

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 2 February 2005

The Council met at half-past Two o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

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

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 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 EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

THE HONOURABLE LI FUNG-YING, B.B.S., J.P.

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE FREDERICK FUNG KIN-KEE, J.P.

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H.

DR THE HONOURABLE JOSEPH LEE KOK-LONG

THE HONOURABLE DANIEL LAM WAI-KEUNG, B.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, S.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, S.B.S., J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE CHEUNG HOK-MING, S.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

MEMBERS ABSENT:

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE CHAN YUEN-HAN, J.P.

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

THE HONOURABLE MA LIK, J.P.

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

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

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

DR THE HONOURABLE YORK CHOW YAT-NGOK, S.B.S., J.P.
SECRETARY FOR HEALTH, WELFARE AND FOOD

CLERKS IN ATTENDANCE:

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments *L.N. No.*

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| Official Languages (Alteration of Text under Section 4D) (Medical Officer of Schools) Order | 9/2005 |
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Other Papers

- No. 53 — Occupational Safety and Health Council
 Annual Report 2003-2004
- No. 54 — Report by the Controller, Government Flying Service on
 the Administration of the Government Flying Service
 Welfare Fund for the year ended 31 March 2004
- No. 55 — Report by the Commissioner of Correctional Services of
 Hong Kong Incorporated on the Administration of the
 Correctional Services Department Welfare Fund for the
 year ended 31 March 2004

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions.

Members should only raise one question when asking supplementary questions and should be as concise as possible so that more supplementaries may be asked by Members.

PRESIDENT (in Cantonese): First question.

Enhancing Competition in Gas Fuel Market

1. **MS AUDREY EU** (in Cantonese): *Madam President, the Hong Kong and China Gas Company Limited (Towngas) will introduce natural gas as a feedstock for towngas production in 2006. Regarding the introduction of natural gas to enhance competition in the gas fuel market, will the Government inform this Council:*

- (a) *how the use of towngas produced from natural gas compares with the direct use of natural gas in terms of energy efficiency;*
- (b) *whether it has regulated the use of natural gas in Hong Kong and formulated policies to encourage the introduction of natural gas; if it has, of the details; if not, the reasons for that; and*
- (c) *whether it has formulated measures to enhance competition in the local gas fuel market; if it has, of the details of such measures; if not, the reasons for that?*

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

- (a) Distribution of piped natural gas to consumers is different from that of towngas. The towngas appliances currently used by Hong Kong consumers cannot be used for natural gas. Conversion works, including the conversion of the entire gas distribution and transmission network and the modification of the gas appliances currently used by all consumers, would be required if natural gas were to be supplied direct for use by consumers. The use of natural gas to produce towngas would require less conversion works and should also allow consumers to obtain benefits from any net savings in fuel costs.

With regard to energy efficiency, the wide range of variables relating to gas production, transmission, distribution and utilization, makes direct comparison of the two supply processes difficult. Generally speaking, supplying natural gas direct to consumers

rather than using it as a feedstock to produce towngas should be marginally more energy efficient.

- (b) At present, natural gas is one of the fuels for electricity generation. The importation, manufacture, storage, transport, supply and use of towngas, liquefied petroleum gas (LPG) and natural gas are subject to the stringent safety regulation of the Gas Safety Ordinance (Cap. 51). The Ordinance, however, does not specify the uses to which natural gas should be put. At present, natural gas is used only as a fuel for electricity generation. From 2006 onwards, Towngas will introduce natural gas as an additional feedstock to naphtha to produce towngas. If natural gas were to be used directly as a fuel, we have to ensure that reliable, stable, sufficient and reasonably priced natural gas supply is available to meet the demand of consumers. The Government will facilitate, where possible, efforts by the private sector to obtain suitable sources of natural gas supply and related facilities for electricity generation or replacement of towngas.
- (c) Hong Kong's gas market is an open one. Companies supplying towngas and LPG have all along been operating in a competitive market. The emergence of new gas suppliers in the local gas market, in particular those supplying natural gas directly to consumers for use as a fuel, depends on a number of factors, including the availability of reliable and stable supply sources, economic benefits and consumers' affordability.

In 1997, the Electrical and Mechanical Services Department commissioned a preliminary study on the feasibility of introducing a common carrier system in Hong Kong as a means to enhance competition in the local gas market. The study concluded that the prerequisite for the introduction of a natural-gas based common carrier system in Hong Kong is the availability of reliable, stable, sufficient and reasonably priced natural gas supply to meet public demand. At this stage, uncertainties remain as to whether reliable and stable natural gas supply sources are available to Hong Kong. We will facilitate, where possible, efforts by the private sector to obtain suitable sources of natural gas supply and related facilities for electricity generation or replacement of towngas.

MS AUDREY EU (in Cantonese): *Madam President, in the last part of the main reply, the Secretary pointed out that uncertainties remained as to whether reliable and stable natural gas supply sources would be available to Hong Kong. Can the Secretary explain what the uncertainties are, particularly when we have learnt that Shanghai would be using natural gas in 2010 and that Towngas has signed a contract for provision of natural gas for a term of 25 years. Therefore, can we ask the Secretary what the remaining uncertainties are?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, as Ms Audrey EU mentioned just now, Towngas has signed a contract for a term of 25 years. In fact, to date, the natural gas station in Guangdong is the only place on the periphery of Hong Kong which can provide natural gas. I believe Ms EU also knows that the CLP Power Hong Kong Limited (CLP) overestimated the quantity of natural gas produced by the natural gas field at Yacheng, in other words, the actual volume of natural gas produced there is less than expected. The problem of securing a stable and reliable supply can thus be seen. At present, the supply available to Towngas is sufficient for it to provide for the volume set out in the signed contract and the natural gas available is only sufficient for 60% of its towngas production. In other words, the outstanding 40% has to rely on naphtha and the supply of natural gas is still insufficient. Certainly, they will continue with their sourcing efforts and we hope that one day there will be sufficient and stable supply. Towngas will consider whether the time is ripe then. If there is sufficient natural gas supply one day, then natural gas can be used full scale for supply. In fact, Singapore is in the same situation. Madam President, like Towngas, Singapore used naphtha and now it is using natural gas for its towngas production.

PRESIDENT (in Cantonese): A total of 11 Members are waiting for their turns to ask supplementary questions. I hope Members who have the opportunity to ask questions can be as brief as possible, so that more Members can raise their supplementary questions.

MR ANDREW LEUNG (in Cantonese): *Madam President, the Secretary mentioned economic benefits in part (c), can I ask the Secretary whether any*

study has been conducted to ascertain the economic benefits or the overall benefits to consumers of the change to natural gas in Hong Kong?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I thank Mr LEUNG for asking this supplementary question. As I pointed out in my reply to Ms Audrey EU, supplying natural gas direct to consumers should be marginally more energy efficient, but we have to consider the economic benefits as well. In fact, as I mentioned in my main reply, if natural gas is to be used direct, among others, the transmission system, pipes, parts, and nozzles have to be readjusted or replaced. Moreover, we have to understand that co-operation of all the consumers is also necessary. For example, modification works have to be carried out for the whole building, for it will be impossible for one consumer to use natural gas while another uses towngas. Furthermore, road-digging, laying of pipes, disconnection of some pipes for the reconnection of natural gas pipes are involved as well. In other words, the conversion works involved are considerable. According to overseas experience, it usually takes years before towngas can be replaced by natural gas, and works involve money. If we proceed with this eventually, the first thing I would tell Honourable Members is that support from all consumers will be required before the company concerned can carry out any adjustment and conversion works. Therefore, it is also important to consider the question of economic benefits.

MR ALAN LEONG (in Cantonese): *Madam President, insofar as I know, natural gas can be used for electricity generation and opening towngas pipes for the supply of natural gas can help undermine the monopolizing positions of the two power companies. In reviewing the Scheme of Control Agreements with the two power companies, has the Government included the opening of towngas pipes as one of its considerations?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I do not think I have understood Mr LEONG's supplementary question very well. I believe Mr LEONG would like to encourage the use of natural gas to generate electricity as much as possible and that is what Mr LEONG hopes to see. I also hope to see more utilization of natural gas in electricity generation by the power companies. Therefore, in the paper we have

issued recently, I mentioned that we would take this opportunity to consider the question of feedstock from the angle of environmental protection and to encourage the two power companies to increase the use of natural gas in the future. However, this is really not directly related to the opening of facilities by Towngas. In fact, as I mentioned in the main reply, finding a sufficient and stable natural gas supply is the most important point. I mentioned that the supply at CLP's natural gas field at Yacheng may be exhausted earlier than expected and hence the need to find new sources of natural gas, or build a natural gas station. Therefore, I pointed out in the reply that we shall, for example, be pleased to facilitate and co-operate in terms of planning and environmental protection when the building of such facilities as a natural gas station becomes necessary.

MR ALBERT CHAN (in Cantonese): *Madam President, my worry is the problem of monopolization. Whether natural gas will be provided is, very often, not decided by the consumers, but by the developers at the time of constructing the buildings. In terms of future control, will the Secretary consider separating the provision of natural gas network and pipes and the provision of natural gas, similar to the practice in the telecommunications industry, so as to pre-empt developers from obtaining unreasonable profits and depriving consumers of their right of choice by monopolizing and deciding on the the kind of gas fuel to be supplied through building development?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I believe Mr CHAN is most concerned to have more than one natural gas provider to choose from. In fact, as I mentioned earlier, we have conducted a study and hope that there will be a natural-gas based, common carrier network eventually. In other words, the situation is the same as in the case of electricity previously mentioned, in which there is one network to allow different power companies to compete in using the facilities. I agree that it will be best to have a common carrier network for access by different natural gas providers in order to enhance competition. We shall certainly continue with our study in this respect.

MR ALBERT CHAN (in Cantonese): *The Secretary mentioned earlier that a common carrier network can allow different gas providers to provide fuel, can he explain how that can be ensured?*

PRESIDENT (in Cantonese): That is not part of the supplementary question you asked earlier.

MR ALBERT CHAN (in Cantonese): *But he*

PRESIDENT (in Cantonese): Please wait for another turn. Sorry, a follow-up has to be part of the supplementary question.

MR ALBERT CHAN (in Cantonese): *Madam President, he has not answered my supplementary question fully.*

PRESIDENT (in Cantonese): The best I can do is to ask the Secretary: Do you have anything to add?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I do not have anything to add for now.

MR RONNY TONG (in Cantonese): *Madam President, the Secretary said that a study had been conducted in 1997. Can the Secretary tell us whether any thorough study has been conducted to ascertain whether any natural gas providers elsewhere, in particular, in the Mainland, are currently available for introduction into the domestic fuel market in Hong Kong to directly compete with the local gas company? Have such suppliers been identified?*

PRESIDENT (in Cantonese): Will the Secretary please rise only after the Member has sat down.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I believe this is an issue in the longer term. With regard to Mr TONG's supplementary question, there are not too many cities which use natural gas even in Guangdong. I believe Members must

understand that the supply of natural gas is limited and we have been trying to source natural gas supplies. The most important thing is to secure a sufficient supply by signing a contract. Therefore, I have been emphasizing the importance of reliable and stable supply all along and that is also why Towngas has signed the contract for a term of 25 years. At this stage, I know that nobody is interested in introducing natural gas into Hong Kong to compete in this way in the economy. Such a situation has not arisen. In fact, that was exactly the problem we stated in the study in 1997. The crucial problem is that to date, no stable, reliable and sufficient supply in the periphery of Hong Kong can be found. That is the problem.

DR LUI MING-WAH (in Cantonese): *Madam President, Towngas originally used coal to generate towngas. If it were to generate towngas with natural gas, can I know what would be the difference in costs?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): First, I would like to clarify that towngas is generated by naphtha, not coal. The pricing of naphtha is similar to that of other petroleum products in the sense that if the price of petroleum rises, the price of naphtha will also be adjusted upward. Therefore, Towngas has suggested to shift to natural gas for 60% of its feedstock starting from next year. The price of natural gas is relatively lower than that of naphtha. Therefore, in October last year, Towngas briefed Members here that the economic benefits for implementing the plan in 2006 would be about 5%. In other words, the cost of generating towngas with natural gas should be reduced by about 5% in the future.

MS MARGARET NG (in Cantonese): *Madam President, according to the Secretary's main reply, it is apparent that in terms of both environmental protection and price, direct utilization of natural gas is beneficial to the public. Therefore, should the Government formulate any policy in this regard, or simply wait until one day when sufficient supply can be found, as the Secretary said? Will the Secretary ask Shanghai why it can secure a stable supply to enable the full-scale use of natural gas in 2010? Other than hoping, what initiatives have the Secretary taken to solve the question of securing a stable supply?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I believe sourcing the supply of gas certainly concerns a company's business operation, which involves, for example, contract negotiations and pricing. Even if such gas supply can be found, people will not use it if the price is too high. Therefore, besides energy efficiency, I also stressed earlier that we have to consider whether our actions will benefit the public. I cited Singapore as an example earlier. As I understand it, the situation in Singapore is similar to that in Hong Kong. Singapore also used naphtha to generate towngas in the past and now it has sufficient natural gas for its use, but most of the consumers are still using towngas generated by natural gas and natural gas is not distributed to consumers direct. As I have explained earlier, there are many points to consider before implementation. The situation is the same elsewhere — it takes years, even eight to 10 years to complete the whole process before towngas can be replaced by natural gas. As I have also explained, our policy is certainly to provide encouragement as far as possible. If a company wants to build a natural gas station, we shall facilitate in environmental protection and planning as far as possible. However, whether the company will purchase natural gas eventually or what the determined price will be are certainly its business decisions.

MS MARGARET NG (in Cantonese): *Madam President, the part which the Secretary has not answered is: As regards Shanghai, has the Secretary made enquiries to find out why natural gas can be used as a complete replacement there in 2010? Where does the stable supply come from?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I believe Shanghai has found its gas provider, and so will some other places, but it does not mean that it can be found in each and every city. To put it simply, Guangzhou is still using LPG and coal gas and it does not have enough supply of gas yet. I believe the fact that Shanghai has found it does not mean that other cities will be able to do so as well.

MS MARGARET NG (in Cantonese): *Madam President, has the Secretary made enquiries to find out how Shanghai has resolved the problem of securing a stable supply?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, Shanghai has launched their promotion in stages. They promote the use of natural gas in industrial areas first and residential areas next. In fact, in the next five years, all Shanghai will be doing is to speed up the gas production units and conversion works of the transmission and distribution system.

PRESIDENT (in Cantonese): This Council has spent more than 19 minutes on this question, we shall now proceed to the second question.

Reuse of Medical Devices Intended for Single Use

2. **DR JOSEPH LEE** (in Cantonese): *Madam President, it has been reported that there had been cases where medical devices intended for single use were reused in public hospitals. The reuse of such devices may enhance the cost-effectiveness but at the same time will increase the risk of infection on patients. In this connection, will the Government inform this Council whether it knows:*

- (a) the total number of times the public hospitals reused such devices in the past four years, together with a breakdown by the types of devices;*
- (b) the procedures for sterilizing the devices in question for reuse and the results of risk assessment on patients becoming infected due to the reuse of these devices; and*
- (c) whether the patients will know before receiving treatment that it involves the reuse of such devices; if not, the reasons for that, and whether they have the right to choose whether or not to accept the reuse of such devices; if they do not have such right, the reasons for that?*

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

- (a) Medical devices labelled by their manufacturers as single-use items are commonly known as Single-use Devices (SUD). At present, most SUDs would be discarded by public hospitals after a single use. However, the Hospital Authority (HA), through professional judgement and careful selection, considers that some SUDs can be reused in a limited manner after sterilization.

There are currently over 600 types of SUDs that are being reused in public hospitals. Due to the relatively large number of such devices, the HA cannot provide a detailed breakdown of the number of reuse by the type of SUDs.

- (b) In a hospital's normal operation, many medical devices can be reused many times. To ensure patient safety, there are existing procedures, guidelines and standards within the HA on the proper processing and sterilization of these devices after use. These procedures, guidelines and standards are applicable to all medical devices, including SUDs. The procedures for sterilizing SUDs are the same as those applicable to other devices.

The HA considers that through careful selection, risk assessment and proper processing after use, SUDs labelled as such can still be reused in a limited manner safely. The HA has made reference to the relevant experience of advanced countries. There is no conclusive evidence showing that the appropriate reuse of SUDs would increase the risks (including the risk of infection) for patients.

- (c) Experts at the HA have carefully assessed the risks of reusing SUDs. Public hospitals also carry appropriate inspection on these devices before reuse, so as to ensure their proper operation. Since reusing SUDs with these safeguards would not result in any apparent increase in the risks for patients, there is no need for public hospitals to inform them of such arrangements specifically. In actual operation, it is also not known to front-line health care staff as to whether the medical devices to be used in a medical procedure are being used for the first time or not.

Under the currently system, patients do not have the right to specify the types of medical devices that must be used or not to be used in

their treatment by public hospitals. The responsibility of the HA is to provide patients with professional medical services. This includes using medical devices in a safe manner. Therefore, the HA has the responsibility to ensure the safety of reusing SUDs in public hospitals. With their safety assured, the interest of patients is reasonably protected.

DR JOSEPH LEE (in Cantonese): *Madam President, strictly speaking, three parts of my question have not been answered by the Bureau. Besides, the main reply is self-contradictory, arousing suspicion that the truth is being concealed. Actually, my question is: As the Secretary has already admitted that over 600 types of SUDs are defined by the manufacturers as suitable for single use only, why can such devices be reused without a record on the number of times reused? Indeed, front-line workers know definitely whether the 600-odd types of SUDs they use are new or not, for the packings are entirely different. Finally, concerning the patients' right to know, Madam President, may I ask why patients do not have the right to know this?*

PRESIDENT (in Cantonese): Members can only raise one supplementary question, but Dr LEE has raised three. However, as he said just now, he thought the Secretary had not answered his question, he therefore raised those three supplementary questions. I hope the Secretary will answer them as far as he can, but he does not necessarily need to answer all three supplementary questions raised by Dr LEE. Secretary.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as I said in the main reply, regarding the so-called SUDs, which is so stated on their labels, we all know that every manufacturer does hope that their products will be disposed of after single use, but, more often than not, these devices can be reused where no special risk will be borne, particularly when they are properly sterilized before reuse. In the past, all so-called SUDs, such as needles, scalpels and so on, were reused after sterilization. Therefore, as I said earlier, certain devices will be reused under circumstances where we considered feasible. I think, from the perspective of medical-effectiveness or environmental protection, we can do so. As to whether health care workers know about it, certainly, some of them do know but some of them do not.

However, the most important point is that when they use the devices, they are fully aware that the devices they use are safe and ready for use, and officers responsible for the supply of medical devices will ensure the safety of such devices in the course of sterilization.

PRESIDENT (in Cantonese): Are you going to raise a follow-up? Which part of your supplementary question has not been answered by the Secretary? You need only state the part that has not been answered.

DR JOSEPH LEE (in Cantonese): *Madam President, my supplementary question is — the Secretary said that those devices intended for single use can be reused, but I know that among the 600-odd types of devices, multiple-use models are available for many types of them. My supplementary question is: Why do the authorities not purchase devices intended for multiple use but continue to purchase SUDs instead?*

PRESIDENT (in Cantonese): I am sorry, Dr LEE, your follow-up question is not part of the supplementary question raised by you earlier. Please press the button and queue up, and I will let you put your question later if an opportunity arises.

MR ANDREW CHENG (in Cantonese): *Madam President, the crux of Dr LEE's main question is that the reuse of medical devices which are intended for single use as stated by manufacturers must involve a higher risk than using brand new devices. The risks incurred in the using of these two types of devices definitely will not be the same. The reuse of such medical devices must incur risks. It is not fair to patients if they have to run the risks. Though the Government is now facing a fiscal deficit, its deficit is diminishing. May I ask the Secretary if the Government is so impoverished that it has to treat patients as guinea pigs or bet on it, putting patients at risk?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, first of all, I have to state that patients and guinea pigs are two entirely different kinds of animal. Second, what is our prime concern? It is

the safety of patients, professional decisions and how suitable treatment is administered. During the course of treatment, medical doctors must assess whether the devices to be used are safe, which is the responsibility a medical doctor must shoulder. Therefore, no matter the devices to be used are intended for single use or being reused, a medical doctor has the responsibility to consider whether the device can be reused.

As I said earlier, manufacturers of devices always hope that their customers will replace the products after single use. Besides, so far, no devices specifying the maximum number of usages are available. However, we have to conduct assessments to confirm whether the devices can be reused. In brief, the HA has conducted studies in this respect for a long time and classified those devices into different categories. High-risk devices, such as cardiac catheter used for percutaneous transluminal coronary angioplasty, definitely will not be reused and will be disposed of once after use. But actually, we are able to know whether certain devices can be reused. As I am in orthopaedics, I find it very wasteful to throw away a cutting saw or a drill bit after single use. We only need to check the sharpness and suitability for cutting of those devices to decide whether they can be reused, which is by no means a difficult task. Moreover, the reuse of these devices has no bearing on the risk to be borne by patients, so they can be reused. Therefore, I think that in cases where differentiation is possible, we have to allow flexibility in handling the issue. Ensuring patients' safety and the effectiveness of medical treatment should be our primary concern, but we should at the same time avoid wastage.

MR LAU KONG-WAH (in Cantonese): *Madam President, despite the repeated assurance given by the Secretary on the relatively low risk involved, psychologically, I cannot help thinking the reuse of certain devices a bit risky. Though the Secretary said the list of such devices cannot be exhausted, may I ask whether syringes will be reused? Have incidents related to the reuse of such devices ever happened in the past, and what experience and lesson have the authorities learnt?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, in the first place, general medical devices, such as syringes, are relatively inexpensive items, so we will not spend time sterilizing them for reuse. We will only consider the reuse of some devices which are more

complicated, expensive and rarely required. In the past, not a single patient has ever suffered from infection or other complications because of the reuse of such devices.

DR KWOK KA-KI (in Cantonese): *Madam President, I do appreciate part of the reply given by the Secretary earlier, for example, as a orthopaedic surgeon, he found that certain cutting saws can be reused. However, I know that many front-line health care workers are compelled to reuse many SUDs owing to insufficient funding. In fact, the Secretary can really help to change this practice. May I ask if SUDs are used only once in future, how much money will be involved? Will the Secretary undertake to allocate the required funding to the HA in the coming year?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, according to the estimation of the HA, if all the devices currently being reused are to be disposed of after single use, the funding involves will range from \$100 million to \$300 million, and the total amount spent on these devices by the HA is around \$800 million. However, if I am asked whether the funding so required can be allocated to the HA, I would prefer spending the funding, if awarded, on expensive medicines.

MR HOWARD YOUNG (in Cantonese): *Madam President, items intended for single use may be considered suitable for reuse from the angle of cost-effectiveness or environmental protection. In respect of the sterilization process for multiple use and single-use devices as stated by manufacturers, may I ask whether hospitals will particularly enhance sterilization of devices originally intended for single use, or will such devices only be sterilized under normal procedures?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the HA will decide the sterilization procedures to be applied according to the nature of devices, that is, the presence of specific material, and the sterilization procedures used will be similar to that used by the manufacturers before the devices roll out of the factory. Therefore, all along, cases causing infection to patients have never happened. We attach great importance to this

practice. At present, different sterilization methods, such as high temperature method, sterilizing gas, sterilizing fluid, are used, depending on the different requirements of devices. Nonetheless, we will by all means ensure that devices to be reused are safe for reuse. Devices of very sophisticated structure, particularly devices which may be affected by the inflow of blood, will not be reused.

DR JOSEPH LEE (in Cantonese): *Madam President, I have queued up in order to ask another question.*

The Secretary said that there were many different methods for sterilizing devices intended for reuse, and that manufacturers would have specified the suitable method to be used. In fact, as far as I know, among the different sterilization methods to be applied to the 600-odd devices, some are not available at the HA, such as the use of ultraviolet radiation and gamma ray. I would like to follow up part (b) of the main question. With regard to the existing sterilization procedures applied to SUDs intended for reuse, does the HA have the relevant results or figures for Members' reference?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I will ask the HA to provide these figures as far as possible, but I think it will be quite difficult. First, the number of times a device can be reused varies from device to device. Besides, more often than not, whether a device is suitable for reuse depends on its condition after its first use. Therefore, we may not be able to provide the relevant figures indicating clearly the number of times a device can be reused by categories. Second, I have to reiterate, in respect of the sterilization procedures and effectiveness, I think Dr LEE, as a member of the sector, knows clearly that certification procedures are in place, which will not be hard to find. Thus, I believe it is 100% safe in this respect.

DR RAYMOND HO (in Cantonese): *Madam President, the Secretary mentioned earlier that some devices were reusable with different degrees of risk; obviously, the reuse of these devices is subject to the financial position of the Government. As such, has the Government conducted constant reviews of the risk of reuse of these devices in the light of its financial position, trying to reuse only those devices with a lower risk level when it is financially viable? If*

reviews have not been conducted, will it consider doing so to put our mind at rest and to enable front-line workers know more clearly the relevant guidelines and practices?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as far as I know, a committee responsible for monitoring the effectiveness of medicines and devices has been established under the HA. The committee will not only consider the effectiveness of devices in money terms, nor the necessity of reuse. Its prime concern is the effectiveness in curing diseases. If the device is effective, the HA will purchase it despite its high costs and intended single usage. Therefore, I think it is not purely a financial consideration. Nonetheless, in general, we hope that the reuse of certain devices with higher cost-effectiveness can be continued. But, absolutely, high-risk devices will not be reused. In respect of professional certification, I have great confidence in the HA and I know the arrangement has been operating quite satisfactorily all along.

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

MR LEUNG KWOK-HUNG (in Cantonese): *Madam President, may I ask the Secretary why such devices have to be reused if the manufacturers have already stated that they are intended for single use? By the same token, many products are intended for single use, for example, condoms can only be used once and cannot be reused. Of course, the two are not comparable. But, obviously, the authorities are acting against the advice of manufacturers. Manufacturers have already informed consumers what to do. The authorities as a collective consumer, the so-called corporate consumer in the Mainland, provide the products to other consumers. However, if the provider of public services does not comply with the rules, those who have no choice but to use such service will be exposed to grave danger. May I ask the Secretary whether he himself or other Policy Secretaries will request using such reusable devices when they seek consultation at public hospitals? If the Secretary considers the arrangement feasible, will he demonstrate to everyone that this is feasible?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I can prove that to Mr LEUNG. I used to work in hospitals, and I know that everyone is treated equally, and no particular official can request the use of certain devices or products for treatment. Most important of all, doctors decide how to treat their patients according to their professional attitude, spirit and judgement.

MR LEUNG KWOK-HUNG (in Cantonese): *Madam President, the question is*

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please let the Secretary take his seat first. I will then ask you to rise to put your question.

MR LEUNG KWOK-HUNG (in Cantonese): *Madam President, I am not asking the Secretary to exercise his privilege. I mean that for the purpose of demonstration, Policy Secretaries should take the lead to try this practice to prove that the reuse of these 600-odd devices is feasible. This is not a matter of privilege, but is indeed requesting them to request to use such devices. Will it be possible? I understand what the Secretary said; he is saying that Policy Secretaries do not have the privilege to request the use of any devices. However, may I ask whether the Secretary agrees to using this method to prove that the practice will not pose any hazard to the public? Does the Secretary agree with this?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I think I am not in a position to say whether or not I agree with the suggestion. Indeed, it is for a patient's doctor to decide what treatment he should receive. This point is more important. Actually, if I have to seek consultation at a public hospital, I think I would put myself in the doctors' hands and let them decide how I should be treated.

PRESIDENT (in Cantonese): Third question.

Unreasonable Treatment of Psychiatric In-patients

3. **MR JASPER TSANG** (in Cantonese): *Madam President, it has been reported that in the middle of last month, some mass media organizations received a video clip showing a male psychiatric in-patient of Kwai Chung Hospital (KCH) massaging a male nurse. In this connection, will the Government inform this Council:*

- (a) when the Hospital Authority (HA) learnt of the incident;*
- (b) whether the HA has investigated the incident; if so, how the investigation was conducted and whether it will release the findings; and*
- (c) whether the HA will review the operation of KCH, and of the mechanism for safeguarding psychiatric in-patients against unreasonable treatment?*

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

- (a) Insofar as I am aware, the HA learnt about the incident on 17 January 2005, upon receipt of an enquiry from the media. The HA has not received any complaint in respect of the incident.
- (b) The HA is very concerned about the incident and has referred the matter on the same day of the receipt of the media enquiry to KCH for follow-up and investigation. According to the result of the hospital's initial investigation, the incident happened about half a year ago. It involved a male psychiatric patient massaging a male nurse whom he knew well. Another male nurse was testing his new digital camera and recorded the process of the massaging. KCH formally commissioned an Investigation Committee to examine the incident in depth. It also reported the incident to the Hong Kong Nursing Council. The Investigation Committee has already completed its report and submitted it to the Deputy Hospital Chief Executive of KCH on 24 January 2005. The conclusion of the report is that the acts of the two staff concerned constituted

improper behaviour. KCH will take disciplinary action against the two staff in accordance with existing procedures.

- (c) KCH will review whether there are areas in its operation that should be improved, so as to prevent the occurrence of similar incidents.

There are existing mechanisms in all HA hospitals (including KCH) to ensure that hospital staff would provide patients with quality medical care. Ward managers monitor the daily operation in hospital wards, which includes the level of service provided to patients by staff. Hospital staff should also comply with service guidelines, such as the Patients' Charter, Code of Professional Conduct and Code of Ethics, and the Personal Data (Privacy) Ordinance. Psychiatric nurses in KCH are also required to observe the Nursing Standards for General Psychiatry and the Nursing Manual of KCH. In addition, the HA conducts clinical audits from time to time, so as to ensure the quality of service provided by its hospitals and clinics.

MR JASPER TSANG (in Cantonese): *Madam President, this kind of incidents in psychiatric hospitals calls for special attention because people worry that psychiatric patients, lacking the ability or even the awareness of self-protection, would most probably fail to complain through an effective channel when they are assaulted or unfairly treated, making it difficult for third-party monitoring to function effectively. Therefore, the behaviour and conduct of hospital staff of psychiatric hospitals call for particular attention.*

The Secretary mentioned in his reply that psychiatric nurses and hospital staff should observe the Nursing Standards and the Nursing Manual. However, the community's expectations of and concern for the rights of psychiatric and other patients are rising continuously. Has the Government conducted regular reviews of the Standards and Manual in order to keep abreast of the times? When was the last review conducted?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Insofar as I am aware, the HA conducts regular reviews of manuals for hospital staff working in psychiatric departments and the last review was probably

conducted within the last two years. Since the subject involved in this incident is not a psychiatric patient, but a mentally handicapped, I think it calls for particular attention. As a result of this incident, we have held detailed discussions with the hospital concerned to examine: first, whether there has been any unauthorized actions insofar as procedures are concerned. But we found that the patient has all along maintained a good relationship with the hospital staff. In the ordinary course of treatment, hospital staff would often provide treatment to patients with the use of games and therefore no unauthorized actions, but improper actions of the hospital staff were found. Second, it is also improper for the hospital staff to record the process in a video without first obtaining the consent of the patient or his guardian. We have therefore referred the case to the Hospital Chief Executive of KCH to determine the disciplinary actions to take. I hope that this incident will enable staff to realize the importance of their work and respect for patients.

MR VINCENT FANG (in Cantonese): *Madam President, I have to declare my interest first. I am the Chairman of the Hospital Governing Committee of KCH. In psychiatric institutions, and psychiatric hospitals in particular, the relationship between management staff and patients is very important. If they have a good relationship, the treatment will be particularly effective.*

I would like to point out that with the rapid changes in mobile phone technology, many mobile phones now have the additional function of camera as well. As visitors often carry mobile phones with them into hospitals, will it open up huge possibilities of disclosure of information? How can this situation be prevented in the future?

PRESIDENT (in Cantonese): Mr Vincent FANG, we are discussing a nurse's improper conduct toward a psychiatric patient, why did you suddenly change the topic to the camera function of mobile phones? Can you explain to me its relevance to the question?

MR VINCENT FANG (in Cantonese): *Fine. What I mean is, there will be many incidents of filming with mobile phones in the future. Camera devices should not be installed in psychiatric institutions in particular, but many mobile*

phones now have camera functions. Can the Government prevent such unauthorized filming in the future?

PRESIDENT (in Cantonese): Do you mean to ask the Secretary whether visitors can be prohibited from taking photographs/movies within the precincts of hospitals?

MR VINCENT FANG (in Cantonese): *Yes.*

PRESIDENT (in Cantonese): However, I do not think that this point has any particular relevance to the question.

MR VINCENT FANG (in Cantonese): *I think that if visitors are allowed to bring their mobile phones in, the situation within a hospital can easily be filmed.*

PRESIDENT (in Cantonese): Sorry, I will not allow you to raise this supplementary question.

MISS TAM HEUNG-MAN (in Cantonese): *Can I ask the Secretary whether any complaints of unreasonable treatment to psychiatric in-patients of the two psychiatric hospitals in Hong Kong have been received, either from the patients or their families? If yes, what are the details?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, insofar as I am aware, such figures are kept, but I do not have the information with me now. The most important thing to establish after the receipt of a complaint is whether the allegation is true, *viz.* whether improper care has been given to the patient. I am concerned about the figures. I will submit them to this Council when I receive the information. (Appendix I)

MR LAU KONG-WAH (in Cantonese): *Madam President, given that this incident involved a patient massaging a nurse whom he knew well, can I ask the Secretary whether such a situation or behaviour is found to be one-off or recurrent in nature in the process of investigation? Besides, is the provision of services to nurses by patients an occasional incident or a common practice?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, according to my preliminary understanding of the report — as I do not have the detailed report yet — the patient in the incident had not given massage to the nurse on a long-term basis and was incidentally massaging the nurse on that day while they were playing. Another staff member happened to have bought a new camera, wanted to try it out and took a picture of them for fun which he then stored in the computer. He could not delete the photos due to a problem with the computer and for some unknown reasons, the picture was subsequently released.

At present, we have not conducted any detailed causal analysis and are not clear about the full circumstances. However, the most important thing is that we have learnt from the statements taken by the HA of its staff that it was an unexpected, one-off incident. The nurse concerned knew the patient well, had been looking after the patient and often used games in the course of his treatment. First of all, I do not think that is a good game. Second, I think it is improper for them to record the process before obtaining the consent of the patient, his parent or guardian.

MR LAU KONG-WAH (in Cantonese): *Generally speaking, are there many nurses who play this kind of game with patients? That is, are there many who behave in similar ways?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, insofar as I am aware, games are used in the rehabilitation process in psychiatry. There are many kinds of games and I certainly think that doing massage on a nurse is not a proper game.

DR KWOK KA-KI (in Cantonese): *The Secretary pointed out in his earlier reply that KCH has put proper codes in place. However, may I ask the Secretary clearly whether the Government has taken any special measures immediately after the incident to protect patients and mentally-handicapped patients in particular, so that such incidents will not happen to them in the future? I hope the Secretary can give me a more substantive reply.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, insofar as I know, KCH immediately held a meeting with all staff after the incident to reiterate how patients and their rights should be respected.

MR LI KWOK-YING (in Cantonese): *The Secretary mentioned earlier that although KCH had manuals for nurses and nursing staff which set down the requirements for nurses in treating patients, the recent incident occurred still. The Secretary also mentioned there were ward managers in hospitals who monitored the daily operation of the wards. However, insofar as I understand it, the patient/nurse ratio is quite high for wards which receive patients suffering from chronic illnesses and strictly speaking, one nurse is responsible for caring patients in the whole ward during the shift. Under the circumstances, although the hospital concerned has set down codes for nurses, the staff breached them still. If there was only one nurse to care for a whole group of patients, has the HA or the hospital concerned considered adopting more efficient methods to prevent such incidents from happening again, as mentioned by Dr KWOK Ka-ki earlier?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I do not really understand Mr LI Kwok-ying's supplementary question. He said that a group of patients were cared for by only one nurse, but two nurses were already involved in this incident. I understand that the HA has asked five nurses who have worked in the ward to testify in the investigation of this incident. Therefore, I think it is not a question of the number of nurses, but of professional conduct. I think we should not bring questions of manpower and the like into the discussion, because problems will arise if staff do not

comply with the Code of Professional Conduct, no matter how much manpower there is.

MRS SOPHIE LEUNG (in Cantonese): *Madam President, as ex-Chairman of the Hospital Governing Committee of Castle Peak Hospital, I knew something about the situation. Generally speaking, I could see that many male nurses were very familiar with their patients and they expected to look after the patients in a rather friendly way. After I had seen certain things, I asked why the nurses and the patients were behaving in such a close way, but I knew they were only playing.*

With regard to part (b) of the Secretary's main reply, I would like to know how the Secretary would delineate "knowing well" and behaving according to the Code of Professional Conduct? I think that in order to solve the current problem that we have noticed, the hospital concerned and its staff would perhaps need more thorough and in-depth discussions. Very often, just then

PRESIDENT (in Cantonese): Have you already raised your supplementary question?

MRS SOPHIE LEUNG (in Cantonese): *..... I have already, as I have asked the Secretary for the delineation. Can that be put now?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I believe that the more experienced hospital staff would understand that in developing a good relationship with patients, while it is possible to know them well on the one hand, it is very important to keep a professional distance on the other. We should keep a professional distance in all of our conduct.

DR JOSEPH LEE (in Cantonese): *Madam President, the Secretary pointed out in part (c) of the main reply that KCH will review areas in its operation and examine the incident that has occurred. Can I ask the Secretary whether KCH*

will consider prohibiting the use of any equipment with a camera function (for example, mobile phones) in its wards, in order to prevent disclosure of patient's privacy?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I think it is rather difficult to purchase a mobile phone without a camera function nowadays. I would rather think that it is a question of whether the people carrying mobile phones with a camera function will use that function after they have entered a certain place. Therefore, according to the Code of Professional Conduct, hospital staff are expected to know what purpose it is to serve when they use camera devices within the precincts of the hospital and they must obtain the permission of management staff beforehand. Second, they must first obtain the patient's permission if he or she will be included in the picture. If the patient concerned does not have the ability to make decisions, then permission must be obtained from his or her parent or guardian. Therefore, I attach great importance to this aspect and would like to take this opportunity to impress on hospital staff to observe the relevant codes more strictly, and Dr LEE can also go back to his voters and do the same. It is not my intention to reply to Mr Vincent FANG's supplementary question, but he has raised a similar issue about the increased risks of disclosure of privacy as a result of the public's current access to the use of camera devices. However, if our professional staff do not conduct themselves in a professional manner, then there would be a higher incidence of behaviour which would affect the public's opinion of professional staff. I hope the staff concerned will exercise self-discipline in this respect.

PRESIDENT (in Cantonese): Fourth question.

Subsidy for Government Evening School Courses

4. **MR LEUNG KWOK-HUNG** (in Cantonese): *Madam President, I am raising a question to ask the Education and Manpower Bureau (the Bureau), is the Secretary for Education and Manpower present in this Chamber?*

PRESIDENT (in Cantonese): In the absence of the Secretary for Education and Manpower, the Secretary for the Civil Service will answer the question on his behalf, which is a permitted arrangement.

MR LEUNG KWOK-HUNG (in Cantonese): *That is to say, the Secretary for the Civil Service will reply on behalf of the Secretary for Education and Manpower? Okay.*

In order to achieve savings, the Bureau has not only outsourced the provision of three categories of evening adult education courses, and the number of students has therefore decreased from 11 000 to 6 000.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, I am sorry, but you have to read out the question approved by me.

MR LEUNG KWOK-HUNG (in Cantonese): *Madam President, it turns out that you approval is required in the first place?*

PRESIDENT (in Cantonese): Yes, please raise your question.

MR LEUNG KWOK-HUNG (in Cantonese): *Well, this is really..... good, okay, there is no problem at all. Now, I am going to read out the approved question now.*

Madam President, it has been reported that in order to achieve savings, the Bureau has not only outsourced the provision of government evening school courses since 2003, leading to substantial increase in tuition and reduced enrolment in the courses, but also has not decided whether or not to continue subsidizing such courses in the next school year. Some students taking such courses have proposed that the Bureau should revert to subsidizing the relevant courses directly, or include the evening secondary school courses, evening primary school courses and evening English courses in the Reimbursable Courses List of the Continuing Education Fund. In this connection, will the Government inform this Council:

- (a) *of the tuition levels as well as the numbers, genders and age groups of the students enrolled in government evening schools in each of the past three years;*
- (b) *when it will decide whether or not to continue subsidizing the relevant courses in the next school year; and*
- (c) *whether it will accept the above proposals, if not, the reasons for that?*

SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for Education and Manpower) (in Cantonese): Madam President, in recent years, the Government has allocated many resources for providing diversified education and training opportunities, such as setting up the Continuing Education Fund (CEF), launching the Workplace English Campaign (WEC), Project Yi Jin (PYJ), and Skills Upgrading Scheme, offering different progression paths for the public and furnishing them with more opportunities and choices for continuing education. Among them, the PYJ provides an alternative path for the adult learners and some Secondary Five school leavers to attain a qualification comparable to five passes in the Hong Kong Certificate of Education Examination. Apart from the above progression paths, the Government has, effective the 2003-04 school year, commissioned two course operators to run the evening adult education courses and continued to provide subsidies, in order to ensure that the fees are kept at the levels of the 2002-03 school year and to facilitate the learners to complete their respective key stages of study.

I would now reply to Mr LEUNG Kwok Hung's questions as follows:

- (a) In the 2002-03, 2003-04 and 2004-05 school years, the enrolments of the subvented classes in the evening adult education courses are 11 170, 6 073 and 3 066 respectively. Among them, around 70% to 80% are aged from 20 to 49, and about 60% are female. The tuition fees for subvented classes in the 2003-04 and 2004-05 school years remain at the level of the 2002-03 school year, that is, from free to \$2,650 per annum.
- (b) The Government is considering to provide subsidies to learners with financial difficulty to pursue some of the evening adult education

courses. Details will be submitted to the Panel on Education for consideration later.

- (c) Besides, learners pursuing English language courses may apply for relevant subsidy under the WEC and the CEF. At present the commissioned operators for the evening adult education courses are also offering a number of reimbursable courses under the CEF, such as the Certificate in Business English (Preliminary Level), to provide learners with more choices.

PRESIDENT (in Cantonese): Members, since nine Members are waiting to ask supplementaries, I hope Members will be as concise as possible in raising questions, so that more Members will have the opportunity to ask supplementaries.

MR LEUNG KWOK-HUNG (in Cantonese): *Madam President, first of all, I wish to express my dissatisfaction. Madam President, please listen to me first, I have not expressed my dissatisfaction yet, that is, Prof Arthur LI.....*

PRESIDENT (in Cantonese): You are not permitted to express your opinions, you should only raise your supplementary. Please raise your question, okay?

MR LEUNG KWOK-HUNG (in Cantonese): *Secretary, I know Secretary Joseph WONG is not in the capacity of the Secretary for Education and Manpower, because Secretary Prof Arthur LI cannot make himself available to answer my question, you have to reply on his behalf, but your reply is not detailed enough. May I ask whether the Secretary knows the fact that after the Bureau has outsourced the abovementioned three categories of evening adult education courses in a pushy way, the enrolments have dropped from 11 000 to 6 000, while the Bureau's expenditure was reduced from \$74 million to \$66 million. In other words, the saving was about \$8 million. Is the Secretary aware of the fact? In view of this, will the Secretary consider that it does harm even before gaining any benefit, and it will gratuitously smother the learning opportunities of those "non-engaged" youngsters and middle-aged people? Will*

the Secretary please inform this Council that whether you are aware of this, or has Secretary Prof LI has not provided you with the answer in this respect?

PRESIDENT (in Cantonese): Please sit down first, then I can ask the Secretary to answer your supplementary. Secretary for the Civil Service.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, our colleagues in the Bureau are highly professional, and they have provided me with the number of students; for that reason, I do know the fact. Nevertheless, what I want to respond is that I have explained in the main reply that the Government has actually allocated a lot of resources in providing diversified education and training opportunities to young people. Such as the WEC, and the PYJ for "non-engaged" youngsters. Although the enrolments of the subvented classes in the evening adult education courses have dropped, the Government still provides subsidies in other areas and the enrolments are quite high. The main reply also explained that the Government was considering to provide subsidies to the relevant courses in the next school year.

PRESIDENT (in Cantonese): Do you wish to raise a follow-up supplementary, or your supplementary has not been answered?

MR LEUNG KWOK-HUNG (in Cantonese): *The Secretary has not answered my supplementary.*

PRESIDENT (in Cantonese): Which part of your supplementary was not answered?

MR LEUNG KWOK-HUNG (in Cantonese): *I have raised a three-part supplementary to the Secretary, with regard to the first part, the Secretary has not answered it actually. I asked the Secretary whether the Government would continue subsidizing such courses in the next school year? The Secretary told us that the matter was under consideration. Will the Government actually*

provide subsidies? He did not answer, and he only said it was still under consideration.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, which part of your supplementary is not answered? A number of Members are waiting for their turns, you have used up a large portion of the question time.

MR LEUNG KWOK-HUNG (in Cantonese): *If that is the case, then I have to.....*

PRESIDENT (in Cantonese): You have the right to do so, but please make it as concise as possible.

MR LEUNG KWOK-HUNG (in Cantonese): *Fine. May I ask the Secretary again if he knows the need of the students who attended the three categories of evening adult education courses, in which the majority are women, is different from the assumption the Government made in the respect of WEC or PYJ? All they want is personal advancement, not a job, but the Government has deprived them of learning opportunities, just because the Government wishes to.....*

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, this is not part of your original supplementary. If you wish to follow up your supplementary, you should raise your follow-up supplementary on the part not answered. If you cannot recall which part, please sit down first and I will invite another Member to raise his supplementary.

MR LEUNG KWOK-HUNG (in Cantonese): *No, I am going to raise it now. It is simple. In your capacity as the Secretary for Education and Manpower, do you think it is a necessary move to save \$8 million and take the learning opportunities away from 5 000 people? However, you are not Secretary for Education and Manpower, you have nothing to say, for the Secretary for Education and Manpower is not present today.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, the purpose of adopting the outsourcing mode is to ensure the cost-effectiveness of continuing education services and it is done according to the actual situation. The major purpose is not to save money at all. Of course, I have explained in the main reply that about 60% of them were female students. With regard to the issue of subsidies, we have yet come to a final decision. Nevertheless, I have explained in the main reply that we were considering to provide subsidies to some of the evening adult education courses in order to facilitate further development, and details would be submitted to the Panel on Education for consideration later.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, after outsourcing Government Evening Secondary Schools' evening adult education courses, the tuition fees rose considerably, and the number of students dropped from 11 000 to 3 000, and the actual rate of decrease was 8 000. Will the Government not admit that the outsourcing project, which has forced a lot of adults in need of further learning terminate their pursuit of learning, is a failure? Will the Secretary consider that there is a need to rectify this project?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I have explained in my main reply that the Government was considering to continue subsidizing the relevant courses and details would be submitted to the Panel on Education for consideration later. Of course, even now, we still subsidize students who have been enrolled at evening adult education courses since 2002, so as to ensure their tuition fees are kept at the level of the 2002-03 school year. In the meantime, we agree to further study the mode of subsidization in future, and as I said just now, the details would be submitted to the Panel on Education for consideration later.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, it seems that the Government has not answered my supplementary. The thrust of my supplementary was: Given the tuition fees were increased due to the outsourcing exercise, the number of students have dropped from 11 000 to 3 000 and the actual drop amounted to 8 000 students, is the decision made on outsourcing the courses, which has caused a significant drop in number of students, a wrong decision?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, in fact, I have already made it clear in the main reply that, in spite of the fact that we have outsourced the adult education courses, we have ensured that the tuition fees existing students have to pay are kept at the level of the 2002-03 school year, therefore the tuition fees for subvented classes remain unchanged.

DR FERNANDO CHEUNG (in Cantonese): *Madam President, I wish to follow up the issue on the number of students which has actually seen a drop of over 70%. Although the Government explained that the purpose of the outsourcing project was not to save money, but after the project was launched, there is actually a discrepancy between the actual tuition fees and the figures provided by the Secretary. According to our understanding, tuition fees for senior secondary course are actually over \$7,000 per annum. May I ask whether the Secretary is aware of the issue in respect of tuition fees? It seems that there is discrepancy between the information the authorities provided to this Council and my personal understanding. The Government explained that the details would be submitted to the Panel on Education for consideration later, may I ask whether there is a timetable?*

PRESIDENT (in Cantonese): Dr CHEUNG, you have actually raised two supplementaries: First, you asked the Secretary whether there was a discrepancy in respect of tuition fees; second, you demanded the Secretary to provide a timetable. Which supplementary do you wish the Secretary to reply?

DR FERNANDO CHEUNG (in Cantonese): *Madam President, in that case, I wish to ask the Secretary to reply on the timetable issue.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, is it about the timetable that we intend to provide subsidies in future?

PRESIDENT (in Cantonese): Yes, that is the timetable to be submitted to the Panel on Education for consideration later.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Fine, Madam President. We estimate that it would be submitted to the Panel on Education for consideration in May or June this year. If the proposal involves additional resources and approval of the Finance Committee of the Legislative Council is required, we plan to apply to the Finance Committee for the relevant allocation during the current Legislative Session.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, just now the Secretary did not answer Mr CHEUNG Man-kwong's supplementary direct, that is, is this change in policy a wrong decision? As a matter of fact, after the implementation of this decision, it was obvious that the enrolments were dropping persistently, so it can therefore prove that the decision was wrong. Nevertheless, since the Government has not answered Mr CHEUNG Man-kwong's supplementary direct, may I ask the Secretary whether the Bureau has conducted a comprehensive review to find out why the number of students declines persistently after the decision is implemented and what is the reason for the decline? Will it include a major reason that, due to an increase in tuition fees, learners have been deterred as they dare not or hesitate to pursue the courses?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I already explained in the main reply that the Government had been providing diversified education and training opportunities. From a more comprehensive perspective, we note that the number of students attending evening adult education courses has decreased on the one hand, yet the number of students taking other subvented courses has increased on the other. For example, the PYJ has seen enrolments in the 2004-05 school year increased to 2 000 when compared with those in the 2003-04 school year; and the WEC also has a growth of 3 000 students in 2004 when compared with the number in 2003. For that reason, one of the possibilities is after taking other progression paths into account, some students have therefore decided to take other courses.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, the Secretary has not answered my supplementary. I asked the Secretary whether a review had been conducted. It was not an estimate, since an estimate is not a review. For that reason, may I ask the Secretary whether a more comprehensive and*

serious review would be conducted? Why has the number of students dropped? If he estimates that those learners have actually switched to other courses, is there hard evidence to prove that these students who are currently taking PYJ or other courses actually used to take the evening courses before switching to PYJ?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, the figures I cited just now have actually demonstrated this phenomenon. As to whether we would sum up the experience from the provision of diversified education and training opportunities, perhaps I will leave it to my colleagues to consider.

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

MR JAMES TIEN (in Cantonese): *Madam President, the Secretary explained in part (b) of the main reply that the Government was considering to provide subsidies to learners with financial difficulty. May I ask the Secretary, with regard to the criterion to define learners with financial difficulty, if any changes were made during the three years when the number of learners dropped from 10 000 to 3 000 during the 2000-01 to 2003-04 school years? Is it the reason for the radical drop in the number of learners? Has the criterion been changed?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, basically, we do not have a criterion to assess financial difficulty in our subvented classes as the Member suggested. As to self-financing classes, since they are operated according to the self-financing principle, the level of tuition is of course higher. The relevant study will help us to establish more objective criteria for learners with financial difficulty, then we would have adequate grounds to provide them with the subsidies.

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

MR JAMES TIEN (in Cantonese): *Yes, Madam President, over the past three years, during which the enrolments declined from 11 000 to 3 000, did the so-called financial difficulty issue exist?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Before the outsourcing, all the courses were subsidized by the Government, and all students would be offered full or partial fee remission, and there was no income vetting and there was no criterion for financial difficulty.

PRESIDENT (in Cantonese): Fifth question.

Legislative Council Carrying out Activities Stated in Basic Law

5. **MR JAMES TO** (in Cantonese): *Madam President, on the 18th of last month, the Deputy Director of the State Council's Hong Kong and Macao Affairs Office said in public that, in his opinion, the Legislative Council would violate the Basic Law if it paid tribute to Mr ZHAO Ziyang, who passed away recently. In this connection, will the Government inform this Council whether:*

- (a) *it has contacted the above official or other officials of the Central Government to find out the justification for stating that paying such tribute would violate the Basic Law; if it has, of the justification; if not, the reason for that;*
- (b) *it is aware of any legal advice to the effect that paying tribute to the late state leaders at meetings of the Legislative Council or District Councils will violate the Basic Law or go against public interest;*
- (c) *it is aware of any legal advice to the effect that the Legislative Council should not carry out activities not stated in the Basic Law, or else will violate the Basic Law?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, regarding the first and second parts of the question, we have not

contacted the Deputy Director of the Hong Kong and Macao Affairs Office of the State Council to understand further his remarks.

Regarding the third part of the question, as for the adjournment debate concerning Mr ZHAO Ziyang, the President of the Legislative Council has made a decision in accordance with the Rules of Procedure. The Basic Law has provisions on the powers and functions of the Legislative Council.

MR JAMES TO (in Cantonese): *Madam President, I hope you can make a ruling because my oral question is comprised of three parts. But the Secretary has evaded answering all of them. In part (a) of my question, I asked, "Whether it has contacted any other officials of the Central Government; if not, the reason for that?" But the Secretary has not answered this question. As for part (b) of the question, the Secretary has not answered "whether it is aware of any legal advice". As for part (c) of the question, again the Secretary has not answered "whether it is aware of any legal advice". Madam President, should we, first of all, request the Secretary to answer the abovementioned parts of the question that have not been answered?*

PRESIDENT (in Cantonese): Mr James TO, in fact this is not the first time you ask me to make rulings of this kind. Very often, Members are not satisfied with the replies of the officials and consider their questions not answered. In the past, there were some occasions on which the officials concerned had not answered every part of the main questions. According to my long-standing practice, Members will be allowed to ask supplementary questions. So, you can ask supplementary questions.

MR JAMES TO (in Cantonese): *In that case, Madam President, I cannot but continue to ask supplementary questions. The Government has evaded answering so many parts of the question, is it because the question is disturbing to the Government? I have to follow up those parts of the question which have not been answered by the Secretary. Has the Government contacted any officials of the Central Government so as to understand the justifications of his remarks? If yes, what are the justifications? If not, what are the reasons? Is the Government aware of any legal advice to the effect that these activities will violate the Basic Law? Besides, is the Government aware of any legal advice to*

the effect that the Legislative Council should not carry out activities not stated in the Basic Law, or else will violate the Basic Law? The Secretary please does not evade answering these questions.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, we have not contacted Deputy Director CHEN or his colleagues so as to further understand the former's remarks. Article 73 of the Basic Law (Article 73) has stipulated the powers and functions of the Legislative Council. As for those important issues, if the Legislative Council acts in accordance with the Basic Law, it will not constitute any problem. Besides, we have also noticed that the President of the Legislative Council has made a decision on the adjournment debate in accordance with the Rules of Procedure and the matter has been properly dealt with.

MR JAMES TO (in Cantonese): *Madam President, the Secretary has yet answered my question on why no contact has been made.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I have already answered it and the reason is that the matter has been properly dealt with.

PRESIDENT (in Cantonese): Mr James TO, do you still want to ask a follow-up question?

MR JAMES TO (in Cantonese): *Madam President, I do not because I cannot do so. He has not answered the question why no contact has been made.*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I have already answered the question twice, so I have nothing to add.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, some officials of the Central Government said that some activities of the Legislative Council had violated the Basic Law. This is quite an important matter. May I ask the Government whether it agrees that paying tribute to ZHAO Ziyang will violate the Basic Law?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, under Rule 25 of the Rules of Procedure, a question shall not be asked for the purpose of obtaining legal advice from the Government in order to solve a legal question. In my opinion, the question just asked by the Member may fall under this category. I would like the President to make a ruling on this.

PRESIDENT (in Cantonese): Secretary for Constitutional Affairs, I allow this supplementary question because I do not think the question contravenes Rule 25(1)(h). I do not think the question is for the purpose of obtaining a solution to an abstract legal question. So would you please answer it. As to how to answer it, it is up to you.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, in our opinion, Article 73 has set out the powers and functions of the Legislative Council which can operate only in accordance with the Basic Law. As regards the adjournment debate, Madam President, you have already made a decision and the matter has been properly dealt with.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, just now my supplementary question was very specific. It was about whether observing silence and conducting an adjournment debate would violate the Basic Law. Article 73 makes no provision for matters concerning observing silence and conducting an adjournment debate on paying tribute to state leaders. In the past, the former Legislative Council had observed silence and in this term of the Legislative Council, we have also observed silence for different persons. Is the act of observing silence in this Chamber, which is not stipulated in Article 73, regarded as an activity in breach of the law? Or whether the act of paying tribute to Mr ZHAO Ziyang is against the law? This is very specific. My*

follow-up question is that the Secretary has not answered my supplementary on whether it is against the law insofar as this matter is concerned.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the arrangement of activities in connection with the death of former state leaders is under the jurisdiction of the Central Government. In Hong Kong, there are in indeed some people who have paid their regards as they consider themselves one of the countrymen. However, as regards the arrangement of these activities in Hong Kong, the SAR Government will also collaborate by providing venues in the Victoria Park, for instance, when necessary. However, it is not appropriate to bring issues under the jurisdiction of the Central Authorities into the legislature of the SAR. Moreover, as the President of the Legislative Council has made a decision on the matter, we respect her decision. And I believe Members will also respect it and comply with it.

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

MR SIN CHUNG-KAI (in Cantonese): *Madam President, I hope the Secretary can clarify whether something inappropriate is equivalent to a breach of the law?*

PRESIDENT (in Cantonese): Sorry, please wait for another turn because this is not part of your supplementary question just asked.

MR LEE WING-TAT (in Cantonese): *Madam President, the oral reply just given by the Secretary is more detailed than the main reply. If he has said so in his main reply, it would have been better. His reply to the main question was short, but the Secretary just said that activities for paying tribute to state leaders were under the jurisdiction of the Central Authorities and should not be brought into the SAR — I am just quoting what he said. Without a verbatim record, I may be wrong and the Secretary can correct me should there be any mistake. I would like to ask the Secretary: Does he mean that activities for paying tribute to state leaders will violate the law or the Basic Law if these activities are dealt with*

or conducted by the Legislative Council of the SAR, according to his or the Government's remarks?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, as Mr LEE Wing-tat has requested a further explanation, I am willing to do so. Activities for paying tribute to the late state leader Mr ZHAO Ziyang are matters under the jurisdiction of the Central Authorities. It is not appropriate to bring a matter which is under the jurisdiction of the Central Authorities into the Legislative Council of the SAR. Having said that, we have noticed that the President of the Legislative Council has made a decision according to the Rules of Procedure and we respect her decision.

MR LEE WING-TAT (in Cantonese): *Madam President, the Secretary has not answered my question. My supplementary question just asked is very specific. I asked whether it was against the law or the Basic Law. I know Chinese but I do not think that "inappropriate" means violating the Basic Law. But Mr CHEN Zuoer said that this would violate the law. So, I asked the Secretary whether he agreed with Mr CHEN Zuoer's remark, that it would violate the law. Now my question is only half answered and the Secretary said that it was inappropriate or not quite right. But he has not stated whether or not it is a breach of the law. May I ask the Secretary to provide a more specific answer? According to the Secretary's answer, is something "inappropriate" equivalent to a breach of the law? Or whether such activity is not a breach of the law?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, having answered the question, I have nothing further to add.

MR ALBERT HO (in Cantonese): *Madam President, in the main reply, the Secretary said that the President had made a decision. Of course, the President has not explained that her decision is not based on the consideration that the matter is not legal. Rather her ruling may be based on other considerations. However, the Secretary said that he respected the decision. Since the Secretary represents the Government's position, does this imply whether it is legal or not is not a problem at all? In other words, the Secretary respects the President's ruling and considers Deputy Director CHEN Zuoer's remark not valid.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I have explained our position on this issue and have no further comments.

MR ANDREW CHENG (in Cantonese): *Madam President, perhaps I should ask a supplementary question in more specific terms. I think the Secretary seems to be evading our questions. Madam President, as regards the last meeting at which this Council could not conduct an adjournment debate and observe silence, you said in public that approval was refused because Mr ZHAO Ziyang's contribution was not as great as Mr DENG Xiaoping's. Regarding the Legislative Council President's open remarks in explaining the reason for disapproving the adjournment debate and observing silence, I would like to ask the Secretary: If a Chinese state leader whose contribution or status is not as high as Mr DENG Xiaoping should pass away and then someone requests observing silence at the meeting of the Legislative Council again, is this against the Basic Law? If not, why does the Secretary, as the Secretary for Constitutional Affairs, not look into such an important constitutional issue? If he does not do so, is it a neglect of duty?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, you and not anybody else is the President of the Legislative Council. So if any Member proposes any motion in the Legislative Council, it must be decided by you, the Legislative Council President or your successor. No matter in which term of the Legislative Council, it should be ruled by the Legislative Council President in accordance with the Rules of Procedure. So, I should not be the one who answers this hypothetical question from the Member.

MR ANDREW CHENG (in Cantonese): *The President of the Legislative Council vetoed the adjournment debate and observing silence based on these remarks. As a result, Mr CHEN Zuoer expressed in public that observing silence was against the Basic Law. One of the main points in my supplementary question is: Why did the Secretary, as the Secretary for Constitutional Affairs, not look into the remark that paying tribute was against the Basic Law? Although Mr CHEN's remark that it is against the Basic Law is a very serious allegation, the Secretary did not look into it. Is this a neglect of duty on his part? He has not answered the thrust of my supplementary question.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the crucial point is that you, as the Legislative Council President, have made a ruling in accordance with the Rules of Procedure, thus resolving the matter in a proper manner.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, the Secretary said earlier that paying tribute to ZHAO Ziyang was a matter under the Central Authorities' jurisdiction and it is inappropriate to bring it into the Legislative Council. Does the Secretary imply that if the Central Authorities do not pay tribute to ZHAO Ziyang, it is not appropriate for the Legislative Council to do so? If the Central Authorities pay tribute to ZHAO Ziyang, then the Legislative Council should follow suit? In that case, does the Legislative Council have any freedom and free will to pay tribute to ZHAO Ziyang?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, all Members can have their own independent viewpoints and express their opinions on any matters in this Chamber in accordance with the Rules of Procedure and the agenda of the meeting. However, views should be expressed and motions should be discussed in such a manner that it is in accordance with the President's ruling.

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, has your supplementary question not been answered?

MR CHEUNG MAN-KWONG (in Cantonese): *No, Madam President. The Secretary just said that we have to act in accordance with the Rules of Procedure of the Legislative Council. In that case, how could he arrive at the conclusion that paying tribute to ZHAO Ziyang was an affair under the Central Authorities' jurisdiction and it was inappropriate to bring it into the Legislative Council? As for the issue whether it is appropriate to pay tribute to ZHAO Ziyang, should it be decided by the Legislative Council or by government officials?*

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, this supplementary question seems not to be part of the question you asked just now. Your follow-up question must be asked in the same wording of your original supplementary question.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, according to the Secretary's reply, it is up to the Legislative Council President to rule whether we can pay tribute or whether we have the freedom to pay tribute. However, he has already set the tone on whether it is appropriate for the Legislative Council to pay tribute, and that is, paying tribute to ZHAO Ziyang is an affair under the jurisdiction of the Central Authorities and it is not appropriate to bring it into the Legislative Council. Does this imply that the Government can override the Legislative Council and decide for the Legislative Council whether it should pay tribute or not?*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, my reply has in fact conveyed our opinion, which is the view of the Government. However, in this Chamber, what motion can be approved by the Legislative Council President and included on the agenda for discussion or debate is decided by the President in accordance with the Rules of Procedure. The Government will naturally respect the President's decision.

PRESIDENT (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question.

DR FERNANDO CHEUNG (in Cantonese): *Madam President, an official of the Central Government mentioned that paying tribute to Mr ZHAO Ziyang by the Legislative Council was against the Basic Law. This can be a serious allegation even though the activity was not carried out at that time. In my opinion, we in the Legislative Council wish to know today whether or not the Government*

agrees to Mr CHEN Zuoer's remarks, that paying tribute to Mr ZHAO Ziyang by the Legislative Council is against the Basic Law. We need to understand this point.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, as Dr Fernando CHEUNG has said, this thing has not happened and you have made a ruling on the matter which has been properly dealt with. We respect the Legislative Council President's decision.

DR FERNANDO CHEUNG (in Cantonese): *Madam President, from the beginning to the end, the Secretary has not answered direct what the Government's stance is. Could the SAR Government, as an open and aboveboard administration, tell us its stance on the views of Mr CHEN Zuoer?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I only have two points to make. First, Article 73 has set out the powers and functions of the Legislative Council. What we have to do is to act in accordance with Article 73. Second, what we respect most is the open and aboveboard ruling of the Legislative Council President. We will act in accordance with the ruling of the Legislative Council President in this Chamber.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Proposals to Construct MTR West and South Hong Kong Island Lines

6. **MR PATRICK LAU** (in Chinese): *Madam President, it has been reported that the Secretary for the Environment, Transport and Works stated in late May last year that the Government would carefully study the project proposals submitted by the MTR Corporation Limited (MTRCL) for the*

construction of the West Hong Kong Island Line (WIL) and South Hong Kong Island Line (SIL) respectively, and estimated that decisions on these projects would be made in five to six months. In this connection, will the Government inform this Council of:

- (a) the results of the studies on the above two projects; and*
- (b) the decisions on the two projects; if the authorities decide to approve one or both of the two projects, whether they will consider requesting the MTRCL to expeditiously implement the project(s) and publish the timetable for the construction works; if the authorities decide not to approve one or both of the two projects, the factors considered by them in making the decision?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President, railways are environmentally-friendly and efficient mass carriers. Under the Government's established policy, railways will serve as the backbone of Hong Kong's transport system. The development of railways requires huge investments. Moreover, once a rail line is developed, it will not be as flexible as other transport modes which can be redeployed more easily. Therefore, the Government needs to plan and implement new railway projects prudently.

The Government is examining the proposal submitted by the MTRCL on the WIL and the SIL, including their economic and transport performance, financial implications, and their impact on other public transport modes. We need to consider changing community needs, changes in the relevant planning parameters, as well as the motion passed by the Legislative Council's Panel on Transport on 28 May 2004 urging the Government to shelve temporarily any further development of and planning for the WIL and the SIL, and to proceed with the study on Route 4, to cater for the transport needs of residents in the Southern and Western Districts. We aim at reporting to the Panel on Transport on the way forward for the WIL and the SIL, including the programme for further planning and implementing the projects if they are to go ahead, within the first quarter of the year.

Investigation of Competition Aspects in Local Retail Fuel Market

7. **MR RONNY TONG** (in Chinese): *Madam President, the Secretary for Economic Development and Labour advised in last December that the Competition Policy Advisory Group would commission an independent consultant to investigate the competition aspects in the local retail fuel market, with a view to identifying whether there was market monopoly by oil companies and determining whether it was necessary to promote competition in the fuel market through legislation or other means. In this connection, will the Government inform this Council of:*

- (a) *the respective commencement and expected completion dates of the abovementioned investigation, and whether the Administration will publish the entire investigation report;*
- (b) *the criteria adopted for selecting the consultant, and whether a consultant has been commissioned; if so, of the name of the consultant and its relevant experience;*
- (c) *the directions the consultant will follow when conducting the investigation, and whether it will assess the competition in the fuel market from the perspective of fair competition; and*
- (d) *the scope of the investigation, and whether it will cover the overall operation of the market or be confined to issues relating to the pricing of oil products only?*

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

- (a) We have started work on recruiting a consultant to study the competition situation of auto-fuel market in Hong Kong. We have invited expression of interest (EOI) from about 100 local and overseas consultancy firms in January this year and will proceed with the selection process. The study is expected to start in the first half of 2005 and be completed in the latter half of the year. The Administration will report the study findings to the Legislative Council and the public.

- (b) The selection criteria include, *inter alia*, the consultant's experience and expertise in competition law and competition-related economic analysis, their knowledge of the auto-fuel market, and their proposed approach and methodology in conducting the study.
- (c) Consultancy firms are required to provide details of their approach and methodology in their proposals.
- (d) The consultancy study will assess the competition situation in the auto-fuel market in Hong Kong, and examine whether the oil companies involved might have engaged in any anti-competitive practices. The study will look into the market structure, operating costs, retail pricing, and so on, of the local auto-fuel market and make reference to the competition laws in other economies such as the United States, European Union and Australia, and the experience and measures adopted by these economies in tackling anti-competitive behaviour of oil companies. The consultant will also make recommendations on whether legislation is required to ensure fair competition in the auto-fuel market in Hong Kong.

Proposal to Raise Fees for Construction Noise Permits

8. **MR ABRAHAM SHEK:** *Madam President, in December 2004, the Government proposed to gradually raise the fees for construction noise permits (CNPs) in respect of percussive piling and other construction works in the next six years, in order to raise the cost recovery rates for issuing such permits from the existing respective levels of 33% and 27% to 100%. In this connection, will the Government inform this Council:*

- (a) *of the proposed increases in CNP fees in each of the next six years;*
- (b) *of the justifications for aiming at achieving full-cost recovery in six years' time;*
- (c) *whether it has consulted the construction industry on the pace of increases in CNP fees; if it has, of the consultation results; and*
- (d) *of the measures it will take to reduce the costs of issuing CNPs?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:

Madam President, the full-cost recovery for processing CNP applications will take seven years to complete (including the increase in fees this year). The current level of fees for CNPs and the full costs of processing CNP applications are set out below:

| | <i>Current Level</i> | <i>Full Cost</i> |
|-------------------------------|----------------------|------------------|
| For general construction work | \$690 | \$2,521 |
| For percussive piling | \$635 | \$1,940 |

- (a) We plan to achieve full-cost recovery in respect of the fees through an annual increase of 20% in each of the next six years.
- (b) The proposed plan to achieve full-cost recovery in seven years will avoid a steep fee increase in any particular year which could affect the trade.
- (c) It is a long-standing government policy to apply the "user pays" principle to recover the full costs from users of government services. This policy has been made known to the public. We have not specifically consulted the construction industry on this occasion.
- (d) The use of information technology and the streamlining of procedures have helped reduce the costs of processing CNP applications. The Environmental Protection Department will continue to explore means, wherever practicable, to further reduce the costs.

Methods for Handling Complaints Against Civil Servants' Performance

9. **MR KWONG CHI-KIN** (in Chinese): *Madam President, some staff unions have reflected to me that various government departments, including those operating trading funds, adopt different methods for handling complaints against civil servants' performance. In this connection, will the Government inform this Council:*

- (a) *of the procedures for handling the above complaints;*

- (b) *whether government departments will handle anonymous complaints of the above nature; if they will, of the names of the relevant departments and the details of how they handle and follow up these complaints; and*
- (c) *whether it has a standardized mechanism applicable to all departments for handling complaints against civil servants' performance; if not, the reasons for not doing so, and whether it will consider putting in place the relevant mechanism?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Madam President, regarding the question raised by the Honourable KWONG Chi Kin, my reply is as follows:

- (a) Following the guidelines issued by the Administration Wing, each department has established clear and comprehensive procedures for handling complaints against the department itself or its staff. These guidelines are applicable to all government departments, including those operating as trading funds. The procedures that departments in general observe when handling complaints are as follows:
 - (i) All complaints, whether signed or anonymous, will be put on file by the receiving department for follow-up actions and further processing. For signed complaints, they will be acknowledged by the receiving department in writing.
 - (ii) Depending on the facts of the case, the department concerned will conduct an investigation which may include interviews with the complainant and parties concerned.
 - (iii) The investigation must be completed within a timeframe prescribed by the department concerned. If the investigation cannot be completed within a short period of time, the case-handling officer should issue an interim reply to the complainant, if known, and inform him of the progress of the investigation.

- (iv) Upon completion of the investigation, the case-handling officer should put up a report for endorsement by an officer designated by the Head of Department and thereafter furnish a detailed reply to the complainant, if known.
- (v) If the complainant is not satisfied with the outcome of the investigation, he may lodge an appeal.
- (vi) A repeated complaint or an appeal should be handled by an officer senior to the one who dealt with the earlier complaint.
- (vii) After completion of the investigation, the department concerned should monitor the follow-up actions where necessary.

Each department should designate a directorate officer to establish internal procedures for handling complaints according to the above guidelines and issue an internal circular to promulgate such instructions among staff. The designated directorate officer will have sight of all complaints received by the department. He should also review the operation of the complaint mechanism on a regular basis.

- (b) No complaint, whether signed or anonymous, will be taken lightly by the receiving department. For anonymous complaints, the department concerned will decide whether follow-up actions are necessary having regard to the facts of the case and the gravity of the allegation made. If the complaint itself does not contain sufficient information and where the complainant cannot be reached to provide further details, it might be difficult for the department concerned to conduct investigation or follow up.
- (c) The mechanisms established by departments for handling complaints have been developed largely according to the guidelines issued by the Administration Wing. Therefore, the mechanisms being used by departments are broadly similar.

Fertility Rate in Hong Kong

10. **MR ABRAHAM SHEK:** *Madam President, according to the statistics from the Census and Statistics Department, by 2033, persons who are 65 or over will account for 27% of Hong Kong's total population. On the other hand, the total fertility rate in Hong Kong in 2003 was at an extremely low level of 941 children per 1 000 women, well below the replacement level of 2 100 children per 1 000 women. It has been reported that due to the recent economic recession, some fertile couples have chosen not to raise children, but they may retire or lose their jobs in 20 years. By then, the shrinking young generations will have to shoulder a heavy tax burden to finance the provision of medical and social facilities. This will take away any incentive to raise children and the vicious cycle repeats. The Administration has set up a Task Force on Population Policy. However, apart from presenting a report of the Task Force, the Administration has not implemented any concrete measure to reverse such an unfavourable trend. In this connection, will the Government inform this Council:*

- (a) of its short-term and long-term plans to mitigate the above threat to Hong Kong's sustained development; and*
- (b) whether there are interim measures to boost Hong Kong's fertility rate?*

CHIEF SECRETARY FOR ADMINISTRATION: Madam President,

- (a) Population is a highly complex and multi-faceted subject. The Task Force on Population Policy was established in September 2002 to develop a comprehensive population policy to secure and nurture a population which sustains Hong Kong's development as a knowledge-based economy. The Task Force published a report in February 2003 with 33 recommendations. They aim to address the challenges posed by an ageing and shrinking workforce on our economic growth, to help rejuvenate our progressively ageing population, to upgrade the productive efficiency and capability of our workforce, to increase productivity and reduce elderly dependency, to provide a more rational basis for the provision of subsidized benefits to the residents of Hong Kong and the growing

transit population, and to facilitate integration of new arrivals with the Hong Kong community. I highlight below the progress made in respect of the relevant recommendations.

While the Administration is of the view that childbirth is a matter of individual choice, the Task Force has reviewed government policies to see if they discourage childbirth. The conclusion is that although the differential treatment for child allowance between the first two children and the third to ninth child is unlikely to have a significant impact on the decision of a couple regarding the size of their family, the differential may not be appropriate in the light of Hong Kong's very low fertility rate. The differential has been removed as from the 2003-04 financial year.

Apart from local births, immigration from the Mainland under the One-Way Permit Scheme is a major source of population growth for Hong Kong. Of the daily quota of 150, there is a sub-quota of 60 for children holding Certificate of Entitlement who, though born on the Mainland, are children of Hong Kong Permanent Residents. This sub-quota has since been strictly enforced. From July 1997 to the end of 2004, out of 390 000 immigrants from the Mainland under the Scheme, 150 000 are children holding Certificate of Entitlement.

The conditions for admitting professionals and talents from the Mainland have also been relaxed and aligned with that for the admission of overseas professionals to make it more attractive to mainland professionals. From July 2003 to the end of 2004, 5 095 applications and 734 related dependant applications have been approved. In his 2005 policy address, the Chief Executive has announced that the Government is working on a strategy to attract talented people from the Mainland and overseas to develop their careers in Hong Kong and will take forward this plan this year. Separately, we are also attracting talents to study and eventually to settle in Hong Kong to help enhance the quality of our workforce and the competitiveness of our economy. In this connection, we are working on a proposal to relax existing policy to allow more non-local students to come to Hong Kong for different types of study programmes.

Since October 2003, we have introduced the Capital Investment Entrant Scheme to attract people who have the financial means to invest in Hong Kong but do not wish to run the business themselves. Up to the end of 2004, a total of 411 applications have been approved.

Apart from measures to address our problem in terms of quantity, the Task Force has also recommended measures to improve the quality of both the local population and the new arrivals. The Continuing Education Fund, Skills Upgrading Scheme and retraining of the unemployed are examples of measures to equip our workforce with new skills and to keep pace with our manpower needs. We shall continue to pursue the upgrading of the general level of education for all, enhancement of our education system for the better development of the capabilities of students, and promote lifelong education so that our workforce will become better prepared to meet the changing needs of the labour market.

On the issue of how to cope with the pressure arising from an ageing population in future, the Task Force has recommended to revisit and redefine the notion of retirement and old ages and continue to develop programmes which promote active and healthy ageing. In respect of financial security in old age, Hong Kong is already practising a three-pillar approach recommended by the World Bank. We have provided the first pillar through the public non-contributory schemes, namely Comprehensive Social Security Assistance (CSSA) and Old Age Allowance. As of December 2004, there were a total of 641 537 elderly beneficiaries. The Mandatory Provident Fund fulfils the second pillar of a privately managed compulsory pension scheme. We also encourage promoting the third pillar of voluntary private savings. In his 2005 policy address, the Chief Executive announced specific measures to help those elderly who choose to retire to the Mainland by relaxing the criteria for paying CSSA, Old Age Allowance and Disability Allowance. Furthermore, for the longer term, we are planning a series of studies for the purpose of developing a sustainable financial support system for the needy elderly.

Following the publication of the Population Projections 2004-2033 by the Census and Statistics Department in June 2004 which confirm that certain previously identified problems and challenges facing Hong Kong, such as ageing and low fertility, persist. The Task Force is undertaking a series of studies on policies and practices in selected territories in relation to immigration, retirement and childbirth. Upon conclusion of these studies, the Administration will consult the public and the Legislative Council on the proposals. The Task Force plans to publish its next report in 2005-06.

- (b) As already mentioned in (a) above, the Administration continues to believe that childbirth is a matter of individual choice. In the light of the prevailing fertility rate in Hong Kong, we are reviewing all government policies which may discourage childbirth. In the 2003-04 financial year, we removed the differential treatment for child allowance in our tax system. That was a concrete step.

Hong Kong's excellent public health care system has a positive effect on childbirth. Maternal mortality rate has been extremely low, and ante-natal, childbirth and post-natal services are available from the Hospital Authority and the Department of Health at very low costs. The Maternal and Child Health Service of the Department of Health also provides a comprehensive range of promotional and preventive health services for women of child-bearing age and children from birth to five years old. In addition, in view of the changing economic and social circumstances and the declining fertility rate, since 1986, the Family Planning Association of Hong Kong has introduced new services like pre-marital check up, pre-pregnancy preparation, youth health care, and so on.

Apart from these activities, as mentioned in (a) above, we are now conducting a study to examine the policies and practices in selected territories for encouraging childbirth and their applicability to Hong Kong. The public and the Legislative Council will be consulted on the proposals. The Task Force on Population Policy will be most grateful if Members of the Legislative Council offer their views on this matter.

Unscrupulous Practices of Hotels to Promote Memberships

11. **MR LI KWOK-YING** (in Chinese): *Madam President, it has been reported that some hotels have used unscrupulous practices to promote their memberships. In this connection, will the Government inform this Council:*

- (a) *of the nature and number of complaints received by the authorities in the past year, and how they compared to those received in the previous two years;*
- (b) *how it has followed up such complaints, and what measures are in place to penalize the persons and organizations involved; and*
- (c) *whether it has studied measures to curb the above unscrupulous promotional practices, so as to protect the rights and interests of consumers?*

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

- (a) Prior to 2003, the Consumer Council (CC) did not keep statistics on complaints involving hotel membership. The number of such complaints received by the CC in 2003 and 2004 were as follows:

| | <i>No. of complaints involving hotel membership</i> | <i>Percentage over the total number of complaints received by the CC during the year</i> |
|------|---|--|
| 2003 | 87 | 0.3% |
| 2004 | 161 | 0.6% |

The CC has advised that the majority of the complaints were about salespersons who had not explained fully the terms and conditions of the scheme or the actual benefits of membership differed from those put forward by the salesperson.

(b) and (c)

Upon receipt of a complaint, the CC will conduct investigation and mediation. After mediation, over 90% of the complainants were refunded.

The Government considers that promoting good business practice and enhancing the awareness of consumers provide the best safeguard for consumers. Most complaints on hotel membership concerned sales promoted and concluded over the telephone but the salespersons had not explained in detail the terms and conditions of the membership to the clients. In following up complaints of this nature, the CC would recommend to the hotel operators and concerned organizations to send, by fax or by post, details of the terms and conditions to their prospective clients before concluding the sale.

In addition, the CC has been promoting consumer knowledge of hotel membership scheme through its *CHOICE* magazine and the media from time to time. For example, the CC attended two radio programmes on this topic in November and December 2004, and published in the *CHOICE* magazine in December 2004 the findings of a survey on hotel membership schemes to remind consumers of the need to fully understand the terms and conditions of the scheme before joining.

Services Provided to Low-income Families and Women

12. **MR FREDERICK FUNG** (in Chinese): *Madam President, regarding the services provided by the Social Welfare Department (SWD) and non-governmental organizations (NGOs) to low-income families and women, will the Government inform this Council of:*

- (a) *the usage rates of the day nurseries and crèches subvented by the SWD in the past three years, and the usage of such services by low-income families, including the number of persons who received financial assistance through the Fee Assistance Scheme for Child Care Centres and the total amount of assistance granted;*

- (b) *the number of persons participating in the subsidized After School Care Programme in the past three years and, among them, the percentage of those from low-income families, as well as the respective numbers of participants who were granted full fee and half fee remission; and*
- (c) *the total number of participants in the Capacity Building Mileage Programme (CBMP) jointly launched by the Women's Commission and other organizations in March 2004 and, among them, the percentage of low-income women?*

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

- (a) At present, there are 952 subsidized day crèches places and 28 661 subsidized day nurseries places across the territory. With the continuous drop in children population, the average usage rates of the day crèches and day nurseries now stand only at 84% and 83% respectively. The low-income families which are unable to take care of their children at daytime for employment or other social reasons may apply for the means-tested "Child Care Centre Fee Assistance Scheme" (the Scheme). Eligible applicants may be granted partial or full fee remission. In 2003-04, among users of the services provided by day crèches and day nurseries, those receiving assistance through the Scheme accounted for 77% and 54% respectively. The number of recipients and the expenditure of the Scheme in the past three years are as follows:

| <i>Year</i> | <i>2001-02</i> | <i>2002-03</i> | <i>2003-04</i> |
|-------------------------|----------------|----------------|----------------|
| Number of recipients | 18 522 | 19 055 | 17 803 |
| Expenditure (\$Million) | 351 | 368 | 355 |

- (b) Regarding the number of persons participating in the subsidized After School Care Programme in the past three years and, among them, the percentage of those from low-income families, as well as the respective numbers of participants who were granted full fee and half fee remission, please refer to the following table:

Statistics on the number of recipients in the subsidized After School Care Programme in the past three years

| <i>Financial year</i> | <i>(i) Total number of children receiving after school care</i> | <i>Number of children receiving assistance through the subsidized After School Care Programme</i> | | | |
|-----------------------|---|---|---|--|--|
| | | <i>(ii) Number of persons granted full fee remission</i> | <i>(iii) Number of persons granted half fee remission</i> | <i>(iv) Total number of persons granted full/half fee remission (iv) = (ii) + (iii)</i> | <i>(v) Total number of persons granted full/half fee remission as a percentage of the total number of children receiving after school care (v) = (iv) ÷ (i) x 100 %</i> |
| 2001-02 | 5 563 | 431 | 575 | 1 006 | 18.1% |
| 2002-03 | 5 572 | 411 | 700 | 1 111 | 19.9% |
| 2003-04 | 5 423 | 358 | 782 | 1 140 | 21.0% |
| 2004-05* | 5 567 | 389 | 632 | 1 021 | 18.3% |

*As at 30 September 2004

- (c) The CBMP, which is open to all, has been delivered in a flexible mode, primarily delivered through radio broadcasting, and supplemented by optional learning activities and face-to-face courses organized by collaborating NGOs. The radio courses are free of charge while the tuition fees for face-to-face courses and supplementary learning activities are set at an affordable level. Scholarship and study grant are also available for needy applicants. As at December 2004, a total of 12 radio courses and three face-to-face courses were conducted. There were so far a total of 3 480 enrolments in the courses (of which 3 410 were female), which exceeded the pre-set target of 2 100. However, we have no

information on the income level of the students. In addition, a large network of audience has listened to the relevant radio programme delivered through radio broadcasting.

Supporting Development of Software Industry in Hong Kong

13. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, regarding the measures to support the development of the software industry in Hong Kong, will the Government inform this Council:*

- (a) *as The Government Procurement Law of the People's Republic of China provides that, except for specific circumstances, governmental bodies in the Mainland should purchase our own country's goods and services, but the software produced in Hong Kong does not fall within the scope of the above goods and services, whether the Hong Kong authorities will, in the discussions on the third phase of the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) beginning early this year, strive for the inclusion of the software produced by software developers in Hong Kong in the above scope or for the enjoyment of zero tariff treatment by such software;*
- (b) *given that the mainland Government has been actively promoting the applications and development of open source software (OSS) in recent years, whether the Hong Kong authorities will take corresponding measures, allocate resources to encourage the software industry in Hong Kong to develop the above software and strengthen the related manpower training; if it will, of the details; if not, the reasons for that; and*
- (c) *in order to strengthen the partnership relationship between the software industries in the Mainland and in Hong Kong, whether the Hong Kong authorities will establish a software centre in Hong Kong to provide software quality testing services and develop the "software development process improvement" technology, so as to support the development of Hong Kong as a collecting and distributing hub of software for the Mainland and overseas regions as well as co-operate with software enterprises in the Mainland to*

secure orders for outsourced software from all over the world; if it will, of the details; if not, the reasons for that?

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

- (a) We have learnt from the relevant authorities in the Mainland that the proposed Implementation Method for Government Procurement of Software (the Procurement Method) has yet to be promulgated. However, in view of the possible negative impact of the Procurement Method on the software industry in Hong Kong, we have conveyed the industry's concerns to the mainland authorities. We are also considering whether we should seek to include software produced by Hong Kong software developers in the agenda for the third phase of CEPA (CEPA III).
- (b) To encourage the local software industry to develop OSS and promote the wider use of OSS in the private sector, the Government of the Hong Kong Special Administrative Region has been providing funding and various forms of support to the related programmes and activities.

To better gauge the adoption of OSS in the market, the Commerce, Industry and Technology Bureau (CITB) and Hong Kong Productivity Council (HKPC) conducted a survey in 2003-04 on the adoption of OSS in Hong Kong's business sector.

In July 2003, the Government provided funding support through the SME Development Fund (SDF) to establish a Linux Resources Centre to promote and support the wider adoption of OSS in small and medium enterprises (SMEs).

Also with funding support provided by the SDF, the HKPC and the Linux Resources Centre jointly launched a SME Linux Jumpstart Program. The program will include testing of relevant software to establish an information database of field-tested Linux solutions. It will also conduct six seminars to help SMEs source the right OSS business solutions so as to increase their productivity and service quality.

To promote the wider use of OSS in the community, the Office of the Government Chief Information Officer (OGCIO) has conducted awareness courses on OSS for secondary school students between November 2004 and January 2005. A total of 78 classes attended by 1 560 students were held.

Within the Government, the OGCIO has also organized a series of promotional and training programmes on the adoption of OSS. Last year, 570 government officials attended 11 seminars and product showcases organized by the OGCIO, and 20 related training courses were held for 325 civil servants in 2003 and 2004.

Besides, training programmes on OSS are also provided by a number of local institutions, such as the HKPC, the Vocational Training Council, and other product and service vendors.

- (c) With the support of the Government's information technology (IT) policies, the HKPC has established a Software Industry Information Centre (SIIC) and a Software Engineering Unit (SEU) to provide integrated support services to help the Hong Kong software industry improve the quality of its software products and generate further business opportunities.

One of the main functions of the SIIC is to assist the local industry to tap into the software outsourcing market. In February this year, the SIIC will, in co-operation with the Hong Kong Trade Development Council (HKTDC) and the Hong Kong Information Technology Federation (HKITF), arrange 10 local companies to attend the Outsourcing Summit in the United States to publicize and promote Hong Kong's outsourcing services and capability. In the course of preparation, the SIIC also helps Hong Kong enterprises to identify mainland partners so as to enhance their appeal for outsourcing businesses.

In addition, the SIIC organizes IT exhibitions where products of Hong Kong and the mainland enterprises are displayed together so as to strengthen co-operation between the two places and expand business opportunities. In co-operation with the HKITF, the SIIC has launched the IT Solution Directory portal which serves as a

co-operation platform for Hong Kong and mainland IT enterprises. Through this portal, mainland enterprises can obtain the latest information about Hong Kong IT products and services. The SIIC also regularly conducts surveys on IT adoption and industry development trends, publishes case studies and best practices guidebooks, and helps promote the image of the industry through IT awards, Capability Maturity Model (CMM) assessment grants, and publication of various promotional materials.

With regard to promoting Hong Kong-Guangdong (HK-GD) co-operation, the HKPC, in conjunction with Guangzhou Tianhe Software Park, Guangdong Software Industry Association, Hong Kong Science and Technology Parks Corporation, and The Chinese University of Hong Kong, championed the establishment of a Pearl River Delta Software Export Alliance at a conference held in Zhuhai last December. The purpose of the proposed Alliance is to enhance HK-GD co-operation, boost their competitiveness, and explore the potential of exporting the software developed in the HK-GD region and securing software subcontracting work from the international market.

The main functions of the SEU of the HKPC are to help the local IT enterprises to understand more about the software engineering methodology and its applications, promote the adoption of internationally recognized standards, and advocate software engineering certification such as software quality assurance and CMM certification. Starting from 1 January 2005, the SEU has become the Hong Kong System Integration (SI) Qualification Assessment Centre to provide assessment services for the local industry applying for SI qualification certification in the Mainland. Certified enterprises will be eligible to bid for SI projects in the Mainland and hence expand their business opportunities.

We are open to whether the functions of the abovementioned SIIC and SEU should be expanded to provide software quality testing services and develop technology for improving the software development process. We welcome concrete proposals from the industry.

Insufficient Parking Spaces for Coaches

14. **MR HOWARD YOUNG** (in Chinese): *Madam President, I have received complaints from members of the tourism industry that the problem of insufficient parking spaces for coaches in the vicinity of popular tourist spots is deteriorating with the growing number of inbound tourists. In this connection, will the Government inform this Council:*

- (a) *whether it will consider relaxing the prohibition on coaches picking up or setting down passengers at certain restricted zones and allowing them to park and wait on a short-term basis at vacant government lands with no concrete development plans (such as those in North Point and Kowloon Tong) lest they may increase the traffic load on the roads by looping around the tourist spots while waiting to pick up passengers; and*
- (b) *given that the Administration had advised in its reply to my question on 16 June last year that it would continue to identify additional sites for coach parking and pick-up/set-down, of the latest progress of the site identification exercise concerned?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President, we have been closely monitoring the traffic conditions at tourist spots, and coach parking spaces and passenger pick-up/set-down laybys are provided wherever such is possible. As regards allowing coaches to pick up and set down passengers within restricted zones, we will need to examine the traffic conditions of individual locations, and will discuss with the trade accordingly.

To provide parking spaces for vehicles (including coaches), we will, as far as possible, lease out vacant government land with no concrete development plans under short-term tenancies. As at 30 September 2004, a total of 1.4 million sq m have been leased under short-term tenancies for this purpose. We will continue to liaise with departments concerned to provide more parking spaces on such vacant government sites (including sites in North Point and Kowloon Tong) under short-term tenancies.

Since June 2004, we have provided additional parking spaces for coaches and passenger pick-up/set-down laybys at five tourist spots. We plan to provide similar facilities at four other locations. The details are set out at the Annex.

Annex

**Coaches Parking Spaces and Passenger Pick-up/Set-down Places
Provided at Tourist Spots Since June 2004 and
Planned Facilities to be Provided**

| <i>Location</i> | <i>Latest Situation</i> |
|--|--|
| <i>Hong Kong Island</i> | |
| 1. The Peak | One additional coach parking space has been added. |
| 2. Stanley Market | Two coach laybys have been provided at Wong Ma Kok Road and Carmel Road in Stanley. |
| <i>Kowloon</i> | |
| 3. Hung Hom KCR Station | One coach layby would be provided in February this year. |
| 4. Shung Shun Street in Kwun Tong (near Lei Yue Mun) | Five coach parking spaces are being planned. |
| 5. Hammer Hill Road in Diamond hill (near Chi Lin Nunnery) | Sixteen coach parking spaces and four coach laybys within the Hammer Hill Road District Park are being planned. |
| <i>New Territories</i> | |
| 6. Wishing Tree at Lam Tsuen | About 40 parking spaces have been provided at a nearby vacant site. |
| 7. Sai Kung Town | A new short-term tenancy car park with 200 parking spaces for vehicles (including coaches) started operation in October 2004. |
| 8. Wan Fau Sin Koon at Tin Shui Wai | Four additional coach laybys were provided in late 2004. |
| 9. Po Lin Monastery at Ngong Ping | Upon completion of the public transport interchange at Po Lin Monastery at Ngong Ping in mid-2005, 19 coach parking spaces will be provided. |

Pollution Problem

15. **MISS CHOY SO-YUK** (in Chinese): *Madam President, it has been reported that industrial pollution in Chiwan of Shekou, which is close to the New Territories, has been serious in recent years. Moreover, the dark smoke dust emitted from the power stations, refuse incineration plants and factories there may drift to the New Territories with the wind and affect the health of local residents. In this connection, will the Government inform this Council:*

- (a) whether any air quality monitoring stations have been established in locations within Hong Kong which are close to Chiwan of Shekou; if so, of the recorded air pollution level; if not, how the authorities monitor the situation of the above pollution problem;*
- (b) of the months and areas of Hong Kong which are most affected by the dark smoke dust, as projected from wind directions; and*
- (c) whether it has discussed with the Shenzhen Municipal Government the options for solving the above pollution problem; if it has, of the progress and results of discussion; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President,

- (a) In the local air quality monitoring network, the monitoring stations at Yuen Long and Tung Chung can monitor the impact on Hong Kong of air pollution in the Pearl River Delta (PRD), including Chiwan, Shekou. In 2004, the average air pollution indices (APIs) recorded by the Yuen Long and Tung Chung monitoring stations were 53 and 49 respectively, which were comparable with those recorded by other stations in the territory.
- (b) As Hong Kong is to the southeast of the PRD, air pollutants originating from the PRD covering Shenzhen (including Shekou) are easily carried by a northerly or northwesterly wind to the territory. Larger particles of smog and dust usually settle near the source of pollution, while the smaller respirable suspended particulates may

be carried by the wind for a long distance. When the atmosphere is stable and a weak northerly or northwesterly wind prevails in the PRD Region, pollutants tend to accumulate, thereby raising the overall pollution level in Hong Kong. As the northeastern part of Hong Kong, including Yuen Long and Tung Chung, is to the downwind side of PRD, it is more susceptible to the influence of regional air pollution than other areas.

- (c) With the sustained rapid economic development in the whole PRD Region, including Shekou of Shenzhen, air pollution in the Region has become more serious, resulting in a regional air pollution problem. To address this problem, the Government of the Hong Kong Special Administrative Region and the Guangdong Provincial Government reached a consensus in April 2002 on the reduction of regional emissions and drew up the Pearl River Delta Regional Air Quality Management Plan (the Management Plan) in December 2003, under which the Guangdong Provincial Government will implement a package of enhanced air pollution control measures in the PRD Region, including Shekou of Shenzhen, with a view to meeting the emission reduction targets.

The Environmental Protection Department has all along been working closely with the Shenzhen authorities on the regional air pollution problem. To reduce air pollutant emissions in Nanshan, Shenzhen (where Shekou is located), the municipal government has started implementing the following emission reduction measures under the Management Plan:

- (i) Expediting the construction of desulphurization facilities for power plants: the flue gas desulphurization (FGD) retrofitting works for three units in Mawan Power Plant have been completed, while those for the remaining three units will be completed in late 2006;
- (ii) To enhance the monitoring of emissions from motor vehicles, the environmental protection and traffic police authorities of Shenzhen have stepped up annual inspections and road checks on emissions from all types of motor vehicles. Owners of

vehicles failing to meet the emission standards are penalized and required to carry out repairs until the standards are met. Additional police officers are also deployed to improve traffic flow so as to minimize emissions from slow-moving motor vehicles;

- (iii) Upon the commissioning of the liquefied natural gas facilities in Guangdong in 2006, enterprises using fuel oils will modify their facilities progressively so as to switch to natural gas;
- (iv) The 15 printing and dyeing factories in Nanyou have all switched to gas-fired energy provided by the Nanshan Power Station Company and the oil-fired boilers in individual plants have been replaced;
- (v) The refuse incineration plant in Nanshan was retrofitted with emission reduction facilities in 2004, using the FGD and dust removal technologies.

Management of Civil Servants' Work Performance

16. **MS LI FUNG-YING** (in Chinese): *Madam President, regarding the management of civil servants' work performance, will the Government inform this Council:*

- (a) *of the following in each of the years since 2001:*
 - (i) *the number of civil servants who were not granted an increment as a result of their work performance being assessed as unsatisfactory, with a breakdown by their departments, ranks, years of service and the manners in which the increment was not granted (that is, stoppage or deferment of increment); the specific circumstances in which their performance was unsatisfactory; and the resultant amount of savings in remuneration expenses; and*
 - (ii) *the number of appeals received from such civil servants against their not being granted an increment, with a*

breakdown by their departments, ranks, years of service, and the outcome of such appeals;

- (b) in addition to stoppage or deferment of increment, of the alternatives for handling cases in which a civil servant's work performance is assessed as unsatisfactory; the number of civil servants who were subject to each of these alternatives in the past three years, with a breakdown by their departments, ranks and years of service for each of these alternatives; and the number of appeals lodged by the civil servants against the penalties imposed on them, as well as the outcome of these appeals;*
- (c) whether it has analysed the overall work performance of civil servants in recent years; if it has, of the phenomena and problems identified by the analysis, and the follow-up actions to be taken; if not, whether it will consider conducting such an analysis; and*
- (d) whether it has conducted a comprehensive assessment on the current management of civil servants' work performance; if it has, of the assessment results; and whether it has considered introducing improvement measures, including overhauling the work performance management system of civil servants; if it has not conducted such assessment, of the reasons for that, and whether it will do so, if it will, of the details and the implementation date?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Madam President,

- (a) (i) The performance of a civil servant must meet the required standard during the appraisal period in order that he may earn an increment on his next incremental date if he has not yet reached the maximum pay point of his rank. If the supervisor of such an officer does not certify that the officer's performance has been satisfactory during the appraisal period, the officer will not be paid any increment from his next incremental date for a period of three to six months. The supervisor will review the officer's performance during the period when the payment of increment is stopped. If the officer has failed to make any marked improvement in his

performance, the increment will continue to be withheld. In addition, his incremental date will be deferred and he will accordingly lose seniority.

A summary of such cases (be it a case of stoppage of increment, or stoppage of increment with deferment of incremental date) which have been recorded since 2001 on account of unsatisfactory performance is given in Annex 1. The specific manner in which each concerned officer was deficient in his performance varies. In general, these officers received a fifth or sixth-level overall rating on a six-level performance scale in an appraisal report, or two fourth-level overall ratings in two consecutive appraisal reports.

- (ii) If an officer feels aggrieved about the management's decision to stop his increment or to stop his increment with deferment of his incremental date, he may appeal to officers holding senior management positions in his department, the grade management concerned or the Civil Service Bureau. Between 2001 and 2004, there were nine unsuccessful appeals against decisions to stop either an officer's increment or an officer's increment with deferment of his incremental date. These nine cases involved staff from seven ranks and five departments. We do not have information on any successful appeal over the same period.
- (b) In addition to stoppage or deferment of increment, the Administration may retire an officer in the public interest under section 12 of the Public Service (Administration) Order (PS(A)O) if his substandard performance persists. Over the past three years (2002 to 2004), 26 officers were required to retire in the public interest under section 12 of the PS(A)O for persistent substandard performance. The bureaux/departments to which these officers belonged and their ranks are detailed in Annex 2. Their average length of service is about 14 years (ranging from seven to 33 years). Over the same period, there were six appeal cases. Five of the appeals had been dismissed. The remaining one is being processed.

- (c) In the past few years, Hong Kong experienced a series of challenges associated with the economic setback caused by external factors and domestic structural problems. The Civil Service has striven hard to come up with more efficient means of service delivery at a time when the public sector, like the business sector and the rest of the community, is facing severe budgetary constraints and extensive downsizing. Following two rounds of voluntary retirement and conscious efforts on the part of departments to streamline and delayer their organization, the overall size of the civil service establishment has gone down from the peak of 198 000 posts to 167 300 at the end of 2004. Notwithstanding the pressure created by the shrinkage in manpower and financial resources, the ever rising expectations of the public we serve and such unforeseen challenges as the SARS, our Civil Service as a whole remains dedicated to serving the community and there has been no slackening in overall efficiency.

In 2003, the Civil Service Bureau conducted a relatively comprehensive analysis of the performance scores of staff in over 300 grades and 900 ranks.^(Note 1) The results show that, on average, over 90% of our civil servants received the third grade or above while less than 1% obtained the fourth grade or below in terms of overall performance. These figures indicate that the vast majority of our civil servants measure up in terms of both commitment to the betterment of our community and performance. We are taking appropriate actions to manage under-performers, including requiring an officer to retire in the public interest in the event of persistent substandard performance.

We also attach importance to third-party assessment on the performance of our Civil Service. The Political and Economic Risk Consultancy Limited has conducted annual surveys in which expatriates working in Asia are asked to rate the performance of civil service in the region. According to the survey findings in 2004 (please refer to Annex 4 for details), Hong Kong civil servants continue to top the list for being the least bureaucratic. Whilst our

^(Note 1) At present, most departments adopt a six-level performance scale in the appraisal report. For details, please refer to Annex 3.

score on efficiency has dropped slightly relative to 2002 and 2003, the outcome of the survey firmly places our Civil Service amongst the finest in Asia. Separate public opinion surveys taken in the last three years have also indicated that, on average, over 75% of Hong Kong people are satisfied with the overall efficiency of our Civil Service.

All in all, our Civil Service is highly efficient and professional, and widely regarded as one of the cleanest in the world.

That is of course not to say that our Civil Service is free from mistakes in the past few years. Whenever there is a case of mismanagement, we always take any criticisms in stride and encourage staff at all levels to turn them into positive impetus for us to strive even harder for improvement.

We are taking the following proactive measures to maintain the high quality of the services provided by our civil servants, and to build a people-based Civil Service that is committed to meeting public demands for prompt and efficient services:

(1) *Provide incentive and give commendation*

On top of giving due recognition to outstanding performers through promotion or commendation under the existing appraisal system, we will give further tribute and encouragement to staff with exemplary service through the departmental Commendation Letter Scheme and the Secretary for the Civil Service's Commendation Scheme. To motivate civil servants to further upgrade the quality of their service, we will also further promote and expand the ambit of the Civil Service Customer Service Award Scheme.

(2) *Provide effective training*

To help sustain improvements to the overall performance of the Civil Service, the Government is committed to providing civil servants with robust training and development

opportunities. The Government spends about \$1 billion dollars annually on civil service training, providing a wide range of relevant courses, learning opportunities and sponsorship schemes for officers at different levels. All civil servants, be they front-line staff or middle and senior managers, are encouraged to pursue continuous learning in their own time so as to further enhance their resilience and capacity for meeting changes.

(3) *Improve performance management*

Continuous efforts are being made to promote a performance-based service culture. For example, we will consult the Public Service Commission and the staff side in early 2005 on proposals to further streamline the procedures for handling persistent substandard performers. We will also conduct a comprehensive review of existing guidelines on performance management.

- (d) The Government attaches great importance to performance management. A comprehensive performance management system enables staff to have a clear understanding of the work targets of their department and the standard of performance expected of them. The strengths and weaknesses of individual staff as revealed in performance appraisal give management an informed basis to determine their training and development needs as well as how best to motivate them to give of their best to their work. Based on the appraisal results, management can take appropriate administrative measures, such as arranging acting/development opportunities for or promoting outstanding performers whilst poor performers are screened out for appropriate corrective actions.

Under the existing system, the supervisor will communicate the expected standard of performance to the appraisee at the beginning of the appraisal cycle. At the end of the appraisal period, the appraisee's performance will be assessed against the standards agreed beforehand. Appraisal reports are usually countersigned by

an officer who is at least two substantive ranks above the appraisee. After the appraisee has read the appraisal report, either the supervisor or the countersigning officer will interview him and review with him the various aspects of his performance. If the appraisee considers that the assessment is not objective, he may state his views and the interviewing officer is required to report the same in the interview record. The appraisee may also make a written request for a review of the performance assessment. Finally, the appraisal report will be reviewed by the Head of Grade or his delegate. Assessment panels authorized to undertake levelling and moderating work among appraisal reports may make amendments to an appraisal report in the interest of ensuring parity of assessment. The appraisee will be notified of any such amendments and the reasons for them.

To ensure that the appraisal results can truly reflect civil servants' actual work performance, we have impressed upon departmental supervisors the importance of having performance appraisal that is honest, fair, impartial and accurate. We shall, where necessary, provide assistance to individual departments to step up training efforts with regard to the specific needs of their staff. Ongoing efforts are being made to ensure that supervisory staff at all levels are made aware of their responsibilities (and suitably trained) in supervising, coaching and monitoring performance management in a fair and effective manner. We have encouraged departments to establish assessment panels to monitor and undertake moderating and levelling work among appraisal reports. Departments are also encouraged to adopt a target-oriented and competency-based approach in performance management so as to inculcate a result-oriented management culture.

We consider that the existing mechanism as a whole allows civil servants' performance and potential to be assessed in a systematic and objective manner. The system has worked well. Nonetheless, we will keep the system under regular review to ensure that it remains appropriate for meeting the demands of our time.

Annex 1

Summary of cases of stoppage of increment and stoppage of increment with deferment of incremental date in the Civil Service from 2001 to 2004

| | 2001 | 2002 | 2003 | 2004 |
|---|----------|---------|---------|---------|
| (i) No. of officers whose increment has been stopped (see Note 1) | 11 | 22 | 14 | 15 |
| (ii) No. of officers whose increment has been stopped with deferment of incremental date (see Note 2) | 8 | 12 | 12 | 4 |
| (iii) Total of (i) and (ii) (see Notes 1 and 2) | 19 | 34 | 26 | 19 |
| (iv) No. of departments/public organization involved (see Note 3) | 15 | 23 | 16 | 10 |
| (v) No. of ranks involved (see Note 4) | 17 | 30 | 24 | 15 |
| (vi) Amount of salary increment not paid (see Note 5) | \$0.26 M | \$0.43M | \$0.39M | \$0.35M |

A breakdown of the cases under item (iii) above by the number of years of service of the civil servants involved is as follows:

| | <i>Number of cases</i> | | | |
|---|------------------------|------|------|------|
| | 2001 | 2002 | 2003 | 2004 |
| Officers with less than 10 years of service | 14 | 20 | 16 | 13 |
| Officers with 10 to 20 years of service | 3 | 11 | 6 | 5 |
| Officers with more than 20 years of service | 2 | 3 | 4 | 1 |
| Total | 19 | 34 | 26 | 19 |

Note 1: The figures refer to the number of cases where the stoppage of increment commenced in the reference year. For those cases with the stoppage period straddling two calendar years, they are not counted again under the second year to avoid double-counting.

Note 2: The figures refer to the number of cases where the stoppage of increment and the deferment of incremental date commenced in the reference year. For those cases with the period of stoppage of increment and the deferment of incremental date straddling two calendar years, they are not counted again under the second calendar year to avoid double-counting.

Note 3: The departments/public organization involved are: Buildings Department, Census and Statistics Department, Chief Secretary for Administration's Office (Efficiency Unit), Civil Aviation Department, Civil Engineering and Development Department, Civil Service Bureau, Commerce, Industry and Technology Bureau, Correctional Services Department, Customs and Excise Department, Department of Health, Department of Justice, Education and Manpower Bureau, Environmental Protection Department, Financial Secretary's Office (Economic Analysis and Business Facilitation Unit), Fire Services Department, Government Flying Service, Government Logistics Department, Highways Department, Hong Kong Monetary Authority, Hong Kong Observatory, Hong Kong Police Force, Hong Kong Post, Housing Department, Immigration Department, Inland Revenue Department, Intellectual Property Department, Judiciary, Labour Department, Lands Department, Legal Aid Department, Marine Department, Office of the Telecommunications Authority, Official Receiver's Office, Planning Department, Rating and Valuation Department, Social Welfare Department and the Treasury.

Note 4: The ranks involved are: Accounting Officer II, Administrative Officer, Assistant Census and Survey Officer, Assistant Clerical Officer, Assistant Education Officer, Assistant Inspector (Telecommunications), Assistant Mechanical Inspector, Assistant Officer II, Assistant Primary School Master/Mistress, Assistant Supplies Officer, Assistant Taxation Officer, Assistant Trade Officer I, Bank Examiner, Building Services Engineer, Building Surveyor, Certificated Master/Mistress, Chief Pilot, Clerical Assistant, Clinical Psychologist, Court Interpreter II, Court Prosecutor, Dental Therapist, Dispenser, Economist, Electronics Engineer, Environmental Protection Officer, Executive Officer I, Executive Officer II, Fireman, Insolvency Officer II, Laboratory Technician II, Land Executive, Land Inspector II, Law Clerk, Management Services Officer II, Occupational Safety Officer II, Office Assistant, Official Languages Officer II, Physiotherapist I, Police Communications Officer, Police Constable, Police Inspector, Postal Officer, Postman, Principal Survey Officer (Estate), Scientific Officer, Senior Accounting Officer, Senior Executive Officer, Senior Immigration Assistant, Senior Law Clerk II, Senior Social Security Assistant, Senior Training Officer, Solicitor, Speech Therapist, Statistical Officer II, Supplies Assistant, Survey Officer (Lands), Survey Officer (Planning), Survey Officer (Quantity), Technical Officer (Architectural), Technical Officer (Civil), Technical Officer (Laboratory), Trade Controls Officer, Valuation Officer, and Valuation Surveyor.

Note 5: The figures reflect the amount of salary increment that was not paid in the reference year. For example, for a case of stoppage of increment straddling two calendar years, say from December 2001 to February 2002, while the case will be accounted for as a 2001 case, the amount of salary increment not paid for the month of December 2001 is counted under 2001 and the amount of increment not paid for the months of January and February 2002 is counted under 2002.

Annex 2

**Cases of retirement in the public interest
under section 12 of the Public Service (Administration) Order
(2002 to 2004)**

Over the past three years (2002 to 2004), 26 officers were retired in the public interest under section 12 of the PS(A)O for persistent substandard performance.

These officers came from the following bureau/departments: Architectural Services Department, Customs and Excise Department, Census and Statistics Department, Electrical and Mechanical Services Department, Environmental Protection Department, Education and Manpower Bureau, Food and Environmental Hygiene Department, Government Laboratory, Government Logistics Department, Department of Health, Hong Kong Police Force, Hong Kong Observatory, Housing Department, Inland Revenue Department, Department of Justice, Labour Department, Lands Department, Office of the Telecommunications Authority, Social Welfare Department and the Treasury.

The ranks involved were as follows: Customs Officer, Certificated Master, Scientific Officer, Physiotherapist I, Court Prosecutor, Assistant Building Services Inspector, Survey Officer, Clerical Assistant, Office Assistant, Maintenance Surveyor, Assistant Education Officer, Accounting Officer II, Assistant Inspector (Telecommunications), Assistant Census and Survey Officer, Police Communications Officer, Supplies Supervisor II, Assistant Clerical Officer, Assistant Taxation Officer, Senior Artisan, Solicitor, Environmental Protection Officer, Science Laboratory Technologist and Laboratory Technician II.

Annex 3

The meaning of different grades under a six-level performance scale

| | |
|----------------|---|
| Outstanding | Applies to a performance which has been exceptionally effective and which has far exceeded the standard required in quality and quantity |
| Very Effective | Means that although not positively outstanding, the performance has been consistently above the standard required in quality and quantity |
| Effective | Means that the performance has met the standard required and has occasionally exceeded it in quality or quantity or both |
| Moderate | Means the lowest acceptable standard of performance, without serious deficiencies |
| Poor | Means that there have been definite performance deficiencies |
| Very Poor | Means that the performance has been of an unacceptable standard |

Annex 4

Rating Asian Civil Servants

| | <i>Bureaucracy/red tape</i> | | | | <i>Civil service efficiency</i> | | | |
|-------------|-----------------------------|-------------|-------------|-------------|---------------------------------|-------------|-------------|-------------|
| | <i>2001</i> | <i>2002</i> | <i>2003</i> | <i>2004</i> | <i>2001</i> | <i>2002</i> | <i>2003</i> | <i>2004</i> |
| China | 7.63 | 8.50 | 7.75 | 8.69 | 6.50 | 7.67 | 7.67 | 6.03 |
| Hong Kong | 3.07 | 3.64 | 3.11 | 1.90 | 4.00 | 3.26 | 3.39 | 3.50 |
| India | 8.88 | 9.67 | 9.00 | 8.90 | 6.80 | 7.83 | 8.00 | 8.15 |
| Indonesia | 8.33 | 9.33 | 8.25 | 7.57 | 9.50 | 8.33 | 8.50 | 7.25 |
| Japan | 5.50 | 7.00 | 7.05 | 7.00 | 4.00 | 4.33 | 4.25 | 2.05 |
| Malaysia | 6.50 | 7.00 | 6.60 | 5.67 | 6.00 | 6.86 | 5.67 | 7.00 |
| Philippines | 8.00 | 8.08 | 8.00 | 7.25 | 6.50 | 8.25 | 7.33 | 7.42 |
| Singapore | 3.83 | 3.10 | 2.80 | 2.50 | 2.80 | 1.70 | 0.57 | 1.63 |
| South Korea | 6.33 | 5.50 | 5.65 | 5.17 | 5.00 | 5.50 | 5.00 | 6.33 |
| Taiwan | 6.38 | 6.17 | 6.00 | 6.13 | 5.71 | 6.17 | 5.50 | 5.50 |
| Thailand | 8.18 | 7.89 | 8.00 | 7.17 | 7.90 | 7.56 | 7.60 | 7.83 |
| Vietnam | 9.50 | 8.13 | 7.75 | 8.57 | 9.75 | 7.88 | 8.25 | 8.14 |

Grades range from zero to 10, with zero being the best grade possible and 10 the worst.

Planting Trees in Country Parks

17. **MR ALBERT CHAN** (in Chinese): *Madam President, currently, the hilltops and slopes in many country parks do not have trees growing on them. Without the protection of plants, they are exposed to serious erosion, hence prone to landslips and soil loss, causing visual blights to the country parks. In this connection, will the Government inform this Council:*

- (a) *of the total number of trees planted by the authorities in the country parks in the past three years and the expenditure incurred; and*
- (b) *whether the authorities have plans to plant trees in the country parks over the next five years; if so, of the number of trees they intend to plant each year; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Chinese): Madam President,

- (a) The number of trees planted in the country parks in the past three years by the Agriculture, Fisheries and Conservation Department (AFCD) and the expenditure incurred are as follows:

Year 2002 — 899 000 trees (about \$9.6 million);

Year 2003 — 880 000 trees (about \$10 million); and

Year 2004 — 877 000 trees (about \$9 million).

The expenditure incurred depended on the tender prices, availability of corporate sponsorship and the planting locations. In general, 28% of the total area of country parks is covered with trees, 30% with shrubs, and the remaining mainly with grass. The area of slopes not covered with vegetation is small. The AFCD will continue to plant trees on these slopes to restore the vegetation destroyed by erosion or hill fires.

- (b) Based on the need for tree planting and available resources in each year, the AFCD draws up a tree planting scheme to conserve and maintain vegetation in the country parks. We estimate that about

600 000 to 900 000 trees have to be planted annually in the next five years.

Enhancement of Professional Competence of Kindergarten Teachers

18. **MS EMILY LAU** (in Chinese): *Madam President, regarding the enhancement of the professional competence of kindergarten (KG) teachers, will the executive authorities inform the Council:*

- (a) *of the respective cumulative numbers of KG teachers who are holders of certificates, sub-degrees and degrees awarded by post-secondary institutions in each of the past three school years, and their respective percentages in the total numbers of KG teachers in the same periods;*
- (b) *whether they have studied ways to improve the training courses for KG teachers, including the provision of more training places, if so, of the results of such studies; if not, whether they will carry out such studies;*
- (c) *whether they have, as proposed by the Education Commission in September 2000, conducted a review to assess the feasibility of raising the entry qualification requirement of KG teachers to bachelor's degree level; if so, of the progress or outcome of the review; if the review outcome is in the affirmative, of the implementation timetable; if the review outcome is in the negative, the justifications for that; and*
- (d) *whether they will allocate additional resources to encourage post-secondary institutions to offer more training courses at certificate or degree levels for KG teachers; if so, of the criteria for allocating the resources; if not, the reasons for that?*

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

- (a) Detailed breakdowns of KG teachers who are holders of certificates, sub-degrees, and degrees awarded by post-secondary institutions are

not available. However, the respective cumulative numbers of KG teachers who are holders of certificates or degrees awarded by post-secondary institutions in early childhood education in years 2001, 2002 and 2003 are available, details as follows:

| <i>Year</i> | <i>No. of KG teachers being holders of certificates or degrees in early childhood education</i> | <i>Percentages in the total numbers of KG teachers (%)</i> |
|------------------------|---|--|
| 2001 ^{note 1} | 615 | 7 |
| 2002 ^{note 2} | 829 | 9.8 |
| 2003 ^{note 3} | 1 065 | 13.1 |

Note 1: Figures collected from Teachers' Survey as of mid-September 2001

Note 2: Figures collected from Teachers' Survey as of mid-September 2002

Note 3: Figures collected from Teachers' Survey as of mid-September 2003

The existing policy is to require all serving KG principals to have completed Certificate in Early Childhood Education (C(ECE)) by 2005-06. The C(ECE) course is not a qualification requirement for serving KG teachers.

- (b) The Government recognizes the importance of early childhood teacher training and has been implementing various measures to gradually raise the qualifications and quality of KG teachers and principals. Sufficient training places are also assured to achieve the policy targets. The policy measures include:
- (i) to raise the entry requirements of KG teachers from two passes in the Hong Kong Certificate of Education (including one language subject) to five passes, including both Chinese and English, from the 2001-02 school year;
 - (ii) to require all newly recruited KG principals to have completed the C(ECE) from September 2002;

- (iii) to require all new KG teachers to possess a Qualified Kindergarten Teacher (QKT) qualification from the 2003-04 school year;
- (iv) to require 100% of QKTs (based on a teacher to pupil ratio of 1:15) by the 2004-05 school year; and
- (v) to require all serving KG principals to have completed the C(ECE) by the 2005-06 school year.

We have made steady progress in attaining the set policy targets and will review the situation in 2005-06 when all the existing policy commitments are delivered.

In fact, early childhood teacher training does not focus only on the attainment of formal qualifications. The Administration has provided other diversified professional development programmes and training opportunities to raise the professionalism of KG teachers, such as:

- (i) to organize briefings on promoting the performance indicators for quality KG education;
- (ii) to organize professional development seminars and workshops for serving KG teachers to strengthen their pedagogical knowledge and skills; and
- (iii) to organize tailor-made courses for serving KG principals to enhance their leadership and management skills.

The Government will continue to provide opportunities to enhance both the qualifications and professional development of KG teachers and principals.

- (c) The Education Commission in September 2000 recommended a long-term target to raise the entry qualifications of KG teachers to sub-degree or higher level. In moving towards this vision, we have started by requiring all newly recruited KG principals to have completed the C(ECE) from September 2002 and serving principals

to have completed C(ECE) by the end of 2005-06 school year. A number of institutions also provide sub-degree and degree programmes on early childhood education on a self-financing basis.

- (d) The Government will allocate additional resources to encourage post-secondary institutions to offer more training courses for KG teachers. In 2005-06, for example, the anticipated annual provision of subsidized in-service training places in C(ECE) will increase by about 150 compared with the previous provision. Together with other self-financing places, the anticipated provision is sufficient to upgrade all KG teachers to the Certificate level or above within six years.

Tax Evasion

19. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that cases of emigrating Hong Kong residents and expatriates who ceased working in Hong Kong not clearing their tax payments before departing Hong Kong have been rather common, resulting in substantial loss in revenue every year. In this connection, will the Government inform this Council of:*

- (a) *the respective numbers of persons and total amounts of taxes involved in the tax evasion cases mentioned above, in each of the past three years;*
- (b) *the existing mechanism to prevent such persons from evading tax and to recover the taxes in default; and*
- (c) *the new policies it may adopt to stop such persons from evading tax?*

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

- (a) In the past three years, the numbers of cases and the amounts of taxes written off due to the departure of taxpayers from Hong Kong before their tax liabilities are fully settled are as follows:

| <i>Fiscal year</i> | <i>Taxes written off</i> | |
|--------------------|--------------------------|--------------|
| | <i>(number of cases)</i> | <i>(\$)</i> |
| 2001-02 | 571 | 52.6 million |
| 2002-03 | 570 | 88.2 million |
| 2003-04 | 290 | 71.2 million |

- (b) A taxpayer is required under section 51 of the Inland Revenue Ordinance (IRO) to notify the Inland Revenue Department (IRD) in writing of his impending departure from Hong Kong one month before the expected date of departure. The taxpayer is liable to a penalty (not exceeding \$10,000) for non-compliance.

Separately, in the case of salaries tax, employers are also required under section 52 of the IRO to notify the IRD in writing of the impending departure of their employees one month before their expected date of departure from Hong Kong, and to withhold within that month payment of any monies due to them until receipt of a letter of release from the IRD. The amount withheld could be used to set off the employees' tax liabilities if the employees leave Hong Kong without settling their tax liability in full. If the employer fails to comply with these requirements, he is liable to a penalty (not exceeding \$10,000).

Furthermore, under section 77 of the IRO, the IRD may apply to the District Judge for a "Departure Prevention Direction" to prevent taxpayers who intend to leave Hong Kong from departing, or who have left Hong Kong to reside elsewhere from leaving Hong Kong again upon their return to Hong Kong, without paying their tax liability in full or providing sufficient security to secure the payment. If the District Judge is satisfied that it is in the public interest to ensure that the person does not depart from Hong Kong or, if he returns, does not depart again, without first paying the tax or furnishing security to the satisfaction of the IRD for payment of that tax, he shall give direction to the Director of Immigration and the Commissioner of Police directing them to prevent the person from departing from Hong Kong without paying such tax or furnishing such security.

Even in cases where the tax has to be written off, the IRD continues to closely monitor the cases thereafter. The IRD maintains an information database to keep track of the income details of taxpayers. Recovery actions will be resumed as and when fresh information conducive to tax recovery comes to light. Under section 71 of the IRO, the Commissioner of Inland Revenue (CIR) may order that a sum not exceeding 5% in the amount in default shall be added to the tax. If the default period exceeds six months, the CIR may also order that a sum not exceeding 10% in all of the unpaid amount shall be added to the unpaid amount. Taxpayers' obligation to pay tax will not be relieved by the lapse of time.

In addition to the above, the IRD also makes special efforts to educate taxpayers on their obligations under the tax laws. The IRD makes use of posters and information pamphlets distributed to the public to explain to taxpayers and employers their respective responsibilities if the taxpayers or the employees of the employers plan to leave Hong Kong.

- (c) The IRD will continue to monitor the situation closely. The Administration considers the present mechanism effective in striking a balance between revenue protection and protection of taxpayers' rights to freedom of travel and to enter and leave Hong Kong. The IRD will continue to strengthen taxpayers' compliance through publicity, education and strict enforcement actions.

Student Finance Assistance Scheme

20. **MR LAU KONG-WAH** (in Chinese): *Madam President, students of the Hong Kong Shue Yan College (SYC) registered in the 2000-01 academic year or before for full-time four-year diploma course may apply for financial assistance under the Student Finance Assistance Scheme (SFAS). One of the requirements for loan repayment under this Scheme is that, if a recipient fails to complete the course (including transfer to a publicly-funded university), he or she has to repay in one lump sum all the financial assistance provided, including grant, loan, interest, surcharge and any other outstanding amount. However, there is no such requirement under the Local Student Finance Scheme, which is open for application by students pursuing publicly-funded programmes in universities.*

In this connection, will the Government inform this Council of the rationale for the difference in loan repayment requirements between the above schemes, and whether it will consider removing the requirement in question?

SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for Education and Manpower) (in Chinese): Madam President, the SFAS was established to provide means-tested grants and loans to full-time students of private post-secondary colleges registered under the Post-secondary Colleges Ordinance (Cap. 320). Since the 2001-02 academic year, the Government has implemented a means-tested grant and loan scheme known as the Financial Assistance Scheme for Post-secondary Students (FASP), to provide financial assistance to students pursuing accredited and self-financing post-secondary programmes. Having considered the fact that the SYC was then the only post-secondary institution registered under the Post-secondary Colleges Ordinance and the need to provide a standardized financial assistance scheme for all students pursuing accredited and self-financing post-secondary programmes, the Finance Committee endorsed the proposal to replace the SFAS with the FASP. Since the 2001-02 academic year, the FASP is applicable to all new students of the SYC. Only those full-time students who were enrolled with the SYC in the 2000-01 academic year or before and are still pursuing a four-year full-time diploma course will continue to be eligible for applying for the SFAS assistance. When the last batch of eligible students graduate in the 2005-06 academic year, the FASP will replace SFAS entirely.

When the FASP was established, the Government had made it clear that students receiving financial assistance under the scheme must complete the relevant recognized programmes so as to ensure that public money is used appropriately and prudently [see FC Paper FCR(2001-02)30].

Both the SFAS and the FASP were established to cater for the needy students pursuing self-financing post-secondary programmes. The Local Student Finance Scheme is primarily aimed at providing financial assistance to students pursuing University Grants Committee-funded or publicly-funded programmes. Since the two financial assistance schemes are different in scope, their repayment terms are different. The Education and Manpower Bureau will in due course review various financial assistance schemes for post-secondary students and the relevant repayment terms will be taken into consideration.

MOTIONS

PRESIDENT (in Cantonese): Motions. Three proposed resolutions under the Interpretation and General Clauses Ordinance in relation to amending the subsidiary legislation.

First motion: Amending the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I move that the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004 as set out in the resolution standing in my name be approved. As the contents of this resolution and the next one on the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004 are largely identical, the following speech is applicable to both resolutions.

On 15 December last year, the Commissioner for Labour laid on the table of the Legislative Council two Orders in connection with the Employees' Compensation Ordinance (ECO) and the Occupational Safety and Health Ordinance (OSHO) which specify the addition of two occupational diseases — severe acute respiratory syndrome (SARS) and avian influenza A — to the Second Schedules of the Ordinances.

The purpose of specifying a list of occupational diseases to the ECO is to relieve an employee of the need to prove that the disease is due to the nature of employment, thereby expediting the compensation process. The corresponding amendment to the OSHO is to require medical practitioners to notify cases of these two occupational diseases to the Commissioner for Labour.

Employees infected with SARS at work are currently protected under section 36(1) of the ECO, but the onus is on the employee to prove that the infection is by accident arising out of and in the course of employment. In order to safeguard the interests of employees in specified high-risk trades, industries or processes and to relieve them of the burden to prove that the disease arose out the nature of employment, it is proposed to prescribe SARS as an

occupational disease under the ECO. Employees covered include medical and nursing staff, medical research and laboratory workers, pathologists, post-mortem or funeral services workers, and so on. There are currently about 94 000 employees in these occupations.

It is proposed that other than SARS, avian influenza A be also prescribed as an occupational disease. The proposal is applicable to any employee who works in a confirmed high-risk trade listed in the Order and has close and frequent contacts with poultry or birds in the course of employment and suffers incapacity or death as a result of avian influenza A. Confirmed high-risk trades include poultry farm, poultry transportation/wholesale and retail, poultry or bird handling or research or laboratory work in connection with avian influenza A. There are an estimated 5 000 employees in these occupations. A Member has expressed concern as regards whether domestic helpers would fall within the scope of the Amendment Order. Since a domestic helper is generally employed to take care of household chores, he does not meet the criteria since he is not engaged by reason of employment in such high-risk occupation as poultry handling even if he will handle or has handled poultry in the ordinary course of his duties. However, he may claim for employees' compensation under section 36(1) of the ECO if he could prove that the infection, which results in incapacity, arose out of and in the course of employment.

The Accident Insurance Association has advised that the impact on employees' compensation insurance premium is unlikely to be significant. The Labour Advisory Board and the Panel on Manpower of the Legislative Council were consulted and they supported the proposal.

At its meeting on 17 December 2004, the House Committee of Legislative Council decided to set up a subcommittee to scrutinize the Amendment Order. I would like to thank the Chairman, Mr LEE Cheuk-yan, and members of the Subcommittee for putting forth invaluable suggestions. In response to these suggestions, we have accordingly made some amendments to the Order which were supported by the Subcommittee.

The Subcommittee has also agreed that the Amendment Order, if passed, shall come into operation on 8 February 2005. I hope that Honourable Members would support my motion and pass the Amendment Order.

Madam President, I beg to move.

The Secretary for Economic Development and Labour moved the following motion:

"RESOLVED that the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004, published in the Gazette as Legal Notice No. 213 of 2004 and laid on the table of the Legislative Council on 15 December 2004, be amended –

- (a) in section 1, by repealing "a day to be appointed by the Commissioner for Labour by notice published in the Gazette" and substituting "8 February 2005";
- (b) in section 2 –
 - (i) in the new item B11, by repealing "頻繁地" and substituting "經常";
 - (ii) in the new item B12, by repealing "頻繁地" and substituting "經常";
 - (iii) in the new item B12, in paragraph (a), by repealing "remains, residues or" and substituting "uncooked remains or residues, or their"."

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

MR KWONG CHI-KIN (in Cantonese): Madam President, as Mr LEE Cheuk-yan, the Chairman of the Subcommittee on Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004 and Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004, is out of town today, I will speak on behalf of the Subcommittee on the motion moved by the Secretary for Economic Development and Labour.

These two orders mainly seek to specify severe acute respiratory syndrome (SARS) and avian influenza A as occupational diseases specified in the

Employees' Compensation Ordinance, so as to safeguard the interests of employees engaged in specified high-risk trades, industries or processes, and at the same time, to relieve them of the burden of proving that their injuries are caused by accident arising out of and in the course of employment when they make compensation claims; and to make consequential amendments to the list of notifiable occupational diseases in Schedule 2 to the Occupational Safety and Health Ordinance.

The Subcommittee has held detailed discussions on the objectives and coverage of the two Orders. Regarding specified high-risk occupations involving close and frequent contacts with sources of avian influenza A infection, members had, on behalf of workers engaged in the handling of poultry or birds, their remains, residues or untreated products, requested the Administration to clarify whether the relevant requirement was intended to cover workers engaged in handling live or uncooked poultry or birds, their remains, residues or untreated products, but not those engaged in handling cooked poultry or birds. Mr Tommy CHEUNG is particularly concerned that workers handling food made from cooked poultry may inadvertently fall within the scope of the Orders.

According to the explanation of the Administration, medical researches indicate that only live poultry or birds, their remains or residues or untreated poultry products may carry a risk of avian influenza A infection, the type of high-risk occupations intended to be covered by the Orders will be the handling of poultry or birds in poultry farms, poultry transportation, wholesale or retail of poultry, and research and laboratory work in connection with avian influenza A viruses. Currently, there is no evidence of transmission of avian influenza A viruses through cooked or undercooked poultry.

To allay the worries of members, the Administration has agreed to amend the two Orders to make it clear that among those types of workers who are employed to handle the remains or residues of poultry or birds, only workers who are employed to handle uncooked poultry or birds or their parts, their remains or residues would be covered.

To address the concern of members, the Administration has explained in detail the rationale for fixing the prescribed period for SARS infection at one month and that of avian influenza A infection at 14 days, as well as how the prescribed period would work in determining the liability to compensation. It has also explained the liability to compensation to be borne by each employer if

an employee working for two employers at the same time contracted avian influenza.

The Subcommittee supports to specify 8 February 2005 as the date on which the two Orders come into operation.

Finally, the Subcommittee urges the Administration to step up publicity on the two Orders, in particular, on how the prescribed period for SARS and avian influenza A infection would work in determining the liability to compensation under Employees' Compensation Ordinance.

Thank you, Madam President.

MR TOMMY CHEUNG (in Cantonese): Madam President, I will speak on both the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004, and the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004 which is to be moved by the Secretary under the Interpretation and General Clauses Ordinance shortly.

The first Order seeks mainly to specify severe acute respiratory syndrome (SARS) and avian influenza A infection as the sources of occupational diseases listed in the Employees' Compensation Ordinance. The second Order seeks to amend the list of notifiable occupational diseases in Schedule 2 to the Occupational Safety and Health Ordinance.

The Liberal Party supports the provision of protection to employees engaged in some high-risk trades, industries or processes. Therefore, we do not object to the inclusion of the two diseases as sources of occupational disease in the relevant ordinances.

In the course of deliberations on the resolution, I particularly noted that employees handling food made from cooked poultry might be included in the scope of the Orders. I have also expressed concern for employees engaged in other industries. For example, if the employer of a domestic helper has a keenness for chicken soup or soy-sauced chicken, and the domestic helper is required to go to the market to buy fresh chicken as well as cooking chicken every day, will the domestic helper be covered by the Orders?

Therefore, I welcome that the authorities had subsequently clarified that there was no evidence indicating the transmission of avian influenza A viruses through cooked or undercooked poultry, and made it clear that the amendment would only cover workers handling remains of uncooked poultry or birds, or their residues.

During the course of deliberations, I also expressed concern over the definition of "frequent contacts" with poultry and birds. I pointed out that the interpretation for the translated term "頻繁地" of frequent was not clear. We do not know whether the contact involving the cooking of chicken soup for an employer every day can be regarded as "frequent"? Or that "frequent" contact could only be established where daily handling and contact with poultry or their remains take place throughout the day?

Therefore, I welcome the authorities to change the Chinese translation of "frequent" to "經常" in the Orders. The authorities also stated at a meeting that though duties of domestic helpers, in addition to household chores, might include the cooking of chicken, they were not employed for poultry handling tasks, and thus would not fall within the scope of occupations covered by the Orders.

The Government has undertaken to step up publicity on the two Orders, giving details and the coverage of the amendments; illustrations will also be used to explain the application of the relevant amendments. I urge the authorities to remind employers to pay attention to the relevant amendments, in particular the liability for compensation under the Employees' Compensation Ordinance, in addition to stepping up publicity efforts on the part of employees.

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

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

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, I would like to speak on the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004 and the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004 together. I welcome the two Amendment Orders.

As the authorities said, the two Orders seek mainly to specify severe acute respiratory syndrome (SARS) and avian influenza A infection as occupational diseases, so that employees who engage in certain occupations and contract these two diseases may receive compensation without having to prove that their diseases are work-related. The amendment does help to alleviate the pressure borne by employees tortured by the diseases and their family members. In this connection, the legislation does carry positive significance.

During the entire course of discussion, the inclusion of certain occupations under the coverage of the Orders was a relatively controversial issue. The Government considered the 94 000 employees engaged in high-risk occupations related to SARS had been covered and the 5 000 employees engaged in occupations related to the source of avian flu had also been protected. The authorities thus considered the arrangement adequate. However, I think that if we are really concerned about the interest of employees, we will certainly look for better protection that allows employees engaged in the relevant occupations to obtain compensation by the simplest means. I believe this is also a common desire of employees. Therefore, for employees who may easily be infected in the course of work, such as domestic helpers and cleaning workers who run high risk of infection, as mentioned by other colleagues earlier, I hope they can also be covered by the scope of protection. I am disappointed that the authorities have failed to achieve this.

Some may consider that though these employees are not covered by the relevant legislation, it does not mean that they do not have any protection. They may still obtain compensation by proving that the diseases they suffered are related to work. However, I must point out that the relevant legislation does not have much significance for such employees as medical practitioners and researchers of laboratories, who have frequent contacts with the viruses, for they can easily prove their case if they are required to do so. Conversely, for employees of marginal cases mentioned by me earlier, it is extremely difficult for them to prove that the diseases they have contracted are work-related. They could have obtained compensation otherwise, but the amendment has left them disappointed. It is unfortunate that the Government has shut out this group of employees in its legislative proposals who are really in need of assistance on the legal front, failing to include them into the scope of protection.

Actually, we have learnt from the Hospital Authority (HA) that some 300 hospital workers suffering from SARS infection have yet to obtain compensation because they were unable to prove that their infections were contracted in the course of work; and some temporary support service assistants infected during the SARS period have not yet obtained compensation. We know from these cases that because it is difficult for those employees to produce evidence, the extension of protection to them is being held over. Therefore, I hope the authorities will extend the coverage of the legislation in some measure to accord protection to employees suffering from the disease.

Another cause for concern is the possible increase in insurance premium of the relevant trades upon the implementation of the new legislation. Actually, in the past, there were cases where hospitals and clinics had to face an increase in premium because they had to offer protection in this respect, and some insurance companies even refused to undertake such insurance. We think the establishment of a central labour insurance system by the Government is certainly a solution, which will enable employees or self-employed persons engaged in certain high-risk occupations to enjoy a certain degree of protection, and spare employers of worries in taking out employees' insurance.

I hope the Government can be more far-sighted in considering this issue. If not, I worry that upon the implementation of the legislation, insurance companies may refuse to undertake such insurance or increase the relevant premium. By then, not only employers will be affected, employees will also suffer, for employers may pass the burden on to employees by cutting their pay. Should this happen, it will be undesirable. Therefore, I hope the Government will think about this. Finally, I hope the Government will step up its publicity efforts upon the passage of the legislation, so that more employers and employees will understand the protection provided under the legislation and fully realize their own interest.

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): Secretary for Economic Development and Labour, do you wish to reply?

(The Secretary for Economic Development and Labour shook his head to indicate his wish of not to reply)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Economic Development and Labour 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 Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I move that the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004 as set out in the resolution on the Agenda be approved. The applicability of the Amendment Order has been explained when I moved the previous motion earlier on. The explanations and amendments are equally applicable to this resolution.

The amendment of Schedule 2 to the Occupational Safety and Health Ordinance requires medical practitioners to notify cases of severe acute respiratory syndrome and avian influenza A to the Commissioner for Labour. This will facilitate the Labour Department in collecting information about these two diseases and in monitoring the occupational health of affected workers. I hope that Honourable Members would support and pass this motion that I move.

Madam President, I beg to move.

The Secretary for Economic Development and Labour moved the following motion:

"RESOLVED that the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004, published in the Gazette as Legal Notice No. 214 of 2004 and laid on the table of the Legislative Council on 15 December 2004, be amended –

- (a) in section 1, by repealing "a day to be appointed by the Commissioner for Labour by notice published in the Gazette" and substituting "8 February 2005";
- (b) in section 2 –
 - (i) in the new item 50, by repealing "頻繁地" and substituting "經常";
 - (ii) in the new item 51, by repealing "頻繁地" and substituting "經常";
 - (iii) in the new item 51, in paragraph (a), by repealing "remains, residues or" and substituting "uncooked remains or residues, or their"."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Third motion: Amending the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) (Amendment) Regulation 2004 and the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:
Madam President, I move that the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) (Amendment) Regulation 2004 (L.N. 209 of 2004) and the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (L.N. 210 of 2004), which were laid on the table of the Legislative Council on 15 December 2004, be amended as set out in the proposed resolution circulated to Members.

The proposed amendments aim to update the Chinese text of section 10 of the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (Cap. 106X), and to clarify beyond doubt that the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation would apply to mobile carrier licences granted after the commencement of this Regulation.

The Subcommittee has expressed support for these amendments.

Madam President, I beg to move.

The Secretary for Commerce, Industry and Technology moved the following motion:

"RESOLVED that –

- (a) the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) (Amendment) Regulation 2004, published in the Gazette as Legal Notice No. 209 of 2004 and laid on the table of the Legislative Council on 15 December 2004, be amended by adding –

"3. Action that may be taken by Authority if licensee fails to keep proper accounts for purposes of determining spectrum utilization fees

Section 10 is amended –

- (a) by repealing "完全或局部關乎" and substituting "關乎（不論是完全關乎或局部關乎）";
- (b) by repealing "按照";
- (c) in paragraph (a) –

- (i) by adding "按照" before "規";
 - (ii) by adding "備存" after "件";
- (d) in paragraph (b) –
- (i) by adding "按照" before "根";
 - (ii) by adding "該" before "持";
 - (iii) by adding "備存" after "規";
- (e) by repealing "備存，";
- (f) in paragraph (c)(i) –
- (i) by repealing "必需的方式處理該等帳目，以使它們" and substituting "為使該等帳目";
 - (ii) by adding "而需用的方式，看待該等帳目" after "定)";
- (g) in paragraph (c)(ii) by repealing everything before "有關" and substituting –
- "(ii) 以該等如此看待的帳目作基準，就該持牌人評核";

(h) in paragraph (d) by repealing everything before "，而" and substituting –

"(d) 該等如此看待的帳目及經如此評核的網絡營業額須用於釐定該使用費".";

(b) the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation, published in the Gazette as Legal Notice No. 210 of 2004 and laid on the table of the Legislative Council on 15 December 2004, be amended in section 3 –

(i) in paragraph (a), by repealing "and" at the end;

(ii) in paragraph (b), by repealing the full stop and substituting "; and";

(iii) by adding –

"(c) "relevant mobile carrier licence" (有關的移動傳送者牌照) means a mobile carrier licence which –

(i) is granted after the commencement of this Regulation; and

(ii) entitles its holder to use the spectrum referred to in section 2."."

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

MR SIN CHUNG-KAI (in Cantonese): Madam President, I report to this Council in my capacity as Chairman of the Subcommittee on the three items of subsidiary legislation.

The three items of subsidiary legislation seek to provide a legal framework for charging spectrum utilization fee (SUF) on second generation (2G) mobile service licensees under the new licences to be issued upon expiry of their existing ones. In general, the Subcommittee does not object to the proposed legislation.

The Subcommittee understands the consideration of the authorities that radio spectrum is a scarce public resource and 2G mobile service licensees, like third generation (3G) mobile service licensees, should pay SUF in future. Members have held detailed discussions on the proposed charging mechanism and level of SUF, the competitiveness and convergence of 2G and 3G mobile service in the future, and the possible impact of issuance or non-issuance of new CDMA and TDMA licence. The Subcommittee has also taken on board views submitted by the six 2G mobile service providers.

Some members have pointed out that while 2G mobile service licensees would be able to offer 3G-like services through network upgrading, the SUF they are required to pay would be lower than that payable by 3G mobile service licensees, they are thus concerned about whether 2G mobile service licensees would have an advantage. In this connection, the Administration explained that after the initial five years of transition, 2G and 3G mobile service licensees would be paying SUF according to the same charging formula from the sixth year onwards, which was 5% of the network turnover of licensees per annum. Regarding the possibility of the shift of the additional burden resulted from SUF onto consumers, the authorities, envisaging that 2G licensees might factor SUF into their cost structure during the first five years, identify additional revenue sources and upgrade their services, thus considered the impact on consumers would be gradual and minimal.

Moreover, the Subcommittee noted that the authorities would conduct a spectrum policy review, aiming to study more effective ways of utilizing and allocating spectrum.

In response to the request of the Subcommittee, the authorities will move amendments to two items of subsidiary legislation to improve the text and clarity

of provisions. These amendments are agreed by the Subcommittee. Madam President, I so submit.

Madam President, please allow me to speak briefly in my capacity as representative of the information and technology industry.

We agree to the amendments proposed this time. However, the crux of the problem is that there are already six operators in the industry at present, it is thus difficult to decide whether new spectrum licences should be issued after the resumption of the spectrum. Of course, if we believe in free market, this should be left to the market to decide. Nonetheless, the telecommunications industry is not a perfectly free market. As I recall, during the period from 1999 to 2000, several European countries, including the United Kingdom and Germany, had put the 3G spectrum to open tender and the greatest benefit those governments could get at that time was a large sum of income. Subsequently, that policy caused serious financial crisis to the relevant companies, dealing a heavy blow to the development of the telecommunications industry.

Regarding the future development in Hong Kong, we can tell from history that sometimes free market is no panacea. In particular we have six operators using the spectrum at present and the spectrum is a public resource, do we need a seventh or eighth operator in future? We have to be cautious about this. At present, the impact on charges is limited. However, as stated in my report earlier, the Government would conduct a review which I think is necessary, and would give comprehensive consideration to the issue. At present, there are over 6.8 million cards, nearly 8 million, in the Hong Kong market. For a market with a relatively small capacity, how many more can we actually accommodate? The Government has to give careful consideration to this, for the issue cannot be solved solely by adopting a free market approach.

This represents my personal view or my view as a representative of the information technology sector. Certainly, I hope the Government will conduct extensive consultation on the policy of spectrum allocation in future. I so submit.

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

MR HOWARD YOUNG (in Cantonese): Madam President, as a Member participating in the scrutiny of this resolution and in my capacity as the spokesman of the Liberal Party on information technology, I speak on the resolution. At present, there are 11 licensees providing second generation (2G) mobile services, but those licenses are due to expire in succession from the middle of this year. All along, licensees of 2G mobile services are not required to pay for the use of spectrum of the frequency bands. However, licensees using the spectrum to provide third generation (3G) mobile services are required to pay spectrum utilization fees (SUF) stipulated in the licences issued by the Government since 2001. Since licensees of 2G mobile services and 3G mobile services are both using the same radio spectrum, a valuable public resource, to provide commercial services, we consider that, in the interest of fairness, licensees of both 2G mobile services and 3G mobile services should be required to pay SUF in order to obtain the right of using the spectrum. The Liberal Party considers it reasonable and acceptable for the Government to renew the licences of 2G mobile service licensees by means of charging SUF, for those licences will expire no matter how and the holding of another tender exercise seems unnecessary with most people expecting mobile services to head towards 3G gradually in future.

In view of the continued upgrading of 2G mobile services in recent years and advances in technologies, it is believed that 2G mobile service licensees will keep on enhancing the quality and functions of their network services, and even provide 3G-like mobile services. As such, there is no reason not to charge 2G mobile service operators SUF. Otherwise, it will be unfair to operators providing 3G mobile services. It is unreasonable for the Government to charge only the operators of certain services for the usage of public resources in providing services, but allow other operators providing commercial services to use the same resources free of charge. The Government should treat everyone equal; if not, it may easily result in an unbalanced situation.

Madam President, I would like to say that, as far as I can recall, it was about 20 years ago when I first come into contact with mobile phones. At that time, mobile phones, nicknamed as "bottle phones", costing about \$20,000 each

could not be bought easily. Nowadays, mobile phones are only sold at several hundred dollars each, affordable to the general public. This is a kind of progress. Moreover, the selling price of mobile phones has dropped significantly, while their functions have been greatly enhanced. The costs of mobile phones have also been reduced substantially. Technologies are advancing in this world. Just like the black and white television sets which were once regarded as high technology products, they are no longer wanted nowadays. How can we promote the advancement of society? If we continue to allow the free use of spectrum by 2G mobile services, we are actually favouring less advanced technology, encouraging such technology to compete with more advanced technology with greater potential.

The Liberal Party considers the method adopted by the Government in determining the SUF for 2G mobile services relatively fair, for it is calculated in megahertz per unit, basing on the amount of radio frequencies a licensee is assigned, similar to the "user pays" method. In order to reduce the amount of charges payable, it is believed that operators will return some unused spectrum or spectrum of low utilization to the Government — it is favourable to return such spectrum to the Government, for it is not a kind of resource that unlimited possession can be gained. Even operators holding both 2G and 3G mobile services licenses may return certain amount of spectrum they consider redundant after taking into consideration their own commercial need. Eventually, the Government may use and allocate this valuable resource more effectively.

Consumers are always looking for new technology or new products. Take the outdated mobile phones, "bottle phones", I mentioned earlier as an example. Nowadays, technology in mobile phone is very advanced, they are now equipped with camera devices and email uplinks. As I said earlier, black and white televisions have been completely replaced by colour televisions now. Licences for 3G mobile services have been issued for three years. At present, more than 200 000 subscribers are using 3G mobile services in Hong Kong, indicating that the expectations of the market on mobile services are rising. Society is advancing towards 3G mobile services, and I am confident that the development will follow this track. It is believed that the five-year transitional period is adequate in allowing 2G mobile service operators to enhance their network and services constantly.

With these remarks, Madam President, I support the motion proposed by the Secretary for Commerce, Industry and Technology.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Commerce, Industry and Technology, do you wish to reply?

(The Secretary for Commerce, Industry and Technology shook his head to indicate his wish of not to reply)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Commerce, Industry and Technology 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.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the Merchant Shipping (Prevention of Pollution by Sewage) Regulation and the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MS MIRIAM LAU (in Cantonese): Madam President, I move that the motion, as printed under my name on the Agenda, be passed.

At the meeting of the House Committee on 21 January 2005, Members agreed that I would move a motion in my capacity as Chairman of the House Committee to extend the scrutiny period of two of the regulations, laid on the table of the Legislative Council on 19 January 2005, enacted under the Merchant Shipping (Prevention and Control of Pollution) Ordinance to 9 March 2005, to allow more time for Members to study the two items of subsidiary legislation.

Madam President, I implore Members to support this motion.

Ms Miriam LAU moved the following motion:

"RESOLVED that in relation to the —

- (a) Merchant Shipping (Prevention of Pollution by Sewage) Regulation, published in the Gazette as Legal Notice No. 7 of 2005; and
- (b) Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation, published in the Gazette as Legal Notice No. 8 of 2005,

and laid on the table of the Legislative Council on 19 January 2005, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 9 March 2005."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Two motions with no legislative effect. The time limits for speeches by Members are set according to the recommendations of the House Committee. I only wish to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Monitoring the post-retirement employment of the Chief Executive, Principal Officials under the accountability system and civil servants at directorate level with private-sector organizations.

MONITORING THE POST-RETIREMENT EMPLOYMENT OF THE CHIEF EXECUTIVE, PRINCIPAL OFFICIALS UNDER THE ACCOUNTABILITY SYSTEM AND CIVIL SERVANTS AT DIRECTORATE LEVEL WITH PRIVATE-SECTOR ORGANIZATIONS

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, the most important theme of the policy address of TUNG Chee-hwa is to be resolutely

against collusion between business and the Government and to eliminate any transfer of benefits. It can be seen that the collusion between business and the Government and the transfer of benefits are deeply implanted in the minds of the public and this has formed a sweeping tide of discontent and distrust against TUNG Chee-hwa and he can never hope to wash his hands out of it.

TUNG Chee-hwa is a product of politics featuring hand-picked candidacy and small-circle election. For a long time, his policies have been heavily biased in favour of the giant consortia. From the sagas of the Cyberport, the Hunghom Peninsula and the West Kowloon project, the people are convinced that TUNG Chee-hwa has even lost sight of the principle of fair competition found in any capitalist society. All he knows is to pump benefits to the mega consortia. He is the number one man behind this collusion between business and the Government.

When the person at the top is like this, the people under him are even worse. Joseph WONG is a principal official under the accountability system. His retirement policy as applied to the senior officials results in the exemption of a huge number of retired senior officials from the policy and what these officials do is to make use of the information they have obtained from the Government as well as the social links they have established over the years and join the giant consortia, enjoy an attractive salary while taking final leave. What they do is to add fuel to this collusion between business and the Government and facilitate further transfers of benefits.

Figures will tell everything. In the year 2003 alone, Joseph WONG received a total 76 applications involving 52 retired senior officials who wanted to join private-sector organizations. Only one of these applications was rejected. All others were approved. The list of senior officials who have joined the business sector over the years is a very long one. It includes familiar names like LAM Kwong-yu, TSANG Yam-pui, Elaine CHUNG, CHAU Foo-cheong, Paul LEUNG Sai-wah, Stephen LAU Ka-man, Eddie HUI Ki-on, John HUI Chiu-yin, CHING Kwok-hoo, Christophe SOLAS, Adolf HSU Hung, LEE Kwan-ha, and so on. Such a long list is tell-tale evidence showing that the problem of senior officials joining the business sector after retirement is growing more and more acute. We must be on guard against this state of affairs and we must never overlook its significance.

But Joseph WONG is doing exactly the opposite. He is flinging wide the gate to these retired senior officials and he does not even think twice before giving them the green light. He is waiving the prohibition imposed on retired senior officials joining the private sector. He is allowing applications to become a mere formality and the sanitization period a nonentity. Such a sanitization period should be applied for at least six months, but the sanitization period for Elaine CHUNG is less than five months, that for LAM Kwong-yu is four months, that for Paul LEUNG Sai-wah is two months, CHING Kwok-hoo is one month, and CHAU Foo-cheong is even less than one week. For TSANG Yam-pui, he got a special favour from Joseph WONG and accumulated more than one year of leave and so an absurd and embarrassing thing happened and, that is, TSANG Yam-pui is serving two masters at the same time and he is a Siamese twin of an official and a businessman. He gets pay from the Government and the business sector at the same time. At a time when top officials are still civil servants, they work for the giant consortia. They get lucrative pay from the Government and from the big business at the same time. It is like once they walk out of the Government into this dazzling world they are eagerly courted by the large consortia.

Why are the giant consortia dying to get these top officials? The paper from the Government on this tells the tale. The original purpose of imposing this sanitization period is to prevent these top officials from taking part or formulating policies which may be advantageous to the prospective employers while they are still civil servants. Such a period also aims to prevent these top officials from using information and experience obtained from the Government to the benefit of their prospective employers. But Joseph WONG has been constantly relaxing the restrictions on the sanitization period and leave so that this line of demarcation between the Government and business is blurred. As such, the official plays a double role as a businessman and the two become inseparable and indistinguishable, resulting in collusion between the Government and business. The retirement system for top officials is reduced to a piece of empty paper and it is on the verge of collapse.

Being an accountable official, Joseph WONG is obliged to enforce this retirement system for top officials strictly. But the fact is Joseph WONG has not done his gate-keeping duty well. He connives and condones. He pretends that nothing has happened. He grants every wish to every retiring official and he never lets them down. And so this bottomline for post-retirement employment of top officials is constantly lifted and pushed backwards. This

culminated in the Elaine CHUNG saga. The ineptitude and dereliction of duty on the part of Joseph WONG are therefore exposed.

Elaine CHUNG used to be the Deputy Director of Housing and before her final leave and sanitization period were over, she applied to work in the Hong Kong Ferry Limited (HKF). As reported by Elaine CHUNG herself, the scope of her work includes tourism, hotels and cultural and leisure activities. An approval was obtained from Joseph WONG in less than one month.

The first blunder made by Joseph WONG is that he only acted on the application tendered by Elaine CHUNG. He did not conduct any investigation as appropriate. He made a rash decision and gave her an approval to work in HKF. Had he been a little bit more conscientious in his duty and browsed the website of HKF, he would have found easily that the main business of HKF does not lie in ferry services and tourism but in real estate development and investment. The major source of revenue of HKF is from the property development project of Metro Harbour View. Has Joseph WONG bothered to check? Why can a Deputy Director of Housing join a real estate company and give rise to such an obvious conflict of interest?

The second blunder which Joseph WONG made is that he did nothing to monitor and stop Elaine CHUNG from taking part in the publicity and tendering work of the Henderson Land Development Company Limited (Henderson Land) with respect to the West Kowloon Cultural District (WKCD) project. When Elaine CHUNG made her frequent appearances in the press conferences held by Henderson Land selling the company's WKCD proposal and the museum plan, and when Members of this Council constantly queried the role of Elaine CHUNG and her conflict of interest, Joseph WONG did not address the fact that the WKCD is a cultural cum land development project. He was so foolish as to know nothing about the fact that Elaine CHUNG had moved her office from HKF to Henderson Land. In the Legislative Council, Joseph WONG still said that there was no conflict of interest in respect of Elaine CHUNG and he was shirking the responsibility of his errors in judgement and not exercising due care in monitoring.

The feeble and flimsy excuse offered by Joseph WONG and his unabashed attempt to protect his former colleague only serve to arouse public indignation. It was only when Mr KWONG Chi-kin and I initiated a campaign among Members to jointly sign a letter requiring Joseph WONG's attendance before this Council to answer our questions that he in his typically slow manner stated his

"Six Don'ts" — forbidding Elaine CHUNG to take part in any activities related to the publicity, briefing, consultation, bidding, and so on, of the WKCD project. This move is tantamount to an admission of his former inadequacies and mistakes and it is a confession that there is conflict of interest by Elaine CHUNG.

The Elaine CHUNG affair happened because of some long-standing reasons. Joseph WONG has not done his gate-keeping duty properly and he graciously granted the wish of every retiring official. As a result, there is no discipline in matters regarding the retirement of top officials. Applications for post-retirement employment become a mere formality. The sanitization period becomes shorter and shorter — even as short as one week. But the final leave of these top officials is getting longer and longer, to the extent of more than one year. This is why so many top officials can work in private-sector organizations when their leave is not yet all taken and while they are technically civil servants, thus getting a double pay. This is simply absurd. It is because Joseph WONG made the wrong judgement, being negligent and slack in his supervision that Elaine CHUNG could join a real estate company in the name of promoting cultural activities. She engaged in bidding work on the pretext of carrying out publicity work. She even moved her office from HKF to Henderson Land. All these were done while Joseph WONG was kept in the dark. He woke up from his dreams when the matter was exposed. This is sheer folly and he can never claim innocence. He must offer his apology to pacify the public.

The Elaine CHUNG affair exposed the torn and tattered retirement system for high officials. The inadequacies must be identified and the loopholes plugged. The greatest causes of public discontent lie in the following:

- (1) The sanitization period of six months is too short and this can offer no effective means to prevent retired officials from making use of the information, experience and social links gained and established during their service in the Government to bring the greatest advantages to their prospective employers. I therefore propose that the sanitization period be extended. For officials retiring at the rank of Administrative Officer Staff Grade A1 or above, that is, those belonging to the rank of Permanent Secretaries, the sanitization period should be extended to two years. For the other directorate officers, the sanitization period should be at least one year as the Government has suggested.

As the permanent secretaries are the highest officer in charge of a department and they are close partners to the principal officials under the accountability system, they can access top secrets in the department and the information, experience and social links they have are of tremendous commercial value. Therefore, their applications for post-retirement employment must be strictly vetted to avoid causing any allegation of collusion between business and the Government and transfer of benefits.

- (2) As these top officials are still civil servants when they are on leave, how can they be allowed to be employed in a business organization while still being civil servants and hence put on a double payroll? Such a special privilege must be stopped. All senior officials must be prohibited from taking up employment in the private sector while they are on final leave and put on a double payroll.
- (3) After the reunification, as the economies of the Mainland, Hong Kong and Macao gradually merge into one, the interests of these giant consortia may stretch across geographical boundaries and these restrictions must not be applied to Hong Kong only. The Government must extend the geographical areas applicable to the regulation of business or employment locations to cover the Mainland and Macao in addition to Hong Kong. This falls within the proposals put forward by the Government and it is aimed at preventing cross-boundary transfer of benefits.
- (4) Facts have shown that the Advisory Committee on Post-retirement Employment is no more than a showcase and a rubber stamp. The reliance on an application in writing and a declaration of interest from the applicant are not sufficient in monitoring the post-retirement employment of senior officials. These loopholes must be plugged to prevent any indiscriminate granting of approval.
- (5) The Government must cease to put up the excuse of privacy and refuse to disclose information concerning the approval given to retired senior officials for employment in the private sector. I wish to make it clear that approval has to be sought from the Government. If a retiring civil servant leaves the service after the

sanitization period, there is of course no need to announce this to the public. The Government cannot put up an excuse saying that no comments will be made on individual cases and hence dodge monitoring by the public and this Council.

- (6) The Government must monitor the changes in the employment of the retired senior officials employed to the private sector so as to avoid any changes in the nature of their work and causing any conflict of interest.

The policy governing the retirement of senior officials is not only fraught with problems and it is reduced to almost a nonentity because it has been enforced loosely by Joseph WONG who abuses his discretionary power and grants approvals indiscriminately. This gives the public an impression that collusion between business and the Government is encouraged and the transfer of benefits is facilitated. So despite the stringency of the rules and regulations, there must be someone to enforce them and hold himself accountable. Only by doing so can discipline be re-established on this issue of the retirement of senior officials and that public queries about officials coming to the defence of the misconduct of other officials be dispelled.

Madam President, the power structure in the SAR is so constituted that it is executive-led; above the senior officials, there are principal officials under the accountability system and the Chief Executive as well. The existing restrictions on the principal officials after their departure from service are even looser than those on directorate officers. Though there is a Committee on Post-departure Employment under the accountability system, it is a classical example of a toothless tiger. Even when officials are employed by a private-sector organization after their departure from service and even when there is clear conflict of interest, what the Committee can do is to make a public recommendation, that is, to advise the official concerned from taking up a certain job. The Committee has no powers to prohibit the official from taking up such employment. Moreover, as reported, this so-called Post-departure Employment Committee is not yet set up after the departures of people like Antony LEUNG, Regina IP and YEOH Eng-kiong. There is nothing as yet on how monitoring and recommendations are to be carried out and it is actually a joke. Just imagine now that three years have passed since the establishment of the accountability system and the principal officials are about to complete their term of office, what is being done to prevent collusion between business and the

Government in the yet higher echelons and how can more serious conflicts of interest be pre-empted? Should the system not be improved?

Madam President, rules and regulations governing the retirement of senior officials are not followed despite their existence, rules and regulations governing the departure of accountable officials are difficult to enforce, and there are no rules and regulations governing the departure of the Chief Executive at all. This is because the Chief Executive is not a civil servant and the incumbent is not subject to regulation imposed by the provisions of the Prevention of Bribery Ordinance on government and public officers. Therefore, the Chief Executive is over and above the law. Now it has been seven years after the reunification and the Chief Executive has completed his first term and he is now in his second term, but the law governing the departure of the Chief Executive is not yet in place and it is still a castle in the air. Why can the Chief Executive enjoy such a prerogative that he is not subject to any regulation? Why is the law governing the Chief Executive never enacted and why does it never come out? This is the greatest mockery of a society with all its claims about the rule of law. It is also the greatest laughing stock for a civilized society.

Integrity and righteousness are the core values of a government. They must never be reduced to empty talks but must be materialized in the form of laws and regulations. The current laws and regulations governing the post-retirement employment of senior officials in private-sector organizations are fraught with inadequacies and loopholes, loosely enforced and displaying a dereliction of duty on the part of the official in charge. These are three major evils. The motion in this Council today calls for the eradication of these three major evils to realize the policy direction proposed by TUNG Chee-hwa, that is, to act resolutely against collusion between business and the Government and eliminate any transfer of benefits.

With these remarks, Madam President, I beg to move.

Mr CHEUNG Man-kwong moved the following motion: (Translation)

"That, since the approval granted to Ms Elaine CHUNG Lai-kwok, former Deputy Director of Housing, for her post-retirement employment with a private-sector organization has aroused severe criticisms from the community and called into question the existence of a conflict of interest between her present job and her previous service in the Government, in

order to restore the public's confidence in the retirement system of senior officials, this Council urges the Government to immediately amend, monitor the implementation of and strictly enforce the policies and measures governing the post-retirement employment of civil servants with private-sector organizations, which should include:

- (a) extending the present period of six months to two years the sanitization period for officers retiring at the rank of Administrative Officer Staff Grade A1 or above, and to one year for other directorate officers;
- (b) prohibiting directorate officers from taking up employment with private-sector organizations during their pre-retirement leave to guard against double pay;
- (c) expanding the regulation of business or employment locations to cover mainland China and the Macao Special Administrative Region, in addition to Hong Kong;
- (d) identifying loopholes in the work of the Advisory Committee on Post-retirement Employment to prevent the Committee from becoming a rubber stamp which approves applications indiscriminately;
- (e) making public information on the approvals granted by the Government for civil servants at directorate level to take up post-retirement employment with private-sector organizations; and
- (f) closely monitoring the changes in the nature of post-retirement employment taken up by directorate officers with private-sector organizations after such approvals have been granted so as to ensure that there is no conflict of interest between their post-retirement employment and their previous service in the Government;

Furthermore, this Council also calls upon Mr Joseph WONG Wing-ping, Secretary for the Civil Service, to apologize for the mishandling of the incident of Ms Elaine CHUNG Lai-kok, and urges the Administration to amend the relevant policies by exercising appropriate and forceful

regulation over the post-departure or post-retirement employment of the Chief Executive and the principal officials under the accountability system with private-sector organizations, so as to achieve the policy direction of 'resolutely against collusion between business and the Government to eliminate any transfer of benefits' announced in the Chief Executive's 2005 Policy Address, thereby ensuring that upon the departure of the Chief Executive, principal officials and directorate officers, they do not enter into any business or take up any employment which may constitute a conflict of interest with their previous service in the Government or adversely affect the image of the Government."

PRESIDENT (in Cantonese): I now propose the following question to you and that is: That the motion moved by Mr CHEUNG Man-kwong be passed.

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

I now call upon Mr TAM Yiu-chung to speak and move his amendment.

MR TAM YIU-CHUNG (in Cantonese): Madam President, an ancient Chinese classic called *Cai Gen Tan* has a line to the following effect: Never come before others in matters of favours and advantages while never lag behind others in matters of virtuous endeavours. This is exactly what the people of Hong Kong expect from senior civil servants. Recently, public concern is again aroused over incidents involving the post-retirement employment of senior officials in private-sector organizations. This shows that the public expects highly of senior officials in terms of their conduct. As the Chief Executive said in the policy address, there were "significant changes in social and political behaviour, the media environment, as well as demands on, and expectations of, the Government on the part of the public at large". As for the issue of senior civil servants engaging in employment after they have retired, the public shares two concerns. First, conflicts of interest. Will the retired officer make use of the information obtained and social links established while in service to assist his new employer in gaining any advantage? Second, favouritism. Will the officer, while serving in the Government, show any favour to any of these giant

consortia to pave the way for his or her new job after retirement? These misgivings will affect public confidence in the senior officials and in turn also affect the credibility of the Government. Therefore, the Government must face this problem squarely and take positive steps to improve the system so that senior officials can be prevented from taking up any employment after retirement which would lead to any conflict of interest in relation to their former public office.

Ever since 1997, this Council has on many occasions discussed the issue of the post-retirement employment of senior officials. In last May the Public Service Panel of this Council held a special meeting to discuss in detail the growing trend of senior officials joining the private sector shortly after their retirement or during their final leave. The meeting urged the Government to expeditiously conduct review of the vetting and approval mechanism in order to prevent any damage to the image of the Government. The Civil Service Bureau undertook to carry out such a review. However, a report of the review will only be completed and released this March. It is regrettable to see the pace of government action lag behind public demands.

Recently, the Secretary for the Civil Service said on many occasions that the Government planned to lengthen the sanitization period governing the post-retirement employment of civil servants from six months to one year, to enhance the transparency of the mechanism and to disclose on a regular basis information about the employment undertaken by retired officers in private-sector organizations. While this tightening direction is correct, there still remains a distance away from public expectations in terms of the yardstick adopted.

Yesterday the Senior Non-expatriate Officers Association held a press conference to oppose this tightening of restrictions on retirement. We understand their worries but we cannot overlook the fact that in the eyes of the public, the remuneration and retirement protection enjoyed by the senior civil servants in Hong Kong are among the best in the world. Their attractive pension payments are sufficient to maintain their existing standard of living. There would be no need for them to join the private sector in such a hurry right after they have retired. Even if they do not involve in any actual transfer of benefits, they would be suspected of causing conflicts of interest. At this time when society is seriously divided and different social classes are in confrontation, the Government must not ignore the misgivings of the public about certain

retired senior officials who have joined private-sector organizations and dismiss them as isolated cases. The entire system must be tightened up full scale. A clear-cut and uniform regulatory system must be built. The use of discretionary powers in vetting applications must be reduced. Only by doing so that the Government can maintain its credibility and image of impartiality in the eyes of the public.

The motion moved by Mr CHEUNG Man-kwong today shares a roughly similar direction with that of the DAB. However, there are some problems with some of the details. Therefore, I would move my amendment with three aspects in mind. These are: First, to extend the present sanitization period to at least one year across the board; second, to delete the proposal in the original motion on expanding the regulation of business or employment locations to cover mainland China and Macao in addition to Hong Kong; and third, the DAB is of the view that a review of the handling of the Elaine CHUNG case should be completed and the report released as soon as possible, persons to be held accountable should be identified and penalties determined.

With respect to the first item in the amendment, the original motion proposes that the sanitization period for officers retiring at the rank of Administrative Officer Staff Grade A1 or above be extended to two years. Under the existing Pensions Ordinance, civil servants who wish to take up employment within two years of retirement must lodge an application with the Government. If not, pension payments may be suspended. This provision empowers retired civil servants to apply for taking up of employment within two years of retirement. However, if all retired civil servants are universally barred from taking up employment in the private sector for a two-year period after retirement, that would deprive retired civil servants of their statutory right to employment completely and in a direct manner. This is not justified on legal grounds. If this sanitization period is revised to at least one year and strict vetting would be applied to applications from officers retiring at the rank of Administrative Officer Staff Grade A1 or above and a sanitization period of at least one year or even two years is imposed, with the final decision to be made by the Advisory Committee on Post-retirement Employment, then the possible conflicts in law can be avoided while the restrictions can be tightened.

For part (c) of the original motion on expanding the regulation of business or employment locations, though the DAB is of the view that the regulation on conflicts of interest should not be limited by any geographical bounds, as the proposal in the original motion implies changes to the existing conditions of

service of civil servants and legal disputes in this respect are not yet resolved, so the proposed restriction should not be imposed at this stage.

The focus of the regulation of post-retirement employment of civil servants should be placed on avoiding any conflict of interest between the employment a retired officer may wish to take up and his former position in the Government. Such a focus does not lie in the location of such prospective employment.

Madam President, I hope very much that Members will support my amendment and that they will make their views known on the policy in this regard. Thank you, Madam President.

Mr TAM Yiu-chung moved the following motion: (Translation)

"To delete "to Ms Elaine CHUNG Lai-kwok, former Deputy Director of Housing, for her" after "That, since the approval granted" and substitute with "in recent years to a number of civil servants at directorate level for their"; to delete "a" after "post-retirement employment with"; to delete "organization" after "private-sector" and substitute with "organizations"; to delete "severe criticisms from the community and called into question the existence of a conflict of interest between her present job and her previous service in the Government" after "has aroused" and substitute with "public concern"; to delete "restore the public's confidence in the retirement system of senior officials" after "in order to" and substitute with "fortify the prevention of civil servants at directorate level from taking up post-retirement employment that involves conflicts of interests with their previous service in the Government"; to delete "amend" after "the Government to immediately" and substitute with "tighten up"; to add "at directorate level" after "post-retirement employment of civil servants"; to delete "extending the present period of six months to two years the" after "(a)" and substitute with "imposing across the board a"; to delete "for officers retiring at the rank of Administrative Officer Staff Grade A1 or above, and to one year for other" after "sanitization period" and substitute with "of at least one year for"; to delete "(c) expanding the regulation of business or employment locations to cover mainland China and the Macao Special Administrative Region, in addition to Hong Kong"; to delete the original "(d)" and substitute with "(c)"; to delete the original "(e)" and substitute with "(d)"; to delete the original "(f)" and

substitute with "(e)"; to delete "Mr Joseph WONG Wing-ping, Secretary for the Civil Service, to apologize for the mishandling of" after "this Council also calls upon" and substitute with "the Civil Service Bureau to expeditiously complete the investigation into"; to add "and publish the relevant report" after "the incident of Ms Elaine CHUNG Lai-kok"; and to delete "amend" after "urges the Administration to" and substitute with "strictly enforce".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr TAM Yiu-chung to Mr CHEUNG Man-kwong's motion, be passed.

MR WONG KWOK-HING (in Cantonese): Madam President, one of the aims behind the establishment of a pension system in the Civil Service is to recognize the contribution made by civil servants to society. But a more profound aim is to nurture a clean and honest Civil Service with an attractive remuneration, hoping that the high-ranking public officers can enjoy a lucrative pay while being free from political interference. It is hoped that they can remain politically neutral, not tempted and corrupted by money, and that they will not do anything detrimental to public interest while in office and that the efficiency and cleanliness of the Government can be assured. The advantages of a pension system are that the civil servants can lead a comfortable retirement life and that public interest can be safeguarded.

However, since the alleged lobbying activities of Elaine CHUNG, former Deputy Director of Housing in the West Kowloon Cultural District project and TSANG Yam-pui, former Commissioner of Police, assumed the post of executive director in a private-sector company during his compensatory leave have caught public attention, the public is beginning to be concerned about the regulation of the post-retirement employment of senior officials, that it is too lax and loopholes may exist.

In Hong Kong, the grassroots have only a meagre income and they cannot possibly have enormous savings. For them, retirement would mean that they will have difficulty in leading a life. That is why they will continue working after they have retired or they may resort to getting Comprehensive Social Security Assistance (CSSA). They will have to work for as long as they live, and retirement is out of the question.

But senior officials will get a lucrative pension after their retirement and that is enviable. It is heard that TSANG Yam-pui, former Commissioner of Police, gets a handsome pension of \$180,000 a month, equal to three years' salary for a security guard.

Under the existing civil service retirement policy, a retired civil servant who wishes to take up employment two or three years after his retirement must obtain prior approval. The first six months after retirement is a prohibition period and as a general rule, no retired civil servant is allowed to take up any paid employment.

As a matter of fact, judging from the attractive pension which a civil servant receives upon retirement, even if he or she does not work for two or three years, his or her quality of life, or that of their family members will not be affected at all. If these retired senior officials want to find a new job, they do not have to hurry and they may wait for two or three years.

The Civil Service Bureau points out that the policy on the post-retirement employment of civil servants has been in force for many years and it is proven. However, it must be noted that this policy has to keep abreast with the rapid changes and developments of the times. The vetting and approval mechanism, in particular, must be stringently enforced to avoid arousing suspicions.

Mr Joseph WONG, Secretary for the Civil Service, said that the length of the sanitization period is of secondary importance, for what is more important is whether or not any conflict of interest is involved. I dare not say that this view is incorrect, but such a remark shows that the speaker lacks the wisdom to avoid arousing suspicions.

Madam President, we must ask a question. Why are the giant consortia so interested in recruiting retired senior officials by every possible means? I think this is due to the fact that they think retired senior officials have four residual values: First, they know the management secrets in the Government; second, their interpersonal relationship in the Civil Service, as many incumbent senior officials may be their protégés; third, they have an extensive social network, for they may have got some recommendation from some celebrities as a kind of reward or encouragement; and fourth, they may have personal clout.

In view of the above, strict monitoring by the Government on the post-retirement employment of senior officials in the private sector will serve to prevent the above four residual values from being traded in exchange for money offered by the giant consortia. This will undermine fair competition which underpins our business environment and damage public interest. Hence, senior officials who already enjoy an attractive pay package must exercise stringent self-discipline, and attach great importance to the commitment and responsibilities to society. As a gatekeeper the Civil Service Bureau must act in defence of the image of the Government and in the interest of the public. The Bureau must discharge its gate-keeping duty strictly, for if not, it would be a dereliction of duty.

Lastly, we should not expand the gravity of this issue indefinitely and lash out at the entire Civil Service. I am convinced that most retired civil servants are clean and uncorrupted, they exercise strict self-discipline and are committed to serving our society. Many civil servants while in employment and in retirement will engage in social services and voluntary work selflessly. Therefore, I have taken the initiative to propose in the Public Service Panel that a commendation system be set up. I hope the Civil Service Bureau can consider this and refer the proposal to the Panel for discussion. This system will serve to commend retired civil servants who have rendered good service to the community, hence giving a boost to positive acts while discouraging improper conduct. Ultimately it will rebuild a clean image for the Civil Service as servants of the people, rectify undesirable trends while also enhance the positive image of Hong Kong in the eyes of the world.

Madam President, I so submit.

MR HOWARD YOUNG (in Cantonese): Madam President, in recent years a number of senior officials were given approval to join private-sector organizations shortly after their retirement. This has aroused much public concern. The Liberal Party is of the view that there is really a need to tighten up and strictly enforce policies and measures on the post-retirement employment of civil servants.

Now directorate officers who wish to go into business or take up employment within two to three years after their retirement must seek the prior approval of the Advisory Committee on Post-retirement Employment. As a

general rule, a six-month sanitization period will be imposed. In many foreign countries, this sanitization period imposed on retired civil servants wishing to join private-sector organizations ranges from one year to five years. Obviously, the sanitization period as practised in Hong Kong is far too short.

Joseph WONG, Secretary for the Civil Service, said recently that the Government was considering lengthening the sanitization period for retired civil servants from six months now to one year. The Liberal Party agrees to this in principle because this will have the benefit of sanitizing retired senior officials, especially those who have taken part in the decision-making process, before they join a private-sector organization, avoid causing conflict of interest and serve to boost public confidence. However, for those civil servants from the professional grades and who have nothing to do with policy-making matters, such as architects, engineers, accountants, and so on, I think that the sanitization period applicable to them should not be lengthened. They need only observe the present requirement of undergoing a sanitization period of six months before they can take up employment under the condition that no conflict of interest is caused. They can then continue to give play to their professional expertise. Since the average life expectancy of Hong Kong people is 74 years for man and 80 years for woman, it would be unreasonable to require someone to retire at the age of 55 or 60 or limit their employment to voluntary work instead of permitting the person to pursue a second career.

With respect to the incident involving TSANG Yam-pui, former Commissioner of Police, though it was only after the six-month sanitization period was over that he joined a private-sector organization, the fact that he had accrued more than one year of leave led to the problem of double pay. My question is: When should the sanitization period start? The existing practice is to start from the day the retiree ceases active service. The Liberal Party is of the view that in order to be fair, the sanitization period should start from the date the retiree formally leaves the Civil Service, that is, when the leave is exhausted. This would avoid the problem of double pay. Moreover, the Government must not allow senior officials to accumulate too many leave days and the requirement which forbids the accumulation of more than one year of leave must be strictly enforced. As a matter of fact, private-sector organizations do not permit the accumulation of one year of leave days. For example, if an employee has 30 days of annual leave, the employer will at most permit that employees to

accumulate 30 days of leave. There will never be the case as with civil servants that one year of leave days can be accumulated.

There are also many inadequacies with the present system. The first is the vetting and approval system. Often vetting is very lenient and civil servants may join a private-sector organization immediately upon retirement. This gives people an impression that officials are covering up each other's shortcomings, and so vetting and approval must be done strictly.

Second, transparency is low. We agree that the basic information concerning the post-retirement employment of senior officials should be made public and that consideration should be given to expanding the regulation of business or employment locations to include places outside Hong Kong, and so on. However, we do not think an across-the-board approach should be taken with respect to the latter. It is because with respect to potential conflicts of interest, the possibilities for such are much lower in places outside Hong Kong than in Hong Kong itself.

As for the call raised in the original motion that Joseph WONG, Secretary for the Civil Service, should apologize for the mishandling of the Elaine CHUNG incident, the Liberal Party is of the view that as the matter is currently under investigation, we should wait until this is over and things are made clear before passing any judgement. At this stage, it would be improper to make any rash comments.

Lastly, I would like to talk about the regulation of post-departure employment of the Chief Executive and principal officials under the accountability system. The Liberal Party thinks that proper and effective monitoring is necessary to prevent any major conflicts of interest, but this should not be overly stringent. In the case of the Chief Executive, for example, he would value his own reputation and it is unlikely that he will make a rash decision to work for a private-sector organization.

In addition, principal officials under the accountability system are unlike civil servants in that they do not enjoy generous retirement protection. We cannot assume that future principal officials are all very rich people and so stringent restrictions imposed on their post-departure employment may deter many able persons from serving in the Government. This will not help the Government in governance.

In the United States, many politically appointed top officials come from the business sector and once they have left the government, they may return to the business sector after a short time. An example is Robert RUBIN. He used to work in an investment bank and in the CLINTON Administration he assumed the post of Secretary of the Treasury. Soon after he had left office in 1999, he joined the top management of the Citigroup. In the case of the United States, the system there places an emphasis not so much on the length of the sanitization period governing the post-departure employment of top officials but on imposing restrictions to prevent conflicts of interest. In other words, the Government will encourage retired senior officials to seek advice from officials in charge of ethical matters with respect to projects they have in their hands in order to avoid any conflict of interest. This is a practice from which we can draw reference.

Madam President, I so submit.

MS MARGARET NG (in Cantonese): Madam President, I speak in support of the motion moved by Mr CHEUNG Man-kwong and the amendment to be moved later by Mr TAM Yiu-chung.

Madam President, the speeches made by many Honourable colleagues today have actually said the things we want to say in the first place. Now I would like to highlight point (b) in Mr CHEUNG Man-kwong's motion, that is, on prohibiting directorate officers from taking up employment with private-sector organizations during their final leave. However, I would not talk specifically about double pay, but about double identity.

Madam President, on the 10th of last month I published an article in *Ming Pao* commenting on the controversy centred around the taking up of employment by TSANG Yam-pui, former Commissioner of Police, in a private-sector organization NWS Holdings Limited before he left the Civil Service formally. The question which many people ask is whether or not this is double benefit. On the one hand he gets paid by a private-sector organization some \$200,000 a month while on the other, he still gets a salary of \$180,000 from the Government. In fact, the problem does not lie in double benefit but in double identity. Madam President, we all know that one cannot serve two masters. As long as he is still a civil servant, he cannot serve a private master. The reason is clear and simple. As long as he gets paid by the Government, he is still a civil servant. It would be another matter if he has been paid the entire

pension at the time of his retirement and has formally left the Civil Service. But if he continues to get government pay, he is still a civil servant and he cannot take up another employment. This has nothing to do with whether or not the person concerned is formally discharging his duties. This same rule should apply to all regardless of rank and position. If the Commissioner of Police can do it, can civil servants of lower ranks do the same? For a clerk in the ordinary ranks, he cannot work in the Government during the day and work in another company in the evening when he is off government duty. If this is the case, he is doing outside work and moonlighting. Generally speaking, civil servants cannot take up another employment before they retire or during their final leave. This applies to the former Commissioner of Police. If the former Commissioner of Police is allowed to do this, then all the policemen, all the staff in the Leisure and Cultural Services Department and the Lands Department, and so on, should be allowed to engage in paid outside work.

After my article had been published, Secretary Joseph WONG wrote a letter in response. Despite its eloquence, the letter with its numerous paragraphs is not to the point at all. All it says from beginning to end is that a review will be conducted. On the question of paid outside work of civil servants during leave, Secretary Joseph WONG only says the following in effect: "Existing policy permits retired civil servants to commence work during their final leave subject to propriety of the employment in question". As to what in fact is "propriety", Secretary Joseph WONG fell short of explaining it at all. The question of propriety can only be gauged from the perspective of public interest or humanitarian grounds. For example, a retired senior official wishes to take up some international duties on behalf of Hong Kong, then he or she must assume office as soon as possible. These are special circumstances and public interest considerations are involved. But what are the circumstances related to TSANG Yam-pui? What is so special about them? Is he doing that for himself or in public interest? I have made an enquiry on this but got no reply at all. In the last paragraph of his letter, Secretary Joseph WONG seems to point out that as he has already said that a review would be conducted, and if I am so unhappy about it, the topic of employment during final leave will be included in the review as well. Madam President, it goes without saying that a review has to be conducted, but before that, he should first give a reply on why the circumstances surrounding TSANG Yam-pui are proper and based upon what standards they can be considered proper. If these standards are applicable to

the former Commissioner of Police, they can be applied to any single civil servant. The Government must treat everyone equal. Madam President, I am totally dissatisfied with the letter from Secretary Joseph WONG.

Madam President, it is a fact that a stable civil service framework is of vital importance to Hong Kong. On the one hand, the reputation of the civil servants is important, and on the other, civil servants should be given a clear idea as to what lies ahead of them. What should be their salary structure before retirement? How should appraisals be undertaken for promotion and other purposes? How should performance appraisals be undertaken? What should be done about post-retirement employment? All these must be clearly defined. Mr Howard YOUNG said earlier that the times now are such that no one can say that they will stop working after they have retired. Against this background, we need a clear set of principles and standards governing the post-retirement employment of civil servants. I think that the points raised by the two Members today can serve as a good start. Therefore, I would support the original motion and the amendment. Thank you, Madam President.

MS LI FUNG-YING (in Cantonese): Madam President, in recent years many directorate officers were permitted to join private-sector organizations after their retirement. This caused great repercussions in society. When these are coupled with allegations of collusion between business and the Government and transfers of benefit, an alarm has sounded for the clean image of the civil service team. This must not be overlooked. If integrity is lost in the Civil Service and if public confidence in the integrity of the Civil Service is lost, this would damage the image of the civil service team and Hong Kong society as a whole.

Before the reunification, the senior officials in the bureaucracy as practised in Hong Kong were mostly officials sent over here from Britain. They enjoyed a lucrative salary while in office and when they retired, they also had an attractive pension. After the reunification, the SAR Government has been following this system generally. But there is one fundamental difference for before the reunification, senior officials from Britain who came to Hong Kong would in most cases return home and sever all ties with Hong Kong when

they retire. After the reunification, the senior officials in Hong Kong still maintain an intricate relationship with the community after they have retired. As a result, certain problems which used to go unnoticed or not contentious have cropped up because the situation has changed. If these are not properly addressed, they would become major problems.

In my opinion, from the reunification to the present day, the SAR Government has not properly addressed the problems related to the retirement of directorate officers. Currently there is no lack of mechanisms governing the post-retirement employment of directorate officers. For example, officers retiring at the rank of Administrative Officer Staff Grade A1 are required to seek prior permission for taking up employment within three years from their retirement. Another example is the six-month sanitization period imposed on post-retirement employment of directorate officers. But why do problems still emerge so frequently? Directorate civil servants in the count-down to retirement can expect to have an opening reserved for them in the private sector. They may even go to work there during their final leave. A former Commissioner of Police can take up a security job. A Director of Housing can join the property sector after retirement. No attempt is made among these directorate civil servants to avoid arousing suspicions. What happens is that these cases of senior officials joining private-sector organizations soon after their retirement are constantly on the rise. This is a major reason why the Government has lost so much of its prestige and credibility.

In the debate on the policy address last week, I put forward the idea that directorate civil servants should consider their career in the Civil Service a lifelong career. This is the best way to ensure public confidence in the integrity and cleanliness of the Civil Service. About the point raised by the Secretary for the Civil Service, that a review of the policy should include a concern for the right to post-retirement employment of the civil servants, I have reservations. I would like to emphasize here that it is not that I do not care about the right to post-retirement employment of civil servants. I have no objection to such a right of the non-directorate civil servants. As mentioned in the policy agenda, the Government is undertaking a review of the policy on the post-retirement employment of civil servants to ensure that such a policy will maintain public confidence in the integrity and cleanliness of the Civil Service. I think that this view is not correct and the review currently being undertaken based on this view

is therefore not proper. The widespread concern expressed for the post-retirement employment of civil servants is not about civil servants in general but about the 1 000-odd directorate officers who hold very sensitive positions. As put in the policy agenda, the problem has not been given a proper focus. It is not tackled. It has been watered down as the entire team of 160 000-plus civil servants are dragged into it.

I think that the review should take into account the unique situation of Hong Kong, that despite it being a tiny place, commercial activities here extend to all corners of the world and economic ties with the Mainland are closer than ever. It is only through strict regulation of the post-retirement employment of directorate officers that public confidence in the Civil Service can be ensured. Such a review should have a direction and, that is, the career of directorate officers should be seen as a lifelong career. The review should also look into the aims of establishing the pension system and whether or not the existing pension system has achieved such aims and what is the relationship between this direction and the provisions in the Basic Law on civil servants.

I agree that directorate officers are cream of society and it would be an unfortunate thing if they cannot continue to make their contribution to society after retirement. However, directorate officers who want to serve the community after retirement can choose to do so without necessarily joining a private-sector organization. A more important consideration is how we weigh the impact of this so-called waste of talents against building public confidence in the integrity and cleanliness of the Civil Service.

Madam President, both the original motion and the amendment do not accord fully with my view on this subject. Having said that, I would not oppose any suggestion to boost the integrity and cleanliness of the Civil Service. Apart from the post-retirement employment of civil servants, the post-departure employment of the Chief Executive and the principal officials under the accountability system should also be considered. Though the latter issue has not yet led to extensive discussions in society, it does not mean that the issue does not exist. If it is not addressed soon, the damage to be done to Hong Kong would be huge if anything goes wrong.

Madam President, I so submit.

MISS TAM HEUNG-MAN (in Cantonese): Madam President, the senior officials of the SAR Government are undoubtedly the cream of society. When they have left the Civil Service, if they can continue to render their service to society, it would of course be a good thing and beneficial to the development of our society. However, when some of these directorate officers who have left the Civil Service join private-sector organizations, they would only fuel public suspicions. The recent incident of Elaine CHUNG has once again aroused strong public concern for the post-retirement employment of civil servants.

Elaine CHUNG, former Deputy Director of Housing, has joined the Hong Kong Ferry (Holdings) Company Limited (HKF) after retirement. But Ms CHUNG has not been doing anything for HKF. She becomes a consultant to Henderson Land Development Company Limited (Henderson Land), the parent company of HKF, in its West Kowloon Cultural District (WKCD) project. Ostensibly, her work would include the field of cultural activities, but in actual fact it is not sure whether or not she is involved in the real estate projects which she had come across in her office before retirement. It is likely that the issue of whether or not any conflict of interest is involved would be another case where truth may never be known.

Apart from this Elaine CHUNG saga which has been in the limelight recently, there are still quite a number of cases where public concern is aroused for senior officials who have joined private-sector organizations upon retirement. These include Mr TSANG Yam-pui, former Commissioner of Police, who went to work in the New World group right after his retirement. As a former Commissioner of Police, he has of course been privy to a lot of confidential and sensitive information. The fact that he joins the private sector at such a short time after his retirement would naturally induce thoughts of conflict of interest and transfer of benefit in the mind of many people.

When the public expresses concern for retired senior officials joining the private sector, it does not mean that the public wants to deter these retired senior officials from making good use of their experience and abilities to make money. What the public worries about is that these retired officials would make use of the social links and influence they have formed during their service in the Government to gain special advantages, hence affecting equity in the market and public interest.

Madam President, when civil servants retire, they are entitled to a lump sum and monthly payment of pension. Therefore, there would not be any need for them to work to make a living. If these retired civil servants wish to serve the community, they may do voluntary work or serve in the advisory bodies, instead of being employed with a private-sector organization. If they insist on taking up employment with private-sector organizations, then they must come under a stringent and comprehensive vetting and approval mechanism.

Current monitoring of the post-retirement employment of civil servants with private-sector organizations is not stringent enough. For if not, there will be no incidents involving retired senior officials like Elaine CHUNG, TSANG Yam-pui, and so on. What the authorities should do, therefore, is to go in the direction of "identifying inadequacies" as taken by the Chief Executive and conduct a full-scale review.

At present, the sanitization period for retired civil servants who wish to work in private-sector organizations is only six months. This is obviously not long enough. The original purpose of a sanitization period is to minimize the improper advantage which a retired civil servant may bring to his private-sector employer through the confidential or sensitive information collected by virtue of his former service. However, the existing length of a sanitization period is not effective at all. For a government policy to proceed from its initial proposal, consultation, revision to its final implementation, it would need three to four years, and so six months would only see it in the consultation stage and not much progress will have been made. If the sanitization period is only six months, the information in the hands of the retired officials would still be the latest confidential information in the Government, then will this six-month control period not be useless? That is why Mr CHEUNG Man-kwong's proposal to extend the present sanitization period for officers retiring at the rank of Administrative Officer A1 or above from six months to two years and to one year for other directorate officers can really serve to minimize the impact caused by the sensitive information at the disposal of these officers. Thus it will help dispel some of the doubts of the public.

Madam President, I doubt very much the work done by the Advisory Committee on Post-retirement Employment. For in the past, though the Committee had received applications for post-retirement employment from dozens of senior officials, only one was turned down. For most other applications, an approval was readily given. Facts show that some of those

applications, like the one from Elaine CHUNG, should have been scrutinized by the Committee with great care. Has the Committee not been doing its work dutifully or does it often give face to the applicants and does not vet their applications rigorously? Or is it because the vetting and approval procedures are themselves at fault? If we cannot solve these problems, how can we expect the Committee to exercise its gate-keeping functions?

Mr CHEUNG Man-kwong proposes expanding the regulation of business or employment locations to cover mainland China and Macao. This is a desirable suggestion. As Hong Kong is an international metropolis, business activities from all over the world may involve the interests of the Hong Kong Government and the public. Should we therefore not consider expanding the regulation of such locations to cover more places such as Britain and the United States?

It would be much more important to enhance the monitoring of the nature of work or the changes in such nature as applied to retired civil servants working in private-sector organizations than giving approval to them to work in private-sector organizations. If the Government is sloppy in this kind of monitoring, then retired civil servants can join private-sector organizations as a matter of course, thinking that they are beyond the reach of the short arm of the law.

Lastly, the authorities say that the investigation into the Elaine CHUNG affair would complete as soon as possible; by then, the people to be blamed will be held accountable, the loopholes will be plugged, the monitoring work would be stepped up and recommendations will be made. I think the officials concerned should come forward to make an explanation, respond to public queries and pacify the disgruntled public. I so submit. Thank you, Madam President.

MR CHIM PUI-CHUNG (in Cantonese): Madam President, we often hear voices in the community, especially the Government, saying that civil servants are one of the most important assets of Hong Kong. I do not oppose this view in principle. This is because the fact is the public has been paying taxes year after year so that these civil servants can climb all the way from the bottom to become the cream of society.

As the retirement age as stipulated in the present system is too young, that is why some civil servants will have to retire at the age of 50 or not later than 60. In such circumstances, it is only natural that they will succumb to the temptation of cool cash because, apart from their abilities, they also have extensive social links and access to government information. Hong Kong is an industrial society and more so it is a utilitarian society. The giant consortia will therefore covet civil servants who have such invaluable assets. That is why they are often eagerly hired. This is never their fault. It is only the system in society that is to be blamed.

We should know that the establishment of the accountability system means that the principal officials working under it are bound to pay a cost. They cannot enjoy the treatment that they used to when they were civil servants. With the completion of their term of office, that will mean a loss of all their pension. However, we must bear in mind that for any Director of Bureau, if he is of the view that his abilities outclass his colleagues, he can say that he ranks number five in the Government. Even if he thinks he ranks last among the Directors of Bureaux, he would still rank the 15th in the Government. Such a lofty position is higher than a lot of other civil servants and members of the public. A more important thing is that they should have a sense of mission. They are proud to serve the some 6 million to 7 million people in Hong Kong and even the 1.3 billion people in China from a macro point of view. This is glory of another kind. Of course, in terms of salary, they may get a few million dollars a year. But in terms of prospects, they have a very rosy future indeed. That of course, will also depend on what post they take up under the accountability system.

Let us look back. Many officials after their retirement get pension from the Government on the one hand but take up an offer from the consortia immediately on the other. Some of these senior officials even say to the effect that the salary is not that much and if that is tailor-made for them, they may get an even higher salary. Such remarks have really pricked the sides of Hong Kong people. Why? For these senior officials can enjoy such a good life only because the people of Hong Kong have given them a chance to climb to the top, though these officials have also paid a price. This shows an unbalanced development in society. Madam President, as I have just said, we should know that these people can have a feeling of superiority because they can be civil servants. Such a feeling cannot be entirely attributed to the treatment they receive or the money they can make.

All right, let bygones be bygones. The most important task ahead is the review. In the past there were laws, but they might not be sufficient and they might have grey areas. Civil servants should not make use of these grey areas to advance their personal interest and rights. For me I would look forward to and care more about the future review. It is understandable that divergent views will arise in the review. I also think that senior officials, especially those holding top positions, should be subject to a sanitization period of not only two years but an even longer period. It is because they are already in a much better position than the ordinary people or those holding high positions in terms of the pension they receive or the other kinds of treatment they get from the Government. What is more, the Government has made things clear to them well in advance and since they are willing to assume such offices, they should know very well what will happen in future.

Furthermore, if these officials really want to contribute their service to the business sector, I think it would be most proper if the government pension or other kinds of allowances be discontinued until their employment in the business sector is over. It is only in this way that they can meet public demand. We must bear in mind and these civil servants must know as well, that they must really see themselves as servants of the people. They must not think that they are officials over and above the people. It is only natural that they will come under criticisms from the public because they receive such treatment and they enjoy such a position. We must bear in mind as well that as a general rule, an ordinary civil servant enjoys better pay and benefits than members of the public. Therefore, Madam President, I hope the Government will conduct such reviews frequently.

MS EMILY LAU (in Cantonese): Madam President, I speak in support of the motion moved by Mr CHEUNG Man-kwong. In his motion, Mr CHEUNG points out that the reason why he is saying these things is he is responding to the call made by the Chief Executive in his policy address to act "resolutely against collusion between business and the Government to eliminate any transfer of benefits". Mr CHEUNG says there ought to be policy revisions. Madam President, later on I will move a motion. As a matter of fact, originally I wished to raise the problem of the post-retirement employment of civil servants with private-sector organizations. But the Clerk suggested withdrawing this proposal because Mr CHEUNG Man-kwong would propose a motion on it. I agreed because both Mr CHEUNG's motion and mine are proposed in response

to or with the call made by the Chief Executive TUNG Chee-hwa in mind. TUNG calls for resolute action against collusion between business and the Government to eliminate any transfer of benefits.

Last week when a debate was held on the policy address of the Chief Executive, many Members talked about these two issues because the Chief Executive has mentioned them. The Chief Secretary for Administration said at that time that he understood Members' views. He said that these acts of collusion or transfer of benefits might not be confined to those acts of bribery which are criminal offences. He said that one of this kind of acts was to make a deliberate move to give the green light in the course of decision-making. This meant that the decision would be made in favour of a giant consortium or that a decision is especially lenient to it. All these are to pave the way for the official's future career in the business sector. Of course, the Chief Secretary would not admit that this was the reality and he said that he only had worries. But I believe he has highlighted the essence of the problem.

Madam President, after listening to the debate today so far, I have a feeling that this is already a big help to Secretary Joseph WONG. For in this Council, regardless of which political party or group you belong, there is a consensus for this matter. That is why no sparks have been ignited in this debate. But there is an all-pervading sadness. We are sad because these things have happened notwithstanding the huge amount of money we have spent. Just as Mr TAM Yiu-chung has said, and I am very much in agreement with him, the retirement benefits of our civil servants rank among the best in the world. During the debate last time, Mr KWONG Chi-kin said that civil servants were paid better than those working in private-sector organizations. I have often said in the panel meetings that the people of Hong Kong have never treated civil servants badly. Even though there have been some changes in recent years, generally speaking and as Members from different political affiliations have said today, the salary of civil servants is still on the high side. The Liberal Party even says that civil servants are paid excessively high. As Mr WONG Kwok-hing explains, the high salary is meant to foster integrity in the Civil Service. It has never been our intention to give a high salary to civil servants only to know that they will look for jobs with a higher salary when they retire. That is why the Elaine CHUNG affair and the TSANG Yam-pui affair have really pinched the nerves of Hong Kong people.

I agree very much with Ms LI Fung-ying when she said that in the days of colonial rule, many expatriate officers would return to their home country upon retirement and the work they did over there would not matter to the Hong Kong people. Of these expatriates, only very few of them have chosen to stay in Hong Kong. Some are still working, but the people are not quite happy about it. But now these civil servants are locals, so where can they go when they retire? Madam President, some of these civil servants know to act in restraint and modesty, but some others are boasting and putting on a cocky air. The people are simply offended. That is why we have this motion debate today. I very much support many of the recommendations made in the motion, especially on final leave. Currently such kind of leave can be as long as one year. I have no idea how they can accumulate such a long leave for it is not possible in many private-sector organizations. Even in my own office, when the colleagues have worked overtime, I would not encash their overtime work but I would let them accumulate their overtime working hours for the purpose of taking a leave. But this arrangement is only valid for half a year, if they do not take any leave during the period, the right to leave will be forfeited. This is why I fail to see why civil servants can accumulate their leave for one or two years. How can this happen?

I agree with what Mr Howard YOUNG has said, that sanitization should begin only after the leave is exhausted as this will prevent the problem of double identity as Ms Margaret NG has mentioned from arising. I think this is really an embarrassing thing, though not to the person being paid two salaries. He can be paid some \$300,000 to \$400,000 a month. Since he is already getting some \$100,000 in pension, will he be in such a financially stringent position? This is a question I really want to ask these retired senior officials on behalf of the public. This is plain truth that the people have been so nice to these senior officials and it is only right that they should pay back the public.

On private-sector organizations, there is one point I wish to make which is not mentioned in the motion. Often times some kind of quasi-government organizations will tailor-make some positions for these retiring senior officials. Some Honourable colleagues say, these retiring senior officials may well ask: The tailor-made clothing does not fit me, it is too tight. How can I put it on? What they mean is that a job of some \$3 million to \$4 million a year is too tight and they can only take up jobs with a lavish pay of \$8 million to \$9 million a year like the one Joseph YAM holds. Remarks like these are piercing to the ear, in the same way as when someone said that the toilets in the flats of Hunghom

Peninsula are too small and people cannot squeeze through. The Secretary should have heard these views from the public loud and clear and he is obliged to respond. I am sure colleagues of the Secretary may not be so happy to hear all these. But they must listen more to the voice of the people as conveyed by Members who are representatives of public opinion.

As for the cases of retiring Chief Executive or principal officials under the accountability system, these must be handled expeditiously. In the outstanding items on the agenda of the Panel on Constitutional Affairs, there is such an item on the retirement of Chief Executive. We have been talking about this issue for three or four years. Things have gone overboard, for a number of principal officials have left — Antony LEUNG, Regina IP, and YEOH Eng-kiang. It is lucky that nothing has happened because they have not taken up any employment. But some other retired officials may really take up a job and if the public feels offended, then controversies will arise. I agree very much with what Ms LI Fung-ying said, that while other people are talking about retired senior officials, what Secretary Joseph WONG says is about all civil servants. For those civil servants at the lower grades, as they are not paid so handsomely, we are not so much concerned. These people may actually need to take up some employment, but the public bears no grudges against them. So what we should do is to narrow down the scope to the some 1 000 directorate civil servants and see what can be done. There may be some legal problems and I hope the Secretary can look into them in detail. It is more so my hope that the Secretary can do something to reflect the wishes of this Council clearly and draw up a regulatory regime at the soonest. We cannot afford to see another scandal about these senior officials, for each and every time this happens, the people of Hong Kong will feel so disgraced.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, the retired former Secretary for Commerce and Industry, Mr CHAU Tak-hay, once described the post-retirement employment system as practised in Hong Kong as the strictest in the world. He pointed out that a permanent under-secretary of state in the British Government may work in the private sector immediately upon retirement; in the United States, once a cabinet minister has left office, the only restriction imposed on him is that he is not allowed to lobby the department he used to serve and that is all. He queried why Hong Kong had to be that strict. He was of the view that the people of Hong Kong lacked the breadth of mind and vision to accept these matters and Members were boiling a storm in a teacup.

Are Members of this Council really raising much ado about nothing? Is the post-retirement employment system for civil servants in Hong Kong much too strict? Madam President, I think these issues are worth discussing.

The first issue. Recently, there have been heated discussions in the community on collusion between business and the Government. The motion debate to be moved by Ms Emily LAU later on will also be on this topic. Why has collusion between business and the Government become the talk of the town all of a sudden? I do not think this is because Mr TUNG has said in his policy address that he is resolutely against collusion between business and the Government that the issue has come to the spotlight. It is because the performance of some civil servants who make up the largest component of the Government in the past has fuelled public suspicions of collusion between business and the Government and a transfer of benefits.

The question of senior civil servants taking up top posts in the private-sector is not a matter of their personal choice but the image of the Government. Further implications are the adverse impact this creates on the mutual trust between the people and the Government and even on the effectiveness of governance. The people will not just question the personal integrity of former senior officials like Elaine CHUNG and TSANG Yam-pui but whether or not the policies they formulated while in office had favoured any individuals or consortia. This is the greatest doubt they cast. We expect that officials who enforce or implement government policies to be neutral. If this is not the case, we will feel very much concerned when the Government wants to implement a certain policy. The people will ask whether or not government policies are fair and impartial. For if not, the level playing field which the Government wants to foster will be open to question. Investors from abroad will lose their confidence. The Government has always been saying that it will revitalize the local economy, but would it be destroying the economy with its own hands? So I do not think it is a case of the description offered by CHAU Tak-hay, that we are just making much ado about nothing. We must face up to the problems seriously.

To compare the system in Hong Kong with that in foreign countries is totally meaningless for we do not have the most important monitoring system in places like Britain and the United States, and that is, democracy.

In the Elaine CHUNG affair, there is convincing proof that she has taken part in the promotional activities of a company which is a subsidiary of

Henderson Land Development Company Limited in association with Henderson Land's bid for the West Kowloon Cultural District project. She also lobbied Kwai Tsing District Council members for support in respect of an application from Henderson Land for change in land use for a shipyard in Tsing Yi. Although I did not attend that meeting, I have asked my colleagues who were present. I was told that Elaine CHUNG did speak in the meeting and briefed members on the application for change in land use. This is irrefutable proof. The Secretary may release findings of an investigation into these allegations later, but what would happen even if these allegations are substantiated? Elaine CHUNG can continue with her work. The Secretary will remain the Secretary. He will not step down because of this incident, because the Legislative Council which is a so-called monitoring body is no more than a toothless tiger. I may have made a few criticisms here, but the Secretary can stay in his office with no harm done. So if we want to make a comparison with the foreign countries, we must not look at the surface but deep into it. We will find out that because we are in lack of a democratic system, there can be no effective monitoring of the Government.

As such it is basically pointless to compare the system here with that overseas when things are detached from the reality. Some people may ask, are we going to impose a total ban on retired officials joining private-sector organizations? Would this be an infringement of their personal rights?

In the face of these queries, we must know in the first place what we want to prevent by imposing this restriction on the post-retirement employment of officials. I think that this involves two things. First, it is meant to prevent the use of information collected and social links established by these retired officials during their service in the Government to the benefit of the private-sector organizations and hence create an unfair advantage over other competitors. Second, it is intended to prevent officials from paving the way for their retirement in that while serving in the Government they will favour any particular consortia or individuals.

Actually, the existing sanitization period can at most prevent the first problem from arising. For the second one, it would be useless even if a 10-year sanitization period is imposed. This is especially true when, in the ethical world of the Chinese, a favour received must be returned. It would be very difficult to stem out this practice. Recently, some people brought up the case of Discovery Bay and queried whether or not Sir David AKERS-JONES has gained

any advantage when he pretended he did not see in the Hong Kong Resort Company Limited case, such as taking up the post of an independent executive director of the company some 10 years later. Cases like these cannot be prevented from happening by resorting to a sanitization period, unless such control period is for life.

We know that retirees must not be deprived of the right to employment. So the only solution is to impose restrictions in two respects. The first thing is to step up long-term monitoring and the penalty system. Now directorate civil servants and ordinary civil servants may take up employment in any private-sector organization three years and two years respectively after their retirement without having to come under any monitoring. We think that a longer monitoring period should be imposed on the post-retirement employment of directorate civil servants with private-sector organizations. Efforts should be made to find out whether or not there is any conflict of interest between their present job and their former service in the Government. Persons in breach of such rules and regulations should be punished.

In addition, we know that there are difficulties in trying to eradicate the above problems by way of the institutions. The best solution lies in self-discipline exercised by the officials themselves. They should know that apart from complying with institutional requirements, they should adhere to a code of professional ethics before they can gain respect from the public and avoid giving the SAR Government worries and trouble.

Madam President, I so submit.

DR RAYMOND HO (in Cantonese): Madam President, as the economy of Hong Kong picks up, there are reports in the local papers that some companies are raising the salaries of their employees and have plans to hire more staff. If the economy keeps on growing for the better, it is expected that these companies will find it hard to hire persons of high calibre to enhance their competitive edge. As we know, the Civil Service is an excellent team. This applies especially to directorate officers. It therefore comes as no surprise that when these officers have left the Civil Service, they will be eagerly sought after by private-sector organizations. The problem is how we can ensure that their employment in these private-sector organizations will not cause any conflict of interest in connection with their previous service in the Government. This should be the focus of our attention.

If the Government wants to prevent any conflict of interest caused by the post-retirement employment of senior officials and civil servants in private-sector organizations, the Government must tackle the problem by looking into the vetting and approval procedures. The Government should vet these applications concerned with great care, instead of trying to find remedies when problems have appeared due to insufficient monitoring after approval is given. Trying to find remedies when problems have surfaced will not only lead to wastage of resources but also undermine the prestige of the Government in governance. As to whether or not the Government should monitor closely the applications approved, the answer is definitely yes. But as to whether or not information of the private-sector organizations concerned should be made public, the Government should give serious thoughts to the suggestion as this may touch on commercial secrets and hence run counter to the philosophy of free economy.

In fact, many directorate officers hold professional qualifications and they have rich expertise and skills. Under the existing system, if they reach retirement age, then they must retire from service. For these professionals in the Civil Service, they are seldom involved in formulating policies or any major decision to allocate resources while in service. That is why their post-retirement employment restrictions should be less stringent than those applicable to senior officials at the rank of head of department or above. This will allow them to make use of their professional knowledge and skills to serve the community. It is also the best way to put talents to their best use.

Madam President, I so submit.

DR KWOK KA-KI (in Cantonese): Madam President, the motion we have today is quite meaningful. Now Mr CHIM Pui-chung is not here, actually, I would like him to listen to a few words from me. Mr CHIM seems to have said that the motion has been raised to stir trouble or that it makes much ado about nothing. However, upon a closer look, even the policy address of the Chief Executive has also mentioned these points. He made it a point to say that he does not want to see any transfer of benefits or collusion between business and the Government. If the credibility of the Government has come to such a stage and yet the problem is not faced squarely, then we are pushing its prestige closer to the verge of bankruptcy. It is precisely with the aim of maintaining the Government's prestige and in the hope that senior officials will not be seen as a

pest and menace when they retire from service that we have raised this topic for discussion today.

The civil service system in Hong Kong follows the tradition of the British civil service and it has very strict rules. As many Honourable colleagues have said, in the past not many civil servants would want to find a job after retirement. The lucrative pension and benefits are meant to serve one purpose and, that is, to encourage civil servants to be diligent and dutiful and to keep them away from any transfer of benefits while they are in service.

After the reunification, some of the retired senior officials — I do not mean all civil servants and I still miss a few of these senior officials and Members have mentioned their names — took up voluntary work and some of them became hosts of radio programmes without getting any pay. They give the public an impression that they are clean and upright. On the contrary, many senior officials work for business tycoons and land developers, not caring about raised eyebrows from the public. This kind of things are shattering the confidence other people have in the entire SAR Government, the civil servants and the Hong Kong people as a whole.

I think that most of the more than 100 000 civil servants are clean and upright. Most of the senior officials have integrity and they are trustworthy. A bad thing is there is a handful of black sheep who take part in commercial activities intentionally after retirement, caring nothing about public suspicions they have induced.

Joseph WONG, Secretary for the Civil Service, has said on many occasions that he does not owe the public an apology, nor should he be held accountable. That is pure nonsense. As a Director of Bureau, the thing that he should do or is expected to do is to maintain such a good system and prevent people from making use of it to damage the civil service system. The approach he has taken, that is, not caring about retired senior officials taking part in commercial activities, is precisely doing damage to the civil service system. Many people, even some senior officials, have said to us that this is improper and they are surprised to find these people doing that. Some serving senior officials are of the view that their former colleagues should not be doing that. It is surprising to find the Secretary, despite his role as the defender of the civil service system, would think that there is no impropriety in all this.

Dr Raymond HO has talked just now about the post-retirement employment of other civil servants, including those from some professional grades. Before I came to this meeting, some civil servants from professional grades and some senior officers had asked me not to vote in favour of the motion because the work done by people like engineers and medical doctors will not lead to any disputes. A retired medical doctor who practises medicine would in most cases not involve any commercial interest.

However, I do not think I can oppose this motion today. Why? It is because the Secretary has destroyed the Civil Service with his own hands. That is why we cannot help but impose stringent restrictions to guard against impropriety. If the Civil Service is problem free and if the Secretary is doing a good job and does not condone and connive so many retired senior officials in doing these things, there will be no motion on this topic today. Things will go well. No one will move this motion. Even if Mr CHEUNG Man-kwong moves a motion, no one will second it. Mr TAM Yiu-chung may not agree with everything found in Mr CHEUNG Man-kwong's motion, that is why he has made some amendments. But in Mr TAM's speech, he concludes that this is a big problem and it is doing damage to the SAR Government. It can be seen therefore that people from all parties or background agree that something has gone wrong in the Civil Service. But why does the Secretary still think that he does not have to shoulder any responsibilities?

We hope that the Civil Service can sustain and that we can have a team of civil servants with integrity and can serve as role models for civil servants in our neighbouring places, including the Mainland. However, judging from what has happened, if no change is made in the next few years, not only will our Civil Service fail to serve as a role model, it will also be relegated into an international laughing stock. People may say such things as: Never try to be like the senior officials in Hong Kong who scheme and conspire in the hope of hitting a fortune when they retire; and Hong Kong officials who used to be in charge of real estate projects or policies can be hired by land developers and take charge of the West Kowloon project when they retire.

Why has our bureaucracy disintegrated after 1997? What is currently done is destroying the stability in the Civil Service. It keeps many people off. People do not want to be civil servants and they do not want to have anything to do with this system. They do not want to do anything to spoil their reputation. They do not want to be accused of any impropriety, or work for the sake of

money and have any transfer of benefits. It is precisely because of this policy that may deter many people from joining the Civil Service.

I do not know if this is a policy of the Chief Executive but many senior officials, including Ms Elaine CHUNG whom we mention so often, are doing this for their career advancement. As I see it, the SAR Government now is like the cruise Titanic and the Secretary is the iceberg which the ship is crashing head on. Now this ship is sinking. If nothing is done to repair and mend it, the SAR Government will sink in no time like the ship.

I do not want to support too many motions which aim at regulating civil servants with integrity and an upright character and prevent them from making use of their expertise after retirement. But as things have gone to such a deplorable state, I cannot help but agree with some Honourable colleagues and tighten the policy grip on some retired civil servants, especially those who used to be involved in policy formulation. This will prevent them from engaging in any transfer of benefits and hence sabotaging our civil service system.

I so submit.

MR ALBERT CHENG (in Cantonese): Madam President, summing up the speeches made by many Members, a few points can be deduced. We agree that Hong Kong does possess a highly efficient Civil Service and it has gained great acclaim from all quarters. We agree that the remuneration of civil servants is on the high side and it has served the purpose of preventing corruption. However, it is important to have a sound system and for the person who enforces such a system, it is only natural that we would have greater expectations.

Unfortunately, Mr Joseph WONG, Secretary for the Civil Service, is the first person who has destroyed this system. How has he destroyed it? When the SAR Government wanted to launch the accountability system, according to explanation given by the Government to this Council at that time, the post of the Secretary for the Civil Service should be taken by a civil servant. Why should a civil servant be chosen and why should the appointee retain his identity as a civil servant? This is because he can enforce policies related to the Civil Service with a neutral stand and he does not have to come under any political pressure. This will hopefully make the vast number of the civil service team put their trust in him. As the head in charge of personnel matters in the 160 000-strong or

more Civil Service, he can therefore be impartial in enforcing out civil service policies. Unfortunately, Mr Joseph WONG chose to retire at a time when he was about to reach retirement age and he was paid the lump sum part of his pension. Afterwards, he is paid the salary of a Director of Bureau and may be even the monthly payments of his pension as well. In so doing he has completely destroyed the civil service system.

As Mr Joseph WONG has chosen to leave the Civil Service, he should not have returned to it. Though he is the Secretary for the Civil Service, the civil servants have no confidence in his neutrality. Since the system is in itself unsound, it would be tempting for retired officers to break the rules when they see the official who is in charge of the Civil Service doing improper things.

The most important thing is that we should have a sound system that will foster cleanliness with high salaries. When a directorate civil servant retires, the pension paid in lump sum would be at least a few million dollars and then the person is paid a pension of some tens of thousand dollars to close to \$100,000 a month. This will ensure the retired civil servant can lead a reasonably comfortable life, though not one of extravagance. Of course, such a life is unlike that of the rich and famous, or some party chairman who may consume a bottle of wine costing over \$10,000. These people are used to such extravagance and they would have a difficult time if they cannot drink such costly wine after retirement. Having said that, the difference might not be so marked as one will become drunk after several glasses.

As a matter of fact, we do have a very good system. For example, when Mr BARMA, Chairman of the Public Service Commission, assumed that office when he had retired, he was not entitled to any pension payment. I do not know why when the accountability system was launched, the Directors of Bureau might be paid two salaries when they retired, that is, they would first get a sum of over \$10 million and then get a monthly payment of some \$80,000 to \$100,000, on top of the pay as a Director of Bureau, that is, some \$300,000 to \$400,000 a month. They are being improper in the first place. A pension should by its very name mean a sum of money which will enable someone to lead a life after retirement or enable the person to do some voluntary work to serve the community.

In my opinion, what should be improved in the system is that when directorate civil servants — they are the targets of the motion — want to work

after they have retired, they should not be paid any pension, unless the job they have taken up is paid at a sum less than the pension. They may then take the difference, whichever is higher or lower, depending on how things are worked out. If the existing system is not changed, retired civil servants will be subject to great temptation to find a job.

In addition, consideration may be given to raising the age of retirement. This is because people these days live longer and when some civil servants retire, they are still at the prime of their life. It would be a waste if they are not permitted to work. However, they really do not need that much money to get by. In my opinion, people who choose to become civil servants do have a sense of mission. They want to serve the community and not for making money, otherwise they will not become civil servants. Since civil servants are paid a large sum of money when they retire and they are paid a monthly pension which is more than enough for them to get by, then if they still work, the monthly pension payment should be deducted. In this way, the public will show more respect for civil servants and they will be willing to support the civil service system which pays civil servants well to make them free from corruption.

I hope that the motion today can be passed and that restrictions can be imposed on civil servants governing their post-retirement employment in private-sector organizations. In addition, I think that there should be some amendments to the payment of pension. Unfortunately, the Legislative Council does not permit private Members' bills, otherwise I would not mind drafting a private Members' bill. After this motion is passed, I hope the Secretary for the Civil Service can consider the following: First, it is time for him to retire; second, he should make some real improvements to the retirement system so that the public can have more confidence in a civil service system which pays civil servants well to maintain their integrity and that the public can show more support and respect to civil servants.

With these remarks, I support the original motion moved by Mr CHEUNG Man-kwong and the amendment moved by Mr TAM Yiu-chung. Thank you, Madam President.

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

MR ALBERT CHAN (in Cantonese): Madam President, many years ago when I had graduated from university, I thought about becoming a civil servant. Then I knew my personality would not fit for the job and so I did not apply for it. That could be a misfortune for the Government, for if I had become a civil servant, I might enforce government policies to the letter, stand up and confront Members here and I might even gain some face for the Government and TUNG Chee-hwa.

According to traditional Chinese thinking, to be a civil servant is like becoming a government official. When we were at school, we read about the moral fibre of government officials like YUE Fei or many other characters from historical novels. There is a universal emphasis that members of the literati should have this moral fibre. The secondary school textbooks tell us that TAO Yuanming would not bend his back to get a favour of five *dou* (decalitre) of rice from someone. So in this way we have formed some impression and expectation for officials. But as we look around now, of course, I must admit that there are many civil servants who do not lack this moral fibre and they should be commended, but there are some civil servants who make advances to these giant consortia even before they leave the service. They may be doing this to pave the way to an even better future after their retirement. There are people who are heads of departments but after they have left the Civil Service, they have become the right-hand men of giant consortia. Such people and such dramatic changes they have gone through are posing a great harm to the Civil Service. They have dealt a great blow to the dignity of the civil servants as well.

I recall a while ago a senior official joined a giant consortium after retirement. I know some executive directors of that company and I have had a chance to talk to them. In our conversation, I came to know that this senior official was frequently scolded by the big boss who shouted at him without giving him any face. When a top official who used to head tens of thousand people and even close to 100 000 people has to pander his self-dignity for a few million dollars of salary after retirement and swallow the disgrace of being shouted and screamed at, I am really sorry for the person's pitiful downfall. It remains, of course, that one can say nothing when scolded as one is paid. Therefore, that top official later resigned and left that private-sector organization for good.

Some Members have mentioned the retirement arrangements for civil servants. I wish to point out some facts concerning pension payments received

by senior officials. Elaine CHUNG got a lump sum payment of some \$4 million and later on she gets some \$70,000 a month. TSANG Yam-pui got a lump sum payment of \$10.6 million and gets \$63,000 a month. Compared with the mean household income in Hong Kong, their income is two to three times the mean household income and this is sufficient for them to lead a reasonable retirement life. I believe the reason for the pension system to be devised to include a lump sum payment and monthly payments is the hope that these civil servants can work with peace of mind and when they reach retirement age, they will be given a sum of money which will ensure a reasonable standard of living for them. For some of those from higher ranks, they may get a lump sum of over \$10 million and a monthly payment of some \$60,000 to \$70,000.

But things are different now. For these senior officials, they will start a new leaf in their life when they retire. Why do they have such opportunities to make money? As pointed out by many Members, this is because they have come to know much confidential information and built social links while in service. Why are they so eager to work for these giant consortia? It is because the sooner they leave the Civil Service, the more valuable is the news and information they have in their possession. This is the most important thing for them.

But what the Government has been doing is to fling wide the gate and give the green light to every one of their applications for post-retirement employment. The result is a massive exodus from the service and the situation is upset and got out of control. This is exactly the crux of the problem. Just imagine, would anyone hire these senior officials three years later? I bet their salaries will fall by a big chunk at that time. Why is every Commissioner of Police so eagerly hired when they retire? This is because he has the most confidential information of Hong Kong in his hands. He was the first one to look at reports from the Criminal Intelligence Bureau in the police and he knows which ones of these big bosses have been investigated. How important he is when he knows all the information about his boss and the enemies of his boss.

What the Government is doing now is therefore an insult to those serving civil servants who have this moral fibre. Those people who are willing to take a salary of some million dollars or even \$10 million and be the right-hand men of the bosses of giant consortia are doing a mockery to the Civil Service. Therefore, since they have obtained a lump sum payment and even if they have rendered a very distinguished service, I would totally agree that they should

cease to be paid any public money. It is because the money is from all the people of Hong Kong.

I think Secretary Joseph WONG cannot be blamed for all of the problems, for he is merely doing his work within the confines of the system. But the criticisms that he has not been doing his gate-keeping duties well and mishandling things are well-justified. Though it is not the Secretary who tells some people to act improperly, he has to do something when he sees some people have acted improperly and committed blunders. He cannot sit back and do nothing. That is why I am very disappointed to see the present state of affairs, especially the way in which these senior officials have behaved.

I fully support the motion moved by Mr CHEUNG Man-kwong. I hope the officials will stop drawing two salaries and so forming a split personality. I do not think they can serve the people of Hong Kong with all their heart when they are drawing two salaries. What they do is pandering their integrity and self-dignity. I only hope that these problems can be ameliorated in future. Thank you, Madam President.

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, throughout our discussion, not a word has been mentioned about the need to monitor the Chief Executive. It seems that the Chief Executive has been excluded from this agenda item. It is indeed imperative to monitor the Chief Executive. Our Chief Executive, elected by 800 people, is rarely monitored. His power is above that of all the watchdogs. He can seek exemption even if he is asked to come here. This is what is happening at the moment. What the higher level does will have serious effects on the lower levels. The Chief Executive can be said to have set an example of allowing businessmen to interfere with politics. His achievement is also a prominent example. As I stated before, his family business, having avoided the crisis and risen against adversity, is being sought after in the stock market. Many well-known moguls in town are holders of its shares. This will surely arouse suspicion. Of course, I cannot possibly prove this, or I would have been a prominent figure of the Security Bureau or the Independent Commission Against Corruption (ICAC). Actually, some matters are beyond the reach of even the ICAC. For these reasons, it would simply be impossible for Members to grasp the crux of the problem without discussing the probability of the Chief Executive acting in his private interest or involving himself in collusion between business and the Government or transfer of benefits.

How can the subordinates of the Chief Executive be monitored, if the Chief Executive himself cannot be monitored? As the Chief Executive is not monitored for what he has done, how can we expect his subordinates to be monitored? Furthermore, it is amazing that the Chief Executive has courageously introduced into Hong Kong the accountability system, resembling neither an ass nor a horse, and made it a David's deer in the animal farm of politics. While half of the members of the cabinet were drawn from the business sector, another half were civil servants promoted to simply serve the purpose of temporarily filling the posts. Secretary Joseph WONG is one such example. He was a civil servant at that time and, all of a sudden, he turned into a politician. Yet, he was not truly a politician, for he is still being paid by the Government. Even when his boss steps down two years after, he can still retain his post. It is precisely for this reason that he has to entertain the guests. Though being neither an ass nor a horse, still he is given such a good post. He must therefore open the gate of convenience in formulating the code for monitoring senior civil servants, policy secretaries or directorate civil servants. The code is supposedly designed to facilitate them, after resigning from the Civil Service, to serve their future bosses by virtue of the information they have gained and the social links built up during their service in the Government.

Police are the icon of law enforcement. I have been arrested a dozen times. It is really ridiculous that the head of police can be exempted, and his successor can even tell us that this is police's tradition. How can he enforce the law, given the disgrace he has suffered for taking the lead to breach the law? I have been subject to unfair law enforcement — hundreds of people pointed their fingers at me and accused me of causing public disturbance, and I was consequently arrested. Why would this happen? Because law enforcement, or governance, must be politically correct. It must safeguard the increasingly apparent and rampant phenomenon of collusion between business and the Government and transfer of benefits. This is the crux of the issue. It would therefore be impossible to exterminate bureaucracy and prevent the directorate officials who are neither an ass nor a horse from serving a new master after they have retired, should we remain silent on the issue of monitoring the Chief Executive or turning him into a democratic figure.

Actually, if we look around us, we will see that Hong Kong's political arena is no different. With the race for the third-term Chief Executive already begun, participants from various sides have started competing for the post.

Two years later, even if the three Secretaries of Departments and 11 Directors of Bureaux cannot remain in office, they will definitely work for a new master. The ensuing problem is that they will definitely adopt a somewhat biased attitude or allow transfer of benefits in terms of policy in preparation for their switching to the business sector when they become jobless. Members must bear in mind that I am not talking about acceptance of bribes of hundreds of dollars by police officers from hawkers. I am talking about tilted policies. Otherwise, it would be impossible for us to imagine how the civil servants with normal intelligence and great wisdom could have made so many mistakes. Neither can we imagine how their superiors could have connived at their acts. This is the crux of the problem.

I learn from history that what happened in France during the period between Louis XIV and Louis XVI could be described as outrageous. The purpose of unifying the state and the church was to put the interest of the minority above that of the majority. The political reality in Hong Kong is that, while the first and the second levels are holding meetings among themselves, the third level is left to suffer. There is no national assembly and constitution in Hong Kong. To talk about bureaucracy, bribery and corruption alone, but not about political and constitutional systems will get us nowhere. I have no wish to continue condemning the Government too. I only wish to protest against the injustice suffered by the lower rank civil servants. The Government has adopted a policy of fattening the top at the expense of the bottom — while 40 000 lower rank civil servants will have to be trimmed over several years, senior government officials have already left the Civil Service for greener pasture while they are still on leave. What sort of society is this that lower rank civil servants are scolded and slashed every day? I hereby voice unfairness for the middle and lower rank civil servants. I hope they can defy orders, even at the risk of their lives, and expose more inside stories.

I will therefore support the Mr CHEUNG Man-kwong's original motion as well as Mr TAM Yiu-chung's amendment. I hope this Council can give the Government a clear message that reform, democracy, anti-bribery and anti-corruption are all indispensable.

MR JAMES TIEN (in Cantonese): Madam President, on behalf of the Liberal Party, Mr Howard YOUNG has expressed our views on this motion earlier in the meeting. I only wish to add a few comments after listening to the speeches

delivered by several Honourable colleagues earlier. The present discussion should be focused on civil servants, not the election of the Chief Executive, or the appointment of principal officials. These matters should be dealt with separately.

Given the six-month sanitization period and the possible deduction of leave from it, I agree that many senior civil servants can take up employment with certain organizations shortly after their retirement. Today's question is about taking up employment with private-sector organizations, not subvented public organizations. However, there are indeed numerous examples of retired civil servants taking up employment with subvented public organizations. This matter might have to be dealt with separately too. We have noted that the annual remunerations of the posts of several organizations examined by us, ranging from \$4 million to \$6 million, are comparable to those of civil servants at the rank of D6 or D8. Again, this matter has to be dealt with. Of course, Members may ask: Is there a conflict of interest? Although specific business interest might not be involved, this issue will still have to be dealt with because certain areas, such as transport, housing, the airport, and so on, are managed by public organizations.

In our opinion, middle-level civil servants can be divided into two categories. Mr Howard YOUNG has, on behalf of the Liberal Party, talked about administrative officers earlier. We have no opinions in this respect. However, we have noticed that many professional civil servants, especially those serving in the Lands Department and the Planning Department, might become notable figures to many in the community because many officials previously working in the planning and environmental fields have taken up employment with certain consortia in the business sector, particularly property developers, soon after their retirement, because they are familiar with the relevant ordinances and departments, and their ex-colleagues. Hence, even non-directorate officers or civil servants not of very senior ranks have become targets of property developers because the latter are able to perform their expected functions. I see no problem with other sectors. Let me cite the medical doctors of the Hospital Authority (HA) as an example. Of course, they are no longer civil servants. I see no problem even if they go into private practice after leaving the HA. However, if a government engineer takes up employment with a consultancy after retirement, and the consultancy is in turn hired by a property developer, the engineer might be able to achieve something because of his or her familiarity with the relevant legislation.

Another point I wish to raise concerns the personal hobbies of civil servants after retirement or while they are still with the Government, albeit I consider it inappropriate to raise such matters in this Council for discussion. Just now, Mr Albert CHENG cited an incident in which civil servants were treated to red wine worth \$10,000 per bottle by a political party chairman. I believe he was referring to me, because it seems unlikely for the chairmen of the other two political parties to consume red wine worth \$10,000. I have once treated Mr CHENG to a glass too. I believe he has not offered me any benefits; neither have I offered him any. In my opinion, it is inappropriate for us to express too many opinions on the personal hobbies of civil servants, such as buying such commodities as a bottle of red wine expected to appreciate in the future, cars, flats, classic paintings, whether before or after their retirement. After all, they have their freedom. We, as Members of this Council, should not make excessive criticisms about or interference with civil servants or retired civil servants with respect to their lifestyle, or their preferred clothing, cars or red wine (regardless of whether that bottle of wine is worth \$10, dozens or thousands of dollars). The Liberal Party has no particular opposing views on the two motions. While we will support Mr TAM Yiu-chung's amendment, we will abstain on Mr CHEUNG man-kwong's motion.

Thank you, Madam President.

MR KWONG CHI-KIN (in Cantonese): Madam President, I rise to speak in support of Mr CHEUNG Man-kwong's original motion and Mr TAM Yiu-chung's amendment. In his motion, Mr CHEUNG has called upon Secretary Joseph WONG to apologize, and also explained clearly his reasons for doing so. Mr TAM has also explained that there remains a considerable gap between the Secretary's handling approach and the expectation of the public. In my opinion, in addition to the public, the Secretary owes the Chief Executive an apology too. Why did I mention the Chief Executive, Madam President? Because I know that the Secretary would not listen to us; yet, he might probably listen to his boss. That is why I have to mention the Chief Executive. The Chief Executive was quoted by a news report two days ago that the Government could do better by, for instance, tightening the sanitization period for retired senior officials. Secretary, did it occur to you that the Chief Executive was pointing his finger at you that you had been too lenient? I think the Secretary

should be fairer to the Chief Executive by apologizing to him. Implicated by the Secretary, the Chief Executive has been told to identify inadequacies. Secretary, you are partly to blame.

Furthermore, I think Secretary Joseph WONG should apologize to serving civil servants too. Our existing civil service system is not completely useless. It is actually quite remarkable in certain aspects — it has not only introduced the required measures, but also established a vetting and approval mechanism as well as a monitoring system. However, for the system to work, the Secretary has to rely on civil servants to exercise self-discipline in making declaration. To avoid public suspicions, it would of course be most preferable for civil servants to maintain a high standard of cleanliness and self-respect, guard against conflicts of roles, and know how to avoid arousing suspicion. However, the entire system has been occasionally damaged by some black sheep in the civil service family.

As stated by Dr KWOK Ka-ki, the Secretary's approach is detrimental to the civil service system, and has led to its collapse. Some senior civil servants have told me in private that they have been caused to suffer by Elaine CHUNG and she should be blamed for causing them so much trouble. In my opinion, that is not the case. They have actually been caused to suffer by the Secretary, and he should really be blamed. This is because whatever systems are in place, they will always be exploited or abused. It was wrong for the Secretary to approve the applications indiscriminately and took no immediate actions to tackle the problems as soon as they had been detected. Let me cite the incident of Ms Elaine CHUNG as an example. The Secretary has behaved like a tube of toothpaste — he would only speak when being beaten up, and the harder he was beaten, the more he would disclose. The public opinion later grew so strong that even the Secretary was requested by this Council to attend a special meeting. Consequently, a number of Members were forced to keep the Secretary company in a meeting held on the day of Winter Solstice, with their festive mood being completely destroyed. *(Laughter)* At that special meeting, instead of seriously telling us the policy he had formulated, the Secretary only told us the direction he would take. Hurry up, Secretary. You have been beaten up once. Now you are telling us that the report would not be submitted until March. The situation would have been different if you had graped the trend of the times and handled the matter more appropriately at the meeting that day. Why did you not show us the report as it had already been completed? Could you act a bit faster?

Actually, you should have been able to cut Mr CHEUNG Man-kwong out. Had you done so, Mr CHEUNG would not be able to make use of the subject under discussion to make a fuss, right? However, you would rather be given one more slap by Mr CHEUNG. Actually, I have no wish to talk about the incident of Ms Elaine CHUNG. I am fed up with the repeated mentioning of it. It is unfair to Ms Elaine CHUNG too, for she is now being treated as a sinner. The Secretary should handle the investigation in a better way. Given the intense public opinion, should the report be presented earlier to give an account to the public, as well as to Ms Elaine CHUNG? This is why I concur with Mr CHEUNG Man-kwong, that the Secretary should apologize, not only to the public, but also to the Chief Executive and serving civil servants.

When it comes to the sanitization period, a number of colleagues have given a very clear account of the public's current concern earlier in the meeting. In terms of direction, the sanitization period should be lengthened, in the light of Members' concern about a possible transfer of benefits, particularly when policy formulation, classified information, and so on, are involved. However, some professional grades probably do not have these problems at all. As sentiment is running high and public opinion is so strong at the moment, the innocent will probably be implicated too. In view of Members' resentment, albeit not too strong, it might not be too appropriate for this question to be discussed today. Earlier, Dr KWOK Ka-ki raised the point that some former government doctors had continued to practise after retirement. The public is not expected to raise much doubt about this, as such practice is probably permissible under the existing mechanism. I hope we can, at future meetings held by the Panel on Public Service, remain calm and slowly examine this issue with the Government. Some professional grades, such as engineers, architects, medical practitioners, surveyors, lawyers, and so on, are unrelated to the formulation of policies as they are purely technical professionals. So, is it necessary to impose a longer sanitization period on them? In my opinion, Members should consider this carefully.

Another much-discussed issue concerns the counting of the sanitization period upon the completion of final leave. I very much agree with this. There has been extensive media coverage on this too. The former Commissioner of Police, Mr TSANG Yam-pui, serves as the most prominent example. I find it absolutely unacceptable for him, widely known as the "number one man", to take up employment with a consortium while he was still on final leave. How can his overlapped roles and identities be accepted? His roles are evidently in conflict. What a disgrace for the "number one man" to work for a consortium!

This is indeed a disgrace for us, Hong Kong people too. How can the problem be resolved? One solution is for him to complete his final leave first. Another solution is for the Secretary to refer to the practice of private-sector organizations whereby cash can be paid in lieu of paid leave. Identity is very important. In this connection, the exact amount of money has to be paid. Can Mr TSANG settle his bill to relinquish his identity as a civil servant before taking up employment with the consortium? I hope the Secretary can appreciate these concerns. He must not say that the matter should be treated in this way administratively or this is the usual practice. This is indeed a very serious issue of principle. I hope the Secretary can pay extra attention to it. Thank you, Madam President.

MR JAMES TO (in Cantonese): Madam President, I wish to make several points. First, in modern society, companies often recruit staff in the name of a consultancy. Let me cite the incident of Ms Elaine CHUNG, who has joined a ferry company, which is in turn employed by another company, as an example. Strictly speaking, according to the Government's former approval system, the ferry company, employed by the consortium as a cultural consultant, has just appointed an employee as its representative to take up the post. A loophole has thus arisen in the existing system because of the Government's failure to anticipate that a company can in turn be employed by another one. So, the person in question, claiming that she is just an employee of the ferry company, has been able to dodge the rules. This incident has occurred only recently. We should learn from our mistakes. Should the Government review whether an additional guideline should be issued to former government employees who have gained approval to inform them that, even though they are still serving the company for which approval has been given, they will still be subject to certain restrictions if their company has signed a consultancy agreement with another one, and that they should clarify the matter?

Second, since I am the Chairman of the Panel on Security, I would like to join in the discussion of the issue mentioned by a number of Members earlier concerning the taking up of employment by the former Commissioner of Police with a consortium. Let me start by saying a few words on the feelings of the front-line staff of the disciplined forces, particularly police officers, with whom I have come into contact. They are actually upset by the incident. According to the culture of disciplined forces, the Police Force is very much concerned about its reputation and being respected. They would feel bad should their boss,

widely known as the "number one man", take up employment with a consortium after retirement. It has been rumoured that their "number one man" was found to be bawled at and was ordered to do this and that in the consortium. Even members of the community have formed an impression that even the "number one man" is waiting for someone to offer him a job and that he is merely required to act as an apologist. Disciplined staff, particularly front-line or junior staff, have found such comments very hard to bear. It is obviously for the same reason that they are so concerned about the "number one" licence plate. They feel as if their own dignity is being affected. Of course, different people have different aspirations. It is very hard to say. Many of their bosses are doing exactly the same thing. If this is really the case, the Government should really consider, in promoting police officers in the future, whether many of those to be promoted to the Commissioner of Police will be eager to work for consortia in the future? Recently, there was an extreme example in which a Commissioner, who had not yet retired and was still living in the official residence of the Commissioner of Police, hinted to others that he still had the ability to work for he was not yet old. Furthermore, he would feel uncomfortable should he stop working, and he had no idea how to spend his time in the future. Perhaps he really thought that way. However, from the angle of others, he seemed to be telling interested bosses and consortia to find him for he was readily available. He has given people a very bad impression for saying something like this even before he retired. Actually, it has later been proved that this is exactly what he has done.

Concerning the case of Mr Sidney CHAU mentioned recently, I think we should be fair. I see it quite differently. First, the Airport Authority (AA) is a public organization; second, Mr CHAU was indeed previously seconded to the AA as Senior Assistant Commissioner of Police. Should there a conflict of interests or roles in his duties and responsibilities, I believe the Government would not have given him approval. I also personally believe there was no conflict. Therefore, the problem really lies in whether the established rules have been violated. The officer would be criticized had he gone too far. Under normal procedures, I believe this case should be less serious than others in principle. I must make a fair comment on this incident.

Concerning the issue of taking up employment with private-sector organizations during final leave, Members should know that, according to the codes of the Police Force, a police officer is duty-bound to or responsible as a matter of discipline for catching thieves when he spots a crime even if he is on

leave. Otherwise, he will probably be accused of absence from duty or cowardice. He should bear in mind that he is still a police officer, whether he is on leave or taking his final leave. So, how can a police officer work for others while he is on leave or taking his final leave? According to the relevant codes, he is still responsible in terms of discipline.

I raised this point during the policy debate. I wish to repeat it as Secretary Joseph WONG is here. Actually, it is widely circulated and generally believed in some government departments, including the Lands Department and the Planning Department, that if Mr A makes a very simple planning application or asks a question concerning the payment of regrant premium, he would know if you do him a favour. If you do not believe me, you may look at your senior colleagues and you will find that some of them are holding top posts. Even the Chief Executive is now vowing to identify inadequacies. If you detect cases of collusion between business and the Government, report them to the ICAC. Therefore, even if Mr A cannot offer you any benefit at the moment, he would still bear in mind that you have been good to him and that he should repay you. One day, he would offer you an appointment. How should we handle such matters? I have conducted two interviews during the past five years. I hope the Government can consider "buying them up". According to the existing codes for the Civil Service, there cannot possibly be reasonable expectation or reasonable vetting. I wonder if the Government can put in place a system in future to disallow retired civil servants from working outside. Instead, they should live on their pension until death, though they may go out working as volunteers. They must not harbour the thought that they may find someone else to employ them. This is probably a radical solution to the problem though, of course, a price probably has to be paid.

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

DR YEUNG SUM (in Cantonese): Madam President, I rise to speak in support of Mr CHEUNG Man-kwong's motion. To start with, I wish to point out that the Democratic Party has no objection to senior civil servants taking up employment in the business sector after retirement. With an ageing population, Hong Kong has seen its people enjoying a longer life. Many civil servants, being public officers with such an excellent performance, can actually continue to contribute to society or pursue their own hobbies after retirement at the age of

60. Insofar as this point is concerned, we are not trying to target specifically at them or give them a hard time. Madam President, our main objective is to request the Government to expeditiously review the sanitization system to prevent retired civil servants from taking advantage of the social links and the data and information they built up while being holders of public office to assist their present employers in knocking down their competitors and thereby gaining benefits.

I believe fair competition is taken very seriously in Hong Kong. It is from this angle that Mr CHEUNG Man-kwong has proposed this motion on our behalf. Mr CHEUNG has already pointed out in his speech that the existing sanitization system is seriously flawed. Hence, I will not repeat this point here. Mr CHEUNG has summed up three major problems as follows: inadequate laws and regulations, loose enforcement of law, and negligence of duty on the part of government officials. Perhaps the Secretary should let us know the Government's views on these three major defects.

Actually, the phenomenon of civil servants taking up employment in the business sector has existed for a long time, but why has it aroused so much attention recently? Of course, some individual government officials have also stirred up much controversy for taking up employment in the business sector during their final leave soon after retirement. However, I believe the grave concern aroused on this occasion is mainly caused by the changed circumstances with the passage of time.

Basically, such problems were not uncommon in the colonial past, but how did they differ from those we have now? At that time, the Hong Kong governors, appointed by the British Government, were not businessmen *per se* and had no business background. After the reunification, however, our Chief Executive, from a traditional, influential family with a business background, has too many ties with the business sector. In brief, businessmen began to rule Hong Kong after the reunification and many troubles and weaknesses are thus completely exposed. Hence, an incident previously not considered very problematic, such as a retired civil servant joining the business sector, would abruptly arouse grave concern in the community. I believe this is largely related to the fact that Hong Kong is now being ruled by businessmen. The close ties between the Chief Executive and business, given that his family is engaged in the same field, have very often aroused suspicions of transfer of benefits. Besides businessmen ruling Hong Kong, the method of selecting the

Chief Executive has also contributed to the problem. As the Chief Executive is elected under a small-circle electoral system, the hundreds of people in the small circle are actually his voters. If the Chief Executive wishes to be re-elected again, he must explain and be accountable to them. Such a political relationship will easily lead people to think that the Chief Executive has to do something, such as returning a favour with a favour. They will also easily associate the Chief Executive with transfer of benefits. We hope the Government can pay serious attention to this matter.

Madam President, during our previous discussions on electoral laws, we repeatedly raised the point that the relevant provisions on the monitoring of candidates or the prevention of corrupt practices in election are not applicable to the problems related to the Chief Executive. However, there is still an absence of comprehensive rules governing the Chief Executive election. Furthermore, the Prevention of Bribery Ordinance is not applicable to the Chief Executive, since he is not a civil servant. This has given people a very ridiculous impression that the Chief Executive is above the laws of Hong Kong. To Hong Kong, where the rule of law is taken seriously, this is utterly unacceptable. As the remaining term of the Chief Executive is running out now, the election of the third-term Chief Executive will soon take place. However, who should assume the role of monitoring the election of the Chief Executive? After a candidate is elected, how long will it take before the Prevention of Bribery Ordinance can be applied to the Chief Executive so that equality for all before the law can be achieved? Madam President, I hope the Secretary can pay particular attention to these two major unresolved issues. For these reasons, Hong Kong is still a laughing stock in the international community. At the same time, there still exists a huge grey area in our political system. I hope the Secretary can, in his response, focus on elaborating on the monitoring of the Chief Executive.

Next, the accountable principal officials. As the Accountability System for Principal Officials has been implemented for three years, only two years are left. Following the expiry of the tenure of the Chief Executive, the accountable officials will probably step down from their posts too. As they will probably join the business sector very soon, how should they be monitored? Under the existing sanitization system, accountable principal officials are monitored even less stringently than senior civil servants. Given the enormous reverberations among members of the community about civil servants joining the business sector, it is even more likely that there will be greater reverberations should

accountable principal officials join the business sector two years later. I hope the Secretary can pay extra attention in this respect.

Today, Mr CHEUNG Man-kwong has happened to propose such a pertinent motion. I hope Honourable colleagues can lend their support to urging the Government to, pinpointing the ills of our time, initiate reforms early and allow those civil servants capable of continuing to serve the community to do so through a reasonable mechanism. Thank you, Madam President.

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

MR ABRAHAM SHEK: Madam President, when top-ranking government officials retire, they face the same dilemma which ordinary retirees face: What to do with all their newly found time, and how to put their experience to optimal use? Some of them very nobly participate and become active in voluntary work, which is an act I highly admire. Others prefer to start a second career in the private sector or in the Legislative Council. This is a choice which I too respect, as they have every right to take such a new life path. But this right should come with certain conditions. There are two criteria which should be met: First, the work must not be in conflict of interests with the position of the retired civil servant, and second, it must not be deemed to constitute a conflict of interests.

I note that some people have argued that we may be treating our retired civil servants too harshly, citing laxer standards in the United States. But then, our civil servants are among the best paid in Asia, if not in the world. So, they should be held to a higher standard. Nevertheless, it is apparent that the personal retirement plans of a few may be putting the whole Civil Service's reputation at stake. Taking all these factors into account, is it too much to ask our ex-officials to refrain from putting on a businessman's hat too hastily upon retirement? Is it appropriate that they should suddenly defend the interests of a public company on the same policy areas which he or she used to advocate on behalf of the Government only months earlier? In this respect, I consider the public's demand on the issue quite reasonable and decent.

That said, I still cannot support the original motion's demand for an apology from the Secretary for the Civil Service — Ms CHUNG's case has not been resolved. According to the Secretary, a follow-up investigation is

underway. I expect the investigation would eventually clear all doubts surrounding Ms CHUNG's claims.

I do support the original motion's proposed measures, which include introducing a two-tier sanitization period; expanding the system to cover jurisdictions outside Hong Kong; tightening up the granting of approvals and the monitoring system, as well as enhancing transparency in the vetting process.

I feel a more stringent approval mechanism is especially important. As things stand, special cases were approved way too indiscriminately. As the approval power is vetted by one, and only one official, namely the Secretary for the Civil Service, the public cannot help but suspect that Joseph, the gatekeeper, is a bit too lenient when it comes to green-lighting exemption applications filed by his old colleagues — I was asked by my colleagues to speak this particular phrase. In addition, the Advisory Committee on Post-retirement Employment — as its very name suggests — appears to be no more than a rubber stamp.

The Government may have to consider whether a panel or a committee, instead of one single accountability officer, should be entrusted with vetting power. Arguably, the other improvement measures, such as extending the sanitization period and restricting new employment during the pre-retirement leave, will have little effect if this back-door exemption arrangement remains unchanged as it now stands.

In turn, this will also encourage calls for greater transparency in the vetting process. On what grounds, for example, did the Secretary approve exemption applications for employment during the sanitization period, or even during a pre-retirement leave? Put it simply, has the Secretary been satisfied with the applicant's justifications for accepting a job offer so hastily? The public needs more information to monitor the Government's regulatory regime on the employment of its retired staff.

Ultimately, Madam President, the purpose of today's motion is not to punish our civil servants. Instead, it is simply aiming at restoring the public's confidence in the Civil Service and its retirement system. Thank you.

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

MR SIN CHUNG-KAI (in Cantonese): Madam President, in certain government projects, some senior officials in the Government were actually on secondment from the private sector, whilst some civil servants were also seconded to the private sector in the past. The objective of such arrangements was to introduce private sector experience into the Government, or *vice versa*, to introduce government experience into the private sector. As long as the rules are set clear and proper, it is no bad thing at all. In fact, when I look at foreign experience, I find that some politically appointed officials would take senior posts in the private sector, one of them was the Treasury Secretary Robert RUBIN who had served in the CLINTON Administration. Soon after he had resigned from the post of Treasury Secretary, he took the post as Chairman of Citicorp.

Each place has its own system, and the core of the debate this time around is that after a system is established, the Secretary is allowed to open a back door from time to time, which has undermined the system. The more senior the official the closer he can get to the Secretary, and the more likely that he can convince the Secretary; on the contrary, the interests of many innocent middle managers in the Civil Service who have reached the age of retirement may well be damaged despite the fact that they could find a new job in view of their experience whilst the job may not necessarily involve any conflict of interest. Nevertheless, after debating the matter in society, the public may have a feeling that civil servants could make more money after retirement. Actually, in the list spelt out by Mr CHEUNG Man-kwong earlier, only a few of the officials were suspected to be involved in a conflict of interest. I do not wish to name any name because Mr Albert CHENG will definitely criticize me for that, but I cannot help associating them with the cockroach droppings theory raised by former legislator NG Leung-sing. In fact, the overall government policy is heavily criticized because of a few civil servants.

For that reason, the problem lies in how well the Secretary enforces this policy and whether he can do it by the book. The Secretary has every responsibility to defend government policy and to say "no" to his colleagues, former subordinates and former colleagues, and this is the most important thing among all. Certainly, every system should have exceptions, and it would be quite extraordinary if a system allows no exception. Nevertheless, if the exception becomes regularity, it is no more exception but routine. Today, Mr CHEUNG Man-kwong moved the motion only because he had seen so many exceptions. If there are not so many exceptions, then it would be unnecessary to tighten the system.

In fact, when I looked at the content of Mr CHEUNG Man-kwong's motion, I also questioned myself whether it would be too harsh towards the Civil Service. Nevertheless, middle and lower rank civil servants have to take the blame just because the disclosure of a few cases, as the saying goes, "the black dog stole but the white dog took the blame", or "the senior management stole but the middle and lower rank took the blame." I hope the Secretary can review whether the decisions he made were too lenient. Were the decisions he made in respect of his former colleagues or colleagues from the same batch too lenient? This is actually more a matter of enforcement than long-standing policy. Since he did not enforce them properly in the past, we therefore should require him to tighten the policy. I do hope the Secretary can carry out a review in that respect.

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

Moreover, an important point is that even if this system is established, when another Secretary takes office two years later, the problem will still persist if he has so much power in hand. For that reason, I hope today's motion can plug the loophole.

With these remarks, I support the motion moved by Mr CHEUNG Man-kwong.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, you may now speak on Mr TAM Yiu-chung's amendment. You have up to five minutes to speak.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, today I am very pleased to find that, generally speaking, despite some minor differences in this Council on the issue of regulating the post-retirement employment of senior

officials, or even though there are some technical differences, Secretary Joseph WONG should have clearly appreciated the spirit and direction adopted by Honourable Members towards this matter and that is, Members are greatly dissatisfied with the current regulatory practice. First, the system is flawed; second, the authorities concerned have constantly acted in an excessively generous manner in enforcing the system and, as a result, the system has existed in vain; and third, he himself has made a lot of mistakes throughout the process of handling the retirement of senior officials.

However, I will only make several points briefly in response to Mr TAM Yiu-chung's amendment. First, the length of the sanitization period. Insofar as this issue is concerned, Secretary Joseph WONG has indicated that the Government is prepared to revise the period by extending it from six months to one year. Actually, I have merely, on this basis, added a special senior rank, that is, officers at or above the rank of Permanent Secretary, which are approximately equivalent to officers at or above D8. I have consulted government officials regarding this matter. Insofar as individual officials, such as Donald TSANG or even Mrs Anson CHAN, are concerned, if they really have to go out to work when they are still within the three-year period during which they have to seek approval under the present system, they must apply according to the system. These people actually hold a lot of important secrets of the Government. As such, the dozen of officials at the rank of Permanent Secretary must be strictly defined, and their sanitization period should be two years.

Furthermore, the locations of regulation should be extended to mainland China and Macao, in addition to Hong Kong. Mr TAM Yiu-chung, being the chairman of the relevant panel, must definitely remember that this proposal was actually raised by the Secretary himself at the previous meeting of the Panel on Public Service. Why do I remember so clearly that the proposal was raised by him? This is because I had originally prepared to raise a question on this matter. As the Secretary had unexpectedly raised the same question before me, I had thus withdrawn my question. Of course, he may refer to the tape recording. This point was raised at that time because many companies were actually operating across three places. Declaration and application are therefore warranted. Let me cite a simple example. Under the present system governing the declaration of interest by civil servants, investments outside Hong Kong must be declared. Given that such a short-term arrangement as investment has to be declared, why

is it unnecessary for civil servants to apply if they plan to take up employment with a company operating across three places?

Third, I have insisted in the motion that Joseph WONG should apologize for his mishandling of the matter. I know that my motion will gain more support if this part is deleted. Once this part is included, some Members may not support the motion. But why do I still insist on doing so? This is because I see that the general policy for accountable principal officials and the retirement policy for senior officials, led by Secretary Joseph WONG, have led to the collapse of many existing systems. Consequently, many systems are merely written on paper without being enforced. As such, the Secretary is entirely responsible for the collapse of the systems, and even the incident of Ms Elaine CHUNG. I have no intention to spare him. I wish to tell the public in unequivocal terms that he can hardly shirk his responsibilities.

Furthermore, he evidently handled the incident of Ms Elaine CHUNG in a slipshod manner and made incorrect judgement during the initial period. Even when he answered a question put by Mr KWONG Chi-kin in this Council eventually, he still insisted that there was no conflict of interest on the part of Ms Elaine CHUNG in the West Kowloon incident. This is absolutely outrageous. He should really feel ashamed to be the accountable official in charge of this policy. For me, asking him to apologize is already the lightest punishment. However, our demand for him to apologize will definitely affect Members' position and his lobbying. Therefore, it is very likely that our motion may not be passed. But still, I have to make it clear that I insist that he should apologize. As stated by Mr KWONG Chi-kin earlier, he should apologize, whether to the Chief Executive, senior officials, civil servants or members of the public.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam Deputy, over the past few months, the public has been gravely concerned about the possible conflict of interests arising from civil servants' post-retirement employment with private organizations. The motion debate today is most welcome because it gives me an opportunity to explain to the Council and the community relevant policies and measures and clarify certain misunderstandings, whether deliberate or not. I would like to thank Members for expressing valuable views on the issue. My speech is going to take some time and please tolerate my wordiness. In response to certain exaggeration and false statements, I see the need to correct them with detailed facts and objective justifications.

Equity, fairness and integrity are the core values of our society. The community at large expects that the Government implements policies on the principles of equity and fairness and provides a level playing field for all. People of Hong Kong also have high expectations of the integrity of civil servants. A clean civil service system helps sustain the core values of equity, fairness and integrity and is the cornerstone of the effective governance of Hong Kong. Over the years, through well-defined policies, legislation, rules and guidelines, stringent procedures and proper monitoring, the Government has established a comprehensive regulatory framework to govern the conduct of civil servants, in the areas of prevention of conflict of interests, declaration of personal investments, use of government data and outside work, and so on. The effectiveness of the Government in maintaining a clean and efficient civil service system have earned the wide acclaim of Hong Kong people and the international community.

Before turning to policies governing post-retirement employment of civil servants, I want to point out that the vast majority of civil servants are clean, honest and law-abiding. They act in the public interests and in a prudent manner to avoid any perceived conflict of interests. A civil servant who seeks advantage by making improper use of data collected by virtue of his post would have already contravened the Prevention of Bribery Ordinance and the Civil Service Regulations. Once his offence is revealed, he is liable to criminal prosecution or internal disciplinary actions. As a matter of fact, many civil servants have served the community dutifully and devotedly while in service, and continue to make contribution to the society by taking part, to different extents, in voluntary or unpaid work after retirement. For those engaged in paid work upon retirement, we must treat them fairly because they should enjoy the same right to employment as others. The pension schemes and legislation applicable to civil servants do not forbid pension recipients to take up approved work. Neither do I think it is appropriate to forbid retired civil servants from taking up work in approved circumstances. The existing mechanism governing post-retirement employment of civil servants might have room for improvement and we will be open-minded in carrying out the review. Members are most welcome to join the discussion, and I certainly hope that they will do so from an unbiased perspective.

I shall first talk about the existing policy and measures. The policy governing post-retirement employment of civil servants aims at preventing conflict of interest to safeguard public interests and maintaining the public

confidence in the integrity of the Civil Service. When drawing up the policy, the Government is committed to striking a balance among public interests, the right to employment of retired civil servants as individuals and the public expectations of the integrity and impartiality of civil servants. In fact, public interests and the right to employment of retired civil servants are not necessarily contradictory. As long as no conflict of interests is involved, such human capital flow is healthy and brings benefits to the community as a whole when former civil servants equipped with expertise and experience in public administration or professional fields join the business sector or other organizations.

According to the current policy which has been in place since 1987, officers retiring at the rank of Administrative Officer Staff Grade A1 or above (such as Permanent Secretary of Policy Bureaux) have to seek prior permission from the Chief Executive before they enter into business or take up employment, if the principal part of the business or employment is carried on in Hong Kong, within three years after retirement. Other officers have to seek prior permission within two years from retirement. Failure to seek prior permission may result in suspension of pension under the Pensions Ordinance. For agreement officers, starting from January 1997, officers at the rank of D3 or above are also required to seek prior permission if they take up employment with outside organizations within one year upon contract expiry. This has already been stipulated in their contract agreements, and they must comply with the provision.

For applications from non-directorate officers, the approving authority are the respective heads of department/grade under delegated power. For applications from directorate officers, they are first vetted by the respective heads of department/grade or Permanent Secretaries and then referred to the Advisory Committee on Post-retirement Employment (ACPE) for advice. These applications are finally submitted to the Secretary for the Civil Service for approval. The prerequisite for approval is that there should be no conflict of interests between the proposed work and the former duties of the applicant.

When a civil servant submits an application for post-retirement employment, he is required to provide details on the proposed work (such as name of prospective employer, duties, level of pay and expected date of employment). He is also required to give a statement as to whether he has any past dealings with his prospective employer and whether he has had access to any

commercially sensitive data during his service in the Government. The approval authority will especially focus on:

- (a) whether the officer, while serving in the Government, is involved in policy formulation, or decisions which could have benefited his prospective employer;
- (b) whether the prospective employer might gain an unfair advantage over competitors because of the officer's previous knowledge and experience; and
- (c) the public perception of the officer taking up the proposed business or employment.

Depending on the circumstances of a case, the approval authority may forbid the applicant to undertake outside work within a specified period of time upon ceasing active service, that is, to stipulate a sanitization period. The approving authority may also impose restrictions on the scope of the proposed work, for example, forbidding the applicant to take part in dealings between the Government and his prospective employer.

As just mentioned by the Honourable LEUNG Yiu-chung, our existing regulatory system of post-retirement employment of civil servants is largely modelled on the British system. At present, a British civil servant who plans to take up full-time, part-time or paid work with any public or private organization within two years after leaving service must apply for approval, while approval is not necessary for unpaid work in non-business organizations. For applications from senior officers, the British Government will consult an independent Advisory Committee on Business Appointments. As a general rule, a senior officer has to wait for three months before he may take up employment with an outside organization after leaving the government. If the advisory committee considers the proposed employment proper and unrelated to the data the officer has obtained during his public service, the waiting period can be exempted at discretion. The advisory committee may also impose restrictions on the scope of the proposed work. The British Government believes that it is in the public interest to allow officers with experience in public administration to join the business sector or other organizations. Such flow of human capital should not be impeded simply because the public may be concerned about isolated incidents. As far as we know, the regulatory measures adopted by the British Government

are administrative in nature. Deterrent effects are achieved through a high degree of transparency of the system, public monitoring and the pressure of public opinion.

On the ground that only one application was rejected in 2003, the Honourable CHEUNG Man-kwong has just concluded that our approval procedures are not stringent enough. Let me explain. Our civil servants are well informed of the approval criteria by various circulars. They know very well what kind of work will be approved or will not be approved. Under normal circumstances, they will not submit an application if they are certain that approval will not be granted. In fact, most civil servants submit applications six months after ceasing active service. I would like to quote the analysis of the cases approved in 2003 and 2004 to illustrate this. In 2003, we approved a total of 76 applications. Of these, the applicants of 41 cases submitted their applications at least six months after ceasing active service. On average, the applicants had already ceased active service for 15 months at the time of application. These figures are for 2003.

The figures for 2004 can illustrate even better. That year, a total of 69 applications were approved and the applicants of 40 cases submitted their applications at least six months after ceasing active service. On average, they had already ceased active service for 16 months at the time of application. Specific sanitization periods ranging from six months to 30 months (average being 11 months) were imposed on the applicants of another 14 cases. There were altogether 54 cases in which the applicants took up outside work six months or more upon ceasing active service, representing 78% of all approved cases. In 12 of these cases, restrictions on scope of work were imposed. For the remaining 15 cases, the applicants took up outside work within six months after ceasing active service. Most of them undertook work relating to education, medical services or professional institutions or worked in public organizations. These figures show that even though one or two individual cases could have been handled in a better way, contrary to what some Members suggest, the sanitization period and other specific restrictions are not window-dressing.

As far as the approval of applications from directorate officers is concerned, the ACPE is definitely not a rubber stamp. Rather, it has an important role to play. Established in October 1987, the Committee gives advice on the principles and criteria to be adopted in dealing with applications from civil servants for post-retirement employment as well as applications from

directorate officers and other officers. The chairman and members are all appointed by the Chief Executive. The Committee is now chaired by a Judge of the Court of First Instance of the High Court and comprises three non-official members. All applications from directorate officers are referred to the Committee for consideration. Upon considering the information and advice provided by the departments concerned, the Committee will advise on the length of sanitization and other necessary restrictions. Here I want to point out clearly that the Secretary for the Civil Service has in general accepted all the advice given by the Committee.

Since its setting up in 1987, the Committee has offered the Government a lot of valuable advice on regulatory measures and approval criteria and has exercised prudence in handling each case. Before making a decision, the approval authority has to fully consider the advice and recommendations of the Committee. We consider this system well-established and it has been operating smoothly. Nevertheless, with a down-to-earth attitude and an open mind, the Government and the Committee are willing to explore room for improvement.

I agree entirely that the existing regulatory system needs further improvement to rise to increasing public expectations of the integrity of civil servants. In mid-2004, well before the particular case drew public attention, I pledged to conduct a comprehensive review of the policy governing post-retirement employment of civil servants. This is a matter of public record. In response to the question asked by the Honourable LI Fung-ying, I wish to point out that directorate officers are the major focus of our review. Our original plan is to brief the panel on the review in May this year. But in view of Members' concern, we agree to advance the discussion over the review outcome to the March meeting of the panel.

Though the review is still underway, we have certain initial thinking. Over the past few weeks, I have mentioned these ideas on various occasions. My ideas are somewhat different from those of Mr CHEUNG Man-kwong; I shall clarify later. Our initial thinking is to improve the regulatory mechanism in the following directions:

- (a) tighten the vetting of applications and monitoring of cases;
- (b) tighten the restrictions on undertaking outside work during final leave;

- (c) consider lengthening the sanitization period; and
- (d) enhance the transparency of approved cases.

First of all, to restore public confidence in our approval criteria, we are considering some changes to the approval procedures. For applications from directorate officers, apart from the head of bureau/department in which an officer last serves, as a standard procedure, we will also request the head of the bureau/department which oversees the area of work of the prospective employer to give advice on the proposed employment.

To enhance monitoring, we shall consider seeking improvements in the following areas. We shall require an applicant to provide greater details, including the actual duties performed during the last three years of government service, as well as the business nature and scope of work of his prospective employer. The applicant should also make a statement declaring that the information provided is complete and accurate. The relevant head of department/grade should in particular, assess critically the public perception of the application so that the approving authority can make a decision on the basis of sufficient and complete information. The applicant is also required to inform his prospective employer of the approved scope of work as well as any additional conditions imposed before taking up the proposed work or employment. At present, when approving applications of post-retirement employment, the approving authority requires that the applicant informs it of any subsequent material changes to the approved work. Depending on the circumstances, the applicant might need to submit a fresh application. To monitor more closely changes to the nature of the work undertaken by directorate officers in the private sector, we shall require that these officers give us an update on their outside work on a regular basis.

The public and Members are both concerned about the outside work taken up by civil servants during their final leave. In response to the question raised by the Honourable Margaret NG, I wish to point out that the existing policy may allow directorate and non-directorate officers alike, irrespective of rank, to undertake during their final leave outside work that constitutes no conflict of interests with their former duties upon granting of approval. As to whether this policy should be tightened in future, I think the major considerations should be public doubts over potential conflict of interests and possible confusion about an officer's status. We shall study whether civil servants should be prohibited

from taking up outside work during their final leave, with possible exceptions of voluntary or unpaid work in non-business organizations or holding important public offices. I would like to recapitulate that the final leave is the paid leave accumulated by an officer during his service in the Government. Even if an officer is also paid by his outside employer for the outside work undertaken during his final leave, there is no question of the public purse "paying double salary".

Just now the Honourable KWONG Chi-kin and other Members asked if it was possible to allow civil servants to encash their leave in one go. I believe that apart from some fundamental problems of principle, we also need to take account of the huge amount of public funds involved as many civil servants have accumulated considerable leave.

The Honourable James TO asked if the Government could make one-off payments to civil servants in certain grades with a view to banning them from working after retirement. This suggestion would involve many difficult issues, like the selection of grades, the great number of civil servants affected, as well as the substantial financial commitment. But on top of these, there is the question of legal principle. The right to employment is part and partial of basic human rights. As such, we need to have the consent of the civil servants concerned, but such consent might not be forthcoming.

I understand that the community has high expectations of the conduct of senior civil servants. To remove any possible doubts, we are considering extending the sanitization period. In drawing up the proposals, we shall need to strike a right balance between meeting public expectations and protecting the right to employment of retired civil servants, bearing in mind that going too far would be undesirable. In respect of certain professions just mentioned by some Members, for example, is it necessary to specify a long sanitization period if a doctor continues to provide medical service in the private sector? Another example: It may be in the interest of the community for a lawyer to take up legal work after leaving the Government. Hence, setting any stringent and rigid sanitization period of one year or two may not be reasonable, may not be in the public interest and may not be fair to the officers concerned.

(THE PRESIDENT resumed the Chair)

When giving thoughts to the proposals on the sanitization period, we must consider whether it is reasonable to prohibit a retired officer from undertaking outside work that involves no conflict of interests for a long period of time, or to set a longer sanitization period for all officers irrespective of rank.

We of course agree that the higher the position a retired officer previously held, the more data he had access to. The public naturally have higher expectations of the integrity of these officers. We have some preliminary thinking, but let me stress that this is just preliminary because we need to seek legal advice and consult the civil servants first. Our thinking is to lengthen the sanitization period applicable to senior directorate officers from the present minimum duration of six months to 12 months. We shall of course consider enforcing the sanitization rule more strictly. For example, unless there are significant public interests to do so, the approving authority shall not remove or shorten the sanitization. In other words, for applicants who plan to take part in commercial activities or join commercial organizations, it is unlikely that the sanitization period would be exempted or shortened in their cases.

At present, the ACPE issues a report to sum up its work annually. The report is given to Members of the Panel on Public Service for reference. To further enhance the transparency of approved cases, we are considering disclosing regularly information about the outside work undertaken by retired directorate officers, including the name of the retiree, the last government department served, the organization he intends to join and the future post, the approved or forbidden scope of work, as well as the length of sanitization period. Disclosure of data will facilitate monitoring by the public. This may have greater deterrent effects towards potential rule-breakers because apart from suspension of pension under the relevant legislation, they are also subject to open criticism.

I wish to point out that enhancing the transparency of approved cases does not mean that the Government is shirking its responsibility to monitor cases that are against the rules. Earlier on, I have already briefed Members on our ideas on enhancing monitoring.

The preliminary suggestions mentioned above, if adopted, will necessitate significant changes to the existing mechanism. Some of these suggestions also involve relatively complicated legal considerations. I hope Members will

understand that we need to study these initiatives in detail, seek legal advice and consult the staff before making a decision.

Some Members asked if the application of the existing restrictions can be extended beyond Hong Kong. This suggestion was in fact found in the original motion of Mr CHEUNG Man-kwong. He said this was proposed by me. He said we could listen to the the tape recording of the last panel meeting. But actually, there is no such need. Here I have a record of what I said at the panel meeting on 21 December 2004. On that occasion, I said the existing system was devised according to law and the Pensions Ordinance only imposed restrictions on post-retirement employment and business in Hong Kong, excluding places other than Hong Kong. The way I then put it was given the fact aforementioned, if it were considered necessary to extend the geographical coverage of the control regime, legislative amendments would have to be made. As indicated in the minutes of meeting, I did not suggest that this had to be done at once. We think that at present, there are no strong grounds or pressing need for extending the geographical scope of control beyond Hong Kong to cover the Mainland and Macao.

I want to point out that at present we have a notification system that requires retired directorate officers to notify the Civil Service Bureau if they take up any paid work outside Hong Kong during the control period. This mechanism enables us to assess whether the work involved has any conflict of interests with Hong Kong. Should we need to study in future whether to extend the area of restriction, we might need to consider places other than Macao and the Mainland. We would need to consider whether there are sound justifications and study the feasibility in execution and monitoring. Besides, we need to consider whether the situation calls for amendments to the Pensions Ordinance which many civil servants are deeply concerned with. I have never suggested revising our existing mechanism to extend the area of application beyond Hong Kong.

In the course of review, we shall take into account valuable views expressed by the public and Honourable Members of the Legislative Council. Furthermore, we shall seek legal advice and in particular, consult the Independent Commission Against Corruption.

Let me say something about the application for post-retirement employment submitted by a former Deputy Director of Housing so that my

response to Members' criticism can be put on record. I know I have spoken for very long and thank you for your patience. Regarding this case, I already gave an explanation when I responded to the question asked by Mr KWONG Chi-kin on 1 December 2004. A detailed paper was submitted to the Panel on Public Service the same month. At the relevant panel meeting, I also answered questions put forward by Members. Having pledged to follow up the queries raised by Members, I shall inform Members of the investigation results within this month. I believe that Mr KWONG Chi-kin, as a lawyer, will understand that we must conduct the investigation in accordance with law and the right procedures including granting the individual concerned an opportunity to defend herself. We should not allow political or time factors to affect the due process.

I want to reiterate that this case was processed according to the established procedures and guidelines. Approval was given on the basis of the information provided by the applicant in her application. Permission was never given for her to take part in business related to real estate or land development, or work for any organization other than the ferry company, or engage herself in the bidding for the West Kowloon Cultural District project. In September last year, some time before Members asked about this case, we already noted that this retiree might be undertaking work not covered by the approval given and took immediate actions to follow up. We had further imposed six restrictions on the retiree's scope of work before Mr CHEUNG Man-kwong and the Honourable KWONG Chi-kin requested a special meeting to be held on the day of the Winter Solstice. As a matter of fact, a letter was issued to this retiree in late November and this was also mentioned in my reply to Mr KWONG Chi-kin's question on 1 December 2004. This can be traced in the minutes of the Council meeting. On 3 December, in view of the media concern, I made further clarification. Looking back, of course we could have done better in handling this case. But the fundamental principle remains the same, that is, no breach of approval will be allowed. If there is evidence showing that this retiree has breached the terms of our approval, we shall definitely handle the case according to law and the Civil Service Regulations. Drawing on the experience of this case, I now feel more certain of the need to improve the mechanism, in particular, to enhance transparency. More often than not, case details quoted by some Members are just partly true and partly false, not completely accurate. The decisions on all cases are made after careful deliberation. However since our existing mechanism is not transparent enough, not all cases are known to the public. I hope that in future there will be no more guessing or popping up of examples and the details of all approved cases will be made public for open monitoring.

Just now Mr KWONG Chi-kin seemed to suggest that the Secretary for the Civil Service is to be held solely responsible for all the faults. This is strange because if that were the case, then he should not be supporting the motion of improving the existing mechanism. The fault of one individual is easy to correct, but possible defects of a system must be corrected upon careful consideration.

Finally, the motion also touches upon Principal Officials' post-departure involvement in business activities. I wish to point out that Principal Officials are different from civil servants. Civil servants are permanent staff while the term of office of Principal Officials normally will not exceed the five-year tenure of the Chief Executive, who can be re-elected only once. As far as the principle of preventing conflict of interests is observed, Principal Officials' freedom to choose employment upon expiry of term of office should not be tightly restricted, lest this would discourage people in professional fields and the business sector from joining the highest echelon of the Government, thus resulting in a smaller pool of candidates.

Following the above principle, section 5.15 of the Code for Principal Officials under the Accountability System specifies that "Within one year after stepping down from office, Principal Officials shall seek the advice of a committee appointed for this purpose by the Chief Executive before commencing any employment, becoming a director or a partner in any business or profession or starting any business or profession on his own account or with others. The proceedings of the committee shall be kept confidential but the advice given shall be made public."

The said committee will make open its advice so that the public and the media can fully monitor the employment or business undertaken by the Principal Officials within one year after leaving the Government.

As far as post-departure involvement of the Chief Executive is concerned, at present there are no restrictions. When considering whether to impose any restrictions on the post-departure involvement of the Chief Executive, we should take into account:

- (a) prevention of conflict of interests; and
- (b) freedom and rights of the outgoing Chief Executive.

The Government is now looking carefully into this issue and we shall inform the Legislative Council of the outcome in due course.

I would like to respond to the Honourable Albert CHENG's criticism which I find unfair. The remuneration packages for all Principal Officials, including that for the Secretary for the Civil Service, were discussed openly and in great detail at the Legislative Council when the Government launched the accountability system. The packages were accepted by most of the Members at that time. My package is completely in line with the packages approved then. When I took office as a Principal Official, I made it quite clear that I would not return to the Civil Service. My statement was reported and recorded extensively by the media at that time.

Madam President, to sum up, I think that the proposals made in Mr CHEUNG Man-kwong's original motion, such as lengthening the sanitization period from six months to two years for officers retiring at the rank of Administrative Officer Staff Grade A1 or above, and extending immediately the geographical scope of business or employment to cover the Mainland and Macao, are inappropriate because they are more stringent than necessary. I therefore do not support the original motion. As regards the amendment moved by the Honourable TAM Yiu-chung, the proposed improvements, relatively speaking, can cater for the present-day situation better, and are generally in line with the major direction of our review.

Lastly, I wish to reiterate that the Government takes it very seriously that civil servants must display the highest level of integrity and we are fully aware of the expectations of the community and Members. I shall remain open-minded when listening to views from various parties, especially those expressed by Members of the Legislative Council. I shall fully discharge my responsibilities as the Secretary for the Civil Service as an accountable Principal Official and make efforts to revamp the existing approval mechanism and monitoring measures of post-retirement employment of civil servants. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr TAM Yiu-chung to Mr CHEUNG Man-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.

(Members raised their hands)

Mr CHEUNG Man-Kwong rose to claim a division.

PRESIDENT (in Cantonese): Mr CHEUNG Man-Kwong 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 Raymond HO, Ms Margaret NG, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr CHIM Pui-chung, Mr Patrick LAU, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Mr CHEUNG Man-kwong and Mr SIN Chung-kai voted against the amendment.

Geographical Constituencies:

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Mr LAU Chin-shek, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr

TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr LI Kwok-ying, Mr Alan LEONG, Mr CHEUNG Hok-ming and Mr Albert CHENG voted for the amendment.

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Andrew CHENG, Mr Albert CHAN and Mr LEE Wing-tat voted against the amendment.

Ms Emily LAU and Mr LEUNG Kwok-hung abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, 23 were in favour of the amendment and two against it; while among the Members returned by geographical constituencies through direct elections, 25 were present, 14 were in favour of the amendment, eight against it and two 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): Mr CHEUNG Man-kwong, you can now reply and you have one minute 20 seconds.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, I can only say some words of gratitude in the remaining time. First, I am grateful that many parties and Members have spoken today. In fact, they have spoken not only today, but also in panel meetings and in the media and have effectively advocated reform of the retirement system for senior officers. Today, I heard Secretary Joseph WONG say that he would be putting forward lots and lots of proposals and changes. These changes are exactly the results accumulated by each and every bit of effort made by this Council and friends of all the parties.

From now on, we should monitor the Government's efforts in realizing these changes, in enabling the retirement system of the local Civil Service to regain the support and confidence of the community, and in making the many honest and responsible civil servants of senior and general ranks feel honoured and proud of themselves.

Besides, I feel at this meeting that, despite our different political views, if we can work together in applying pressure on the Government on a specific topic which concerns the community and the livelihood of the people, the legislature can still function effectively and that is also one way to improve people's impression of the legislature. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr CHEUNG Man-kwong, as amended by Mr TAM Yiu-chung, 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, who are present. I declare the motion as amended passed.

PRESIDENT (in Cantonese): Second motion: Opposing collusion between business and the Government and transfer of benefits.

OPPOSING COLLUSION BETWEEN BUSINESS AND THE GOVERNMENT AND TRANSFER OF BENEFITS

MS EMILY LAU (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, there has been widespread discussion in the community since the Chief Executive stated in his policy address last month that he was determined to oppose collusion between business and the Government and wipe out transfer of benefits. Of course, some people opine that the Chief Executive is merely repeating what some people have said for years. However, the Chief Executive has shocked or even infuriated other people, including Members of this Council. In their opinion, it is inappropriate for the Chief Executive to make such a remark because it will arouse disputes in a formal manner.

Madam President, I think you have also read from the newspaper today that Sir Gordon WU has claimed himself to be a victim of collusion between business and the Government. The reporter who interviewed me just now said to me, "Good! Now that someone has confirmed that you did not make it up. Probably more will report their cases voluntarily." However, I also told the reporter, "Some people will probably not speak out because they still have to stay in business. Do you think they dare offend those people with power and influence?"

Madam President, during our meeting with the Chief Executive yesterday, he said that the accusation was very serious. As Members are aware, the matter was raised by him in the policy address, but now he has denied it. He has even indicated that we should never give the community an impression that we find the business sector very disgusting. Madam President, I hope the business sector would not get the impression from what I said in this Council over the years that I hold the business sector in disgust or even wish to drive away investors. Even when the Financial Secretary invited me to join the Employment Council (now known as the Economic and Employment Council, or EEC), I was very pleased to accept his invitation to do something about removing restrictions. I have joined even all the committees and subcommittees set up under the EEC, as well as a panel on food set up in this Council. Even Mr Andrew CHENG was taken aback when he saw me appearing in its meeting. He said, "Why have you come?" I replied, "Yes, I have too much time but nothing to do." (*Laughter*) I very much hope that people would not, based on my past record, think that I

want to stir up disputes to ward off investors. However, if there is anything that has aroused great suspicions among Hong Kong people, or even doubts within the business sector itself — I hope Honourable colleagues will speak out when delivering their speeches later — we must do something.

Madam President, during the debate on Motion of Thanks last week, I also raised the point that collusion between business and the Government and transfer of benefits would trigger problems related to disparity between the rich and the poor. I remarked then that Hong Kong is very rich. I am now reading a figure published in the April issue of *The Economist* in 2004 about the largest economies in the world. Of course, these economies include the United States, Japan, Germany, the United Kingdom, France, China, and so on. Yet, we have not performed too badly. Madam President, Hong Kong was ranked the 26th. With assets reaching US\$167.9 billion, Hong Kong is richer than such countries as Denmark, Turkey, Indonesia, Venezuela, Finland, Greece, Thailand, Iran and South Africa. We are indeed extremely well-off. Our per capita income of Gross Domestic Product, amounting to US\$23,260 and ranked the 17th, is even more impressive. Given that we are so wealthy, why is it that even the authorities agree that more than 1 million people in Hong Kong are living in poverty? We are not short of resources, only that resources have been funnelled to the pockets of a handful of financial magnates by improper means. If this problem is not tackled, social conflicts will definitely escalate.

Just now, I read out the definition recited by the Chief Secretary for Administration last week. He did indicate to us that there is indeed such a definition. Otherwise, how could Members know about it? Mr Albert CHAN said that he would investigate the matter. However, we cannot investigate unless we know what is happening. Besides civil servants, the Chief Secretary mentioned decriminalization too. The public is definitely concerned about whether the Government will, in the course of decision-making, particularly when land grant is involved, act unfairly or favour certain consortia. This is what the Chief Secretary said. Despite his denial of it, however, he thinks that many people are discussing this issue.

Concerning the issue of land, one is related to land sale and the land application list system, which are administered in an extremely fair manner. Another one is related to regrant premium. And then there are applications for private treaty grants. The Cyberport we talked about in our meeting this morning falls into this last category. Madam President, there is poor

transparency in the Government's handling of regrant premium and applications for private treaty grants. Although the Chief Secretary indicated last week that transparency in this area would be enhanced, he was merely saying that announcements would be made on the web site. After joining the Council headed by the Chief Secretary, I have come into contact with many property developers and people from various sectors. Many people shared the view that there was poor transparency and they had no idea at all why such a decision could be made. While some people very often considered the amount of regrant premium too low, property developers considered it too high as a matter of course. To date, we have still failed to come to any conclusion with respect to the issue of regrant premium we have been discussing in this committee. As such, this problem is very serious. However, the Chief Secretary has not responded to us. I wonder whether the Financial Secretary could give us a response later in the meeting.

On land, Madam President, I have recently read some reports alleging that the Government has, in the past, granted a lot of land to non-profit-making educational, health care and charity organizations at a nominal premium. Of course, the Government has also granted land at market price to telephone companies, electricity suppliers, gas companies, oil companies, and so on, to develop their businesses at that time. Despite the specification of land use in the private treaty grants, the Government has sometimes failed to resume the land although it is no longer used for the purpose specified in the agreement. Moreover, some people might co-operate with property developers in applying for modification of land use in order to turn schools, hospitals, children's homes, oil depots, power plants, depots, telephone exchanges, and so on, into mega housing estates. They were only required to pay a very small amount in regrant premium. Moreover, they did not need to compete with others. It can be said that there is a huge difference between the land acquired in this way and that acquired through government auctions. For these reasons, some people have an impression that transfer of benefits has really been involved. Why does the Government have to deliver the resources belonging to taxpayers to others as a gift?

During our discussion on the Cyberport issue this morning, even the authorities admitted that the Pacific Century CyberWorks Limited (PCCW) has initially been required to underwrite 50% of the occupancy rate. When asked by Mr Albert HO why the undertaking was later waived, Permanent Secretary Francis HO explained that it was because they had hoped people from more different countries would lease the place. He was scolded not only by Mr HO,

but also by Ms EU. Even Ms EU, who is normally such a gentle person, could not help flaring up and scolded the Secretary. The undertaking was supposedly designed to give the Government an assurance. The scrapping of the undertaking means that the Government is not required to subsidize if there are many lessees but, if there is no lessee, the Government would have to do so. Should the abolition of this undertaking be considered a transfer of benefits?

Madam President, the suspensions of the sale of Home Ownership Scheme (HOS) flats and land sale are also examples of transfer of benefits related to land. As Members are aware, the richest man in town, Mr LI Ka-shing, remarked in late August 2001 that the production of HOS flats should be reduced, or even be completely scrapped shortly. A few days later, like a magician, the Chief Secretary for Administration announced in early September the suspension of the production of HOS flats. In November 2002, Secretary Michael SUEN proposed his "Nine Strokes", including suspending the construction of HOS flats indefinitely, suspending land sale and the land application list system before late 2003, as well as postponing the development of the superstructures of the two railway corporations through tender. This initiative, probably used for stabilizing property prices, can also reduce the number of negative equity asset holders.

Last year, The Frontier received a sponsorship of more than \$200,000 from the Hong Kong Construction Association (HKCA) to undertake a study report on long-term housing strategies. The report has now been completed and submitted to the HKCA. In the study, conducted in conjunction with The Hong Kong Polytechnic University, many of the interviewees raised objection to the suspension of the sale of HOS flats and land sale. The decision to suspend the development of Mass Transit Railway superstructures, however, was supported by more people. The Government has restrained itself from developing these government resources. Why? Madam President, it is for the sake of transferring benefits to property developers. The Government, refusing to sell the flats already completed, has triggered the Hunghom Peninsula scandal. This is what I mean by transfer of benefits.

In addition to these resources, on what occasions do transfer of benefits and collusion between business and the Government take place? Madam President, senior officials and financial magnates have occasionally been seen revelling throughout the night together. Furthermore, they have been seen appearing on a lot of extravagant occasions too. As they often spend their time

feasting together, the officials will naturally understand and very much approve of the thinking and viewpoint of property developers. Am I right?

There is one more point I have to raise. The wedding of the Chief Secretary for Administration's son in December 2003 was reported to be the most impressive one in Hong Kong history as it was held in three parts: a church ceremony; a hotel banquet; and a reception held in the Chief Secretary's residence on the Peak. A recent report reads: It is thought that the Gross Domestic Product of the entire territory has gathered here for all the richest families in town have appeared in the banquet hall. According to the report, a mainland official, who happened to be in the territory and saw this, asked why Hong Kong civil servants could possibly act in such an extravagant manner, for this would definitely not be allowed on the Mainland and no one would dare to do so. However, the official further added: if such thing happened on the Mainland, the civil servant would have been locked up in jail before dessert is served. This could possibly happen on the Mainland because there is absolutely no respect for the law there. Madam President, what would members of the public think when they often see these high-ranking officials occupying critical positions appear with the very wealthy men on social occasions? This is particular so when the officials show up on other occasions and say: Comprehensive Social Security Assistance (CSSA) has to be cut because the burden is too heavy; expenditure on education is too enormous; health care expenditure is also problematic and has to be trimmed. Should that happen, it will be difficult to resolve the issue. Madam President, for this reason, I believe the public has a pretty good idea of how collusion and transfer occur.

Madam President, I have mentioned advisory committees in my motion. As the time for my speech is limited, Dr Fernando CHEUNG will give a detailed explanation on my behalf in his speech later. Dr CHEUNG and I have actually twice written to the Home Affairs Bureau. We will write to it again later. However, I must mention again here that, according to the information furnished by the authorities in April last year, that is, the so-called "six-six" information, a member cannot serve more than six years. At present, however, more than 3 000 people are allowed to serve more than six years. The rule has also stipulated that a member cannot serve on more than six boards/committees. Yet, more than 40 people are doing this at present. The Home Affairs Bureau is responsible for monitoring this matter. Although I have not yet read the report published by the Equal Opportunities Commission (EOC) today, there are seven EOC members who are violating this rule.

If a leader sets a bad example, it will be followed by his subordinates. We hope through this motion debate, whether it will end up achieving nothing at all, Members can put forward their views. Sir Gordon WU should not be the only one who says that there is collusion between business and the Government. I hope Members can encourage each other in our endeavours.

Ms Emily LAU moved the following motion: (Translation)

"That, as the Chief Executive has stated in his 2005 Policy Address that while ensuring the efficiency of Hong Kong's free market and its capacity to create wealth, the Administration also seeks to properly balance the interests of different social strata and sectors, and is resolutely against "collusion between business and the Government" and will strictly enforce the monitoring systems to eliminate any "transfer of benefits", this Council urges the Administration to:

- (a) clearly define what constitutes "collusion between business and the Government" and "transfer of benefits", and elaborate on how the monitoring systems will operate;
- (b) review the existing political system and the procedure for allocating resources, and plug the loopholes;
- (c) open up the mechanism for nominating members to advisory and statutory bodies and enhance its transparency, strictly enforce the rules whereby a person should not serve as a member on more than six boards/committees and should not serve more than six years in any board/committee as well as the principle of "making appointments on the basis of merits", listen widely to the views of different sectors of the community, and avoid "cronyism" and "transfer of benefits"; and
- (d) implement the election of the Chief Executive and all Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively to prevent the small-circle electoral system from continuing to give rise to problems of "collusion between business and the Government" and "transfer of benefits". "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Emily LAU be passed.

PRESIDENT (in Cantonese): Mr Jeffrey LAM 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 Mr Jeffrey LAM to speak and move his amendment.

MR JEFFREY LAM (in Cantonese): Madam President, in recent years, we have often heard people mention the slogans of "collusion between business and the Government" and "transfer of benefits", as if the entire world is living in great darkness. It is probably in view of this that the Chief Executive, for the sake of clearing the air, particularly stated in this year's policy address that he is resolutely against "collusion between business and the Government" and will strictly enforce the monitoring systems to eliminate any "transfer of benefits". Unfortunately, as the Chief Executive did not explain too clearly, his clarification has, on the contrary, been used by others to make a fuss. I believe this is not expected by the Chief Executive.

"Collusion between business and the Government" is not terminology of law and can hardly be defined clearly. As stated by a scholar of the Faculty of Law of the University of Hong Kong, Mr Eric CHEUNG Tat-ming, this is more an issue of political morality than a legal issue. In other words, it is difficult to set objective standards for the making of a moral judgement. For these reasons, today I will propose an amendment on behalf of the Liberal Party. Given the difficulty in definition, why do we not ask the Government to clearly explain how to prevent the problems, particularly in actual practice, and how to avoid damaging the healthy and normal partnering relationship between business and the Government?

Actually, since the establishment of the Independent Commission Against Corruption (ICAC), the trend of corruption in Hong Kong has been greatly improved. Early last month, Hong Kong was ranked the world's freest economy for the 11th consecutive year by the Heritage Foundation and *The Wall Street Journal*. Last year, Transparency International, a global corruption watchdog, ranked Hong Kong as the second cleanest place in Asia. The figure of reported government department corruption cases, published by the ICAC last

year, has also dropped substantially by 17%. It is thus evident that, with our proven anti-corruption mechanism, the allegation of collusion is completely untenable.

Madam President, co-operation between business and the Government is originally extremely normal and healthy. In particular, Hong Kong is a sophisticated free economy, hence, co-operation between business and the Government is very often preferred. Co-operation is not tantamount to collusion. By co-operation, it means that business and the Government work together to promote economic development, build the territory and create employment opportunities so as to benefit all people. As for collusion, it means that the Government is directly transferring benefits to the business sector with the implication of secret deals. This is what we have been trying so hard to oppose and pre-empt.

It is difficult for the Government to be solely responsible for many of the major infrastructure projects in Hong Kong, owing to great risks and high costs. The business sector has thus become the "ideal partner" of the Government. For instance, the business sector has, for many years, been invited to invest in and assist the Government in undertaking many major public infrastructure projects. In addition to the three cross-harbour tunnels, the Tate's Cairn Tunnel, the Tai Lam Tunnel of Route 3, and even Phase one of the Hong Kong Convention and Exhibition Centre, were built under BOT, or the build-operate-transfer model. In other words, consortia are responsible for financing construction and management. After certain years, the infrastructure will be returned to the Government as part of its assets. While some of these projects are making profits, some are still operating in the red. For these reasons, Members should not think that co-operation between business and the Government would always guarantee huge profits.

Nevertheless, I wish to point out that we must not indiscriminately gather evidence of "collusion between business and the Government" and "transfer of benefits" and make rash criticisms simply because the Government has sometimes failed to undergo thorough consideration in making decisions. This is because people on the outside might thus think that Hong Kong really has serious problems with its cleanliness. Furthermore, social harmony will be undermined, thus leading to anti-business sentiment or hatred for business in society. Eventually, doubtful investors might even withdraw their capital. It can be seen that there has been a massive drain of capital over the past few days.

Though I am not sure whether this is the reason, the situation is evident to all. I think all members of the community will suffer eventually. This is definitely the last thing Members would like to see.

However, the Liberal Party is of the opinion that the Government can do better to avoid arousing suspicions. For instance, the Government should follow its usual practice of comparing prices, even in buying a pencil. What is more, extra care must be exercised in allocating rare and valuable resources such as land, radio spectrum, and so on. In particular, the principle of openness, fairness and honesty must be adhered to the formulation of policies. Moreover, a high degree of transparency must be maintained to convince the public that the Government will not involve itself in illicit transfers in enforcing public policies.

The Government should therefore explain to people on the outside the procedure involved in determining the mode of partnership to be adopted between business and the Government. For instance, an explanation must be given to the public with respect to the items that will deviate from the usual practice, as well as items not required to be put up for open tender and those requiring single tender for the purpose of gaining the understanding and acceptance of the community. The Government must not, for the sake of administrative expediency, turn a blind eye to the public's right to know. As a western saying goes, we must not only be fair, but also be seen to be fair. Poor transparency will not only attract criticisms, the Government's credibility and governance ability will be affected too.

In order to boost public confidence in the impartiality of the Government, we support the recommendations announced by the Chief Secretary for Administration last week to ensure fair governance. For instance, planning and land policies will be formulated by way of interdepartmental consultation and collective decision for the sake of reducing the individual flavour of policies and formulating highly transparent application list and regrant premium systems.

Madam President, I will now turn to my reasons for deleting certain parts of the original motion. In the opinion of the Liberal Party, the original motion has gone beyond the scope of this discussion by mentioning the appointments and terms of advisory and statutory bodies, and it is inappropriate to discuss this subject on this occasion.

Furthermore, it is inappropriate to include discussions on the political system and elections in the motion. This is because, over the past year or so, this subject has been discussed numerous times in this Council, and the proposal of dual elections by universal suffrage has already been voted down. This part of the motion is merely being used as a pretext to exaggerate the matter in an attempt to, by way of repackaging, bring this topic back to this Council for discussion again.

Lastly, I wish to emphasize once again that a commercial society must adhere to the principle of facilitating the people and business. Only in doing so can investment be enhanced and job opportunities created. Under no circumstances can we act in an overly cautious manner just because the Government is criticized for colluding with business.

With these remarks, Madam President, I beg to move.

Mr Jeffrey LAM moved the following amendment: (Translation)

"To delete "define what constitutes" after "(a) clearly" and substitute with "explain how to prevent"; to delete "elaborate on how the monitoring systems will operate" after "and 'transfer of benefits', and" and substitute with "ensure that the normal partnering relationship between business and the Government is not undermined; and"; to delete "the existing political system and the procedure for allocating resources, and plug the loopholes;" after "(b) review" and substitute with "the procedure for determining business and Government partnership projects and to enhance its transparency, "; and to delete "(c) open up the mechanism for nominating members to advisory and statutory bodies and enhance its transparency, strictly enforce the rules whereby a person should not serve as a member on more than six boards/committees and should not serve more than six years in any board/committee as well as the principle of 'making appointments on the basis of merits', listen widely to the views of different sectors of the community, and avoid 'cronism' and 'transfer of benefits'; and (d) implement the election of the Chief Executive and all Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively to prevent the small-circle electoral system from continuing to give rise to problems of 'collusion between business and the Government' and 'transfer of benefits'" and substitute with "so as to safeguard public interest". "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Jeffrey LAM to Ms Emily LAU's motion, be passed.

MR LEE WING-TAT (in Cantonese): Madam President, I speak in support of the motion moved by Ms Emily LAU. Before I come to my speech proper, I would like to tell Mr Jeffrey LAM that the recent capital outflow seems to be irrelevant to this motion. Therefore, please do not exaggerate, otherwise, your credibility will be lost. As the representative of the General Chamber of Commerce, it is rash of Mr LAM to express this kind of opinion. Neither "Chief Executive YAM" nor the Financial Secretary will concur that the outflow of billions to ten billions of dollars is a result of too much talk in the community recently on collusion between business and the Government and transfer of benefits.

Returning to my speech, Madam President, first of all, I agree that it is very difficult to define what constitutes collusion between business and the Government. However, I cannot agree with Mr TUNG or Mr Jeffrey LAM, who think that only matters related to the ICAC legislation constitute collusion between business and the Government. Stipulations on matters concerning corruption and bribery are clearly stated in the law. The collusion between business and the Government that we want to discuss now is in fact about two situations mainly.

First, it is what we call a bias in policy. Such a bias is reflected in those arrangements that have apparently deviated from the existing system. For example, the Cyberport project was not granted through an open tender process, the single-tender approach was adopted in the West Kowloon development project, and so on. From these incidents, can we make an observation or analysis that such policies are in favour of certain groups or people, and there is an implication of transfer of benefits? Second, in the process of policy implementation or making, relevant officials are conferred with certain discretionary or decision-making power. If such power is not exercised in a fair manner, and certain businessmen or individuals are subsequently benefited, this will actually constitute collusion between business and the Government.

It is very difficult to deal with these two situations by way of law enforcement. How can we make such an observation? First, if there is no

generally acceptable justification for such a bias in policy, or such an unreasonable exercise of discretionary power, it is very difficult to clear the suspicion. Second, as I mentioned in a previous speech, in fact, not only Hong Kong people oppose collusion between business and the Government, members of the business community who really believe in free market, and who have confidence in their companies or themselves to have a competitive edge in business should also oppose collusion between business and the Government.

A few years ago, in the Cyberport incident, we had a situation where 10 developers told the public and the Democratic Party that they opposed the granting of the Cyberport project not by way of open tender. A lot of developers also opposed the adoption of single-tender approach in the West Kowloon development project. Therefore, I hope that people will not get the impression that only pro-democracy groups hold dissenting views on these issues. In fact, many members of the business sector are often forced to keep their indignation to themselves. This is because they know that if they boldly voice their opinions in public, they have to bear lots of various consequences. I certainly agree with what Ms Emily LAU said, that even now Sir Gordon WU says so. I believe that the campaign against collusion between business and the Government will gather momentum and more people will join in. We are not alone in this campaign.

Third, the Chief Secretary for Administration said last week that as discussions on collusion between business and the Government were largely related to land, a simple measure on a technical level could be adopted by disclosing more information on such things as the reserve list, negotiations on land premium and other related issues. I agree that by adopting such a measure, the transparency of the overall decision-making process of the Government will be enhanced on a technical level. However, I think the proposal put forward by the Chief Secretary for Administration last week cannot pinpoint the crux of the matter, which is not a simple technical matter, but a matter of major government policy, which concerns the upholding of justice and fairness and no favouritism towards any member of the business sector.

I am of the view that a strong monitoring force must be put in place. This force must believe in the core values that have all along been upheld in Hong Kong: First, freedom of speech and freedom of the press; second, a system with a high degree of transparency. Unfortunately, we still needed to debate on the

motion on enacting legislation on freedom of information last Wednesday. This shows that the public has become aware of the significance of freedom of information, or sunshine policies named by some overseas administrations. And third, monitoring by a democratic system. Government policies will then be subject to checking, proper questioning and debate. Should there be an attempt to induce bias in a policy, or to abuse discretionary power in policy-making, proper and other forms of restraint can be imposed in the process. I think this is more important.

Therefore, I do not think the Government has adopted the right way to solve the problem. To have the problem properly resolved, safeguards for the monitoring role of freedom of speech and freedom of the press must be enhanced; sound legislation must be enacted to protect our right to unobstructed access to information; and a democratic system must be put in place.

Madam President, my last point is, after raising this problem, Mr TUNG has denied over and over again its existence. A survey conducted by the Democratic Party after the release of the policy address indicates that over 60% of Hong Kong people have the impression that there is collusion between business and the Government in Hong Kong. Of course, this is only an impression. Many people, when debating this subject, will request concrete evidence to prove whether they have accepted benefits. However, this is not the crux of the matter. When such a large proportion of people in the community suspect that there is collusion between business and the Government, the problem is, in fact, very serious already. In other words, in matters concerning the formulation and enforcement of government policies, and matters involving collaboration between the Government and the business sector, the general impression is that there is an unreasonable transfer of benefits from the Government to the business sector. Therefore, no matter how this motion will end up in this debate, most importantly, I hope the Government will no longer insist that there is no collusion between business and the Government and so no actions have to be taken. Instead, the Government should reflect upon the fact that if people have such a strong impression, in what ways can the Government improve its policy and mechanism to remove that impression? Thank you, Madam President.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, the motion under discussion today concerns "collusion between business and the Government" and

"transfer of benefits". However, as Mr LEE Wing-tat has just said, in response to the discussions over the past few weeks, many government officials has turned the issue of collusion between business the Government and transfer of benefits into an issue of corruption of government officials. As we all know, should there be government officials involved in corruption, they will certainly be handled by the ICAC. However, the "collusion between business and the Government" and "transfer of benefits" under discussion today is an entirely different matter. It is a pity that Secretary Joseph WONG stressed time and again what he said in the debate on the policy address: "Government departments have well-established systems and procedures in place for policy-making, procurement, law enforcement, financial and personnel management. Through well-defined policies and laws, stringent procedures and proper monitoring, malpractices are kept to the minimum. Government departments also maintain close co-operation with the ICAC to review systems and procedures on a regular basis so as to plug any loophole." As we all know, if problems arise due to the non-compliance with those procedures, I trust that the government departments concerned will act in accordance with law. However, the issue under discussion today is a different matter, which concerns how public interest is adversely affected by collusion between business and the Government.

In his reply last week, the Chief Secretary for Administration briefly mentioned this issue. He really just made a brief mention of this issue. In mentioning "..... any attempt to neglect the law or established administrative procedures and ignore overall public interest by engaging in transfer of benefits or collusion between business and the Governmnet", he highlighted the crux of the matter. However, it is a pity that the only solution he could offer is the reference to the motion that such "is unlikely to happen under the present monitoring and preventive mechanisms." Madam President, the question is, though government officials have said time and again that this situation is unlikely to happen, not only Members of this Council have mentioned time and again the issue of collusion between business and the Government and transfer of benefits, the general public have also got this impression. Why? This problem has to be explained and resolved. We cannot ignore the problem simply because government officials deny its existence. Similarly, we cannot let Mr TUNG get away with the problem by resorting to ostrichism, saying "I cannot see it" in answering Member's question and then considering the problem resolved.

In fact, the most important issue in collusion between business and the Government is whether government officials, in the process of policy-making, can be regarded as the epitome of impartiality, so that no consortia or individuals will receive benefits in invisible or visible, direct or indirect circumstances. In fact, in the incidents of the Cyberport, the West Kowloon development project and the Hung Hom Peninsula, we can clearly see that only certain consortia or individuals have been benefited. Hence, there is no level playing field for competitors. Therefore, if the Government does not rectify its concept of collusion between business and the Government and transfer of benefits, discussions on the issue will become meaningless because we are "not on the same frequency". Therefore, first of all, we should discuss how we can tune into "the same frequency" today. It is meaningless if the Government does not understand public sentiment and public opinion, and only stresses time and again that there is no collusion between business and the Government.

I think another key issue in Ms Emily LAU's motion today, which concerns cronyism and the implementation of universal suffrage in 2007 and 2008, is also very important. However, it is a pity that the amendment seeks to delete these two key issues. Why has Ms Emily LAU urged to avoid cronyism? This is because since the establishment of the SAR Government, cronyism has been prevalent. Not only does cronyism appear in the appointment of the Executive Council Members, but also in the appointment of District Council members. Although there are no particular interests at stake in the District Councils, there are other problems, such as the advisory bodies. These advisory bodies either have direct or indirect relationship with the Government, or have direct relationship with particular groups or consortia. As we all know, a lot of policies are submitted to these advisory bodies before being put forward to the Legislative Council or the Executive Council. Take transport issue as an example. Issues concerning transport policy are submitted to the Transport Advisory Committee before being put forward to the Legislative Council or the Executive Council. Therefore, if the issue is approved by the Committee, it will most probably be agreed; if the issue is not approved, it will be negated. As regards these issues, if members are not selected in a fair and honest manner and without any conflict of interests, but through cronyism, it will lead to an indirect transfer of benefits. Therefore, Ms Emily LAU has raised a very important point. It is a pity that this point is deleted.

Another more important issue is the implementation of universal suffrage in 2007 and 2008. As we have just said, a strong monitoring body must be put

in place so that the Government will be subject to effective monitoring. However, it is a pity that should the Legislative Council wish to urge government officials on through the proposition of motions, the chances of it winning are always slim. Why? This is because, like I have just said, this Council is a "toothless tiger". We can only reprimand the Government, but we cannot exert any pressure on it. The Government can keep on doing what it likes. Mr TUNG can continue to govern Hong Kong by ostrichism, always denying problems on the grounds that he cannot see them. Therefore, the implementation of universal suffrage in 2007 and 2008 is of paramount importance. The issue concerning the Civil Service, which was mentioned not long ago, is just the same. Why are there fewer restrictions in the other countries? It is because of the presence of co-operative monitoring organs, a democratic system and an open society. Without these mechanisms, Hong Kong is doomed to fail. I think the implementation of universal suffrage in 2007 and 2008 will play a significant role in monitoring collusion between business and the Government and transfer of benefits. Regrettably the amendment has sought to amend such an important issue. Therefore, I will not support the amendment. I will only support the original motion.

Madam President, I so submit.

MR PATRICK LAU (in Cantonese): Madam President, the theme of the policy address this year is Working Together for Economic Development and Social Harmony. I totally agree that only when our economy is in good shape, our society will be in harmony. Therefore, I support the Government to improve our business environment, to enhance the cost-effectiveness of different trades and industries and to attract foreign capital so that the prosperity and stability of Hong Kong can be maintained.

In order to bring in foreign capital to invest in Hong Kong, the presence of a good investment environment and a harmonious atmosphere is of paramount importance. Hong Kong is a capitalist society. Businessmen will only continue their investments here when profit can be made. Therefore, it is impossible to have no transfer of benefits. The crucial point is how benefits can be transferred in a fair and honest manner and everybody has a share of it. Hong Kong is always a free market economy where price is adjusted by the market. In addition, Hong Kong has a sound system of the rule of law where a

level playing field is maintained. These are the driving forces that attract investments and promote economic development.

A market environment with a high degree of transparency is the key to maintaining fair competition. However, in recent years, some of the government development projects have shown a lack of transparency, where disclosure of financial data in particular has been refused. Not only the public cannot understand the situation, even the Legislative Council has been bypassed, making it impossible to perform its function of monitoring the Government. It is inevitable that people have formed the impression that the Government has kept its operations in the dark.

As regards the so-called collusion between business and the Government, and what Mr LAM has just called the collaboration between business and the Government in the property development projects, I would like to offer my point of view as an architect and share with Members my analysis.

The processes for property development have been a trilogy of town planning, land sale and building construction, which have all along taken place in a fair, honest and open environment. Planning briefs and development strategies are formulated under the legislation of the Town Planning Board, which allows participation and contribution of the public; everybody can raise their hands at a public land auction; and the regrant premium for any land redevelopment project is determined by the market price. Therefore, the issue of unfair transfer of benefits has never entered into these processes.

However, when the Government adopts a *modus operandi* in which land is disposed of by Private Treaty Grant in exchange for partnership development, the public begin to have doubts. The major concern for Public Private Partnership is no financial data such as land value are made known in advance, making the public impossible to decide whether the project is developed at a right price. This leads to collusion between business and the Government, or a bias in decision-making as mentioned by Mr LEE Wing-tat.

Obvious examples include the Cyberport and the Hunghom Peninsula incidents which are the focus of increased public concern lately, and the West Kowloon development project which is now under public consultation. In fact, why have these incidents given people an impression of transfer of benefits? It

is precisely because of inadequate transparency. It has been the practice of the Government to put selective information in the open. Neither has the Government seized the right opportunities to announce specific details of the development projects, nor has it clearly disclosed the financial arrangements involved. The Government would offer explanations only after problems have arisen, which naturally gives rise to public concern and association of the problem with collusion between business and the Government and unfair transfer of benefits.

Madam President, while I think the Government should assume sole responsibility for some development projects, the Government's wish to reduce investment risks through partnership development is understandable. Therefore, should a Public Private Partnership or Participation model be adopted, it is crucial to uphold the following four principles: First, the Government must announce the reasonable market value of land upon the development of the project; second, developing a business model and conducting a detailed cost-effectiveness analysis before the open tender exercise, which is a common practice in many countries; third, bidding should be conducted in a fair, honest and open manner; and fourth, oversized development projects will dissuade participation. Large, medium and small enterprises should have equal opportunity to participate in projects of different sizes.

In any case, it is critical that the adoption of any *modus operandi* must be in the interest of the public and will not give an impression of collusion between business and the Government. I understand that the Government perhaps cannot disclose the financial information involved. However, as land price constantly varies, it is necessary for developers to seize the opportunity. Therefore, land price should be publicized before or after the tender exercise so that it can be decided whether the project is developed at the right price. And the public is then able to make a comparison.

People are unable to shake off any misgivings about transfer of benefits when the Government has adopted such a secretive manner in its past dealings. Therefore, the Government should conduct a serious and thorough review, with a view to setting up an improved mechanism where the four principles that I have just mentioned will be adopted to establish a set of guidelines with great transparency and to maintain a level playing field which is conducive to the development of major projects in future. Moreover, the Government should

further recognize the function of the Legislative Council in monitoring the work of the Government for the public. The Council will then exercise the necessary checks and balances and urge the Government to balance the interests of different social sectors and to eliminate collusion between business and the Government and unfair transfer of benefits so that public interest can be protected. Thank you, Madam President.

MR RONNY TONG (in Cantonese): Madam President, Secretaries, Honourable colleagues, the motion under discussion today concerns collusion between business and the Government. Mr TUNG said in this Chamber, "There is no such problem. If you have evidence, you may report it to the Independent Commission Against Corruption." The Liberal Party said, "There is only 'collaboration between business and the Government'. And this is not surprising." However, when one of the tycoons in town — if not the wealthiest one — also described himself as a victim of collusion between business and the Government, the façade maintained by the Government seems lacking in credibility.

Hong Kong people's concern for collusion between business and the Government is the same as that for the rule of law. It is a general sentiment. It is a kind of apprehension. Such incidents of collusion between business and the Government do not necessarily involve criminal acts. The basic element of collusion between business and the Government is collaboration between the powerful and the wealthy to retain most of the benefits gained in business activities among themselves. Collusion between business and the Government can be seen as some form of "collaboration between business and the Government" which is not beneficial to society as a whole.

Some people said that there was the problem of collusion between business and the Government well before the reunification. Why did people not cry out then? Well, there were, in fact, many incidents of collusion between business and the Government in Hong Kong in the British Hong Kong colonial era. The Discovery Bay incident is one of the good examples. However, the major difference between the British Hong Kong Administration and the SAR Government is that the Governor of Hong Kong was directly appointed by the British Government in the past, and not "selected" by a small circle of businessmen. Under the system of businessman ruling Hong Kong, the Chief

Executive lacks the support and trust of the general public. Therefore, he has to rely on the support of the business sector. When the Chief Executive only lends an ear to the business sector and transfers its benefits, he, in fact, gives the sector political returns. This is a political sickness. To prescribe an effective remedy for this sickness, putting universal suffrage in place is the only way. The resentment and grievances of the people towards this issue can only be redressed through this channel.

There are three features in collusion between business and the Government, namely, low transparency, a lack of open competition and partnership that evades scrutiny.

First, enhancement of transparency — There is a Western saying: "Secrecy is the badge of fraud". Secrecy in this case means the conclusion, details, reason and consequences of collaboration between business and the Government. It is not necessary for an open and proper transaction to have any cover-ups. Therefore, the first act to prevent collusion between business and the Government is to put all information in the open.

Second, fair competition — competition is the worst enemy of collusion between business and the Government. The disposal of land by Private Treaty Grant in the Cyberport incident, as well as the adoption of the single-tender approach in the West Kowloon development project are perhaps the hotbed for collusion between business and the Government. Only when there is open and fair competition can collusion between business and the Government be eliminated and doubts of the people cleared. This is the second act to prevent collusion between business and the Government.

Third, public scrutiny — another obvious sign of collusion between business and the Government is the deliberate twist of the legal and constitutional power of the Legislative Council and the public to monitor the Government. The perfect example is the disposal of land by Private Treaty Grant in the Cyberport incident and the West Kowloon development project. The Government has deliberately bypassed the Legislative Council, which is empowered by Articles 64 and 73 of the Basic Law to monitor the Government. Whatever the Government's argument is, the willingness to commit and to be subject to scrutiny is an act of innocence in itself, as well as a panacea to stop the rumour of collusion between business and the Government. It is essential for the Government to provide sufficient and comprehensive information to its monitors in order to achieve effective monitoring. If the Government's

willingness to be subject to scrutiny is merely surface deep, but it is actually unwilling to provide all the relevant papers and facts, the effectiveness of monitoring will certainly be heavily discounted. The last act to prevent collusion between business and the Government is effective public scrutiny. As the Honourable "Long Hair" said, this is really simple.

This is the trilogy of "How to Eliminate Collusion between Business and the Government". Every act is an integral part of the trilogy. If the Government sincerely wishes to eliminate "collusion between business and the Government", it has to put this trilogy into practice. Only then can the people and the Government recite together, "We have a fair and just society".

Thank you, Madam President.

DR RAYMOND HO: Madam President, we must be fully on guard against the emergence of "collusion between business and the Government" in Hong Kong. Like cancer in human body, its growth will kill a free market like ours.

The integrity of our Government and its officials is always cited as one of the most important strengths of Hong Kong. As far as I know, contracts for supplying goods and services to the SAR Government are awarded through open, fair, competitive and transparent procedures.

Basically, government procurement is strictly governed by related laws and regulations. Besides relevant reference in Articles 106 and 110 of the Basic Law, the government procurement process is governed by the Stores and Procurement Regulations which are supplemented by Financial Circulars issued by the Secretary for Financial Services and the Treasury from time to time.

The principles underlying the procurement system of the SAR Government are also consistent with the spirit and objectives of the World Trade Organization Agreement on Government Procurement. Reviews of the procurement regulations and procedures are also conducted from time to time, with the involvement of the Independent Commission Against Corruption.

There should be no question of "collusion between business and the Government" as long as the existing procedures for procurement are strictly

followed. Should there be any departure from the established practices, the Government has to give explanations. If there is any suspicion, investigations must be carried out to ascertain if there is any negligence, irregularity, or even corruption involved.

But the emergence of new forms of co-operation between the public and the private sectors, such as Public Private Partnership (PPP) and Private Finance Initiatives (PFI), has called into the question the relevance of the existing procedures and regulations originally designed for the traditional form of procurement of government services and goods.

For meeting the new requirements, the Government has to put into place a set of new rules and procedures for procurement for new PPP or PFI projects. As some countries, such as the United Kingdom and Canada, have a longer experience in their adoption, the Government may consider learning from them.

Usually, developing a PPP or PFI project includes the following major stages: the identification of service need, option appraisal, assessment of project potential with funding and project approval, project development, bidding process, project finalization review, final negotiation and contract management. It is imperative that clear guidelines and regulations should be established for these different stages of the process. There must be no inherent bias in favour of one option over another.

Even in the traditional form of procurement, there is always a tendency for the Government to be accused of having bias in selecting proponents. This may be more prevalent with PPPs, as "low bid" may not always win the contract should the Government use other criteria, such as value for money or assurance of quality. Decisions must therefore be based on a rigorous assessment of different options.

Madam President, the potential for the Government being accused of colluding with business and transferring benefits can be reduced through well-developed regulations and procedures, by ensuring transparency in dealing with potential private partners.

With these remarks, I so submit.

MR ALBERT HO (in Cantonese): Madam President, "to be against collusion between business and the Government and to eliminate transfer of benefits" should not be an empty slogan only, nor should it be an aimless accusation. It should be the fundamental objective and directive of governance that embodies respect for fair competition.

Collusion between business and the Government and transfer of benefits are closely intertwined, with collusion between business and the Government as the cause, and transfer of benefits as the effect. This causal relationship is apparent. A more profound observation and analysis indicates that the design of an unfair and pro-business political system that runs counter to democracy becomes the cause of collusion between business and the Government, while the resultant effect is transfer of benefits.

Mr Jeffrey LAM of the Liberal Party has just said that collusion between business and the Government was a form of collaboration, that is, collaboration between business and the Government. I agree to part of his statement. I think collusion between business and the Government can be regarded as a form of collaboration, but it is an immoral collaboration, or even an illegal collaboration. It is already bad that the Government is biased towards the business sector in the process of policy-making. It is even worse that our top leader or high-ranking official is biased in favour of individual financial magnate or consortium in exchange for political support or transfer of benefits. Should the above two scenarios be proved to be true, they are definitely unlawful, where they can be regarded as an exploitation of power for personal gains, or a practice of bribery at an election, or even an act of corruption. If the Chief Executive thinks that the problem can be resolved by bringing in the ICAC, his attitude is no different from burying his head in the sand and turning a blind eye to the problem.

Collusion between business and the Government and transfer of benefits can take on three different modes: First, exchange of power and money; second, connection between present benefits and future returns; and third, personal gains, together with benefits for the family. Everybody can see that all these connections are closely intertwined. Transfer of benefits takes a complicated and obscure course, usually with mutual and tacit understanding of all parties concerned.

Madam President, what are the features of unfair practices like collusion between business and the Government and transfer of benefits? We have gathered the first feature through our observation in the Legislative Council over the past few years. When a special measure departed from established policy is taken, it is usually kept secret on the grounds of business ethics. On many occasions, even the victimized party does not know there are other parties that have been benefited. Take the Tseung Kwan O Industrial Estate incident we mentioned earlier as an example. The management concerned offered a particular company concession by lowering the land premium. We queried then why other companies could not enjoy this concession. The management's response was no other companies had submitted similar applications. But the actual fact was that other companies were completely ignorant of this possible concession. Another example is the Cyberport incident. When we review the initial stage of negotiation now, Secretary K C KWONG in fact asked a series of questions, which included: Why was the public tender approach not adopted? Why was there property development involved in the project? Why was this industry chosen? Why the PCCW was chosen? Why this site was chosen? Eventually, all answers provided were "no comments" on the grounds of confidentiality.

The second feature is special consideration. In the Cyberport incident, how did the PCCW persuade the Government that it was not necessary to conduct a public tender exercise? The PCCW stated that it was the only consortium in Hong Kong that was capable of developing the Cyberport project. The situation was analogous to a Disneyland theme park. Only the Disney was capable of building a Disneyland in Hong Kong. Moreover, the PCCW told the Government that should a public tender exercise be conducted, the Government had neither the experts nor the ability to analyse the bids. This shows that these so-called special considerations are ridiculous. Upon the acceptance of these reasons, how does the Government regard itself? How can the Government be accountable to the public? Upon the acceptance of these reasons, does the Government admit that it lacks abilities in governance? If the Government is incapable of considering the bids, why is it capable of ascertaining if the reasons offered by the PCCW then for special consideration were tenable?

The third feature is the employment of public private partnership and land subsidy. The latter has made use of the flexibility of land valuation, adding into it a large number of invisible premiums, as well as benefits that cannot be

instantly estimated, followed by the adoption of single-tender approach or no tender exercise at all.

The last feature is the exercise of the prerogative of land grant to bypass monitoring by the Legislative Council and the public. Madam President, we are overcome with grief when we discuss this motion today. It is because at present, the Hospital Authority is in the deficit, our education institutes face a cut in resources, there is a widening gap between the rich and the poor, and the CSSA recipient families cannot even afford a pair of spectacles for their children. However, at the same time, tens to hundreds of million dollars of our revenue have been lost: \$80 million in the Tseung Kwan O Industrial Estate incident, \$600 million to \$800 million in the Hunghom Peninsula incident, and \$1 billion to \$10 billion of a shift of wealth and a transfer of benefits in the West Kowloon development project and the Cyberport incident.

Lastly, I hope the Government will introduce reforms to the system, adhere to the Basic Law and show respect to the power of the Legislative Council to approve public expenditure..... *(the buzzer sounded)* Thank you.

MR TAM YIU-CHUNG (in Cantonese): Madam President, the integrity of the Civil Service of Hong Kong is world renowned. And our free economy and fair business environment is recognized by the rating organizations on a long-term basis. The rule of law and anti-corruption system of Hong Kong have neither retrogressed nor deteriorated after the reunification. Therefore, hasty accusations of collusion between business and the Government and transfer of benefits are uncalled for. However, the impartiality of the Government in certain economic sectors, in particular, the domain related to land development rights, has often been called into question. It is true that there is room for improvement in terms of land planning. As discussed in the previous debate, the system to regulate post-retirement employment of high-ranking officials with private-sector organizations is also far from perfect. Therefore, it is inevitable that the public has cast doubts on the impartiality of the Government in some of its policies.

To ease people's concern and to enhance the credibility of the Government, it is imperative for the Government to introduce greater transparency and reforms to the existing mechanisms concerning land grant and land development, as well as regulation of post-retirement employment of high-ranking officials with private-sector organizations.

The original motion suggests that the existing electoral system, among other causes, has given rise to collusion between business and the Government. It then suggests the implementation of universal suffrage in 2007 and 2008. I cannot agree to such oblique and twisted argument.

We have stressed time and again that the insistence on implementing universal suffrage in 2007 and 2008 is not only in violation of the decision of the Standing Committee of the National People's Congress (NPCSC), it will also result in the slowing down the democratization agenda of Hong Kong. It is stipulated in the Basic Law that constitutional development of Hong Kong must be consistent with the principle of "gradual and orderly progress". In exercising its constitutional power and acting in accordance with the provisions of the Basic Law, the NPCSC promulgated "An interpretation of Article 7 of Annex I and Article III of Annex II to the Basic Law" on 6 April last year. And in response to the report submitted by the Chief Executive to the NPCSC, the NPCSC promulgated "A decision on methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008 in the Hong Kong Special Administrative Region" on 26 April, which clearly mapped out the scope of constitutional development in Hong Kong. Both the interpretation and the decision are constitutionally binding on Hong Kong and also serve the purpose of putting an end to social disputes in Hong Kong. It is indisputable that the NPCSC has exercised its power in accordance with law. Therefore, every one of us should respect the NPCSC interpretation of the Basic Law, as well as its decision on the constitutional development of Hong Kong. Only on foundation of this understanding can social stability be maintained and democracy be further pursued in Hong Kong.

Secondly, the political system and the emergence of collusion between business and the Government or transfer of benefits do not have a direct causal relationship. It is apparently not practical to simply attribute the problems of the Government of the Hong Kong Special Administrative Region (SAR) to the absence of universal suffrage. Take the United States as an example. Some people hold the United States in high esteem for its democratic system. However, accusations on collusion between business and the Government and transfer of benefits have equally prevailed and a lot of scandals have emerged in the United States. For example, it was revealed in the Enron case that the company was closely connected with the high-ranking officials of the United States Administration. And it was the largest political donor ever in the history of the United States. The energy select committee under the BUSH Junior

Administration had given the proposals of the company its full support and helped the company monopolize the energy industry in the United States. In addition, countries on the periphery of Hong Kong such as the Philippines and Indonesia have universal suffrage in place, but the extent of corruption and collusion between business and the governments in these countries is really shocking.

Political system and democratic development are not necessarily related to the effectiveness of the Government in preventing collusion between business and the Government and in maintaining a free economy. Practice proves that the independent and healthy anti-corruption mechanism of Hong Kong has served as an effective means to prevent any collusion between business and the Government and transfer of benefits. Apart from the ICAC, we also have the Office of The Ombudsman and Audit Commission, which are vested with statutory powers to monitor the administration of the Government. It is impossible for any law-breaking government officials to avoid punishment under the law. On this foundation of sound social institutions, we hope the SAR Government will further improve the regulatory systems on land planning and development and the Civil Service, with a view to stepping up monitoring and checking and to enhancing transparency, so that an image of impartiality for the Government can be maintained.

With these remarks, I oppose the original motion.

MR ALBERT CHAN (in Cantonese): Madam President, I seldom share the observations of Mr TAM Yiu-chung on many issues. However, I totally agree with what he has just said, that there are incidents of collusion between business and the government in a democratic country like the United States. Democracy may not be the panacea for collusion between business and the government. But the absurdity of the situation in Hong Kong is that even our high-ranking officials, who include the Chief Executive, denied that there has been collusion between business and the Government. The Legislative Council can do nothing to deal with such shameless acts of the Government. Nor is this Council capable of monitoring and restricting such open collusion between business and the Government. However, the people of the United States can do these. They can rectify malpractices such as collusion between business and the government in the Enron incident through their law and established mechanisms.

However, in Hong Kong, we can only discuss in this Council incident of open collusion between business and the Government such as the Cyberport project.

In fact, the problem of collusion between business and the Government has a very long history. It does not happen just now here in Hong Kong or in the United States. In fact, there was the problem of collusion between business and the government in the late Qing Dynasty; during the reign of the Republic of China; in the separatist warlord regime; even in our Motherland under the rule of the Communist Party, and in the British Hong Kong Administration era. In the past, businesses with British background had close ties with the colonial administration, with their representatives enjoying special status and privileges. This is apparently a typical example of collusion between business and the Government. However, in the British Hong Kong Administration era, the situation did not deteriorate to an extreme because of monitoring by the elected British Parliament.

Prof LAU Siu-kai is, at present, the chief advisor of the Chief Executive. We have read his work written in 1978, that is, 27 years ago. In *The Basics of Political Stability in Hong Kong in Utilitarianistic Familism*, he then mentioned that there was a close tie between the Hong Kong Government and the prominent families. Political stability could be maintained through the collaboration between the Government and the prominent families. He even described the political system of Hong Kong at the time, that is, nearly 30 years ago, as a two-tier structure under familism, with the British Government at the upper tier while the prominent families at the lower tier, in which both were closely tied. These prominent families were concerned with their own interests instead of the overall interests of the public. Many social problems at the time were resolved through the social ties between the Government and the prominent families. Many of those instances described by Prof LAU happen to coincide with the present situation of collusion between business and the Government in Hong Kong.

In fact, the problem of collusion between business and the Government in Hong Kong is very serious and tends to deteriorate. At present, collusion between business and the Government is gradually structuralized, rationalized and, to a certain extent, even legalized. And the extent of legalization is shocking because even high-ranking officials like the Chief Executive and Secretaries of all levels have completely denied the phenomenon of collusion between business and the Government. They asked questions like: Could you give us examples? Could you not give us examples? If you could, then lodge

a complaint with the ICAC. They want us to give them examples. This is like the discussion of the problem of corruption in Hong Kong before 1972. Before 1972, any attempt to tell the Hong Kong colonial officials that there was a corruption problem in Hong Kong would certainly receive a negative answer and then a question in reply, "How can there be corruption?" It was until Sir Murray MacLEHOSE became the Governor and appointed Sir Jack CATER as the Commissioner that, like a sudden clap of thunder, the problem of corruption was addressed.

At present, Secretaries of all levels and the Chief Executive have handled the situation in a manner no different from that of the colonial administration towards corruption before 1972. How can it be different? The Government, including the Chief Executive, has accepted that some people may be benefited from collusion between business and the Government. Let us take a look at the Orient Overseas (Shanghai) Limited (the Orient Overseas). How can the Orient Overseas get such a lot of property development projects? At present, the Orient Overseas is one of the consortia that have amassed the largest number of property development projects in Shanghai, with assets valued at thousands of million dollars. With a new company getting such a large number of property development projects in Shanghai and achieving such a lot, I absolutely do not believe that no special consideration and special privilege has been granted. Should people ask us to give examples of bribery and corruption, it is like the reaction towards the problem of corruption in Hong Kong before 1972.

As regards our political system, many Members, including Mr TAM Yiu-chung, said that it was not related to democracy. Why can the Hong Kong Government deny the problem in solemn and categorical terms? This is because the Government has been shielded by a majority of Members in this Council, and has been supported by a lot of prominent families in Hong Kong. In addition, Beijing has lent its support to the SAR high-level for its governance. Let us take a look at the past, especially at the time when the Basic Law was promulgated. In the Basic Law Drafting Committee, many members were chairmen of major consortia such as Sir YK PAO, Dr David LI, Mr LI Fook-sean, Mr LI Ka-shing and Mr FOK Ying-tung. It was even more so in the Basic Law Consultative Committee. After the reunification, the Provisional Legislative Council was once in the hands of the business sector. Legislation related to the right to collective bargaining was then repealed by the business-controlled Legislative Council. This is obviously collaboration

between political and business interests to suppress, attack and exploit the rights of the people.

Should the SAR Government and the Members handle the situation in the same manner as that towards the problem of corruption before 1972, I can tell Secretaries of all levels loud and clear that by adopting ostrichism, and by turning a blind eye to collusion between business and the Government, and people's discontentment and hostility, they can never assuage public indignation. Like corruption giving rise to public wrath in the past, Hong Kong will step towards instability, with more social unrest to come. I hope people will recall the problem of corruption before 1972 and see how similar it is to the present problem of collusion between business and the Government.

MR SIN CHUNG-KAI (in Cantonese): Madam President, I do not intend to discuss problems of a general nature. I wish to discuss issues related to Private Treaty Grant. This is a problem that the Government should address, and it is also regarded as the root of collusion between business and the Government.

On many occasions, land was granted for the construction of power stations or telephone exchanges, or even for use by some social welfare organizations. However, after 20 or 30 years, the piece of land may no longer be suitable for the original purpose. So the Government would seek to change the land use either by way of regrant or by invoking section 16 of the Town Planning Ordinance. Such a practice is actually open to question. Therefore, the Government should review this practice and examine whether in future the user of a piece of land for a specified purpose should have priority and change the original land use.

Members may recall that many years ago, there was a Whampoa Dockyard. On the site of the dockyard, it is now Whampoa Garden. At first, the land was perhaps specified as a dockyard. But it was changed afterwards. I suggest that when the land use of a Private Treaty Grant is about to change, such as conversion to residential use, the Government should consider treating that piece of land like any on the reserve list. The Government should negotiate with the original user to agree on a reserve price. Then within a certain period of time, that piece of land should be up for public auction. In this way, land use is changed through an open, fair and transparent mechanism. However, the

present practice is that after reaching an agreement with a developer, the Government will tell us that a reasonable price will be estimated by a number of valuers and surveyors. This is inadequate because other organizations do not have an opportunity to take part in the game.

It is important to have a level playing field. Take the Cyberport project discussed this morning as an example. The crux of the matter is that before March 1999, apart from a particular company, the whole world had no idea that such a project was on the agenda of the Government. After the decision had been made, other parties no longer had any chance to participate in the project. It is not necessary for us to discuss whether that piece of land was granted at a price reflecting or higher than the market value. The most important point is whether other parties participated in the process. Should the Government put the land up for public auction after negotiations with the PCCW at the time, I believe that efforts need not be spent on so much discussion on this issue now.

I think the Government should seriously handle future land disposal by Private Treaty Grant because there is going to be many more to come. The Legislative Council has discussed earlier the issue of the land presently occupied by oil tanks at South Horizons. A consortium has made an application to change the land use again through Private Treaty Grant. If the application is approved, it will probably be accused as another incident of collusion between business and the Government. Therefore, I think the Government should make an improvement. It is unreasonable to reject all applications of change of land use. However, should land use be changed, is it possible for the Government to establish a mechanism whereby the land involved will be put up for public auction after negotiations with the developer? This practice will eliminate doubts, or at least create an impression of fair play in the process.

When we discuss the problem of collusion between business and the Government today, we can actually find a lot of examples. The Hunghom Peninsula incident is one of them. Why did the Government not put the land up for a second auction at an overall price in the final stage of negotiations? If the land is put up for a second auction, it means the consortium involved has set a reserve price. Even if no other consortium takes part in the auction, the consortium that has set the reserve price will be able to undertake the project.

Madam President, I hope the Government will learn a lesson. In future, not only the Government itself should think there is no collusion between business and the Government, it should establish a mechanism where people can see that there is no collusion between business and the Government, that is, it has to be seen to be fair.

With these remarks, I support the original motion.

MS MIRIAM LAU (in Cantonese): Madam President, when notions of "collusion between business and the Government" and "transfer of benefits" are suggested, ten out of ten people will say they oppose them. However, if a question of what constitutes "collusion between business and the Government" and "transfer of benefits" is raised, it is possible that ten people will come up with ten different answers. Although much would be said on their various opinions, they would share one common point, and that is, a lack of concrete evidence.

We are definitely against "collusion between business and the Government". But does it mean that whenever the business sector and the Government come together, there must be collusion between them; it must be something bad; and nothing good will come out of it? I think these are not necessarily true. As Mr Jeffrey LAM said earlier, we rank very high in terms of cleanliness in the international community. In fact, in the development of transport infrastructure, there has been collaboration between business and the Government since long ago, which has brought huge benefits to society as a whole. In addition, not only Hong Kong has such a partnership, it is also a common practice in other countries.

Take the three cross-harbour tunnels as examples. All of them were constructed by the "Build, Operate and Transfer" model and were privately financed with a construction fee amounting to \$10 billion. These three tunnels, which have linked up the central, eastern and western parts of Hong Kong Island and the Kowloon Peninsula, not only have promoted the development at both sides of the Victoria Harbour, but also the economic development of the whole territory. They have provided the public with a convenient and reliable transport network to facilitate the development of freight transport, port trade, logistics, as well as different trades and industries.

Madam President, we should not forget that the construction fee for the Cross Harbour Tunnel at Hung Hom was \$320 million. It was very expensive at the time. But the private sector was still willing to make the investment. However, the investor of the Cross Harbour Tunnel had better luck, who gained a fat profit long ago. After the tunnel was transferred to the Government, the Government continued to make a healthy profit. Is this "collusion between business and the Government"? I certainly do not think so. However, should people maintain that as long as the private sector gains a profit, it is because of "collusion between business and the Government" and "transfer of benefits", I hope they can take a look at the situation of the other tunnels. In the case of the Western Harbour Crossing, figures as at August last year show that despite the tunnel has been commissioned for seven years, not only has it made no profits, it has incurred liabilities of \$6.1 billion. Although a profit of \$145 million was recorded for the first time after the toll rise in 2002, it has to make a profit of at least \$300 million each year in order to pay off its liabilities and to level its investment before its franchise ends in 20 years' time — in fact, it should be in less than 20 years' time.

Apart from the Western Harbour Crossing, both the Tai Lam Tunnel and the Tate's Cairn Tunnel have been similarly in deficit. The former has a cumulative deficit of \$600 million while the latter \$453 million. Should business making a profit be regarded as a "transfer of benefits", business having no profit but a loss instead should then be regarded as a "reverse transfer of benefits". I believe the private sector understands that there are incidental risks in an investment. And the public also understand that if these losses are to be shouldered by the Government, our tax burden will be much heavier than it is now.

This proves that the collaboration between business and the Government in the past has resulted in saving a substantial amount of public revenue from transport infrastructure development for use on other more necessary purposes while the public can enjoy the benefit brought by quality public transport facilities. We should bear in mind that there will be more transport infrastructure projects that need collaboration between business and the Government in the future. If investors are branded as engaging in "collusion between business and the Government" and "transfer of benefits" at every opportunity, will they continue to make investments here, or will they "vanish in a flash"? In fact, who will be willing to invest in a hostile environment? Therefore, I hope every one of us will calm down and refrain from making

shocking speeches just for the sake of hitting a chord in the public. After all, we should take into consideration the consequences of our speech and whether there is concrete evidence.

Madam President, I so submit.

MS MARGARET NG (in Cantonese): Madam President, I originally did not intend to take part in the discussion on the motion of collusion between business and the Government and transfer of benefits. However, as Mr Jeffrey LAM sought to amend point (d) of Ms Emily LAU's motion, which concerns the implementation of universal suffrage in 2007 and 2008, and claimed that Ms LAU had seized a pretext to air her opinions, I find it impossible not to say a few words.

The existing problem of collusion between business and the Government and transfer of benefits is, in fact, a structural problem. On the one hand, the Government has control over certain public interests; on the other, businessmen lend the Government political support. That means while the Government transfers benefits to the business sector, businessmen give the Government political support in return, and between them, small-circle election acts as a bridge to make such a transaction possible. People who have studied history are well aware that there was a strange phenomenon in Chinese history. The imperial government was very reluctant to appoint officials to serve in their home towns. Why? It was because the imperial government feared that officials would gain too much power in the locality and collude with the local gentry and businessmen. Therefore, the prevention of collusion between business and the Government institution-wise is always a major subject in Chinese history.

Then what particular situation are we now facing in the modern society? At present, the Election Committee that is responsible for selecting the Chief Executive is markedly biased, which is under the control of some financial consortia and political powers. Whether the policy of the Chief Executive elect can be carried out smoothly in future largely depends on the support or checking of the Legislative Council. However, a majority of the Legislative Council Members returned by functional constituencies are also controlled by that same small circle. Therefore, our existing structure has induced collusion between business and the Government. This is precisely why we have to face this

problem squarely. We must open up the election so that important appointments will not be so easily influenced by a small number of people.

We have had a lot of discussions on transfer of benefits. And the benefits mentioned in many of our discussions happen to be incidents related to land, for example, the Cyberport project, the West Kowloon development project, and so on. On 27 January, what did Mr Donald TSANG, the Chief Secretary for Administration, remind us? He said, "under the Basic Law, the administration of land is within the pavers of the executive. We certainly have to be accountable to the Legislative Council and the public in respect of all policies and particularly, when the use of public coffers is involved, we must first obtain the approval of the Finance Committee of the Legislative Council. In spite of this, the constitutional fact that the power of land administration rests with the executive should not be undermined." The Secretary told us that the power was in his hands. Therefore, the point is whether the Legislative Council can check his power. If not, benefits can be openly transferred. Is it possible for the Legislative Council to achieve this purpose through criticizing the Government, calling for a meeting or a debate, or even setting up a select committee? Is it possible for such a motion to be carried in the Legislative Council? The Government can easily tell the public that the Legislative Council has given it support. Then the Government can openly transfer benefits.

Madam President, benefits transferred are actually numerous and varied. Not only can they be land, they can also be contracts, licences, or even positions. Who will be appointed by the Government? What different positions should different appointees hold? How can different appointees gain benefits and status from different positions? All of these involve a lot of benefits — not only monetary benefits, but also those that are not directly related to money. The power is in the hands of the executive authorities. But who will exercise the power? It is the government officials. Therefore, some of the government officials are found to be vested with immense power. People who have studied history and personally experienced this kind of suffering know that there is going to be a scenario of powerful officials manipulating power for personal ends, which will give rise to corrupt government.

A number of Members have earlier mentioned that the ICAC of Hong Kong is world renowned. This is certainly true. But by whom is the Commissioner of the Independent Commission Against Corruption appointed?

By whom is the Commissioner of Police appointed? And by whom are the accountability officials appointed? Therefore, we often have to ask these questions. Is our present political structure open and transparent? Is this structure under the control of some people; or are many issues within the control of most of the voters?

I absolutely disagree with Mr Jeffrey LAM's suggestion that we have seized a pretext to air our opinions on universal suffrage. He said that the problem of collusion between business and the Government and transfer of benefits can be resolved simply by conducting an in-depth review. I want to ask Mr LAM a question. Under the present structure, how can he prevent the problem of collusion between business and the Government and transfer of benefits from deteriorating? Why are we so eager to have universal suffrage in place in 2007 and 2008? This is definitely because many of us hold hopes for democracy. I remember Mr LEUNG Kwok-hung once said, "As we have fought for democracy for such a long time, why are we so eager to have universal suffrage in place in 2007 and 2008?" Madam President, it is because we want to make vigorous efforts to turn the tide in many aspects. And we do not want to see this tendency towards corruption continue.

Certainly, we all know that we cannot force the Central Authorities to agree to implement universal suffrage in 2007 and 2008. No matter how Ms Emily LAU has seized a pretext to air her opinions, it is not possible to change this fact. We can only offer the Central Authorities a piece of our sincere advice: Should the small-circle election not be abolished, it is inevitable that there are going to be incidents of collusion between business and the Government, transfer of benefits, as well as powerful officials manipulating power for personal ends to give rise to corrupt government. And this is precisely our concern. Thank you, Madam President.

MR JAMES TIEN (in Cantonese): Madam President, it so happened that Ms Margaret NG spoke just before me. She raised a lot of questions. Let me answer those questions on behalf of Mr Jeffrey LAM, as the Liberal Party is unanimous in this issue.

Is direct election the panacea for all the problems? Is the absence of direct election the root of all the problems Hong Kong is now facing? In the British Hong Kong Administration era, the Governor was appointed by Britain.

There were no direct elections in Hong Kong. Was there no so-called collusion between business and the Government and transfer of benefits at the time which involved the Hongkong and Shanghai Banking Corporation and the Standard Chartered Bank? Is this a new problem we are now facing? A "one-person, one-vote" electoral system is in place in the United States. Does it mean such a system can cut off the tie between President George W BUSH and the major oil companies in Texas? After he has become President of the United States, has he appointed his "buddies" as ambassadors to Britain and France? Have awards been presented to them as usual? I think no matter how leaders all over the world are elected, either by direct elections or indirect elections or any other ways, one may say there is a problem of collusion between business and the Government and transfer of benefits, or one may say there is no such problem.

To be more specific in my response, the Election Committee is currently composed of 800 members, among which 200 members come from the business sector, representing one quarter of the Committee. In other words, 600 members come from non-business sectors, representing 75% of the Committee. If the Chief Executive only looks after the interests of the business sector, members from the other three sectors will not give him their votes. In other words, is it necessary for the Chief Executive to transfer benefits to the other three sectors? Do Members returned by "one person, one vote" have to listen to all the views from the districts? Does a Chief Executive returned by "one person, one vote" have to listen to all the views from the districts, and transfer benefits only to the people? If this is the case, it will become collusion between people and the Government. Collusion between people and the Government and transfer of benefits seems to be a matter of course. After collecting tax revenues, the Government should look after the interests of the public, such as in the areas of medical services, education, and so on. Is it a transfer of benefits? It is certainly not collusion between people and the Government, or transfer of benefits between people and the Government. It is the responsibility of the Government.

Madam President, after responding to the views of Ms Margaret NG, I would like to return to my original speech. I think we should look at the current issue of collusion between business and the Government and transfer of benefits from a comparative angle. From this point of view, we can make a comparison between Hong Kong at present and Hong Kong in the past, or we can make a comparison between Hong Kong at present and other countries in the world. As we live in this city, we see the problems here and feel dissatisfied with some

issues. For example, the bone of contention in the Cyberport incident is the absence of a public tender. However, is the absence of a public tender equal to collusion between business and the Government and transfer of benefits? The Disneyland project was also granted without a public tender process. Of course, you may say that only the Disney can build a Disneyland theme park, but the PCCW is not necessarily the only company that can build a Cyberport. A few dozens more companies could have been invited to take part in the bid. I believe the Government has learnt a lesson from this incident. Whatever project it has in future, it will invite tenders in order to enhance transparency. However, if the Government decides to invite tenders, will it be possible that businessmen of Hong Kong or other countries will turn to the governments of Guangzhou, Shanghai or Singapore for partnership in their new ventures, and give up negotiating with the Hong Kong Government? This is because if they approach those governments to negotiate for a partnership, and those governments decide to give a green light to their proposals, they will be engaged for the development of the projects. Their innovative and sound proposals are not going to be put to a public tender exercise. Should the Government decide to invite tenders for the proposed projects, what is the point for the business sector to seek partnership with the Government when they have already spent so many efforts in research and development? However, I do understand that as the people of Hong Kong have this view, the Government has to adopt this approach, and the Liberal Party will render its support.

I believe the business sector will probably not engage the Hong Kong Government in the development of their viable ventures in the future. They would rather approach other cities for negotiation of partnership because in the process of inviting outside investments, other cities may offer them concessions in tax, land and the like. Therefore, there are actually no well-defined lines among concession, collaboration and collusion. The Liberal Party and many members of the business sector do not find ourselves colluding with the Government. However, the Democratic Party finds that there is such a problem in Hong Kong. Perhaps it is our close involvement that confuses our judgement. If we believe that outsiders can see more clearly, we should refer to the journal reports and research findings of other countries to get a clear picture of the situation here. Mr Jeffrey LAM today mentioned time and again the Heritage Foundation, the Cato Institute and the Fraser Institute of Canada. Moreover, Hong Kong ranks second in Asia in the Corruption Perception Index of 146 regions in the world, which has been recently released by Transparency International, a global anti-corruption monitoring organization. As corruption

is a relatively serious problem in Asia, therefore, ranking second does not necessarily mean we are doing very well. However, when we are compared with other countries, the problem of corruption in Hong Kong is not so bad. Therefore, Madam President, I think we should see how other countries in the world regard Hong Kong. Is it possible that the American Chamber of Commerce thinks that as American companies having business interests here do not have opportunities to collude with or employ high-ranking officials, they do not stand a chance of competing with the consortia of Hong Kong? Or is it possible that when Hong Kong was under the British rule in the past, as all high-ranking officials had retired and gone back to Britain, and they had not worked for business with British background here, there was no chance of a transfer of benefits?

As the rule of law in Hong Kong is monitored by such a lot of Members, and now that the Government has decided to invite tenders for most of the projects, I think this is the best proof. And international comments and institutes also view Hong Kong as the best in the world in these categories. I prefer trusting the opinions of foreign experts to those of the Members of Hong Kong. Thank you, Madam President.

MR DANIEL LAM (in Cantonese): Madam President, the Chief Executive has stated in the policy address this year that efforts will be made in five areas, in which the first one is "resolutely against 'collusion between business and the Government' and to eliminate any 'transfer of benefits'". Is this an early warning by the Chief Executive, or his proposal to rectify shortcomings and introduce reforms?

The traditional Confucian school of thinking regards academics superior to businessmen, resulting in a special public sentiment towards the business sector. It is acceptable for the Government and officials to trust and rely on professionals and academics. However, if a closer link is established with businessmen, a sensitive nerve will be easily touched, and doubts of improper transfer of benefits will thus be induced. There is no need for us to make our own speculation to see whether it is true or not. After all, Hong Kong is under the rule of law. It is both irresponsible and unfair to make accusations without any concrete evidence. And it will definitely cause great damage to the business environment and international reputation of Hong Kong.

Madam President, Hong Kong is an international cosmopolitan city where promotion of economic activities and encouragement of overseas investments are the lifelines for sustained prosperity. Therefore, it is the prime task of the Government to build and improve a business-friendly environment. In the process, it is essential for the Government to offer proper and concrete incentives in its policy and operation to achieve "collaboration between business and the Government" and "a share of benefits". For example, in order to assist the Boeing Company to develop its market, the United States Government ruthlessly exerted political and economic pressure on other countries, and openly confronted the European Union. And it is the usual practice of a country to show its support to the home business sector by bringing a large business delegation with its head of state on overseas visits. Have these practices been accused of "collusion between business and the Government" and "transfer of benefits"?

Madam President, at present, capital projects allegedly involve "collusion between business and the Government" are those related to land development. At the debate on Motion of Thanks for the policy address last Wednesday, the Chief Secretary for Administration admitted that there was a need for greater transparency in the areas of land planning and land policy, and various improvement measures were proposed. There is definitely room for improvement in those measures, for example, to be more specific and open in the criteria and work flow in land planning and land policy, and to put in more effort in consultation and negotiation to dispel people's concern.

Madam President, I so submit.

MR WONG TING-KWONG (in Cantonese): Madam President, the frequent accusations of "collusion between business and the Government" and "transfer of benefits" have made us businessmen very anxious. We feel concerned that this may send a wrong message about our investment environment to businessmen who are interested in doing business here. They may get the impression that the economy of Hong Kong is in chaos; we have no respect for fair competition; corruption is prevalent; and incidents of collusion between business and the Government and transfer of benefits are flooding every sector, as if we have returned to the 1960s and 1970s.

In fact, the situation here is just the opposite. The latest report of the Independent Commission Against Corruption (ICAC) indicated that the total

number of corruption reports received last year had dropped by 13%, with those related to the government sector having dropped by 17%. This shows that the Civil Service of Hong Kong remains impartial, clean and trustworthy. Moreover, many international rating organizations have all along described Hong Kong as business-friendly and have paid us a high regard in terms of economic freedom, government intervention in the economy, regulation of trades, and so on. A number of Members have also mentioned recently that Hong Kong has been ranked the freest economy in the world for the 11th consecutive year by The Heritage Foundation of the United States. With such an auspicious beginning for 2005, the SAR Government should seize the opportunity to promote our business-friendly environment and attract capital to develop our economy. Among ourselves in the SAR, we should unite in harmony and bring our team spirit into play. We should not get ourselves entangled in matters and arguments that are unfavourable to Hong Kong.

Vice President ZENG Qinghong spoke of Hong Kong in an interview in Lima, capital of Peru, when he visited the country at the end of last month. He said, to this effect, "At present, the mainstream opinion of the public of Hong Kong is the 'striving for three targets': striving for stability; striving for harmony; striving for development. These are the expectations of the majority of people there. What we have to focus now is how to value and expand this favourable situation."

In addition, the Chief Executive has stressed in the recently released policy address that the Government will work hard to promote social harmony and stability; and insists on the principle of fairness in governance. While ensuring the efficiency of our free market and its capability to create wealth, the Government also seeks to properly balance the interests of different social strata and sectors, and is resolutely against "collusion between business and the Government" and will strictly enforce the monitoring systems to eliminate any "transfer of benefits".

In fact, different sectors of Hong Kong, which include developers and professionals, may have their own views and opinions on the mode of development of individual projects. They can openly discuss the development of individual projects, the pros and cons of government policies and the merits and demerits involved. Both the affirmative and negative sides can exchange their arguments. The important point is whether public opinion can continue to be gauged through open discussions.

The public private partnership model can be adopted for the development of new government projects with a view to making good use of the capital, skills and talents of the business sector. This is mutually beneficial and complementary. As "business is business", it is essential profits can be made in any investment. Otherwise, there is no incentive for the business sector to participate and invest.

As collusion between business and the Government nibbles away at public interests, the general public and Legislative Council Members have a right to monitor the situation. However, they should avoid making accusations without any proof. Wild accusation of "collusion between business and the Government" and "transfer of benefits" is detrimental to the well-being of society, and it will cause worries among the people. Should such a practice be advocated, and a sentiment of loathing and dislike towards the business sector be spread, businessmen will be deterred from making investments and setting up businesses here. This will inevitably affect the economic foundation and development of Hong Kong.

Madam President, we believe that in a highly free environment with sophisticated and sound legislation, fair and clean governance and powerful monitoring by the mass media, the SAR Government is able to prevent vile practices of "collusion between business and the Government" and "transfer of benefits" and to safeguard the overall interests and development of Hong Kong.

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

DR PHILIP WONG (in Cantonese): Madam President, it baffles me why some people have recently raked up incident after incident that happened many years ago and given them a worse and worse account. Many interested parties in these incidents have either retired or are no longer involved in politics. I do not know whether a force has been gathered to tell the incumbent government officials through these "stories of old times" that, "Even when you have stepped down, you may be asked to settle accounts afterwards"? If we look a bit further, is it possible that some people intend to start political debates to make government officials all feel threatened and reluctant to do anything? Should this go on, will it help encourage people with aspirations and abilities to devote themselves to public service?

Well, I would like to put forward my opinions in four areas on today's motion.

First, we definitely oppose "collusion between business and the Government". However, we have to adopt a practical approach to analyse whether currently there is "collusion between business and the Government" in Hong Kong and how serious the problem is. We should not over-simplify and politicize the matter. The so-called "collusion between business and the Government" should have at least two parties involved. As a member of the business sector, I wish to point out that in a commercial city like Hong Kong, which has a tradition of the rule of law, a sophisticated market and a free information network, it is only natural that businessmen will make profits through legal channels in a fair and reasonable manner. Proper collaboration between business and the Government should aim at benefiting society as a whole, such as increasing public revenue, creating job opportunities, enhancing competitiveness, and so on. Operators of listed companies particularly are duty-bound to maximize profits for stock-investors who have placed their trust in them. The more profits they make, the more popular they are with stock-investors. Of course, it is essential for them to make profits "in a proper way", and they should not forget to make contribution to the community. Should government officials abuse their power for interests other than their entitled remunerations, this is intolerable misconduct. The concern of the public in this regard is understandable.

Second, the so-called "collusion between business and the Government" is a serious allegation. There should be sufficient and convincing concrete evidence. I totally agree with what Mr LIU Tsz-ming, a former Justice of Appeal, said in an article in *Ta Kung Pao*. He pointed out that under common law, unless there is evidence to prove someone is "guilty", otherwise, he is "innocent". Therefore, it is not necessary in law for the Government to provide disproof of "collusion between business and the Government". The accusers should take up the onus of proof. As a number of Members of this Council are in the legal profession, I am surprised that none of them have been willing to take up the "onus of proof". Although Members enjoy immunity in making speeches in this Council, the ICAC must have heard this allegation. Is it the responsibility of the ICAC to conduct investigations to ascertain whether this allegation is true? A large number of people have made this allegation not only inside but also outside this Council, as well as in various kinds of media. Should they not take up the "onus of proof"?

Third, the spirit of innovation is invaluable. It is the driving force for technological advancement and social progress. It is inevitable for a pioneer in concept development to bear risks in the commercial field and to experience numerous tests and failures to start an original venture. As there are no precedents, the one who takes the first step is subject to great pressure, and therefore, should receive general support. It is possible that a more effective result will be achieved if an innovative concept is developed by the joint, rather than separate, efforts of the public and private sectors. Examples of this nature abound in Hong Kong. The Government has also offered the Disney group different kinds of concessions during the negotiations. But has anyone been accused of "collusion between business and the Government"?

Fourth, the Chinese attach great importance to the concepts of "harmony is invaluable" and "harmony brings wealth". Different trades and industries, be they the real estate industry or innovative technology industry, have made contribution to the economic development achieved in Hong Kong today. Hong Kong has been ranked as the freest economy in the world for a number of consecutive years since the reunification. This proves that Hong Kong has earned worldwide recognition in its rule of law and free competition. I mentioned the "time, terrain and human elements" in my speech last week. Our "time element" is the support of the Central Government and the high-speed growth of the mainland economy; our "terrain element" is our unique advantages such as the tradition of the rule of law. And whether Hong Kong can sustain its economic recovery and the people can have a real share of the fruit of economic recovery crucially depend on the "human element", that is, whether we will focus all our efforts on bringing our economy back in good shape. If everything is politicized where proper collaboration between business and the Government is labelled as "collusion between business and the Government", and if Hong Kong is painted as "a city of corruption" to provoke feelings of "hostility towards business" to stir up discontentment towards the Government and to intoxicate the social atmosphere, our business environment will be affected. As a result, local and overseas businessmen will be deterred from making investments in Hong Kong and eventually, it is the people who will suffer.

Although the Government has its hands full with many unresolved problems now, when it faces an allegation of "collusion between business and the Government", it should have more political wisdom and take the initiative to make more people understand the situation. At the same time, it should implement measures in accordance with law to prove the innocence of the

Government and the investors. As to those who have made groundless and wild accusations, they had better stop such accusations and confrontations, and join forces with the Government and other sectors to improve the rule of law and uphold the clean reputation of Hong Kong.

Madam President, I so submit.

DR FERNANDO CHEUNG (in Cantonese): Madam President, I do hope that I can believe there is no collusion between business and the Government and transfer of benefits in Hong Kong. However, it is the Chief Executive who has mentioned in the policy address that the Government is "resolutely against 'collusion between business and the Government'" and will "eliminate any 'transfer of benefits'". Why did the Chief Executive mention this issue in the policy address but later, when he addressed the public, completely deny the issue, insisting that there was no collusion between business and the Government in Hong Kong and he did not see such a problem? This is really intriguing. If there is no collusion between business and the Government and transfer of benefits, why has the Chief Executive placed this issue in such a high profile in the policy address, but denied it afterwards? No matter whether the Chief Executive admits it or not, as the eyes of the people are discerning, it is very difficult to change their bad impression of the existing governance.

There are, in fact, several levels in collusion between business and the Government and transfer of benefits. Broadly speaking, in order to protect the interests of capitalists, the Government has not hesitated to sacrifice the interests of other sectors. There are many specific examples, such as the Government has turned a blind eye to monopolization and cartels in banking, real estate, power, wharf and oil industries in the domestic market of Hong Kong on the grounds of free economy. Mr Leo GOODSTADT, the former Head of the Central Policy Unit, has pointed out in his recent publication, *Uneasy Partners*, that "The government's unwillingness to counter the way that major firms collaborated to curtail competition in key sectors of the economy highlighted a fundamental conflict within Hong Kong life. Government policies were openly biased in favour of business, and the well being of the rest of the community seemed a secondary consideration."

In recent years, the life of the "male and female workers" is full of frustrations. Marginalized workers such as cleaners and security guards work

10-odd hours daily but they cannot support themselves on their meagre incomes. A few days ago, a worker who worked for a cleaning contractor of the Housing Department complained that his ex-employer had not allowed him a day's leave in six years. The public is concerned about the right of workers and fights for the institution of minimum wages and maximum working hours. However, once the representatives of employers and capitalists came forth to express worries and opposition, the Government would use the excuse of the need to conduct studies to delay the proposal. This shows that the Government is biased towards the interests of capitalists. This is the broad meaning of collusion.

On another level, collusion between business and the Government is reflected in the practice of favouritism demonstrated by individual government officials. They abuse their power in the process of formulating and implementing policies to seize extra benefits for individual enterprises. It is difficult to identify concrete evidence in these incidents of collusion between business and the Government because such deals are often done by "tacit understanding" or "secret agreement". Therefore, they are difficult to regulate.

We can see some typical examples of this nature. In the case of the Cyberport project, the Government claimed that the project had to be developed expeditiously to keep pace with the fever of information technology. However, it could not explain why there was no public tender and why it had to be granted to the PCCW. I still remember that the Cyberport project was announced shortly after the Chief Executive and Mr Richard LI paid a visit to Israel together. This makes me recall the amicable relationship between the Chief Executive and the LI family. Is it not a reasonable ground for the public to doubt that this is a transfer of benefits from the Chief Executive to his younger family friend? The Sally AW incident is another example of collusion between business and the Government of this nature. Individual government official has sacrificed public interests for personal gains. Collusion between business and the Government of this nature is so filthy that it is detestable.

The third level is the appointment of people who side with the Government to the existing 508 advisory and statutory bodies which have very strong influence currently such as the Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation, the Airport Authority, the Housing Authority, and so on. The interests vested in these bodies have significant impact on the life of the people. However, the process and criteria of

appointment are not open at all. The apparent bias towards the business sector and consortia will give rise to a transfer of power, reputation and influence. This is collusion between business and the Government and transfer of benefits of another nature.

There is no open and transparent mechanism in place for the selection of candidates for these bodies. When a wrong choice is made, a severe blow will be resulted. For example, in the incident of the Equal Opportunities Commission (EOC), a controversy was caused by the dismissal of Mr YU Chung-yin by the former Chairperson of the EOC. To everybody's surprise, several EOC members who were involved in the incident were all reappointed afterwards. After this incident, the credibility of the EOC has been undermined.

In comparison with other overseas regions, we have no well-defined criteria for the appointment of members to these statutory bodies. A study conducted by the Legislative Council Secretariat pointed out that it is stipulated in the United Kingdom and Canada that these bodies must represent the interests of different social sectors. Moreover, a commissioner to appoint public officers is in place in the United Kingdom to monitor the appointment process to ensure its compliance with relevant codes and guidelines. However, the same study pointed out that there is no information indicating that there is such a monitoring process in Hong Kong.

The Frontier, the Power for Democracy and the Hong Kong Democratic Foundation conducted a study two years ago, for which I was the person in charge. We found out that before 1 April 2003, 43 people had been appointed to seven or more advisory and statutory bodies. A "double six" principle should have been observed but the Government had failed to do so. The study indicated that among the few dozens people who had been highly regarded to have been appointed to seven or more advisory and statutory bodies, half of them came from the business sector. Information provided by the Home Affairs Bureau on 16 April 2004 gave us the latest account. There are 1 695 members with a service of over six years, and 45 members are still serving on six or more boards/committees. Madam President, I really hope that there is no collusion between business and the Government. To justify the case, is it possible for the Government to establish a more transparent system to enhance the transparency of the whole process of appointment? Is it possible to enact legislation on freedom of information and fair competition? Is it possible to disclose all the

papers related to the Cyberport project, the West Kowloon development project and the Hunghom Peninsula incident?

Thank you, Madam President.

MISS CHOY SO-YUK (in Cantonese): Madam President, collusion between business and the Government and transfer of benefits are serious allegations of criminality. Unless there is concrete evidence, it is irresponsible to make wild accusations against government officials. Honourable colleagues should speak with more caution in this Chamber particularly as this is a solemn venue. Otherwise, bad precedents will be set, giving the public an extremely bad message that as Legislative Council Members are protected by the Legislative Council (Powers and Privileges) Ordinance and therefore, with no worries for consequences, they can indulge in wild talks, regardless if they have deviated from basic facts in order to challenge the authority of the Government and to attract the attention of the media and the public.

In fact, as regards incidents often labelled recently as examples of collusion between business and the Government, such as the single-tender approach in the development of the West Kowloon Cultural District, the sale of Hunghom Peninsula at a cheap price and the land grant in the Cyberport project, we can have different opinions and viewpoints on the Government's handling of these cases. We can even point out areas that warrant review and examination. However, the crucial point is, after considerable public discussions and careful examination, no evidence can be found to prove the most important factor that constitutes collusion between business and the Government, that is, the government officials involved have consequently obtained direct benefits. As regards some so-called benefits fabricated only by imagination, such as the government official involved is expected to receive handsome returns from the private sector as a returned favour after his retirement, I frankly think that apart from attracting public attention, such imaginative speculation only confuses the focus of the issue and leads the discussion towards fault-finding and label-fixing.

Everybody knows that there is an independent and healthy anti-corruption mechanism in Hong Kong. If there are really incidents of the so-called collusion between business and the Government and transfer of benefits, the Independent Commission Against Corruption will definitely conduct

investigations into them. However, it does not mean the present practices and policies of the Government are perfect and have no room for improvement.

Madam President, because of the time limit, I will cite only one example.

I think the practice of the Government is very much problematic. Mr SIN Chung-kai has earlier put forward similar views on these issues. I just want to cite one specific example. A land grant policy which was formulated in 1884 and is still in effect today allows some non-profit-making organizations, subject to the approval of the Secretary concerned, to be granted land rights for 10 years, or even 100 years at a nominal land premium. The sites of some well-known clubs for the wealthy, such as the country clubs, the Aberdeen Marina Club, the Royal Hong Kong Yacht Club and the Hong Kong Jockey Club have been granted at a premium of \$1. The Government has continued the renewal of the land grant so that such clubs can own the land for an indefinite term.

It is common knowledge that the subscription fees of these prestigious clubs often range from several hundred thousand dollars to several million dollars. Although their membership policy is euphemistically described as non-discriminatory, which sounds fine on the surface, an application for membership has to be subject to strict appraisal by the board. Together with the huge subscription fees, if a person is neither wealthy nor having some kinds of connection with the board member, how can he become an honourable member of these prestigious clubs?

Madam President, my personal experience on another occasion convinced me that organizations of wealth and influence enjoy a definite advantage under this land grant system. An international school at Braemar Hill had applied for a land grant at a nominal premium to build a soccer pitch near the school. However, as the neighbouring residents strongly opposed the proposal, I had an interview with one of the members of the school board before the issue was discussed in the District Council. He brought with him a list of the members of the school board and parent committee and pointed out to me one big-name in town after another. He then told me in a peremptory air that with the background of the members of the school board and the parents of the students, it was a matter of course for the school to be granted the land at a premium of \$1 and to hold the land for an indefinite term by continued renewal of the land grant. If the Government is not so docile and never "says no" to these organizations of

wealth and influence, how can that member of the school board be so arrogant to completely turn a deaf ear to the protests of the residents?

Although this mechanism has been in force for a long time, it is absolutely ineffective. It has even become an anachronism that is divorced from social norm. Should this practice be continued, though the government officials involved will not be consequently benefited, the objective reality is that the public will get a strong impression that there is a constant transfer of benefits from the Government to those so-called non-profit-making organizations of wealth and influence. However, it seems that the Government still takes this as a natural practice. Even though I brought up the absurdity of this land grant system in this Council at the end of 2002, and urged the Government to conduct an overall review on this colonial policy which is still in force today, I have never heard of any plans of the Government to introduce reforms in this area more than two years down the line, despite the fact that Mr TUNG has declared that the Government is resolutely against collusion between business and the Government and will prevent any transfer of benefits.

I have to ask the Government this question. Under these circumstances, how can Members and the public be convinced that the existing arrangement is not a means to transfer benefits to non-profit-making organizations of wealth and influence, and to give advantages to the rich and influential?

Madam President, I so submit.

MISS TAM HEUNG-MAN (in Cantonese): Madam President, catchphrases of "collusion between business and the Government" and "transfer of benefits" have recently become popular topics of conversation. The Chief Executive has joined in the fray by making a loud declaration in the policy address that "the Government is resolutely against collusion between business and the Government and will eliminate any transfer of benefits." However, in less than 24 hours, he evaded the issue like the plague at the Question and Answer Session. It is only natural for people to doubt the determination of the Government.

Mr John TSANG, Secretary for Commerce, Industry and Technology, published an article on the Cyberport project in the newspaper last Wednesday, certain that this would defend the Government's case. However, a contrary

outcome has unexpectedly resulted, which has pushed public discussion to a more heated level. The Government has reiterated that there is no collusion between business and the Government in Hong Kong. But what is the actual situation here?

In the Cyberport incident, the Government handed the single development right of the Cyberport project over to the PCCW on a plate, without seeking the approval of the Legislative Council. It is a principle in economics that both parties to a commercial deal should maximize their own profits. However, the Government did not conduct any consultation or discussion on parcelling out the property development part of the Cyberport. We find it difficult to believe that the Government has tried its best to safeguard its best interests in this project, which are also the best interests of the people of Hong Kong. Instead, it makes people suspicious that it has offered the consortium its own share of benefits with both hands.

Madam President, the recent vigorous development of the West Kowloon Cultural District has also given people an impression that the Government is biased in favour of large consortia. It is apparent that the adoption of a so-called single-tender approach in such an enormous project is a means to convert the game into a monopoly by the consortia. Moreover, even when people suggest that an auction of parcels of residential land in the West Kowloon Cultural District will bring more proceeds to the Government, or split-tender model should be adopted, the Government has turned a deaf ear to these suggestions and made no response. This proves that to get the largest possible profit is not the target of the Government. Then what actually are the criteria of the Government? It is really baffling. After giving the matter plenty of thought, we are back to the old question: Has the Government gone to such a lot of trouble again for the interests of a particular consortium?

Although concrete evidence to prove an unusual tie between the Government and the business sector cannot be found, the above incidents have cast serious doubts about "collusion between the business and the Government". To ease people's doubts about the Government and to enhance its credibility, I think nobody will oppose a strict monitoring of the relationship between the Government and the business sector to prevent the establishment of an unusual tie and to promote social justice and fairness. What can we do to realize this principle? This provides us with much food for thought.

Madam President, at present, we have a series of legislation that regulates the relationship between the Government and the business sector. And there are the Independent Commission Against Corruption and the Audit Commission to enforce these regulatory legislation. However, we do not have an integral mechanism to clamp down on collusion between business and the Government. We urge the Government to conduct a study expeditiously on relevant legislation and regulations to establish a comprehensive, strict and transparent mechanism that monitors the relationship between the Government and the business sector. In this way, the undertaking of the Chief Executive made in the policy address will be honoured. And it will not again end up in a joke of "words speak louder than actions".

I support the proposal made by Ms Emily LAU in her motion to improve the mechanism to appoint members to statutory and advisory bodies and to enhance the transparency of these bodies. At present, a majority of the members of these statutory and advisory bodies have come from the business sector. In addition, there are strange phenomena such as a person serving several public offices, extended service in the same post, and so on. Serving the community is a good deed. However, these bodies have great influence on the making of government policy and have access to sensitive information. People will readily associate these with the establishment of an unusual tie between the Government and the business sector through these bodies. Therefore, only real actions such as opening up the nomination mechanism, strict enforcement of guidelines and enhancement of transparency can win the trust of the people.

Madam President, public interest is definitely the prime consideration of an administration returned by universal suffrage. And with this, the chances of the establishment of an unusual tie between the Government and the business sector are relatively slim. Therefore, the introduction of changes and universal suffrage to the existing political system will eliminate the possibility of an unusual tie between the Government and the business sector resultant from small-circle elections that can easily be manipulated by large consortia and the business sector. Only by tackling the problem at root can the credibility of the Government be totally restored and public trust be gained.

With these words, I support the original motion. Thank you, Madam President.

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, everybody is talking about businessmen the whole evening. I will not talk about businessmen but "showgirls" instead. There is a verse in a poem saying that "where showgirls, with no thought of a perished kingdom, gaily echo A Song of Courtyard Flowers".

Hong Kong has reunited with the Motherland for eight years. Under the governance by a Chief Executive returned by small-circle election, the number of unemployed has doubled, and the number of people in poverty has nearly doubled in these eight years. What causes these social disasters? Some people said Hong Kong people "have brought discredit on themselves" and "they get what they deserve". And some people said that there has been so much "noise" in society that "the noise has made Hong Kong submerge". I do not think these are the reasons. Small-circle election is the real culprit. I have pointed out before that the present situation is not a case of "collusion between business and the Government" but "the business sector acts on the instructions of the Government" — excuse me, it should be "the Government acts on the instructions of the business sector", that is, the Government has followed the instructions of the businessmen.

What has made this happen? Ms Margaret NG has given a number of reasons earlier, and also mentioned the Chinese culture. I also recall that some people were called "rich landlords" in China. What were they? They were the most evil characters in the Cantonese movies. They were local tyrants. They did not have any scholarly honours. In fact, they were nobody. But they did all sorts of evil in the locality. How could they do these? They colluded with government officials. As corruption was prevalent in the royal court of ancient China, all county officials received no salaries. They had to employ their own runners and deal with everything by themselves. Therefore, they were forced to be associated with those rich landlords in evil doings. There are also a lot of these rich landlords in Hong Kong. They have neither run in an election nor served the community. They are only interested in their own business and taken part in small-circle elections. They do not need to compete fairly and sit for any examination because they will be admitted before the examination. And eventually all of them will be selected. They are self-elected and this is collusion between business and the Government — the root of Hong Kong's ills.

Actually, we can clearly see that as the Chief Executive is elected by 800 people, his power is conferred by these 800 people. Therefore, the Chief Executive has to repay them either by showing a bias in favour of them in his policies, or transferring them benefits through improper channels. Evidence of this nature is impossible to be traced or found. Some people (Mr James TIEN) asked: How about President George W BUSH? In fact, he should also be reprimanded. But the fact is that the Americans have chosen him. However, his father was ill-fated. He was not so lucky as his son and lost his presidency to President CLINTON. And I think President CLINTON is very good. Therefore, this proves that there is a difference in nature in them. Back in Hong Kong, even if you do not like TUNG Chee-hwa or BUSH, you have no choice because the choice rests in the hands of other people.

Talking about unity, it reminds me of a true story of a revolutionist of the Communist Party. He was arrested by the Kuomintang, brought to trial, and about to be sentenced to death. He was like me when I was abruptly stopped in the middle of my speech, and was reminded of the need for unity and proper behaviour. The revolutionist told the Judge, "A rider talks about unity while he is whipping his horse. Does he make any sense?" We are now in the same situation. A handful of people are now enjoying benefits and they are like the rider on horse back. While they are whipping their horses and making them suffer in great pain, they scold the horses for no sense of unity and crack their whips again on the horses. This is what unity is all about. However, the fortunate thing is that the revolutionist did not die. He was CHEN Duxiu, a member of the Communist Party. He only received a light sentence of 10 years in jail. However, here in Hong Kong, it seems that we deserve a death penalty for we have committed such a serious crime that we have nearly made Hong Kong submerge.

In fact, if Members do not have a short memory, they should remember that the Chief Executive admitted at the very beginning of the policy address that there is collusion between business and the Government. And before that, Mr James TIEN had made some comments about Chief Secretary Donald TSANG outside (not in this Chamber). Please judge by yourselves whether there is collusion between business and the Government! Those are their own words. Should there be no conflicts among themselves, we will never learn of those facts. Why should they tell us to "shut up"? They should be the ones who should "shut up" so that "skeletons will be kept in the cupboard" and nobody will learn

of those facts. Right? This is nothing but a fight among themselves over uneven shares of the spoils.

Dr Philip WONG asked us to take up the onus of proof. He must be kidding. Under the common law, only the police have the right to investigate to bring a charge against a person. What right do I have to investigate? Though I am a so-called Honourable Member, Mr Michael SUEN said no to me when I asked him for information; Mr LEUNG Chin-man also said no to me when I asked him for information. In fact, all government officials said they had no information. When I approached the Chief Executive, again there was no information. When I approached the Executive Council, it gave me the same answer. Even when I approached the 500-odd statutory and advisory bodies, it was again to no avail. As we have no right to investigate, how can we take up the onus of proof? I have proposed to conduct an investigation by invoking the Legislative Council (Powers and Privileges) Ordinance. And I was told to be out. I can do nothing but doubt. In fact, a responsible government should take the initiative to clarify whether it has done such a thing. However, this Government has refused to be investigated and it is extremely inappropriate.

Therefore, I think there are definitely incidents of collusion between business and the Government or the Government acted on the instructions of the business sector. I now challenge the Government and all those people who have made a sudden change in stance to say there is no collusion between business and the Government and transfer of benefits to have investigations conducted by this Council into the West Kowloon development project, the Cyberport project, The Link REIT incident and other incidents by invoking the Legislative Council (Powers and Privileges) Ordinance. If they do not accept this challenge, they should then "shut up". They can no longer claim that there is no evidence. If we manage to gather evidence from the investigation, we will definitely put it in the open. Those who have made a sudden change in stance remind me of a saying: "One dog barks at a shadow, and a hundred dogs join in". And I want to recite once again the verse I have cited in tribute to Mr James TIEN: "Wild willows lean with the wind, and frivolous peach blossoms drift with the stream". People who talk parrot fashion and echo the views of others change their stance constantly. Thank you.

MR ALAN LEONG (in Cantonese): Madam President, the Cyberport project and the development of the West Kowloon Cultural District are typical examples

of recent bitterest reproach for "collusion between business and the Government and transfer of benefits". It happens that both projects have been implemented under the mode of Public Private Partnership (PPP).

Some people suggested that the Government has adopted the mode of PPP as a strategy to bypass the Legislative Council to avoid intervention and involvement of this Council. As I still have a spirit of goodwill with me, I do not want to accept this as a reality. Therefore, I do not want to discuss it now.

However, it is indisputable that the Government has distorted the mode of PPP to make things easy for itself; lacked supervision in its implementation, and taken no initiatives and efforts to rectify mistakes.

The definition of PPP given by the Efficiency Unit of the Government is, I quote, "an arrangement where the public and private sectors both bring their complementary skills to a project, with varying levels of involvement and responsibility, for the purpose of providing public services or projects." End of quote.

Madam President, over the past few years, the Chief Executive has mentioned in his policy addresses and the Financial Secretaries in their Budget speeches that it is the long-term policy of the Government to facilitate participation of the private sector in the provision of public facilities and services with a view to encouraging innovation, promoting productivity, expediting the progress of works and speeding up the services. And the quality and efficiency of service will be improved and the opportunities for investment in Hong Kong will be increased. Therefore, the Government has encouraged bureaux and departments to allow participation of the private sector in the provision of public facilities.

Madam President, a successful PPP can indeed bring about a many-win scenario, in which the public, the Government and the private investors will all be benefited. It is also the prerequisite and foundation for promotion of the concept of sustainable development in a society. Therefore, it merits our support. However, much to our regrets indeed, the Government of the Hong Kong Special Administrative Region (SAR) has mishandled the PPP projects time and again, inducing the people to believe more firmly that there is "collusion between business and the Government and transfer of benefits" and affirm the Government's loss of authority in administration.

Hong Kong has just made a start in the implementation of PPP. To allay public concerns over the possibility of "collusion between business and the Government" and "transfer of benefits" in this arrangement, it is imperative for the Government to refer to overseas experience and to start at the system by improving and devising a stringent set of rules and guidelines, or even introducing proper legislation on the planning of PPP arrangement and decision-making in respect of land administration. Open and transparent criteria should be introduced for such matters as selection of partner, mode of financing, tendering process, contract terms, monitoring mechanism, cost-effectiveness assessment, liability for breach of contract, public consultation system, and so on, to minimize the possibility of abuse or misuse of discretionary power by government officials. This is the only way to get rid of the notoriety of collusion between business and the Government.

In the recent debate on the Motion of Thanks for the policy address in the Legislative Council, the Chief Secretary for Administration proposed to enhance transparency in the policy-making process of the Government. He has found a right direction after all. It is, therefore, a pity that he has only made some off-the-mark proposals in the same speech. There is still a wide gap between these proposals and the appeal for public participation and monitoring in the disposal of the most valuable resource of Hong Kong. The Chief Secretary for Administration also stressed in his speech that in accordance with the Basic Law, the power of land administration rests with the executive. Although the executive has to sometimes seek the approval of the Legislative Council for appropriation of public funds, the constitutional fact that the power of land administration rests with the executive should not be undermined. This shows that the Government is still unable to grasp the crux of the matter. While maintaining its absolute power in land disposal, the executive has only made some petty moves of political expediency in response to the recent heated public discussion on "collusion between business and the Government" and "transfer of benefits". This not only falls short of the expectations of the public, and if the Government insists to keep this up, its authority in governance will also be further undermined. This is neither the wish of the people nor a blessing for Hong Kong.

I hope that after the debate today, the Government will identify the real problem behind the frequent allusions to "collusion between business and the

Government" and "transfer of benefits" in town, and take proper measures to remove these disgraceful and hopefully, untrue labels.

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

DR KWOK KA-KI (in Cantonese): Madam President, the questions being debated today are very meaningful indeed. This is because, first, these two important questions happen to be debated on the same day. One of them concerns the post-retirement employment of civil servants, which is crucial to collusion between business and the Government and transfer of benefits, a topic being discussed at the moment. Second, the motion proposed by Ms Emily LAU today is aimed at initiating a debate on collusion between business and the Government. The two motions are actually interrelated in many ways.

It is even more meaningful that Financial Secretary Henry TANG, who has attended this meeting to reply to us, is widely known as one of the hopefuls for the third-term Chief Executive. Mr TUNG should originally be the ideal person to sit here to listen to today's debate because many issues probably may be attributed to him. It does not matter, though, even though he has not come. The fact that a candidate of the Chief Executive is present at this meeting has made me feel that the views expressed by us may even be more worthy. I also hope that the future Chief Executive, whoever he is (perhaps Financial Secretary Henry TANG will become the Chief Executive in future), will find the speeches delivered today helpful to future governance.

I fully concur with the opinions expressed earlier by a number of colleagues (including colleagues from the Liberal Party and the Democratic Alliance for Betterment of Hong Kong). They have all along maintained that it is imperative for business to co-operate with the Government and transfer of benefits to be eliminated. Furthermore, they have called on other Members not to "bad-mouth" Hong Kong as there is no collusion between business and the Government in Hong Kong. I only wish to raise several points.

When the Government was prepared to make the land grant for the Cyberport project several years ago, nine property consortia came forth and accused the Government of transferring benefits. Likewise, shortly before the Government put up the West Kowloon development project for single tender, some property developers, including the Chairman of the Real Estates

Development Association (REDA), Mr Stanley HO, and the Chairman of the Liberal Party, Mr James TIEN, who is not present in this Chamber at the moment, stepped forward and made some comments. Being prominent figures of the local business sector, they have indeed made a lot of efforts to maintain the reputation of Hong Kong's business sector. Why is it that the business, besides Members of this Council, would come forth and speak? As such, Members must not be smeared, and it must not be said that only Members or certain Members claim that there is transfer of benefits. No, even the business sector has made the same accusation.

What is the purpose of today's debate? Actually, we are only earnestly hoping that Hong Kong can maintain a highly transparent and fair society. It is precisely because we cherish our business environment that we do not wish to see any transfer of benefits. If transfer of benefits can make Hong Kong more progressive and improve its business environment, we would not have to set up the Independent Commission Against Corruption (ICAC). Neither do we have to keep complaining of serious corruption in our neighbouring Southeast Asian countries, including the Mainland.

Earlier some colleagues said that such cases, if any, should be reported to the ICAC. How should the report be made? Even the ICAC cannot interfere with certain cases in which transfer of benefits at a high level is involved; it is not that we do not wish to report the cases. In my opinion, it is meaningless to do this. What will happen even if the cases have been reported to the ICAC? Even though today we are talking about past incidents, I still hope that, at the end of this motion debate, Financial Secretary Henry TANG will understand, whether or not he is listening, Hong Kong cannot allow transfer of benefits and we hope to wipe it out. Even if Financial Secretary Henry TANG thought that we had said something wrong, we only hope that we would not see such thing happen in the future. But have we really said something wrong?

Members have been talking every day about the spate of incidents occurred recently. I do not wish to talk about the Cyberport incident anymore. Each of the incidents, from the Discovery Bay, though a very old issue, to the recent Hung Hom Peninsula incident, has brought great pain to Hong Kong people. Of course, there is still one incident in progress, the single tendering of the West Kowloon development project, remains to be resolved for it is not yet known when it will be finalized. Despite a motion calling on the Government to abolish the single-tender approach and canopy construction and expressing the

hope for eradicating transfer of benefits and collusion between business and the Government has been carried by a great majority in this Council, the Government has given us a shocking response that it cannot accede to our request.

I would like to tell Members that the foundation of Hong Kong, in addition to several Members who have moved a motion in this Council, has been hurt. Hong Kong is a commercial society. Any commercial society must be founded on a fair, honest and reasonable business environment. In a reasonable business environment, there must be no transfer of benefits and collusion between business and the Government. Otherwise, who will be willing to operate businesses in Hong Kong?

Financial Secretary Henry TANG should find this debate very meaningful because he has come from the business sector and is a business elite. What is more, he may become a member of the governing team in the future. Despite his profound understanding of many matters, he will definitely not admit the existence of transfer of benefits and collusion between business and the Government in his reply. However, I believe he knows more than we do and he has even more justifications for acknowledging the situation. Nonetheless, the Secretary will not necessarily agree with me.

Ms Emily LAU has put forward many proposals today, though they may be amended by Mr Jeffrey LAM one after another. The reason for Ms LAU to propose items (c) and (d) in the motion is to pinpoint statutory bodies and universal suffrage. We cannot rely solely on the ICAC to eradicate transfer of benefits or collusion between business and the Government because the ICAC can do nothing about it. We hope to put in place a fair system. A system that is going to be effective must be founded on a sound governance model and a good electoral system. This cannot be changed. However, it is so strange that the Government has, on the one hand, thought that there are problems but, on the other, adopted a completely indifferent attitude towards the appointment of members to the advisory boards/committees. As Members are aware, advisory boards/committees serve as an important base for collecting public opinions. Secretary Stephen LAM is here in this Chamber today. As a lot of boards/committees are chaired by him, he should realize the importance. However, the biggest drawback is that these boards/committees have too many ties with the business sector. This is the very reason for the Government to pretend that it sees no problems, even though it realizes that they do exist. This

is very worrying. We are expressing a lot of views in the hope that Hong Kong can maintain a business-friendly environment and that Hong Kong can continue to prosper. It must not be felt that the views expressed by us today, including the question of this motion, are intended to make Hong Kong's business environment even worse. Neither should any excessive speculations or wild guesses be made.

All Members who are sitting here, regardless of their future inclinations and whether they will vote in favour of the motion, have struck home a very clear message that, whether or not they agree with the original motion or the amendment, there is indeed collusion between business and the Government and transfer of benefits in Hong Kong. We only hope that the Government can address this issue and that such incidents relating to governance will not happen again in future. The West Kowloon incident before us is precisely a case in point. We hope that the Government can listen to our views. Lastly, the two points of this motion, namely the future composition of the advisory boards/committees and universal suffrage in 2007 and 2008, are precisely the most important cornerstone to ensure that Hong Kong is free of transfer of benefits and collusion between business and the Government in the future.

With these remarks, I support Ms Emily LAU's original motion.

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

DR YEUNG SUM (in Cantonese): Madam President, in a recent survey conducted by the Democratic Party on the views of the public on "collusion between business and the Government", more than 60% of the respondents believe that it does exist in Hong Kong. This answer is very interesting. While the Chief Executive states that he is against collusion between business and the Government and is determined to eliminate transfer of benefits, it is surprising that 60% of the respondents consider there is collusion between business and the Government in Hong Kong.

Generally speaking, "collusion between business and the Government", so to speak, carries two meanings. First, the Government is inclined towards certain organizations or the business sector in its governance or policies. The

other one is probably not a policy issue, but one concerns individual officials, particularly the issue being discussed recently concerning the taking up of employment with the business sector by retired civil servants. As pointed out by Mr CHEUNG Man-kwong earlier, some retired civil servants have been found working in the business sector while they are still on their final leave. This has aroused suspicion among the public as to whether certain civil servants have taken advantage of their posts while they are still serving in the Civil Service to transfer benefits to certain people in the business sector in exchange for employment with the business sector after they have retired. Therefore, collusion between business and the Government may, on the one hand, refer to the inclination of government policies and, on the other, refer to the integrity of individual officials.

Let us look at why 60% of the people think that there is collusion between business and the Government in Hong Kong and that the situation is quite serious. I believe there are several reasons which are worth considering. First, is it a structural problem, as stated by Ms Margaret NG? As the Chief Executive election is basically a small-circle election, the interests of a number of consortia are involved. As these consortia are the voters, the Chief Executive, should he wish to be re-elected, must curry favour with them or establish a good relationship with them so that they will continue to lend him support in the next term. Whether political benefits of this kind are founded on the transfer of economic benefits is indeed highly questionable. Although this is not necessarily so, the public will still have such an impression. Their perception may be, to a certain extent, associated with the political structure and the method of selecting the Chief Executive.

The second reason may probably be associated with the fact that Hong Kong is ruled by businessmen after the reunification, a point raised by me earlier in my speech on Mr CHEUNG Man-kwong's motion. Both the Chief Executive and his family have too many ties with the business sector. Of course, when the Chief Executive took office, he already announced his separation from his family's business. However, the relationship between him and his family is still very close. Will the many ties between the Chief Executive and the business sector and businessmen ruling Hong Kong arouse suspicion? People simply cannot help asking this question: Will the Chief Executive favour his cronies or friends? The governance model of businessmen ruling Hong Kong actually warrants our in-depth consideration.

In the book, entitled *Uneasy Partners*, written recently by Leo GOODSTADT, former Head of the Central Policy Unit, it is mentioned that government policies were actually inclined towards the business sector even in the British-Hong Kong era. However, the public seems to feel that such inclination or collusion between business and the Government has even worsened after the reunification.

Concerning the Cyberport, a subject we have often mentioned these days, the Government has explained many times that there is no connection between its decision not to put the Cyberport up for public tender and collusion between business and the Government. According to the Government's explanation, as the economy was slipping downward at that time, it was imperative to find an economic locomotive to give impetus to our economy and introduce better development. Furthermore, Hong Kong had to race against time because many places and other Asian countries were on their way towards digitalization. We must therefore not lag behind the development trend. Actually, I was told one reason by some former senior officials and that is, there was no other alternative for the Cyberport project because the entire Hong Kong Government had no knowledge of the situation in this respect. As a result, it could only seek help from the Pacific Century CyberWorks (PCCW) because, after all, it had a little knowledge of matters in this area.

John TSANG has recently indicated that the Cyberport has actually brought the Government huge benefits. However, Madam President, we are not discussing whether the Cyberport will bring benefits or how many benefits it will bring. We want to know why there was no open tender and why the PCCW happened to be chosen, as many developers did wish to participate in the project too. I used to have little contact with property developers but, precisely because of the Cyberport incident, we have come into contact with many of them. They approached us and asked us to let them attend our parliamentary group meetings to express their views. However, when we asked them to express their views in public, they were reluctant to do so for they only wished to complain behind closed doors that the Government had been favouring the PCCW and, as a result, they were left with no scope for development.

After this incident, the Democratic Party considers the Cyberport a perfect example of collusion between business and the Government. It is simply impossible for the Government, despite its intention to do so, to explain why the

PCCW was chosen among so many developers. Although the PCCW might still end up being picked after an open tender, the holding of an open tender is consistent with our principle of fair competition. Perhaps the dissatisfaction of other developers can thus be slightly appeased. Yet, the authorities happened to let the PCCW construct the Cyberport without going through an open tender and, as a result, huge profits were reaped by the PCCW. No wonder some people see this as transfer of benefits or collusion between business and the Government. Such thinking is already deeply rooted in the people's minds.

Madam President, recently, the Democratic Party has frequently criticized the Government for resorting to land subsidy. As the Government thinks that land subsidy does not involve public money and submissions to the Finance Committee are thus not required, so the Legislative Council has very often been sidelined completely. Hence, this Council is unable to monitor certain major government projects, such as the Cyberport, the West Kowloon development project, and so on. Another issue of grave concern to us is the granting of land by the Lands Department. Why is it that certain property developers can very easily acquire land for development through the payment of regrant premiums? Why is it that the Town Planning Board (TPB) has yet enhanced the transparency of its operation? Why does it not open all of its meetings to the public? Why is it that the Chairman of the TPB must be a senior official? Why must he or she be a Permanent Secretary? Can the post be taken up by a professional instead? As the Lands Department is responsible for granting land, and the TPB endorsement, such an arrangement is basically like having the left hand helping the right. Both applications are to be decided by the relevant persons of government departments. From land subsidy to the operation of the TPB, the poor transparency of the Lands Department, members of the public have the impression that *(the buzzer sounded)*

PRESIDENT (in Cantonese): Dr YEUNG, your time is up.

DR YEUNG SUM (in Cantonese):collusion between business and the Government is indeed very serious. Thank you, Madam President.

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

MR MARTIN LEE (in Cantonese): Madam President, I could not help bursting into laughter when I read the contents of the amendment proposed by Mr Jeffrey LAM. While he has proposed no amendment to the first paragraph, he has, in item (a) of the second paragraph, proposed to delete "clearly define what constitutes 'collusion between business and the Government' and 'transfer of benefits'" and substitute with "clearly explain how to prevent 'collusion between business and the Government' and 'transfer of benefits', and ensure that the normal partnering relationship between business and the Government is not undermined". Item (b) of the original motion is amended as "review the procedure for determining business and government partnership projects and to enhance transparency". The rest of the motion is completely deleted, with "so as to safeguard public interest" being added afterwards.

The amendment has first mentioned the "partnering relationship between business and the Government". Many people, including members of the Liberal Party, have joined in discussing this issue. Actually, it is evident that the mentality of the Liberal Party or businessmen in taking part in politics is to seek benefits, or to ask government officials to help them make a fortune. The idea of competing in a "level playing field" is simply unacceptable to them. If they are to take part in a soccer match, when they strike during the first half of the match, the soccer pitch has to be tilted in such a way that the ball will roll into the goal of the opposite side; in the second half, however, the soccer pitch has to be tilted in the opposite direction to ensure that the ball will, again, strike the goal of the opposite side. This is how they would like to play the match.

Actually, it is extremely dangerous for them to act in this way. If they have to rely frequently on the Government's assistance, they will lose once they are faced with a level soccer pitch because they are not capable of competing with their rival in a fair manner. As such, we must not connive at them. A good government must not listen to their words for, in doing so, they will only get hurt. It is said that Hong Kong was chosen by Heritage Foundation as the freest economy every year. At first, I did not know why. Later, I discovered that the freest economy had to be Hong Kong. Why? This is because Singapore was in the second position. If Singapore, where everything is controlled by the state, can rank second, for what reasons can Hong Kong not be number one?

Let us not look at other countries; we deserve to be number one if we look merely at Singapore and Hong Kong.

Mr LAM has also mentioned "partnership between business and the Government". Actually, the difference between "partnership" and "collusion" merely lies in that the former sounds better than the latter. Both of them involve "the seeking of benefits". Now that "partnership" is sought, but why "partnership between business and the Government"? Why not "partnership between agriculture and the Government"? Why not an even better option, "partnership between the people and the Government"? It is good for government officials to forge a partnership with the people. Even our state leaders have repeatedly proposed the need to be "people-oriented", not "business-oriented". I believe state leaders will also be extremely shocked should they hear this motion debate today. They will surely say, "This is ridiculous. Hong Kong has even gone so far as to widely adopt the 'business-oriented' approach to let businessmen seek benefits!" After talking for quite some time, Mr Jeffrey LAM ended up calling upon the Administration to "safeguard public interest". What is it all about? Does it mean that business interest has to be safeguarded first? Does it mean that so long as the benefits of the businessmen are safeguarded through partnership between business and the Government, the community at large will be able to make a fortune, and public interest can thus be safeguarded?

Such an amendment has clearly reflected their mentality — I can only say that Mr Jeffrey LAM is really being extremely honest because his mentality is exactly like this. This is what the mentality of a businessman participating in politics should be. However, how can we support this amendment if we are really concerned about public interest? Thank you, Madam President.

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

MR CHIM PUI-CHUNG (in Cantonese): Madam President, I originally intended not to speak. I personally feel that collusion or co-operation between business and the Government is of no concern to me. During the election, I was persecuted by government officials too. Yet, I have no evidence to prove it. This is purely my personal feeling.

Hong Kong is a commercial society. If we wish to gain a better understanding, we have two most senior and experienced Members, Mr Martin LEE and Mr LAU Wong-fat, here in this Chamber. They have definitely witnessed all the developments in Hong Kong's past history. Actually, it has come to our notice in recent years that some businessmen were given preferential treatment. In all fairness, however, preferential treatment does not necessarily involve collusion or transfer of benefits between business and the Government. Why is it that some retired officials have managed to take up employment with private-sector organizations? By virtue of their personal experience, they can offer terms in line with government policy and access the Government's internal information. Of course, I am not saying that they have gained such information through improper channels. Instead, they are able to obtain the information because of their previous working background. There is no need to deny these because they are iron-clad facts. Nevertheless, we cannot prove that transfer of benefits is thus involved.

We have recently noticed the great attention paid to three incidents by this Council. First, the Hunghom Peninsula incident. Whether Members are satisfied or not, the matter has been resolved. With the co-operation between the Government and the buyers of the Hunghom Peninsula, that is, the NWS Holdings and the Sun Hung Kai Properties Limited, the matter has been resolved satisfactorily. Second, the West Kowloon development project. Of course, we can now make sweeping generalizations, given that the motion has been passed. However, Members must bear in mind that the matter has not yet been truly resolved. Maybe one day the Government of the Hong Kong Special Administrative Region (SAR) will overturn all its previous proposals and decide to put the project up for tender again and come up with new zoning. Would Members be proved self-contradictory if they go too far now? In my personal opinion, it is better not to go too far. After all, it is not based on facts. If it is, Members should produce sufficient evidence to prove which single company has benefited.

Here I would have to come back to the "single tender" issue. We have often forced the Government to admit that it is wrong to award the project by way of single tender. What benefit will the public gain if the Government angrily put the project up for tender and divide it among three developers? Whether the project is to be developed by a single property developer or jointly developed by three developers, I think public interest and the property of the SAR must always come first. Only doing so is right. For this reason, I

personally think that Members should not apportion blame before the truth is revealed because we have to demonstrate credibility.

I have risen to make a fair comment. "Collusion between business and the Government" is just an expression. One can interpret it either as collusion or co-operation. While co-operation is right, collusion is not. Some Members are probably colluding with businessmen and so, they dare not say a word to criticize the businessmen. Members should know it very well who are colluding with businessmen and who are not. Without evidence, we should not speak ill of others. I have risen mainly to tell Members that we have no concrete evidence. There is absolutely no need for me to speak good of Mr TUNG Chee-hwa. If he is capable, he should have gained the support of all the people of the community for he has assumed the post of Chief Executive for seven and a half years. Now that he still has two and a half years to go, will he suddenly turn capable? It will be a miracle if he does.

Although I need not speak in defence of him, I still have to uphold the confidence of the people in the territory. Being a commercial society, Hong Kong cannot offer absolute social welfare and Comprehensive Social Security Assistance (CSSA). This is a point Members must bear in mind. I think even CSSA recipients would like their own children to be able to rise to their feet sturdily one day and repay society. As such, in a commercial, ultra capitalist society, we have to encourage the people to help one another and complement each other's shortcomings. We must not attack each other because, in doing so, businessmen, particularly overseas businessmen, would think that Hong Kong has turned into an ultra socialist or even communist society intent on sharing the property of others.

We are convinced that Hong Kong people (including Honourable Members) are absolutely against collusion between business and the Government as well as transfer of benefits in any forms. Meanwhile, we welcome the Government to, through lawful channels, improve its communication with businessmen and the business sector. I personally am incapable of communicating with the business sector on behalf of the Government because I really am not qualified to rise to that level. However, I very much hope that Members can refrain from labelling the co-operation between the Government and businessmen by treating it as absolutely unlawful and illegal. I very much hope that Members can handle this problem with good sense. Thank you.

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

MR JAMES TO (in Cantonese): Madam President, when I read the press interview of Mr Gordon WU today, I felt very puzzled as well. As a matter of fact, it is rather incredible or even inconceivable for Mr Gordon WU, an experienced businessman and head of a major consortium, to consider himself a victim of collusion between business and the Government.

However, as I read through the report, there are mainly two points relevant to us. The first point is, I am most anxious to find out whether it is true. This is because Mr WU has been knighted. He said a major property developer had told him that there was no hope for his project, namely the Megatower in Wan Chai, to be approved, so he told Mr WU to sell the site to him. That developer also said that people in the Planning Department had already straightened things out. There are several possibilities. The whole issue could be completely fabricated by Mr Gordon WU himself; or else that major property developer must be trying to deceive him — he had been bluffing Mr Gordon WU into selling it to him, and the project will not possibly be approved even after it is sold to him. But please bear one point in mind: If the land is put up for sale, it will involve a substantial amount of money as Mr Gordon WU will not sell it at a very low price. If the lot in question is ultimately not approved, then both parties will become victims of this saga. Mr Gordon WU has been acquiring flats and shops in Wanchai for many years. If that property developer was not certain he could get the approval for the site, he would not have made the offer to Mr Gordon WU with his own hard cash. Of course, it could also be simply a joke — the developer was just kidding Mr Gordon WU.

However, the worst possibility is, Mr WU believes in the words of the major developer, and based on his own worldly experience, thinks that the developer must have justifications in saying something like that. Why should he have any doubt about his words? Later, he might wonder whether that developer was actually coercing him to dispose of the land. That allegation is indeed worrying. Should this be the case, if we do not call it underworld tactics, what should we call it, "upperworld" tactics? This in fact could be a kind of intimidation. A certain developer has the "power" to "straighten" the entire Government out. Oh, he did not say the entire Government, but only the

Planning Department. He controls it, so the project could not be passed in the Town Planning Board. So it cannot be built. And next he went to blackmail Mr WU, asking Mr WU to let him have a share of the profits. This is the version of Mr WU.

Of course, I do not know whether the Chief Executive would say that he would take Mr WU's words very seriously because Mr WU mentioned directly the existence of such a person — though his identity is not revealed, apart from saying that this man was not from the Sun Hung Kai Group. Under such circumstances, the Chief Executive should go and talk to Mr Gordon WU to find out which possibility is true. I believe the Government should take this report and accusation very seriously. How would other places, communities, governments and countries handle this kind of incidents? Certain democratic governments may adopt the approach of leaving it to the law-enforcement authorities to ask Mr WU what actually happened. Another possible approach is to let some local councils invoke legislation like the Legislative Council (Powers and Privileges) Ordinance to summon Mr WU and force him to divulge the details.

Of course, there is always a dilemma. If we force him to disclose it, then many others who have originally intended to report on collusion between business and the Government will be discouraged from doing so. Mr WU is very brave, and as Mr CHIM Pui-chung said, he possesses considerable power and strength, and he is considered by some in society as wealthy, and he does have some influence. It was exactly because he has the power and influence that he dared disclose the incident, saying that he felt someone had played a trick on him in the Megatower incident. However, if we do not clarify this with Mr WU by asking him whether it was true or simply his own fabrication, then we are not discharging our duties as Legislative Council Members.

If the Government feels that it does not have the power to force Mr WU to tell the truth, another possibility is to establish a commission of inquiry, that is, the Chief Executive should appoint members to this commission of inquiry and confer it with the power of summoning anyone to find out the truth. Of course, if this commission thinks that Mr WU, or any other people who knows the truth, is unwilling to speak up, and they will only be willing to say anything in camera, then it shall have no alternative but to hold meetings in camera to enable them to tell the truth willingly under oath. In making such remarks and such an

accusation, Mr WU is literally passing the ball to the Government, and we may consider him as having passed the ball to this Council with the summoning power, and see what we shall do next. If we take the incident seriously, I believe, after having read this report, we (including the Democratic Party, though we have not discussed this incident) should consider whether it is necessary to adopt an alternative approach (this approach is very important, such as invoking the privileges legislation) to grant certain persons immunity from libel charges before the investigation commences.

Our society needs to find out the truth. Now we have at least one concrete case which poses a great challenge to the SAR, the SAR Government, the Legislative Council and even the entire system of Hong Kong. I bring up this incident in the hope that all of us can think about it seriously, and I also hope this can be put into the official record of proceedings of this Council because this really poses a great challenge to the SAR Government. I am afraid the Government cannot maintain its silence anymore. Unless the SAR Government responds in the following manner: The Government is of the opinion that Mr WU has been talking nonsense; he has been imagining or fabricating stories; or Mr WU made an incorrect judgement as that person was actually cheating him; this is indeed a serious accusation in the history of Hong Kong. As it does not only involve collusion between business and the Government, but also oppression and extortion resulting from such collusion, it is really a very serious issue.

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

MR ALBERT CHENG (in Cantonese): Madam President, originally I did not intend to speak on this motion. I have absolutely no idea what the purpose of the motion is as I hold the same feeling as that of most Hong Kong people — a sense of helplessness about the situation of collusion between business and the Government and transfer of benefits. The reason for our sense of helplessness is basically attributable to the existence of structural collusion between business and the Government. Under this system of businessmen governing Hong Kong, the Executive Council, the Legislative Council, even the accountability system for principal officials as well as the several hundred advisory bodies/committees are all controlled by a small group of people, who are all from the business sector, insofar as their background is concerned.

However, in this debate, after listening to the speeches delivered by many Members, I am baffled. I do not know whether they are suffering from amnesia or they are holding the red flag high only to oppose the cause of the red flag? Or are they making oblique accusations? I say this because they said that Ms Emily LAU had been raising alarmist talk in moving the motion and asked her what evidence she had to prove the existence of collusion between business and the Government. They claimed that what she said would scare away investors and dampen the investment sentiment of businessmen. However, who on earth first brought up the subject of collusion between business and the Government and transfer of benefits in this Chamber, thus throwing such a bombshell at our doorsteps and triggering our discussion of this matter? I would like to bring the memory of those who suffer from amnesia back to the Legislative Council meeting on 12 January 2005, in which Chief Executive TUNG Chee-hwa delivered his policy address — it was exactly this policy address. I do not know if you still have a copy of it. Many had already discarded it. I had also discarded mine. Just now, I had deliberately gone back to my office in the Central Government Offices to retrieve a copy from the recycling box. In the 9th paragraph on page 24 of the policy address, "First, we insist on the principle of fairness in governance. While ensuring the efficiency of our free market and its capacity to create wealth, we also seek to properly balance the interests of different social strata and sectors. We are resolutely against 'collusion between business and the Government' and will strictly enforce our monitoring systems to eliminate any 'transfer of benefits'." It was not said by "Long Hair", but by TUNG Chee-hwa in front of the two sets of machines which were out of order on that day.

Whom are the Members scolding? Why do they scold Ms Emily LAU? Why do they scold Dr Fernando CHEUNG? Why do they scold those Honourable colleagues who raised the subjects of collusion between business and the Government and transfer of benefits for dealing a blow to businessmen's investment sentiment and affecting the prosperity and stability of Hong Kong? It is TUNG Chee-hwa, your boss who said it here. He is elected and supported by you. Are you holding the red flag high only to oppose the cause of the red flag? Are you taking this opportunity to make oblique accusations against TUNG? I hope this is not true. If this is the case, it is really cruel, and improper.

As for Ms Emily LAU's motion, I have read it over and over again. It contains altogether 276 words, of which 178 words will be deleted by Mr Jeffrey

LAM. I read it over again to find out what are the words that were deleted. So the deletion of the entire item (c) is most significant. So what is wrong with "opening up the mechanism for nominating members to advisory and statutory bodies and enhance its transparency"? Even enhancing transparency is not right? For the part on "strictly enforce the rules whereby a person should not serve as a member on more than six boards/committees", even six boards/committees are not enough? And also ".....should not serve more than six years in any board/committee" is a provision made by the Government itself, why should this be deleted? And also what is wrong with the principle of "making appointments on the basis of merits"? And for the part of "listen widely to the views of different sectors of the community, and avoid 'cronyism' and 'transfer of benefits'", it is copied direct from Mr TUNG's policy address. Actually Ms Emily LAU is not very diligent this time.

And then item (d), this proposal should be deleted. If I were Mr Jeffrey LAM, I would also delete it. In fact, "implement the election of the Chief Executive and all Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively to prevent the small-circle electoral system from continuing to give rise to problems of 'collusion between business and the Government' and 'transfer of benefits'" is the essence of today's motion of Ms Emily LAU. I did not intend to speak because the situation has already evolved into a structural problem of transfer of benefits and collusion between business and the Government. What else can we say? We all feel a strong sense of helplessness. As long as we do not introduce changes to this Government, and implement universal suffrage in the elections of the Legislative Council, the situation will not change. As this Government basically is not accountable to the people, it is only natural that there would be the occurrences of transfer of benefits. As a matter of fact, we should delete this item. If this item is deleted, Stephen LAM will not have to sit here, right? When I saw Stephen LAM in the Legislative Council today, I was baffled. I asked myself what does this motion have to do with him? Why is he related to collusion between business and the Government? It is all because of this item which demands the implementation of elections in 2007 and 2008 by universal suffrage, so he has to sit here this evening. If this item was deleted in the first place, he would not have to come here. And even if he is made to sit here, he does not have anything to say. It is a waste of breath for us to talk to him about implementing universal suffrage in the elections of 2007 and 2008.

Madam President, I think if we support LAM — not Stephen LAM, but Mr Jeffrey LAM's amendment, then we are indirectly legalizing transfer of benefits and collusion between business and the Government. How can we support this amendment? Madam President, I support the original motion, and may I borrow Mr TUNG's rhetoric by saying, I am "resolutely against" Mr Jeffrey LAM's amendment which in effect legalizes transfer of benefits and collusion between business and the Government. I so submit, Madam President.

MR ANDREW LEUNG (in Cantonese): Madam President, very unfortunately, Hong Kong has become a city addicted to sound bites, with lots of slogan-type exchanges of abuses in both the Legislative Council and the community. It has become a commonplace occurrence in our daily lives. However, the accusation of "collusion between business and the Government" and "transfer of benefits" is not just directed against the Government and the business sector, but it is also a very serious allegation against the clean and fair reputation which Hong Kong has built up over the years as well as its proven law enforcement agencies and the Judiciary. Such an accusation should not be made casually.

By "collusion between business and the Government", it means someone in the business sector offers some advantages to certain officials in exchange for some advance information on government decisions, so as to enable the former to gain benefits out of it. This involves unlawful practices such as corruption and under-the-table deals. This falls into the category of criminal offence. If evidences are available, I believe the relevant parties would have called the police to arrest the persons suspected of such illegal acts, and then the Independent Commission Against Corruption (ICAC), with internationally renowned efficiency, must have started its investigation into it.

Madam President, "Hong Kong. Our advantage is the ICAC." It is true indeed. We had already established a set of very stringent regulatory mechanisms. Honourable colleagues of the Legislative Council will definitely not deny the fact that the ICAC is still doing a great job in combating corruption even after 1997, and its achievement in this regard is internationally acclaimed. Even now, it has not relaxed its efforts. If there are really so many malpractices involving collusion between business and the Government, are you accusing the ICAC of negligence of duties? For other regulatory authorities

such as the Audit Commission and the Office of The Ombudsman, are you saying that they have not done their jobs properly?

As a member of the business sector, I can share with you my personal experience. Each success story of all Hong Kong businessmen is attributable to their own hard work, possibly accumulating bit by bit and in a level playing field. Besides, the industrial and commercial sectors of Hong Kong have also done exceedingly well in the international arena. If such achievement is not attained through our own strengths, are you not saying that it is attained, once again, through collusion between "business and the Government", even with foreign governments?

The economy of Hong Kong has just revived. It is just the most opportune time for the Government, the business sector and all the people to work hand in hand, pooling their strengths, to actively strive for better results. If we keep making such claims as "collusion between business and the Government" and "transfer of benefits" every day, eventually it will only undermine the fair business environment in Hong Kong. By then, how can we attract international investors to come to Hong Kong and make investments, thereby providing more new openings and improving the employment environment?

The current accusation of "collusion between business and the Government" made in the Legislative Council and society is predominantly political in nature. It involves mostly emotional expressions as well as over-simplistic labelling. After rehashing the theme for a long time, it will severely damage the overall credibility of Hong Kong as a whole. What I am referring to is not just the credibility of the Government, but also the international image of Hong Kong as a whole. A momentary impulsive expression of political emotion could destroy the positive image of Hong Kong as a place of good governance and impartiality which we have built up over the years. It is simply not worthwhile.

Some exaggerated and untrue allegations can only aggravate the suspicion and division among the different classes in society, thus causing dissatisfaction, even hatred, among the people towards businessmen. As a result, people may take some normal co-operation between the business sector and the Government as transfer of interests or collusion. This will bring about great pressure to both the Government and the business sector and may make them, in order to avoid

suspicion, refrain from participating in co-operation projects originally beneficial to society as a whole. The party which will suffer eventually is none other than the people.

All along, different governments in the world like to promote "co-operation between business and the Government". This is an established form of co-operation commonly found in any commercial society. Even in major democratic countries like the United States, which many Honourable Members admire, the industrial and commercial sectors would actively make donations to finance the various political parties as well as the ruling party in each general election. All these donations and co-operations are open. If any normal "co-operation between business and the Government" is interpreted as transfer of benefits or collusion, it will only cause some very strong detrimental effect which will not be conducive to the long-term development of Hong Kong.

Anyway, given that the people really have some worries in this regard, then the Government must strive to prove its integrity, and it is duty-bound to explain and clarify everything to the people, so as to remove the doubts of the public. In the meantime, the Government should also attach great significance to the relevant criticisms and adopt a "sunshine approach" by enhancing the transparency in order to eliminate any public suspicions. The Government should be particularly careful in the allocation of public resources such as land and radio spectrum, which must be conducted according to the principles of openness, fairness and impartiality. All the details must be explained to the public so as to ensure that, in terms of public policies, the Government will not be suspected of transferring benefits to any designated parties, thus turning an otherwise constructive development project into a crime involving transfer of benefits.

Madam President, I am very much surprised that Members from the legal sector have said that the present Government is extremely corrupt. I am also most surprised that they would say that the impartiality of the Commissioner of the ICAC, appointed by the Chief Executive, is questioned. Madam President, we are now in the era of "Hong Kong people ruling Hong Kong", and we are our own master under the Basic Law. Are we worse-off than the era of the Commissioner being appointed by the Governor, who was appointed by the Royal Patent at a time when there was no election at all? Another Member said that, be it the Public Private Partnership (PPP), co-operation between

business and the Government or collusion between business and the Government, they all involve transfer of benefits. Is it not the intention of that Member to ask me to call on everyone in the industrial and commercial sectors most fervently not to participate in any PPP project proposed by the Government, including those PPP projects in the social welfare and the educational sectors? As for those who have frequently made criticisms, I hope they will not adopt the principle of "being demanding with others but lenient with themselves" — while accusing the Government of transferring benefits in an unfair manner, they keep shouting fictitious slogans to make unfair allegations against the Government or even the entire Hong Kong.

With these remarks, Madam President, I support Mr Jeffrey LAM's amendment.

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

MRS SELINA CHOW (in Cantonese): Madam President, I am ready to make my response, but unfortunately, the two Members involved are not in the Chamber now.

When Mr Martin LEE discussed Mr Jeffrey LAM's amendment earlier, he said it was not made on a level playing field, and that he disagreed with it in many different aspects. It is all too natural. We cannot expect Mr Martin LEE to understand our perception of issues because co-operation between business and the Government is a positive perception of issues, and such co-operation aims at achieving certain constructive purposes. However, Mr Martin LEE will never understand this because he has been "fighting" ever since his first day of participation in politics. He must oppose others, and he must scold others. In the eyes of Mr Martin LEE, the Government does well only on extremely rare occasions. Therefore, he absolutely has never considered issues from a constructive perspective, and he has never intended to achieve a constructive purpose.

Please think about this: If collusion between business and the Government does exist, could Mr Martin LEE have attained his present success? The Government will never resort to legal proceedings with the businessmen — since collusion has already existed, why should there be any need for litigation? The

Government virtually does not have to rely on our laws, or our lawyers or our judicial system to safeguard many of the issues about which all of us think we are right. The great success of Mr Martin LEE today, to a very large extent, serve to illustrate that the so-called collusion just exists in only a very limited way. What is more, he has become a billionaire without participating in the business world. His financial success is actually attributable to the situation in Hong Kong which does not allow collusion between business and the Government.

Besides, Mr Albert CHENG mentioned that the whole saga was brought up by the Chief Executive himself, leading everyone to think that he was responsible for causing all such trouble. In short, the Chief Executive has brought up the whole issue. However, these few words were not invented by the Chief Executive. He first heard of these few words over the radio. Those so-called famous talk-show hosts have repeated these words many times during the past decade, saying that the situation of collusion between business and the Government and transfer of benefits does exist. They conveyed this message to millions of their supporters, making everyone talk about it all the time. Even though they do not have any evidence, the supporters still keep on agreeing to this idea because a certain person has told them so. Eventually, even the Government has to come forward to clarify and say that the Government is resolutely against this. Is it wrong to do so? Is it wrong for the Government to indicate its disapproval of such acts? We certainly hope that the Government is resolutely against this, right? However, why should the Government say so? This is not a sudden fabrication of some non-existent ideas. The Government mentioned this simply because there had been endless discussions on such an issue, and to a very large extent, it was attributable to the repeated coverage of such an allegation by the media.

With regard to transfer of benefits, in fact there are always transfers of benefits in society. The Government collects tax from the people, and the tax is also a kind of transfer of benefits. A category of people called the "haves" are those who pay more tax. The tax collected by the Government from the "haves" will be spent on the "have-nots" who do not have any money or those who have limited abilities. This is well accepted by all of us. We agree to such transfer of benefits for the sake of the overall development of society, and for the promotion of more equal opportunities for everyone, and for the progress of society as a whole.

There are many categories of transfer of benefits, which are not just confined to the transfer of benefits between business and the Government, as alleged by certain persons. What is the case of other forms of transfer of benefits? For example, some famous talk-show hosts on the one hand boldly denounce collusion between business and the Government, and yet on the other, they receive consultation fees from the business sector. In such cases, the benefits being transferred are not for achieving any objectives for the overall benefits of society and for any public causes. Instead, such benefits could end up in the personal wallets of certain persons. How many members of the public are aware of this? Or are we saying that such transfer of benefits is acceptable to us? On the contrary, those benefits being transferred for upholding the interests of the entire society, though transparent and can be seen by everyone, are still subject to our criticisms.

As we examine this issue, we must adopt a wider and broader vision, and should not be hypocritical. If we are living in a glass house, then do not throw stones at others. After all, I feel we must admit that, the present success of Hong Kong has been attributable indeed to some very healthy, highly transparent co-operations, which are acceptable to everyone, between business and the Government in the past. We owe our success to "big market, small government". Many of us may not have come very good social background, but why can they become very successful persons? This is all because we have a very free environment which allows us to give full play to our abilities. When we live in such a society, we should not casually point our accusing fingers at others. Nor should we keep abusing others, invariably condemning others as having private motives in whatever they do. We should not exaggerate others' mistakes while overlooking their credits. If someone has done something wrong, it is only natural that such wrong-doings have to be rectified. But we cannot over-generalize everything and adopt such an approach to divide society. Thank you, Madam President.

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

MR ANDREW CHENG (in Cantonese): Madam President, today's debate is still going on and it is now five minutes past eleven in the night. I have never expected that this debate can drag on to become such a late-night event. However, after listening to the responses of Members from the business sector, I

cannot help rising to say something to state my views. With regard to Mrs Selina CHOW's comments just said, I hope she can do some soul-searching. If she said that Mr Martin LEE, or Members of the pro-democracy camp represented by Mr Martin LEE, knew nothing apart from abusing and "fighting", she does not appear to be the Mrs Selina CHOW whom I used to know. In the past, on different occasions, such as panel meetings, when she was criticizing the Government in defence of the interests of the business sector, she could abuse the Government more strongly and even more viciously — forgive me for using the word "viciously" — because for the interests of her sector and for the Liberal Party, she can do that. To quote one example, she condemned the Government vehemently in today's Transport Panel meeting over the issue of the driving offence points system.

Very often, criticisms are made sincerely from the bottom of our hearts. She cannot say that when Members of the pro-democracy camp make criticisms, they are bad-mouthing Hong Kong. But for the Liberal Party and the industrial and commercial sectors, when they make criticisms, they are doing it for promoting Hong Kong and are doing something good for Hong Kong. In fact, we are all working for the common good of Hong Kong. I hope we can examine the so-called problem of collusion between business and the Government from this perspective.

The issue of collusion between business and the Government was not deliberately brought up by us. Instead, it was brought up by Mr TUNG himself. On that day, I was not in the mood of listening to his speech. Madam President, I was absent on that day. Very often, I am really fed-up. I was no longer interested in listening to his delivery of the policy address in this Chamber. However, with regard to today's subject of collusion between business and the Government (I had not read the press reports on Gordon WU. However, I just saw the newspapers left by Ms Emily LAU on the floor, and Mr James TO has kept up this discussion), I found that the more I listened to him, the more strongly I felt that the issue of collusion between business and the Government is no longer an issue that may force only the people to rebel, but it will force some other businessmen to rebel as well.

If the Government does not address this issue squarely, or as certain Members from the business sector said, or as Mr CHIM Pui-chung solemnly said to the effect that "for the sake of the future of Hong Kong, we should seek to co-operate", the problem cannot be resolved. How can we co-operate? The

businessmen cannot co-operate among themselves. In the past development of Hong Kong, there had been fair and healthy competition among businessmen. But now everything has come to a dead alley. The Government is telling naked lies. In today's debate, I feel that Members from the industrial and commercial sectors have also told naked lies without a trace of their own conscience. They dare not tell the truth and the brutal reality. Does the Legislative Council still have any future? Where has our own conscience gone?

In fact, the problem of collusion between business and the Government, which we discuss today, does exist. And the core of the existence of this problem lies Just now, an Honourable colleague quoted Mr Andrew LEUNG as saying that certain Members from the legal sector accused the ICAC of being unfair. I am sorry because I missed why the ICAC was accused of being unfair. I believe we must have discussed this before, that is, whether the authority of the ICAC and the existing legislation are adequate in exercising checks and balances on Mr TUNG Chee-hwa in his capacity as the Chief Executive. The legislation must be amended. As far as I understand it, the ICAC legislation, the Prevention of Bribery Ordinance, the regulations governing crown servants and public servants are all fundamentally not applicable to Mr TUNG. Why should we investigate Mr TUNG? I hope everyone can act with his own conscience. How can the ICAC conduct any investigation on Mr TUNG? What kind of authority do they have?

Mr TUNG was elected, so to speak, by 800 people. Why do most of these 800 people come from the industrial and commercial sectors? Talking about fairness, if we say that Hong Kong is a prosperous financial centre, is it not so of Tokyo? Is it not so of London? Is it not so of New York? But why then the rich entrepreneurs and consortia in these three cities do not enjoy the same special privileges as those enjoyed by their counterparts in Hong Kong? Why are they like the ordinary people in having only the right of "one person, one vote"? With regards to LI Ka-shing, Thomas KWOK Ping-kwong, Walter KWOK Ping-cheung, and such major consortia as Sun Hung Kai, Hutchison Whampao, why do they or their companies have one more vote or many more votes than the ordinary people? Why? As Hong Kong is a prosperous financial centre, and enjoys a high ranking in the international arena, why should the rich tycoons hold such special privileges? The intention behind such special privileges is that Mr TUNG can have access to the core of power. With such transfer of benefits, how can we stop worrying?

If the Cyberport incident has never occurred, even if we have the Hunghom Peninsula which has been solved, as well as the West Kowloon issue, we can still say that there is no concrete evidence. If we do not have the case mentioned by Gordon WU, I can never be sure about whether the interpretation of Mr James TO is correct. If this is true, can we still say that these are not concrete evidences?

I do not know whether Members are feeling that it is already too late, and wish that the meeting can conclude as soon as possible, so that they can go home to have a good sleep. I hope they can understand that, if they still insist on saying that we in the pro-democracy camp know nothing apart from making criticisms, and that we are not acting for the good of Hong Kong, I would like to advise them not to say it anymore if their allegation is not supported by concrete evidence. They are simply telling naked lies. Madam President, we are working for the good of Hong Kong. Our harsh criticisms of it originated from our intense love for it. I do not wish to see the day when we all shut up simply because we feel disheartened, dejected and hopeless. By then, we shall not utter any words.

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

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

MRS SOPHIE LEUNG (in Cantonese): Madam President, after listening to the ferocious speeches delivered by Mr Albert CHENG and "Siu Pan"¹ (he was about to bang his fist on the table), and probably this is the last meeting before the Chinese New Year, I would also like to say something.

On hearing him mentioning "conscience", I would like to share with the President a little incident. When I contested for a seat in the Legislative Council in the election of 1996, a very good friend of mine mentioned "conscience" to me. He was a Senator of the United States. He knew that I was going to run in the election, and he asked me if I knew that in doing so, I

¹ "Siu Pan" is the transliteration of "小班" in Cantonese, which can be interpreted as a small tycoon or a small class of students. "Siu Pan" is usually used to refer to Mr Andrew CHENG as a pun, in contrast to "Tai Pan" (大班), which refers to Mr Albert CHENG.

would become a politician. He then asked me if I knew the meaning of a politician in the United States. He said, "In the United States, when a Senator swears in, he has to put his hand over his heart. This means that he is masking his own conscience when he makes that oath." I have told this little joke to many politicians. Today, "Siu Pan" CHENG, oh, I am sorry — Mr CHENG talked to us about "our conscience", I feel that each of us should go back and reflect on ourselves: Have we been on the receiving end of any transfer of benefits? Is our conscience really working for Hong Kong people?

Mrs Selina CHOW's earlier speech was possibly prompted by what she felt today. If some people say that we uphold only the interests of our own sector, or if it is because we have not done sufficiently well in our work of supporting the people's livelihood or in highlighting the livelihood issues to the officials, and think that it is right for us to condemn the officials, and that the officials should be condemned, they just vaguely think that we should condemn the officials in the same way as they do. In fact, we just state our reasoning in such cases. However, when we pointed out what had not been done properly in certain issues related to the business sector, I have a feeling — just now Mr CHENG said that he had a feeling, and so do I — that the difficulties practically faced by people in our sector may not be comprehensible to many Members. Instead, they thought that those were just the problems of the business sector, so let them be. This is my own feeling.

If the business sector does not exist in Hong Kong — today, if we still want to stir up some hatred towards the business sector, then in our existing co-operation mechanism (roughly speaking, it is our business sector), there are many small and medium enterprises (SMEs), I had mentioned in this Chamber: What have they done to deserve this? The only mistake they have made is to invest all their savings and assets in a business organization; to earn foreign exchange for Hong Kong; and to create job opportunities for Hong Kong. These are their faults. Some have even made the mistake of becoming negative-equity property owners. Why should they be subject to such treatment? Hong Kong has a population of only 7 million people. Why can we not be more considerate and think about how we can do better? I feel that if we really feel that the problem of collusion between business and the Government and transfer of benefits have become so unacceptable, we should come forward to report on such cases. Just like Mr Gordon WU, we should disclose everything to the public. Who would do it? In addition, I have great

confidence in the professional sectors of Hong Kong. Madam President, the Enron incident was unfolded by the professional sectors. If there are really many instances of collusion between business and the Government and transfer of benefits, have our professional sectors died? Where have our professional sectors gone? Why are our professional sectors unaware of such problems? Why should our professional sectors conceal the problems and let them continue to exist? All along, I have felt that the professional sectors should reflect on themselves and try to enhance their own professional levels. We have heard that in certain countries, some companies keep two sets of books. Do Hong Kong companies have such a problem? With a conflict of interest, can this problem be seen clearly? Have our lawyers taught our business sector to safeguard their interests? Is what they have been doing decent and proper? I feel that the professional sectors should reflect on themselves. If we say that there are really many instances of collusion between business and the Government and transfer of benefits, then we should examine the issue very carefully. I am saying this not just to the legal sector, or the accounting sector. As a matter of fact, many professionals should think about whether their eyes have been masked. Where have they put their code of professional conduct? I feel that when we criticize a certain sector of society unilaterally, we should examine our entire mechanism to see if it is in good order. Have the abovementioned people done their share properly in the context of the entire mechanism? Please do not overlook the achievement of other people which has been accumulated through a lot of hard work. Although there may be some oversight insofar as the mechanism is concerned, they have never wanted it to happen that way, nor have they planned to do it by this approach. It is just because there is a gap in the mechanism which allows them to do it that way. In this connection, we should study ways of improving the problem by plugging this gap, instead of just joining the crowd to throw stones.

Madam President, I hope all my Honourable colleagues can think about what my Senator friend said: Are we masking our conscience with our invisible hands? As Mr Andrew LEUNG said, making slogan-style criticisms do not do any good to society. The 7 million Hong Kong people are still living in great difficulties, and they are waiting for us to find a way out for them. But a lot of what we said has been treated as crap.

I am sorry. Madam President, I so submit.

MR JASPER TSANG (in Cantonese): Madam President, loss of memory, telling lies with eyes wide open and being hypocritical, all these are abominable. As I sat here and listened, I caught a very disgusting remark and that was made by Mr Andrew CHENG — there used to be fair competition but now it is in a dead alley. Madam President, what is fair competition? Can you compete with HSBC, Jardines and Tai Koo fairly? They do not have to canvass any votes. In the past, their people could get into the legislature and even the executive authorities provided that they were appointed by the Governor. So what is fair competition? The level playing field which Mr Martin LEE has talked about, did it ever exist? He was in the legislature in the 1980s and did he not lash out his attacks and make allegations about collusion between business and the Government with all agitations and eloquence as he did just now? I dare those who have attacked collusion between business and the Government to rise and say once again: All these took place after the reunification and there was no collusion between business and the Government before 1997. I think this is the most hypocritical thing of it all.

PRESIDENT (in Cantonese): Does any Member wish to speak? Mr CHAN Kam-lam.

(Mr CHAN Kam-lam indicated a wish to speak but Mr LEUNG Kwok-hung did not wait for his turn to speak)

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, I wish to repeat again, may I? (*Laughter*)

PRESIDENT (in Cantonese): Definitely not. You have already spoken.

MR LEUNG KWOK-HUNG (in Cantonese): It is him

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, you should be familiar with the Rules of Procedure. If you wish to speak, you must stand up and face the President and say: "Madam President, a point of order."

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, a point of order. He

PRESIDENT (in Cantonese): You may sit down now because I have already answered you.

MR LEUNG KWOK-HUNG (in Cantonese): It is him who made me stand up and speak. I have never said that it did not happen before. I have always opposed colonial rule

PRESIDENT (in Cantonese): Please sit down. Mr LEUNG Kwok-hung.

MR LEUNG KWOK-HUNG (in Cantonese): It is you who allowed him to say something like that. It was not my doing.

PRESIDENT (in Cantonese): Members can say what is on their mind when they speak. However, Members who have already spoken cannot rise and speak again, except raising a point of order. I asked you whether you had a point of order, yet you could not answer me. It is useless even if you hold the Rules of Procedure in your hand. You must tell me what question you have.
(*Laughter*)

MR LEUNG KWOK-HUNG (in Cantonese): Here it reads that a Member can speak twice as he can seek elucidation. Now someone has challenged me whether I am "courageous" enough to rise and speak. I must therefore seek elucidation. Is he being serious? If the answer is yes, I have to stand up and speak. You have to ask him.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung. Have you finished?

MR LEUNG KWOK-HUNG (in Cantonese): I do have concrete evidence. I am not joking.

PRESIDENT (in Cantonese): Have you finished? If not, I will let you finish first.

MR LEUNG KWOK-HUNG (in Cantonese): This is actually what he said. I have referred to the Rules of Procedure. It reads that if a Member seeks elucidation in a meeting, he can speak twice. This is an exceptional case.

PRESIDENT (in Cantonese): Yes, but this example cited by you is not right. Furthermore, your explanation and interpretation are wrong. Will you please sit down first. If you wish to interrupt or ask another Member to elucidate certain matters, you have to rise and seek elucidation while he is speaking. However, if you think that he has misunderstood the speech given by you earlier, you may elucidate what you said. However, these two situations do not apply to what you said just now.

It is now 11.24 pm in the night. If you want me to spend Members' time to continue discussing this issue with you in this Chamber, I can tell you that I will absolutely not give you approval because I think it is now time to let another Member to speak.

PRESIDENT (in Cantonese): Mr CHAN Kam-lam, please wait a moment. Mr Andrew CHENG, what do you want to elucidate?

MR ANDREW CHENG (in Cantonese): I wish to seek elucidation because I think Mr Jasper TSANG has misunderstood part of the speech delivered by me earlier, may I?

PRESIDENT (in Cantonese): Yes, but you cannot bring in new arguments.

MR ANDREW CHENG (in Cantonese): I will not do so.

PRESIDENT (in Cantonese): Fine.

MR ANDREW CHENG (in Cantonese): I hope Mr Jasper TSANG would not misunderstand the part mentioned by me about fair competition and the dead alley. I have not spoken a word indicating that there were lots of fair competition in the past. I have not said so. Can I ask Mr Jasper TSANG not to put these words into other people's mouth by secretly replacing others' ideas, something he is extremely good at?

PRESIDENT (in Cantonese): Mr Andrew CHENG, you only need to elucidate your own speech. No new arguments can be brought in.

MR CHAN KAM-LAM (in Cantonese): Madam President, whenever it is my turn to speak, some trouble is bound to happen. *(Laughter)*

No matter what Mr Andrew CHENG has said, I believe this is the first time we have held a debate on the issue of collusion between business and the Government in this Council.

Mr Albert CHENG seemed to have made a great discovery when he held a copy of the Chief Executive's policy address in his hands, thinking that it was the Chief Executive who had started all the disputes on collusion between business and the Government. I have found some information on the Internet. I found that since the middle of last year, the pro-democracy camp has used such wordings as "collusion between business and the Government" and "transfer of benefits" to criticize the Government. Among the people, the expression of "collusion between business and the Government" has become a household catch-phrase. I read about a press report in which the Hongkong Electric Company Limited (HEC) announced an increase in its tariff, whereas the CLP Power Hong Kong Limited (CLP) also announced a suspension of its rebate to its customers. At that time, a businessman said that he had to pay a monthly electricity bill between \$70,000 and \$80,000. He said that it was a tough life,

yet there was nothing he could do, but to endure the hardship because there was collusion between business and the Government and transfer of benefits.

My feeling at that time was, our society had entered into era which is against all good senses. There was a general air of discontent in society, which has lingered on for the past seven and a half years. We can understand the situation because our economy has been making adjustments all the time, and many people have suffered great losses. Therefore, it is very easy for the people to project their grievances onto the incompetence of the Government, poor governance, collusion between business and the Government or some malpractices.

In fact, the situation is worrying to us. Why can Hong Kong be so successful over the years? This is a question that warrants our deliberation. In Hong Kong, we have a good system with the rule of law, a high degree of social stability, financial prosperity, a good supply of talents and a good business environment. But what we need most is a free business environment with competitiveness. This is very important. Although we have a very good system with the rule of law, if we do not have a good business environment, if we do not have an internationally acclaimed free society, if we do not have an efficient and professional Civil Service, I believe it is very difficult for Hong Kong to become an international financial centre, a place with great economic success.

Today, when we level criticisms at collusion between business and the Government, we should also think about the great damage that may be done. It does not only damage our existing bureaucratic system but also injures our existing systems as well as the investors who have made investment and attained success in Hong Kong.

Just now, many Members said that our policies were biased in favour of the business sector. But I still remember that two years ago, when we were facing the SARS outbreak, we earnestly hoped that the Government could launch more proposals to attract more investments. So, not only people from the business sector and the DAB, but also other democrats, urged the Government to take more initiatives to attract more investments, so as to put our economy back onto the right track. Several years ago, we had a very good example. Dr LUI Ming-wah may recall the example of H & Q Asia Pacific. He negotiated with the SAR Government for some concession, but the talks eventually fell through

and the company did not make any investment in Hong Kong. At that time, many Members criticized the Government of not reacting with sufficient market sensitivity, and that Hong Kong did not have enough conceptual ideas for developing new technology. If the deal was clinched, we may not only have the Cyberport incident, but we may also have the Hong Kong Silicon Valley scandal. Why is this project approved but not others? Why is the land granted to this company not through an open tender? Why shall we provide it with some tax concession? Many questions will follow. Therefore, I think as we review the success of Hong Kong today, we should not try to undermine it.

Just now Ms Emily LAU mentioned that: What surprises us most is the revelling and entertainment among senior officials and the rich men throughout the night together. On seeing such occasions, she thinks that this is exactly collusion between business and the Government. What she saw was the wedding of the son of Chief Secretary for Administration Donald TSANG, which had been held over three days. This is serious. She saw that nearly all the rich tycoons of Hong Kong had gathered together — they were all there. She said in a highly emphatic manner: This is exactly a phenomenon of collusion between business and the Government. I am afraid, all senior officials must bear in mind that, from now on, you must cut away from all your relatives, and do not make friends with anyone. Only in this way can we manifest a clean government.

When Mr LI Ka-shing made some remarks about the property market, he was also criticized of colluding with the officials. I hope those critics should examine clearly what the actual situations are, and do not sabotage the free economic system in Hong Kong. Thank you, Madam President.

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

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, I would like to discuss the history of collusion between business and the Government. I was prompted to speak on this subject by the speech of Mr Jasper TSANG earlier.

As we take a retrospective look at history, we would find that the cession of Hong Kong was the result of collusion between business and the government.

We can recall that at the time of the Opium War, Britain invaded China with the assistance of the East India Company. During the British invasion of China, the East India Company and the British Government demonstrated a classic example of collusion between business and the government. Of course, we all know the outcome of such collusion, namely, the cession of Hong Kong to Britain. Therefore, Mr Jasper TSANG was right in saying that it is a stark fact that collusion between business and the Government did exist in Hong Kong under the British colonial rule. Is there any other collusion between business and the Government more significant than invasion? He is right on this point.

However, many of us who are present today have trodden such a path in the past — I do not know why "Long Hair" rose just now — but I can testify that "Long Hair" did oppose the British colonial rule of Hong Kong when he was young, and he did oppose collusion between business and the Government. Similarly, many of the friends in the pro-democracy camp, or even from the leftist camp, had also trodden the same historical path in the '70s and the '80s, and also opposed the colonial rule and the collusion between business and the Government at that time. As such, I believe collusion between business and the Government is really not the unique creation of the Hong Kong Special Administrative Region, and it should have already existed during the era of the British colonial rule in Hong Kong.

As I have just said, the cession of Hong Kong was the most significant outcome of collusion between business and the government. This is a historical fact, which cannot be wiped away. However, many of the young people at that time (When we were young, why did we oppose the colonial rule?) were dissatisfied with the dark side of society as well as collusion between business and the Government. But after a certain period of time, the Sino-British talks on Hong Kong started and the issue of reunification was put on the agenda. Many of us who are present today supported the reunification of Hong Kong with China. Our support for the reunification was of course supported by our ideals and convictions. And we hoped that the reunification can be a democratic reunification — hoping that we can have a democratic system after the unification and that such a system can check the phenomenon of collusion between business and the Government. We do not wish to see the continuation of such a page of history from the past. Unfortunately, prior to the reunification, Hong Kong failed to forcefully, effectively and reasonably build up a democratic system. After the reunification, our political system has even become a small-circle political system. This is substantially and distinctly different from the

convictions and ideals we upheld in the '70s and '80s when we strove for democracy and opposed the colonial rule.

How does the small-circle political system bring about prerogative politics? And how does it bring about the new form of collusion between business and the Government? In fact, today Ms Margaret NG has mentioned that, in small-circle politics, there are too many incentives and relationships that foster collusion between business and the Government. This is an unhealthy and undesirable system. But why has the problem of collusion between business and the Government once again hit the headlines recently under this unhealthy system? Frankly speaking, if we do not have the West Kowloon Cultural District development, if we do not have the Hunghom Peninsula incident, with no one worrying that such a vast piece of land might be awarded to one or two consortia for development, which could be attributable to collusion between business and the Government, this problem will not have been raised here. Likewise, the Hunghom Peninsula is another similar incident.

Some people may say, that such problems have become such major issues in the past one or two years is mainly because the pro-democracy camp has brought them up. However, what sorts of power or authorities do members of the pro-democracy camp have in affecting how the land at West Kowloon is granted? Or how do they affect the sale of the Hunghom Peninsula at pitiable prices? This is an issue over which we must distinguish its "causes" from its "effects". Without the "causes" of the West Kowloon project and the Hunghom Peninsula incident, we shall not have the resulting "effects" of the issue of collusion between business and the Government. People in power have already been allocated some benefits, and even in the sharing of benefits, such allocation of benefits will differ from case to case, dependent on the weight of power or the position each party holds. LI Ka-shing received the benefits first, and Gordon WU felt aggrieved. So this is the ending.

When we discuss the issue of collusion between business and the Government, we still have a deeper level of implications, that is, the emergence of "super collusion between business and the Government". It is just like what I have said. Why have the Cyberport incident, the West Kowloon project and the Hunghom Peninsula incident aroused the real concern and real anger among Hong Kong people. And such concern and anger are closely related to the small-circle election and political system.

Under such circumstances, we need not put any make-up for the history of the colonial days. We all know that it is a page of history of invasion. However, with regard to the history of today, after the reunification, we should still uphold our convictions, hopes and pursuits. We should not carry on with the political system characterized by small-circle elections. Instead, we should democratize such a system, and then in turn make use of such a democratic system to check the Government and pre-empt the possible emergence of the social reality of collusion between business and the Government. Do you not mean to say that we should not pursue this? Or do you think that we should not struggle for this kind of conviction? These are exactly the reasons why the pro-democracy camp has brought up the discussion of collusion between business and the Government, and why Ms Emily LAU has mentioned that we should have universal suffrage in her motion.

My dear friends, if you really want to do something good for Hong Kong, if you really intend to eradicate — or at least to the check, or to reduce collusion between business and the Government, then it is necessary to formulate a system. And what we need is not a system in which the votes are cast by 800 or 1 600 persons. What we need is not a Chief Executive who is pre-ordained. Instead, we need a Chief Executive who is elected by universal suffrage, monitored by all the people, checked by everyone in society. This is the only way that can bring about long-term political harmony and stability and thereby reduce, I dare not say eradicate, collusion between business and the Government.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Ms Emily LAU, you may now speak on Mr Jeffrey LAM's amendment. You have up to five minutes to speak.

MS EMILY LAU (in Cantonese): Madam President, I am perplexed and cannot understand, as mentioned by many other colleagues, why Mr Jeffrey LAM has to

delete so many parts of my original motion. I also have to tender my thank to Ms Margaret NG in particular, who kindly added certain points which I have omitted, even though she had not planned to say anything in this debate.

I cannot fully understand the mentality of certain Members as well as those from the Liberal Party. In fact, Madam President, if Members can take a closer look at my motion, they will see that actually it does not contain any special ideas. The first paragraph contains direct quotations of the remarks made by TUNG Chee-hwa in this Chamber. Next, I move on to say perhaps we can clearly define what constitutes "collusion between business and the Government" and "transfer of benefits", and mention some monitoring systems and how such systems operate. And then I suggest examining the existing political system and the allocation of land resources, and so on, and trying to see if there are loopholes that have to be plugged; and then we shall study whether such statutory bodies as advisory committees have to be reviewed. The "eyesore" is of course the parts related to the introduction of universal suffrage in 2007 and 2008 election. However, all these issues have to be mentioned. Since the Chief Executive has made some remarks in the policy address, I just say that maybe we can ask him to clarify them in more specific terms. Then all of a sudden, someone comes forward with a big bang to delete nearly all the content of my motion. The motion does ask all Members to think about how to pre-empt the occurrence of certain situations, but if we do not even know what such situations are, how can we pre-empt their occurrences? Actually does he or does he not want to define such situations? Maybe he should delete the reference to "TUNG Chee-hwa" right away.

You have made such amendments, but you said you did not know if they had touched on the various types of work of the ICAC. Let me quote what Donald TSANG had said. He thought that what was involved was not just confined to those with criminality. If everyone agrees that such situations could happen even outside the scope of criminal offences, should we, being civilized persons, first of all define the scope? Therefore, I also disagreed with Mr Albert CHAN the other day in putting forward the request of allowing him to commence an investigation into the Chief Executive right away. I asked him what he would look for in his investigation. Mr CHAN did not even have a single criterion, how did he know what he should look for in his investigation? A definition should be drawn beforehand. Now someone does not let other

people determine definitions, and then he even goes ahead to delete everything, deleting even those parts on reviews of resource allocation and systems.

Madam President, collusion or co-operation between business and the Government are distinctly different. For co-operation between business and the Government, we will not oppose it at all. Ms Miriam LAU mentioned something about tunnels or construction projects, and so on, has anyone ever mentioned that such projects are suspected of being involved in collusion between business and the Government? It is not necessary to mention such projects at this juncture. No one is talking about such projects. Just now some colleagues did mention some "painful cases" — cases really involving collusion between business and the Government. Those were cases which we would like to discuss, instead of the ones mentioned by Ms Miriam LAU involving vehicles or tunnels, and so on. Maybe those cases fall within her interest areas. But no one has ever mentioned those cases. So it is not necessary for her to invite trouble in this way. Even for cases which no one has ever mentioned, people would still go ahead to examine them rationally. But for the actual cases under discussion, some of us did mention them. Yes, we really insist on discussing such cases. We started discussing the Cyberport case in 1999, and even now, the year of 2005, we still keep on discussing it. It was TUNG Chee-hwa who brought it up again, and John TSANG has also written two articles on it. Everyone is making a fuss about it, even people in the business sector are making a fuss about it. Now Gordon WU has talked about it. I do not know who else will come forward and talk about it again tomorrow.

I did not fabricate that issue myself, Madam President. Someone accused me of raising alarmist talk. In fact, everyone has been talking about it for many years. However, very obviously, Madam President, this incident has pinched some nerves of some people. Why? It is all about the benefits issue. The transfer of benefits is something bad. If the benefits are transferred to the people, such an action will not be described as transfer of benefits. I am not a language expert, but we all know the correct usage of this expression. Therefore, I hope we can discuss the issue calmly. However, I would also like to thank Members of the Democratic Party for having spoken so much. It has been a long time since they last had such heated arguments with other Members.

However, what I would like to say today is, we must draw certain definitions. If loopholes are identified, we must do something to plug them. I also agree with certain colleagues in saying that the problems are structural or they are in the systems. It was because of cronyism. The sons or daughters of rich families are arranged to sit on the committees or advisory boards. So someone says that, in that small-circle Election Committee, we in the industrial and commercial sectors only account for about 200 persons out of a total membership of 800 persons. But have you looked at the remaining 200-odd members? Who are they? They are Legislative Council Members, NPC Deputies and regional representatives. Is it not true that most of them belong to the industrial and commercial sectors? For those from the professional sectors, do they or do they not also belong to the industrial and commercial sectors? This Anthony WU, should he be considered as someone from the industrial and commercial sectors or the professional sectors? He is a member of this Committee. He is also a member of a committee charged with the responsibility of examining our salaries and remuneration, and he is also the Chairman of the Hospital Authority. Many of his duties have a close relationship with the industrial and commercial sectors.

Therefore, Madam President, this evening, I really hope to expose all these problems to the public. The truth will become all the more evident after repeated debates. The ultimate justice lies in the hearts of the people. I do not know whether there are still people who have not gone to bed yet at twelve midnight and are still listening to our speeches. For those who are still listening, I believe they must have understood something now. They must have known who have been speaking their conscience, and who have been defending their own interests with a selfish motive only.

FINANCIAL SECRETARY (in Cantonese): Madam President, first of all, before I respond in detail to the motion today, I would like to make it clear to Members that the Government has adopted a market-oriented economic policy which has never changed. Development and promotion of our economy will continue to be the Government's focus so as to ensure an environment which is conducive to fair competition and business-friendly where private enterprises can bring their impetus of wealth creation into play. We will also create a society with equal opportunities for everyone to give full play to his strengths so as to improve his and his family's living standards. The Government will continue to uphold its long-standing economic philosophy by strictly adhering to

"market-driven and government-facilitated" principle. It will also maintain a "big market and small government", and provide an open, equitable and fair business platform so that market forces can be optimized.

The policy address recently delivered by the Chief Executive announced many practical measures to implement "people-based" governance, to reduce conflict between different strata and build a harmonious and united society. In formulating government policies, we will listen to the public views and balance the interests of various quarters.

Hong Kong is renowned as the freest economy in the world. As stated by the Chief Secretary for Administration last week in the debate on the Motion of Thanks for the policy address, Hong Kong is a place where high transparency and the spirit of rule of law prevail. For many years, international authoritative organizations have held a very high opinion of Hong Kong's free economy. The Heritage Foundation has for 11 consecutive years rated Hong Kong as the freest economy in the world and acknowledged Hong Kong's many merits, including minimal government intervention in economic activities and simple business regulations which are applied universally in an impartial manner.

The SAR Government has made a lot of efforts in enhancing the transparency of its policies and listened to public views more closely. The establishment of the Economic and Employment Council (EEC) last year is a good example. Some Members criticized the composition of EEC as being too big and the number of members too many, thus failing to discuss issues effectively. However, I would like to point out that one of the purposes of forming the EEC is to canvass public views in the widest possible perspective at the early stage of formulating economic and employment policies. Those 36 non-official members come from various sectors including the business sector, academia, the labour sector and the Legislative Council. Because of its wide representation, discussions are always conducted with people-orientation and the public's well-being as the basic consideration.

A fair land grant process is another good example and a major concern of many Honourable Members. The Government has always taken up the role as a market facilitator by providing an open, transparent, simple and proper regulatory regime to help private development and new ideas to flourish. As far as land policy is concerned, an application list system has been established for

the disposal of government land in a highly transparent manner. We also have an established process and practice for regrant premium. As regards land lease modification and land exchange, monthly information on new agreements signed and the amount of premium paid are regularly announced on the website of the Lands Department.

For applications of private treaty grants, the land use must be intended for public purposes with policy support by the relevant Policy Bureau before the application will be processed by the Lands Department. Depending on the circumstances, we have to consider whether there is a precedent to follow and whether the applications should be submitted to the Executive Council for approval. Public opinions of the community concerned will be fully reflected and considered in the planning process. Besides, we have planned to announce the granting of private treaty grants and the land premium paid on the Lands Department website.

Regarding town planning, the Government has all along encouraged enhanced public participation. The statutory plan is made by the Town Planning Board in accordance with the statutory process under the Town Planning Ordinance and a sound mechanism exists, allowing the public to offer their views on the plans and individual development projects. We passed the Town Planning (Amendment) Ordinance last year to perfect the whole planning system and process, including a greater opportunity for public participation in the formulation of plans.

Since public utilities affect various aspects of the people's life, their modes of operation have been a major concern to all sectors. I would like to make it clear that we have not granted any franchise to any company in energy supply. We have signed a Scheme of Control Agreement with the two power companies and an Information and Consultation Agreement with the Hong Kong and China Gas Company Limited (HKGC). These companies, however, do not enjoy any franchise or business concession for the provision of electricity or gas supply locally.

We have signed the Scheme of Control Agreements with the two power companies in order to ensure that the public will get reliable, stable and safe electricity supply at reasonable tariffs. The Agreement with the HKGC aims at improving the transparency of the tariffs and tariff adjustment mechanism of the company.

I believe Members have noticed that at the end of January we started a phase-one consultation on the development of Hong Kong's electricity market after the expiry of the Scheme of Control Agreements. Such Agreements signed between the Government and the two power companies will expire in 2008. We would take this opportunity to conduct a detailed study with a view to formulating a development plan for the electricity market beyond 2008. One of the major purposes of this consultation exercise is to ensure that the public will have reliable, stable and safe electricity supply at a reasonable price. In addition, we will improve the inadequacies of the present monitoring mechanism to address people's concern.

We have an open mind about the way forward of the electricity market. We welcome views from the general public and Honourable Members.

Another franchise of public concern is the bus service. We have issued six franchises to five bus operators. Since 1991, such franchises have been granted to new operators through open tender. In planning new bus routes, we will consult the public and where appropriate, select the most appropriate operators among the existing ones to provide the new services in an open manner.

The Government has been monitoring the operation of bus companies to ensure their provision of reliable and efficient services. In order to strengthen monitoring measures and cater for the need of operation, we will always take the opportunity of granting new franchises to review the terms and conditions. For operators who are underperforming, we will not renew their franchises. For example, in 1998, we introduced a new franchised operator by open bidding in order to introduce competition to bus services on Hong Kong Island.

Many Members have referred to the Cyberport project. This morning the Secretary for Commercial, Industry and Technology attended an Information Technology and Broadcasting Panel special meeting to give detailed replies to Members' questions. The Secretary also disclosed more than 20 letters and documents between the Government and the Pacific Century CyberWorks so that Members and the public could gain a deeper understanding of the project. I understand that the meeting this morning lasted for more than two hours. The

Secretary and Members have held a thorough discussion on the matter and I will not repeat their exchanges.

Many Members have also mentioned what mode of development should be adopted for the West Kowloon Cultural District project. In fact, the Chief Secretary for Administration has, on many occasions, including the Council meeting on 6 January, elaborated the concept behind the single-developer approach.

I understand that the property market now is in a much better shape than it was when the single-developer approach was first discussed. So, some people are concerned that the developer may make a windfall because of the booming market. This is understandable.

The public consultation in respect of the development of the West Kowloon Cultural District is ongoing. The public has been very enthusiastic in participating various consultation activities. As of 31 January, more than 86 000 people have visited the exhibition of screened-in proposals and we have received more than 13 000 opinion questionnaires. Besides, many people have attended the seminars or submitted views through various means such as post, e-mail and facsimile. The Chief Executive has made it clear in the policy address that the Government would adopt an open mind and listen to all opinions. All decisions will be made on the basis of public opinion and the overall and long-term interests of Hong Kong. I hope Members will also adopt an open mind during the public consultation period so that the public can have more space to express their opinions.

In the last motion debate, the Secretary for the Civil Service accounted in detail the policy in relation to the post-retirement employment of civil servants. I am not going to reiterate those points here.

Apart from enhancing transparency in the process of policy formulation, we have also in place a proven monitoring mechanism. If the so-called collusion between business and the Government and transfer of benefits involve corruption, the Independent Commission Against Corruption (ICAC) will certainly conduct investigations. The operation of the ICAC is independent from the executive. It has made a lot of efforts through investigation, prevention and education and its achievement is evident to all. Apart from the

ICAC, we also have the Office of The Ombudsman and Audit Commission which will monitor the Government's efficiency and use of public resources.

Of course, the Legislative Council and the media have all along been monitoring the Government very closely. Various bureaux and government departments regularly brief relevant Legislative Council panels on their work in various areas. Our resource allocation process has been subject to stringent monitoring by the Legislative Council. There is no question of transfer of benefits. Take our annual Budget as an example. It will be scrutinized very carefully by the Finance Committee (FC) of the Legislative Council before the Appropriation Bill can be passed. Take the Budget for 2004-05 as an example. Members had raised as many as 1 800 questions during the Special FC meeting. If there are changes to the original approved provisions, we have to follow the established process of applying for approval from the FC or authorized units. If some expenditure items do not conform with the principle of value for money, the Audit Commission and the Public Accounts Committee of the Legislative Council can also request the relevant departments to provide an account for the particular expenditure items.

All in all, the Government will continue to strive for a higher degree of transparency in policy formulation and implementation and use of resources. Subject to various direct and indirect channels of monitoring, we will run the Government in accordance with the law and the public interests will be our prime concern without any favouritism or partiality.

Ms Emily LAU's original motion refers to the mechanism for appointing members to advisory and statutory bodies. In fact, the "six-boards" and "six-year" rules have been established for quite a long time, with the aim of ensuring that the duties of non-official members will not impose an excessive workload on them. Only under exceptional circumstances will the relevant members be appointed to more than six boards/committees or reappointed after six years of service.

Madam President, Ms Emily LAU's original motion demands the implementation of election of the Chief Executive and all Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively. The SAR Government cannot support this. In Hong Kong, we have perfect and effective electoral legislation to ensure that the whole election processes are held in a fair, open and honest manner. We also have impartial and effective law

enforcement and monitoring agencies, including the ICAC and the Electoral Affairs Commission, to make sure that our elections are clean and fair. We believe that the future electoral system will also be fully protected in a similar manner.

Mr Ji Pangfei, the Chairman of the Basic Law Drafting Committee, said on 28 March 1990 when submitting the draft Basic Law and relevant documents to the Third Session of the Seventh National People's Congress (NPC), "The political structure of the SAR should accord with the principle of 'one country, two systems' and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system that suits Hong Kong's situation should gradually be introduced."

After the reunification, the Election Committee is composed of people from various sectors and the Legislative Council have retained functional constituency seats with the purpose of safeguarding the interests of various strata and realizing the principle of balanced participation.

If we look at other communities in the world, balanced participation is the underlying principle of a well-developed democratic society. The only difference is that different countries will adopt different approaches to achieve the same. For instance, some have adopted bicameral systems with an Upper House or Senate while some will allow the participation of political parties which represent different social strata and sectors to realize balanced participation.

The Constitutional Development Task Force (the Task Force) headed by the Chief Secretary for Administration is now conducting a wide and open consultation on the method of selection of the Chief Executive and the method of formation of the Legislative Council in 2007 and 2008 respectively. The Task Force would like to forge a consensus in society on how the two election methods should be amended around mid-2005 and put forth a mainstream proposal for public discussion by that time.

The Task Force will adhere strictly to the provisions of the Basic Law and the decision of the Standing Committee of the NPC (NPCSC) made on 26 April

2004 in dealing with the relevant issues. In this connection, the Task Force stated clearly in its Fourth Report that it would not handle any proposal that is not in line with the Basic Law or the decision of the NPCSC.

The power of interpretation of the NPCSC is derived from the Constitution of the People's Republic of China and is also articulated in Article 158 of the Basic Law. And the NPCSC made a decision on the constitutional development on 26 April 2004. In his visit to Hong Kong to explain the decision on that day, Mr QIAO Xiaoyang, Deputy Secretary-General of the NPCSC, said that it was a prudent and responsible political decision made after the views of various sectors of Hong Kong community had been taken into account and the pros and cons of the issue had been carefully weighted and considered. Mr QIAO had also explained why it was inappropriate to introduce universal suffrage in the two elections in 2007 and 2008.

Therefore, the SAR Government has a duty to comply and implement the decision of the NPC. After the interpretation by the NPCSC, we can have a clear understanding of paragraph 7 of Annex I and paragraph 3 of Annex II. We can pool our wisdom together to find ways to amend the two election methods so that we can gradually develop democracy in the light of Hong Kong's situation in accordance with the Basic Law. Under Articles 45 and 68 of the Basic Law, universal suffrage is the ultimate goal for the selection of the Chief Executive and the formation of the Legislative Council. I earnestly hope that various strata of the community will participate actively in the rational discussion within the framework of the decision so that we can come up with a democratic, progressive and forward-looking constitutional development proposal. As a responsible leader, the SAR Government will focus on the overall interest of society during the entire discussion process on the constitutional development. We should be rational and accommodating in respect of different views in order to work out a proposal that is conducive to reaching a consensus. Let us work together to build a united and harmonious environment so that our children and future generations can grow in a democratic, open, united and harmonious society where people are patriotic, considerate, caring, pluralistic and full of vitality.

Hong Kong is one of the freest economies in the world, where the high degree of transparency and respect for the rule of law can help prevent collusion between business and the Government.

Business activity is the lifeline of Hong Kong. It can create wealth which will bring necessary impetus to our prosperity and stability. This is indisputable. The business sector, through various donations and charitable activities, helps the needy in the community. The private sector in Hong Kong has created most of the employment opportunities in the territory. The Government, therefore, should actively create and maintain an environment which is business-friendly and conducive to fair competition on the premise that it complies with the law and the public interests. This is certainly consistent with our long-term interest. I believe no one will say that this is collusion between business and the Government and transfer of benefits.

In many countries and regions, the governments will offer various concessions such as a long tax holiday to attract investors. But we do not. We only rely on our strengths in terms of a simple and low tax regime, rule of law and high transparency in governance. The business sector considers Hong Kong attractive precisely because there is no collusion between business and the Government and there is no favouritism. Rather, a level playing field for all is ensured.

If people are so skeptical that normal partnerships are regarded as transfer of benefits or collusion, the Government and business sector will face a lot of pressure. As a result, no one will dare to launch any co-operation project even though it will bring benefits to the community as a whole. This is certainly not in Hong Kong's interest.

We should work together to build our economy. We also need investors to come to invest in profitable projects in order to boost our economy and create job opportunities. However, if investors are smeared and become targets of attack, capitals will go elsewhere because many other countries and economies are also trying hard to lure them. If so, can we say that this is people-based governance? The Government should pay attention to enhancing its transparency in order to dispel doubts. However, any groundless accusation of collusion between business and the Government with the aim of creating an anti-government issue will result in a deterioration of the social atmosphere which will adversely affect the business environment. This will inflict direct harm on our economy and eventually the public will lose out.

Madam President, I earnestly hope that instead of labelling people, Members can co-operate and work together with the Government in building up an open, fair and equitable society. I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr Jeffrey LAM to Ms Emily LAU'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 Jeffrey LAM rose to claim a division.

PRESIDENT (in Cantonese): Mr Jeffrey LAM 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 Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr Patrick LAU and Kwong Chi-kin voted for the amendment.

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Joseph LEE, Dr Kwok Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted against the amendment.

Geographical Constituencies:

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted for the amendment.

Mr Albert HO, Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Albert CHENG 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, 28 were present, 21 were in favour of the amendment and seven against it; while among the Members returned by geographical constituencies through direct elections, 25 were present, nine were in favour of the amendment and 15 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): Ms Emily LAU, you may now reply and you have one minute 40 seconds.

MS EMILY LAU (in Cantonese): Good morning, Madam President and every one. There is nothing much I want to say now, for the Financial Secretary and the Liberal Party are breathing through the same nostrils. I believe the Government of the Special Administration Region of Hong Kong cannot learn from experience and it has no intention to identify its inadequacies either.

Therefore, I can foretell there will be further rebukes from the President of China again. Madam President, I will not say anything further.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Emily LAU as printed on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raise their hands)

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:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Joseph LEE, Dr Kwok Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the motion.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Daniel

LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr Patrick LAU and Mr KWONG Chi-kin voted against the motion.

Geographical Constituencies:

Mr Albert HO, Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mr Albert CHENG voted for the motion.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, seven were in favour of the motion and 21 against it; while among the Members returned by geographical constituencies through direct elections, 25 were present, 15 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

NEXT MEETING

PRESIDENT (in Cantonese): It is now 12.15 am on Thursday, 3 February. This Council will not sit on Wednesday, for it is Chinese New Year Day. I wish every one a peaceful and leisurely Chinese New Year break.

I now adjourn the Council until 2.30 pm on Wednesday, 23 February 2005.

Adjourned accordingly at sixteen minutes past Twelve o'clock in the morning.

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Health, Welfare and Food to Miss TAM Heung Man's supplementary question to Question 3

As regards information on the number of complaints of unreasonable treatment received by the Hospital Authority (HA) from patients of the two psychiatric hospitals or their families over the past three years, the HA has received a total of seven complaints from patients of Kwai Chung Hospital and Castle Peak Hospital or their families over the past three years. Further details of these complaints are set out in the attached table.

**Complaints by Psychiatric Patients from
Kwai Chung Hospital and Castle Peak Hospital**

| <i>Year</i> | <i>Number of Cases</i> | <i>Nature of Complaint</i> | <i>Remarks</i> |
|-------------|------------------------|---|---|
| 2002-03 | 4 | Attack by staff | All four complaints not substantiated. |
| 2003-04 | Nil | N/A | N/A |
| 2004-05 | 3 | Attack by staff (two cases) The 3rd case involved a patient being attacked by a staff and the patient was asked to perform cleansing duties. | First two cases not substantiated. The 3rd case was reported to the police. No further action taken by the police. |