundamental right. Why can he not do so? So, in this very cordial atmosphere of our discussion on reconciliation, I wish to again urge colleagues from the DAB to further think about this. Mr SZETO Wah's amendment is actually not excessive, and I hope Members can support it.

Earlier in the debate, Dr YEUNG Sum and Mr Albert HO mentioned the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (the Alliance). Madam President, I think the Alliance has gained wide public support. It is true that many in the Democratic Party are affiliated to the Alliance and are even the core members of the Alliance. But what have they done wrong? Recently, I have heard some academics ask members of the Democratic Party, particularly those who are Members of the Legislative Council, to leave the Alliance. I am totally astonished. Why would even the academics suggest this? Is there the freedom of association in Hong Kong? We have our own conscience, and the organization which we join is supported by many people. Why should we withdraw from it before reconciliation can start? I am very glad that Mr James TIEN and Mr IP Kwok-him did not mention this point. Reconciliation should be unconditional. Madam President, I do not know when reconciliation will realize, but I will not stoop to ask for mercy. However, we are deeply grateful for our colleagues' goodwill, assistance or support to us. I so submit.

**MR NG LEUNG-SING** (in Cantonese): Madam President, I always hold that members from all sectors or strata of the community, irrespective of their political views and political affiliation, should endeavour to maintain good communication and co-operation between Hong Kong and the Mainland for the long-term prosperity and stability of Hong Kong. Some people may still be subjectively unwilling to accept this point because of their background or

political stance. But the long-term social, political and economic development of Hong Kong absolutely hinges on good communication and co-operation with the Mainland, an objective fact that is unquestionable and unchangeable.

To maintain this relationship, it is necessary to strictly adhere to one principle, namely "one country, two systems", and under this consideration must at least be given to two points. First, under "one country, two systems", the Hong Kong Special Administrative Region (SAR) operates under "a high degree of autonomy" and so, the Mainland and Hong Kong should not interfere with each other's social system and as a common saying goes, "well water does not encroach on river water". Hong Kong should not attempt to change the political system in the Mainland. Similarly, the Mainland also should not attempt to change the capitalist system in Hong Kong. Under "one country, two systems", we must respect the respective immigration control authority of Hong Kong and the Mainland. Mr SZETO Wah's amendment proposes to add "in order to safeguard the right of Chinese nationals in Hong Kong to return to their home places". While we know that Mr SZETO Wah does have the right to return to Hong Kong from Canada, it appears that he is also questioning the deprivation of the right of Hong Kong people to return to their home places. But if we think about this more carefully, this is a serious distortion of the respective immigration control authority of the two places under "one country, two systems". According to the logic of the amendment, do all Chinese nationals have the right to enter or leave any place in our country, including Hong Kong and Macao, anytime? Do all mainland residents have the freedom and right to enter Hong Kong freely and to live and work here as a matter of course? We, therefore, have to respect the respective immigration control authority of the two places and at the same time maintain good communication and co-operation between Hong Kong and the Mainland. We also have to put ourselves in each other's place; we must understand each other and trust each other. We must bear this in mind: Do not unto others what you would not do to yourself. This will enable us to conduct normal exchanges and communication in the Mainland, just as millions of ordinary citizens issued with the entry permit have been doing.

Second, I must stress strict compliance with the law. Under "one country, two systems" and "a high degree of autonomy", the Standing Committee of the National People's Congress (NPCSC) has the power to interpret the Basic Law and to make decisions on the constitutional development of the SAR. To

establish trust and conduct communication, we must first respect its constitutional role as well as its powers and responsibilities. Since the NPCSC has interpreted Annexes I and II to the Basic Law, and has, in accordance with law, made a decision on the methods for the selection of the Chief Executive and the formation of the Legislative Council in 2007 and 2008 respectively, in order to achieve mutual trust and communication, I think all sectors of the community should use these as a legal basis or framework and actively facilitate discussion on the specific arrangements for the constitutional system in relation to 2007 and 2008. Any attempt to incite public sentiments and hence create political pressure in a bid to force the NPCSC to revert its decisions will make it difficult for a good atmosphere to be created for the communication and co-operation between the two places.

Madam President, I so submit.

**MR AMBROSE LAU** (in Cantonese): Madam President, in handling issues related to Hong Kong, the Central Authorities have all along preferred enhanced communication and making efforts to seek common grounds while preserving differences and to listen extensively to the views of all sectors, views of all social strata and views from all sides, including different and opposition views, in order to make decisions that can cater for the actual situation in Hong Kong. I have always advocated that confrontation be replaced by communication, because it is at present most imperative for Hong Kong to seek common grounds while preserving differences. "One country, two systems" has manifested to the largest possible extent the essence of seeking common grounds while preserving differences. Vice-President ZENG Qinghong made three points earlier on the question of communication. First, the Central Authorities and the Democratic Party are not enemies and so, there is no question of reconciliation, and all that is needed is just communication. Second, he agreed to the need for the Central Authorities to communicate with the Democratic Party, but there must be a basis for communication and that is, to implement "one country, two systems" and maintain the prosperity and stability of Hong Kong. Third, when conditions are suitable and where necessary, the Central Authorities will be willing to communicate with members of any sector and strata.

Madam President, these three points have demonstrated the goodwill and sincerity of the Central Authorities in conducting communication with the

pro-democracy camp in Hong Kong. The democrats should show genuine goodwill and sincerity. With more goodwill between the two sides, there will be less hostility; with more mutual trust, there will be less suspicion. Only in this way can communication be truly realized between them.

The Central Authorities do not consider the pro-democracy camp an enemy. In this connection, I think it is necessary for some democrats in Hong Kong to change their cold-war mentality towards the Mainland. Such cold-war mentality has often caused them to become antagonistic towards the country and the Central Government. Let us not talk about incidents that happened a long time ago. Let us just look at the interpretation of the Basic Law and decisions made by the Standing Committee of the National's People Congress (NPCSC), which, in some democrats' views, are instances of the Central Authorities strangling the democracy and freedoms of Hong Kong. In fact, the NPCSC's interpretation and decisions are made for the good of Hong Kong, reflecting that the NPCSC has shouldered its constitutional duty for the benefit of political stability, economic prosperity and social harmony in Hong Kong. As long as the democrats can give up the cold-war mentality, they would not be hostile to everything done by the Central Authorities for Hong Kong.

There must be a basis for communication, and this basis is "to seek common grounds". What exactly are these "common grounds"? I think it means to act for the good of Hong Kong, and this is the "common grounds" that we should be seeking. Over the last seven years since the reunification, the policies of the Central Authorities on Hong Kong have all been devised for the good of Hong Kong. I think genuine and sincere dialogues should replace radical attacks, and a pragmatic attitude should replace emotional confrontation.

Madam President, since Vice-President ZENG Qinghong has stated that the Central Authorities will be willing to communicate with members from any sector and strata when conditions are suitable and where necessary, the pro-democracy camp in Hong Kong should take this with patience and confidence. I also agree that it is necessary for the Chief Executive and the Government of the Hong Kong Special Administrative Region to assist the democrats, where necessary, in obtaining the Home Visit Permit for Hong Kong and Macao Residents, so that they can visit the Mainland in person to understand the country's economic, social and political developments over the years. Over the last two decades or so, the economy of China has created a miracle in the history of economic growth in the world. The reform and opening up of China

have facilitated significant improvements in human rights, democracy and freedom for the people. A China which rises peacefully poses no threat to the world. On the contrary, it will be an opportunity to the world and more so to Hong Kong under "one country, two systems". I hope that the democrats who have the need can visit the Mainland in person as soon as possible to gain a fuller understanding and more knowledge of their own country.

Madam President, I so submit.

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

**MR ANDREW CHENG** (in Cantonese): Madam President, just now I heard that Mr John SHUM has been issued with a Home Visit Permit, but a one-off permit only. I found this very strange, for it is like a disposable permit, which is so environmentally unfriendly since it can only be used just once. Besides, this has also downgraded the right to return to the home place as conferred by the Home Visit Permit as well as our national feeling.

Why is it so difficult for us, being Chinese nationals, to obtain a Home Visit Permit after the reunification? It seems that many things will happen if we return to our home places. For those who are more radical, such as "Long Hair", he is allowed to cross the boundary only on a one-off basis. He has to make many compromises, and what is more, he can return to his home place only when his family members (such as his mother) are in ill health. Regarding the motion proposed by Mr James TIEN for debate today and his goodwill, I, being one of the people without the Home Visit Permit, originally did not intend to speak today. But earlier on during dinner, I heard Ms Cyd HO say that she was prepared to speak even though she did have a Home Visit Permit. Since I do not have the Home Visit Permit, there is no reason for me not to make a speech. Otherwise, I am afraid that I might be misunderstood as making a volte-face. *(Laughter)*

Dr LO Wing-lok said that he was not aware that I did not have a Home Visit Permit. I promised that I would tell him later why I do not have one. Meanwhile, I would like to take this opportunity to respond to Mr James TIEN about "where necessary" as in his proposal of "assisting the democrats, where

necessary". When I saw the words "where necessary" in Mr James TIEN's original motion, my first reaction was this: Does Mr James TIEN think that even though some Members of the democratic camp consider assistance necessary, they still should not be allowed entry to the Mainland because the Central Authorities may not consider such assistance necessary?

Why did I think so? Let me say a few words about my personal experience. In July 1996, and as Members may recall, the discussion on opposition to the Provisional Legislative Council began in 1995 and 1996. We had formed a Coalition Against the Provisional Legislature and collected many signatures at many places in Hong Kong in opposition to the formation of the Provisional Legislative Council. At that time, about six or seven of us from the pro-democracy camp took with us over 80 000 or close to 100 000 signatures of Hong Kong people opposing the Provisional Legislative Council to Beijing. At that time, I still had a Home Visit Permit. Luckily, I have kept a copy of my Home Visit Permit which I will take out and have a look when I have time (*laughter*), and the copy shows that the Permit was valid for 10 years. When our flight arrived at the airport in Beijing and when the cabin door was opened, we breathed the fresh air of Beijing. But when we looked down through the window, we saw some members of the People's Liberation Army carrying AK47s with them walking around. I had a bad feeling and then I saw a public security officer boarding the plane with a name list in his hand. Although the paper was white, I was sure that it was a black list. When every passenger walked out, he would check the list against their Home Visit Permits. When I went up to him, I, of course, saw my name and I also saw the names of many democrats, including "Uncle Wah", Martin, YEUNG Sum and CHEUNG Man-kwong. I saw all the names very clearly. We reckoned that this list contained two pages with over 100 democrats' names on it. When he saw my name, he took my Home Visit Permit and courteously asked me to return to my seat and wait. I had waited for several hours and finally, I was sent home on the same flight. I did not even set foot on the land of Beijing.

So, regarding whether assistance is considered "necessary", so to speak, I very much hope that it is not decided by the power-that-be as to who has the need or otherwise, whether this need is a family need, a community need or even some radical and sensitive political needs. We have no gun and we have no cannon. Nor do we plan to put up resistance by force. We only hope to conduct democratic and rational discussions and communication. Earlier in the debate, Ms Emily LAU said that according to Mr James TIEN, among the

democrats some are more radical and some are more moderate. That is how she has put it. My first reaction was that when the Democratic Party decided on the seating arrangement, I remember that "Uncle Wah" was the first who chose this seat, which is at the farthest end on the left. I do not quite remember why no one had chosen to sit beside "Uncle Wah". I therefore chose to sit beside him near the farthest end on the left. Does it mean that "Uncle Wah" and I are more slanted to the left and therefore considered more radical democrats? Ms Emily LAU and I had lain on the street and perhaps for this reason, many people consider us radical democrats. "Lying on the street" was merely to stage a protest, and please make this point clear in the Official Record of Proceedings. I see that Mr CHAN Kam-lam is a bit.....I do not know what has come to his mind. *(Laughter)* In any case, both the radical and moderate democrats are rational democrats, and we are all working for Hong Kong and the Motherland. We hope that an open attitude can be adopted, so that our compatriots and Hong Kong people can truly live in harmony and work in concert for co-operation. Therefore, I hope Mr James TIEN will understand our wish that "assisting the democrats where necessary" can cover democrats with various needs, so that all types of democrats can obtain the Home Visit Permit early.

Thank you, Madam President.

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

**MS CYD HO** (in Cantonese): Madam President, I must speak since Mr Andrew CHENG has spoken.

First of all, I must thank Mr James TIEN for his expression of goodwill as well as his concern about whether we can return to the Mainland. But I must first clarify the meaning of pro-democracy camp. I think that the way it is pronounced in Chinese does have implications. Some people who have shown more respect will pronounce "民主派" (meaning pro-democracy camp) as "men<sup>4</sup> dzy<sup>2</sup> pai<sup>3</sup>", whereas others who are more sarcastic pronounce it as "men<sup>4</sup> dzy<sup>2</sup> pai<sup>1</sup>". In fact, I do not like this name, and we seldom call ourselves the pro-democracy camp. It is because many political parties which hold different attitudes towards universal suffrage will claim to be democratic. For example, sitting on the left and right sides of this Chamber are two political parties of



which the names consist of the word "democratic", namely, the Democratic Party and the Democratic Alliance for Betterment of Hong Kong. However, their attitudes towards universal suffrage and their demands for its pace are very different. One of the parties asks for about 10 miles per hour, while the other asks for 80 miles per hour. So, when The Frontier was to decide on its name, we had in particular avoided the word "democratic" to pre-empt confusion. During the election, the word "democratic" has suddenly become very ambiguous. Many people may claim to be "men<sup>4</sup> dzy<sup>2</sup> pai<sup>1</sup>". Since this word has become so confusing, I must explain it more clearly.

What exactly is the difference between us? Some are democrats with the Home Visit Permit, whereas some are democrats without the Home Visit Permit. The topic under discussion now is whether or not democrats without the Home Visit Permit can return to the Mainland. These democrats without the Home Visit Permit do have something in common. They are more persevering with civil rights, freedom, democracy and the rule of law. Madam President, in fact, my Home Visit Permit is still valid until 2005. But in 1999 when Mr James TO and I wished to go to Beijing to explain to the Legislative Affairs Commission of the National People's Congress why we opposed the interpretation of the Basic Law by the Standing Committee of the National People's Congress, we were rejected at the Hong Kong Airport. The farthest place that I have since been able to reach with my Home Visit Permit is only the small room on the right of the Shenzhen Bridge. Although Mr James TO and I still have the Home Visit Permit, we belong to the group of democrats whose Home Visit Permit cannot be used.

I am very grateful to Mr James TIEN for doing all this for us. But the topic of the motion is a bit unacceptable to me. Mr James TIEN's original motion reads, "In order to maintain the long-term prosperity and stability of Hong Kong.....to assist the democrats, where necessary, in obtaining Home Visit Permit for Hong Kong and Macao Residents". Madam President, I, being a democrat whose Home Visit Permit cannot be used, am only a person who is as equal as all other people before the law. I am not a cosmetic for stability and prosperity. A truly beautiful Hong Kong does not need my Home Visit Permit to be an embellishment. Nor does it need my being able to return to the Mainland or not as an embellishment.

In fact, in 1988, the Central Government signed the International Covenant on Civil and Political Rights which provided that everyone lawfully

within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. However, these 20-odd democrats of us who do not have the Home Visit Permit are deprived of this right because of our perseverance for human rights and freedom.

On 22 April this year, five Members of the Legislative Council arrived in Shenzhen hoping to reflect our aspirations for universal suffrage in 2007 and 2008 to Deputy Secretary-General QIAO Xiaoyang. Nevertheless, Mr James TO and I were rejected entry under Article 8 para 7 of Chapter II of the Regulations on Exit and Entry Frontier Inspection, that is, the provision about notification by the public security department of the State Council and state security organ on disapproved exit and entry. My Permit had once be confiscated. But five minutes later, a frontier officer who was soaked in sweat ran to me, saying that I had left something behind. I was completely puzzled, not knowing what I had left behind. Then he handed to me the Home Visit Permit which had been confiscated earlier. We are separated by one river just because our political stance and thinking are different. We are not allowed to return to the country; we are rejected entry to the country; and worse still, even an act of confiscation is confused with an act of someone leaving something behind. This is so regrettable.

Madam President, in fact, before I took office as a Member of the Legislative Council, I always travelled to the Mainland. During the journey from Guangzhou to Hengyang, I saw many slopes along the railway and on the slopes there were many holes. I saw tiny spots of light in these holes and learned that people were living there. Then I knew that the country was very poor. In fact, I very much wish to go to Hunan and see why the farmers have to trade their blood for money and subsequently being infected with Aids through the syringe. I very much wish to visit Beijing and see how the people there face desertification. I very much wish to go to the Dujiang Dam where LI Bing, a local official, had carried out water control works and rethink why China has not thoroughly solved the problem of flooding over centuries. We wish to return to the country not for the ostentatious Shanghai and Beijing. Rather, we wish to see the true sides of the country and to understand the gap between the rich and the poor there. It is because these people are most in need of the country's attention and care, and they are people whom we should care for and help, people for whom we should work when we return to the country. It is more meaningful if we can return to the country and conduct communication in this way.

Madam President, although these democrats of us who do not have the Home Visit Permit very much hope for communication, I know that there must be an objective for communication and a meaning to it. In fact, many democrats with the Home Visit Permit have been communicating with the Central Authorities. Why should the people ask these democrats without the Home Visit Permit to work for communication? It is because the people believe that we are their representatives and we can present the actual situation in Hong Kong. That is why they hope that we can obtain the Home Visit Permit. I must reiterate that the objective of communication is to speak truly from the heart. So, there must be a bottomline and that is, to firmly uphold principles and to firmly stand by our position. While we should take a moderate and rational attitude, we should firmly uphold our position. Otherwise, there would not be a need for us to conduct communication and by then, we would become democrats to whom assistance is considered unnecessary. Thank you, Madam President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Mr James TIEN, you may now speak on Mr SZETO Wah's amendment. You have up to five minutes to speak.

**MR JAMES TIEN** (in Cantonese): Madam President, regarding the amendment proposed by Mr SZETO Wah, I said when I spoke at the very beginning that I would comment after listening to the speeches of Mr SZETO Wah and other Members. So, we in the Liberal Party have been listening while forming our decision.

The topic that we proposed for discussion is simple. Our objective is to — Ms Cyd HO does not like the part on long-term stability and prosperity. But we only wish to urge the Government of the Hong Kong Special Administrative Region to assist the Central Government in enhancing communication with the pro-democracy camp in Hong Kong or to facilitate their communication, in order to eliminate division and polarization in the community.

When we say "where necessary", it is actually us who decide on whether or not it is necessary. It is because we think that there are, in fact, many democrats in Hong Kong who have obtained the Home Visit Permit. Since they already have the Home Visit Permit, it is therefore unnecessary for us to assist these democrats in obtaining the Home Visit Permit. That is what we mean. In saying "where necessary", we do not mean that the determination of whether or not it is necessary rests with the Central Authorities. Here, I wish to clarify our proposal. For democrats who have obtained the Home Visit Permit, assistance will not be necessary; and those who do not wish to return to the country may not apply for it. We consider it necessary to assist those who wish to return to the country but do not have the Home Visit Permit.

On the second point, in fact, the scope of our original proposal is very narrow, for we have only considered the fact that there are not many democrats who need to but cannot return to the Mainland. We had never thought that Mr SZETO Wah would propose an amendment to include all 7 million people of Hong Kong, asking the Government to strive for it for all Hong Kong people. As I mentioned earlier when I spoke, as far as we understand it, of the 7 million Chinese nationals in Hong Kong, those colleagues from the pro-democracy camp in this Chamber are the only people whom I know to be unable to obtain the Home Visit Permit. As far as I can remember, I do not know any other friend who does not have a Home Visit Permit. So, is it necessary to also protect their right to obtain the Home Visit Permit?

During the debate, Mr NG Leung-sing suddenly raised a point on "one country, two systems". In fact, our situation cannot be compared to that in foreign countries. In any foreign country, their nationals certainly have the right to return to their country. But we are now discussing "one country, two systems". If every Chinese national in Hong Kong has the right to return to their home place, can it reflect the concept of "one country, two systems"? On the contrary, do all Chinese nationals in the Mainland also have the right to come to Hong Kong? This is obviously impracticable and impossible. If this is impracticable, and since the majority of us can now return to the country, there is the view that it would turn out to be protecting our right. However, I consider it inappropriate to put it this way.

So, the Liberal Party has now decided to abstain in the vote on the amendment of "Uncle Wah". Thank you, Madam President.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, over the past couple of weeks, the community has, relatively speaking, shown signs of a more relaxed atmosphere. While Members of the pro-democracy camp have expressed a wish to communicate with the Central Authorities, members of the public generally share that the new atmosphere is conducive to Hong Kong's social development.

Members who have spoken today have mentioned a number of areas. They include constitutional development and communication between the Hong Kong Special Administrative Region (SAR) and the Central Authorities, particularly communication between people of certain political parties and the Central Authorities. The issue of Home Visit Permit has been mentioned too.

Communication and dialogue, both requiring a solid foundation, are essential. It is imperative for all of us to support the full implementation of "one country, two systems" according to the Basic Law, to respect the Constitution and the constitutional order and basis provided for in the Basic Law, and to support the promotion of constitutional development in Hong Kong under the principle of "one country, two systems". I believe people who really care for the future of Hong Kong, particularly those taking part in politics, will approve of these principles.

The earlier discussions relating to constitutional development have created a relatively tense atmosphere in the community and undoubtedly caused a small degree of concern and anxiety among members of the public. I find it better today for Members have been discussing matters of concern in a more harmonious manner. The earlier round of discussions has actually led us to more in-depth thinking: Under "one country, two systems", how should Hong Kong, as a region and a SAR of the country, establish its relationship with the Central Authorities?

I very much agree with Mr James TIEN's remark, that it will certainly be conducive to the overall development of Hong Kong in future if we can pool collective wisdom and reach a consensus on the subject of constitutional development.

People involving in politics in Hong Kong should start from the basis that the Central Authorities have the deciding power over the constitutional development of the territory. According to the provisions of the Basic Law *per se*, if there is a need to amend the method for selecting the Chief Executive and

the Legislative Council, such amendments must be made with the endorsement of a two-thirds majority of all the Members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress (NPCSC) for approval and record.

For these reasons, we must not decide and act alone to achieve the purpose of actively taking constitutional development forward in Hong Kong. In conceiving concrete plans for the two elections in 2007 and 2008, we must take into account the view of the Central Authorities while underlining the preference of Hong Kong itself. Only through exploration from different aspects can we raise the chance of reaching a consensus.

I agree with Mr James TIEN's view that there remains plenty of room in promoting constitutional development after the interpretation and decision made by the NPCSC in April. It is the hope of the SAR Government to, through discussion with Members for purposes of reaching a consensus, take forward the selection methods for the two elections, thereby narrowing the gap between our electoral system and the ultimate goal of universal suffrage.

Regarding the point raised by Dr YEUNG Sum concerning whether the implementation of universal suffrage in 2007 and 2008 can be reconsidered, the Chief Executive pointed out in his response a couple of days ago that the NPCSC had actually taken into full consideration the relevant factors, including the aspiration of some organizations and people in Hong Kong for the expeditious implementation of universal suffrage, in deciding whether universal suffrage should be implemented in 2007 and 2008. The NPCSC's decision was made through a formal procedure in accordance with the Basic Law.

Our community has, in accordance with the NPCSC decision, entered the stage of discussing concrete proposals. We sincerely invite all sides and parties to continue to take part in the consultation process by letting us know their views to enable us to publish a new consultation paper after autumn.

Madam President, I now back to the original motion moved by Mr TIEN today. Acting as a bridge between the Central Authorities and the public in Hong Kong, the SAR Government will continue to reflect the views of various sectors of the community to the Central Authorities. It will also facilitate and promote communication between various parties and sectors and the Central Authorities.

The SAR Government will continue to play an active role in assisting the pro-democracy camp in enhancing communication with the Central Authorities.

When the "Nine plus Two" Pan-Pearl River Delta Forum was held in early June, we invited all chairmen of the panels of the Legislative Council, including Members from different parties, to attend relevant meetings and activities. According to the reply slips received, for instance, Mr SIN Chung-kai of the Democratic Party has attended, upon invitation, some of the activities.

During the two visits paid by Mr QIAO Xiaoyang, Deputy Secretary-General of the NPCSC, to Hong Kong in April this year to explain to the public and various sectors of the community the NPCSC's interpretation and decision, democrats were also among those invited to attend the relevant seminars to directly reflect their views to the Deputy Secretary-General and other officials. Should suitable opportunities arise in future, we will certainly try our best to enhance communication between the Central Authorities and the pro-democracy camp.

Regarding the issue of assisting some democrats in applying for Home Visit Permits, the Chief Executive gave a positive reply during his meeting with some democrats in mid-June this year. We will convey the wish of the democrats to the relevant authorities of the Central Government to examine if there is room to assist them in obtaining Home Visit Permits. Under the mainland legislation, such decisions should be made by the relevant authorities of the Central Government.

In today's debate, Mr CHEUNG Man-kwong spoke of his mental journey during the past decade or so. Actually, I believe many citizens in Hong Kong and people from different sectors have also noticed the remarkable changes and developments in the Mainland during the past two decades or so. Towards the end of the '70s and at the beginning of the '80s, we began to witness the emergence of a line towards reform and liberalization, which had not only brought Hong Kong's manufacturing sector and economic development great room for development, but also brought changes to the Mainland in terms of living, social, economic and even political conditions. Today, many parts of the Mainland have already attained a moderately high standard. The central leadership places great emphasis on the importance of governing the country according to law, fighting against corruption, anti-bribery and anti-corruption. These are all important topics in the two annual conferences. Today, nationals

of the Mainland can bring various government departments, whether at the central or regional level, to the Court to hear their complaint cases.

Actually, Hong Kong has, throughout the '60s, '70s and '80s, gone through the journey of establishing the rule of law and a clean government. Today, while witnessing the national developments in a number of areas on the Mainland, we believe we can contribute to the development of our country provided that we are prepared to actively participate. We can also express our approval of the direction of development of our country and our future really counts on it.

Based on this consideration, we very much hope Members from different parties who are sitting here in this Chamber can one day find out for themselves that our country has a bright future.

Mr James TIEN has also spoke of the composition of the Executive Council. In accordance with the Basic Law, the Chief Executive may appoint Members of the Legislative Council to be Members of the Executive Council, and he may exercise such power at any time for the purpose of forming the Executive Council. However, if we take a look around us at the governments of various parts of the world, we will notice that leaders of these places will, generally speaking, appoint members of the community with similar political ideas to the cabinet being formed. A cabinet will rarely comprise members holding relatively contrasting political ideas. This is because, should this road be chosen, a cabinet with diverse political ideas will only bring additional difficulty in administration. While I greatly appreciate Mr TIEN's good intention, my response is that this idea is quite unusual and special.

Madam President, today a few Members have raised the point concerning which Members belong to the moderate camp and the opposition camp. Looking at the assemblies of different places, we can actually find that members of the opposition can be very moderate, and even moderate members of the ruling party can, at times, oppose the Government. Despite the fact that Ms Emily LAU, whom I am acquainted with, described her words as a bit radical, she has her face of tenderness (*laughter*). This afternoon, she warmly supported the legislation relating to electoral provisions. I would like to take this opportunity to thank her once again.



Lastly, Madam President, I find the political situation in Hong Kong constantly changing. As this harmonious atmosphere of accommodation is accepted and welcomed by members of the public, we should treasure it and strive to prevent this new development from being damaged. Some political parties and Members, including the Liberal Party and Dr David CHU, are hoping to make an effort through their own channels.

I believe communication, requiring time and space, cannot be achieved instantly. Neither can we expect all problems to be resolved instantly. Yet, I believe positive results can be yielded one day provided that we can continue to show sincerity in communication and create favourable conditions.

The emergence of conflicts in the community is very often attributed to the insistence on one's own ideas and the reluctance to accept or respect the viewpoints of others. What Hong Kong needs most at the moment is a spirit of putting aside differences to seek common grounds while preserving differences and a more rational and understanding attitude. I hope Members can continue to further co-operate to uphold the key characteristic of Hong Kong as an open, tolerant and pluralistic community.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr SZETO Wah to Mr James TIEN's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr James TIEN rose to claim a division.

**PRESIDENT** (in Cantonese): Mr James TIEN has claimed a division. The division bell will ring for three minutes.

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

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong, Ms LI Fung-ying and Mr Michael MAK voted for the amendment.

Mr Henry WU voted against the amendment.

Mr James TIEN, Dr Eric 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 Tommy CHEUNG and Mr IP Kwok-him abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr WONG Sing-chi voted for the amendment.

Mr CHAN Kam-lam, Mr Jasper TSANG, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr David CHU, Mr NG Leung-sing and Mr Ambrose LAU abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, five were in favour of the amendment, one against it and 13 abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 18 were present, 10 were in favour of the amendment and seven 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.

**PRESIDENT** (in Cantonese): Mr James TIEN, you may now reply. You have two minutes 12 seconds.

**MR JAMES TIEN** (in Cantonese): Madam President, more than 10 Members have spoken today and I have listened to them very attentively, particularly the speeches by Members from the pro-democracy camp. On the point mentioned by Mr Andrew CHENG about assisting the democrats "where necessary", I have already responded to it, and I have also responded to the remarks of Mr SZETO Wah. Madam President, on the point mentioned by Dr YEUNG Sum, I notice that many people are very concerned about it and that is, whether or not foreign powers are involved in the Democratic Party or whether or not it has accepted funding from foreign countries. I am very glad that Dr YEUNG Sum has clarified this point, telling us that all the funds of the Democratic Party were raised in Hong Kong. As far as I understand it, when he said that the money had been raised in Hong Kong, he meant that the money came from Hong Kong people in Hong Kong, not from foreigners in Hong Kong.

Moreover, Ms Emily LAU said that we must cease to adopt the approach of handling the easier tasks and not the difficult ones. In fact, my intention is to accomplish the easier tasks first and then proceed to the more difficult ones. I did not say that we should simply drop the difficult ones. Since Ms Emily LAU and other Members of the pro-democracy camp hold this view, we will put forth all the proposals in one go as far as possible in our future endeavours, instead of dealing with the easier tasks first and the more difficult ones later. I believe they would of course handle this issue in their own way.

Madam President, from the speeches of Members on this motion, we do appreciate the feelings of many colleagues from the pro-democracy camp,

though we see one another quite often. Now I know that many of them have not returned to the Mainland for over a decade and they very much wish to return to the country. On this point, apart from making an appeal to the SAR Government through this motion, I will continue to more actively call on individual members of my party or friends in the business sector to help lobbying the Chief Executive, in the hope that this issue can be resolved as soon as possible.

Regarding the comment made by Secretary Stephen LAM on my proposal on the Executive Council, my view is that Hong Kong is a very small community with little problem in respect of race and religion. So, I think it is unnecessary for an opposition party to exist. In foreign governments, there are certainly the ruling party and the opposition party. But in such a small place of Hong Kong, issues that need attention are often confined to the economy and the people's livelihood. So, it is basically unnecessary for an opposition party to exist. But with the consent of the Central Authorities, and if the Democratic Party is on good terms with Mr TUNG, its existence is still possible. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr James TIEN, as set out on the Agenda, 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 motion passed.

**SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the meeting until nine o'clock in the morning tomorrow.

*Suspended accordingly at twenty-three minutes to Eleven o'clock.*

**Annex IV**

## ADOPTION (AMENDMENT) BILL 2003

**COMMITTEE STAGE****Amendments to be moved by the Secretary for  
the Environment, Transport and Works**

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>(a) In paragraph (b), in the proposed definition of "Court", in paragraph (b), by adding "and section 23B" after "Part 5".</p> <p>(b) By deleting paragraph (d) and substituting –</p> <p style="padding-left: 40px;">"(d) in the definition of "parent" –</p> <p style="padding-left: 80px;">(i) by adding "、父或母" after "(父母";</p> <p style="padding-left: 80px;">(ii) by repealing "illegitimate" and substituting "born out of wedlock";".</p> <p>(c) By deleting paragraph (e) and substituting –</p> <p style="padding-left: 40px;">"(e) in the definition of "relative" –</p> <p style="padding-left: 80px;">(i) in paragraph (b), by repealing "illegitimate" and substituting "born out of wedlock";</p> <p style="padding-left: 80px;">(ii) by adding "、外祖父母" after "祖父母";".</p> <p>(d) By adding –</p> <p style="padding-left: 40px;">"(ca) in the definition of "臨時命令", by repealing the full stop and substituting a semicolon;".</p> <p>(e) In paragraph (f) –</p> <p style="padding-left: 40px;">(i) in the proposed definition of "accredited body", by deleting "approved" and substituting "accredited as an</p>

accredited body, or the accreditation of which is renewed,";

(ii) by adding –

""accreditation" (認可) means an accreditation granted or renewed under section 26;".

7 In paragraph (a), by deleting everything after "An" and substituting "application made under section 4 or 20" and substituting "Subject to section 20C(3), an application made under section 4"; ". .

8 (a) In paragraph (a) –

(i) by deleting ", (3)";

(ii) in the proposed section 5(1) –

(A) by deleting "in respect of an infant under section 4(a)" and substituting "authorizing a sole applicant to adopt an infant";

(B) in paragraph (c), by deleting everything after "to a" and before "; or" and substituting "parent of the infant";

(iii) in the proposed section 5(2), by deleting "in respect of an infant under section 4(b)" and substituting "authorizing applicants who apply jointly as 2 spouses to adopt an infant".

(b) In paragraph (f), in subparagraph (iii), in the proposed paragraph (ab), by deleting "by virtue of" and substituting "under".

(c) In paragraph (g), in the proposed section 5(8), by deleting "For the purposes of subsection (7)," and substituting "Without

limiting any other circumstances in which the Court may determine that continuous actual custody has not been broken for the purposes of subsection (7),".

(d) By adding –

"(h) by adding –

"(9) For the purposes of paragraph (b) of subsection (7), in the case of an adoption in relation to which section 27 applies, no notice under that paragraph may be lodged unless the applicant has been assessed to be a suitable adoptive parent under section 29 and the provisions of section 29A, 29B or 29C (as may be applicable) have been complied with.".

9 In the proposed section 5AA –

- (a) by deleting "27(3)(a) and" and substituting "27A(2)";
- (b) by deleting "an application";
- (c) by deleting "27(3)" and substituting "27A(2)(b)".

New By adding –

**"9A. Freeing infant for adoption**

Section 5A(4)(b) is repealed and the following substituted –

- "(b) the Director or an accredited body may place, subject to the provisions of this Ordinance, the infant for adoption; and".



- 10 In paragraph (b), by deleting "by repealing "安置幼年人接受領養" and substituting "爲領養的目的而將幼年人交託"" and substituting "by repealing "the Director" and substituting ", the Director and any accredited body"".
- 12(a) By deleting "any person whose consent is required by section 5(5)(a)" and substituting "a parent of an infant".
- 13(a) (a) In subparagraph (i) –  
(i) by deleting "birth";  
(ii) by deleting "by virtue of" and substituting "under".  
(b) In subparagraph (iii), by deleting "27(3)" and substituting "27A(2)".
- 16 In the proposed section 13(1) –  
(a) in paragraph (a) –  
(i) by deleting "birth";  
(ii) by deleting "applied for by virtue of" and substituting "made under";  
(b) in paragraph (b)(i) –  
(i) by deleting "applied for by virtue of" and substituting "made under";  
(ii) by deleting "birth";  
(c) in paragraph (c)(i), by deleting "applied for by virtue of" and substituting "made under".

- 17 By deleting the clause and substituting –
- "17. Cessation of certain orders, etc.**
- Section 14 is amended –
- (a) in subsection (1), by repealing "illegitimate" and substituting "born out of wedlock";
  - (b) in subsection (3), by repealing "控制" and substituting "管束".
- 18
- (a) In paragraph (a), in the proposed section 15(1)(b) –
    - (i) by deleting "applied for by virtue of" and substituting "made under";
    - (ii) by deleting "birth".
  - (b) In paragraph (c), in the proposed section 15(2)(c)(ii) –
    - (i) by deleting "applied for by virtue of" and substituting "made under";
    - (ii) by deleting "birth".
  - (c) In paragraph (d), in the proposed section 15(3) –
    - (i) by deleting "applied for by virtue of" and substituting "made under";
    - (ii) by deleting "birth".
- 19
- (a) By adding –
    - "(ba) in subsection (2)(c)(ii), by repealing "一州" and substituting "國家";".
  - (b) In paragraph (c), in the proposed section 17(4), by deleting "in paragraph" and substituting "by paragraph".

- 24 (a) In the proposed section 20A(1), in the definition of "Convention adoption", in paragraph (b) –
- (i) by deleting "whether or not" and substituting "regardless of whether in respect of which";
  - (ii) by deleting "in respect of the adoption";
  - (iii) by deleting "State in respect of the adoption;" and substituting –  
"State,  
other than any adoption that is excluded from the meaning of "Convention adoption" by an order made under section 20J;"
- (b) By adding –
- "20J. Modification of the definition of "Convention adoption"**
- (1) Subject to subsection (2), the Secretary for Health, Welfare and Food may by order published in the Gazette declare that, for the purposes of this Ordinance, such adoptions as specified in the order shall be excluded from the meaning of "Convention adoption".
- (2) An order under subsection (1) may be made only if –
- (a) the People's Republic of China has made a declaration under Article 25 of the Convention to the effect that Hong Kong will not be bound to recognize adoptions made in accordance with any agreement concluded by application of

paragraph 2 of Article 39 of the  
Convention; and

(b) the order specifies the adoptions."

27 In paragraph (a), in the proposed section 22(1)(b), by adding ", in an amount that is calculated in accordance with a schedule of fees approved by the Director from time to time in relation to the accredited body" before the full stop.

29 (a) In the proposed section 23A –

(i) by deleting subsection (1) and substituting –

"(1) Subject to subsections (1A) and  
(1B), no person other than –

(a) the Director;

(b) an accredited body acting  
under and in accordance with  
its accreditation; or

(c) a person acting in pursuance  
of an order of the Court,

shall make arrangements for the adoption of an  
infant, or place an infant for adoption.";

(ii) by adding –

"(1A) Subsection (1) shall not apply if the  
prospective adopter, or (where the prospective  
adopters are 2 spouses) either of the prospective  
adopters, is –

(a) a parent or relative of the  
infant; or

- (b) a person who is married to a parent of the infant.

(1B) If an arrangement leads to the placement of an infant from a place that lies outside Hong Kong but within the People's Republic of China with a person resident in Hong Kong, then subsection (1) shall not apply to the arrangement nor the placement.”;

(iii) in subsection (2), by deleting paragraph (a);

(iv) by deleting subsection (3);

(v) in subsection (4) –

(A) by deleting paragraph (a) and substituting –

“(a) he enters into any agreement, or makes any arrangement, for the adoption of the infant by any other person where the adoption is effected, or is intended to be effected, in Hong Kong or in a place outside the People's Republic of China;”;

(B) in paragraph (b), by deleting “any negotiations of which the purpose or effect” and substituting “negotiations the purpose or effect of which”.

(b) In the proposed section 23C, by adding –

“(2A) For the purposes of subsection (1), “relative” (親屬), in relation to an infant, means a grandparent, brother, sister, uncle or aunt of the full blood or of the half blood, but excluding, where the

infant is born out of wedlock, the blood relations of his father.".

30 By deleting the clause and substituting –

**"30. Adoption to be effected  
under the Ordinance**

Section 25 is renumbered as section 33."

31 (a) By adding before the proposed section 26 –

**"PART 7**

**ACCREDITED BODIES, SUITABILITY ASSESSMENT OF  
PROSPECTIVE ADOPTERS, AND PLACEMENT, ETC.**

**25. Interpretation of Part 7**

In this Part and Schedule 4, unless the context otherwise requires –

"adoption of overseas children" (海外兒童領養) means an adoption within the meaning of paragraph (a) of the definition of "non-Convention adoption";

"Convention adoption" (公約領養) has the meaning assigned to it by paragraph (a) of the definition of the expression in section 20A(1);

"local adoption" (本地領養) means the adoption of an infant resident in Hong Kong by a person resident in Hong Kong;

"non-Convention adoption" (非公約領養) means –

- (a) the adoption of an infant resident in a place outside the People's Republic of China by

a person resident in Hong Kong, other than a Convention adoption; or

- (b) the adoption of an infant resident in Hong Kong by a person resident in a place outside the People's Republic of China, other than a Convention adoption."

- (b) By deleting the proposed sections 26, 27, 28 and 29 and substituting –

**"26. Accredited bodies**

(1) The Director may, in accordance with the principles set out in Articles 10 and 11 of the Convention (as defined in section 20A(1)), accredit, or renew the accreditation of, a body of persons (corporate or unincorporate) as an accredited body in relation to –

- (a) Convention adoption; or
- (b) non-Convention adoption.

(2) The Director may, in accordance with the principles set out in Schedule 4, accredit, or renew the accreditation of, a body of persons (corporate or unincorporate) as an accredited body in relation to local adoption.

(3) An accreditation may be subject to such conditions as the Director may reasonably impose.

(4) Unless revoked or suspended, an accreditation shall be valid for a period of 4 years or such lesser period as the Director may determine when he grants or renews the accreditation.

(5) The Director may, at any time by notice in

writing served on the accredited body, amend or revoke any such condition, or impose new conditions, as may be reasonable in the circumstances.

(6) An accredited body may, while acting under and in accordance with its accreditation and subject to the provisions of this Ordinance, make arrangements for the adoption of infants and proceed with their placement for adoption.

**26A. Revocation or suspension of accreditation**

The Director may, at any time by notice in writing served on an accredited body, revoke or suspend its accreditation if –

- (a) in his opinion, the accredited body is operated in a manner that is inconsistent with the principles in accordance with which it is accredited under section 26(1) or (2); or
- (b) any condition of the accreditation has not been or is not being complied with by the accredited body.

**26B. Register of accredited bodies**

- (1) The Director shall cause to be kept, in such



form as he may specify, a register of accredited bodies containing—

- (a) the name and address of every accredited body; and
- (b) such other particulars as the Director thinks fit.

(2) The Director shall make such amendment to the register as may be necessary for the purpose of maintaining the accuracy of the register.

(3) The register may be inspected at the office of the Director during office hours by any member of the public.

(4) A certificate purporting to be signed by or for the Director that a body of persons is or is not an accredited body shall be evidence of the facts stated in the certificate until the contrary is proved.

(5) A copy of an entry in the register purporting to be certified under the hand of the Director shall, until the contrary is proved, be admitted in evidence as proof of the facts stated in the certificate.

**27. Duty to apply for assessment  
of suitability to be  
an adoptive parent**

(1) Subject to subsection (2), a person resident in Hong Kong who intends to adopt any infant, other than a person who is —

- (a) a parent or relative of the infant; or
- (b) married to a parent of the infant,

shall apply in accordance with section 27A(1) and (2) for assessment of his suitability to be an adoptive parent.

(2) A person habitually resident in Hong Kong who intends to make an application for Convention adoption shall apply in accordance with section 27A(1) and (2) for assessment of his suitability to be an adoptive parent.

**27A. Application for suitability assessment and authorization for checking criminal record, etc.**

(1) An application under section 27 shall be made in a form specified by the Director and submitted –

- (a) in the case of local adoption, to the Director or an accredited body accredited for that purpose;
- (b) in the case of adoption of overseas children or Convention adoption, to the Director or an accredited body authorized by the Director in that behalf.

(2) The application shall be submitted together with –

- (a) such information as the Director or the accredited body (as the case may be) may reasonably require; and
- (b) a written authorization from the

applicant to the Commissioner of Police authorizing the Commissioner of Police –

- (i) to inform the Director whether or not the applicant has at any time been convicted of any offence in Hong Kong or elsewhere; and
- (ii) if the applicant has a previous conviction, to release to the Director the particulars of the conviction.

(3) In the case of local adoption where the application is submitted to an accredited body, the applicant may, in the authorization, designate the accredited body in substitution of the Director for the purposes of subparagraphs (i) and (ii) of subsection (2)(b).

(4) On receiving an authorization submitted under subsection (2), the accredited body shall forthwith send the authorization to the Director for him to proceed in accordance with section 28.

(5) The Director or the accredited body (as the case may be) may refuse to consider an application in respect of which subsections (1) and (2) are not complied with.

## **28. Criminal record**

**checking, etc.**

(1) On receipt of an authorization under section 27A(2)(b), the Director shall forthwith send to the Commissioner of Police –

- (a) the authorization; and
- (b) (if an accredited body is designated in the authorization pursuant to section 27A(3)) the Director's certification to the effect that the authorization is submitted in support of an application for adoption.

(2) The applicant may be required to –

- (a) attend before a public officer authorized by the Commissioner of Police for the purpose of subsection (3); and
- (b) allow that officer to take and record his fingerprints.

(3) For the purpose of verifying whether or not the applicant has been convicted of an offence in Hong Kong or elsewhere, a public officer authorized by the Commissioner of Police for the purpose of this subsection may take and record the fingerprint impressions of the applicant for checking against police records, but any fingerprints obtained pursuant to this subsection shall be destroyed as soon as reasonably practicable after the record checking has been

conducted.

(4) The Director or an accredited body may, for a purpose connected with a person's proposed adoption of an infant, release any information on the person that the Director or the accredited body has obtained pursuant to section 27A(2)(b) (as read with section 27A(3)) to –

- (a) the Government, or a government in a place outside the People's Republic of China;
- (b) an accredited body, or a person duly authorized (howsoever described) by a competent authority in a place outside the People's Republic of China to place infants, or make arrangements, for adoption;
- (c) any court having jurisdiction to make the adoption order;
- (d) any other person who, in the opinion of the Director, reasonably requires the information to facilitate the process of the proposed adoption;
- (e) the Administrative Appeals Board.

## **29. Suitability assessment**

(1) After considering an application made under section 27A(1)(a) for local adoption, the Director

or (if the application is submitted to an accredited body) the accredited body may decide that the applicant is suitable, or is not suitable, to be an adoptive parent.

(2) After considering an application made under section 27A(1)(b) for adoption of overseas children or Convention adoption, the Director may decide that the applicant is suitable, or is not suitable, to be an adoptive parent.

(3) In relation to an application made under section 27A(1)(b) for adoption of overseas children or Convention adoption, the Director may –

- (a) designate an accredited body to collect such information as the Director may reasonably require to enable him to make the assessment;
- (b) in making his assessment, take into account any recommendation made by that body on the basis of such information.

**29A. Placement of infants for local adoption where specific consent is given**

(1) This section applies to local adoption where consent for the adoption of an infant is given in the prescribed specific form of consent.

(2) If a person is named in the consent as the prospective adopter for the infant and the person applies with the Director for an assessment under section 29(1),

then as and when the Director has assessed the person to be a suitable adoptive parent, the Director may proceed with the infant's placement.

(3) If a person is named in the consent as the prospective adopter for the infant and the person applies with an accredited body for an assessment under section 29(1), then as and when the accredited body has assessed the person to be a suitable adoptive parent, the accredited body may proceed with the infant's placement.

**29B. Placement of infants for local adoption where general consent is given**

(1) This section applies to local adoption where consent for the adoption of an infant is given in the prescribed general form of consent.

(2) As and when the Director decides, having due regard to any opinion given to him pursuant to subsection (3), that –

- (a) an applicant assessed to be a suitable adoptive parent under section 29(1) would be a suitable adoptive parent for a particular infant; and
- (b) the placement of the infant with the applicant for adoption would be in the best interests of the infant,

the Director, or (if the application was submitted to an

accredited body) the accredited body, may proceed with the placement.

(3) Before the Director makes a decision under subsection (2), he shall seek the opinion of each and every accredited body that has proposed any prospective adopter for that particular infant and such other persons as the Director may consider appropriate.

**29C. Placement of infants for adoptions other than local adoption**

(1) This section applies to adoption of overseas children and Convention adoption.

(2) As and when the Director decides that –

- (a) an applicant assessed to be a suitable adoptive parent under section 29(2) would be a suitable adoptive parent for a particular infant; and
- (b) the placement of the infant with the applicant for adoption would be in the best interests of the infant,

the Director may proceed with the placement, or authorize an accredited body to proceed with the placement.

**29D. Termination of placement**

(1) If at any time after the Director has proceeded with an infant's placement or authorized an



accredited body to proceed with an infant's placement with a prospective adopter, the Director opines that to continue the placement would not be in the best interests of the infant, then the Director may terminate the placement or direct the accredited body to terminate the placement.

(2) If at any time after an accredited body has proceeded with an infant's placement with a prospective adopter for local adoption, pursuant to section 29A(3) or 29B(2), the accredited body opines that to continue the placement would not be in the best interests of the infant, then the accredited body may terminate the placement.

## PART 8 MISCELLANEOUS

### **29E. Review of decisions of accredited bodies**

(1) If a person is aggrieved by an accredited body's decision –

(a) on the assessment of that person's suitability to be an adoptive parent;  
or

(b) to terminate a placement,

the person may, within (in the case of paragraph (a)) 28 days or (in the case of paragraph (b)) 7 clear days of receiving notice of the decision, lodge with the Director a written notice requesting the Director to review the decision.

(2) In any such review, the Director may confirm, vary or reverse the decision under review.

(3) A decision referred to in subsection (1) shall have immediate effect, or have effect from a date specified in the decision (if applicable), notwithstanding any review against the decision."

(c) In the proposed section 30 –

(i) by renumbering it as section 30(1);

(ii) in subsection (1) –

(A) in paragraph (d), by deleting " the person's status as an accredited body" and substituting "his accreditation";

(B) by deleting everything after ", within" and substituting "(in the case of paragraph (b)) 7 clear days or (in other cases) 28 days of receiving notice of the decision, lodge a notice of appeal with the Administrative Appeals Board to appeal against the decision.";

(iii) by adding –

"(2) A decision referred to in subsection (1) shall have immediate effect, or have effect from a date specified in the decision (if applicable), notwithstanding any appeal against the decision."

(d) By adding –

**"31. Cessation of accreditation**

(1) If an accreditation expires without having been renewed, or is revoked or suspended, the Director

may, in relation to an adoption case handled by the accredited body concerned ("the defunct accredited body") under its accreditation –

- (a) take over the adoption case; or
- (b) designate any other accredited body to take over the adoption case.

(2) The Director or an accredited body so designated (as the case may be) may exercise any function that the defunct accredited body would be entitled to exercise under this Ordinance in relation to the adoption case but for the expiration, revocation or suspension.

### **32. Regulation**

The Secretary for Health, Welfare and Food may make regulations –

- (a) to provide for the procedure to be followed and the requirements to be observed, in relation to –
  - (i) assessment and approval of any person to be a suitable adoptive parent;
  - (ii) placement of infants for adoption;
- (b) in respect of the exercise by accredited bodies of their functions of placing infants, or making arrangements, for adoption of

- infants;
- (c) to provide for matters related to –
  - (i) the grant or renewal of accreditation; or
  - (ii) the suspension or revocation of accreditation; and
- (d) to provide for incidental and connected matters."

New                      By adding –

**"31A. Sections added**

The following are added –

**"34. Transitional provisions for section 23A**

(1) If a person has filed, before the commencement of section 23A, a notice under section 5(7)(b) stating his intention to apply for an adoption order in respect of an infant, then section 23A shall not apply to any arrangement or placement for the infant's adoption by the person.

(2) If an infant has been placed with a person for an adoption to be effected in a place outside the People's Republic of China and the adoption has not yet been effected as at the commencement of section 23A, then that section shall not apply to any arrangement or placement for the infant's adoption by the person.

**35. Transitional provisions for Part 7**

(1) Part 7 shall not apply in relation to any

arrangement or placement for adoption referred to in section 34.

(2) If the Director has assessed that a person is suitable to be an adoptive parent and the assessment remains valid as at the commencement of section 27, then it may be taken as an assessment made by the Director under section 29, and accordingly, the provisions of Part 7 shall apply in relation to any decision made after that commencement for placing a particular infant with that person.

(3) If a prospective adopter for the adoption of an infant has not filed, as at the commencement of Part 7, a notice under section 5(7)(b) stating his intention to apply for an adoption order in respect of the infant, then subject to subsection (2), the prospective adopter shall apply for an assessment under section 27 and accordingly, the provisions of that Part shall apply in relation to the proposed adoption in all respects."."

32 By adding –

"SCHEDULE 4 [ss. 25 & 26(2)]

#### ACCREDITATION PRINCIPLES

1. Accreditation shall only be granted to and maintained by a body of persons (corporate or unincorporate) that –

(a) is a charitable institution exempted

from tax under section 88 of the Inland Revenue Ordinance (Cap. 112); and

- (b) demonstrates its competence to carry out properly tasks related to local adoption services, having regard to –
  - (i) its experience in adoption services or child welfare services; and
  - (ii) its financial status and its resources (financial or otherwise) that may be made available for providing local adoption services.

2. An accredited body –

- (a) shall ensure that its local adoption services are undertaken by a team of staff designated by it for such services, and directed by persons qualified by their ethical standards and by training or experience to work in the field of local adoption;
- (b) shall ensure that the team so designated includes registered social workers (as defined in the Social Workers Registration

Ordinance (Cap. 505)), and that only those registered social workers may undertake home assessment and placement tasks for adoption; and

- (c) shall establish effective internal procedures to supervise its operation related to local adoption."

**Schedule** By adding immediately before "Adoption Rules" –  
"Employment Ordinance"

### 1A. Interpretation

Section 2(1) of the Employment Ordinance (Cap. 57) is amended, in the definition of "issue" --

- (a) in paragraph (b), by adding "(subject to paragraph (ba))" after "but";
- (b) by adding –
- "(ba) includes a child of the employee adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the employee is the parent referred to in that paragraph;".

### Intestates' Estates Ordinance

**1B. Interpretation**

Section 2 of the Intestates' Estates Ordinance (Cap. 73) is amended –

- (a) in subsection (2) –
  - (i) in paragraph (b), by adding "or 20F" after "section 17";
  - (ii) by adding ", subject to subsection (2A)," after "shall be treated";
  - (iii) by adding "如" after "任何人";
- (b) by adding –

"(2A) For the purposes of this Ordinance, a person adopted under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) shall be treated as the child of the adopter and the parent referred to in that paragraph, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly."

**Surviving Spouses' and Children's  
Pensions Ordinance**

**1C. Interpretation**

Section 2(1) of the Surviving Spouses' and Children's Pensions Ordinance (Cap. 79) is amended, in the definition of "child", by repealing everything after "in relation to" and substituting –



"a contributor –

(a) includes –

- (i) an illegitimate child, a step-child and a child adopted by the contributor; and
- (ii) a child of the contributor adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the contributor is the parent referred to in that paragraph; but

(b) subject to paragraph (a)(ii) and except as provided in subsection (5)(ac), does not include a child of the contributor adopted by another person;"

#### **Pensions Ordinance**

##### **1D. Pensions to dependants when an officer dies on duty**

Section 18(3)(e) of the Pensions Ordinance (Cap. 89) is amended –

(a) in subparagraph (i) –

- (i) by repealing "other than" and substituting "but (subject to subparagraph (ia)) does not include";
- (ii) by repealing "and" at the end;

(b) by adding –

- "(ia) any child of the officer adopted by another person under an adoption

order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the officer is the parent referred to in that paragraph; and".

### **Widows and Orphans Pension Ordinance**

#### **1E. Interpretation**

Section 2 of the Widows and Orphans Pension Ordinance (Cap. 94) is amended –

- (a) in subsection (1), in the definition of "child", by adding "or 20F" after "section 17";
- (b) in subsection (5), by repealing everything after "290)" and before the dash and substituting "(other than section 5(1)(c) of that Ordinance), or in such other manner as is referred to in section 17 or 20F of that Ordinance,".

### **Pension Benefits Ordinance**

#### **1F. Interpretation**

Section 2(1) of the Pension Benefits Ordinance (Cap. 99) is amended, in the definition of "child", by repealing everything after "in relation to" and substituting –

"an officer –

- (a) includes –
  - (i) an illegitimate child, a step-child and a child

- adopted by the officer; and
- (ii) a child of the officer adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the officer is the parent referred to in that paragraph; but
- (b) subject to paragraph (a)(ii), does not include a child of the officer adopted by another person;".

### **Auxiliary Forces Pay and Allowances Ordinance**

#### **1G. Interpretation**

Section 2(1) of the Auxiliary Forces Pay and Allowances Ordinance (Cap. 254) is amended, in the definition of "child" –

- (a) in paragraph (a) –
  - (i) by repealing "other than" and substituting "but (subject to paragraph (aa)) does not include";
  - (ii) by repealing "or" at the end;
- (b) by adding –
  - "(aa) any child of the member adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the member is the parent referred to in that paragraph; or".

**Employees' Compensation Ordinance****1H. Interpretation**

Section 3(2) of the Employees' Compensation Ordinance (Cap. 282) is amended –

- (a) in paragraph (a) –
  - (i) in subparagraph (ii), by repealing "of the Adoption Ordinance (Cap. 290)" and substituting "or 20F of that Ordinance";
  - (ii) in subparagraph (iii), by repealing "and" at the end;
- (b) in paragraph (b) –
  - (i) by adding "subject to paragraph (c)," before "any person so adopted";
  - (ii) by repealing the full stop and substituting "; and";
- (c) by adding –
  - "(c) any person adopted under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) shall be treated as the child of the adopter and the parent referred to in that paragraph, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly.".

- Schedule,  
section 2      By deleting everything after "Rule 10(2)" and substituting "(a) is amended by repealing "or Form 4A" and substituting ", Form 4A or Form 4B".".
- Schedule,  
section 4      (a)      In paragraph (a)(ii), in the proposed ANNEX TO FORM 1 –
- (i)      by deleting "the Director of Social Welfare" and substituting "the Director of Social Welfare\*/.....  
.....(name of accredited body\*)<sup>(2)</sup> of  
.....  
.....(address)";
- (ii)      in Note (1), by deleting everything after "should be" and substituting "a solicitor practising in Hong Kong, a notary public, or a registered social worker working with the Social Welfare Department or an accredited body accredited under the Adoption Ordinance (Cap. 290).";
- (iii)      by adding immediately after Note 1 –
- "(2)      If the proposed adoption is processed by a body of persons accredited for local adoption under the Adoption Ordinance (Cap. 290), the applicant may insert the name of the accredited body as the recipient of the information."
- (b)      In paragraph (c), by adding –
- "(iia)      in paragraph 10, by repealing "care and possession" where it twice appears and substituting "actual custody";".

- (c) In paragraph (d) –
- (i) by adding before subparagraph (i) –
- "(ia) by repealing "茲因" and substituting "由於";
- (ib) by repealing "又因" and substituting "又由於";
- (ii) by adding –
- "(ia) by repealing paragraph (1) and substituting –
- "(1) I understand that the effect of an adoption order is that a parent or guardian will lose all his rights in respect of the maintenance and upbringing of the infant.";";
- (iii) by adding –
- "(va) in note (6), by repealing everything before "In all cases" and substituting –
- "(6) The document will not be admissible as evidence unless the signature is attested by a commissioner for oaths (or, if executed outside Hong Kong, by any person for the

time being authorized  
by law in that place to  
administer an oath for  
any judicial or other  
legal purpose, as  
mentioned in rule 29  
of the Adoption Rules  
(Cap. 290 sub. leg.  
A)).";

(iv) by adding –

"(vii) by repealing note (8);".

(d) In paragraph (c) –

(i) in subparagraph (iii), by deleting everything after  
"by repealing" and substituting –

"everything before "In all cases" and  
substituting –

"(4) The document will not be  
admissible as evidence  
unless the signature is  
attested by a commissioner  
for oaths (or, if executed  
outside Hong Kong, by any  
person for the time being  
authorized by law in that  
place to administer an oath  
for any judicial or other legal  
purpose, as mentioned in rule  
29 of the Adoption Rules

(Cap. 290 sub. leg. A)).";";

(ii) by adding –

"(iv) by repealing Note (5);".

(e) In paragraph (f), in the proposed FORM 4B –

(i) in paragraph (1), by deleting "will/will not"

deprive" and substituting "is that I will/will not\*  
lose";

(ii) in Note (6) –

(A) by deleting "birth parent" and substituting  
"parent (as defined in the Adoption  
Ordinance (Cap. 290));

(B) by deleting "will deprive a parent of all"  
and substituting "is that a parent will lose  
all his";

(iii) in Note (7), by deleting "an officer authorized by  
the Adoption Rules (Cap. 290 sub. leg. A) – see  
note (8)]" and substituting "any person for the  
time being authorized by law in that place to  
administer an oath for any judicial or other legal  
purpose, as mentioned in rule 29 of the Adoption  
Rules (Cap. 290 sub. leg. A)]";

(iv) by deleting Note (8);

(v) by repealing "茲因" and substituting "由於";

(vi) by repealing "又因" and substituting "又由於".

Schedule By adding immediately before "**Administrative Appeals Board  
Ordinance**" –



**"Employees Compensation Assistance  
Ordinance**

**5A. Interpretation**

Section 2(2) of the Employees Compensation Assistance Ordinance (Cap. 365) is amended –

- (a) in paragraph (a) –
  - (i) in subparagraph (ii), by repealing "of the Adoption Ordinance (Cap. 290)" and substituting "or 20F of that Ordinance";
  - (ii) in subparagraph (iii), by repealing "and" at the end;
- (b) in paragraph (b) –
  - (i) by adding "subject to paragraph (c)," before "any person so adopted";
  - (ii) by repealing the full stop and substituting "; and";
- (c) by adding –
  - "(c) any person adopted under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) shall be treated as the child of the adopter and the parent referred to in that paragraph, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly."

**Pension Benefits (Judicial Officers)  
Ordinance**

**5B. Interpretation**

Section 2(1) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) is amended, in the definition of "child", by repealing everything after "in relation to" and substituting –

"an officer –

(a) includes –

- (i) an illegitimate child, a step-child and a child adopted by the officer; and
- (ii) a child of the officer adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the officer is the parent referred to in that paragraph; and

(b) subject to paragraph (a)(ii), does not include a child of the officer adopted by another person;".

**Annex V**

## HUMAN ORGAN TRANSPLANT (AMENDMENT) BILL 2001

**COMMITTEE STAGE**Amendments to be moved by the Secretary for the  
Environment, Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting "and Welfare" and substituting " Welfare and Food".
New	By adding -  <b>"2A. Part heading added</b>  The following is added immediately before section 1 -  "PART 1  PRELIMINARY".
3(c)	(a) In the proposed definition of "restricted organ transplant", by deleting the full stop and substituting a semicolon.  (b) By adding -  ""Appeal Board" (上訴委員會) means the Appeal Board established by section 7G;  "Director" (署長) means the Director of

Health;

"Secretary" (局長) means the Secretary for  
Health, Welfare and Food."

New

By adding -

**"3A. Part heading added**

The following is added immediately before  
section 3 -

"PART 2

HUMAN ORGAN TRANSPLANT BOARD".

4

(a) By deleting the heading and substituting

**"Establishment and functions of the board".**

(b) By deleting the proposed section 3(2) to (12)  
and substituting -

"(2) The board has the following  
functions -

(a) to give approval to the  
carrying out of a  
restricted organ removal  
or a restricted organ  
transplant in accordance  
with the provisions in  
this Ordinance;

(b) to receive any information  
and documents that by this

Ordinance are required to be submitted or supplied to the board;

(c) to require any information or documents that the board may require to be provided under this Ordinance;

(d) to keep a record of information supplied to the board in pursuance of the regulations made under section 6;

(e) to receive and require information and documents in respect of imported organs in accordance with section 7;

(f) to make regulation to provide for any matter that by this Ordinance is required or permitted to be prescribed by the board;

(g) to perform any other functions that the board is required or permitted

to perform under this  
Ordinance.”.

New

By adding -

**“4A. Sections and Part heading added**

The following are added -

**“3A. Constitution of the board**

(1) The Secretary shall appoint 9  
substantive members to the board as  
follows -

- (a) a chairman, who shall not  
be a registered medical  
practitioner;
- (b) a vice-chairman, who shall  
not be a registered  
medical practitioner;
- (c) 4 members from the medical  
sector, all of whom shall  
be registered medical  
practitioners;
- (d) 1 member from the social  
work sector, who shall be  
a registered social  
worker;
- (e) 1 member from the legal  
sector, who shall be a  
legally qualified person;

and

- (f) 1 member from the non-medical sector, who shall not be a registered medical practitioner.

(2) The Secretary shall also appoint a panel consisting of -

- (a) 8 members from the medical sector, all of whom shall be registered medical practitioners;
- (b) 2 members from the social work sector, both of whom shall be registered social workers;
- (c) 2 members from the legal sector, both of whom shall be legally qualified persons; and
- (d) 2 members from the non-medical sector, neither of whom shall be a registered medical practitioner.

(3) The Secretary shall publish in the Gazette notice of every appointment made under subsection (1) or (2).

(4) The substantive members of the

board and the panel members shall be appointed on such terms and for such period as the Secretary shall specify on appointing them.

(5) If a substantive member from a particular sector is unable to perform his functions during any period, the board may, according to its procedure, appoint a panel member from that sector to act as a substitute for that substantive member in the board during that period, except that the panel member shall not -

- (a) be regarded as a substantive member mentioned in subsections (6), (7) and (8); or
- (b) participate in the making of any regulation by the board under this Ordinance.

(6) If the chairman of the board is unable to perform his functions during any period, the following person shall act as chairman during that period -

- (a) the vice-chairman of the board; or



(b) if the vice-chairman is unable to act as chairman during that period, a person who complies with subsection (7) and who shall be -

(i) appointed by the chairman or, if the chairman has failed to make the appointment, by the vice-chairman; or

(ii) elected by the following persons among themselves if both the chairman and the vice-chairman have failed to make the appointment -

(A) all remaining substantive members in

the board;

and

- (B) any panel member who is for the time being acting as a substitute in the board under subsection (5).

(7) For the purpose of subsection (6) (b), a person who is to act as chairman of the board -

- (a) shall not be a registered medical practitioner; and
- (b) shall be a substantive member of the board unless all remaining substantive members in the board are registered medical practitioners, in which case that person may be a panel member who is for the time being acting as a substitute in the board

under subsection (5).

(8) If a substantive member from a particular sector is acting as chairman of the board during any period, the board may, according to its procedure, appoint a panel member from that sector to act as a substitute for that substantive member in the board during that period.

(9) The Secretary shall appoint to the board a secretary and a legal adviser on such terms and for such period as the Secretary shall specify on appointing them.

### **3B. Procedure of the board**

The board may determine its own procedure, whether to be followed in general situations or in a particular case, but the procedure shall not be inconsistent with any provision in this Ordinance or in any regulation made under this Ordinance.

### **3C. Application of Part VII of Interpretation and General Clauses Ordinance to the board and panel**

Part VII of the Interpretation and

General Clauses Ordinance (Cap. 1)  
applies to the board and the panel, and  
to appointments to the board and the  
panel, except in so far as that Part is  
inconsistent with any provision in this  
Ordinance or in any regulation made under  
this Ordinance.

PART 3

PROHIBITION OF COMMERCIAL  
DEALINGS IN HUMAN  
ORGANS".".

- 5 (a) By adding immediately before the proposed  
section 5 -

"PART 4

RESTRICTIONS ON ORGAN TRANSPLANTS  
BETWEEN LIVING PERSONS".

- (b) In the proposed section 5, in the heading, by  
deleting "**Restriction on**" and substituting  
"**Offence in respect of**".  
(c) By deleting the proposed section 5B(1) and (2)  
and substituting -

"(1) A registered medical  
practitioner may carry out a restricted  
organ transplant if he is satisfied that  
at the time the organ concerned was  
removed from its donor, it was removed

for the therapy of the donor and not for transplant into any specific recipient.

(2) Subject to subsection (2A), a registered medical practitioner who carries out a restricted organ transplant under subsection (1) shall -

(a) make a declaration in writing to the effect that -

(i) he had checked the related documents as defined in subsection (2B) before he carried out that transplant;

(ii) he is satisfied that at the time the organ concerned was removed from its donor, it was removed for the therapy of the donor and not for transplant

into any  
specific  
recipient; and  
(iii) to the best of  
his knowledge  
and belief, no  
payment  
prohibited by  
this Ordinance  
has been made or  
is intended to  
be made;

(b) submit that declaration to  
the board within 30 days  
after the transplant, or  
within such longer period  
as the board may on  
application allow; and

(c) provide the board with any  
further information that  
it may reasonably require.

(2A) A registered medical  
practitioner who carries out a restricted  
organ transplant under subsection (1) is  
not required to comply with subsection  
(2) if the organ concerned was removed  
from its donor before the commencement of

this section.

(2B) In subsection (2)(a)(i),  
“related documents” (相關文件), in  
relation to a restricted organ  
transplant, means -

(a) a certificate issued by  
the registered medical  
practitioner who removes  
the organ concerned from  
its donor, certifying that  
the organ is removed for  
the therapy of the donor  
and not for transplant  
into any specific  
recipient; and

(b) a declaration made by that  
practitioner in writing to  
the effect that to the  
best of his knowledge and  
belief, no payment  
prohibited by this  
Ordinance has been made or  
is intended to be made.”.

(d) By deleting the proposed section 5D(1)(a) and  
substituting -

“(a) the donor concerned has reached the

age of 18 years;".

New

By adding -

**"5A. Part heading added**

The following is added immediately before  
section 6 -

**"PART 5**

**INFORMATION ON TRANSPLANTS USING  
ORGANS FROM DEAD OR LIVING  
PERSONS".**

6

(a) By adding immediately before the proposed  
section 7 -

**"PART 6**

**RESTRICTIONS ON TRANSPLANTS OF  
IMPORTED ORGANS".**

(b) By deleting the proposed section 7(5), (6) and  
(7) and substituting -

"(5) In subsection (2), "specified  
place" (指明地方), in relation to an  
imported organ, means the place outside  
Hong Kong where the organ was removed  
from its donor.

(6) A registered medical  
practitioner who, in Hong Kong,  
transplants an imported organ into a  
recipient ("the transplanting  
practitioner") shall -



(a) ensure that the original or a certified true copy of the certificate mentioned in subsection (1)(b) is supplied to the board within 7 working days after the transplant if a copy of that certificate has been supplied to the board under subsection (1)(c); and

(b) provide the board with any further information that it may reasonably require.

(7) For the purpose of subsection (6)(a), a certified true copy of a certificate accompanying an imported organ must be a copy certified by the registered medical practitioner who imported the organ ("the importing practitioner") to be a true copy of that certificate.

(8) If the transplanting practitioner of an imported organ is not its importing practitioner and a certified true copy is supplied under

subsection (6)(a), the transplanting practitioner shall -

(a) make a declaration in writing to the effect that to the best of his knowledge and belief, the certified true copy was certified by the importing practitioner of that organ; and

(b) submit that declaration to the board within 7 working days after the transplant.

(9) Despite section 13 of the Oaths and Declarations Ordinance (Cap. 11), the declaration mentioned in subsection (8) of this section is not required to be made and signed in the manner provided by section 14 of that Ordinance.

(10) A person who, without reasonable excuse, contravenes subsection (1), (6) or (8) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

(11) A registered medical practitioner who, in purported compliance with subsection (8), makes a declaration

that he knows to be false or misleading in a material respect, or recklessly makes a declaration that is false or misleading in a material respect, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.”.

New

By adding -

**“6A. Parts and part heading added**

The following are added -

“PART 7

EXEMPTION OF REGULATED PRODUCTS

**7A. Exemption of regulated products from this Ordinance**

(1) For the purposes of this Part -

(a) “regulated product” (受規管

產品) means a product

containing any structured

arrangement of tissues

that -

(i) falls within

paragraph

(a)(iii) of the

definition of

“organ” in  
section 2; and

(ii) has been  
subjected to  
processing;

(b) “processing” (加工處理), in  
relation to any structured  
arrangement of tissues,  
means any activity  
performed on the tissues  
which alters the  
biological  
characteristics, function  
or integrity of the  
tissues, but does not  
include recovering or  
preparing the tissues,  
preserving the tissues for  
storage, or removing the  
tissues from storage.

(2) This Ordinance shall not apply  
to a regulated product to the extent that  
it is exempted by the Director under this  
Part.

(3) The Director may, on  
application, exempt a regulated product

from the application of this Ordinance if he is satisfied –

- (a) that using the product for transplant purposes is safe and has no adverse impact on public health;
- (b) either that the donor of the tissues concerned has given his consent to the removal of the tissues for the purpose of producing the product without coercion or the offer of inducement, or that the tissues are removed for the therapy of the donor;
- (c) that no payment has been made, or is intended to be made to that donor for his supplying the tissues from his body;
- (d) that all applicable laws of the place where the tissues were obtained or processed have been complied with in obtaining and processing the

tissues; and

- (e) that the circumstances and manner in which the tissues are obtained and processed are not affected by any matter that the Director may consider to be objectionable.

**7B. How to apply for exemption**

(1) A person may apply for an exemption in respect of a regulated product under this Part by submitting an application to the Director in a form specified by the Director.

(2) A form specified for the purpose of subsection (1) may require that -

- (a) it be completed in a specified way;
- (b) specified information be included in or attached to it; or
- (c) it be submitted in a specified manner.

(3) If any requirement under subsection (2) is not complied with in

relation to a form, the form is not properly completed.

(4) The Director may, by written notice, require an applicant to provide, within a reasonable period specified in the notice, additional information and documents as are reasonably necessary to enable the Director to determine the application.

(5) If such a requirement is not complied with, the Director may reject the application.

(6) When the Director is satisfied that the form of an application has been properly completed and all the information and documents he requires for determining the application have been submitted, he shall issue a written acknowledgment to the applicant confirming the receipt of the application.

(7) Any person who, in purported compliance with this section, provides information that he knows to be false or misleading in a material respect, or recklessly provides information that is false or misleading in a material

respect, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

**7C. Determination of applications for exemption**

(1) After considering an application for exemption under this Part, the Director may decide to approve the application and grant the exemption, or to reject the application.

(2) The Director shall give the applicant written notice of the decision by registered post.

(3) In approving an application for exemption, the Director may -

- (a) limit the validity of the exemption to a specified period; or
- (b) grant the exemption only to the applicant, a specified person or a specified class of persons.

(4) The Director may grant the exemption subject to such conditions as the Director considers appropriate,



including a condition limiting the exemption only for a particular occasion or for the purpose of a specified type of transplant.

(5) On the breach of a condition imposed under subsection (4), the Director may -

- (a) revoke the exemption concerned so that it shall have no effect either on the breach or from such date as the Director may determine;
- (b) vary that exemption in such manner as the Director may determine; or
- (c) suspend that exemption so that it shall have no effect for such period or until compliance with such other conditions as the Director may determine.

(6) A determination under subsection (5)(a), (b) or (c) may be made at the time the condition concerned is imposed under subsection (4) or breached.

(7) If an exemption granted by the

Director is subject to any condition imposed under subsection (4), he shall specify that condition and the applicable consequence of its breach under subsection (5) in the written notice given under subsection (2).

(8) The Director may specify different consequences for the breach of different conditions under subsection (5). The Director may specify that a consequence shall apply generally or to the person who breaches the condition.

(9) If the Director rejects an application for exemption, he shall include in the written notice given under subsection (2) a statement setting out the reasons for the decision.

**7D. Director's power in relation to exemptions granted**

(1) At any time after an exemption has been granted under this Part, the Director may, on such grounds as he considers appropriate -

- (a) revoke the exemption so that it shall have no effect from such date as

the Director may

determine;

(b) vary the exemption in such manner as the Director may determine; or

(c) suspend the exemption so that it shall have no effect for such period or until compliance with such conditions as the Director may determine.

(2) The Director shall give the person to whom the exemption is granted a written notice of any decision under subsection (1) by registered post. The notice shall include a statement setting out the reasons for the decision.

#### **7E. Register of exemptions**

(1) The Director shall maintain a register in a form determined by him containing details of the exemptions granted, revoked, varied or suspended under this Part.

(2) The Director shall make the register available for inspection by the public, free of charge, during ordinary

business hours at his office.

#### PART 8

#### APPEAL BOARD

##### **7F. Right of appeal to Appeal Board against Director's decision on application for exemption**

A person aggrieved by a decision of the Director under section 7C or 7D may appeal to the Appeal Board by giving a notice of appeal in such manner and with in such period as the Secretary may prescribe by regulation.

##### **7G. Constitution of Appeal Board**

(1) There is established an Appeal Board for the purpose of hearing and determining an appeal under section 7F.

(2) The Appeal Board is to be constituted according to this section.

(3) Where a notice of appeal is given under section 7F, the Secretary shall appoint 3 members from the Appeal Board Panel constituted according to section 7I, one from each group of members described in section 7I(2)(a), (b) and (c), to serve as members on the

Appeal Board for the purpose of hearing and determining the appeal to which the notice relates.

(4) The Secretary shall appoint one of those 3 members to be the Chairman of the Appeal Board in the hearing of that appeal.

(5) The Secretary shall ensure that no person having a financial or other personal interest in the matter involved in an appeal is to serve as a member on the Appeal Board for hearing and determining that appeal.

#### **7H. Determination of appeals**

(1) In determining an appeal, the Appeal Board may either -

- (a) dismiss the appeal; or
- (b) remit to the Director the matter under appeal for his reconsideration.

(2) The Director shall reconsider the matter remitted under subsection (1)(b) and make a decision having regard to any reasons given by the Appeal Board for the determination.

(3) A decision under subsection (2)

is regarded as a new decision under section 7C or 7D (as the case may be) and is subject to appeal to the Appeal Board.

**7I. Constitution of Appeal Board Panel**

(1) Subject to subsections (2) and (3), the Secretary shall appoint an Appeal Board Panel ("the Panel") consisting of such persons as he considers suitable to serve as members of the Appeal Board. None of those persons shall be a public officer.

(2) The Panel shall have the following members -

- (a) a group of members who are registered medical practitioners;
- (b) a group of members who are legally qualified persons; and
- (c) a group of members who are neither registered medical practitioners nor legally qualified persons.

(3) For the avoidance of doubt, a registered medical practitioner who is an employee of the Hospital Authority

established by section 3 of the Hospital Authority Ordinance (Cap. 113) may be appointed as a member of the Panel.

(4) An appointment under subsection (1) shall be for a period which shall not exceed 3 years and which shall be determined by the Secretary at the time of the appointment.

(5) A member of the Panel may resign his office by giving notice in writing to the Secretary.

(6) A person who ceases to be a member of the Panel shall be eligible for reappointment to the Panel.

(7) The Secretary shall publish in the Gazette notice of every appointment made under subsection (1).

(8) The Secretary shall also appoint to the Panel a secretary on such terms and for such period as the Secretary shall specify on appointing him.

**7J. Power of Secretary to make regulations**

The Secretary may by regulation provide for -

- (a) the procedures to be followed in making an appeal under this Part, including matters and information to be set out in or to accompany the notice of appeal;
- (b) the hearing and determination of such appeal;
- (c) the practice and procedure of the Appeal Board;
- (d) any matter that by this Part is required or permitted to be prescribed by the Secretary; and
- (e) any matter ancillary or incidental to those specified in paragraph (a), (b), (c) or (d).

PART 9

MISCELLANEOUS".".

7

- (a) In the proposed section 9(3)(b), by deleting "3(6)" and substituting "3A(5)".
- (b) In the proposed section 10, by renumbering it



as section 10(1).

(c) In the proposed section 10(1), by deleting  
“for Health and Welfare”.

(d) In the proposed section 10, by adding -

“(2) An amendment under subsection  
(1) is subject to the approval of the  
Legislative Council.”.

10(2)

(a) By deleting “and Welfare” and substituting “,  
Welfare and Food”.

(b) By deleting “section 3 of the principal  
Ordinance as amended” and substituting  
“section 3A of the principal Ordinance as  
inserted”.

## HUMAN ORGAN TRANSPLANT (AMENDMENT) BILL 2001

## COMMITTEE STAGE

Amendments to be moved by the Honourable Cyd HO Sau-lanClauseAmendment Proposed

5

In the proposed section 5A, by adding –

“(8) For the purpose of subsection (1)(a)(ii), “marriage” (婚姻) includes one in which the parties are of the same sex and which was celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed.”.

**Annex VI**

## COMPANIES (AMENDMENT) BILL 2003

**COMMITTEE STAGE**Amendments to be moved by the Secretary for Financial Services  
and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
2	(a) In the heading, by deleting "2,". (b) By deleting "2,".
3	By deleting ", 2".
4	(a) In the heading, by deleting "2,". (b) By deleting "2,".
Schedule 1, section 3	(a) In paragraph (a) - (i) in the proposed section 38A(1), by deleting everything after "considers that" and substituting - "the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements - (a) would be irrelevant or unduly

burdensome; or

(b) is otherwise

unnecessary or

inappropriate.";

(ii) in the proposed section 38A(2), by deleting everything after "considers that" and substituting -

"the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements, in the case of that class of companies or prospectuses, as the case may be -

(c) would be

irrelevant or

unduly

burdensome; or

(d) is otherwise

unnecessary or

inappropriate.".

(b) In paragraph (b) -

(i) in the proposed section 38A(4) (a),

by deleting "38AA(1)," and ", (3A)";

(ii) in the proposed section 38A(6), by

deleting ", suspended or withdrawn";

(iii) by adding -

"(7) Where the Commission  
proposes to issue -

(a) a notice of  
exemption under  
subsection (2);  
or

(b) an amendment  
order under  
subsection (5),

it shall publish a draft of the  
proposed notice or order, in  
such manner as it considers  
appropriate, for the purpose of  
inviting representations on the  
proposed notice or order by the  
public.

(8) Where the Commission  
issues a notice or order  
mentioned in subsection (7)  
after a draft is published  
under that subsection in  
relation to the notice or  
order, it shall -

(a) publish, in such

manner as it  
considers  
appropriate, an  
account setting  
out in general  
terms -

(i) the  
representa-  
tions made  
on the  
draft; and

(ii) the  
response of  
the  
Commission  
to the  
representa-  
tions; and

(b) where the notice  
or order is  
issued with  
modifications  
which in the  
opinion of the  
Commission  
result in the

notice or order  
being  
significantly  
different from  
the draft,  
publish, in such  
manner as it  
considers  
appropriate,  
details of the  
difference.

(9) Subsections (7) and  
(8) do not apply if the  
Commission considers, in the  
circumstances of the case,  
that -

- (a) it is  
unnecessary or  
inappropriate  
that such  
subsections  
should apply; or
- (b) any delay  
involved in  
complying with  
such subsections

would not be -

- (i) in the  
interest of  
the  
investing  
public; or
- (ii) in the  
public  
interest."

Schedule 1      By deleting section 4.

Schedule 1,  
section 5      In the proposed section 38B(1) (b), by adding  
"prospectus or" before "proposed prospectus".

Schedule 1,  
section 7      (a) By deleting paragraphs (a), (b) and (c) (i).  
                  (b) In paragraph (d), by deleting the proposed  
                  section 38D(11), (12) and (14).

Schedule 1,  
section 8      (a) In the proposed section 39A, by deleting  
                  subsections (2) and (3).  
                  (b) In the proposed section 39B -  
                      (i) by deleting subsections (3) and (4);  
                      (ii) in subsection (6), by deleting "(1)  
                      or".



Schedule 1      By deleting section 12 and substituting -

**"12. Prohibition of allotment  
in certain cases unless  
statement in lieu of  
prospectus delivered  
to Registrar**

Section 43 is amended -

(a) in subsection (3), by adding  
"or any allotment of shares or  
debentures the subject of an  
offer specified in Part 1 of  
the Seventeenth Schedule as  
read with the other Parts of  
that Schedule" after "company";

(b) by adding -

"(6A) For the purposes  
of subsection (5), "untrue  
statement" (不真實陳述), in  
relation to a statement in  
lieu of prospectus,  
includes a material  
omission from the  
statement."."

Schedule 1,      By deleting paragraph (c)(ii).  
section 15

Schedule 1,      (a) In paragraph (a) -  
section 16

(i) in the proposed section 342A(1), by

deleting everything after "considers that" and substituting -

"the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements -

- (a) would be  
irrelevant or  
unduly  
burdensome; or
- (b) is otherwise  
unnecessary or  
inappropriate.";

(ii) in the proposed section 342A(2), by deleting everything after "considers that" and substituting -

"the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements, in the case of that class of companies or prospectuses, as the case may be -

- (c) would be

irrelevant or

unduly

burdensome; or

(d) is otherwise

unnecessary or

inappropriate.".

(b) In paragraph (b) -

(i) in the proposed section 342A(4) (a),

by deleting ", 342AB(1)" and ",

(3A)";

(ii) in the proposed section 342A(6), by

deleting ", suspended or withdrawn";

(iii) by adding -

"(7) Where the Commission

proposes to issue -

(a) a notice of

exemption under

subsection (2);

or

(b) an amendment

order under

subsection (5),

it shall publish a draft of the

proposed notice or order, in

such manner as it considers

appropriate, for the purpose of

inviting representations on the proposed notice or order by the public.

(8) Where the Commission issues a notice or order mentioned in subsection (7) after a draft is published under that subsection in relation to the notice or order, it shall -

(a) publish, in such manner as it considers appropriate, an account setting out in general terms -

(i) the representations made on the draft; and

(ii) the response of the Commission

to the  
representa-  
tions; and

(b) where the notice  
or order is  
issued with  
modifications  
which in the  
opinion of the  
Commission  
result in the  
notice or order  
being  
significantly  
different from  
the draft,  
publish, in such  
manner as it  
considers  
appropriate,  
details of the  
difference.

(9) Subsections (7) and  
(8) do not apply if the  
Commission considers, in the  
circumstances of the case,

that -

- (a) it is  
unnecessary or  
inappropriate  
that such  
subsections  
should apply; or
- (b) any delay  
involved in  
complying with  
such subsections  
would not be -
  - (i) in the  
interest of  
the  
investing  
public; or
  - (ii) in the  
public  
interest."

Schedule 1      By deleting section 17.

Schedule 1,  
section 19      (a) By deleting paragraphs (c), (d) and (e)(i).  
                  (b) In paragraph (f), by deleting the proposed  
                  section 342C(10), (11) and (13).

Schedule 1,  
section 20

- (a) In the proposed section 342CA, by deleting subsections (2) and (3).
- (b) In the proposed section 342CB –
  - (i) by deleting subsections (3) and (4);
  - (ii) in subsection (6), by deleting "(1 or".
- (c) In the proposed section 342CC, by deleting paragraph (b)(i) and substituting –
  - "(i) a member of the governing body of the company;
  - (ia) the secretary of the company;
  - (ib) an agent of a member of the governing body or of the secretary of the company, authorized in writing for the purpose by the member or secretary;".

Schedule 1      By deleting section 21.

Schedule 1,  
section 25      By deleting paragraph (b).

- Schedule 1,  
section 26
- (a) By deleting the proposed entries relating to sections 38AA(4), 38D(14), 342(3), 342AB(4) and 342C(13).
  - (b) In the proposed entries relating to sections

39B(6) and 342CB(6), by deleting "Prospectus or amendment" and substituting "Amendment".

Schedule 1,  
section 27

(a) In the proposed Seventeenth Schedule, within the square brackets, by deleting "38AA," and ", 342AB".

(b) In the proposed Seventeenth Schedule, in Part 1 -

(i) in section 3(a), by adding ", or its equivalent in another currency" after "Part 2";

(ii) in section 4(a), by adding ", or its equivalent in another currency" after "Part 3";

(iii) by deleting section 7 and substituting -

"7. An offer of shares in a company -

(a) made -

(i) for no consideration, to any or all holders of shares in the



- company; or
- (ii) as an  
alter-  
native to a  
dividend or  
other  
distribu-  
tion, to  
all holders  
of shares  
of a  
particular  
class in  
the  
company,  
provided  
the offer  
is of fully  
paid-up  
shares of  
the same  
class; and
- (b) containing a  
statement  
specified in  
Part 3 of the

Eighteenth

Schedule to this

Ordinance.";

(iv) in section 9(a), by deleting everything after "述的" and substituting "屬公共性質的慈善機構或信託；或";

(v) in section 10(a), by adding ", or applicants for membership," after "members".

(c) In the proposed Seventeenth Schedule, in Part 4, in section 6(b), in the Chinese text, by adding "的人" before the dash.

(d) In the proposed Eighteenth Schedule, in Part 3 -

(i) by deleting "neither been reviewed nor endorsed" and substituting "not been reviewed";

(ii) by deleting "或批署".

(e) In the proposed Twenty-first Schedule, in Parts 1 and 2, by deleting section 9.

Schedule 2 By deleting the Schedule.

Schedule 3,  
section 1 By adding -

"(3) Section 2(10) is amended -

- (a) in paragraph (a), by repealing  
"subscribers of the memorandum of  
association of a company" and  
substituting "founder members";
- (b) by repealing "the memorandum of  
association of which has only one  
subscriber" and substituting "that  
has only one founder member".

Schedule 3,  
section 2      By deleting everything after "repealing" and  
substituting "subscribing his or their name or  
names to" and substituting "signing his or their  
name or names on".

Schedule 3,  
section 7      In the proposed section 14A(3), by adding ", or  
where only one founder member is named in the form,  
by that founder member" after "the form".

Schedule 3      By adding -  
  
                  "12A. **Entries of satisfaction and  
                  release of property from  
                  charge**  
  
                  Section 85(5)(a)(iii) is repealed and the  
                  following substituted -  
  
                  "(iii) in the case of a non-Hong Kong  
                  company, a person who is registered  
                  under section 333 as a person

authorized to accept service of  
process and notices on its behalf;  
or".

Schedule 3,  
section 14

By deleting the proposed section 91 and  
substituting -

**"91. Application of Part III to  
non-Hong Kong companies**

(1) This Part extends to charges on  
property in Hong Kong of a non-Hong Kong  
company registered under Part XI that are  
created, and to charges on property in Hong  
Kong that is acquired, by the company.

(2) Notwithstanding subsection (1), this  
Part does not extend to charges on property in  
Hong Kong of a non-Hong Kong company  
registered under Part XI if the relevant  
property was not in Hong Kong at the time the  
charge was created by the company, or at the  
time it was acquired by the company subsequent  
to the creation of the charge.

(3) In the application of sections 88  
and 89 to a non-Hong Kong company registered  
under Part XI -

(a) references in those sections to  
the registered office of a  
company shall be construed as

references to the principal  
place of business in Hong Kong  
of the non-Hong Kong company;  
and

- (b) references in section 89 to  
charges shall be construed as  
references to charges of any  
kind mentioned in subsection  
(1).

(4) This Part does not apply to a non-  
Hong Kong company registered under Part XI  
if —

- (a) the non-Hong Kong company sends  
a notice to the Registrar under  
section 339 of the fact that it  
has ceased to have a place of  
business in Hong Kong;
- (b) the Registrar enters in the  
register of non-Hong Kong  
companies a statement under  
section 339AA that the company  
has been dissolved; or
- (c) the name of the company is  
struck off from the register of  
non-Hong Kong companies under  
section 339A.

(5) Where a non-Hong Kong company that is registered under Part XI after the commencement of section 14 of Schedule 3 to the Companies (Amendment) Ordinance 2004 ( of 2004) has, on the date of such registration, any property in Hong Kong that is subject to a charge created by the company or subsisting when the property was acquired, being a charge of any such kind as would, if it had been created by the company or the property had been acquired after the company has been so registered, have been required to be registered under this Part, the company shall, within 5 weeks after it is so registered, deliver to the Registrar for registration the particulars in the specified form (including any instrument or its copy by which the charge was created or is evidenced) that are mentioned in this Part as requiring registration in respect of a charge of that kind.

(6) If default is made in complying with subsection (5), the non-Hong Kong company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.

(7) For the purposes of this section —

- (a) a ship or aircraft that is registered in Hong Kong shall be treated as property in Hong Kong notwithstanding that the ship or aircraft is physically located outside Hong Kong; and
- (b) a ship or aircraft that is registered in a place outside Hong Kong shall be treated as property outside Hong Kong notwithstanding that the ship or aircraft is physically located in Hong Kong."

Schedule 3,  
section 17

By deleting "認購股份" and substituting "在章程大綱內簽署認購股份" 而代以 "簽署章程大綱".

Schedule 3,  
section 18

In the heading, by adding "**of companies other than private companies**" after "Directors".

Schedule 3,  
section 18(1)

By deleting the proposed section 153(2) and substituting —

"(2) With effect from the date of incorporation of a company (not being a private company) mentioned in its certificate

of incorporation, the first directors of the company are the persons named as the directors in the incorporation form submitted in respect of the company pursuant to section 14A."

Schedule 3,  
section 18(2)

In the proposed section 153(6) -

- (a) by adding "(not being a private company)" after "company";
- (b) by deleting "of change of directors in respect of him" and substituting "under section 158(4AA)";
- (c) by deleting "under section 158(4)".

Schedule 3

By adding -

**"18A. Directors of private companies**

(1) Section 153A(2) is repealed and the following substituted -

"(2) With effect from the date of incorporation of a private company mentioned in its certificate of incorporation, the first directors of the company are the persons named as the directors in the incorporation form submitted in respect of the company pursuant to section 14A."

(2) Section 153A is amended by adding -



"(10) A person who has been deemed to be a director of a private company under section 153A(2) of the pre-amended Ordinance shall, until a notification under section 158(4AA) is sent to the Registrar, continue to be deemed as such as if section 18A(1) of Schedule 3 to the Companies (Amendment) Ordinance 2004 ( of 2004) had not been enacted.

(11) For the purpose of subsection (10), "pre-amended Ordinance" (修訂前的本條例) means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 18A(1) of Schedule 3 to the Companies (Amendment) Ordinance 2004 ( of 2004).".".

Schedule 3,  
section 19

By deleting the proposed section 154(1AA) and substituting -

"(1AA) With effect from the date of incorporation of a company mentioned in its certificate of incorporation, the first secretary of the company is the person named as the secretary in the incorporation form submitted in respect of the company pursuant to section 14A.

(1AB) Where the name of a firm is contained in the incorporation form pursuant to section 14A(2)(i), all partners in the firm as at the date of the incorporation form are the first joint secretaries of the company."

Schedule 3      By deleting section 20 and substituting -

**"20. Register of directors and secretaries**

(1) Section 158(4) is repealed and the following substituted -

"(4) Where there is any change in the company's directors, reserve director (if any), secretary or joint secretaries (if any) or in any of their particulars contained in the register, the company shall, within 14 days from the change, send to the Registrar a notification in the specified form of the change and of the date on which it occurred, and such other matters as may be specified in the form.

(4AA) On the appointment of a person as director of a company otherwise than by virtue of section 153(2) or (6) or section 153A(2) or (10), the company shall, within 14 days of the appointment,

send to the Registrar a notification in the specified form containing the director's particulars specified in the register and a statement, signed by the person, that he has accepted the appointment and that he has attained the age of 18 years."

(2) Section 158(4A) is amended by repealing "the appointment of a person as a director, secretary or joint secretary of the company or".

(3) Section 158(4B) is repealed and the following substituted -

"(4B) Subsection (4A) does not apply to a nomination the relevant particulars of which have been stated in a notification sent to the Registrar under subsection (4)."

(4) Section 158(5) is repealed.

(5) Section 158(8) is amended by repealing "(4A), (5)" and substituting "(4AA), (4A)".

(6) Section 158 is amended by adding -

"(9A) Where a company was registered immediately before the commencement of sections 18, 18A and 20 of Schedule 3 to

the Companies (Amendment) Ordinance 2004 ( of 2004) and has not complied with section 158(4)(a), (4A) and (5) of the pre-amended Ordinance before the expiry of the periods mentioned in that section 158(4)(a) and (4A), then sections 153, 153A and 158 of the pre-amended Ordinance shall continue to apply to the company as if sections 18, 18A and 20(1), (2), (3), (4) and (5) of Schedule 3 to the Companies (Amendment) Ordinance 2004 ( of 2004) had not been enacted."

(7) Section 158(10) is amended by adding –

"(ca) the expression "pre-amended Ordinance" (修訂前的本條例) means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by sections 18, 18A and 20 of Schedule 3 to the Companies (Amendment) Ordinance 2004 ( of 2004);".

Schedule 3,  
section 21(b)

By deleting everything after "(b)(iii)," and substituting "by repealing the full stop and substituting "; or";".

- Schedule 3,  
section 21(c)      In the proposed section 168C(1)(c), by deleting the semicolon and substituting a full stop.
- Schedule 3,  
section 22(2)      By deleting "subscribed" 而代以 "signed" and substituting "在章程大綱內簽署認購股份" 而代以 "簽署章程大綱".
- Schedule 3,  
section 23(1)      In the proposed section 305(1A) -
- (a) in paragraph (a)(ii), by deleting "or" at the end;
  - (b) in paragraph (a)(iii), by deleting "and";
  - (c) in paragraph (a), by adding -
    - (iv) a person who has entered into possession of the property of a specified corporation as mortgagee;
    - (v) a person who is appointed as the provisional liquidator or liquidator in the winding up of a specified corporation; or
    - (vi) a person who is appointed as the receiver or manager of the property of a specified corporation; and";
  - (d) in paragraph (b), by deleting "for the

purposes under" and substituting "or the particulars of that mortgagee, provisional liquidator, liquidator, receiver or manager, as the case may be, for the purposes of".

Schedule 3,  
section 23(3)

- (a) By deleting paragraph (a).
- (b) In paragraph (b), by renumbering the proposed section 305(1)(b)(ia) as proposed section 305(1)(b)(iia).
- (c) In paragraph (b), by renumbering the proposed section 305(1)(b)(ib) as proposed section 305(1)(b)(iib).
- (d) In paragraph (b), in the proposed section 305(1)(b)(iib), by deleting "or".

Schedule 3,  
section 23

By adding -

"(4) Section 305(5) is amended by repealing "subsection (1)" and substituting "this section".".

Schedule 3,  
section 28

By deleting the proposed section 333A and substituting -

**"333A. Continuing obligation in  
respect of authorized  
representative**

- (1) Any non-Hong Kong company registered

under this Part shall at all times, until the expiration of a period of 1 year from the date on which it ceases to have a place of business in Hong Kong, keep registered under section 333(2)(e) the name, address and, in the case of an individual, number of the identity card (if any) or, in the absence of such number, the number and issuing country of any passport, of at least one authorized representative of the company.

(2) Where one person only is registered as an authorized representative of a non-Hong Kong company and he ceases to be such representative, the company shall be deemed to comply with this section if, within 1 month after he ceases to be such representative, it delivers to the Registrar for registration a return under section 335(1)(b) in respect of some other person so authorized."

Schedule 3,  
section 29

In the proposed section 333B(2), by deleting "14 days" and substituting "1 month".

Schedule 3,  
section 32

In the proposed section 335(1) and (2), by deleting "21 days" and substituting "1 month".

Schedule 3,  
section 35

In the proposed section 337A(1), by adding "or within 14 days after the notice of commencement of such proceedings has been served on the company according to the law of the place in which such proceedings are commenced, whichever is the later," after "the company,".

Schedule 3,  
section 36(3)

In the proposed section 337B(3) -

- (a) in paragraph (a), by deleting everything after "的名稱" and substituting "(該公司建議在香港經營業務所採用的法人名稱除外)的陳述書交付處長登記；及";
- (b) in paragraph (b), by deleting everything after "准的名稱" and substituting "(該公司的法人名稱除外)的陳述書交付處長登記，以取代以往註冊的名稱。".

Schedule 3,  
section 42

In the proposed section 341(1) -

- (a) by deleting the definition of "director" and substituting -
  - "director" (董事) includes a shadow director;";
- (b) in the definition of "place of business", by adding "includes a share transfer or share registration office but" before



"does".

Schedule 3,  
section 46      By deleting "'認購股份'" and substituting "'在章程大綱  
內簽署認購股份" 而代以 "簽署章程大綱"".

Schedule 3,  
section  
49(a) (i)      By deleting "91(11)" and substituting "91(6)".

Schedule 4,  
section 3      (a) By deleting the proposed section 152FA and  
substituting -

**"152FA. Order for inspection**

(1) Subject to sections 152FD and  
152FE, on application by such number of  
members of a specified corporation as is  
specified in subsection (2) (in this  
section referred to as "applicant"), the  
court may make an order -

- (a) authorizing the applicant  
or any one or more of such  
members applying as  
applicant to inspect any  
records of the specified  
corporation; or
- (b) authorizing a person  
(whether or not a member  
of the specified

corporation) other than  
the applicant to inspect  
any such records on behalf  
of the applicant.

(2) For the purposes of subsection  
(1), an application may be made by -

- (a) any number of members  
representing not less than  
one-fortieth of the total  
voting rights of all  
members having at the date  
of the application a right  
to vote at a general  
meeting of the specified  
corporation;
- (b) any number of members  
holding shares in the  
specified corporation on  
which there has been paid  
up an aggregate sum of not  
less than \$100,000; or
- (c) not less than 5 members.

(3) The court may only make an  
order under subsection (1) if it is  
satisfied that -

- (a) the application is made in

good faith; and

- (b) the inspection applied for is for a proper purpose.

(4) Any person who is authorized by the court to inspect the records of a specified corporation may make copies of the records unless the court orders otherwise.

(5) A person who complies with an order made under this section or section 152FB to produce records for inspection shall not be liable for any civil liability or claim whatever to any person by reason only of that compliance."

(b) In the proposed section 152FB -

- (i) in paragraph (a), by deleting "and";
- (ii) in paragraph (b), by deleting the full stop and substituting a semicolon;
- (iii) by adding -

"(c) an order requiring the applicant to pay the expenses reasonably incurred by the specified corporation in the inspection; and

(d) an order permitting the applicant or the person who is authorized to inspect the records of a specified corporation under section 152FA to disclose any information or document obtained as a result of an inspection under that section to such person as is specified in the order."

(c) By deleting the proposed section 152FC and substituting -

**"152FC. Disclosure or use of information or document obtained as a result of inspection**

(1) Subject to section 152FE, the applicant or the person who is authorized to inspect the records of a specified corporation under section 152FA shall not, without the previous consent in writing of the specified corporation, disclose any information or document obtained as a result of an inspection under section 152FA to any other person, except to the other members applying as

applicant or to the applicant, unless the disclosure is -

- (a) required with a view to the institution of, or otherwise for the purposes of, any criminal proceedings;
- (b) permitted in accordance with an order made under section 152FA or 152FB; or
- (c) permitted in accordance with law or a requirement made under law.

(2) Subject to subsection (1) and section 152FE, the applicant or the person who is authorized to inspect the records of a specified corporation under section 152FA shall not, unless the court otherwise orders, use any information or document obtained as a result of an inspection under section 152FA for purposes other than the proper purpose referred to in section 152FA(3)(b).

(3) A person who contravenes this section shall be guilty of an offence and liable to imprisonment and a fine."

- (d) By deleting the proposed section 152FD and substituting -

**"152FD. Legal professional privilege**

Nothing in sections 152FA and 152FB, or any order made under any of those sections, shall authorize a person to inspect any records containing information that is subject to legal professional privilege."

- (e) In the proposed section 152FE -

- (i) by deleting "section 152FA or 152FB" and substituting "any of those sections";
- (ii) by deleting "retention and" and substituting "retention or".

Schedule 4,  
section 4

- By deleting subsection (2) and substituting -

"(2) Section 168A(2) is repealed and the following substituted -

"(2) If on any petition under subsection (1) the court is of opinion that the specified corporation's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of some part of the members (including the

member who presented the petition),  
whether or not such conduct consists of  
an isolated act or a series of acts -

(a) the court may, with a view  
to bringing to an end the  
matters complained of -

(i) make an order  
restraining the  
commission of any  
such act or the  
continuance of such  
conduct;

(ii) order that such  
proceedings as the  
court may think fit  
shall be brought in  
the name of the  
specified corporation  
against such person  
and on such terms as  
the court may so  
order;

(iii) appoint a receiver or  
manager of the whole  
or a part of a  
specified

corporation's  
property or business  
and may specify the  
powers and duties of  
the receiver or  
manager and fix his  
remuneration; and  
(iv) make such other order  
as it thinks fit,  
whether for  
regulating the  
conduct of the  
specified  
corporation's affairs  
in future, or for the  
purchase of the  
shares of any members  
of the specified  
corporation by other  
members of the  
specified corporation  
or by the specified  
corporation and, in  
the case of a  
purchase by the  
specified



corporation, for the  
reduction accordingly  
of the specified  
corporation's  
capital, or  
otherwise; and

- (b) the court may order  
payment by any person of  
such damages and interest  
on those damages as the  
court may think fit to any  
members (including the  
member who presented the  
petition) of the specified  
corporation, whose  
interests have been  
unfairly prejudiced by the  
act or conduct."."

Schedule 4,  
section 4(3)

- (a) By deleting the proposed section 168A(2A).  
(b) By deleting the proposed section 168A(2C) and  
substituting -

"(2C) If on any petition under  
subsection (2B) the court is of opinion  
that the specified corporation's affairs  
were conducted in a manner unfairly

prejudicial to the interests of the then members generally or of some part of the then members (including the past member who presented the petition), whether or not such conduct consists of an isolated act or a series of acts, the court may order payment by any person of such damages and interest on those damages as the court may think fit to any then members (including the past member who presented the petition) of the specified corporation, whose interests were unfairly prejudiced by the act or conduct."

(c) By adding -

"(2CA) For the avoidance of doubt, the damages that may be ordered by the court under subsections (2)(b) and (2C) does not entitle a member, past member or then member of a specified corporation to recover by way of damages any loss that is solely reflective of the loss suffered by the specified corporation which only the specified corporation is entitled to recover under the common law."

(d) By deleting the proposed section 168A(2D).

Schedule 4,  
section 4(4)      By deleting the proposed section 168A(5C).

Schedule 4,  
section 4      By adding -

"(5) Section 168A is amended by adding -

"(7) Where before the commencement of section 4 of Schedule 4 to the Companies (Amendment) Ordinance 2004 ( of 2004), a petition has been presented for an order under section 168A of the pre-amended Ordinance, that section of the pre-amended Ordinance shall continue to apply in relation to such a petition as if section 4 of Schedule 4 to the Companies (Amendment) Ordinance 2004 ( of 2004) had not been enacted.

(8) For the purpose of subsection (7), "pre-amended Ordinance" (修訂前的本條例) means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 4 of Schedule 4 to the Companies (Amendment) Ordinance 2004 ( of 2004).".".

Schedule 4,  
section 5      (a) In the proposed Part IVAA, in the heading, by deleting everything after "IVAA" and substituting -

"STATUTORY DERIVATIVE ACTION".

(b) By adding -

**"168BAA. Application**

(1) This Part applies to -

(a) the bringing of  
proceedings in respect of  
misfeasance committed  
against a specified  
corporation;

(b) the bringing of  
proceedings in respect of  
any matter where a  
specified corporation  
fails to bring proceedings  
in respect of such matter  
by reason of misfeasance  
committed against the  
specified corporation; and

(c) the intervention in  
proceedings in respect of  
any matter where a  
specified corporation  
fails to diligently  
continue, discontinue or  
defend the proceedings in  
respect of such matter by  
reason of misfeasance

committed against the  
specified corporation,  
where in relation to the proceedings  
brought or intervened in, the cause of  
action or right to continue, discontinue  
or defend those proceedings, as the case  
may be, is vested in the specified  
corporation and relief, if any, is sought  
on behalf of the specified corporation.

(2) In this section, "misfeasance"  
(不當行爲) means fraud, negligence,  
default in compliance with any enactment  
or rule of law, or breach of duty."

(c) In the proposed section 168BB -

(i) by deleting subsection (1) and  
substituting -

"(1) A member of a  
specified corporation may, with  
the leave of the court granted  
under subsection (3) -

(a) bring  
proceedings  
before the court  
on behalf of the  
specified  
corporation; or

- (b) intervene in any proceedings before the court to which the specified corporation is a party for the purposes of continuing, discontinuing or defending those proceedings on behalf of the specified corporation.";
- (ii) in subsection (2), by deleting "subsection (1)" and substituting "subsection (1) (a)";
- (iii) by deleting subsection (3) and substituting -
  - "(3) The court may, on the application of a member of a specified corporation, grant leave for the purpose of subsection (1) if the court is satisfied that -

(a) it appears to be  
prima facie in  
the interest of  
the specified  
corporation that  
leave be granted  
to the  
applicant;

(b) if the applicant  
is applying for  
leave to bring  
proceedings  
under subsection  
(1)(a), there is  
a serious  
question to be  
tried and the  
specified  
corporation has  
not itself  
brought the  
proceedings;

(c) if the applicant  
is applying for  
leave to  
intervene in

proceedings  
under subsection  
(1) (b), the  
specified  
corporation has  
not diligently  
continued,  
discontinued or  
defended those  
proceedings; and  
(d) except where  
leave is granted  
by the court  
under section  
168BC(4), the  
member has  
served a written  
notice on the  
specified  
corporation in  
accordance with  
section 168BC.";

- (iv) in subsection (4), by deleting  
"This" and substituting "Subject to  
other provisions in this Part,  
this";



(v) by adding -

"(4A) The court may dismiss an application for leave under subsection (3) if the applicant has, in the exercise of any common law right -

(a) brought proceedings on behalf of the specified corporation in respect of the same cause or matter; or

(b) intervened in the proceedings in question to which the specified corporation is a party.".

(d) In the proposed section 168BC -

(i) in subsection (1), by deleting "brings or applies for leave to intervene in proceedings under section 168BB" and substituting

"applies for leave under section  
168BB(3)";

- (ii) in subsection (3)(a), by deleting  
"bring or apply for leave to  
intervene in proceedings under  
section 168BB" and substituting  
"apply for leave under section  
168BB(3)".

(e) By adding -

**"168BCA. Court's power to strike out  
proceedings brought or  
intervention in proceedings by  
members under common law**

(1) Where leave has been granted to  
a member of a specified corporation under  
section 168BB(3) and the member, in the  
exercise of any common law right,  
subsequently brings proceedings on behalf  
of the specified corporation in respect  
of the same cause or matter, or  
subsequently intervenes in the  
proceedings in question to which the  
specified corporation is a party, the  
court may -

- (a) order to be struck out or  
amended any pleading or  
the indorsement of any  
writ in the proceedings

brought under the common law, or the intervention under the common law, or anything in such pleading or indorsement; and

- (b) order the proceedings brought under the common law, or the intervention under the common law, to be stayed or dismissed or judgment to be entered accordingly.

(2) This section is in addition to and does not derogate from any power of the court conferred by any enactment or rule of law."

(f) By deleting the proposed section 168BD.

(g) In the proposed section 168BE(1) -

- (i) in paragraph (b), by deleting "strike out the proceedings brought by the member, or";

- (ii) by deleting "一些".

(h) In the proposed section 168BF -

- (i) in subsection (1) -

- (A) by adding ", at any time," after "may";

- (B) in paragraph (b), by deleting  
", including requiring  
mediation";
- (C) in paragraph (c), by adding  
"(including the provision by  
the specified corporation or  
the officer of such information  
or assistance as the court may  
think fit for the purpose of  
the proceedings or  
application)" after "act";
- (ii) in subsection (3)(a)(ii), by adding  
"or application" after  
"proceedings";
- (iii) by adding -
  - "(5) The court may, at any  
time, make any order and give  
any direction it considers  
appropriate in relation to  
sections 168BB(4A) and  
168BCA."

- (i) By adding -

**"168BFA. Protection of personal data**

Nothing in section 168BF(1)(c) and  
(d) and (2) shall authorize the  
collection, retention or use of personal  
data in contravention of the Personal

Data (Privacy) Ordinance (Cap. 486).".

(j) By deleting the proposed section 168BG and substituting -

**"168BG. Power of court to make orders about costs**

(1) The court may, at any time (including on granting leave under section 168BB(3)), make any order it considers appropriate about the costs incurred or to be incurred by the following persons in relation to an application for leave made under section 168BB(3) or any proceedings brought or intervened in, or to be brought or intervened in, under section 168BB(1) -

- (a) the member;
- (b) the specified corporation;
- and
- (c) any other parties to the application or proceedings.

(2) An order made under subsection (1) may require the specified corporation to indemnify out of its assets against the costs incurred or to be incurred by the member in making the application or in bringing or intervening in the

proceedings.

(3) The court may only make an order about costs (including the requirement as to indemnification) under this section in favour of the member if it is satisfied that the member was acting in good faith in, and had reasonable grounds for, making the application, or bringing or intervening in the proceedings."

Schedule 4,  
section 6

In the proposed section 350B -

- (a) in subsection (1), by adding ", in relation to a specified corporation," after "has";
- (b) in subsection (1)(f), by deleting "or";
- (c) by deleting subsection (1)(g) and substituting -

"(g) a breach of his fiduciary duties owed to the specified corporation in any capacity other than as a director of the specified corporation; or";

- (d) in subsection (1), by adding -

"(h) a breach of his fiduciary or

other duties as a director of  
the specified corporation owed  
to the specified  
corporation,";

(e) in subsection (1), by deleting "any  
person" and substituting "a member or  
creditor of the specified corporation";

(f) in subsection (3) -

(i) by adding ", in relation to a  
specified corporation," after  
"has";

(ii) by deleting "any person" and  
substituting "a member or  
creditor of the specified  
corporation";

(g) in subsection (5), by adding "on such  
terms and conditions as it thinks fit"  
after "injunction";

(h) by adding -

"(8) For the avoidance of  
doubt, the damages that may be  
ordered by the court under  
subsection (7) does not entitle a  
person to recover by way of damages  
any loss that is solely reflective  
of the loss suffered by a specified

corporation which only the specified  
corporation is entitled to recover  
under the common law."

Schedule 4,  
section 7(1)

In the proposed entry relating to section  
152FC(2) -

- (a) by deleting "152FC(2)" and substituting  
"152FC(3)";
- (b) by adding "or using" after "disclosing";
- (c) by adding "or (2)" after "152FC(1)".

Schedule 5

By deleting Part 2.

Schedule 5,  
Part 3,  
section 2

In the proposed paragraph 3(2)(a)(vi) and (b)(vi),  
by adding "professional" before "company".

Schedule 5,  
Part 3,  
section 4

In the proposed paragraph 6(2)(a)(vi) and (b)(v),  
by adding "professional" before "company".

Schedule 5,  
Part 3

By adding immediately after section 22 -

**"Merchant Shipping (Local Vessels)  
(Certification and Licensing)  
Regulation**

**22A. Interpretation**

Section 2(1) of the Merchant Shipping  
(Local Vessels) (Certification and Licensing)  
Regulation (L.N. 27 of 2004) is amended, in



the definition of "document of identification", in paragraph (c) -

- (a) by repealing "an oversea" and substituting "a non-Hong Kong";
- (b) by repealing "oversea" and substituting "non-Hong Kong".

**22B. Certificate of ownership and other documents ceasing to have effect on death or dissolution of owner, etc.**

Section 24(b) is amended by repealing "overseas" and substituting "non-Hong Kong".

**22C. Notice of death or dissolution of owner, etc.**

Section 25(2) is amended by repealing "overseas" and substituting "non-Hong Kong".

Schedule 5,  
Part 3,  
section 26

In the Chinese text, in the heading, by deleting "**XI**" and substituting "**IX**".

**Annex VII**

## CRIMINAL PROCEDURE (AMENDMENT) BILL 2004

**COMMITTEE STAGE**Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
1	(a) In the heading, by deleting " <b>and commencement</b> ". (b) By deleting subclause (2).
2	(a) In the proposed section 67C - (i) in subsection (1), by deleting "Within 6 months after the commencement of this section" and substituting "As soon as practicable after the commencement of this section and in any event within 6 months after such commencement"; (ii) by adding - "(1A) If, within 6 months after the commencement of this section, the Secretary for Justice does not make any application in respect of any prescribed prisoner under subsection (1), the prescribed prisoner may also apply to the

- court for a determination by a judge under this section.";
- (iii) in subsection (2), by adding "or (1A)" after "(1)";
- (iv) in subsection (3) -
- (A) by deleting "Subject to subsection (4), where" and substituting "Where";
- (B) by deleting "the prescribed prisoner was under 18 years of age" and substituting "he was under 18 years of age, then, subject to the consent of the prescribed prisoner to the application of this subsection to him";
- (v) by deleting subsection (4);
- (vi) by deleting subsection (5) and substituting -
- "(5) In making a determination under this section -
- (a) subject to paragraph (b), the judge may

take into account  
any material  
submitted to him  
by the Secretary  
for Justice or  
the prescribed  
prisoner that is,  
in his opinion,  
relevant to the  
determination;  
and

- (b) the judge must  
not take into  
account the  
previous  
recommendation or  
the previous  
determination."

(b) In the proposed section 67D -

- (i) in the heading, by deleting "(1)";
- (ii) by deleting subsection (1);
- (iii) in subsection (2) -
  - (A) by deleting "under section  
67C(1) or subsection (1)" and  
substituting "or a prescribed

prisoner under section 67C(1) or  
(1A)";

(B) in paragraph (b) -

(I) by adding after "signed" -  
"-

(i) in the case  
of an  
application  
under  
section  
67C(1),";

(II) by deleting the full stop  
at the end and  
substituting -

"; or

(ii) in the case of an  
application under  
section 67C(1A),  
by the prescribed  
prisoner.";

(iv) by adding -

"(2A) No charge is to be  
payable for any application  
under section 67C(1) or (1A).

(2B) As soon as practicable

after the Secretary for Justice has made an application in respect of a prescribed prisoner under section 67C(1), the Secretary for Justice must serve a copy of the application on the prescribed prisoner.";

(v) in subsection (3) -

(A) by adding "or (1A)" after "67C(1)";

(B) by deleting "by the Secretary for Justice to him in that behalf, deliver to the Secretary for Justice" and substituting "to him by the Secretary for Justice or the prescribed prisoner, as the case may be, as the person by whom the application is to be made, deliver to the Secretary for Justice or the prescribed prisoner, as the case may be";

(C) in paragraph (a), by deleting everything after ", of the" and substituting "proceedings

relating to the relevant

sentence; and";

(vi) by adding -

"(3A) Where an application has been made in respect of a prescribed prisoner under section 67C(1) or (1A), the Secretary for Justice or the prescribed prisoner may apply to a judge for -

- (a) a copy of the record, if available, of the proceedings concerning the prescribed prisoner (whether relating to the relevant offence or the relevant sentence) or any part or parts of the record; and
- (b) a copy of any document in the

possession of the

Registrar,

and if the judge is satisfied  
that it is necessary and  
practicable to do so, the judge  
must direct the Registrar to  
deliver the copy to both the  
Secretary for Justice and the  
prescribed prisoner.";

(vii) in subsection (4) -

(A) by adding "or (1A)" after  
"67C(1)";

(B) by deleting "subsection (1)" and  
substituting "subsection (3A)".

(c) In the proposed section 67E(b), by deleting  
"instituted under section 67C in relation to  
the prescribed prisoner" and substituting  
"relating to the prescribed prisoner under  
section 67C".

(d) In the proposed section 67G(1), in the  
definition of "relevant provisions", in  
paragraphs (a) and (b), by adding "originally"  
after "as".



relation to him".

4

In the proposed rule 4(1)(ca), by deleting "in  
relation to him".

**Annex VIII****PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 2004****COMMITTEE STAGE**Amendments to be moved by Dr the Honourable Eric LI Ka-cheung

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting "30 days after the day on which it is published in the Gazette" and substituting "on 8 September 2004".
10(b)(ii)	By deleting "21".
16	In the proposed section 18B(1)(c), by deleting from "—" up to and including "(ii)".
17	By deleting the clause and substituting -

**"17. Register of certified public accountants**

Section 22 is amended -

(a) by adding -

"(1C) The register may be maintained -

(a) in a documentary form; or

(b) by recording the information required under

ClauseAmendment Proposed

subsection  
(1A) otherwise  
than in a  
documentary  
form, so long  
as the  
information is  
capable of  
being  
reproduced in  
a legible  
form.";

- (b) by repealing subsection (3) and substituting -

"(3) For the purposes of enabling any member of the public to ascertain whether he is dealing with a certified public accountant, a certified public accountant (practising), a firm of certified public accountants (practising) or a corporate practice and to ascertain the particulars of registration of such person, the register or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form shall at all reasonable times be made available for public inspection without charge.";

- (c) by adding -

ClauseAmendment Proposed

"(4) Any person registered as a professional accountant immediately before the relevant day shall be deemed to be registered as a certified public accountant."."

22(e)(ii) By deleting "certified public accountant or accountants (practising)" and substituting "certified public accountant (practising) or certified public accountants (practising)".

25(a) By deleting "certified public accountant or accountants (practising)" and substituting "certified public accountant (practising) or certified public accountants (practising)".

28(e) In the proposed section 29A(1B), by deleting "如紀律委員會根據第 35(1)(db)條針對申請人作出的飭令不得向他發出執業證書的命令正具有效力，則不得向他發出執業證書" and substituting "在紀律委員會根據第 35(1)(db)條作出針對申請人的命令中所述的期間，不得向申請人發出執業證書".

29(b) In the proposed section 30(4), by deleting "professional accountant" and substituting "public accountant".

37(c) (a) In the proposed section 35(1)(f), by deleting "(f)" and substituting "(i)".

(b) In the proposed section 35(1)(g), by deleting "(g)" and substituting "(ii)".

ClauseAmendment Proposed

- (c) In the proposed section 35(1)(h), by deleting "(h)" and substituting "(iii)".

54(7) By deleting paragraph (s).

Schedule 1 By adding -

**"5A. Notice of meetings of Institute**

By-law 14 is amended by repealing "21 days" and substituting "28 days".

Schedule 1, By deleting "14,".  
section 23(7)

Schedule 2 By adding -

**"Inland Revenue Ordinance**

**8A. Institutions that may accredit or recognize training or development courses for the purpose of section 12(6)(c)(iii)**

Schedule 13 to the Inland Revenue Ordinance (Cap. 112) is amended, in item 16, by repealing "Hong Kong Society of Accountants" and substituting "Hong Kong Institute of Certified Public Accountants".

Schedule 2 By adding -

**"Travel Agents Regulations**

ClauseAmendment Proposed**15A. Forms**

The Second Schedule to the Travel Agents Regulations (Cap. 218 sub. leg. A) is amended -

- (a) in Form 4, in question 5(a), by adding "(practising) as defined in the Professional Accountants Ordinance (Cap. 50)" after "accountant";
- (b) in Form 5, in question 4(a), by adding "(practising) as defined in the Professional Accountants Ordinance (Cap. 50)" after "accountant".

Schedule 2 By deleting section 20.

Schedule 2 By adding -

**"Electoral Affairs Commission (Financial Assistance  
for Legislative Council Elections) (Application  
and Payment Procedure) Regulation**

**29A. Interpretation**

Section 2(1) of the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation (Cap. 541 sub. leg. N) is amended, in the definition of "auditor", by repealing "a professional accountant

ClauseAmendment Proposed

registered and holding a practising certificate under" and substituting "a certified public accountant (practising) as defined in".

Schedule 2, By deleting the proposed definition of "certified public accountant section 52(b) (practising)" and substituting -

"certified public accountant (practising)" (執業會計師) has the meaning assigned to it in the Professional Accountants Ordinance (Cap. 50);".

Schedule 2 By adding -

**"Hong Kong Sports Development Board (Repeal) Ordinance**

**55. Final statement of accounts and reports**

Section 13(3) of the Hong Kong Sports Development Board (Repeal) Ordinance (11 of 2004) is amended by adding "(practising)" after "a certified public accountant".

**Annex IX****WING HANG BANK, LIMITED (MERGER) BILL****COMMITTEE STAGE**

Amendments to be moved by Dr the Honourable David LI Kwok-po

ClauseAmendment Proposed

16(1)(a)      By deleting ", 119E(2) or 119H(1)(a)".