

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 9 March 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 LEE CHEUK-YAN

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 CHAN YUEN-HAN, J.P.

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

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 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 CHAN KAM-LAM, J.P.

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

THE HONOURABLE MA LIK, J.P.

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

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

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

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

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

THE HONOURABLE AMBROSE LEE SIU-KWONG, I.D.S.M., J.P.  
SECRETARY FOR SECURITY

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Fixed Penalty (Public Cleanliness Offences) Ordinance (Amendment of Schedule 2) Order 2005 .....	20/2005
Magistrates Ordinance (Amendment of Fourth Schedule) Order 2005.....	21/2005
Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) (Amendment) Order 2005 .....	22/2005
Telecommunications (Amendment) Regulation 2005 .....	23/2005
Telecommunications (Carrier Licences) (Amendment) Regulation 2005.....	24/2005
Tax Reserve Certificates (Rate of Interest) Notice 2005.....	25/2005
Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (Commencement) Notice 2005.....	26/2005

**Other Papers**

- No. 62 — Audited Statement of Accounts of the Language Fund for the year ended 31 August 2004, together with the Director of Audit's Report
- No. 63 — Employees' Compensation Insurance Levies Management Board Annual Report 2003/2004
- No. 64 — Employees Compensation Assistance Fund Board Annual Report 2003/2004

- No. 65 — Occupational Deafness Compensation Board  
Annual Report 2003-2004
- No. 66 — Pneumoconiosis Compensation Fund Board  
Annual Report 2003
- No. 67 — Report of the Committee on Members' Interests on its  
consideration of the cases of Hon James TO's failure to  
register interests with the Clerk to the Legislative Council  
pursuant to Rule 83 of the Rules of Procedure

## ADDRESSES

**PRESIDENT** (in Cantonese): Address. Mrs Sophie LEUNG, Chairman of the Committee on Members' Interest, will address the Council on the Committee's report on its consideration of the cases of Mr James TO's failure to register interests with the Clerk to the Legislative Council pursuant to Rule 83 of the Rules of Procedure.

### **Report of the Committee on Members' Interests on its consideration of the cases of Hon James TO's failure to register interests with the Clerk to the Legislative Council pursuant to Rule 83 of the Rules of Procedure**

**MRS SOPHIE LEUNG** (in Cantonese): Madam President, in my capacity as Chairman of the Committee on Members' Interests (the Committee), I submit to the Legislative Council the report of the Committee on its consideration of the cases of Mr James TO's late registration of interests.

The Committee of this Legislative Council term was established on 19 October 2004, comprising a wide representation of Members from different grouping in the Legislative Council. After its establishment, the Committee received a report from its clerk which included four points as set out below:

- (1) On 23 August 2004, a newspaper reported that Mr James TO had not declared with the Clerk to the Legislative Council his shareholdings in Target Link Limited (TLL) in accordance with the Rules of Procedure, and that he rented the sitting room of a

property owned by TLL for use as his Legislative Council Member's District Office from June 1998 to July 2001 and claimed reimbursements from the public coffers of rental expenses at a level above the market rate. In addition, two District Council members each rented a room in the property in question from January 2000 to December 2003 and January 2000 to March 2004 respectively.

- (2) The Clerk to the Legislative Council wrote to Mr James TO immediately, asking him to clarify whether he had previously registered his shareholding in TLL with the Secretariat; and whether he had control of TLL or had more than 50% shareholding in it.
- (3) In his written reply to the Clerk to the Legislative Council on 26 August 2004, Mr James TO confirmed that he had shares in TLL. However, he claimed that he had all along mistakenly believed that TLL had issued two shares only and the one share he held had also been donated to the Democratic Party. Therefore, he held the share in the capacity of a "nominee shareholder" only. In the Registration Form on Members' Interests, "shareholdings" is defined as personal shareholdings and do not include shareholdings held by a Member in the capacity of a nominee shareholder. Moreover, he was not a remunerated director of TLL and did not receive any material benefits. Therefore, he believed that he was not obliged to register such interests with the Legislative Council. He realized only afterwards that he had misunderstood the situation. In fact, TLL had issued 100 shares and he held 50 of them. Discounting the one share which he had already donated to the Democratic Party, he still held 49 shares, which were registrable interests according to the Rules of Procedure. He then registered the interests out of time, and
- (4) The Committee received five related complaints from members of the public from 24 August to 15 September 2004.

The Committee held a total of 16 closed meetings to discuss Mr James TO's case and the related complaints. Three of the meetings were held with Mr James TO.

When deliberating on Mr James TO's case and the related complaints, the Committee referred to the following:

- (1) The Procedure for Handling Complaints drawn up in July 1999 by the Committee of the first Legislative Council term: according to the Procedure for Handling Complaints, the Committee would not handle the following complaints:
  - (i) complaints not made in writing;
  - (ii) complaints not related to the registration and declaration of Members' interests; and
  - (iii) complaints made by an anonymous or unidentifiable person or by a person who cannot be contacted; and
- (2) When handling cases of individual Members' late registration of interests, the Committee of the first Legislative Council term decided that there was no need to take further action as these cases obviously did not involve any conflict of interests.

The Committee noted that among the five complaints it received, the first three complaints were not made in writing. The complainant of the fourth complaint did not provide name or contact details while the subject matter of the remaining complaint was neither the registration nor declaration of Members' interests. Since the complaints did not meet the criteria provided in the Procedure for Handling Complaints, the Committee considered that none of these five complaints required further follow-up.

However, Mr James TO had admitted the fact of his late registration of interests in his letter to the Clerk to the Legislative Council. Given that Mr James TO had claimed reimbursements from the public coffers of the rental expenses on renting a property owned by TLL and thereby conflict of interests might be involved, the Committee decided to follow up the case.

The Committee had discussed whether it had been authorized to ask Mr James TO questions relating to his claims from the public coffers to reimburse his rental expenses. We concluded that the Committee was not empowered to judge whether or not such act of Mr James TO was appropriate, or determine

whether or not the rental level was above the market rate. However, obtaining reimbursement of expenses by Members through applications made to the Legislative Council might involve conflict of interests which they did not wish to disclose, thereby constituting an incentive to not register the interests in accordance with Rule 83 of the Rules of Procedure. We therefore deemed it necessary to ask Mr James TO questions on the rental expenses with a view to determining whether or not his late registration of interests had involved such incentive.

The questions the Committee put to Mr James TO during the meetings and the replies received were detailed in the report.

Regarding the question of whether Mr James TO's omission to register interests was a deliberate act or otherwise, the Committee notes that Mr James TO had registered his shareholding interests in TLL with the Yau Tsim Mong District Council (YTMDC). As information on interests registered by Legislative Council Members and District Council members were accessible to the public, if Mr James TO deliberately omitted to register the interests with the Clerk to the Legislative Council so as to conceal his shareholding interests in TLL, he should have omitted to register the interests with the YTMDC as well. As Mr James TO did register the interests with the YTMDC, the Committee accepts that Mr James TO did not deliberately conceal such interests.

The Committee accepts that when Mr James TO dealt with the affairs of TLL as its director, he did not actively participate in the matters of the company. According to his declaration, he had believed that he did not actually hold any shares of TLL. He therefore entirely relied on those who handled the party affairs of the Democratic Party, the secretarial services company and the accounting firm to handle the affairs of TLL. When the staff members concerned showed him the documents, he never perused but just signed at places where they were flagged. The Committee considers that although Mr James TO's way of handling matters in this respect could be regarded as grossly inadequate and negligent, there is no evidence indicating that he deliberately concealed the interests concerned.

The Committee notes that the rules relating to Legislative Council Members' claims for reimbursements of expenses do not prohibit Members from submitting claims for reimbursement of rental expenses in respect of a property owned by themselves, the political party to which they belonged or the company

under their control for use as their Legislative Council Members' District Offices, nor do the rules require Members to provide evidence or information showing that the rental of the offices concerned was not higher than the market rate when they submitted claims for reimbursement of rental expenses. As such, Mr James TO has not breached any relevant rules of the Legislative Council by renting the property owned by TLL for use as his Legislative Member's District Office, and claiming reimbursements of rental expenses thereof. The Committee considers that, in these circumstances, there should be no need for Mr James TO to omit registration in order to conceal the interests.

The conclusions of the Committee are that Mr James TO failed to furnish to the Clerk to the Legislative Council the particular of a registrable interest, namely the name of TLL, during the period from 1 July 1998 to 25 August 2004, contrary to Rule 83 of the Rules of Procedure. After examining carefully Mr James TO's case, the Committee considers that there is no evidence which indicates that he deliberately omitted to register his interests.

In handling cases of late registration of interests, the former Committee did not recommend sanctions against the Members concerned on the basis that no conflict of interests was involved. However, as the interests registered out of time by Mr James TO involved claims from the public coffers, this case is materially different from the previous cases. Although the way and attitude in which Mr James TO handled matters of TLL is not within the Committee's terms of reference, as a Legislative Council Member and in order to comply with Rule 83 of the Rules of Procedure, he had a duty to clarify and ascertain the number of shares of TLL held by him and whether he was holding such shares in the capacity of beneficial owner or nominee. The Committee considers that Mr James TO failed to prudently discharge such a duty, which falls short of the standards expected of a Member in handling such matters by members of the public, hence there is a need to recommend sanction in this case.

In accordance with Rules 73(1)(e) and 85 of the Rules of Procedure, the Committee recommends that Mr James TO be sanctioned by admonishment on a motion to that effect. In this connection, I will move a motion on behalf of the Committee at the Council meeting of 6 April and hope that it will have Members' support.

Madam President, in addition to the case of TLL, Mr James TO of his own volition reported to the Committee on 2 November 2004 that during his

term of office as Member of the Legislative Council of the last term, he was negligent in omitting to register his shareholding interests in Union Pace Development Limited (UDPL) with the Clerk to the Legislative Council. He held about 7% of the shares of UDPL. He explained that the only asset the company held was a village house and it did not actively participate in commercial activities. He registered such interests with the YTMDC in 2001, 2002 and 2004.

The Committee notes that Mr James TO did register such interests with the YTMDC and had also registered such interests with the Clerk to the Legislative Council in this term. The Committee considers that this omission did not involve any claims from the public coffers, conflict of interests, or other factors which will make it accept that it should take an approach different from the way similar cases were handled by the Committee of the first Legislative Council term. Hence, the Committee decides that there is no need to take further action in respect of this case.

The Committee completed the draft report at its meeting on 3 February 2005, and sent the whole draft report to Mr James TO on 4 February. He was told at the same time that he might provide a written response to it. After receiving Mr James TO's response, the Committee considered his comments carefully and made minor amendments to the descriptions of certain facts in the report.

Madam President, this is the first time in history that the Committee on Members' Interests of the Hong Kong legislature conducted a detailed investigation into the case of the failure of a Member to register interests. In conducting the investigation, the Committee had referred to the Procedure for Handling Complaints drawn up by the Committee of the first Legislative Council term. I would like to point out that the conclusions and recommendations in this report are reached after thorough discussion and consideration by all members of the Committee. In examining this case, members did their best to follow the principles of fairness and impartiality, and took a careful and serious attitude when considering the case prudently from different perspectives. I would also like to take this opportunity to thank the staff of the Legislative Council Secretariat for their professional and dedicated support.

Madam President, in summing up the experience of the investigation, the Committee considers that the Procedure for Handling Complaints drawn up by

the Committee of the first Legislative Council term may be further improved. For example, instead of launching an investigation upon receipt of a complaint, the Committee may also start an investigation when a Member admits that he/she has failed to register and declare interests in accordance with the Rules of Procedure.

At its first closed meeting to discuss this case, the Committee agreed that all deliberations should be kept in strict confidence. Regrettably, despite such an agreement, some of the deliberations were still disclosed. As this would undermine the credibility of the Committee and hence that of the Legislative Council, as well as Mr James TO's interest or honour, the Committee held several discussions in respect of the disclosure to explore the ways to prevent its recurrence. The Committee notes that there were also cases of breach of confidence in a select committee of the last Legislative Council term and the Committee on Rules of Procedure has been invited to study the ways to prevent disclosure. The Committee recommends that the Committee on Rules of Procedure should study expeditiously the establishment and implementation of a mechanism to prevent disclosure.

Madam President, the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement and the Subcommittee to Consider a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims under the House Committee are deliberating on the ways to improve the relevant guidelines and the setting up of a mechanism for handling complaints. I hope that the two Subcommittees can put forward their recommendations and have them implemented as soon as possible. I also hope that with Members' co-operation, the credibility of the Legislative Council can be upheld.

Thank you, Madam President.

## **ORAL ANSWERS TO QUESTIONS**

**PRESIDENT** (in Cantonese): Questions. A supplementary should only contain one question and should be as concise as possible. Also, Members

should not make statements when asking supplementaries, as this contravenes Rule 26(5) of the Rules of Procedure.

First question.

### **Outsourcing of Government Services**

1. **MR KWONG CHI-KIN** (in Cantonese): *Madam President, regarding the outsourcing of government services, will the Government inform this Council:*

- (a) *of the total number of services for which feasibility studies are being conducted on outsourcing of government services or public private partnership (PPP), as well as the details about such services, including the names of departments or consultancy firms responsible for the studies, and the expenditures on the study, and whether the study results will be released to the public or staff of the relevant departments; if so, of the release time;*
- (b) *of the reasons for conducting each of the above studies and whether the authorities have, before conducting the studies, assessed if there will be abuse of power and corruption after implementation of the outsourcing or PPP in the provision of the relevant government services; and*
- (c) *whether it will consult the civil servants who are providing the relevant government services or their unions when conducting the studies?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, the Government is always conscious of the need to deliver public services in the most cost-effective and efficient manner possible. It is established policy that we should use the private sector where possible, in keeping with our objectives of maintaining a small and efficient government, containing the size of the Civil Service, and promoting business opportunities and jobs in the private sector.

- (a) Information provided by the Efficiency Unit (EU) on formal studies undertaken by departments on the feasibility of outsourcing or PPP arrangement are set out at the Annex.
- (b) There are a wide range of reasons why departments consider using the private sector to deliver public services. Departments are required to contribute to the Government's efforts to constrain the size of the Civil Service, and to provide more and better services with fewer resources. In specific cases, departments may be looking to get access to skills, experience, or technology that are not available in-house.

The Administration takes the possibility of corruption or abuse of power very seriously, whether the services are delivered in-house or by means of the private sector. Outsourcing procedures are governed by the Stores and Procurement Regulations, supplemented by a number of Circulars. Civil servants are bound by these, as they are, for example, by the Civil Service Regulations and the Prevention of Bribery Ordinance. In addition, the EU has produced a number of guides to outsourcing and PPPs. The Independent Commission Against Corruption (ICAC) has also produced its own guide to the prevention of corruption in outsourcing. The guides are designed to help those involved in outsourcing exercises to adopt best practice in all respects. The guides are reviewed and updated from time to time to ensure that they continue to incorporate up-to-date best practices and reflect lessons learned.

- (c) Staff unions as well as individual civil servants will be consulted on any change initiative arising from a review study. Given the nature of such reviews, civil servants are inevitably actively involved throughout the process of fact finding and investigation and their views sought. In addition, civil servants or their union representatives will be invited to give their views on specific study recommendations if a proposal to outsource services in their area of responsibility is being considered seriously. When a department decides to use the private sector to deliver services any affected staff will be advised and steps taken to ensure their interests are properly taken into account as the project proceeds.

## Annex

## Studies on Outsourcing/PPPs conducted by the EU started on or after 1 January 2004

<i>Project Title</i>	<i>Outsourcing/ PPPs</i>	<i>Start Date</i>	<i>Name of External Consultant (if any)</i>	<i>Consultancy Fee (if applicable)</i>	<i>Date of Release of Report (if applicable)</i>
Provision of Call Centre Infrastructure and Related Applications and Facilities Management Service for the Integrated Call Centre 2	Outsourcing	March 2004	-	-	-
Outsourcing of Disciplined Services Sports and Recreation Club Management	Outsourcing	April 2004	M. Halliday Consulting Company Daniel Chan & Associates Limited AC Nielsen (China) Limited	\$110,000 \$250,000 \$138,000	-
Study on Illegal Parking Enforcement	Outsourcing	August 2004	-	-	-
Market Testing Exercise for the Outsourcing of the Accounting and Billing Activities of the Rating and Valuation Department	Outsourcing	September 2004	-	-	-
Outsourcing of Technical Services at Three Hilltop Radio Stations (Phase 2)	Outsourcing	November 2004	-	-	-
PPP Preliminary Feasibility Study on Prison Redevelopment at Lo Wu and Chi Ma Wan	PPPs	January 2005	-	-	-
Private Sector Involvement Study on Future Provision and Management of Cemeteries, Crematoria, and Columbaria	PPPs	March 2005	-	-	-

Note: All EU study reports are submitted to the client departments, who will decide whether or not to accept the recommendations, and whether to release the reports.

Studies on Outsourcing/PPPs conducted by other departments  
started on or after 1 January 2004

<i>Department</i>	<i>Project Title</i>	<i>Outsourcing/ PPPs</i>	<i>Start Date</i>	<i>Name of External Consultant (if any)</i>	<i>Consultancy Fee (if applicable)</i>	<i>Remarks</i>
Drainage Services Department	Upgrading of Pillar Point Sewage Treatment Works	PPPs (DBO)	Scheduled in July 2005	-	\$15 million (estimated)	Consultant selection exercise is being conducted
Drainage Services Department	Construction of Yung Shue Wan and Sok Kwu Wan Sewage Treatment Works	PPPs (DBO)	Scheduled in October 2005	-	\$7 million (estimated)	Consultant selection exercise is being conducted

Note: DBO stands for Design, Build and Operate

**MR KWONG CHI-KIN** (in Cantonese): *Madam President, it has been reported that the Government intends to outsource illegal parking enforcement and prison tower duties. May I ask the Secretary, via the President, how he can ensure that there will be no abuse of power and corruption when such enforcement duties are not discharged by civil servants? How feasible is the outsourcing of these duties? If the outsourcing of these duties is not so feasible, is it a waste of public money for the Government to still spend money on the studies concerned?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): *Madam President, a study on outsourcing illegal parking enforcement referred to by Mr KWONG Chi-kin is mentioned in the Annex. As far as this issue is concerned, in-depth studies have been conducted by the EU, the Transport Department and the police. Their studies are not confined to enforcement, and various other factors such as public acceptance, efficiency, legal considerations and effects on staff are also taken into account. It is not a*

simple question of enforcement. They have already reached a tentative conclusion and will proceed with the project. However, as far as I am aware, they have been maintaining contact with their staff throughout the studies, with a view to gauging their views. They have reached the tentative conclusion that outsourcing is feasible, but no final decision has yet been made as to whether it should be put into practice.

As for the issue of prison tower duties mentioned by Mr KWONG Chi-kin, there are currently six maximum security prisons equipped with security towers, all of which are currently manned by staff of the Correctional Services Department (CSD). The CSD has just conducted a preliminary study on outsourcing these duties, which involve a total of roughly 100 posts. The study is only preliminary, and no conclusion whatsoever has been drawn so far.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, it is pointed out right at the beginning of the Secretary's reply that outsourcing is the most cost-effective means of delivering public services. But does the Secretary know why this is the case? Exploitation is the only answer. Whenever the Government does not want to deliver certain services, it outsources them to outside contractors. But the latter will invariably suppress wages to very low levels. This is precisely the reason for the so-called cost-effectiveness. Madam President, I am taken aback by one project listed in the Annex, that is, the PPP Preliminary Feasibility Study on Prison Redevelopment at Lo Wu and Chi Ma Wan. It is a usual practice to outsource the construction of prisons to outside contractors. But what is involved here may not simply be the outsourcing of construction works. That is why I wish to ask whether outsourcing is really to be limited to prison tower duties. Will correctional institutions and prisons be run by private-sector organizations, as in the case of the United States?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, thanks to Mr LEE for his supplementary question. Actually, what is referred to in the Annex is just the outsourcing of construction works. We have conducted a feasibility study on PPP. As far as I know, the PPP feasibility study on this respect has not come to any conclusion. What is being studied is just the introduction of PPP. There are some examples in foreign countries, which is why we have conducted a study on the subject.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. We of course do not bother about how prisons will be constructed. But will prison management be included? Will PPP also cover prison management? This should be the work of the CSD.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, regarding this point, I think I should reply to Mr LEE in writing, because his question involves the feasibility study report of the CSD. I hope that both the President and Mr LEE can allow me to give a written reply at a later time. (Appendix I)

**MR FRED LI** (in Cantonese): *Madam President, I wish to talk about money with the Secretary. The Secretary's main reply mentions quite a number of advantages of outsourcing, such as containing the size of the Civil Service, maintaining a small and efficient government and promoting business opportunities and jobs in the private sector. All this aside, has outsourcing brought about any actual monetary saving for the Government, or any increases in Treasury reserves? If yes, how much?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, Members all know how much the Government spends every year. Over the past few years, we have done quite a good job in controlling expenditure. Although I am unable to give an array of all the relevant figures, Members can still see that the Government has done quite a good job in this respect over the past few years. One of the reasons for this is outsourcing. Owing to the necessity of raising the overall efficiency of the Government, several thousand contracts worth a total of \$200 billion have been signed to outsource the provision of government services. As Members can see, the outsourcing of many different public services has enabled the Government to better contain the size of the Civil Service and allocate resources. Our philosophy is "big market, small government". Although we are unable to offer Mr LI a total figure on the actual, combined value of all these contracts, Members can still see clearly that while the Government has done quite a good job in controlling expenditure, there has nonetheless been no reduction in its

service commitment. That is why I think that generally speaking, outsourcing has achieved certain effects.

**MR FRED LI** (in Cantonese): *Madam President, my question is on a very practical point. Can a total figure be given to us, so that we can form a picture of the whole situation? If the Secretary cannot do so now, will he provide us with a written reply later on?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I must say to Mr LI that there may be some difficulties, because as many as several thousand projects and also some assumptions are involved. That is why I think that there may be difficulties. I am not being unco-operative; rather, I can actually imagine what will happen if I ask my staff to study all the several thousand contracts and then try to compute how much money outsourcing can save when it is adopted in place of the employment of civil servants. I simply do not think that this will be cost-effective at all.

**MR WONG KWOK-HING** (in Cantonese): *Madam President, it is pointed out in the Secretary's reply to part (b) of Mr KWONG Chi-kin's question that the ICAC has also produced its own guide to the prevention of corruption in outsourcing. But the Government's outsourcing exercises are plagued with many other problems: the attempts made by unscrupulous employers to cheat workers of their wages, withhold MPF contributions and change monthly-rated workers as daily-rated. It is therefore clear that the Government has continued with outsourcing before it can ensure the full protection of workers' rights and interests. Madam President, may I ask the Secretary how the Government is going to ensure that outsourcing contract workers will not be subjected to any exploitation or cheated of their wages?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, we are equally unhappy to hear of the malpractices mentioned by Mr WONG because we too do not wish to see their occurrence. We will certainly deal with all these cases whenever they occur. If a contractor has committed any of these malpractices, we will take various

punitive actions, such as points deduction and barring the contractor from submitting any tenders in the future. If the malpractices involve any criminality, we will refer the cases concerned to the law-enforcement agencies. Therefore, Mr WONG may rest assured. All contractors must submit performance pledges to the Government. And, we will handle all cases of violation very seriously.

**MR WONG KWOK-HING** (in Cantonese): *Madam President, I wish to ask a follow-up question because I am not assured. Madam President, may I ask the Secretary whether a standard contract will still be put before the Legislative Council Panel on Manpower on 17 March and adopted on 1 April, as originally scheduled, so as to protect outsourcing contract workers?*

**PRESIDENT** (in Cantonese): Sorry, Mr WONG Kwok-hing, this is not part of the supplementary question you asked just now. Your follow-up question can only deal with that part of your supplementary question which has not been answered by the Secretary.

**MR WONG KWOK-HING** (in Cantonese): *Madam President, in his reply a moment ago, the Secretary told me to rest assured. But my worries about the wage deduction problem faced by outsourcing contract workers are not yet allayed.*

**PRESIDENT** (in Cantonese): You have already made use of the opportunity to ask a follow-up question to make clear your own position. Since your question is not a follow-up question as such, you are not permitted to pursue it. I am sorry.

**DR FERNANDO CHEUNG** (in Cantonese): *Madam President, the scope of the Government's outsourcing projects has kept on expanding; the duties of disciplined services and law enforcement may also be outsourced. May I ask the Government a question on the kinds of services that can, or cannot, be outsourced? Are there any unambiguous criteria or considerations? Are the criteria clear and transparent enough to enable members of the public to follow*

*the criteria that will be considered by the Government in deciding whether any particular type of services should be outsourced?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, the EU of the Government has prepared a booklet on the criteria of outsourcing for distribution to government departments and members of the public. If Dr Fernando CHEUNG is interested, I am happy to give him a copy of the booklet for detailed studies. But in general, we will consider the following criteria: efficiency enhancement, cost-effectiveness, interests of the affected staff, public acceptance and the legality of outsourcing the services concerned. The scope is hence very extensive, and many criteria and factors are involved. Naturally, these criteria may not be relevant in all cases. But generally speaking, they are the factors we will usually consider. Madam President, if Dr Fernando CHEUNG is interested, we will give him a copy of the booklet after the meeting.

**DR FERNANDO CHEUNG** (in Cantonese): *I also know of the availability of these documents, and indeed, one can also find very detailed information on the website of the EU. However, what I still wish to know are the many fine details under all these general criteria. These fine details actually involve many principles, which, as rightly pointed out by the Secretary, will vary from case to case. That being the case — I mean, as the details will vary from case to case — it will be very difficult for members of the public to understand how the criteria are established in each case. The social service sector, for example, is a very complex case. I also do not want to waste time here, so I hope that the Secretary can make public all the detailed criteria.*

**PRESIDENT** (in Cantonese): Dr Fernando CHEUNG, you are actually saying that since the Secretary has not answered your supplementary question clearly, he should give a detailed answer. Secretary, please do so.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I have already mentioned the major principles. We can see that in each case, the department concerned will set up a working group to study the feasibility of outsourcing. Sometimes, an outside consultant

may even be commissioned to conduct a study. When it comes to the details, various departments will have different considerations. But as I said just now, the major principles will remain the same in all cases. As for detailed considerations, they of course vary from case to case. I do not think that it is possible to make any generalization here. I hope Dr CHEUNG can understand. But if Dr CHEUNG detects any problems with outsourcing, he may still convey them to the departments concerned. For example, if outsourcing problems are found with the Social Welfare Department, which he mentioned earlier on, he may reflect them to either the Director of Social Welfare or the Secretary for Health, Welfare and Food. I am sure that they will certainly listen to Members' views.

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

**MR PATRICK LAU** (in Cantonese): *Madam President, in the construction and engineering sector, the outsourcing of consultancy services is a very common practice. Tenders are usually invited, and each bidder will submit two envelopes. As far as I know, fees for consultancy services are getting increasingly low. Therefore, may I ask the Secretary whether he is satisfied with the quality and efficiency of these services?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, one of the two envelopes mentioned by Mr LAU is about service quality. What I mean is that a tenderer will get scores only if he has the necessary know-how and a record of sound experience in the past. The second envelope is about price. When assessing tenders, the Government will try to strike a balance between these two factors. The Government will not select a tenderer with insufficient experience no matter how low the quoted price is. On the other hand, a tenderer with sufficient experience may still get high scores even though the quoted price is comparatively high. The whole point is about striking a proper balance. One should not think that low prices are necessarily good. That is why the Government requires each tenderer to submit two envelopes, and the total scores of the two envelopes are used for assessment. Our aim is always to protect the public interest. Sometimes, we do receive quoted prices that are incredibly low. The tenderer concerned will

not be happy, of course. But as people responsible for spending public money properly, we will be very happy when the price is low and there is quality assurance. The current practice is fair, open and honest, one which can uphold the interests of the public.

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

**MR PATRICK LAU** (in Cantonese): *No. I wish to ask a follow-up question. May I ask the Secretary whether he is satisfied with the quality of all those low-priced works projects? Will he conduct any review?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, generally speaking, we are satisfied. But as I have pointed out, there are many contracts on the outsourcing of government services. In case we are not satisfied, we will surely conduct a review.

**PRESIDENT** (in Cantonese): Second question.

### **Monitoring of Fund-raising Activities**

2. **MR LAU KONG-WAH** (in Cantonese): *Madam President, I raise this question for Mr CHAN Kam-lam. Regarding the monitoring of fund-raising activities, will the Government inform this Council:*

- (a) *of the respective numbers of applications for organizing flag days and other fund-raising activities received in each of the past three years and, among them, the number of applications which were unsuccessful and the reasons for their being so; and the criteria adopted by the authorities for granting charitable institutions permits for organizing such activities; whether they have regularly assessed the performance of these institutions after granting them the permits so as to ensure that their reputation and management*

*capacity are satisfactory; if they have, of the assessment results; if not, the reasons for that;*

- (b) whether it has assessed the effectiveness of the existing measures adopted for monitoring the fund-raising activities organized by charitable institutions on streets and via the Internet and the usage of such funds; if it has, of the assessment results; if not, the reasons for that; and*
- (c) as the Reference Guide on Best Practices for Charitable Fund-raising Activities (the Reference Guide) published by the Social Welfare Department (SWD) in November last year contains no restrictions on the ratio of the administration fees in the donation proceeds nor stipulates any penalties on charitable institutions for non-compliance with the Reference Guide, and the Reference Guide itself is not legally binding, whether the authorities will consider enacting legislation to impose such restrictions and drawing up prosecution measures for non-compliance with the Reference Guide; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese):  
Madam President, I wish to thank Mr LAU Kong-wah for raising this question for Mr CHAN Kam-lam.

- (a) Between 2002 and 2004, the number of applications for Public Subscription Permit (PSP) for flag-selling and other charitable fund-raising activities received by the SWD were 596, 766 and 756 respectively and among them, 94, 108 and 107 applications were unsuccessful. The main reasons for the unsuccessful application were that the number of applications for flag selling far exceeded the quotas allowed for the activity and that the applicant organizations in question had violated the conditions of PSP in their previous fund-raising activities.

The SWD will evaluate the applications for PSP for flag-selling and other charitable fund-raising activities against certain criteria, such as the fund-raising activity must be charitable in nature; the applicant organization must possess a valid registration under the

relevant ordinances or it is an organization exempted from tax under section 88 of the Inland Revenue Ordinance; the previous performance of the organization and the capability of the applicant organization in holding the fund-raising activity.

The Director of Social Welfare (DSW) will lay down in PSP a number of requirements to augment the transparency of the fund-raising activity, including that the activity should not be profit-making; within 90 days after the activity, the gross proceeds raised after the deduction of any expenses incurred should be deposited in the relevant bank account and that the verified copy of the audited account should be submitted.

Besides, between 2002 and 2004, the number of applications for Lottery Licence received by Television and Entertainment Licensing Authority (TELA) were 127, 111 and 122 respectively. Among them, only one application submitted in 2004 was unsuccessful. The TELA rejected the application on the ground that it was a late submission.

Anyone who wishes to conduct a lottery activity has to apply for a licence from the Commissioner for Television and Entertainment Licensing (CTEL), under the Gambling Ordinance (Cap. 148). The licensing conditions prescribe the maximum duration of a lottery sale. The conditions also specify that lottery proceeds should not be appropriated to any individual(s) for private gain purpose. If the sales or peddling of lotteries are to be conducted in public streets, prior written approval from the CTEL is required. In order to ensure that the organization for holding the lottery activity will use the proceeds on the claimed purpose, the licensee must submit to the CTEL within a specified period a financial statement audited by a public accountant. The statement must set out the proceeds and expenses arising from the lottery activity.

In short, the present regulating measures on charitable organizations are mainly based on the criteria for issuing PSP or Lottery Licence, including the previous performance of the institutions. For those institutions who have violated the conditions, their names will be

put in a sanction list. We will review the present administrative measures over those institutions who fail to observe the conditions.

- (b) In the interest of public order, section 4(17)(i) of the Summary Offences Ordinance (Cap. 228) states that any person who organizes, provides equipment for, or participates in any collection of money or exchange for donation of badges, token or similar articles in a public place for charitable purpose, is required to apply for PSP from the DSW. Besides, the CTEL is empowered to issue Lottery Licence to those who wish to organize lottery activities under the Gambling Ordinance (Cap. 148). The Ordinance also specifies the conditions which the applicants and holders of the Lottery Licence must observe. The CTEL also sets out additional conditions for regulating lottery sale to be conducted in public streets. For those who fail to observe the conditions of PSP and the Lottery Licence, the SWD and the CTEL may not accept their future application. On the other hand, the public may inspect the financial statement of the Lottery Licence holders and the information relating to the PSP charitable activities on the Internet.

Under the existing law, we do not have any regulating measures over the public fund-raising activities through the Internet or held in other forms.

Public views have been divided on the proposal for the Government to impose legislative controls over fund-raising activities. Indeed, the Government has conducted a full-scale review and assessment of the existing regulating mechanism and come to view that a full control through legislation is not practical. Alternatively, we may strengthen the existing measures and come up with a voluntary self-regulation system. After extensive consultation with the public, and the relevant panels/committees, the SWD has issued the Reference Guide for voluntary adoption of charitable organizations. The Government will review the Reference Guide one year after its issue.

The Government has reminded the public through the mass media of the need to fully understand the background and operation of the organizations concerned as well as the purpose of their fund-raising

activities before making donation. If they have any doubt, members of the public may wish to contact the SWD or the TELA or report the cases to the police. The Theft Ordinance (Cap. 210) regulates those fraudulent or deceptive fund-raising activities. When there is any alleged breach of the law in the conduct of flag-selling, fund-raising or lottery activities, we will normally refer the case to the police for further follow-up.

- (c) The Reference Guide was issued by the SWD in November 2004. It has laid down 21 guidelines, covering the best practices regarding three areas, namely donors' right, fund-raising practices and financial accountability. One of the guidelines specifies that no more will be spent on administration and fund-raising than is required to ensure effective management and resource development. The SWD also encourages a charity organization to disclose the ratio of its return and expenses for donor's reference. The aim of the Reference Guideline is to ensure that the amounts of fund-raising expenses and administrative expenses are maintained at an appropriate level to allow the maximum possible resources to be used for charitable purposes. The Reference Guide has not set any ceiling on the administrative costs as a percentage of the donation proceeds incurred. As a matter of fact, the appropriate level of the amount of fund-raising expenses would vary subject to the following factors: the size of the charity organization, its history background and reputation, networking of donor, the assistance of voluntary workers, networking of enterprises, management expertise, financial management and the professional experience of the fund-raisers and so forth.

The Reference Guide is for voluntary adoption by charity organizations. It serves to strengthen the accountability and transparency of the organization while assisting the public to make an informed decision about making donation.

At present, the Government has no intention to implement compulsory adoption of the Reference Guide. If it is to be implemented, stringent vetting and review procedures will have to be put in place which would have considerable resource and manpower implications both for the Government and the charity

organizations. Such a system may also inadvertently discourage fund-raising activities. In view of the large number of organizations and the broad scope of activities involved, it is doubtful whether the establishment of a regulatory system to cover all charitable fund-raising activities will be effective. We, therefore, do not see the need at this stage to have compulsory adoption of the Reference Guide.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the Secretary mentioned in part (b) of the main reply that if members of the public have any doubt, they may contact the relevant department. Madam President, most people must have the experience of meeting someone who claims that he is raising fund and asks for public donation on the streets; it seems that members of the public are of no benevolence if they make no donation, yet they have doubts about whether they should make the donation, what should they do? In view of this, members of the public will become hesitant in making the donation. Will the authorities actively conduct random inspections? What is the actual number of true cases of fraud that took place in the past few years which can show that the problem really exists? Were they reported by members of the public or were they uncovered by the spot checks initiated by the Government?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, Mr LAU, as far as I know, a lot of fund-raising activities were organized after the recent tsunami strike, and the SWD received 56 relevant complaints. We would follow up each of them. Of the 56 cases, seven were referred to the police. The police followed up three cases and ceased the investigation as they considered no criminality was involved. The remaining four cases are still under investigation. If we receive complaints, I consider that we should follow up each of them, but should we spend too much resources and manpower to take the initiative to monitor each fund-raising activity? I believe it will cost us a lot of time and will also cause much inconvenience. The most important thing is that members of the public should make their own analysis as to whether they want to help those people or group on the one hand, and to consider whether the fund-raisers are reputable charity organizations. I believe the people in Hong Kong are quite well-educated these

days, so they should be able to make the analysis. With regard to the enactment of legislation to impose control, I think it may not be necessary.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the Secretary has not answered whether there were cases of successful indictment of true frauds in the past few years. Can the Secretary provide figures?*

**PRESIDENT** (in Cantonese): Do you have the figures to provide to Members?

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I do not have the breakdown of cases which purely show that an institution or individual had been convicted for conducting fraudulent or deceptive fund-raising activities. Nevertheless, in the past five years, the number of staff from charity organizations being charged by the ICAC for other offences, such as their work or other aspects, ranged from one to five, but we do not have information on detailed figures.

**MR BERNARD CHAN** (in Cantonese): *Madam President, according to part (c) of the Secretary's main reply, I also agree that we should not force certain charity organizations to adopt the Reference Guide by way of legislation. Nevertheless, may I ask the Secretary, although we encourage them to adopt the Reference Guide, whether these organizations will let the public inspect the accounts on donations as opposed to expenses, or whether such accounts will be uploaded to the SWD's website for public inspection, of course the provision of information is voluntary? Or is there any other means to make public such information? If members of the public wish to examine these figures, should they enquire with the respective organization, or is there any other channel which will enable them to examine the accounts provided by hundreds of social service groups voluntarily so that they can make easy reference to the relevant figures?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, with regard to the supplementary of Mr Bernard CHAN, first of all, since we have introduced the Reference Guide, 91 voluntary agencies,

that is, NGOs receiving subsidies from the SWD, have agreed to adopt the Reference Guide. Of course, the Reference Guide was launched in last November, only four months since, thus it is very likely that some organizations have not conducted any fund-raising activities. I will not dismiss the possibility that more organizations will adopt the Reference Guide in the future. One of the requirements of the Reference Guide is that the organizations have to make public their financial statements and their administrative expenses or other expenses in each fund-raising activity. I hope they would adopt this approach to make public their financial status after they have become familiarized with the relevant procedure.

Moreover, members of the public may view the names of organizations and activities which have obtained the PSP issued by us on the SWD's website and the Government's ESD*life* website. If members of the public wish to find out whether or not such activities have obtained the PSP, they can find out on these websites and can check the financial statements of these organizations on their respective websites.

**MISS TAM HEUNG-MAN** (in Cantonese): *Madam President, just now the Secretary said that there were 56 complaints about the tsunami relief fund-raising activities. Will the Secretary inform this Council of the respective numbers of complaints about various fund-raising activities received in the past three years? What follow-up action has been taken? In view of the fact that there are numerous illegal fund-raising activities on streets and the Internet, has the Government any specific policy to strengthen public education and combat illegal elements? As the Secretary said that education was also very important earlier, what proposal does the Government have to protect donors and lawful charity organizations which are subject to regulatory control?*

**PRESIDENT** (in Cantonese): Miss TAM Heung-man, you have raised two supplementaries, do you wish the Secretary answer the second supplementary?

**MISS TAM HEUNG-MAN** (in Cantonese): *Yes, thank you Madam President.*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, is it the second supplementary or the first one? Shall I answer both? (*Laughter*)

**PRESIDENT** (in Cantonese): Yes, that is certainly acceptable.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Miss TAM Heung-man, the answer to the first supplementary is rather simple. In the past three years, the SWD received a total of 32 complaints related to these fund-raising activities, and the TELA received a total of seven complaints. Most of the complaints were related to the conduct of fund-raising activities without PSP.

As to how we can make the public or fund-raising organizations understand the objective of fund-raising in a better way and make the fund-raising activity more public and transparent, I consider the Reference Guide issued by us now is useful, and that is put in place after the Panel on Welfare Services had reviewed it in the last term of the Legislative Council. Of course, we should not jump to the conclusion that this is final, but I am of the opinion that after being implemented for one year, the Reference Guide will become more lucid after review. Likewise, we hope relevant organizations will disclose more information to the public in the course of raising funds so as to let the public know what they are doing. If the relevant organizations can do more, the amount of public donation will become bigger. If they do less, members of the public who have little knowledge about them will not necessarily make donations even if they pass by. I consider that it is a kind of interactive education process. I hope the Government will take complementary measures to meet their needs and help such activities.

**PRESIDENT** (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question.

**DR KWOK KA-KI** (in Cantonese): *Madam President, I agree with the Secretary in respect of the implementation of mandatory regulation or the criteria of implementation. When we walk on the street, we will meet some peculiar fund-raising activities from time to time. Although the Government said that no immediate monitoring measure would be put in place, will the Government consider conducting spot checks on some suspicious charity organizations against which complaints have been and yet not substantiated?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, at present, two measures are in place to prevent the fund-raising activities organized by unscrupulous organizations. The Inland Revenue Department (IRD) is responsible for first measure. The IRD will conduct spot checks on tax-exempt organizations which are suspicious of conducting non-charitable activities; this is a rather comprehensive measure. With regard to the second measure, the SWD has a so-called sanction list, that is, it has a punitive list of relevant unscrupulous organizations. We would add the name of an organization to the list if it has adopted unscrupulous practices in the course of raising funds or failed to follow the Reference Guide in its past fund-raising activity. When such organizations apply for PSP the next time, we will take their so-called track record into consideration; this is another regulatory measure. At present, 154 organizations are on this list.

**PRESIDENT** (in Cantonese): Third question.

### **One-way Exit Permit Quota**

3. **MR MARTIN LEE** (in Cantonese): *Madam President, it has been reported that One-way Exit Permit (OEP) holders who came to Hong Kong numbered 34 000 last year, representing a decrease of about 36% from 53 000 in the previous year, and the annual OEP quota for that year, with a daily limit of 150, was not used up. In this connection, will the Government inform this Council:*

- (a) *of the usage of the various categories of OEP quotas last year, including whether there was a shortfall in the respective sub-quotas for the minors born in the Mainland to Hong Kong residents and have no right of abode in Hong Kong and for the spouses of Hong Kong residents in the Mainland, as well as the numbers of these two categories of persons still awaiting the approval for settlement in Hong Kong;*
- (b) *whether it will propose to the Central Government that the basis of allocating OEP quotas be revised, for example, by adopting a family, instead of an individual, as the unit for the granting of*

*OEPs, or shortening the period of separation between Hong Kong residents and their mainland spouses required for the granting of OEPs, and that the applications by mainlanders for settlement in Hong Kong be vetted and approved by the Government of the Hong Kong Special Administrative Region (SAR), so that the Hong Kong authorities may adjust the various categories of OEP quotas flexibly to take account of the actual situation in Hong Kong; and*

- (c) *as the annual quota of OEPs has not been used up, whether it will relax the eligibility criteria for the admission schemes for mainland professionals and capital investors intending to invest, work and settle in Hong Kong, so as to admit more persons of such categories to Hong Kong for settlement?*

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

- (a) Of the daily One-way Permit (OWP) quota of 150 places, 60 places are allocated to children holding Certificate of Entitlement (CoE) who enjoy the right of abode in Hong Kong, 30 to spouses separated for 10 years or more (long separated spouses) and their accompanying children, and 60 to applicants belonging to other categories. Included under other categories are spouses separated for less than 10 years and their accompanying children, unsupported children who need to join their relatives in Hong Kong, persons coming to Hong Kong to take care of their unsupported aged parents (that is, those with no other children in Hong Kong) and unsupported elderly people coming to join relatives in Hong Kong.

In 2004, a total of 38 072, or a daily average of 104, OWP holders arrived in Hong Kong. According to information furnished by OWP entrants on their arrival in Hong Kong, 10 314 were CoE children (that is, a daily average of 28), and 3 682 were spouses separated for 10 years or more and their accompanying children (that is, a daily average of 10). Besides, 24 076 applicants under other categories (that is, a daily average of 66) entered Hong Kong, including 19 209 spouses separated for less than 10 years and their accompanying children (that is, a daily average of 53). As persons

issued with OWPs may enter Hong Kong within a three-month period, the number of OWP holders entering Hong Kong each year may differ from the number of OWPs issued by the mainland authorities in the same period.

The number of OWP holders entering Hong Kong in 2004 was lower than that in the previous year. We believe that this largely reflects the under-utilization of the daily quota of 60 places for CoE children. Our figures indicate that the daily arrival of CoE children in 2004 stood at 28, which was short of the designated quota by 32 places.

As regards separated spouses, according to the eligibility criteria recently announced by mainland public security authorities, the waiting time for separated spouses has been further shortened to six years for spouses in Guangdong, and to five years for spouses in other provinces. As the mainland authorities are responsible for processing OWP applications, we are unable to provide the breakdown on the different types of applicants awaiting approval for settlement in Hong Kong for the time being.

- (b) As regards the approving authority for OWP, according to Article 22(4) of the Basic Law, people from other parts of China who wish to enter Hong Kong must apply for approval. Under existing arrangements, the authority to approve applications for OWP is vested with the mainland authorities. Since May 1997, the mainland authorities have started to assess OWP applications in accordance with the "Points System", under which the eligibility of applicants and the order in which they may settle in Hong Kong are assessed and determined according to objective criteria and a transparent mechanism. In the past few years, nearly 90% of OWPs were issued to Hong Kong permanent residents' mainland children with the right of abode in Hong Kong, Hong Kong residents' mainland spouses as well as their accompanying children under the age of 18. On the whole, the OWP system has been operating well in recent years. Whilst we have suggested to the mainland authorities to explore the possibility of allowing more mainland adult children with genuine needs to lawfully apply to settle in Hong Kong to take care of their parents, we have no plan at

this stage to request the mainland authorities to change the OWP mechanism and the related eligibility criteria.

As set out in the Report of the Task Force on Population Policy published in 2003, we will have consultation with the mainland authorities on questions relating to the OWP quota and its allocation among different categories regularly. The Task Force will publish its next report in 2005-06, and the Government will consult the public and the Legislative Council on the relevant proposals.

- (c) The objective of the OWP Scheme is to facilitate family reunion, but not to attract talent or investors. Including such considerations in the OWP Scheme may adversely impact on the clarity of its aim and complicate its implementation. Utilization of OWP quota may also fluctuate from year to year. Even if there is unused quota in a particular year, this may not necessarily tie in with Hong Kong's demand for talent at the time which is market-driven. We therefore consider it more appropriate to deal with the importation of mainland talent through separate policies.

Under existing policy, mainland residents may apply to enter Hong Kong for employment under the Admission Scheme for Mainland Talents and Professionals. There is no quota under the Scheme and the number of talent imported depends on the needs of the local economy. Between the introduction of the Scheme in July 2003 and the end of February 2005, the Immigration Department has approved 5 705 applications. As the Chief Executive clearly stated in the 2005 Policy Address, in line with our development strategy, Hong Kong must attract talent from around the world and take more positive measures in this direction. Even though the Admission Scheme for Mainland Talents and Professionals has been operating well, in line with the policy direction set out in the 2005 policy address, we will review the existing policy from time to time to ensure that Hong Kong can continue to enjoy an adequate supply of mainland professionals for our economic growth and the development of local enterprises.

**MR MARTIN LEE** (in Cantonese): *Madam President, according to the Secretary's main reply, it is clear to us that problems do exist in the approving process of OWP by the mainland authorities. For instance, the daily quota of 60 places allocated to children holding CoE has not been used up, meaning that 32 places on average have been wasted. In addition, the daily quota of 30 places allocated to spouses separated for 10 years or more — the Cowherds and the Girl Weavers — has not been used up, meaning that a daily quota of 20 places has been wasted. Meanwhile, for those who have married for four years, for instance, they are even not eligible. As it is so obvious that so many problems exist, why does the Secretary still consider that the OWP mechanism operates well and it is not necessary to fight for the approving authority for OWP on the basis of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy"? Or should the Secretary not at least fight for the approving authority of the under-utilized quotas so that more Hong Kong people can unite with their family members in the Mainland as soon as possible?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the OWP system, which has its own historical background, has all along been making contribution to family reunion. Since 1997, the system has provided a good channel for over 300 000 mainlanders to unite with their family members in Hong Kong. Just now Mr LEE asked why the Hong Kong authorities had not fought for the approving authority from the Central Government. In fact, it is based on two considerations: first, under Article 22(4) of the Basic Law, for entry into the SAR, people from other parts of China must apply for approval. Under the Basic Law, the approving authority is exercised by the mainland authorities.

Having said that, no matter it was before the reunification in 1997 or after 1997, the Hong Kong Government has reflected our views on OWP, including the need for improvement or higher transparency of some procedures previously. The mainland public security authorities have also accepted our views, including the existing "Points System", the practice of publishing on newspapers the names of those who have been approved to enter Hong Kong and posting relevant notices at local places. All these suggestions were made by the Hong Kong authorities. Now we have 64 places (Appendix 1) allocated to children holding CoE. We applied to the mainland authorities for this quota on the forecast that the number of children having right of abode would increase

after 1997. I do not rule out the possibility that the authorities will continue to propose other views on the management of OWP in future.

Besides, in the main reply, I have also mentioned that the Task Force on Population Policy under the co-ordination of the Chief Secretary for Administration will conduct a review next year. By then, it will consult the public and the Legislative Council and reflect the views to the Mainland.

**MR MARTIN LEE** (in Cantonese): *Now at least 52 places are not used every day, why do the authorities not fight for the approving authority for these 52 places?*

**SECRETARY FOR SECURITY** (in Cantonese): First of all, the approving authority is vested with the mainland authorities. This is undeniable. Of course, on the management of OWP, as I have just replied, both the SAR Government and the former Hong Kong Government have also offered advice. In my understanding, quotas are under-utilized because, first, the situation may differ from year to year; second, as far as I know, the number of people holding CoE has decreased and couples separated for 10 years or more have not used up the quotas. The mainland authorities have allocated some of these quotas to couples who have separated for less than 10 years and their accompanying children.

**PRESIDENT** (in Cantonese): Members, we have spent 13 minutes on the exchanges between Mr Martin LEE and the Secretary for Security. Please be brief and concise as far as possible because eight Members are waiting for their turns to ask supplementary questions.

**DR YEUNG SUM** (in Cantonese): *Madam President, under the existing OWP system, applications by minor children, adult children and spouses are vetted separately. Sometimes, children are allowed to come to Hong Kong whilst their mothers are not yet eligible. They have to be taken care of by their fathers after arrival at Hong Kong. When they go to school later, many problems of adaptation will arise. For instance, the so-called "pseudo-single-parent" phenomenon will occur. Madam President, may I ask the Secretary this question. Since the purpose of OWP is to help those who have right of abode to*

*come to Hong Kong for family reunion, can the Secretary seriously consider requesting the mainland authorities to adopt family as the basis for application?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, we have also noticed such a situation. Since applications lodged by children having right of abode in Hong Kong will be approved very quickly, in general, they do not have to wait and their OWPs will be issued expeditiously once their documents are all in order and their right of abode in Hong Kong has been confirmed. Besides, we have also noticed that in the past, children were often allowed to come to Hong Kong whilst their mothers' OWPs had not yet been approved, leading to some undesirable situations. After we have reflected such situation to the mainland authorities, children who have right of abode in Hong Kong will have their OWPs issued later even after their right of abode has been confirmed so that they can be accompanied by their mothers, as what Dr YEUNG Sum has just said, if they wish to come to Hong Kong together with their mothers. This can pre-empt the situation where the children come to Hong Kong before their mothers can do so.

**MR RONNY TONG** (in Cantonese): *Madam President, after listening to the Secretary's reply, I found that each category of quotas seemed to be under-utilized. But the Secretary said that there was no plan to request the Mainland to revise the relevant criteria. In this connection, may I ask the Secretary whether the Government will consider allocating the residual quotas to those who are illegally staying in Hong Kong so that they can be benefited?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, in the main reply, I have explained that under the existing legislation, the authority to approve applications for OWP is vested with the mainland authorities, rather than the Security Bureau. Under the existing mechanism, we and the mainland authorities have reached an agreement that if children claiming to have right of abode in Hong Kong apply for coming to Hong Kong under such category, the Mainland will refer their applications to Hong Kong for approval mainly because we have relevant information to confirm whether they have right of abode in Hong Kong. As regards applicants under other categories, the authority to issue OWPs to them is vested with the mainland authorities instead of the Immigration Department of Hong Kong. So, in response to Mr Ronny

TONG's question concerning whether these residual quotas can be utilized and allocated to those who claim that they have right of abode in Hong Kong in order that they can stay in Hong Kong, I can only say that we do not have such an authority under the law.

**MR RONNY TONG** (in Cantonese): *Madam President, I think the Secretary does not quite understand my question. What I meant is that these people are forced to stay in Hong Kong because the system is unfair. If they return to the Mainland .....*

**PRESIDENT** (in Cantonese): Mr TONG, if you think that the Secretary has not answered your supplementary question, please state which part of your question has not been answered.

**MR RONNY TONG** (in Cantonese): *I would like to make some elaboration because the Secretary may not have understood my supplementary question.*

**PRESIDENT** (in Cantonese): But this is not allowed in the question time .....

**MR RONNY TONG** (in Cantonese): *I understand.*

**PRESIDENT** (in Cantonese): Because many Members are waiting for their turns.

**MR RONNY TONG** (in Cantonese): *Madam President, if you allow me to speak for one more minute, the problem will be solved immediately.*

**PRESIDENT** (in Cantonese): If you speak for one more minute, it will be 18 minutes in total.

**MR RONNY TONG** (in Cantonese): *Less than one minute. What I meant is that these people, once having returned to the Mainland, will not be able to come to Hong Kong by virtue of the existing system. Since there is information for processing their cases in Hong Kong, it will be more appropriate. My question is: Precisely because of such a situation, should the authorities not consider allowing those who are illegally staying in Hong Kong to make use of these residual quotas on the ground of humanity? These are my justifications. I hope the Secretary can respond to my question.*

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

**SECRETARY FOR SECURITY** (in Cantonese): Perhaps let me add a few points. Madam President, I think Mr TONG's question is a separate issue from the OWP. If a person wishes to apply for an OWP, approval from the mainland authorities is needed. I believe Mr TONG's question is: Since the original quota are 54 000 places annually and now only 30 000-odd places have been used or 10 000-odd people have not been accepted, can the Director of Immigration exercise discretionary power and allow those who have failed in the litigation in respect of claims for right of abode to stay in Hong Kong? But I think this is a separate issue. What I can say is that if the Director of Immigration exercises the discretionary power conferred on him by law and allows a person to stay in Hong Kong, he has to do so on a case by case basis. He cannot allow all those belonging to a particular category of people to stay in Hong Kong, otherwise, it will create a policy. As far as I know, among those who have failed in their litigation in respect of claims for right of abode, some are allowed to stay in Hong Kong by the Director of Immigration by exercising his discretionary power on the ground of their special circumstances.

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

**MS MARGARET NG** (in Cantonese): *Madam President, the Secretary's main reply shows that there are, in fact, a lot of communication between the Mainland and Hong Kong and the Mainland is very willing to accept Hong Kong's views in respect of the quota system. Otherwise, it will not lead to the interpretation of*

*the Basic Law due to the worry that 1.67 million people might come to Hong Kong. I would like to ask the Secretary this question. Will the authorities consider allocating the unused 32 places to those who are affected by the Court of Final Appeal's rulings on the case concerning NG Ka Ling & Others so that the adult children having right of abode can queue up and wait for their turns under the "Points System"? If so, those who are most worthwhile for accepting and best suit Hong Kong's need will be selected and come to Hong Kong by using these 32 unused places. I believe the authorities can discuss this "Points System" with the Mainland.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, to reflect to the Mainland that adult children should be allowed to wait for their turns — not necessarily those who have failed in the litigation in Hong Kong, as far as I can remember, in those years, for the fairness of those who had or had not involved in the litigation or those who had returned to the Mainland in response to our advice, my predecessor Secretary for Security Regina IP and I, in the capacity of the Director of Immigration, had reflected to the mainland authorities our views on whether it was necessary to allow the adult children to queue up and wait for their turns. Both the incumbent Director of Immigration, my successor, and I, after taking over the duties of Secretary Regina IP, have always raised this issue with the authorities concerned during visits to the Mainland, in the hope that the mainland authorities will consider allowing the adult children to queue up and wait for their turns to come to Hong Kong. We will keep making efforts in this aspect.

**PRESIDENT** (in Cantonese): Fourth question.

### **Energy-saving Designs of Hong Kong Disneyland**

4. **MISS CHOY SO-YUK** (in Cantonese): *Madam President, will the Government inform this Council whether it knows:*

- (a) *the amount of waste to be produced daily by the Hong Kong Disneyland (HKDL) upon its opening in September this year; and whether there are plans to recover and recycle such waste; if so, of the details of the plans;*

- (b) *which of the facilities in the HKDL have adopted energy-saving designs; and*
- (c) *whether renewable energy will be used in the HKDL; if so, of the details, including the percentage of the electricity thus saved against the total electricity consumption?*

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

(in Cantonese): Madam President,

- (a) According to information provided by the Hong Kong International Theme Parks Limited (HKITPL), the HKDL, including the affiliated hotels, will generate about 13 tons of waste per day after its opening. In the course of providing entertainment, the HKITPL also attaches great importance to protecting the environment. It is now drawing up a comprehensive Waste Management Plan (WMP) and will design and implement suitable measures to minimize waste. The HKITPL is required to submit the WMP to the Director of Environmental Protection for approval at least one month before the HKDL commences operation. The WMP shall include details of how the mitigation measures of operational waste management will be implemented, together with the arrangements for avoidance, minimization, material recovery/recycling, collection, transportation and disposal of various types of waste generated during the operation of the theme park. Preliminary information from the HKITPL suggests that examples of waste management measures to be adopted include:
- encouraging separation at source of recyclable materials by providing convenient access to recycling bins both in guest areas and back of house facilities;
  - reducing the use of paper towels through the use of hand-dryers in lieu of paper towels in most public washroom facilities;
  - use of reusable delivery cages, totes and containers for transportation of food and products between warehouses/back

of house facilities to various outlets within the theme park;  
and

- encouraging the use of reusable utensils and containers in restaurants and food outlets within the theme park where feasible.

- (b) According to the HKITPL, its environmental policy is to strive for improved water and energy conservation in existing operations, and to incorporate into its design and operations an extensive Energy Management System (EMS) which monitors and controls the energy consumption of electrical and mechanical facilities, air-conditioning systems, water supply systems, lighting systems, and so on, in the theme park.

The EMS enables precise and efficient ventilation, temperature and humidity control. The theme park uses high-efficiency centralized water-cooled systems. Depending on the number of occupants at the time, the ventilation systems introduce suitable amount of fresh air into buildings thereby avoiding excessive hot, humid outside air mixing with indoor air. Cool, dry exhaust air is used to remove heat and moisture from the entering ventilation air and as a result, the compressor operations of the air-conditioning systems can be minimized.

The EMS also precisely co-ordinates outdoor lighting installations. Dusk and dawn times are calculated daily to control the lighting and avoid wastage.

The EMS monitors and records the energy consumption levels park-wide and will generate notification to responsible personnel where energy consumption limits are exceeded. This will enable early detection and rectification of faulty facilities.

In addition, where feasible, heat-insulating materials have been used in walls, roofs and windows to reduce cooling loads during summer.

- (c) According to the HKITPL, the HKDL has not used renewable energy systems for the time being. However, the company will continue to monitor developments in the use of renewable energy in Hong Kong and consider the feasibility of doing so at the theme park where this could fully meet the design and operational requirements of the HKDL.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, in the main reply, the Secretary mentioned the information provided by the HKITPL. The measures mentioned are mostly saving measures essential to a commercial operation and can hardly be regarded as specific environmental protection measures. May I ask the Secretary whether she is satisfied with the measures taken by the HKITPL and whether she considers those measures adequate for protecting the environment? If those measures are not adequate, will the Secretary request the HKITPL in writing to enhance its measures? Or, will she wait until the month before the opening of the theme park to inspect the actual situation before making such a request? Will it be too late by then? If the Secretary does have some specific opinions, she must require the HKITPL to make improvement.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, first of all, I would like to make it clear that environmental protection measures may not necessarily be in conflict with commercial operation. People who do think so are very wrong in concept. Good environmental protection measures will also be beneficial to commercial operation, for those measures will certainly help reduce waste and save energy. The procurement of environmentally-friendly products, the conduct of research and technological development, as well as community involvement and education are activities that can facilitate vigorous promotion and creation of business opportunities on the one hand and protection of the environment on the other. I am not going to do any publicity for the HKITPL now, though we all know the company very well. In their business worldwide, environment management has become part and parcel of its corporate objectives in operation. As I always say, environmental protection should be made part of the operation of a company, and the HKITPL is exactly doing this.

Are we satisfied with the several sample measures cited by them at present? The entire approach they will adopt in waste management does not only include these measures. They also have to submit to the Director of Environmental Protection a WMP, which will not be implemented only one month before the opening but has already begun. We also take part in the planning by putting forward our requests on basis of the information provided by them and examining whether our requests are practicable. We will adopt a reasonable and co-operative approach in environmental protection. The best should be done in waste management particularly, and that practicability and feasibility in the operation of the HKITPL should be ensured.

**DR RAYMOND HO** (in Cantonese): *Madam President, in part (c) of the main reply, it is mentioned that the HKITPL would monitor developments in the use of renewable energy in Hong Kong and would cope with such development in design and operation. However, from now until the opening of the HKDL, only six months are left. Will the Government wait passively for the HKITPL to inform it what they will do? Or, has the Government briefed them on the relevant developments, thus enabling them to examine whether their existing design can tie in with the developments? In this connection, will the Secretary inform us of the aspects about which opinions have been made to the company?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): *Madam President, it is mentioned in part (c) of the main reply that the HKDL has not used renewable energy systems for the time being. At this stage — the project is implemented in two phases, which I believe Dr HO may be aware — we hope that they will keep an open mind on this issue. It is hoped that they will remain open-minded in drawing up the design of the next phase, so that with technological advancement in renewable energy facilities, or when the use of renewable energy can be brought in line with the operation of power companies in Hong Kong, their future design may make use of renewable energy. But, at present, renewable energy has not been used.*

**MISS TAM HEUNG-MAN** (in Cantonese): *Madam President, has the Administration formulated any specific environmental protection regulation or policy encouraging the implementation of environmental protection measures in respect of the HKDL or theme parks to be built in Hong Kong in future?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, we do have a master plan for environmental protection measures all along. In respect of certain large-scale facilities, different requirements will be set for different operations through the environmental impact assessment (EIA). During the course of vetting, Environmental Permits will be issued, stating the environmental protection measures each organization has to implement in operation. In respect of the issuance of guidelines, we have to examine the actual situation to decide the standard to be applied, for the same standard may not be applicable to all operations. The compulsory implementation of energy saving measures may not be feasible in practice. Therefore, in drawing up the objective energy indicator, we have to first understand the scale of operation scale, visitor flow, temperature, air flow and sunshine before the adoption of the appropriate indicator can be considered. I can thus tell Miss TAM Heung-man that we do encourage the implementation of environmental protection measures via the procedures of EIA, but this is not an established scheme.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, Hong Kong has only two theme parks, namely the Ocean Park and the HKDL. However, there are a lot of hotels in Hong Kong, and newly completed hotels are not lacking. May I ask the Secretary for the Environment, Transport and Works a similar question, that is, apart from the case of the HKDL, how will the issue related to other hotels be handled? Will each hotel be questioned about the amount of waste it generates, the amount of waste being handled and the energy saving measures being implemented?*

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai, in what way is your supplementary question related to those environmental protection measures of the HKDL mentioned in the main question?

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, I would like to know the situation of those cases compared to the HKDL?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, we have not made any comparison in this respect, so I can hardly give an answer to Mr SIN Chung-kai. However, insofar as hotels are concerned, giving advices and publicity are the current approach adopted by us. Before I assumed office, some energy saving competitions had been held among hotels, which included energy-saving and water-saving competitions. We have also selected some green hoteliers. All these competitions are voluntary in nature. At present, we intend to introduce a comprehensive WMP which will be implemented gradually at different commercial organizations. Though the plan has yet to be introduced, we have been negotiating with some hotels gradually to examine the means for reducing waste generated by existing hotels and the possible measures for saving energy and resources.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, in fact, the requirement imposed on this theme park is relatively stringent. I notice that the Secretary stated in part (a) of the main reply that the relevant WMP had to be submitted to the Environmental Protection Department (EPD) for approval at least one month before the opening. May I ask about the criteria for granting approval? If the plan is not approved by the EPD, does it mean that the HKDL cannot commence operation? If the HKDL can still commence operation without securing the said approval, what is the purpose of scrutinizing the application before the commencement of the operation?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, special requirements are imposed on the HKDL mainly because its operation differs from that of other business operations, which involves the gathering of a large number of people at a certain place at the same time. We also understand that amusement parks of this type around the world generate a lot of waste, in particular, the large number of bottled water and disposable catering utensils now available, as well as leftovers. Therefore, we specifically require them to adopt effective methods of waste reduction. Upon the completion of the EIA report, an Environmental Permit will be issued. If they fail to reduce waste or comply with the relevant requirements, they will breach the law. We can impose control by means of this permit.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, in the reply to my supplementary question earlier, the Secretary said that she would keep in touch with the HKITPL to discuss applicable measures. May I ask the Secretary, in addition to the measures set out in the main reply today, what measures are under negotiation? Are there any measures which the EPD has already required the HKITPL to implement but are not included in the main reply?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, let me quote some more examples perhaps. Some waste reduction measures have not been set out. Moreover, there are measures related to the disposal of used battery, as well as unwanted food and waste oil from the kitchen.

**DR KWOK KA-KI** (in Cantonese): *Madam President, why can the HKDL draw special attention from all of us? I believe there are two reasons. First, the Government owns some of its shares. Second, we all know that the HKDL will probably adopt the American style of consumption which may generate a large amount of waste. The Secretary said earlier that in respect of the use of renewable energy and the implementation of other measures, the Government would only consider the issue when the HKITPL had expressed its opinion. May I ask about the role played by the Government in the HKDL project? Will it be possible for the Government to take proactive actions or act vigorously in setting some indicators? In particular on the use of renewable energy, will the partner in co-operation, the HKITPL, be requested to implement those indicators laid down by the Government?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, the contract reached by the Government and the HKITPL is very clear. During the entire construction process of the HKDL, all indicators and specifications are set by the HKITPL, for the theme park has a complete set of specifications which should be achieved wherever the Disneyland is built. We are concerned about the high consumption and high wastage linked with the America lifestyle as mentioned by Dr KWOK Ka-ki. If Members are interested in the issue, they may refer to the information on Enviroport provided by the Disneyland on the Internet. Regarding environmental protection, the approaches it adopts, and the principle and

regulations of the company are set out in the annual report. We very much agree with the substantial environmental protection work done by the company in those resorts, which has taken into account the principle of minimization and recycling of waste. They have agreed to do so in principle. As for the relevant specifications concerned, we have to allow them to work it out on basis of their overall design to make the specifications practicable.

Regarding the use of renewable energy on a large scale, we have mentioned it on several occasions that much larger space is required. Given the existing size of the HKITPL and the existing technology, this may not be feasible. However, we hope that the HKITPL may use small-scale renewable energy systems, such as solar water heating systems. The HKITPL has used solar-powered light-emitting diodes to direct traffic in other sites. It is now examining the feasibility of a similar system but cannot confirm at the moment whether the system is applicable.

**PRESIDENT** (in Cantonese): Dr KWOK Ka-ki, has your supplementary question not been answered?

**DR KWOK KA-KI** (in Cantonese): *Madam President, I would like to clarify a point. According to this principle, does the Secretary mean that the Government has no means or power to request the HKITPL to comply with the standard set by the Government? Is it the case?*

**PRESIDENT** (in Cantonese): Dr KWOK Ka-ki, according to the Rules of Procedure, Members are not allowed to seek clarification or express his or her opinions during question time, so this question is not allowed, I am sorry.

This Council has spent more than 19 minutes on this question. Last supplementary question.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, Disneyland is a place where lots of children will visit, and education on environmental protection is of the utmost importance to children. May I ask the Secretary whether the HKITPL will be required to include education on environmental protection as*

*part of its overall operation? That is, to educate children to understand and attach importance to environmental protection work via the environmental protection measures implemented by the HKITPL.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I have to do publicity for the HKITPL again. The objectives of the HKITPL include environmental protection concerns and the implementation of proactive measures in environmental protection management. Besides, these measures are not limited to compliance with environmental protection legislation and regulations. The relevant measures implemented also include the procurement of environmentally-friendly products, reduction of waste, energy saving, research on technological development, community participation and education. The first co-operation between the EPD and the HKITPL was the organization of the second Jiminy Cricket's Environmentality Challenge programme in 2004 for the impending opening of the HKDL. Since then, the Environmental Campaign Committee and the HKITPL have launched a series of education programmes at various schools.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, my supplementary question asked not about this. My question is: Will the HKITPL teach the children about environmental protection while they visit the park?*

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

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I wish to stress that what I mentioned just now is one of the environmental protection policies implemented by the HKITPL, that is to educate through activities.

**PRESIDENT** (in Cantonese): Fifth question.

## **Settlement of Adults Born on the Mainland to Hong Kong Residents in Hong Kong**

5. **DR FERNANDO CHEUNG** (in Cantonese): *Madam President, persons born in the Mainland to Hong Kong residents do not have the right of abode in Hong Kong if their parents were not Hong Kong permanent residents when they were born. If these persons are aged over 18, they may not apply for One-way Permits (OWPs) for settlement in Hong Kong on grounds that they are dependent children seeking support from their relatives in Hong Kong. The former Secretary for Security said in January 2002 that she would discuss with the mainland authorities the issue of permitting adults who were born to Hong Kong residents to settle in Hong Kong. In this connection, will the Government inform this Council:*

- (a) of the time, occasions and with which mainland authorities the Administration discussed the said issue, and the details and progress of the discussions; and*
- (b) whether the Administration will discuss with the mainland authorities the formulation of more transparent measures to enable adults who were born to Hong Kong residents to apply for settlement in Hong Kong as soon as possible?*

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

- (a) In 2002, in response to requests by right of abode claimants, the Director of Immigration raised with the Bureau of Exit and Entry Administration of the Public Security Ministry in the Mainland the suggestion of exploring the possibility of allowing more mainland adult children with genuine needs to lawfully apply to settle in Hong Kong to take care of their parents. In parallel, we made it clear to right of abode claimants that there was no guarantee that mainland authorities would agree to the suggestion. We have subsequently made enquiries with mainland authorities on the above suggestion on numerous occasions, but have not yet received a concrete response.

- (b) Under the existing mechanism, eligible mainland residents who wish to settle in Hong Kong must apply for OWPs from mainland authorities. The OWP Scheme is devised by mainland authorities to regulate the settlement of mainland residents in Hong Kong. Mainland authorities are responsible for its implementation. The Scheme involves mainland regulations and includes a "Points System" which aims to ensure that the Scheme is operated in a fair and just manner. Proposals to change the Scheme, where any, must be considered with the utmost care to ensure that its operation continues to be lawful, fair and just.

From the reunification to the end of January 2005, around 390 000 mainland residents settled in Hong Kong under the OWP Scheme, including 150 000 who were the children of Hong Kong permanent residents and enjoyed the ROA pursuant to Article 24 para 2(3) of the Basic Law.

Mainland children of Hong Kong residents, where they do not enjoy the right of abode under the Basic Law, may apply under the classification of "other categories" under the OWP Scheme if they are so eligible. Under one of the categories, mainland adult children aged 18 or above may apply to settle to Hong Kong to take care of their aged parents aged 60 or above, provided the parents have no other children in Hong Kong. From the reunification to the end of January 2005, around 13 000 mainland children have settled in Hong Kong under this category.

Furthermore, mainland adult children not eligible for settlement in Hong Kong may come here to visit their families. This has been made much easier in recent years as a result of closer integration and the development of convenient transportation links between the Mainland and Hong Kong as well as the gradual relaxation of the Mainland's policy governing mainland residents visiting relatives and sightseeing in Hong Kong.

**DR FERNANDO CHEUNG** (in Cantonese): *Madam President, the right of abode incident is a tragedy. In fact, on 29 January 1999, the Court of Final Appeal (CFA) delivered a judgement that allowed children born to Hong Kong*

*people to come to Hong Kong, however, due to the subsequent interpretation of the Basic Law and the Government's claim that 1.67 million would come to Hong Kong — actually, the number of people is not that great — these people could not come. A classification made according to the judgement delivered by the CFA on 10 January 2002 indicates that only about 7 000 people would come to Hong Kong.*

*Given that discussions have been held but no concrete response has been given by the Mainland, may I ask the Secretary for Security whether the SAR Government has the responsibility and will do its utmost within its jurisdiction to enable this group of children born to Hong Kong people to come to Hong Kong in an orderly manner as soon as possible?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I think the right of abode is a legal matter. There is now a judgement of law in Hong Kong and we are now implementing the judgement made by the CFA.

After the CFA had delivered its judgement, there were over 9 000 unsuccessful claimants who initiated legal proceedings and did not leave Hong Kong. Several hundred of them who fulfilled the requirements of concession were permitted to remain in Hong Kong. The majority of the remaining unsuccessful claimants have already left Hong Kong. At present, there are 100-odd to 200 people whose legal proceedings have not yet concluded and they are still remaining in Hong Kong. We have received suggestions from members of the public from time to time, saying that if these 100-odd to 200 people were allowed to stay in Hong Kong, this matter would come to an end. We have considered this suggestion but come to the view that if we do so, firstly, it will be most unfair to those people who had lost in their legal proceedings for the right of abode and subsequently followed the Government's advice and left; secondly, such a move will be tantamount to establishing a new policy in which people will obtain the right of abode as long as they initiate legal proceedings and refuse to leave; thirdly, doing so will circumvent the OWP Scheme, since according to Article 22 of the Basic Law, mainland residents who enter Hong Kong for the purpose of settlement must be approved by the Mainland; fourthly, although the Director of Immigration can be requested to exercise discretion, the discretion vested in him by law can only be exercised on

an individual basis and he cannot permit all these people to remain in Hong Kong across the board.

Therefore, after consideration, we believe that this issue of the right of abode should be dealt with according to the law. Of course, if there are compassionate or humanity grounds in the cases involving unsuccessful claimants, the Director of Immigration will consider their individual circumstances and consider if discretion should be exercised to permit the people concerned to stay in Hong Kong.

**MS EMILY LAU** (in Cantonese): *Madam President, the Secretary pointed out in the main reply that the Director of Immigration had raised with the Mainland the suggestion of exploring the possibility of allowing more mainland adult children with genuine needs to settle in Hong Kong, however, no response had yet been received. May I ask the Secretary what he means by "more"? To them, what does "with genuine needs" mean? Will discussions with the Mainland continue to be held?*

*Madam President, we have all along been asking if Hong Kong will take upon itself to strive to do something. This is because on this matter, Hong Kong also has some say and it is not necessary to obtain approval from the Mainland before mainland children born to Hong Kong people can come to Hong Kong.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, we received some views in 2002 enquiring whether adult children born to Hong Kong residents who lost in the litigation for the right of abode can be allowed to join the queue and apply for OWP to come to Hong Kong through lawful channels on the Mainland.

After consideration, we believed that it was a reasonable request but were of the view that we should not relay to the authorities on the Mainland the view that a queue should be established specifically for adult children born to Hong Kong residents who lost in their litigation in Hong Kong. We have examined if a new application method can be devised under the OWP Scheme and if a queue can be established for all adult children on the Mainland born to Hong Kong

residents, rather than confining it to people who have lost in the litigation for the right of abode. I remember that at that time, I was still the Director of Immigration and I personally went to the Mainland to hold discussions with the authorities. When the subsequent Director of Immigration and the Secretary for Security visited the Mainland, they also followed up the proposal.

As regards the number of people, in fact, we have not specified any figure. We only hope that a portion of the quota of 150 persons can be set aside for application by adult children on the Mainland born to Hong Kong residents. We do not have any figure in mind as to whether we want to permit 10 000 or 20 000 people to come to Hong Kong.

**MS EMILY LAU** (in Cantonese): *The Secretary has not answered the last part of my supplementary. Has the Secretary ever lobbied for anything or tried to secure a say for Hong Kong on what people on the Mainland can come to Hong Kong, instead of waiting for the Central Authorities to give their approvals?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, according to the Basic Law and the existing law on the Mainland, no matter if residents on the Mainland want to settle, travel or engage in other activities in Hong Kong, they must go through a vetting procedure on the Mainland. In addition, our CFA also agreed in its judgement that mainland residents must go through a vetting procedure if they want to come to Hong Kong. Therefore, it is not a question of whether or not we have ever lobbied for anything, but it is a question of amending both the Basic Law and the law on the Mainland if the existing arrangement is to be changed.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Madam President, in fact, a question raised on the last occasion pointed out that there was an excess in the quota for Hong Kong, what is more, a misleading claim that 1.67 million mainlanders would come to Hong Kong was once made in this Chamber. Since the existing quota has not been fully utilized, it has been proven that the statement back then was wrong.*

*The Secretary has failed to answer all the questions raised by Members and he only referred to Article 22 of the Basic Law. I will now quote the Article: "For entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People's Government after consulting the government of the Region.". Here, it is stated clearly that the Central Government has to consult the Government of the Hong Kong Special Administrative Region before making a decision. It is a must for the Central Government to consult the Hong Kong Special Administrative Region Government and it is necessary for the Central Government to listen to the views of our Government.*

*Just now, Members have asked if the Secretary had taken such a step but the Secretary just kept talking about the law and that was totally irrelevant. I will now ask the question again — I can only be a little repetitive and in fact, this has been asked many times. Has the Secretary ever conveyed to the Central Government the view that since the quota has not been fully utilized and since allegations have been wrongfully directed at these people, consideration should be given to making use of the quota in such a way that adult or young children born to Hong Kong residents, who have the right of abode and are now stuck in Hong Kong, can be given an amnesty immediately? Has the Government ever done this? I am asking the Secretary if he has or has not.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I think I have already answered this supplementary when replying to Ms Emily LAU's supplementary. We did request — but not lobby for — the mainland authorities to establish a channel for adult children on the Mainland born to Hong Kong residents to make applications. At that time, we did not specifically restrict the eligibility for making applications to people who have lost in the litigation for the right of abode because we did not think that there should be such a restriction. Rather, the application should be open to all mainland children born to Hong Kong residents.

Mr LEUNG Kwok-hung and several other Members have mentioned the figure of 1.6 million. Perhaps it is necessary for me to do some explaining here. According to the interim figures of a special topic enquiry conducted by the Census and Statistics Department in 1999, it was estimated that in view of

the judgement at that time, about 1.6 million first-generation and second-generation children born of Hong Kong people would be entitled to the right of abode. However, after the interpretation of the Basic Law on 26 June 1999 by the NPC, most of the people in this estimate were no longer entitled to the right of abode in Hong Kong according to Article 24 para 2(3) of the Basic law because their father or mother had not yet become permanent residents of Hong Kong at the time of their birth. The Government estimated that according to this judgement and after the interpretation of the Basic Law, about 270 000 people were eligible, including about 100 000 children of registered marriages and 170 000 children born out of wedlock. Therefore, to compare the hypothetical and estimated figure of 1.6 million children on the Mainland born to Hong Kong residents before the interpretation of the Basic Law with the actual number of children with the right of abode who arrived in Hong Kong after the interpretation of the Basic Law is to confuse the fundamental definition of eligible children in two different periods of time. I have already pointed out just now that so far, 150 000 mainland children of Hong Kong residents with the right of abode here have come to Hong Kong and this figure does not differ greatly from the 270 000 persons that the Government estimated in that year.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Madam President, a follow-up.*

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, has the Secretary not answered the supplementary you have asked? Please stand up and put the part that has not been answered to the Secretary again.

**MR LEUNG KWOK-HUNG** (in Cantonese): *No. I think the Secretary has not answered my supplementary. The Secretary was the Director of Immigration back in those years and is now the Secretary for Security, so he should be well-versed in the operation involved. In Council meetings, the Secretary has repeatedly stated the intention of not to formulate a policy on these unsuccessful claimants or adult children of Hong Kong residents who originally had the right of abode. I wish to ask the Secretary if he has any intention of formulating a policy to do them justice. He was the Secretary in those years and he wronged those people — no, he was the Director then and is now the Secretary — and he has the responsibility to formulate a policy to make the*

*Central Government understand that something wrong was done at that time and changes have to be made. Does the Secretary have such an intention?*

**PRESIDENT** (in Cantonese): Secretary for Security, before you reply, I have to tell you that you need only reply to the part which Mr LEUNG Kwok-hung raised when he put the supplementary for the first time but which you has not answered. If you have already given a reply, then it is up to you to decide what to do.

**SECRETARY FOR SECURITY** (in Cantonese): I think I have already given a reply but still I wish to clarify what Mr LEUNG Kwok-hung has said. Firstly, we did not do any injustice to anyone. All along, the Government has acted according to law. Secondly, I stated when I was the Director of Immigration, and I will still say so today, that there will not be any amnesty. In spite of this, the Director of Immigration will determine if he can exercise his discretion and allow some of the people to stay in the light of individual circumstances.

**MR ALBERT HO** (in Cantonese): *Madam President, at present, problems obviously exist in the system on the Mainland for vetting applications made by mainland residents to enter Hong Kong: A large number of the quotas has not been utilized but at the same time, many mainlanders, including mainland children of Hong Kong parents, cannot come and settle in Hong Kong. Moreover, the birth rate in Hong Kong is very low and the Chief Secretary for Administration also wants Hong Kong people to have more babies. From this, it can be seen that a lot of problems of mismatch exist.*

*The Secretary said that the authorities on the Mainland have been requested to consider the views in Hong Kong and establish a system. I wish to follow this up. Has the Secretary requested the authorities on the Mainland to provide information on the applicants in various provinces and areas who have applied for entry to Hong Kong? Are comprehensive records available, so that a system can also be established in Hong Kong to assess the mismatches that have occurred in the vetting system or identify other aspects that we consider undesirable?*

**SECRETARY FOR SECURITY** (in Cantonese): We have requested the Mainland to provide breakdowns on people who have queued up or who have applied for OWPs and are waiting for approval, however, they have indicated that there are no such breakdowns. We know that about 150 000 people have applied for OWPs and are waiting for approval, however, the authorities on the Mainland do not have the breakdowns.

**MR ALBERT HO** (in Cantonese): *Madam President, we wish the Mainland to provide comprehensive records to Hong Kong. Has Hong Kong ever made such a request?*

**SECRETARY FOR SECURITY** (in Cantonese): I will not comment on whether we will establish a system of records, however, we did request the mainland authorities to provide breakdowns on the applicants that they are dealing with, for example, on their gender, grounds of application, age distribution, and so on, however, the mainland authorities have told us that such breakdowns are not available.

**PRESIDENT** (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question.

**MS MARGARET NG** (in Cantonese): *Madam President, I wish to ask a question in greater detail. The Secretary said that he had made proposals to the Mainland. What exactly were those proposals? Has the Secretary raised the issue of allowing children on the Mainland born to Hong Kong people to join the queue? I do not just mean those people who had lost in legal proceedings. We are not looking at this from a purely legal point of view, but rather, we hope that apart from abiding by the law, leniency can be applied and adult children on the Mainland born of Hong Kong residents can be looked after. Has the Secretary ever proposed a points system to the Mainland so that people meeting the needs of Hong Kong can come at an early date? If the mainland authorities did not give any concrete response, then what response did they give? Have they pointed out where or what the difficulties were? Is it related to the Individual Visit Scheme? Under the Individual Visit Scheme, mainlanders visiting relatives in Hong Kong can only stay for a very short period of time and*

*it is totally different from settling in Hong Kong. Can the Secretary elaborate in greater detail?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have already pointed out that our request was to establish an additional category under the existing OWP system to allow mainland adult children born to Hong Kong residents to apply to come to Hong Kong. This is what our request was about and we have made it not just once. However, up to now, the authorities on the Mainland still have reservations about this. I cannot reply on their behalf what the real reason is and I do not know if they think this will lead to an influx of mainlanders to Hong Kong or if there are some other reasons. Regarding the real reason, I think it is up to the mainland authorities to divulge it.

**MS MARGARET NG** (in Cantonese): *The Secretary has not yet replied as to whether a proposal to establish a points system in view of the needs of Hong Kong has been raised, so that the people concerned can queue up and register?*

**SECRETARY FOR SECURITY** (in Cantonese): We have not yet come to this stage. We hope that the authorities on the Mainland can first revise its existing policy and establish one more category, so that mainland adult children of Hong Kong residents can apply to come to Hong Kong. If this policy can be implemented, we will then be happy to raise our views on a points system or on other matters.

**PRESIDENT** (in Cantonese): Sixth question.

### **Owners of Small House Holdings Defaulting Payment of Government Rent and Rates**

6. **MS EMILY LAU** (in Cantonese): *Madam President, it has been reported that there are more than 30 000 cases of owners of small house holdings in the New Territories (many of them being indigenous villagers) defaulting payment of government rent and rates, and the arrears amount to at least \$75 million and*

*may even exceed \$200 million. In this connection, will the executive authorities inform this Council:*

- (a) of their policies on the collection of government rent and rates in respect of small house holdings and the land owned by indigenous villagers as well as the details of the relevant legislation;*
- (b) whether they know the reasons for the owners concerned not paying the government rent and rates; and*
- (c) of the accumulated number of cases of non-payment of government rent and rates since 1 July 1997 in respect of the aforesaid holdings and land as well as the total amount of arrears involved; the measures adopted by the government departments concerned to recover the arrears, as well as the number of cases in which the arrears have been recovered and the total amount of arrears recovered?*

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

- (a) On the issue of government rent, as advised by the Secretary for Housing, Planning and Lands, the Government Rent (Assessment and Collection) Ordinance (Cap. 515) enacted in May 1997 provides for the arrangements for the assessment and collection of government rent after 30 June 1997. Section 6 of the Ordinance stipulates that the lessee of a lease to which the Ordinance applies is liable to pay in accordance with the Ordinance a government rent of an amount equal to 3% of the rateable value of the land leased. The applicable leases under the Ordinance include also those extended by the operation of the New Territories (Extension) Leases Ordinance (Cap. 150).

Section 4 of the Government Rent (Assessment and Collection) Ordinance sets out in detail the conditions under which exemption from the liability to pay government rent may be granted. Such conditions have reflected Article 122 of the Basic Law and the relevant clauses of Annex III to the Joint Declaration.

In brief, where a rural holding or small house lot was held by an indigenous villager on 30 June 1984 and has since continued to be held by him or a person who is a lawful successor in his male line, the liability to pay government rent in respect of the property (that is, 3% of the rateable value) may be exempted and only the old rent needs to be paid. Moreover, any indigenous villager who was given a small house grant or respite house grant after 30 June 1984 may also be exempted from the liability to pay government rent, provided that the interest in the property continues to be held by him or a person who is a lawful successor in his male line. Indigenous villagers can apply to the relevant District Lands Offices for the exemption from paying the new government rent. Those who have not applied, or those whose applications were not approved, are required to pay the new government rent.

With regard to the government rent demand issued to owners of the village houses in the New Territories by the Rating and Valuation Department (RVD), the total amount of government rent payable for the period from 1 July 1997 to 28 February 2005 amounted to \$880 million. As at 28 February 2005, the arrears amounted to \$27 million, involving 11 607 government rent accounts.

According to the information of the RVD, some indigenous villagers, who have given explanation, attribute their late payment of government rent to their financial difficulties. Some others misunderstand the exemption criteria under the Government Rent (Assessment and Collection) Ordinance and query the Government's justifications in charging the new government rent. They have therefore not paid the government rent within the prescribed timeframe. The Lands Department has been explaining the exemption criteria under the Government Rent (Assessment and Collection) Ordinance through the Heung Yee Kuk and Rural Committees, and has been appealing to the indigenous villagers for early payment of the government rent.

As regards the measures to recover the government rent arrears, the RVD normally would impose a surcharge prescribed by the Government Rent (Assessment and Collection) Ordinance on the payers with a view to encouraging prompt payment. In the event

that payers fail to make payment as demanded, action will be taken for recovery of the arrears through the Small Claims Tribunal or the District Court, depending on the amount of arrears involved. For cases involving financial difficulties, the RVD will allow payment by instalments so as to increase the recovery rate.

Regarding the government rent payable during the period from 1 July 1997 to 28 February 2005 in respect of the above properties, the RVD has successfully recovered some \$41 million of arrears, which involve 10 107 accounts.

- (b) On the issue of rates, under section 36 of the Rating Ordinance (Cap 116), there are two types of village houses in the New Territories which may be exempted from rates payment.

The first type is village houses situated within the "Designated Village Areas" in the New Territories which are in compliance with the building specifications set out in the Buildings Ordinance (Application to the New Territories) Ordinance (Cap 121). There is no size restriction on the dwelling houses which were built before 16 August 1945 (that is, pre-war houses) and are of a type normally built for New Territories residents.

The second type is village houses situated outside the "Designated Village Areas" of the New Territories. If these houses are in compliance with the abovementioned building specifications under the Buildings Ordinance (Application to the New Territories) Ordinance and are for residential use by indigenous villagers or their immediate family members, application may be lodged with the Home Affairs Department (HAD) for exemption from rates payment.

With regard to the rates demand issued to owners or occupants of the village houses in the New Territories by the RVD, the total amount of rates payable for the period from 1 July 1997 to 28 February 2005 amounted to \$1,196 million. As at 28 February 2005, the arrears amounted to \$24 million, involving 10 453 rates accounts.

According to the information of the RVD, some indigenous villagers, who have given explanation, attribute their late payment of rates to their financial difficulty. Some others misunderstand or hold different opinions on the exemption requirements under the Rating Ordinance. They have therefore not paid the rates within the prescribed timeframe.

Measures taken to recover rates arrears are similar to those for government rent. Regarding the rates payable during the period from 1 July 1997 to 28 February 2005 in respect of the above properties, the RVD has successfully recovered some \$50 million of arrears, which involve 11 428 accounts.

**MS EMILY LAU** (in Cantonese): *Madam President, the figures quoted by the Secretary in the main reply are not as appalling as reported. Nevertheless, the number of cases of late payment of government rent or rates amounts to 10 000 each, involving tens of millions of dollars. The Secretary pointed out in his reply with respect to rates that the Lands Department had been assisted by the Heung Yee Kuk and Rural Committees. We know that the Heung Yee Kuk is very influential. May I ask the Secretary to what extent the Government has been assisted by the Heung Yee Kuk and Rural Committees in recovering government rent? Furthermore, have the Heung Yee Kuk and Rural Committees assisted the Government in recovering rates?*

**PRESIDENT** (in Cantonese): Which Secretary is to answer?

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, first, I would like to give a reply on government rent. The most distinct difference between government rent and rates lies in the historical background of the New Territories. Perhaps I should add something more to the information given on government rent in the main reply. Against the historical background of the New Territories, all leases granted before the signing of the Joint Declaration expired on 30 June 1997. Therefore, after the Joint Declaration had come into effect, the Government enacted in 1988 the New Territories Leases (Extension) Ordinance to enable all New Territories land leases due to expire on 30 June 1997 to be automatically renewed until

30 June 2047. Meanwhile, the Government also enacted the Government Rent (Assessment and Collection) Ordinance in 1997 to set the annual rateable value of land leases in the New Territories, like the rate of government rent payable by other land leases or renewed leases, at 3% (other than those exemptions). This point has been stated clearly in the main reply.

As regards exemption, the third paragraph of part (a) of the main reply has also spelt it out clearly. In view of the fact that land leases in the New Territories would expire on 30 June 1997, whereas other parts of the territory would not encounter such a situation, the Government enacted in 1988 the New Territories Leases (Extension) Ordinance to enable all land leases to be automatically renewed. However, taking into account that the levying of government rent would impose on the indigenous residents a burden much heavier than their previous one, exemption conditions thus came into being. Because of these conditions, many villagers did not understand when they were first implemented in 1997. At that time, we explained to them through the Heung Yee Kuk and relevant Rural Committees. I have on hand some pamphlets and leaflets published during different periods in an attempt to explain in detail who can and cannot be exempted. In this respect, we have indeed spent a lot of time. Furthermore, the number of applications for exemption has to be taken into account as well — the main reply has not mentioned that there were a staggering 189 500 applications. Upon receipt of such an enormous number of applications, we had to spend a lot of time vetting them to determine if they qualified for approval. As such, the Lands Department had to deploy more manpower to handle the large number of applications. To date, 123 500 applications, or 65% of the total number of the applications, have been approved and 66 000, or 35%, have been rejected. 1 740 applications are still pending.

It is thus evident that we require a large manpower input and it takes time to process the applications slowly. In view of this, some applications are still pending, with some having completed in the past year or so. After being informed of the completed applications, the RVD would make evaluation, after which a demand would be issued. Despite the protracted process, I can tell Honourable Members here that the most strenuous part of the process has been completed. However, we can see from the main reply that there remain 10 000 default cases, with more than 1 000 of them pending processing. Yet, I am confident that these cases can be completed soon.

**MS EMILY LAU** (in Cantonese): *Madam President, I would like to extend my sincere gratitude to the Secretary. He should have included his reply in the main one. Madam President, my supplementary question is indeed very simple: Have the Heung Yee Kuk and Rural Committees rendered assistance to the Government? If yes, what have they done? If no, should they do something?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, as I stated earlier, we have attended the meetings held by the Heung Yee Kuk and Rural Committees to give explanation. Apart from explanation, we have also left behind these pamphlets to let the villagers understand the entire process so that they would know the relevant criteria and the circumstances under which their applications would or would not be accepted. In this respect, I am very grateful to the enormous amount of work done by the Heung Yee Kuk. Owing to the vast number of applications, it certainly takes some time before we can finish processing all of them.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, perhaps I should add some information. Before conducting the first rates assessment of the small houses in a certain district, the RVD would issue letters through the HAD to the relevant Rural Committees and village representatives to inform them of the relevant details and meetings would be arranged to explain to the villagers. I can therefore assure Honourable Members that the village representatives and Rural Committees have played a very significant role in this respect.

**PRESIDENT** (in Cantonese): Honourable Members, we have spent more than 15 minutes on Ms Emily LAU's questions and the replies given by the two Secretaries. I would slightly extend the question time to allow Members to raise a couple of supplementary questions more.

**MR LAU WONG-FAT** (in Cantonese): *Madam President, the Heung Yee Kuk has received numerous complaints against the Government for unilaterally abolishing the rates exemption previously granted to self-occupied small houses on the ground that the small houses have illegal structures. Can the*

*Government inform this Council of the legal basis for this? Or is it purely because of the wishes of senior officials?*

**PRESIDENT** (in Cantonese): Which Secretary is to answer? Secretary for Financial Services and the Treasury.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, as I stated in the main reply, applications must meet several conditions before they can be exempted from rates payment. One of these conditions is that there must be no illegal structures. During the vetting and approval process, the HAD may not grant rates exemption to an application failing to prove this. While the RVD is responsible for evaluating the amount of rates payable, the HAD is responsible for vetting and approval. Exemption may not be granted if illegal structures are found.

**MR LAU WONG-FAT** (in Cantonese): *Madam President, which piece of legislation stipulates that exemption will not be granted if illegal structures are found? The Secretary has not answered.*

**PRESIDENT** (in Cantonese): Mr LAU Wong-fat did indeed ask about the legal basis in the supplementary question he raised just now. Can the Secretaries look into the matter to see if additional information can be provided.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Fine. Madam President, according to the main reply, the second type of village houses, namely village houses situated outside the "Designated Village Areas", may be exempted if they are in compliance with the building specifications set out in the Buildings Ordinance (Application to the New Territories) Ordinance. I understand that small houses are subject to numerous specifications. For instance, they may contain three storeys, each of which should not exceed 700 sq ft in area. This is what ordinary people should know. However, the specifications will be violated if one additional storey is built.

Furthermore, small houses must be used by the indigenous villagers or their immediate family members for residential purposes before applications can be made to the HAD for exemption from rates payment. Exemption will not be granted if these two conditions are not met.

**MR DANIEL LAM** (in Cantonese): *Madam President, according to the relevant legislation, indigenous New Territories residents who are owners of small houses for self-occupation purposes may be exempted from payment of rates and government rent. Can the Government inform this Council under what circumstances the 20 000-odd arrears cases are required to pay rates and government rent? How many of these cases are pending cases appealing for rates exemption?*

**PRESIDENT** (in Cantonese): Which Secretary is to answer? Secretary for Financial Services and the Treasury.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, we are demonstrating our team spirit to work in co-operation with an appropriate delineation of responsibilities. I will answer questions relating to rates, whereas Secretary Michael SUEN will answer those relating to government rent. On the issue of rates, I believe the supplementary question raised by Mr Daniel LAM is about the number of arrears cases which have to go to the tribunals or the District Court. These cases include approximately 6 350 rates and government rent cases pending hearing at the Small Claims Tribunal or the District Court. Members may be interested in knowing that, insofar as rates are concerned, there are approximately 120 cases involving small houses under charge. There are approximately 10 453 accounts defaulting rates payment, and the arrears amount to approximately \$240 million.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, as pointed out in the main reply, the exemption conditions have reflected Article 122 of the Basic Law. The most critical point of the provision is that successors before 30 June 1984 or successors in the male line may be exempted. Disputes arising from this point are often related to

successors. From the legal point of view, a successor refers to a person who has inherited the estate of a dead person. This interpretation is very often confined to the estate successors referred to in the Basic Law. In other words, a person must be dead before his estate can be given to his successor in accordance with the relevant ordinance. A qualified successor may then be exempted. However, some people have chosen to give his properties as a gift to their sons or other people when they are still alive. Although the properties have been given away, no inheritance procedures have been conducted. Moreover, the original owners of the properties are still alive. Therefore, according to law, the successors cannot be exempted.

This interpretation has indeed been confirmed by the Lands Tribunal in the appeal proceedings of a substantial number of these cases. In this respect, we have spent a lot of time awaiting the judgement by the Lands Tribunal and legal advice has been sought too. If an applicant seeks to defend himself on this ground, we will have to tell him clearly. This explains why we still have some problems to tackle in this area. From the legal point of view, if there is no more legal challenge to the Government's view, we hope the villagers can accept. Of course, we do hope proceedings can be completed expeditiously should any other points of law arise and the villagers question the Government's view through other recourse in law. Before the completion of proceedings, we would continue to adhere to this standard.

**PRESIDENT** (in Cantonese): We have spent more than 23 minutes on this question. Last supplementary question.

**MR LI KWOK-YING** (in Cantonese): *Madam President, in his reply, the Secretary mentioned that some people had failed to pay rates and government rent within the timeframe because they have some misunderstanding of the exemption criteria. As far as I understand it, indigenous residents have to submit an application after 1997 before they can be exempted. Will the Government inform this Council whether, in these recovery cases, there are cases which should have been granted exemption had an application been made? If the answer is affirmative, will the Government put in place a simple mechanism to enable the indigenous residents to make enquiry and be granted exemption immediately, thus sparing them of the psychological pressure of being the target of arrears recovery?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, there is no such breakdown in our figures. Nevertheless, as I mentioned earlier, we have made tremendous efforts and have also been assisted by Rural Committees and the Heung Yee Kuk. Moreover, the publicity leaflets have stated clearly what they can do, where they can submit applications and, in the event that their applications are not approved, the channels through which they may appeal. Furthermore, as I mentioned earlier, everyone should know about it because of the substantial number of appeals and disputes that have arisen. If some people still do not know about it, I hope I can take this opportunity to tell them through the media that applications can be submitted to us through these channels. As far as I know, should such situation really exist, the number of cases involved would still be limited.

**PRESIDENT** (in Cantonese): Oral questions end here.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Green Procurement Policy**

7. **MR ANDREW LEUNG** (in Chinese): *Madam President, in this year's policy address, the Chief Executive states that government departments will adopt a green procurement policy to help create a market for environmentally-friendly products, and will also make it a policy to implement mandatory product responsibility schemes to ensure the recovery and recycling of the products concerned. In this connection, will the Government inform this Council:*

- (a) *of the respective amounts of paper used by government departments in correspondence and publications, as well as the respective numbers of ink cartridges consumed by their printers and facsimile machines and the expenses involved in each of the past three years, and how these figures compare to those in the previous year;*
- (b) *of the respective percentages of recycled products in the above paper and ink cartridges that were consumed;*

- (c) *of the percentage of recycled products being procured at present in the total procurements of government departments, and the rates of increase/decrease over the past three years;*
- (d) *whether government departments have been implementing recycling programmes for different materials; if so, of the effectiveness of these programmes; and*
- (e) *apart from implementing the green procurement policy in government departments, whether the authorities have other practical programmes to support the market for environmentally-friendly products, such as the implementation of the Green Label Programme or the provision of economic incentives, to encourage the public to use more environmentally friendly products?*

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

(in Chinese): Madam President,

- (a) The amount of paper procured by the Government Logistics Department (GLD) for consumption (including publications) by all government departments for purposes in 2002 to 2004 are as follows:

<i>Year</i>	<i>Metric Tonnes</i>	<i>Year-on-year change</i>	<i>Expenditure (\$ Million)</i>
2002	11 559	-7.0%	72.5
2003	11 525	-0.3%	72.3
2004	11 179	-3.0%	71.4

According to the GLD, the majority of the toner/ink cartridges are procured by respective government departments under delegated authority. As government departments usually record the procurement of ink/toner cartridges as part of the total procurement of all stationery items, statistics on the number of cartridges consumed by all government departments in the past few years are not available.

- (b) The amount of recycled paper as a percentage of the total paper procured by the GLD consumed by all government departments is as follows:

<i>Year</i>	<i>Metric Tonnes</i>	<i>Year-on-year change</i>	<i>As a percentage of total paper consumption</i>
2002	1 449	-16.5%	12.5%
2003	1 697	+ 17.1%	14.7%
2004	1 804	+ 6.3%	16.1%

- (c) As government departments do not record the procurement of recycled products separately, statistics on percentage of recycled products are not available. The GLD would however procure some of the products for government departments, including 17 types of recycled products such as paper, pencil, toilet paper, lubricants, and so on. The value of the procurement in the last three years are as follows:

	<i>Total value of 17 types of recycled products procured (\$ Million)</i>	<i>Total value of non- recycled products procured that have recycled products as alternatives (\$ Million)</i>	<i>Total value (\$ Million)</i>	<i>Share of recycled products</i>
2002	34.3	51.8	86.1	40%
2003	19.8	-*	19.8	100%
2004	54.1	45.4	99.5	54%
Total	108.2	97.2	205.4	53%

Note\*: Since some of the bulk purchasing contracts are concluded every two years, the GLD did not procure the non-recycled products with the 17 recycled alternatives in 2003.

- (d) Departments implement different recycling programmes to recover materials such as paper, plastic bottles, used CDs, and so on in their respective offices. Since the implementation of the Green Managers Scheme in 1994, each department has to appoint a Green

Manager from its department to implement green housekeeping in Government offices. Every year, Green Managers are required to submit a green management report to the Environment, Transport and Works Bureau on recycling programmes that have been conducted during the year among other initiatives such as waste minimization and energy conservation. The reports showed that departments actively engaged in waste minimization, reuse and recycling.

- (e) The GLD has adopted most of the specifications recommended in the Consultancy Study on Environmentally Responsible Product Specifications for Government Procurement Items commissioned by the Environmental Protection Department in 2000 for acquisition of goods. All departments are advised to adopt a green procurement policy and to use recycled products as much as possible. By taking the lead in green procurement, we will set an example for the community, which will result in an increased demand and supply of greener products with improved recyclability, reduced packaging, greater durability and higher recycled contents.

Some recycled products are primarily developed for use in public works, for example, asphalt rubber produced from waste tyres for construction of road surface, fill materials containing crushed glass or recycled aggregates for use in drainage layer, road base or non-structural concrete blocks. We are establishing a clear government policy to pursue the use of these products with priority, so as to increase the market potential for these products.

In order to encourage green consumption and use of green products, the Electrical and Mechanical Services Department has been implementing a voluntary "Energy Efficiency Labelling Scheme" to promote the use of more energy efficient electrical appliances since 1995. The Scheme now covers 16 types of household appliances and office equipment. While most models of refrigerators and washing machines available in the market have applied for energy labels, it is not the case for other electrical appliances. The Government intends to make the acquisition and display of energy efficiency labels a mandatory requirement. Through the consumer's preference towards models with high energy efficiency,

we hope that those with poor efficiency will be gradually eliminated by market force. This can also encourage the trade to design and introduce products with higher energy efficiency. The Government will consult the public and traders on the proposed plan later in the year.

The Government has also been monitoring the development of eco-labels in Hong Kong and overseas. Eco-labels are at present put on products by the manufacturers or importers on a voluntary basis with the approval of foreign or local authorities. The Green Council has launched a voluntary Green Label Scheme under which manufacturers or importers can apply for the Green Label for their products.

### **Emissions from Vessels**

8. **MR FREDERICK FUNG** (in Chinese): *Madam President, section 50 of the Shipping and Port Control Ordinance (the Ordinance) (Cap. 313) stipulates that no vessel in the waters of Hong Kong shall emit smoke in such quantity as to be a nuisance, except in circumstances affecting the safety of life or of the vessel. Regarding the emissions from vessels, will the Government inform this Council:*

- (a) *of the respective numbers of complaints received by the authorities concerned about emission of smoke from vessels, verbal warnings issued to and prosecutions instituted against the shipowners concerned by the Marine Department (MD), and convictions in the past three years;*
- (b) *whether it has assessed the adequacy of the current arrangement whereby law enforcement actions are taken by the MD only; whether it will consider empowering the Environmental Protection Department (EPD) to take law enforcement actions in this respect, particularly in cases involving excessive smoke emitted from the vessels berthing at the piers along both sides of the Victoria Harbour (for example, the Ocean Terminal in Tsim Sha Tsui and piers for inner harbour and outlying island services);*

- (c) *given that the above provision only targets the quantity of smoke emitted from vessels and does not specify limits on the concentrations of various harmful substances contained in the smoke, whether it will consider amending the legislation to specify the emission standards applicable to vessels;*
- (d) *whether it has conducted tests on the concentrations of harmful substances in the emissions from vessels and assessed their impact on public health and the air quality; and*
- (e) *whether it will draw up measures to encourage the installation of emission reduction devices in vessels?*

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

(in Chinese): Madam President,

- (a) The numbers of complaints received, warnings issued and prosecutions instituted by the MD regarding emission of smoke from vessels during 2002 to 2004 are as follows:

<i>Year</i>	<i>No. of Complaints</i>	<i>No. of Verbal/Written Warnings</i>	<i>No. of Prosecutions</i>	<i>No. of Convictions</i>
2002	17	4	0	0
2003	16	8	0	0
2004	18	6	1	1
Total	51	18	1	1

- (b) Emissions from vessel engines are subject to control under the Ordinance. As the enforcement of the Ordinance requires marine expertise and relevant equipment, the responsibility rests with the MD. Upon receiving a complaint about emission of smoke from a vessel, the EPD will refer the case to the MD for follow-up action.
- (c) At present, it is an offence under the Ordinance for a vessel to "emit smoke in such quantity as to be a nuisance". The Government is

considering amendment to the relevant provisions so that the Ringelmann Chart as adopted in the Air Pollution Control Ordinance (Cap. 311) will be used to determine the concentration of smoke. When the concentration of smoke emitted by a vessel exceeds the statutory limit for a specified period of time, prosecution may be instituted.

- (d) As regards other pollutants, most vessels operating in Hong Kong waters use diesel or fuel oil. The air pollutants produced by the combustion of these fuels are more or less the same as those emitted by other fuel-related emission sources, such as diesel vehicles, power generation facilities or industrial boilers. The major pollutants include nitrogen oxides (NO<sub>x</sub>), sulphur dioxide (SO<sub>2</sub>), suspended particulates and carbon monoxide (CO). According to the estimates by the EPD, the amounts of suspended particulates, SO<sub>2</sub>, NO<sub>x</sub> and CO emitted by vessels in 2003 accounted for about 6%, 4%, 16% and 3% respectively of the total emissions in Hong Kong. In contrast with the terrestrial environment, the expanse of the sea facilitates the dispersal of smoke and vessel emissions thus have a smaller impact on the public than other emission sources in urban areas such as vehicles.
- (e) To further reduce vessel emissions, the Government is considering how to implement the proposed controls on vessel emissions in the new annex (Annex VI) of the International Convention for the Prevention of Pollution from Ships. The Government is now consulting the industry on the matter.

### **Allowing 60% of Secondary School Leavers to Receive Tertiary Education**

9. **MR CHEUNG MAN-KWONG** (in Chinese): *Madam President, in 2000, the Chief Executive set a target of providing, within 10 years, 60% of Hong Kong senior secondary school leavers the opportunity to receive tertiary education. This year, he indicated in his policy address that the target might be achieved ahead of schedule. In this connection, will the Government inform this Council:*

- (a) *whether places in pre-associate degree (Pre-AD) programmes have been included in determining whether the above target has been achieved; and*
- (b) *between the 2000-01 and the 2007-08 academic years:*
  - (i) *the annual numbers of senior secondary school leavers; and*
  - (ii) *the numbers of places and enrolment figures of various types of tertiary-level courses offered by each tertiary institution each year, with a breakdown by the level of qualifications awarded or to be awarded upon completion of the courses and by whether the courses are publicly-funded?*

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

- (a) Pre-AD programmes target at Secondary Five graduates, and the completion of a Pre-AD is one of the major criteria for admission to associate degree (AD) programmes. Since most Pre-AD students will further their studies to attain an exit qualification of AD, and some post-secondary institutions will use the equivalent of a Pre-AD curriculum as the foundation portion of their AD programmes, for consistency's sake we normally regard Pre-AD student places as contributing to our policy target of providing post-secondary education opportunities for 60% of senior secondary school leavers. For instance, in the 2004-05 academic year, the number of student places at intake level for Pre-AD programmes is about 15% of that for all self-financing sub-degree programmes.
- (b) (i) The following table lists the number of senior secondary leavers from local secondary day schools between the academic years 2000-01 and 2004-05:

	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05 (Provisional)</i>
Secondary Five	77 700	75 170	73 180	73 960	78 000
Secondary Seven	27 570	28 000	27 370	27 380	27 000

## Remarks:

1. The above table represents student enrolment figures as at September of every academic year.
  2. Local secondary day schools include government, aided, Caput, Direct Subsidy Scheme schools and other private schools. English School Foundation schools, other international schools, special schools, practical schools and skills opportunity schools are excluded.
  3. Since statistics on graduates are not available before the 2001-02 academic year and from the 2003-04 academic year onwards, for these years we have set out the enrolment figures for Secondary Five and Secondary Seven instead. According to past experience, the number of students enrolled is very close to the number of graduates. Regarding the academic years 2005-06 to 2007-08, we estimate that the student enrolment for Secondary Five and Secondary Seven in local secondary day schools will be around 80 000 and 30 000 respectively in each academic year.
- (ii) According to the information provided by existing operators of post-secondary education programmes, the number of student places available for fresh intake and the corresponding enrolment figures between the 2000-01 and 2007-08 academic years, grouped by qualifications awarded upon completion and funding modes, are listed at Annex 1 and Annex 2.

## Annex 1

## Number of Student Places of Full-time Accredited Post-secondary Programmes for Fresh Intake

<i>Level of Qualification</i>	<i>Funding Mode</i>	<i>Institution</i>	<i>Academic Year</i>							
			<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>2005-06</i>	<i>2006-07</i>	<i>2007-08</i>
Bachelor's Degree	UGC-funded Programmes	City University of Hong Kong	2 321	2 282	2 282	2 282	2 282	2 282	2 292	2 292

Level of Qualification	Funding Mode	Institution	Academic Year							
			2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
		Hong Kong Baptist University	1 329	1 306	1 306	1 306	1 306	1 306	1 306	1 306
		Lingnan University	690	679	679	679	679	709	709	709
		The Chinese University of Hong Kong	2 946	2 896	2 871	2 861	2 875	2 875	2 875	2 875
		The Hong Kong Institution of Education	114	409	489	536	493	453	433	433
		The Hong Kong Polytechnic University	2 439	2 381	2 362	2 347	2 365	2 365	2 375	2 375
		The Hong Kong University of Science and Technology	1 869	1 828	1 818	1 811	1 811	1 811	1 811	1 811
		University of Hong Kong	2 792	2 719	2 693	2 678	2 689	2 699	2 699	2 699
		Sub-total	14 500	14 500	14 500	14 500	14 500	14 500	14 500	14 500
	Other Publicly-funded Programmes	The Hong Kong Academy for Performing Arts	101	82	90	86	84	Not yet available	Not yet available	Not yet available
		Sub-total	101	82	90	86	84	Not yet available	Not yet available	Not yet available
Self-financing Programmes	Total for Self-financing Programmes	0	245	490	958	1 922	2 232	2 350	2 385	
Total for all Bachelor's Degree Programmes			14 601	14 827	15 080	15 544	16 506	16 732	16 850	16 885

Level of Qualification	Funding Mode	Institution	Academic Year							
			2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
Sub-degree	UGC-funded Programmes	City University of Hong Kong	1 422	1 686	2 003	2 004	2 007	1 478	544	530
		The Hong Kong Institution of Education	1 009	626	400	245	260	210	210	210

Level of Qualification	Funding Mode	Institution	Academic Year								
			2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	
		The Hong Kong Polytechnic University	1 639	1 929	1 939	1 969	1 896	1 855	1 430	1 410	
		Sub-total	4 070	4 241	4 342	4 218	4 163	3 543	2 184	2 150	
		Other Publicly-funded Programmes									
		The Hong Kong Academy for Performing Arts		35	29	29	39	38	Not yet available	Not yet available	Not yet available
			Vocational Training Council	2 824	2 938	4 140	5 270	5 190	4 960	4 750	4 750
				Sub-total	2 859	2 967	4 169	5 309	5 228	4 960	4 750
	Self-financing Programmes	Total for Self-financing Programmes	2 468	5 951	7 752	10 032	16 362	16 923	20 221	21 356	
		Total for all Sub-degree Programmes		9 397	13 159	16 263	19 559	25 753	25 426	27 155	28 256

## Remarks :

- (1) UGC-funded programmes are calculated on full-time-equivalent-basis, while other programmes are based on headcount.
- (2) Figures on UGC-funded bachelor's degree programmes cover first-year-first-degree (FYFD) programmes.
- (3) Figures on UGC-funded sub-degree programmes do not cover non-full-time in-service programmes for teachers.
- (4) Figures for UGC-funded programmes for the 2000-01 academic year are estimated figures.
- (5) In the context of the above table, sub-degree programmes include Associate Degree, Higher Diploma, Professional Diploma and Honours Diploma, and so on.
- (6) Some providers of self-financing post-secondary education programmes have not provided projections for the academic years 2005-06 to 2007-08.
- (7) Figures listed in the above tables include only figures provided by existing providers of full-time accredited post-secondary programmes.

## Annex 2

## Enrolment Figures of Full-time Accredited Post-secondary Programmes for Fresh Intake

Level of Qualification	Funding Mode	Institution	Academic Year				
			2000-01	2001-02	2002-03	2003-04	2004-05
Bachelor's Degree	UGC-funded Programmes	City University of Hong Kong	2 206	2 188	2 250	2 212	2 264
		Hong Kong Baptist University	1 316	1 355	1 362	1 408	1 367
		Lingnan University	707	730	735	745	715

<i>Level of Qualification</i>	<i>Funding Mode</i>	<i>Institution</i>	<i>Academic Year</i>					
			<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	
		The Chinese University of Hong Kong	2 865	2 816	2 899	2 887	2 925	
		The Hong Kong Institution of Education	338	415	544	532	496	
		The Hong Kong Polytechnic University	2 386	2 448	2 430	2 348	2 396	
		The Hong Kong University of Science and Technology	1 844	1 865	1 863	1 788	1 858	
		University of Hong Kong	2 772	2 758	2 746	2 719	2 707	
		Sub-total	14 433	14 575	14 829	14 639	14 728	
	Other Publicly-funded Programmes	The Hong Kong Academy for Performing Arts	104	90	107	115	100	
		Sub-total	104	90	107	115	100	
	Self-financing Programmes	Total for Self-financing Programmes	0	285	605	1 030	1 353	
	Total for all Bachelor's Degree Programmes			14 537	14 950	15 541	15 784	16 181

<i>Level of Qualification</i>	<i>Funding Mode</i>	<i>Institution</i>	<i>Academic Year</i>				
			<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>
Sub-Degree	UGC-funded Programmes	City University of Hong Kong	1 434	1 734	2 327	2 425	2 108
		The Hong Kong Institution of Education	649	717	521	201	188
		The Hong Kong Polytechnic University	1 795	1 905	1 923	2 198	1 991
		Sub-total	3 878	4 356	4 771	4 824	4 287

Level of Qualification	Funding Mode	Institution	Academic Year				
			2000-01	2001-02	2002-03	2003-04	2004-05
	Other Publicly-funded Programmes	The Hong Kong Academy for Performing Arts	50	40	43	33	27
		Vocational Training Council	2 918	3 238	4 809	5 931	5 499
		Sub-total	2 968	3 278	4 852	5 964	5 526
	Self-financing Programmes	Total for Self-financing Programmes	2 621	5 546	6 832	8 317	17 077
Total for all Sub-degree Programmes			9 467	13 180	16 455	19 105	26 890

## Remarks:

- (1) UGC-funded programmes are calculated on full-time-equivalent-basis, while other programmes are based on headcount.
- (2) Figures on UGC-funded bachelor's degree programmes cover FYFD programmes.
- (3) Figures on UGC-funded sub-degree programmes do not cover non-full-time in-service programmes for teachers.
- (4) In the context of the above table, sub-degree programmes include Associate Degree, Higher Diploma, Professional Diploma and Honours Diploma, and so on.
- (5) Figures listed in the above tables include only figures provided by existing providers of full-time accredited post-secondary programmes.

### **Providing Temporary Accommodation Service for Men Distressed by Domestic Problems**

10. **MR JASPER TSANG** (in Chinese): *Madam President, at present, temporary accommodation service is not available to men who are distressed by family problems, including family violence. The Family Crisis Support Centre (FCSC) operated by Caritas-Hong Kong can arrange for them short-term accommodation for a limited period of two to three days. In this connection, will the Government inform this Council:*

- (a) *of the number of cases in which married men distressed by domestic problems sought assistance from the Social Welfare Department (SWD) or subvented social service agencies over the past three years, with a breakdown of such cases by reasons for seeking assistance;*

- (b) *whether it has assessed the possibility of strengthening the short-term accommodation service provided by the FCSC, including relaxation of the time restriction on stay; if it has, of the assessment results; and*
- (c) *whether it will consider providing temporary accommodation service for men and assess the demand for such service?*

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

- (a) The Administration is committed to providing services to married men distressed by family problems, including family violence. These services are delivered through the Integrated Family Service Centres operated by the SWD or non-governmental organizations (NGOs) over the territory, and the SWD's Family and Child Protective Services Units. Social workers will provide appropriate services to these married men to meet their specific needs, including individual or marriage counselling, and various relevant activities and support groups, as well as a wide range of referral services. However, we do not have a breakdown of the number of cases of married men who sought assistance from these service agencies.

In October 2001, the SWD, as part of its efforts to enhance its support services to individuals or families in crisis or distress, commissioned the Caritas-Hong Kong to operate the first FCSC in Hong Kong. The FCSC offers distressed individuals temporary accommodation for retreat and provides them with professional counselling on how to handle crisis and to avoid tragedy triggered by impulsive acts. The services provided by the FCSC include 24-hour hotline service (18288), short-term accommodation, crisis intervention, support/therapeutic/counselling group, resource corner, day-time educational activities, stress management, outreaching service, as well as community education, and so on. The FCSC has been in full operation since March 2002.

The FCSC targets its services to needy individuals and families in crisis or distress, including those facing marriage problems or

family violence, and so on. Service users, regardless of their gender, will receive the same support catering to their needs. Between March 2002 and January 2005, a total of 2 526 users had been admitted to the FCSC, including 447 male users (that is, 18%). About 60% of these male users encountered conflicts or difficulties in their marital relationship, while others plagued by problems relating to parent-child relation, financial hardship, extramarital affairs or emotional problems. Moreover, of the 60 000 calls received by the FCSC hotline, about 14% were from male callers.

- (b) The FCSC is set up primarily to provide retreat facility and support services to help the distressed individuals calm down as quickly as possible and think through how to handle the crisis with the support of professional social workers. For this reason, these individuals normally will not stay too long in the centre. About 60% of the help seekers stay in the FCSC for three days or less. However, the FCSC will make flexible arrangements or relax the time limit on their stay on a case-by-case basis and in some cases the accommodation period was as long as over two weeks. On the other hand, the FCSC will also refer cases with welfare needs to the respective Integrated Family Service Centre or Family and Child Protective Services Unit for follow-up action to facilitate the help seekers and their families to obtain necessary services.
- (c) For men requiring temporary accommodation due to family problems, social workers will refer them to the FCSC for short-term accommodation on a case-by-case basis, and help them cope with their emotional problems and find positive ways to solve their family problems. Social workers may also refer them to the hostels for single persons operated by the NGOs to meet their accommodation needs.

Besides, if they have genuine housing needs, with sufficient social and medical reasons and are eligible for public rental housing, the SWD will consider recommending them for compassionate rehousing. Under the compassionate rehousing arrangements, a Conditional Tenancy Scheme is available to help those (including victims of spouse battering) who are assuming custody of child(ren)

and on divorce proceedings to meet their genuine housing needs while awaiting the court decision on their divorce applications. With effect from November 2002, the Scheme was extended to cover victims of domestic violence having petitioned for divorce who have no children or have not brought along any dependent children. The SWD will also make recommendations on matters regarding transfer of public rental housing and splitting of public housing household to the Housing Department for their consideration and action.

As the existing services have given sufficient level of support to men distressed by family problems, we are of the view that there is no need at this stage to provide additional temporary accommodation services for men.

### **Development of Multiple Intelligence Among Youth**

11. **MR FREDERICK FUNG** (in Chinese): *Madam President, it has been reported that the Commission on Youth (COY) advocates the development of multiple intelligence among the youth and the establishment of a benchmark for measuring multiple intelligence, so as to change the current trend of putting too much emphasis on achievements in conventional academic subjects in our society and enable young people to develop their multiple intelligence according to their individual abilities and interests as well as through complementary measures in terms of training and qualification recognition. Moreover, at the Youth Summit 2004 held in November last year, the Secretary for Constitutional Affairs said that funds would be allocated for the establishment of youth councils in the next financial year. In this connection, will the Government inform this Council:*

- (a) *of the specific plan for the development of multiple intelligence and its effectiveness in the past three years;*
- (b) *whether the education system has been changed in response to the need for developing multiple intelligence among students, and whether the authorities have taken such a need into account in making the recommendations in the Consultation Document on Reforming the Academic Systems for Senior Secondary and Higher Education; and*

- (c) *of the specific plan for the formation of youth councils, including the method for the selection of council representatives, and whether they will be designated as statutory or consultative bodies, and the role of youth councils in formulating policies on youth?*

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

- (a) In respect of curriculum development, the Curriculum Development Council in its report "Learning to learn — The Way Forward in Curriculum" released in 2001 recommends that schools should take into account the potential of students and assist their multiple developments through different curriculum contents in terms of breadth and depth and flexible use of learning and assessment strategies. Statistics have shown that there have been changes in the learning culture of students. For example, students are more motivated to learn; there has been greater emphasis on developing lifelong learning ability and experience; extra-curricular activities have become more diversified; students are more eager to express their views; and schools can make more flexible use of textbooks and other teaching resources to cater to the different needs of students.

To develop multiple intelligence among young people, the Home Affairs Bureau has been providing recurrent subvention to 11 uniformed groups and youth organizations for the provision of non-formal education and progressive training programmes/activities to young people aged between eight and 25. Through squad training and foot drills, the uniformed groups seek to foster confidence, a sense of responsibility, leadership skills and team spirit among young people. The training provided by these uniformed groups also helps enhance the learning abilities, interpersonal skills, sense of belonging and community participation among young people. Between 2002 and 2004, the membership of uniformed groups in Hong Kong increased from around 104 000 to around 129 000.

Furthermore, the Home Affairs Bureau has been working closely with the COY in either organizing various youth development

programmes or funding such programmes organized by non-governmental organizations in each year, with a view to developing multiple intelligence among young people. Between 2002 and 2004, we have organized the following programmes:

<i>Year</i>	<i>Programme/ Activity</i>	<i>Purpose</i>	<i>Number of individuals/ organizations benefited (2002 to 2004)</i>
2002 to 2004	International Youth Exchange Programme	To broaden the international perspective of youth and enrich their life experiences.	184 persons
2002 to 2003	Youth Leadership Training Funding Scheme	To provide funding subsidy for youth leadership training activities organized by different organizations for the purpose of training youth leaders.	Around 87 000 person-times/511 organizations
2002 to 2003	Youth Community Services Funding Scheme	To provide funding subsidy for youth community service projects organized by different organizations for the purpose of encouraging young people to recognize and develop their potential, as well as to enhance their community awareness and involvement in community affairs, through participation in voluntary work.	Around 166 000 person-times/306 organizations
2002 to 2004	Community Participation Scheme for Organizing Study Tours to the Mainland	To fund youth study tours to the Mainland organized by different organizations for the purpose of offering youth opportunities to understand more about mainland China through first-hand experiences, thereby enhancing their sense of national identity.	Around 20 000 persons/525 organizations

<i>Year</i>	<i>Programme/ Activity</i>	<i>Purpose</i>	<i>Number of individuals/ organizations benefited (2002 to 2004)</i>
2002 to 2004	Youth Summit	An annual youth conference whereby a specific topic is designated for in-depth interactive discussions every year to enable the young people to convey their views and opinions to the Government and various sectors of the community.	Around 2 000 persons
2004	Youth Forum being organized	To provide a platform for youth to participate in public affairs so that they can develop independent thinking and the ability to express views on issues of public concern through the process of research and deliberations.	

Development of multiple intelligence among the youth is an ongoing task. We will, from time to time, monitor the effectiveness of the above programmes through considering the responses from the participants and conducting specific studies.

- (b) In the 21st century, the aim of education in Hong Kong is to enable every person to attain all-round development in the domains of ethics, intellect, physique, social skills and aesthetics according to his/her own attributes. Therefore, education reform and curriculum development should adopt a "learner-focused approach" and provide "life-wide learning opportunities for whole-person development", with an emphasis on allowing ample room for students to develop their abilities and attributes.

To cater to the need for students to attain all-round development, the Government has established a diversified school system that

includes Direct Subsidy Scheme schools and private independent schools to embrace different philosophies, development directions and curriculum focuses to provide students with more choices. In addition to this, a diversified approach has also been adopted in the areas of learning, teaching and assessment to develop students' potential and establish a learner-focused education system by enhancing the professional standards of teachers through training and other supportive measures.

Proposals regarding reform in the academic structure of senior secondary and higher education are an extension of the development of basic education. They provide a balanced and diverse curriculum under which all students can realize their full potential and pursue further studies, receive vocational training or take up employment according to their aptitudes, interests, abilities and needs. The proposed curriculum framework includes core subjects (45% to 55%), elective subjects (20% to 30%) and other learning experiences (15% to 35%). Apart from the four core subjects of Chinese Language, English Language, Mathematics and Liberal Studies, students will choose two to three elective subjects from a number of subjects and applied learning subjects such as career-oriented studies. These elective subjects cover both conceptual learning and applied learning and students should be able to choose the ones that suit their own needs. As for other learning experiences, students will receive moral and civic education, and participate in community services as well as aesthetic and physical/sporting activities to achieve whole-person development and the non-academic goals of the curriculum. We offer a broadly-based curriculum and a wide range of choices and encourage students to adopt different learning modes according to their aptitudes and interests.

- (c) The Home Affairs Bureau, in conjunction with the COY, is organizing youth forums to be formed by young people, which seek to provide a platform for young people to participate in public affairs. The objective is to enable young people to acquire the culture and skills of handling public affairs, develop independent thinking, and the ability to express views on issues of public

concern through the process of research and deliberations, thereby promoting civic awareness and responsibility among young people.

The youth forums would be an ongoing youth development programme under the COY. The forums would also enable the Government and other public organizations to tap the views of young people in a more structured manner, thereby increasing the accountability of public polices. The forums could also draw up discussion items that are of concern to young people so as to allow young people to convey their views to the Government and the general public, thereby facilitating the implementation of policy proposals related to young people.

The COY, in co-operation with non-governmental youth organizations, is now in the process of setting up district youth forums in six districts on a pilot basis. This pilot project, if successful, would later be extended to all 18 districts in the territory. The six districts concerned are:

- Sha Tin
- Sham Shui Po
- Central and Western
- Tai Po
- Kwun Tong
- Yuen Long/Tin Shui Wai

The pilot project is still in the preparatory stage. Our initial thinking is that each district youth forum would consist of young people aged between 15 and 24 who are studying, working or living in the district. Forum members would be returned by election. The secondary schools and youth organizations in the district could nominate youth representatives as candidates, or eligible young people could recommend themselves as candidates for the election.

As regards the existing district youth councils, they are formed under the District Councils and receive financial, secretariat and other logistical support from the District Councils for the purpose of maintaining their operations and organizing activities. A district youth council typically comprises 20 to 30 members aged between 15 and 29. They generally follow the operational mode of the District Councils and hold regular discussions on local and territory-wide issues, especially those related to youth. Members

are normally nominated by district organizations, but young people may also apply for membership themselves and become members after going through a selection process.

### **Private Sector Finance Projects**

12. **MR ABRAHAM SHEK:** *Madam President, the Government originally intended to invite bidding for the two Private Sector Finance (PSF) projects on leisure and cultural facilities in Kwun Tong and Tseung Kwan O by mid-2004. However, so far, the Government has only invited Expressions of Interest (EOIs) for these projects. In January this year, the Secretary for Home Affairs informed the Panel on Home Affairs that the Government was examining the details of the tendering arrangement, and no implementation timetable could be provided. In this connection, will the Government inform this Council:*

- (a) why the above two projects have lagged behind schedule;*
- (b) why a timetable for implementing the projects concerned has not been provided in this year's policy initiatives, and when the Administration will invite bidding for these projects;*
- (c) of the details of the new PSF projects to be launched in the next 12 months, and whether they include the re-provisioning of the Sha Tin Water Treatment Works; and*
- (d) of the measures taken by the Administration to expand the scope of the PSF projects?*

**SECRETARY FOR THE CIVIL SERVICE** (in the absence of Secretary for Home Affairs): Madam President, in order to benefit from the best possible range of expertise in the design and management of leisure and cultural facilities, the Administration is considering involving the private sector to contribute towards the provision of these facilities. To take this forward, the Administration has identified two leisure and cultural projects as pilot projects to assess the market's interest, identify the issues arising from the new initiative,

and develop appropriate procedures for wider implementation. The Administration's response to the various parts of the question is as follows:

- (a) As PSF is a new approach in the provision of public facilities, the Administration has taken a cautious approach in examining the policy and technical issues with respect to the two pilot leisure and cultural projects in Kwun Tong and Tseung Kwan O. These issues include possible scope of development, the modes of operation, commercial viability and sustainability of different business models, tendering terms, financial and funding aspects, and public consultation. Substantial planning and co-ordination are needed to address these issues thoroughly, and more time is required than originally anticipated to develop a comprehensive scheme before the two pilot projects could be put up for public tender.
- (b) As a first step, the Administration has invited EOI from interested parties to implement the two pilot projects in Kwun Tong and Tseung Kwan O using the PSF approach. Ten submissions have been received, and consultants have been appointed to analyse the EOIs. The Administration is studying the consultants' findings and other technical and policy issues involved in order to work out a timetable for the implementation and tendering of the pilot projects.
- (c) There are no other projects scheduled to be launched in the next 12 months by way of a PSF approach. As regards the reprovisioning of the Sha Tin Water Treatment Works, the Administration has conducted a feasibility study on the possible implementation options which involve some form of participation from the private sector. The Legislative Council Panel on Planning, Lands and Works was informed of the outcome of the feasibility study in May 2004. The Administration is consulting the staff on the matter.
- (d) The Administration has compiled guidelines and conducted seminars to promote awareness and understanding of the staff on the various approaches of involving private sector in the provision of public facilities. Assistance is also provided to help departments

concerned to explore such collaboration opportunities with the private sector.

### **Electronic Waste**

13. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, it has been reported that as the mainland customs authorities have recently prohibited the import of electronic waste (e-waste), an increasing amount of such waste has been transshipped to Hong Kong for processing, resulting in several pieces of land in the New Territories being used for their storage. In this connection, will the Government inform this Council :*

- (a) *of the respective amounts of e-waste imported into and transshipped via Hong Kong, the top three import sources and export destinations in terms of quantities, and how the waste importers concerned dealt with the waste over the past three years;*
- (b) *whether it has drawn up guidelines to regulate the importers concerned in handling e-waste; if it has, of the effectiveness of these guidelines; if not, the reasons for that and whether the authorities will consider drawing up such guidelines;*
- (c) *of the measures to monitor the facilities of e-waste sites to ensure their compliance with the relevant requirements of the Environmental Protection Department (EPD), in order to prevent toxic e-waste from polluting the environment and posing safety hazards to workers in those sites; and*
- (d) *whether it will formulate a comprehensive policy to tackle the problem of e-waste, such as making reference to the Waste Electrical and Electronic Equipment Directive and the Restriction of Hazardous Substances in Electrical and Electronic Equipment Directive formulated by the European Union, which will come into effect in August this year and July next year respectively, to legislate against the use of toxic materials by manufacturers in the production of electronic devices in order to avoid environmental*

*pollution caused by discarded electronic devices containing toxic materials?*

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

- (a) E-waste containing or contaminated by hazardous substances is subject to control under the Waste Disposal Ordinance (WDO). In the past three years, the EPD did not issue any permits for the import and export of e-waste containing or contaminated by hazardous substances. The import and export of non-hazardous e-waste for the purpose of recycling do not require a permit issued by the EPD while the import and export of second-hand electrical appliances are not subject to control under the WDO. As such, information on the import and transshipment of these types of e-waste is not available.
  
- (b) Under the WDO, a permit issued by the EPD is required for the import and export of any kind of waste, unless the waste is a type of waste specified in the Sixth Schedule, and that the waste is uncontaminated, non-hazardous and is imported for the purpose of recycling. The import of any hazardous e-waste (such as cathode ray tube display units) for dismantling or disposal in Hong Kong also requires a permit. In November 2004, the EPD issued a set of guidelines on the control of the import and export of second-hand electrical and electronic equipment and hazardous e-waste for reference by the industry. Regarding the control of e-waste that falls within the definition of chemical waste, the EPD has published a series of guidelines on the requirements of the WDO and the Waste Disposal (Chemical Waste) (General) Regulation to facilitate compliance by waste producers, collectors and disposal facilities. The guidelines, which have achieved good effects, include:
  - (i) A Guide to the Chemical Waste Control Scheme, which introduces and explains the legislative controls on the management of chemical waste in Hong Kong applicable to the production, storage, collection, transport and disposal of chemical waste;

- (ii) Code of Practice on the Packaging, Labelling and Storage of Chemical Wastes; and
  - (iii) A Guide to the Registration of Chemical Waste Producers, which provides guidance on the identification of activities that produce chemical waste and compliance with the registration requirements.
- (c) Dust, noise, wastewater and waste generated by e-waste workshops are subject to control under the Air Pollution Control Ordinance, the Noise Control Ordinance, the Water Pollution Control Ordinance, the WDO and their subsidiary regulations respectively. Furthermore, any workshop dismantling e-waste classified as chemical waste (such as cathode ray tube display units) must obtain a licence. The design and operation of the workshop must comply with stringent environmental requirements. The operator is required to submit an operational plan laying out the details on operating procedures, techniques, facilities, managing staff, environmental and safety standards, and so on, for approval. The workshop is required to pass operating tests before the licence is issued. Apart from regularly inspecting licensed facilities, the EPD also requires licence holders to submit reports in accordance with the licensing conditions to ensure that the operation of the workshops is up to standard. A person who manages chemical waste without a licence is liable, for the first offence, to a fine of \$200,000 and imprisonment for six months and, for a second or subsequent offence, to a fine of \$500,000 and imprisonment for six months.
- (d) The Waste Electrical and Electronic Equipment Directive mainly requires the producers of electrical and electronic equipment imported into the Member States of the European Union to meet most of the costs of collecting, treating, recovering and disposing of their products put on the market after August 2005. For products put on the market before August 2005, the producers are required to share the responsibility for the collection, treatment, recovery and disposal of such products in proportion to their respective share of the market. This requirement shares the spirit of Product Responsibility Scheme (PRS). We are studying the feasibility of

introducing a PRS for electronic and electrical equipment with a view to reducing waste and promoting waste recovery in Hong Kong. Under the proposed scheme, producers, importers, retailers and consumers are required to share the responsibility for properly managing their products at the post-consumption stage. In early 2005, the EPD began a study on the introduction of PRS for different types of waste electrical and electronic equipment. This study comprehensively evaluates the cost-effectiveness of various options, the impacts on the trade and the stakeholders, and so on, and draws on overseas experience in the management of such waste equipment so as to identify feasible options for extensive consultation in due course.

The Restriction of Hazardous Substances in Electrical and Electronic Equipment Directive requires the producers of electrical and electronic equipment to ensure the products they place on the market from 1 July 2006 do not contain such hazardous substances as lead, mercury and cadmium unless the elimination or substitution of the substance is technically or scientifically impracticable. The EPD will continue to monitor the trend of policy development in this aspect among the international community in order to consider the need for introducing similar regulations in Hong Kong.

### **Travel Industry Compensation Fund**

14. **MR HOWARD YOUNG** (in Chinese): *Madam President, recently, some members of the industry told me that the Travel Industry Compensation Fund (TICF) had accumulated a balance of some \$300 million. Moreover, over the past 16 years, the total payment made by the TICF as compensation and emergency financial relief for tourists against their losses arising from the closure of travel agents was about \$17 million, representing less than 1% of the above accumulated balance. In this connection, will the Government inform this Council whether:*

- (a) *it will consider suspending the imposition of the levy in relation to the TICF, or lowering the level of levy currently set at 0.3% of the outbound tour fees, or extending the usage of the TICF so as to make full use of it; if not, the reasons for that; and*

- (b) *it has set an upper limit for the accumulated balance of the TICF; if so, of the amount and justifications of such limit?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President, the TICF was established in 1993 under section 32C of the Travel Agents Ordinance (TAO). The objectives of the TICF are to provide protection and emergency financial relief to outbound tour group travellers under two circumstances:

- (i) where outbound travellers suffer a loss in the outbound tour fare, including losses caused by default of travel agents; and
- (ii) where expenses are incurred by outbound travellers arising from death or injury sustained in activities provided or organized by a travel agent whilst travelling abroad, including medical expenses and expenses for paying visits to the place of accident by relatives, and so on.

According to sections 32H and 32I of the TAO, travel agents are required to contribute 0.3% of the outbound tour fare received from each outbound traveller as levy, half of which, that is, 0.15%, is put into the TICF. The TAO has not specified any upper limit in respect of the reserve level of the TICF.

The TICF is held, managed and applied by the Travel Industry Compensation Fund Management Board (TICFMB) established under section 32B of the TAO. The TICFMB regularly reviews the reserve level of the TICF and the rate of the levy to ensure that the TICF is able to meet the *ex gratia* payments payable to outbound travellers in case of travel agent defaults and tour accidents. In 2002-03, the TICFMB appointed an independent actuarial consultancy firm to conduct a review of the reserve level of the TICF and the rate of the levy. Having considered the consultant's report and advice, the TICFMB held the view that the reserve of the TICF should be maintained at a healthy level in order to meet any liability arising from unexpected claims. Therefore, the TICFMB considered that there was no immediate need to adjust the rate of the levy and would conduct professional reviews of the reserve level of the TICF and the rate of levy every five years. The TICFMB has no intention of changing the usage of the TICF at this stage.

**Substandard Services of Telecommunications Service Providers**

15. **MR ALBERT CHAN** (in Chinese): *Madam President, in recent years, I have received a number of complaints from members of the public about the substandard services of telecommunications service providers and the unreasonable fees charged by them. In this connection, will the Government inform this Council:*

- (a) *of the number of complaints received by the Office of the Telecommunications Authority (OFTA) and the names of the telecommunications service providers involved in each of the past three years, broken down by the type of telecommunications services (such as fixed-line telephones, mobile phones, external telecommunications and broadband Internet access) and the nature of complaints;*
- (b) *among the cases mentioned in part (a) above, of the number of those in which the complainants made successful claims for compensation, and the names of the telecommunications service providers which were prosecuted, and the number of prosecutions instituted against them; and*
- (c) *whether the authorities will, apart from continuing with the existing measures to regulate telecommunications service providers, adopt new regulatory measures to better protect the consumers' interests; if so, of the details; if not, the reasons for that?*

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

- (a) The number of consumer complaints handled by the OFTA against telecommunications operators in each of the past three years, broken down by type of telecommunications services and the nature of complaints, is listed as follows:

Nature of Complaint		(1)	(2)	(3)	(4)	(5)	Total	
		Disputes over Contract/ Bill	Customer Service	Alleged Deceptive/ Misleading Sales Conduct/ Advertisements	Technical Quality	Others		
Telecom- munications Services	Internet	2002	216	259	107	453	42	1 077
	Access	2003	119	110	19	289	4	541
		2004	34	47	83	92	4	260
Fixed Line Telephone	2002	118	262	32	5	118	535	
	2003	77	146	49	41	86	399	
	2004	12	81	92	13	22	220	
Mobile Phone	2002	371	152	9	120	39	691	
	2003	178	85	5	64	8	340	
	2004	26	22	10	16	4	78	
External Telecom	2002	125	18	17	39	102	301	
	2003	64	22	6	21	31	144	
	2004	21	10	20	11	2	64	

In respect of these complaints, the OFTA will launch formal investigation in cases where there is sufficient *prima facie* evidence indicating possible breach of the provisions of the Telecommunications Ordinance or licence conditions. The OFTA will publish the names of the operators involved, and the reasons and results of investigation under the column of "Consumer Interest" at the OFTA's website < <http://www.ofta.gov.hk> > . Over the past three years, such investigation involved almost 30 operators.

- (b) Since the functions and powers of the Telecommunications Authority do not include arbitration of disputes over money/contracts between consumers and telecommunications operators, or claim for compensation on behalf of consumers, the OFTA does not have any statistics on the number of cases in which the complainants made successful claims for compensation.

The OFTA will investigate into complaints pertaining to breach of the provisions of the Telecommunications Ordinance or licence

conditions by telecommunications operators. If a case is established, the OFTA will sanction the relevant telecommunications operator accordingly. In the past three years, among the consumer-related cases investigated, 44 cases of breach were established, involving 180 complaints and 23 telecommunications operators. Case details and names of telecommunications operators have been published under the column of "Consumer Interest" at the OFTA's website.

- (c) Other than existing measures, the OFTA will introduce the following two initiatives to strengthen regulation of telecommunications operators in order to protect consumer interests:
- A. In view of an upward trend of the number of complaints against the conduct relating to sales of telecommunications services, the OFTA will issue a report to set out details of the improper sales conduct present in the telecommunications market, and propose a series of measures for operators to uphold fair trading and further protect consumer interests. After several rounds of discussion with relevant operators and the Consumer Council, the OFTA is close to completing the report and will release it on the OFTA's website shortly.
  - B. In January 2005, the OFTA announced the implementation of a framework concerning quality of service (QoS) information on residential broadband Internet service. QoS information of the four major Internet service providers (Hong Kong Broadband Network Limited, Hutchison Global Communications Limited, i-Cable WebServe Limited and PCCW IMS Limited) as well as other providers participating on a voluntary basis will be published in August this year. QoS information includes five technical performance indicators (download time from the service provider's website, download time from a local website, download time from overseas websites, upload time to the service provider's FTP server and network latency), three types of service information (helpline, billing and service termination) and

two service performance indicators (complaint handling time and enquiry call answering time).

### **Market Share of Airport Railway in Respect of Land Passenger Transport**

16. **MR LAU KONG-WAH** (in Chinese): *Madam President, among the passenger trips by land to the Passenger Terminal Building of the airport in 2002-03, those made by the Airport Railway accounted for 19% only, and such a market share figure fell far short of the 43% forecast in the New Airport Master Plan (the Plan), drawn up by the relevant authorities in 1991. In this connection, will the Government inform this Council of:*

- (a) the basis on which the market share of the Airport Railway in respect of land passenger transport was arrived at in 1991, and whether it has looked into the reasons for the substantial difference between the forecast and actual market shares; if so, of the findings and whether the fare level of the Airport Railway is considered one of the factors; and*
- (b) the respective current market shares of various modes of land transport in respect of passenger traffic to the airport, and how they have changed over the past five years?*

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

(in Chinese): Madam President,

- (a) The patronage forecast for the Airport Express Line (AEL) made in the Plan in 1991 was based on a number of assumptions, including competition from buses, the AEL's fare level, air passenger volume and composition, and congestion on North Lantau Expressway. Some of the assumptions made then are different from the actual situation. The differences, as set out below, may be attributable to the AEL's lower than forecast patronage, though it would not be possible to establish a causal correlation between them and the rail's patronage:

- (i) competition from buses: the Plan assumed that there would be no competition from buses. At present, 37 franchised bus routes are serving the Airport and connecting it to various key locations in the territory. The current single-journey AEL fares from Tsing Yi, Kowloon and Hong Kong Stations to the AEL Terminus at the Airport are \$60, \$90 and \$100 respectively, which are close to those assumed at the planning stage of AEL. The bus fares range from \$3.5 to \$45;
  - (ii) air passenger volume and composition: it was assumed in 1991 that by 2004 the Airport would handle 30 million passenger trips requiring connecting land transport. However, the actual figure in 2004 was 24 million passenger trips. It was also assumed that 66% of the passengers using the Airport would be visitors from overseas who are more prone to using AEL than passengers who are local citizens. However, in 2004, only 58% of the passengers using the Airport were overseas visitors; and
  - (iii) congestion on North Lantau Expressway: the more congested the connecting highway is, the higher should be the AEL's patronage as AEL would save people's journey time. It was assumed in 1991 that the peak hour two-way traffic flow through the Expressway would be 13 900 passenger car units (PCU) by 2004. However, the actual figure in 2004 was only 4 800 PCU. The assumed congestion on the Expressway has not eventuated.
- (b) We believe that the figure of 19% for 2002-03 mentioned in the question comes from a consultancy report commissioned by the Hong Kong Airport Authority. The figure was specifically for comparing the usage of railway and the usage of other land transport modes. The consultancy did not examine the breakdown of the market shares of the various non-rail land transport modes. There is no information on the current market shares of various land transport modes serving the Airport. The last survey on that was conducted by the Hong Kong Airport Authority in 1999, and the results were as follows:

<i>Transport Mode</i>	<i>Percentage of total passenger trips to the Airport</i>
Rail	29.2%
Franchised bus	45.0%
Private car	13.1%
Taxi	3.8%
Hotel vehicle	2.3%
Non-franchised bus	4.4%
Ferry <sup>Note</sup>	2.1%
Others (for example, motorcycle)	0.1%

Note: In 1999, there was a ferry service running between Tuen Mun and the Airport. It was subsequently changed in 2002 to a service between Tuen Mun and Tung Chung Pier.

The Hong Kong Airport Authority commissioned a consultant to conduct another survey in 2004. The survey will be completed shortly. We would only be able to assess the changes in the market shares over the past five years when the survey results are available.

### **Assessment of School Standard by School Self-evaluation**

17. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that upon completing the initial phase of the External School Review (ESR) involving some 100 primary and secondary schools, the Education and Manpower Bureau noticed a substantial difference between the School Self-evaluation (SSE) scores and the ESR scores. In this connection, will the Government inform this Council:*

- (a) *of the reasons for the substantial difference in the above scores and whether the difference is mainly the scores for secondary schools or primary schools;*
- (b) *how it deals with the substantial difference in scores; and*
- (c) *whether it will review if it is appropriate to assess the performance standard of the schools concerned by way of SSE?*

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

- (a) The Education and Manpower Bureau introduced School Development and Accountability (SDA) framework in 2003 with the provision of a series of evaluation tools to facilitate the implementation of systematic, evidence-based and data-driven school evaluation, complemented by the ESR. Both the SSE and the ESR processes adopt the Performance Indicators (PI) for Hong Kong Schools (2002) as a common platform for school performance assessment. For most schools, this is their first attempt in conducting systematic, evidence-based and data-driven school evaluation and they may not have full mastery of the performance indicators, knowledge and skills in implementing systematic SSE based on evidence and data. The discrepancy of the schools' rating and that of the ESR team results on school performance as a whole (including primary, secondary and special schools) at the initial stage is understandable. Also, it takes time and practical experience to seek convergence on ratings in school performance. The professional exchange during the ESR and the various measures under SDA framework are all conducive to narrowing the gap in ratings between the SSE and the ESR.
- (b) In narrowing the differences in schools' ratings and that of the ESR team results on school performance, the following measures have been adopted.
- (i) To enhance schools' professional capacity of the SSE/ESR through the following means:
- Workshops to strengthen the skills in the SSE, including the preparation of the self-assessment report;
  - Seminars by distinguished local and overseas education professionals to foster a better understanding of the theories and practices of the SSE;
  - Sharing sessions on good practices in the SSE and self-assessment by school personnel who have undergone the ESR;

- Using school data for school development; and
  - Developing online course on the SSE to equip school personnel with the required skills.
- (ii) To strengthen schools' knowledge of the ESR, school principals are invited to participate in the ESR as external school reviewers. This will provide school principals with first-hand experiences of the ESR process.
- (iii) Involving local academics as external school reviewers to further promote SDA culture.
- (iv) Refinement of the SSE tools:
- Reviewing the Key Performance Measures (KPM) framework and reporting requirements based on feedback from schools, with reference to the quality, usefulness, and collectibility of data;
  - Providing reference KPM data to schools to further support the development of the SSE.
- (v) The ESR reports for individual schools uploaded to the Education and Manpower Bureau webpage will not include specific ratings on school performance in the 14 PI-areas and will not contain commentary on discrepancies between the SSE and the ESR results.
- (c) The SSE is a critical quality assurance process wherein all stakeholders are involved in making self-assessment of the school's performance based on evidence and data to identify strategy for sustained development for the benefit of the students. Based on schools' own self-assessment of their strengths and areas of improvement complemented by assessment of the ESR team, schools should be able to better identify their direction for school improvement, set priorities and formulate strategies for sustained development. Through the SSE process, schools can build the professional ownership and enhance transparency and

accountability in school management. An Impact Study on SDA in 2004 also confirmed that schools were capable of using the SSE to establish a firm foundation for enhanced learning outcomes and that the ESR had added value to the SSE.

### **Development of New Juvenile Justice System**

18. **DR FERNANDO CHEUNG** (in Chinese): *Madam President, the Government informed the Subcommittee on juvenile justice system of the last Legislative Council term that it would enhance the support measures targeted at unruly children and young offenders, and would report to the Legislative Council of the current term the development of a new juvenile justice system. In this connection, will the Government inform this Council:*

- (a) *of the implementation details and effectiveness of the following enhanced support measures undertaken by the Government:*
  - (i) *extension of the service of the police's Juvenile Protection Section (JPS) to unruly children below the age of 10, and of the number of these cases handled last year;*
  - (ii) *enhanced referral mechanism between the police and the Social Welfare Department (SWD)/Education and Manpower Bureau regarding cases involving unruly children, and of the number of cases so referred by the police last year;*
  - (iii) *improved information leaflet on the provision of professional support services for distribution by the police to unruly children and their parents; and*
  - (iv) *introduction of the Pilot Scheme on Family Conferences (PSFC) for those aged above 10 but below 18;*
- (b) *whether it has provided enforcement guidelines and relevant training for front-line police officers in implementing the measures mentioned in items (i), (ii) and (iii) above; if it has, of the details;*

- (c) *of the outcome of the Government's review on the PSFC, and whether the Government will put forward improvement proposals in the light of the outcome of the above review and when it will consult non-governmental social service organizations on the relevant proposals; and*
- (d) *whether it has conducted any studies on the development of a new juvenile justice system; if it has, of the results of the study and whether it will consult non-governmental social service organizations?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President,

- (a) (i) Since 13 September 2004, the services of the police's JPS have been extended to children below the age of 10. Each child offender under 10 is assessed for suitability for referral to the JPS, and his/her parents/guardians are provided with information on available support services. So far, however, no cases involving children under 10 have been assessed to be suitable for referral to the JPS.
- (ii) The enhanced direct referral mechanism between the police and the SWD/Education and Manpower Bureau has been operational since 1 July 2003. From July 2003 to December 2004, the police referred close to 2 000 cases to the SWD and the Education and Manpower Bureau for necessary follow-up services.
- (iii) The police have recently enriched the contents of a leaflet containing information on support services available for juveniles in need. The leaflet now includes website addresses of major youth-related non-governmental organizations (NGOs) which organize programmes for juveniles and their families. Apart from the English and Chinese versions, the leaflet is now also available in two other languages to cater for the needs of young offenders who are ethnic minorities.

- (iv) The Pilot Scheme on Family Conferences for those aged 10 or above but below 18 was launched in October 2003. Up to end September 2004, 44 conferences had been held.

As the measures in (i) to (iii) have been introduced for a relatively short time, we will continue to monitor their effectiveness. As for (iv), it is a pilot scheme. Part (c) below is relevant.

- (b) The police have put in place procedures and referral guidelines for front-line police officers in respect of cases involving children and juveniles at risk. Most recently, in September 2004, a new set of procedures for front-line officers for handling those below the age of 10 has been put in place.

Moreover, from time to time training materials and seminars are arranged for police officers to enhance their skills in handling cases involving children and youth at risk, such as the two-month "Intensive Mentoring Scheme" introduced in 2004.

- (c) The SWD, with the assistance of the police, is currently reviewing the effectiveness of the Scheme. Based on the overall observations and recommendations of the review, the SWD will consult the various stakeholders including Hong Kong Council of Social Service and NGOs concerned. If the Scheme is assessed to be effective, we will continue with its operation and consider extending it to cover children aged below 10.
- (d) The relevant bureaux and departments have been considering how best to take forward the suggestion for the development of a new juvenile justice system incorporating principles and practices of restorative justice in Hong Kong. In the process, they have taken stock of the considerable number of measures already available for dealing with young offenders in Hong Kong. They also note that the introduction of even a limited form of restorative justice would have far-reaching implications for our juvenile justice system. The Administration has to take into account our existing prosecution policy, the possible need for legislation, society's general receptiveness of restorative justice, overseas experience, the differences in social and cultural contexts between Hong Kong and other places, resource implications, availability of expertise and

other relevant considerations. The discussions are still continuing and no conclusions have been reached. We will consider how best to consult the NGOs in the welfare sector and other stakeholders at an appropriate time.

### **Pumping Seawater to Flush Shenzhen River**

19. **MISS CHOY SO-YUK** (in Chinese): *Madam President, last year, the Shenzhen Municipal Government proposed to pump seawater to flush the Shenzhen River in order to improve the water quality there. In this connection, will the Government inform this Council whether it has assessed the impacts of such flushing on the ecosystems of the RAMSAR site around Mai Po and Inner Deep Bay as well as other waters in Hong Kong; if it has, of the results and the remedial measures to be adopted; if not, the reasons for that?*

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

(in Chinese): Madam President, the Government of the Hong Kong Special Administrative Region (SAR) has all along been working with the Shenzhen authorities on improving the water quality and pollution control of the Shenzhen River through the Shenzhen-Hong Kong Joint Working Group on the Shenzhen River Regulation Project (JWG). The scope of work included the Shenzhen River Regulation Project at the beginning and gradually extended to cover pollution control and cleaning-up operations, such as the scavenging of floating refuse of the river in recent years.

At the first meeting of the Environmental Management Special Panel under the JWG in August 2003, the Shenzhen side proposed the "Shenzhen River Flushing Project" to improve the environmental quality of the Shenzhen River and its catchment. By constructing a pumping station at Mirs Bay, seawater will be used to flush the river aiming at increasing the base flow, diluting the pollutant levels and reducing the retention time of the river. At the meeting, the Environmental Protection Department (EPD) and the Agriculture, Fisheries and Conservation Department (AFCD) of the SAR Government expressed great concern over the proposal's impacts on Deep Bay, in particular, the RAMSAR site at Mai Po. The Shenzhen side had also expressed their understanding of our concern. Recognizing the complexity of the "Shenzhen River Flushing Project" and the impact on the environment, both sides agreed

that it was prudent to conduct a preliminary study to ascertain the feasibility of the project before considering a more thorough, comprehensive study to avoid any damage to the environment.

In early 2004, the Shenzhen side commissioned the Centre for Coastal and Atmospheric Research (CCAR) of The Hong Kong University of Science and Technology and the Xiamen University (XU) to conduct preliminary studies on the potential environmental impacts of the project. The Shenzhen River Regulation Office had also organized two seminars in Hong Kong and Shenzhen in March and November last year respectively to brief the green groups and relevant government departments from Hong Kong on the objectives, methodology and latest findings of the preliminary study and to listen to their views. Representatives of the Environment, Transport and Works Bureau of the SAR Government had also attended the seminars to keep abreast of the study progress and gauge the views of green groups.

At the moment, the preliminary feasibility studies undertaken by the CCAR and the XU are at their final stage and we are awaiting further details from the Shenzhen side. Once the materials are available, we will evaluate whether it is appropriate to proceed on a more comprehensive study of the "Shenzhen River Flushing Project" and we would formally inform the Shenzhen authorities of our position.

In fact, apart from the Shenzhen River, the Hong Kong and Shenzhen sides had also established water quality protection and pollution control policies for Mirs Bay and Deep Bay in 1999 and 2000 respectively to strengthening our co-operation on the protection of our common waters. In accordance with these policies, we have not only launched the Livestock Waste Control Scheme to reduce the pollution of local rivers caused by livestock waste, but also enhanced our sewerage and sewage treatment facilities to reduce the pollution load to the above waterbodies.

### **Noise Nuisances Caused by Ma On Shan Rail**

20. **MS EMILY LAU** (in Chinese): *Madam President, since the commissioning of the Ma On Shan Rail (MOSR) in December last year, I have incessantly received complaints from residents along the MOSR about the noise*

*nuisances caused by running trains. In this connection, will the executive authorities inform this Council:*

- (a) of the total number of complaints about the noise nuisances related to the MOSR received by the relevant government departments and the Kowloon-Canton Railway Corporation (KCRC) since the commissioning of the MOSR;*
- (b) of the highest and average noise levels generated by trains running along the MOSR; and*
- (c) although the noise levels generated by trains running along the MOSR have not exceeded the statutory limit, whether the authorities will advise the KCRC to adopt further measures to abate the noise nuisances caused to the residents; if so, of the details of the measures; if not, the reasons for that?*

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

(in Chinese): Madam President, since the commissioning of the MOSR on 21 December 2004, the Government and the KCRC respectively received 15 and 14 complaints relating to the MOSR train noise.

Train noise generated by the MOSR during its operation is controlled under the Noise Control Ordinance (NCO) (Cap. 400). The NCO limits are measured via the 30-minute equivalent level in unit of A-weighted decibels (dB(A)), which is a commonly used international standard. So far, the results of noise measurement conducted by the Environmental Protection Department (EPD) and the KCRC show that the noise levels at all locations along the MOSR have consistently complied with the NCO limits, which are 50, 55 or 60 dB(A) (depending on the locations). The MOSR has also satisfied the planning criterion on the maximum sporadic noise level under the Environmental Impact Assessment Ordinance (Cap. 499), which is 85dB(A).

The Government encourages the KCRC to maintain a close dialogue with affected residents and has referred their concerns about the MOSR train noise to the KCRC for consideration. It is the Government's objective to encourage the

KCRC to continuously improve its service including the environmental protection aspect. Indeed, the KCRC has taken the approach to mitigate the MOSR train noise at source by adopting a multi-plenum system. Other noise abatement measures taken include putting noise absorbing lining under the train car, beneath the walkways along the tracks and on the inside of the parapets, adding "skirts" to train vehicles, installing floating slab track and rubber bearings, and extending the walkways and parapets at critical sections. While it will be beyond the EPD's statutory power to direct the KCRC to adopt further noise abatement measures with all the findings showing that the MOSR has complied with the statutory limits under the NCO, the EPD will closely monitor the MOSR's performance to ensure its continuous compliance. We also understand that the KCRC is prepared to explore suitable measures where appropriate to fortify the effectiveness of its present noise abatement measures. We are in support of this.

## **BILLS**

### **First Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: First Reading.

### **STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2005**

### **AVIATION SECURITY (AMENDMENT) BILL 2005**

**CLERK** (in Cantonese): Statute Law (Miscellaneous Provisions) Bill 2005  
Aviation Security (Amendment) Bill 2005.

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

### **Second Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: Second Reading.

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2005**

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, I move that the Statute Law (Miscellaneous Provisions) Bill 2005 (the Bill) be read the Second time.

The Bill largely makes minor, technical and non-controversial amendments to the Laws of Hong Kong. In that respect, it follows the pattern of similar Bills which have been enacted in recent years as an efficient way of effecting improvements to existing legislation. The Bill also includes some proposed minor reforms to our laws. The Bill is divided into six Parts. Part 1 contains preliminary provisions. Parts 2 to 6 propose amendments to various Ordinances.

Part 2 provides for the transfer of certain statutory functions and powers, and contains five divisions.

Division 1 transfers to the Secretary for the Civil Service certain functions of the Chief Secretary for Administration. Following the implementation of the Accountability System, it is necessary for certain pension-related functions to be transferred from the Chief Secretary for Administration to the Secretary for the Civil Service, who is the Principal Official responsible for civil service matters.

Division 2 amends the Oaths and Declarations Ordinance (Cap. 11) to transfer to the Director of the Chief Executive's Office the function of the Chief Secretary for Administration to administer the Oath of Secrecy taken by the Clerk or Deputy Clerk to the Executive Council. This transfer reflects the fact that the Executive Council Secretariat is now under the Chief Executive's Office.

Division 3 transfers to the Administrative Appeals Board the function of the Chief Executive in Council to determine appeals under the Medical Clinics Ordinance (Cap. 343).

Division 4 transfers the chairmanship of certain committees from the Chief Justice to the Chief Judge of the High Court. Division 5 transfers the rule-making and related powers in the Matrimonial Causes Ordinance (Cap. 179) from the Chief Justice to the Chief Judge of the High Court.

Part 3 of the Bill provides for the change of name; it enhances the operational efficiency in certain areas; and it refines certain statutory provisions. There are nine divisions in Part 3.

Division 1 changes the Chinese name of the Convocation of The Chinese University of Hong Kong from "評議會" to "校友評議會". This follows advice from The Chinese University of Hong Kong that the current Chinese name of the Convocation of the University does not accurately reflect its composition.

Division 2 amends the Legal Aid Services Council Ordinance (Cap. 489) to empower the Legal Aid Services Council to do such things as are necessary to enable it to exercise its functions (including entering into contracts) and to appoint staff, and to extend the time limit within which it must submit an annual report to the Chief Executive. The amendments will enhance the operational efficiency of the Legal Aid Services Council.

Division 3 amends the Trade Marks Ordinance (Cap. 559) to clarify when the period of six months referred to in section 41(1) of the Ordinance commences, and to clarify the meaning of the expression "owner" in section 55(2) of that Ordinance. The proposed amendments reflect the original intention of the relevant provisions.

Division 4 amends the Theft Ordinance (Cap. 210) to bring the definition of "deception" in the Ordinance into line with the definition of "deceit" in the Ordinance.

Division 5 amends the Crimes Ordinance (Cap. 200) to require consent to be given for the prosecution of a conspiracy to commit any offence where consent is needed for the prosecution of the offence itself.

Division 6 amends the Firearms and Ammunition Ordinance (Cap. 238) to make possession of imitation firearms an indictable offence, triable in the District Court and Court of First Instance. Without the amendment, there would be an anomaly in that a Magistrate is empowered to impose imprisonment of seven years for the offence of possessing an imitation firearm under that Ordinance.

Division 7 amends the Prevention of Bribery Ordinance (Cap. 201) to prohibit a person from leaving Hong Kong if he is subject to investigation by the Independent Commission Against Corruption (ICAC) on reasonable suspicion of having committed an offence under the Ordinance and has, by written notice, been required by a Magistrate to surrender all his travel documents. It clarifies that police officers and persons appointed by the Commissioner of the ICAC have the power to arrest the first-mentioned person for failure to comply with the notice.

Division 8 amends the Costs in Criminal Cases Ordinance (Cap. 492) to empower the Court of Appeal and Court of First Instance to award costs to the prosecutor or defendant on the other party's unsuccessful application for a certificate under the Hong Kong Court of Final Appeal Ordinance (Cap. 484). Section 32 of the Hong Kong Court of Final Appeal Ordinance provides that, before leave to appeal is granted, it must be certified that the case involves a point of law of great and general importance or grave injustice has been done. It is anomalous that the Court has no power to order costs where the prosecutor or a defendant applies unsuccessfully for a section 32 certificate.

Division 9 repeals provisions in 16 Ordinances which prevent any further appeal of a decision beyond the Court of Appeal. This reflects the Court of Final Appeal's judgement in *A Solicitor v The Law Society of Hong Kong*, which held that section 13(1) of the Legal Practitioners Ordinance (Cap. 159) was unconstitutional, since it provided that a decision by the Court of Appeal in respect of disciplinary proceedings concerning a solicitor shall be final.

Part 4 of the Bill relates to judicial officers, and contains three divisions.

Division 1 amends the Judicial Officers Recommendation Commission Ordinance (Cap. 92) to require a member of the Commission who may be selected to fill a judicial vacancy to disclose whether or not, if he were to be selected, he is willing to accept appointment. Division 2 updates the list of judicial offices covered by the Judicial Officers Recommendation Commission Ordinance. Division 3 amends some court-related Ordinances to further provide for the professional qualifications for certain judicial officers.

Part 5 of the Bill relates to legal education and legal practitioners, and contains two divisions.

Division 1 amends the Legal Practitioners Ordinance to include two representatives of The Chinese University of Hong Kong in the Standing Committee on Legal Education and Training established by that Ordinance. The amendments are required since The Chinese University of Hong Kong is about to establish a new law school. The other tertiary institutions which have a law school are also represented in the Committee.

Division 2 amends the Legal Practitioners Ordinance to make it clear that the Council of The Law Society of Hong Kong may make rules to provide for the professional practice of any solicitor and to make indemnity rules in respect of any solicitor's practice, whether or not the solicitor is engaged in private practice.

Part 6 contains miscellaneous amendments of a minor nature. It rectifies a number of textual errors, inconsistencies and other minor irregularities which have been identified in our legislation.

Madam President, as I indicated earlier, this Bill is part of a continuing process of tidying up Hong Kong's statute law and effecting minor reforms. I commend the Bill to the Legislative Council.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Statute Law (Miscellaneous Provisions) Bill 2005 be read the Second time.

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

## **AVIATION SECURITY (AMENDMENT) BILL 2005**

**SECRETARY FOR SECURITY:** Madam President, I move that the Aviation Security (Amendment) Bill 2005 (the Bill) be read the Second time.

To deal effectively with the problem of unruly passenger offences, the International Civil Aviation Organization (ICAO) adopted a resolution and

developed a Model Legislation on Certain Offences Committed on Board Civil Aircraft (the Model Legislation), urging Contracting States to enact relevant laws and regulations. As an international aviation centre, Hong Kong has observed closely the safety and security standards and practices promulgated by the ICAO under the relevant international conventions. We have an obligation to play our part in the international effort to deal more effectively with the problem of unruly passengers.

In Hong Kong, the Aviation Security Ordinance (ASO) is the principal legislation on aviation security. The main purposes of the ASO are to prohibit acts which pose threats to international civil aviation and to give effect to international conventions on aviation security. The ASO addresses mainly very serious offences such as hijacking and sabotage, and does not specifically provide for offences involving unruly behaviour.

Legislative amendment is needed to fill the gap in the existing legislation to strengthen the control over unruly passenger offences committed on board Hong Kong-controlled aircraft and to extend Hong Kong's jurisdiction over such acts committed on board non-Hong Kong-controlled aircraft outside Hong Kong while they are coming to land at Hong Kong.

The Bill proposes to create new offences which includes offences relating to the obstruction of crew members in the performance of their duties; the failure to comply with instructions given by the commander of the aircraft or crew members for the purpose of protecting the safety of the aircraft; disorderly behaviour; the tampering or interfering with aircraft apparatus, equipment or systems; intoxication by alcohol, drugs or other intoxicating substances, and smoking and the operation of electronic devices when prohibited.

The Bill also proposes to incorporate certain criminal offences related to "assault", "intimidation or threat", "sexual assault" and "criminal damage" occurring on an aircraft, so that Hong Kong will have jurisdiction to prosecute regardless of whether the aircraft is a Hong Kong-controlled aircraft or not. However, when exercising Hong Kong's jurisdiction over the aforesaid offences that take place on board non-Hong Kong-controlled aircraft, certain restrictive conditions must be met. These include the next place of landing of the aircraft is in Hong Kong and the commander of the aircraft must have made a request to the Hong Kong police to take action against the suspected offender.

Madam President, the proposal will enable the Hong Kong authorities to prosecute in appropriate cases criminal acts and offences constituting unruly behaviour on board Hong Kong-controlled and non-Hong Kong-controlled aircraft. This will enhance the security, safety, as well as the good order and discipline on board the aircraft. I hope Members will support the proposal and pass the Bill as soon as possible.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Aviation Security (Amendment) Bill 2005 be read the Second time.

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

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

**PRESIDENT** (in Cantonese): This Council will now resume the Second Reading debate on the Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2005.

### **MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) (AMENDMENT) BILL 2005**

#### **Resumption of debate on Second Reading which was moved on 26 January 2005**

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2005 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2005.

Council went into Committee.

### **Committee Stage**

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

### **MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) (AMENDMENT) BILL 2005**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2005.

**CLERK** (in Cantonese): Clauses 1 to 20.

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

### **Third Reading of Bills**

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

### **MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) (AMENDMENT) BILL 2005**

**SECRETARY FOR THE ENVIRONMENT DEVELOPMENT AND  
LABOUR** (in Cantonese): Madam President, the

Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2005

has passed through Committee stage without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2005 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2005.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions: Seeking papers, books, records and documents regarding the Cyberport project.

The mover of the motion may have a maximum of 15 minutes to move the motion and speak in reply respectively. Other Members may have a maximum of 15 minutes each to speak on the motion.

## **SEEKING PAPERS, BOOKS, RECORDS AND DOCUMENTS REGARDING THE CYBERPORT PROJECT**

**MR LEE WING-TAT** (in Cantonese): Madam President, I move the motion as printed on the Agenda.

Madam President, the Legislative Council (Powers and Privileges) Ordinance empowers the Legislative Council to set up Select Committees to investigate into certain incidents and to demand any person to produce information before the Legislative Council. In my career as a Member of this Council, I have come across a few occasions when the Ordinance was invoked on the first ground mentioned. For the second ground, it has rarely been invoked by this Council. On this occasion, I move that section 9(1) of this Ordinance be invoked because with respect to the Cyberport project, the Government has only submitted information which it wishes to submit to this Council. Much of the incident remains clad in obscurity. The public desires to know that with respect to this incident whether or not there is any illicit deals between top government officials and the business sector and whether or not there is any transfer of benefits.

I would like to state here on behalf of the Democratic Party that we support the Cyberport concept. However, we cannot accept that the Government has deviated from the well-established principle of fair and open competition and employed an irregular practice of awarding the development right of the Cyberport project to the Pacific Century Group (PCG) without undergoing an open tender procedure.

The motion which I move today is to order the Private Secretary to the Chief Executive and the Secretary for Commerce, Industry and Technology to produce the information on the Cyberport project in their possession before this Council according to the law. Now I would like to put forward our views on the information we seek.

On 2 February this year, I wrote to Mr Donald TSANG, Chief Secretary for Administration, to demand production of more information on the Cyberport project. In the letter I raised nine questions with respect to the related matters. On 7 February, I received a reply from the Chief Secretary for Administration. In the letter he made an attempt to answer the questions selectively. The most obvious point is that he did not answer the following two questions:

- (1) How many times did Mr TUNG Chee-hwa meet Mr Richard LI, Chairman of the PCG, during the period from 1998 to 1999, regarding the Cyberport project? How many times did they meet alone and how many times in the company of officials? What were the contents of the discussions?
- (2) Which official in the top echelons of the Government made the final decision? Did Mr TUNG Chee-hwa make this final decision?

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

Madam Deputy, in deciding the development of the Cyberport project, Mr TUNG Chee-hwa played a very important role. As far as we know, during the period when the Government was discussing the Cyberport project with the PCG, Mr TUNG met Mr Richard LI on a few occasions. Did they talk about the Cyberport project? Did these meetings play a decisive role in the Government's decision to award the project to PCG? I believe the public very

much wants to know. With respect to the questions I have raised, had the Chief Executive not met Mr LI and no mention was made of the Cyberport even if they met, and had Mr TUNG not made the final decision in the Cyberport project, Mr TSANG might have denied each one of these questions in his reply. But Mr TSANG did not do so and he chose to evade these questions instead.

Last month, when the Secretary for Commerce, Industry and Technology attended the meeting of the Legislative Council Panel on Information Technology and Broadcasting on 2 February, I noted in particular Secretary John TSANG made some remarks to the effect that judging from the correspondences and documents at that time, he believed that officers in the former Information Technology and Broadcasting Bureau had handled the proposal from a private-sector company which is beneficial to the development of the local economy in a highly professional and prudent manner, taking into account the economic conditions at that time, and there was no misconduct arising from personal interest or the status of any institution, in other words, there was certainly no question of "collusion between business and the Government" and "transfer of benefits". Certainly, Mr John TSANG was only saying that such things had not happened in the then Information Technology and Broadcasting Bureau, but what about Mr TUNG and other people in the government leadership? He did not say anything in reply.

Both the letter of reply from Mr Donald TSANG and the speech made by Mr John TSANG have not dwelled on the role played by the Chief Executive in this matter. However, no attempt has been made to clarify this point for Mr TUNG. When after Mr TUNG had met Mr LI, the public can only presume that Mr TUNG made a final decision on the Cyberport project and the project was awarded to the PCG without going through the usual open and competitive tender process.

In this jigsaw puzzle of the incident, the Government has blacked out the role played by the Chief Executive. The result is that the most important piece of the jigsaw is missing. I am therefore left with no other alternative but to invoke the powers conferred by the Ordinance to order the Private Secretary to the Chief Executive to produce before this Council the information he has in his possession in relation to any meeting held between the Chief Executive and Mr Richard LI to ascertain whether or not any transfer of benefits or collusion between business and the Government exists.

With respect to ordering the Secretary for Commerce, Industry and Technology to produce the relevant information, in the meeting held last month by the Panel on Information Technology and Broadcasting, the Government released more than 20 items of correspondences and documents, on top of those documents already released earlier. We think that more information about other aspects should also be made available before a fuller understanding can be obtained of the issue of whether or not problems exist in the decision-making process of the Cyberport project.

On 4 March 1999, a newspaper reported that Mr Donald TSANG, the then Financial Secretary, stated that there had been a Cyberport project concept for many years but no consortium was willing to invest in it. However, the Government has never produced any information on such concept before this Council. So I think that there is a need to obtain information in this respect to understand the scale and strategies of development in the original concept.

In the information submitted by the Government to this Council with respect to the negotiations between itself and the PCG concerning the Cyberport project, Chief Secretary Donald TSANG pledged in the beginning of his reply to my letter that all the correspondences and documents had been produced. But when I read through the documents, I discovered that minutes are available for some meetings but not others. In line with the prudent government practice, I believe there should be minutes as long as there are meetings. So the Government is obliged to make the remaining minutes available. Should the Government think that certain documents contain sensitive commercial secrets, I would not mind having the relevant parts removed.

Madam Deputy, the Government advanced some glamorous reasons to defend its collaboration with the PCG in the Cyberport project. Such reasons are that opportunities of development in information technology had to be seized and since the PCG was a leading player in the sector and it was willing to bear all the risks, therefore the development right was awarded to the PCG. However, there were also some other companies which were capable of undertaking the Cyberport project and they might even do better than the PCG, but the Government had never approached them, so how could it be sure that these companies were unwilling to bear all the risks?

In such circumstances, I consider it necessary to seek all information on the internal discussions held within the Government and the follow-up actions taken. When such information is made available to the Legislative Council, it would be in a position to know whether or not a unanimous view had ever been reached within the Government on awarding the development right to the PCG; if no such view was reached, what the arguments put forward then were.

In the House Committee meeting on 18 February, when Members discussed whether or not the Ordinance should be invoked to order the Government to produce information, we were grateful to Mr Ronny TONG for putting forward some very pivotal arguments. In the letter of reply written by Donald TSANG, the Chief Secretary for Administration, to me, it is pointed out that the Government had decided on 14 January 1999 to take forward the PCG's proposal as soon as possible; but when reference is made to the then Secretary for Information Technology and Broadcasting's letter dated of the same day, the letter states that "The HKSAR Government ..... has decided to take forward consideration of the proposal as a matter of priority". However, there is obviously a difference in meaning between taking forward a proposal as soon as possible and considering a proposal as a matter of priority. I do not know how the Government can justify its consideration of the two scenarios as one and the same.

If on 14 January 1999 the Government was only considering the PCG's proposal as a matter of priority and no decision had been made to take forward the PCG's proposal, then what the Chief Secretary for Administration said in his letter to me that there was no U-turn in the Government's thinking during the period from 26 January 1999 to 11 February 1999 is not correct and such argument cannot stand. Therefore, with a view to confirming the Government's position, it should produce records of its discussions with the PCG and its internal meetings to this Council. We can then determine whether or not it is consistent with the facts when the Chief Secretary said that there was already a decision to take forward PCG's decision and there was no U-turn in the Government's thinking during the period.

In the Chief Secretary's letter to me, it is said that records of internal government meetings and deliberations of the Executive Council cannot be released in the public interest and that the candour of discussions would be seriously impaired. In the present motion, I am not asking the Government to produce records of Executive Council meetings. When the Government

releases records of internal government meetings, the names of officials can be removed to allay misapprehensions on the part of the Government.

With respect to the waiving of the PCG's take-up guarantee in the Letter of Intent, in my letter to the Chief Secretary for Administration, I also asked about who had raised this idea of waiving such a guarantee and which official had eventually agreed to such an arrangement, but it is unfortunate that Mr TSANG in his reply only mentions the reasons for waiving such a guarantee and nothing is said on the process through which such a guarantee was waived. In view of this, I can only resort to asking the Government to produce all information on the waiving of the take-up guarantee.

Madam Deputy, there have been speculations over the past 10 days about the resignation of Mr TUNG. In the likelihood that Mr Donald TSANG may assume the office of Acting Chief Executive and that he may be selected as the new Chief Executive in the election to be held 120 days later, I would like to remind Mr TSANG that as he may be the supreme leader of the SAR, the public would have higher and more stringent demands on him than other people or even most of the people. Such demands would include whether or not he will release on his own initiative to the public and this Council information which in his opinion the public should have a right of access. He is also expected to collaborate with this Council sincerely so that it would not be necessary for me to move this motion to order the Government to produce such information.

At times I would hear some people in the Government say that officials should be whiter than white. But with respect to this incident, what I have seen is that the Government has been imposing hurdles all the time and refusing to collaborate with this Council and produce the information that it should produce. At this juncture, I fail to see any reason for the Government to insist on covering up and keeping confidential such information which the public wants to know. I hope the Chief Secretary will consider our views again and support my motion. I hope he can also convince other political parties and Members to support this motion so that the truth of the case can be uncovered. At this time when the Chief Secretary is about to assume a higher position as the Chief Executive, I hope he could give us a foretaste of better things to come, that he will not give us an impression that someone who will soon assume the position of the Acting Chief Executive will pose hurdles everywhere in this Council and deny the public access to the information that it is entitled to.

With these remarks, Madam Deputy, I beg to move. Thank you, Madam Deputy.

**Mr LEE Wing-tat moved the following motion: (Translation)**

"That, pursuant to section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), this Council orders the Private Secretary to the Chief Executive of the Government of the Hong Kong Special Administrative Region to attend before the Council on 6 April 2005 to produce any papers, books, records or documents in relation to any meeting held between the Chief Executive and Mr Richard LI Tzar-kai, Chairman of the Pacific Century Group (PCG), during the period from 1998 to 1999 regarding the Cyberport project, and orders the Secretary for Commerce, Industry and Technology of the Government of the Hong Kong Special Administrative Region to attend before the Council on 6 April 2005 to produce any papers, books, records or documents in relation to the following matters:

- (a) the Government's deliberations of the Cyberport project and any other similar projects before September 1998;
- (b) the negotiations between the Government and the PCG concerning the Cyberport project;
- (c) any internal discussion and follow-up action within the Government between August 1998 and May 1999 regarding the Cyberport project, including but not limited to the internal discussions and follow-up actions of the working group referred to by the then Secretary for Information Technology and Broadcasting in his letter dated 14 January 1999 to the PCG; and
- (d) the Government's decision to drop the take-up guarantee proposed by the PCG, which was originally stated in the Letter of Intent."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEE Wing-tat be passed.

**MR PATRICK LAU** (in Cantonese): Madam Deputy, to a great extent the problems surrounding the Cyberport project are attributed to the inadequate experience on the part of the Government in the collaboration between the public and private sectors, that is, on the modes of collaboration such as PPP and PFI. Government departments fail to grasp the best way of putting these into practice. But let bygones be bygones, the fact is there are inadequacies. It would be futile to engage in fault-finding and we should be more positive and examine what can best be done in the days to come.

As a matter of fact, there should be greater transparency in the partnership between the Government and the private sector. This will enable Members of this Council and the public to give play to their monitoring and checking roles. That is why I would not mind having the relevant documents released to the public as appropriate. But if documents that may be confidential are also released in their entirety, then I would have hesitations. It is because a dangerous precedent may be set and in future all documents, be they sensitive information classified as confidential, or financial arrangements which are commercial secrets or restricted internal documents, and so on, would all have to be dug out and subject to censorship and critique. If this happens, I wonder if any private sector entity will like to collaborate with the Government. So careful consideration must be made when the Legislative Council (Powers and Privileges) Ordinance is invoked again in future.

Collaboration in Public Private Partnership (PPP) mode is a global trend. As the public sector and private sector entities deliver public services or undertake a project together, both parties can make use of their respective expertise through various degrees of participation and commitment made. In the end it is expected that a complementary effect to the benefit of both parties can be achieved. However, the question is how this partnership can be brought into full play and how to avoid problems like a decline in service quality caused by the Government losing its balance or insufficient public monitoring of the private sector entities and the resultant accountability.

The Research and Library Services Division of the Legislative Council has compiled a research report on "Public Private Partnerships" recently in which analysis is made on the common practices in Hong Kong and some other countries in PPP. Discussions have been made on topics such as the extent of control by the government and the legislature, transparency and incentives for innovation, and so on, as the situations in various places are compared and

analysed. A special discussion is made on the topic of Private Finance Initiative (PFI), that is, the mode of partnership adopted in the Cyberport project. All these issues merit our in-depth study.

According to information found in the report, in the United Kingdom, the procuring authority is accountable for the performance of a PPP project. The performance of the procuring authority is subject to monitoring by the Parliament. The Public Accounts Committee appointed by the House of Commons examines the accounts of selected PPP projects and the Government will be responsible for controlling the allocation of public resources in the project. Guidelines are produced by Partnerships UK to ensure that the Parliament is fully informed of the extent of PPP commitments. A copy of specific PPP model agreements is deposited in the Parliamentary Libraries for public reference. If a private sector partner does not perform up to standard, the procuring authority concerned can reduce payments to the private-sector partner or even reserve the right to take over the project.

In the case of the United States, whilst the PPP project is overseen by the procuring authority, the relevant legislature monitors its delivery through the budgeting process and it has full control of the allocation of resources. Therefore, projects financed by public money will require the enactment of relevant legislation defining the upper limit of funding that can be made available to the procuring authority. If a private sector partner fails to perform up to standard, the procuring authority may also take over the project or engage another private sector entity to deliver project services.

In New Zealand, the Local Government Act enacted in 2002 requires individual local councils to adopt a PPP policy. Unlike the United Kingdom and the United States, there is no specific authority responsible for the promotion of PPPs. In any event, the Local Government Act empowers a local council to develop a PPP project and to determine the nature and scope of its commitment of resources to the project. For PPP projects requiring financial support from the government, an agreement must be executed between the local council and the private sector entity, specifying all terms and conditions of the partnership. The progress of the project is monitored through annual reports on the implementation of the long-term community plan of the local council which are available to the public.

In Hong Kong, the authority responsible for promoting the adoption of PPP is the Efficiency Unit. The Unit has published "An Introductory Guide to Public Private Partnerships" for the above purpose. PPP projects requiring financial support from the Government must obtain the approval from both the Government and the Legislative Council. A PPP project is overseen by the Intelligent Client Team formed under the procuring authority. However, if the project concerned is financially autonomous, such as the Tung Chung Cable Car project and the conservation of building heritage projects, an approval from the Legislative Council is not required. Though the Legislative Council is informed of the policy on private sector participation, including PPPs, in the policy address by the Chief Executive and the Budget speech by the Financial Secretary, no thorough study and discussion have taken place in the Legislative Council on the general policy issues relating to PPP as a mode of government procurement.

Madam Deputy, the report shows that in the places studied, public consultations will be conducted before the procurement process commences. Competitive bidding is adopted to enhance the transparency. But only three overseas places require the authorities concerned to inform the public of all PPP opportunities through either advertising in relevant publications or pre-tender conferences. Output requirements are listed to assist interested parties in preparing their tender documents.

For the PFI form of PPP as adopted in the Cyberport project, in countries such as the United Kingdom and the United States, due to cost benefit reasons, most unsolicited proposals will be made public to enable interested parties to submit tenders. The government will make sure that the intellectual property right of the proponent is not jeopardized in order not to impede creativity. In the United Kingdom, the single tender arrangement will be used if the proposal is unique, but the procuring authority may allow the proponent to secure licensing rights or a share in the intellectual property right so that other providers can be engaged.

In Hong Kong, the "Introductory Guide" stipulates that unsolicited proposals should go through a competitive bidding process to demonstrate value for money and to guarantee probity. The procuring authority should establish clear selection and assessment criteria and procedural guidelines to reduce corruption risk. However the Introductory Guide also permits the Government to grant a private sector entity on a non-competitive basis, an exclusive mandate to fully develop a proposal if the intellectual property right in the proposal is of

such a novelty value that a competitive market for the service does not exist. It is precisely because private sector entities may bypass the established procedures and be granted an exclusive mandate to fully develop a proposal that the Cyberport incident has happened. Therefore, I think a review should be conducted of this Introductory Guide.

Madam Deputy, the conclusion of the report points out that as Hong Kong is at a relatively early stage of implementing PPPs, there has not been any study showing the effectiveness of the monitoring mechanism of a PPP project adopted by the Government. I hope therefore that the Government can learn from its past experience and draw reference from overseas experience to formulate a set of standards that better suits Hong Kong for application.

In my opinion, there are four vital principles regarding development projects. First, the Government must make public the reasonable market price of the land when the project is developed. Second, reference should be made to overseas practice to compile simulated business cases and detailed cost analyses before public tender commences. Third, the most important thing is to make the competitive bidding fair, just and open. Fourth, equal opportunities should be given to large, medium and small enterprises to take part in projects of various scales. It is my hope that these four principles may help maintain a level playing field in Hong Kong to the benefit of the smooth progress of the projects and avoid disputes like those over the Cyberport.

Thank you, Madam Deputy.

**MR ALBERT CHAN** (in Cantonese): Madam Deputy, I rise to speak in support of the motion on seeking the relevant papers. I support the motion because the matter involves the public interest, because the papers concerned can reveal the true picture of government-business collusion, how benefits were transferred, why special treatment was given to the persons concerned and who gave special treatment to all these persons and corporations. There are many questions here, all of which involve the interests of the public and those of many consortia. As long as the information concerned is not disclosed, the whole thing will forever remain a mystery. The causes of death, so to speak, of those who died because of the incident will never come to light, will never be known.

We may look back at the history of development of the Cyberport. In a paper submitted to the Legislative Council in 1999, the Government pointed out that the Cyberport project would create as many as 12 000 jobs. And, the PCG also stated that 14 multinational corporations, namely, Cisco, CMGI, Hewlett-Packard, Hikari Tsushin, Hua Wei, IBM, Legend, Microsoft, Oracle, Portal, Silicon Graphics, Softbank, Sybase, and Yahoo!, had signed letters of intent to become anchor tenants. It was also claimed that 105 local and overseas companies would co-operate with PCCW and had indicated interest in becoming Cyberport tenants. But according to a report of the Cyberport, five years later, in 2004, there were only 33 tenants employing a total of some 2 000 people. I must add that before they moved to the Cyberport, many of these tenants in fact used to rent their offices in commercial buildings elsewhere in Hong Kong, and their move was largely induced by the low and preferential rental rates offered by the Cyberport. These were not new companies, and they were not attracted to the Cyberport by any appeal on establishing a silicon valley.

Of all the multinational corporations that signed a letter of intent in 1999, only Microsoft and Sybase are now tenants of the Cyberport. Some new lease agreements may have been signed recently, so I hope that the Secretary can give us some additional information. In any case, it is still true that the very ambitious plan of establishing a silicon valley in Asia has largely fallen through, with the causes of death yet to be investigated. Why did the Government believe such lies? All this has turned out to be big lies. Most of the corporations that indicated an interest in leasing offices in the Cyberport have never signed any lease agreements.

Besides, we also need to find out who the beneficiaries and victims of the Cyberport project have been. Looking back, we will see that the greatest beneficiary of the project has been the major shareholder of PCCW, whom everybody knows. A look at the stock prices of PCCW will tell us why. Before 1999, its stock price was most of the time around \$10. Then, in May 1999, when the construction of the Cyberport was about to commence, the stock price started to rise, from \$3.3 on 4 May to \$80. Afterwards, it continued to soar, and on 15 February 2000, it reached the peak of \$142.5. But from then onward, it almost plummeted to the levels of penny stocks. The recent situation is a bit better, as it has risen to \$4.4.

Why were there such drastic rises? It was because someone was well-versed in financial techniques and manipulating the mass market. And, because the Government even "pitched in" and gave a "helping hand", the stock price literally rocketed. When the stock price was rising, many individual investors, that is, the ordinary people of Hong Kong, hastened to buy the stocks of PCCW, because they believed the lie told by our Government and the consortium that it was an IT stock, because they believed the Hong Kong Government and the consortium, thinking that since many corporations had already signed letters of intent to become Cyberport tenants and would really do so, the project would have very bright prospects. But in the end, what they saw was the tragic plummeting of the stock price.

Many ordinary people in Hong Kong, especially those of older generations, like to purchase stocks for their post-retirement living. Many of them have bought the stocks of the former Cable and Wireless, the Hong Kong and Shanghai Banking Corporation, the CLP Power Hong Kong Limited, and so on. For decades, people of older generations in Hong Kong have been doing so, and I suppose the Secretary should know only too well. However, the agreement on the Cyberport has changed everything. Many people have built up their confidence in market operation and the Government over many decades, but suddenly, they find that their confidence has been misplaced and the price is the total loss of their pension money. Why has this happened? The Government is largely responsible, and it owes history a clear explanation.

Let us talk about the changes in stock price again. Who actually realized their stocks in the largest quantities, especially after the price rises? Who managed to sell their stocks for huge profits? Many of them were major shareholders of PCCW. The silicon valley as originally conceived has turned out to be a "valley of death" for many ordinary Hong Kong people. The silicon valley as publicized by the Government and PCCW has become a mass grave for the ordinary people of Hong Kong. A coroner's investigation has yet to be carried out to ascertain the cause of death.

Since the end of 1999, the Cyberport project has been altered beyond recognition and reduced drastically in scale. It has literally become a project with messy books and a property development in disguise. Gone are all the promises and rosy pictures that the people were offered. However, those who sought to make huge profits through their financial techniques have already managed to line their pockets. They may now be enjoying themselves in

various scenic spots or holiday resorts, sipping vintage wine and savouring caviar. But many individual stock investors are highly discontented because they have lost all they have. Those who have retired may even have been plunged into financial hardship and helplessness. That being the case, I think that if Members or the Government still object to the disclosure of information, they will let individual stock investors down and owe the Hong Kong public an explanation.

Some may well say that things of this nature have been happening all the time in the course of Chinese history. In the imperial times, people were buried alive with emperors. In Egypt, Pharaohs constructed their Pyramids. Can we not see that the Cyberport in Hong Kong is just like a Pyramid? In the construction of a Pharaoh's Pyramid, workers were all sent inside, and all of them were buried alive inside the Pyramid as its stone door descended in the end. The case of the Cyberport in Hong Kong is very similar.

If we still think that Hong Kong is a civilized society, and that the Legislative Council is a place of public accountability and a responsible legislature, then there will be no excuse for us to vote down this motion on demanding the Government to disclose the relevant information. I hope that Members can restore the reputation of the Legislative Council and do justice to the ordinary people of Hong Kong. That way, through the disclosure of the information concerned, the cause of death of many innocent victims can be ascertained, and justice can be done to them. Thank you, Madam Deputy.

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

**MR RONNY TONG** (in Cantonese): Thank you, Chief Executive. I am sorry. It is just a slip of the tongue. *(Laughter)* Thank you, Madam Deputy.

Madam Deputy, Secretaries and Honourable colleagues, it is highly probable that after all these seven years, the era of TUNG Chee-hwa, sometimes sarcastically called the "Turbulent Reign of TUNG", may come to a close this weekend. But the imminent ending of the "Turbulent Reign of TUNG" cannot possibly obliterate the incontestable fact that since his assumption of office seven years ago, the Chief Executive has set many undesirable precedents in Hong Kong. One of all these undesirable precedents, the granting of land by the SAR

Government in 1999 to the PCG for the development of the Cyberport, has come to be regarded by the public as the most classic example of "collusion between the Government and business" under the administration of TUNG Chee-hwa.

On 3 March 1999, the then Financial Secretary, Mr Donald TSANG, announced all of a sudden in the Budget that the Government would develop a "Cyberport" in Hong Kong through PPP. And, he also proposed to award the project to one single company — the PCG, which had not yet acquired Hong Kong Telecom, and which was still very little known.

Then, at a subsequent Legislative Council meeting, in marked contrast to his characteristic irresolution and refusing to follow the established procedure of open tender, Mr TUNG Chee-hwa announced that for urgency reasons, a premier land lot in Pok Fu Lam would be offered to the PCG by way of a private treaty grant for the construction of luxurious apartments and the development of the Cyberport. This led to huge public outcries at that time, but in spite of public opposition, the SAR Government adamantly refused to delay the project and conduct open tenders and auctions.

Article 64 and Article 73 of the Basic Law provide that the SAR Government shall obtain approval from the Legislative Council for public expenditure. The spirit behind these two Articles is that since the Legislative Council is the representative of the people in monitoring the Government's utilization of social resources, the executive must hold itself accountable to the Council in this particular respect.

The Cyberport is a public infrastructure meant for promoting the development of information technology (IT) in Hong Kong. The defence advanced by the Government was that since the project would not involve any cash expenditure, approval from the Legislative Council could be dispensed with. We maintain that such a defence is an insult to the provisions of the Basic Law.

After the passage of five years, Secretary John TSANG recently published an article in the press, attempting to explain to the public why the Government had made a private land grant to the PCG for the development of the Cyberport years back. But the article failed to dispel public anxieties, and worse still, the papers submitted by the Government to the Legislative Council even induced yet more doubts. Of all these doubts, four are most notable: First, why must the

Cyberport be a mixed development project? Members should all remember the contents of the papers submitted by the Government, which reveal that the proposal once advanced by the property sector can actually guarantee that auctioning the residential parts of the project will enable the Government to obtain at least \$8 billion. After deducting \$5 billion in costs, there will still be a net profit of \$3 billion. This can obviously achieve the objective of high returns and low risks and is in compliance with the established procedure. However, without any thorough consideration, the Government simply hastened to reject the proposal, saying that it was a departure from the overall concept of the Cyberport being a mixed development project. We do not think that such an explanation can be tenable. The reason is that the Cyberport is supposed to be an infrastructure for the promotion of IT in Hong Kong, and as such, it should have nothing whatsoever to do with Residence Bel-Air, which is merely a luxurious property development for the upper-middle classes of society — unless, of course, the Government really wanted to offer this premier land lot to the PCG as a giveaway. If this was not the intention of the Government, why then must the lot be handed over to one single property developer for mixed development?

The second question is: Why must the PCG be selected? Even if there was really a need for mixed development, can any special reasons be cited to justify the Government's rejection of open tenders throughout? Why was it impossible to ask the PCG to compete with other developers in open tenders? Established just a few years before, the PCG was at the time still very little known, and neither could it be considered an experienced developer or famous IT company. The only special thing about it was that it was a company set up by one of the sons of a business tycoon in Hong Kong. Nor was the idea of developing a "Cyberport" anything so novel and original at the time, because as a matter of fact, such an idea had been discussed in many other places since a long time before. The only thing was that this idea was first raised in Hong Kong by the PCG.

Third, I wish to talk about the five queries of KWONG Ki-chi. Actually, Mr LEE Wing-tat has already talked about them, and quite a number of Members have also questioned the Government on them on various occasions. Why have all these five queries never been answered? Did the Government make its decision before these were put forward? Or, did it do so only afterwards? If the latter was the case, why were there no answers to the five queries? If the former was the case, why was there no review of its decision?

Fourth, why did the Government strike out the take-up guarantee? This is beyond our comprehension too. The Government has always insisted on the need for reducing risks. But the deletion of the PCG's take-up guarantee would probably run counter to this avowed objective. Was there any transfer of benefits?

Doubts similar to the four mentioned above indeed abound. Regrettably, however, despite the repeated requests of Members, the Government has all along refused to disclose all papers and records relating to this incident. It has all along refused to answer people's queries about "collusion between the Government and business" or "transfer of benefits".

Under the Legislative Council (Powers and Privileges) Ordinance, the Legislation Council can order government officials to attend before it to produce any papers, books, records or documents. This power is meant to better enable us to exercise our very important constitutional power of monitoring the Government. In the past, this power was exercised on a number of occasions, including the opening chaos of the new airport, the short-pile incident, the Kwun Lung Lau landslide and the Government's dismissal of Alex TSUI and Laurence LEUNG.

Land is the most valuable resource of Hong Kong. By deviating from the usual procedure in the Cyberport project, that is, by adopting a private land grant to bypass the Legislative Council, the Government has certainly set a very bad precedent. Worse still, the Government has kept on employing the very same tactic, using private land grants as a means of co-operating with the business sector in the construction of public facilities, so as to avoid monitoring by the public and the Legislative Council. The West Kowloon Cultural District development is one example. The Penney's Bay Rail Link is another. In this latter example, the Government has proposed to give up its shareholder entitlement to a dividend of \$798 million in exchange for an agreement with the MTR Corporation Limited on the construction of the Penney's Bay Rail Link without any government funding.

When we in this Council are faced with all these attempts to expend an increasing amount of our resources on public facilities without any approval from the Council or the provision of any information, how should we react? Should we just quietly resign ourselves to the reality, forgetting all about our duties as Legislative Council Members? Or, should we disregard the

Government's repeated refusal to produce the relevant papers and launch thorough investigations, so as to enable the public to see the truth? Are we Legislative Council Members with a sense of responsibility? The voting results today will give a clear answer to this question.

Thank you, Madam Deputy.

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

**MS AUDREY EU** (in Cantonese): Madam Deputy, I speak in support of the motion mainly for two reasons: First, the Legislative Council should do its utmost to understand this incident in order to examine whether this controversial project is in the public interest; and second, the Government must have a very high degree of transparency.

Particularly, with regard to the controversies revolving around the Cyberport project, all the procrastination and stalling since 1999 have been a major target of criticism against the Government's policy blunders. Why do we always cite this example? Apart from the reason that this project had departed from the Government's established practice of open tender, it is also because the Government has not fully disclosed all the relevant documents. That is why the doubts and suspicions have yet been dispelled six years later.

At the end of last year, Secretary John TSANG published an article in a number of newspapers to point out that the Cyberport project had not involved any collusion between business and the Government or transfer of benefits. The Government also made public 24 correspondences and documents. However, these 24 documents still cannot provide a satisfactory answer and worse still, they have, to a certain extent, given rise to more doubts and suspicions. As we can see from newspaper reports and discussion, what the Secretary did has caused even more problems, and this also explains why Mr LEE Wing-tat proposed this motion today.

Obviously, there is a complete lack of transparency in the way with which the Government handled the controversies about the Cyberport. When public criticisms were most severe, the Government still put forward many reasons in defence, including using "commercial secrets" as a shield and hide behind it.

Madam Deputy, I would like to cite a recent example in relation to the Cyberport project to prove why the lack of transparency in the work of the Government will cause greater public concern. A financial analyst named Mr David WEBB — I think you, Madam Deputy, may have heard his name — is concerned about the three limited companies established by the Government to oversee the Cyberport project. He, therefore, wrote to the Government to seek information in accordance with the Code on Access to Information. He wrote to the Office of the Government Chief Information Officer, and this Office, in accordance with the Code on Access to Information, replied only after 21 days. In the replying letter, it was said that as the relevant information would be made public in 60 days, it was unnecessary to provide the information to Mr David WEBB. Mr David WEBB then made some calculations, and as the meeting of the Legislative Council would be held in January, there would be a period exceeding 60 days from the date of Mr David WEBB's letter to seek information. He, therefore, decided to pursue the case and at the same time lodged a complaint with The Ombudsman against incomppliance by the Office of the Government Chief Information Officer with the Code on Access to Information.

Shortly afterwards, the Government finally produced some documents to the Legislative Council. The documents were submitted to the Legislative Council on the 59th day from Mr David WEBB's letter, barely complying with the 60-day requirement. Nevertheless, the information submitted by the Government was not that sought by Mr David WEBB. According to the Government, the accounts of these companies could not be fully disclosed because the director's reports and financial reports of these three companies contained some commercially sensitive information and given the confidentiality agreement signed by the Government with the PCG. What the Government has finally provided is the so-called sanitized accounts to which some deletions have been made.

Since public coffers are used to develop a PPP project, why could the Government have signed a confidentiality agreement and said that certain information could not be disclosed and worse still, that the information could not be disclosed because they are commercial secrets? Madam Deputy, this reminds me of the past incident of inviting the Rolling Stones to perform in Hong Kong for the Harbour Fest. The same had happened, for it was also said that a contract had been signed to promise that no information could be disclosed to Hong Kong people. So, we can see that even though something is done using public coffers, the Government could still tell us that as a contract was

signed with a third party, some information had become commercial secrets and so, the information could not be disclosed. In other words, it means that even though there is the Code on Access to Information in Hong Kong, the Government is not obliged to provide the information to us.

In fact, this recent example relating to the Cyberport project has demonstrated to all Members of the Legislative Council as well as members of the public that very often, when we ask the Government to provide information, it is like "squeezing toothpaste out of the tube", and the Government will consider providing the information only when it feels the urgency. Some colleagues said that while they agreed that the Cyberport issue warranted concern, it did not really matter because the Audit Commission may consider or investigate into this incident and so, no follow-up action is required.

Madam Deputy, I must take exception to this view because, even though the Audit Commission will follow it up, it does not mean that the Legislative Council should not exercise its power, and what the Audit Commission will do generally is to conduct value-for-money audits. However, the concern of the Legislative Council on the Cyberport incident today covers a far broader scope than value-for-money audits, and we do have reasons to look into it in greater depth, in order for the public to make a judgement.

So, Madam Deputy, I hope that when Honourable colleagues of the Legislative Council cast their votes today, they will consider the fact that the Legislative Council (Powers and Privileges) Ordinance has actually empowered Members of the Legislative Council to perform our duties, in order to allay public concern and answer the questions that have accumulated for six years. I hope that when colleagues cast their votes today, they will not refuse to exercise even the powers conferred on us in the Legislative Council, which will only tie our own hands. I hope that Members will support this motion of Mr LEE Wing-tat in the vote later. Thank you, Madam Deputy.

**MR CHIM PUI-CHUNG** (in Cantonese): Madam Deputy, today's debate is similar to the motion on constitutional reform proposed in this Council in that the conclusions regarding the elections in 2007 and 2008 are foregone. I support today's motion in principle and this is what I will do in spirit at the least.

Today's motion touches on the operation of the entire Government and the Executive Council. As we understand, apart from the Chief Executive, there are at present 22 Members in the Executive Council and we also know that according to the Basic Law and the Laws of Hong Kong, if put in a nice way, these 22 persons are the advisors of the Chief Executive, but if put not so nicely, they are his employees.

We understand that the SAR Government operates under a system of collective responsibility. Each person shares the responsibility over the success or otherwise of any decision and cannot shift the blame to any Secretary of Department or Director of Bureau, or to the Chief Executive for that matter. We know that to Hong Kong people, the Cyberport is a rather dubious project and we also understand that in 1998, after the so-called Asian financial turmoil, Hong Kong was eager to make some achievements and wanted to forge ahead to become a centre of high technology among the regions, countries and cities in Asia. The Government was also misled by factors that were quite uncertain, therefore, it awarded this project to the company concerned. If the Government has nothing to hide, then it should submit the full set of documents to Members of this Council for assessment, as it did in the case involving Hung Hom Peninsula. We know that in the past, the Government did a lot of things that were rather unjustifiable and convincing and it can also be said that the Government did lose control in many aspects. For example, in 2002, the Legislative Council passed a bill to cut the salaries of civil servants by 3% for two years, cumulating at a total of 6%. The bill was passed by the Legislative Council and was submitted to the Standing Committee of the National People's Congress (NPCSC) in Beijing, which accepted it. Had the NPCSC in Beijing considered this piece of legislation enacted by Hong Kong to have contravened the Basic Law or carried any uncertainties, it would have returned it to the Legislative Council in Hong Kong without making any amendment. Since it was willing to accept the bill, this clearly indicated that the piece of legislation concerned was in order. Under these circumstances, certain Judges in the Court of Appeal in Hong Kong went so far as to rule by two to one that the relevant piece of legislation was suspected to have contravened Article 100 of the Basic Law.

Madam Deputy, why did I raise this matter again? Because I want to show that this Government in fact says that black is white and nobody is willing to shoulder any responsibility. Although Members of the Legislative Council had formally passed the relevant piece of legislation, a regional court even dared to dispute it. In that case, is it necessary for the bills passed by the Legislative

Council in future to be ratified by the Court? If the Court of a regional government can go so far as to challenge the interpretation of the law by the Central Government, it seems what cannot be changed can also be changed.

A lot of things happened probably because the people in the Executive Council had their own private agenda. It is not surprising if some people had misled the Chief Executive who was not familiar with the operation involved, and some people wanted to gain some benefits, political capital or other types of capital. Therefore, Madam Deputy, I believe that even though the motion today will probably not be passed, the Government should still co-operate properly and produce whatever information it has. However, personally, I respect the structure and composition of the Executive Council and if highly confidential information on governance is involved, at the end of the day, it is secret information and the Executive Council also has its policy-making power.

Concerning the many so-called chairmen or conveners of the numerous committees in the Legislative Council, you may congratulate yourselves on assuming such capacities, however, many Secretaries of Departments or Directors of Bureaux have in fact made the arrangements for whom they hope will assume the relevant posts. You are just following their orders unawares and serving their ends. Therefore, I hope that Honourable Members of this Council will really come to your senses and devote your time and wisdom to addressing the real concerns of Hong Kong people. Of course, the position of the Central Government is that the executive should assume a leading role and in fact, the so-called separation of powers is practised in Hong Kong. If we cannot do things that are meaningful or constructive, we will be forsaken by the public in disgust sooner or later. Certainly, I also hope that the Secretaries of Departments and Directors of Bureaux in the Government can engage in formal communication and co-operation and do not adhere to bureaucratic practices and appear as if they were absolutely in the right when trying to persuade us but conversely, try to pass the buck when we seek their assistance. If they do so, how can the executive and legislature achieve better communication?

We trust that after this week, another situation will emerge in Hong Kong next week. Such a situation will lead to an even more chaotic situation. Later, it is possible for me to support this motion in voting, however, Madam Deputy, I will most likely abstain.

**MR LAU KONG-WAH** (in Cantonese): Madam Deputy, as a matter of fact, this topic has been discussed in the House Committee and Members have expressed their views, but they may like to talk about them again today.

With respect to the Cyberport incident, personally I think that even now, the public still has some queries and for these the Government is obliged to clarify. As Members of the Legislative Council, we are also obliged to follow up the incident. Having said that, there are many ways of following up, one of which is by a motion moved by Mr LEE Wing-tat. I have said before that if this matter is to be pursued, it should be done in a professional and comprehensive manner so that we can get the true picture.

I notice that in his letter dated 15 February to the House Committee, Mr LEE Wing-tat made seven demands, that is, he demanded that the Government should produce seven related documents and records. But when it came to the House Committee, he said all of a sudden that one item should be removed from the list and the Executive Council would not be required to produce information. At that time I was puzzled. Why? The information from the Executive Council is the most important of all and it is the most interesting part as well. If Members would look at the Discovery Bay incident, they will know that certain issues were pursued after a lead was provided by the recommendations made by the Executive Council at that time. Now Mr LEE Wing-tat further cuts the number of documents demanded to only four and this list of documents is getting shorter and shorter.

I think that this kind of piecemeal investigation may not be the best approach to take. Of course, some people may say that these four documents should be demanded in the first place and if it is found that the information is not sufficient, then the fifth item can be demanded. But that will drag the matter on forever. So at that time I made a counter-proposal. I hoped that a request could be made in the House Committee to ask the Audit Commission to conduct a full-scale and professional investigation. This sort of investigation has been done before. At that time some Members thought that my recommendation might contravene the Basic Law, for it was provided in the Basic Law that the Audit Commission had its own independent scope of work. But as far as I know, any member of the public may write to the Audit Commission to ask it to conduct an investigation and so there is no question that the Basic Law would be contravened in any way.

However, as Honourable colleagues have made this proposal, I will respect their views. Therefore, I have written a letter to the Audit Commission in my personal capacity in the hope that it can conduct a full-scale, in-depth and really professional investigation. At the end of the day, the findings of the investigation should be submitted to this Council. For seven years I have served on the Public Accounts Committee and I know very well that the Audit Commission will read those most important and interesting papers from the Executive Council. Then it will take out the most significant and appropriate parts and write them into the report for follow-up action by Members. I think that this may be a more appropriate course of action to take. Now Mr LEE Wing-tat does not even want to seek Executive Council documents. I think something is missing. Therefore, I have written a letter to the Audit Commission in the hope that we can follow the matter up in this way on behalf of the public.

It remains of course, that I am aware of the fact that the Audit Commission has said on a public occasion that the project has not yet completed and so we may need to wait for two or three years. If so, one way is to start with some parts and proceed with others later. Or we may wait for two or three years until everything is completed. Some Members may think that this is only a very short time and so instead of waiting for two or three years, immediate action should be taken. Please do not forget that the Discovery Bay incident happened more than two decades ago and even today we have brought it up for discussion.

So speaking from our part, we have written to the Audit Commission to ask it to conduct a full-scale investigation and to submit the report findings to this Council for follow-up action. We think that this is the most appropriate course of action to take. In view of this, we are unable to offer our support to Mr LEE Wing-tat's motion.

Thank you, Madam Deputy.

**MR ALBERT HO** (in Cantonese): Madam Deputy, I would like to bring your attention to the absence of a quorum now.

**DEPUTY PRESIDENT** (in Cantonese): Will the Clerk please count the number of Members and see if a quorum is present or not.

(The Clerk, after counting the number of Members, confirmed that a quorum was not present)

**DEPUTY PRESIDENT** (in Cantonese): Since a quorum is not present, will the Clerk please ring the bell to summon Members back to the Chamber.

(The President resumed the Chair while the summoning bell was ringing)

(After the summoning bell had been rung, a number of Members returned to the Chamber)

**PRESIDENT** (in Cantonese): A quorum is now present. Mr Albert HO, you may speak.

**MR ALBERT HO** (in Cantonese): Madam President, the motion proposed by Mr LEE Wing-tat under the Legislative Council (Powers and Privileges) Ordinance today is a solemn, legally-binding and yet controversial motion. It is precisely because the motion is controversial that I very much hope that there is a sufficient number of Members to form a quorum here to listen to this debate. I also hope that colleagues who oppose Mr LEE Wing-tat's motion can present clear and convincing arguments to tell us why we in the Legislative Council should not perform the duty that we should perform.

Madam President, I believe Members do know very well the background of this motion today. It is because the Chief Executive had, in his policy address, departed from his normal behaviour and vociferously expressed opposition against collusion between business and the Government and transfer of benefits, albeit the Chief Executive appeared to be going back on his words the next day in denying the existence of collusion between business and the Government and even suggesting that any person who knows of such cases should report to the Independent Commission Against Corruption. But subsequently, through an article written by Secretary John TSANG in newspaper, the Government defended its handling of the Cyberport incident and

even criticized the Legislative Council for not performing its responsibilities and duties. What is more, the Government even linked the matter with the West Kowloon project, alleging that the Legislative Council has failed to give many opinions that it should have given over the years, and that insofar as the West Kowloon project is concerned, the Legislative Council has raised issues over which there was no dispute before.

(THE PRESIDENT'S DEPUTY, Ms Miriam LAU, took the Chair)

During the Question and Answer Session after the delivery of the policy address, Mr LEE Wing-tat particularly cited this well-known example of Cyberport to challenge the Chief Executive and demanded an explanation from him. But the Chief Executive still responded in a way consistent with his usual style, as he had just hummed and hawed, and no one knew what he was up to. Later, the Government selectively produced 24 documents to make a disclosure, so to speak, in an effort to defend the Government's position. But regrettably, the disclosure of those 24 documents has led to more questions than the questions such disclosure can answer.

In fact, Madam Deputy, at the meeting of the relevant panel, we already asked a lot of questions and extensively aroused concern in the community. In its letters, the PCG went to great lengths to persuade the Government into accepting its proposal, that is, awarding the Cyberport contract to the PCG by way of private treaty grant and to allow the PCG to finance the project by land development projects. The PCG strongly argued that the Government lacked talents in this field and knew nothing about information technology and so, it naturally lagged behind the global trend of development and also lagged behind Singapore and many other places. For this reason, the PCG considered that the Government should co-operate with a company which is well-versed in this field of technology. Certainly, the PCG would think that it is the torchbearer or pioneer in this field and so, it held that the Government must appoint the PCG as its partner in the development of the Cyberport and the ancillary property projects.

Indeed, we repeatedly asked the Government on that day that if it did accept this view of the PCG — just as Chief Secretary Donald TSANG pointed out in his letter in reply to Mr LEE Wing-tat (and I quote): "Quite simply, there

was insufficient expertise within the Government at that time to plan and build a Cyberport that would meet the high specifications of such a project. It was in these circumstances that the Government decided to commence negotiation with PCG, the originator of the Cyberport concept". Of course, negotiation was actually quite unnecessary, for the Government had decided to award the project to the PCG well before the official announcement.

If expertise and professionals were really lacking within the Government for carrying out such a project, on what basis could the Government come to view that this project proposed by the PCG was the best and the most feasible project? On what basis could it conclude that the PCG was the best, the most desirable and most trustworthy partner? The PCG stated repeatedly — I broke into laughter after reading those letters, for the PCG was indeed teasing the Government in affirming that the Government did not even have the ability to assess the tenders. I do not know why the Government could still stand the humiliation and accept these criticisms and really think that it did not have the ability to assess the tenders. Since the Government did not even have the ability to assess the tenders, it would have to conclude that the sponsor of this proposal was the best, the smartest leader or pioneer with the most foresight and professional knowledge. The Government, therefore, awarded the project to the PCG, and that was how the decision was made.

Madam Deputy, do Members consider what I have just said ridiculous and laughable? If they do, then we have more reasons to find out why this happened. We can only look at the Government's internal deliberations, internal feasibility studies and internal financial analysis before we can have an idea of the thinking of government officials.

Besides, Madam Deputy, Mr KWONG Ki-chi (the then Secretary for Information Technology and Broadcasting) issued a memorandum on 26 January in which five questions were asked: First, why was the PCG chosen as the partner in the development of the Cyberport? Second, why was it not put to open tender? Third, why was Telegraph Bay chosen to be the location of property development? Fourth, why should the development of the Cyberport be supported by property development? Fifth, why should it be this sector, that is, the information technology sector?

We would like to ask the Government this: Since the former Secretary Mr KWONG Ki-chi did ask these very good questions on 26 January, how did the

Government answer these questions? What thinking process had the Government gone through, what analysis had it made, and what professional opinions had it obtained for it to come up with an answer that could ultimately address all the five questions of Mr KWONG most unequivocally? This, I do not know. On the surface of it, as of 21 February — we thought at the time that substantial changes seemed to have taken place during those 15 days — these five questions actually did not need to be addressed, because there were already answers to them. At that time, we did think that there was black-box operation during this 15-day black hole period and the outcome was ultimately to the benefit of the PCG, because the Government had purposely chosen the PCG as its partner.

But turning back to the letter from Chief Secretary Donald TSANG (a point also made by Mr Ronny TONG), we found that the Government had actually made a decision before 26 January. In the letter, it was written: "The decision to take forward PCG's proposal as a matter of priority is evident from the then Secretary for Information Technology and Broadcasting's earlier letter dated 14 January 1999 to PCG." Let me also quote the preceding part of this paragraph. It says: "Before the Government handed over the discussion note to PCG on 26 January 1999, we had considered these five issues thoroughly and, for reasons (a)-(e) above (which refer to the five questions stated by me earlier), had clearly decided that the negotiation with PCG should continue on the basis of a PPP model".

So, the question now is not what happened during those 15 days, but what happened before 26 January. As for what had actually happened, KWONG Ki-chi was not in the know and in other words, the then Secretary in charge of this project was not in the know, and that was why he had been so silly as to ask those five questions. Therefore, I must ask: What was the decision-making mechanism of the Government at that time? Was there a special decision-making mechanism or channel in which KWONG Ki-chi was not involved, or was Donald TSANG the only person who knew about it, or could it be that not even Donald TSANG was in the know and only TUNG Chee-hwa knew about it? All these are precisely questions that we must ask.

In fact, at that time, it was widely known that the Chief Executive had personally met with Mr Richard LI on at least two occasions for this project. One of these occasions may be his visit to Israeli together with Mr Richard LI. It transpires that this very important decision might be reached during their

meeting on that occasion when they were having tea or perhaps a glass of red wine. Once an order was given, Donald TSANG must execute it; and once an order was given, KWONG Ki-chi must shut up.

Today, we may be facing the same situation. But Madam Deputy, what I have said may not be fair, and if I am being unfair, colleagues please give the Government a chance to do justice to itself by proving that I am wrong. Today, Madam Deputy, we need to know the truth, the whole truth. If we do not know the truth, we cannot force the Government to take stock of experience and learn a lesson. Whether we should pursue the responsibility issue is already another question. Whether the creditability of Chief Secretary Donald TSANG will be affected or even whether it would eventually render him unable to become the Chief Executive is also another question. We are not interested in considering these questions for the time being, but we need to know the truth.

Madam Deputy, Mr Patrick LAU said earlier that we should let bygones be bygones, and that really shocked me. In fact, everything that has happened becomes bygone, and does it mean that we do not have to talk about anything anymore? He said that many things involved are confidential. Then I would like him to ask Mr Abraham SHEK, the convenor of the Alliance to which Mr LAU belongs, about this. He had been very active when he was a member of the Select Committee, and he had worked with us to investigate into the short-pile problem in public housing estates. Was that a special case in which he could take part for the purpose of investigation? So, all this is, in fact, the duty expected of us as Members of the Legislative Council. This is what we should do.

In this very important debate today, I hope that colleagues who oppose the motion can speak, particularly Mr James TIEN who is not in the Chamber at the moment. He said that he would come back and speak later. I hope he will really do so. I very much agree with what he has said — not that I agree with it, just that I have a deep impression of it — he said that Chief Secretary Donald TSANG has "covered the sky with one hand", or manipulated the situation single-handedly, insofar as the West Kowloon project is concerned. Let me tell him now that if we do not support the passage of this motion today, then Mr James TIEN, as well as colleagues of the Liberal Party and the Democratic Alliance for Betterment of Hong Kong (DAB) would be covering up the sky with

their many hands and eventually, we cannot see the sky anymore. Nor can we see the true facts.

Mr LAU Kong-wah said that many things had not been done very well and they were not handled satisfactorily. But it is still worthwhile for us to look into it. Why shouldn't we? Whether the Audit Commission will look into it is beyond our control. But disregarding whether or not the Audit Commission will take up the case, the Legislative Council should still look into it. I have listened to the speeches of the representatives of the DAB for a long time, but I still cannot hear their reasons for opposition. So, I hope that colleagues can support today's motion according to their own conscience and will not make an anti-intellect decision ..... *(the buzzer sounded)*

**MR KWONG CHI-KIN** (in Cantonese): Madam Deputy, on the motion moved by Mr LEE Wing-tat today, I would abstain.

Let me perhaps review the developments in relation to Mr LEE's motion. At first, Mr LEE put forward this motion in the House Committee and one of the demands he made was to seek papers from the Executive Council. Because of this, I could not lend him my support. It is because the Executive Council is bound by confidentiality which is an important constitutional notion that cannot be broken lightly. Then Mr LEE said that this demand could be withdrawn and papers of the Executive Council would not be sought. I then said that I would consider supporting the motion.

However, upon checking the law books, I found out that I could not lend my support to Mr LEE's motion. As evident in the speeches made by many Members earlier and that has also been my impression all along, that is, the Legislative Council (Powers and Privileges) Ordinance confers on the Legislative Council great powers, that it can compel the Government to produce papers or testify before it. But after looking at the provisions, I found that the laws have still left the Government a lot of room to manoeuvre.

Whether or not the Legislative Council can compel the Government to do this is open to great doubts. The whole piece of legislation hinges on a penalty, that is, the penalty for contempt under section 17 of Chapter 382 of the Laws of Hong Kong. The section provides that any person who disobeys any lawful order made by the Legislative Council requiring him to do something, such as to

produce some papers before the Council, commits an offence and is liable to a fine of \$100,000 and to imprisonment for 12 months. This is a serious criminal offence.

But the section does not carry much meaning for the Government, for under section 26, it is provided that no prosecution for an offence under the Legislative Council (Powers and Privileges) Ordinance shall be instituted except with the consent of the Secretary for Justice. So as the Cyberport incident involves top officials and if the incident is the result of a unanimous decision of these top officials, it would be hard to imagine that the Secretary for Justice would give her consent to prosecute these top officials.

Therefore, I think it would be hard for me to support Mr LEE Wing-tat's motion. My major consideration is that I hope Honourable colleagues can consider the impact of this on the prestige and credibility of the Legislative Council. If what we do seems to aim at compelling the Government into doing something and in view of section 26 which I have just cited, that is, consent must be obtained from the Secretary for Justice before prosecution can be instituted, then we would not be able to compel the Government into doing anything. If we try to do so, that would impact on the prestige and credibility of the Legislative Council.

In view of this, we had better move a simpler motion as that will have the same meaning. The motion we may move will be moved in the hope that the Government will do the same thing and the Government will be compelled in the same way. However, due to the stipulation in section 26, that is, the consent of the Secretary for Justice will have to be obtained before prosecution can be instituted, the offence of contempt as provided for in section 17 is only empty talk.

Madam Deputy, this is a rather difficult decision. In principle, I support the Legislative Council in demanding the Government to produce more documents. I am for this direction. But owing to technical reasons and taking into account the implications on the prestige and credibility of this Council, I will abstain today. Thank you, Madam Deputy.

**MR SIN CHUNG-KAI** (in Cantonese): Madam Deputy, I find the arguments advanced by colleagues of the DAB and the Hong Kong Federation of Trade

Unions (FTU) utterly strange. First of all, I would like to say a few words on Mr LAU Kong-wah's comment that it is best for an investigation to be conducted by the Audit Commission. After we have obtained the documents, we have to do our own work, and after the Audit Commission has obtained the documents, they will only do the work of the Audit Commission. In fact, we will be doing our own work separately. It is not the case that after we have done what we should do, the Audit Commission would not be able to carry out its work.

Mr LEE Wing-tat did not ask for the documents of the Executive Council only because he wished to lower the threshold and to seek common grounds while preserving differences, in the hope that he can obtain the support of Members. But if Members cannot even support this motion with a lowered threshold, then I will be rather disappointed.

As for the point made by Mr KWONG Chi-kin, I think a true man should have the courage to persevere with his cause even though he knows that it is impossible to succeed. But if we do not even have the courage to do so, I will be very disappointed. I think it is most important that we should have the determination. Since there is something that we think we should do — we all think that this is what we should do, and Mr LAU Kong-wah and Mr KWONG Chi-kin also said earlier that this incident was not handled in the most desirable way and that not everything has been made unequivocally clear and so, disclosure and explanation are warranted. But no concrete proposal has been mentioned, or no concrete proposal has been made as to what the Legislative Council can do.

In fact, insofar as this motion today is concerned, I think what we need to rethink is the procedures involved in large-scale development projects carried out by the Government. Certainly, Mr Patrick LAU has earlier on explained some of his views on this. This motion today involves two key figures — TUNG Chee-hwa and Donald TSANG. One is the outgoing Chief Executive and the other is rumoured to be the next Chief Executive. Both are key figures in the Cyberport incident. But who has been made the scapegoat? We do not know. We have been criticizing TUNG Chee-hwa for six years, and we certainly feel that he might be involved in collusion between business and the Government and illicit deals. He might have privately awarded the development project of Residence Bel Air — not the Cyberport — to a particular consortium without putting it to tender, allowing the consortium to undertake property development projects there. Back in 1998 when the Financial

Secretary was preparing the Budget (Members will understand that the economy in Hong Kong was indeed very bad during the financial turmoil in 1998), perhaps the then Financial Secretary Donald TSANG was at his wits' end, not having any "smart idea" and so, somebody suggested that he pass the buck to TUNG Chee-hwa, and TUNG Chee-hwa then became the one to make the decision and be held responsible.

Today, with the benefit of hindsight, we can see that six years have lapsed and from 1999 to this year of 2005, it is really not very effective to adopt such an approach to take forward development. As the representative of the information technology (IT) sector, I do have mixed feelings. In 1999, I certainly welcomed the Government's initiatives to promote IT development, but it was difficult for me to accept the Government's approach of awarding the project without putting it to tender. I, therefore, consulted my sector as to how we should make a choice. The feedback from the sector was that we must vote in support of it, come what may. Six years after we cast a supporting vote, if we do some stringent calculations, we will see that the Government has in fact spent billions of dollars on the Cyberport project (excluding the residential portion). That is to say, the Government has used the forgone capital, that is, proceeds amounting to billions of dollars otherwise could have been generated from selling the site for constructing buildings, to subsidize the IT industry. A subsidy of billions of dollars for one industry is, in fact, a huge amount of money. However, the IT industry does not actually feel that it has been given a government subsidy in billions of dollars. Perhaps it is because the unemployment rate in the industry has remained high over the last few years with many companies having folded.

Today, the question under discussion is seeking information relating to the Cyberport. But the Government must also learn a lesson from it, because another project is currently in progress. This project is also carried out in the same way, that is, land proceeds will be used to subsidize the cultural sector. If the Government is not paying sufficient attention to it, the same mistake made in respect of the Cyberport may be repeated. So, I think we all the more need to learn a lesson today. All the factors that had been considered in the entire policy-making process should be carefully listed, so that we can thoroughly understand the Cyberport incident and draw on the experience to help us in the handling of issues relating to the West Kowloon project. Meanwhile, we must also assess whether the future decision-maker (the candidates will have to explain this clearly if election will be held several months later) has the ability to

make good judgement and to lead and govern Hong Kong in the future. Was this shady Cyberport deal created by TUNG Chee-hwa on his own or was it created by TUNG Chee-hwa only after Donald TSANG had passed the buck to him? Certainly, both of them still cannot evade their responsibilities in any case.

Nevertheless, Madam Deputy, insofar as today's motion is concerned, it only requested an explanation at the most and so, the request is in fact very modest. Actually, it only requests the Government to produce a number of documents. Even after we have obtained the documents, does it mean that we can find out the truth? Certainly, that may not be the case, and it may eventually turn out that even the officials who are going to answer our questions may not be in the know either, because perhaps only TUNG Chee-hwa and Donald TSANG know the truth. But being a Member of the Legislative Council, I still very much hope that we can discharge our vocation of monitoring the Government. Through monitoring, emphasis will be put not just on a past incident, but also the lessons to be drawn from past mistakes. We can draw on the experience when handling the West Kowloon project. So, I hope colleagues can support Mr LEE wing-tat's motion.

**MR JEFFREY LAM** (in Cantonese): Madam Deputy, today, we are here again to discuss an issue that has been repeatedly discussed. On the Cyberport issue, Members may recall that we have discussed it at meetings of the relevant panel over and over again. But as the Chief Executive mentioned in the policy address that the Government is against collusion between business and the Government, the pro-democracy camp, therefore, has seized the opportunity to arbitrarily equate the Cyberport with collusion between business and the Government and transfer of benefits, in an attempt to restart a new round of debate in our peaceful society.

In fact, the proposals made by Mr LEE Wing-tat today were negated by the House Committee on 18 February. He put forward these proposals again in this meeting today only to have his case reversed. The position of the Liberal Party on the Cyberport incident has all along been very clear. We are certainly against collusion between business and the Government. But we consider that this allegation is only a farfetched interpretation of the actual situation to suit an argument and is totally unfounded.

Although we agree that the Government can enhance the transparency of this incident to allay public concern, we should pay attention to two principles. First, the relevant documents cannot involve confidential commercial information and second, we should seek information from the Government through normal channels, not by casually invoking the Legislative Council (Powers and Privileges) Ordinance.

At the House Committee meeting, Mr LEE Wing-tat requested seven items of information in relation to the Cyberport. Later, he withdrew the request for one of the seven items of information, that is, papers of the Executive Council, which means that he was then seeking six items of information. The Chairman of the Liberal Party, Mr James TIEN, already pointed out at the time that we did not oppose his request for three items of information, including:

- information about the Government having conceived the idea of Cyberport many years ago;
- information relating to the Government's decision to commission Arthur Anderson Business Consulting to conduct strategic assessment of the Cyberport project after receiving the Cyberport development proposal from the PCG; and
- any information relating to the Government giving up the requirement of take-up guarantee offered by the PCG for the Cyberport.

These three items of information can actually be obtained from the Government through normal channels. As for the other three items of information, as they involve commercial secrets and information on the internal operation of the Government, the Liberal Party is of the view that they should not be disclosed and it is inappropriate for them to be disclosed. It is because once a precedent is set, the mode of operation within the Government and even the discussion between the business sector and the Government on various partnership projects will be affected. I believe this would lead to very serious consequences.

With regard to the motion proposed by Mr LEE Wing-tat today, the contents have remained more or less the same although its wording has been slightly modified. We have no objection to items (a) and (d), but have

reservations about the other two items. But with regard to the details of the deliberations as mentioned in item (a), we still consider it inappropriate to include sensitive commercial information, in order not to cause any impact on the operation of the business community.

Another major reason why we have reservations about the motion is that we should not invoke the Legislative Council (Powers and Privileges) Ordinance lightly or arbitrarily to summon this person or that person to give evidence or provide information.

I wish to point out in particular that since 1993, the Legislative Council (Powers and Privileges) Ordinance has been invoked by this Council for seven times altogether, and every time it was invoked for the purpose of inquiry into major blunders or social issues of public concern, such as the Kwun Lung Lau incident, the short-piling incident in public housing estates, the chaos that occurred during the opening of the new airport, and so on.

As regards the Cyberport incident, we have already pointed out that owing to the economic doldrums back in those years, the Government was eager to get quick results and therefore launched two projects without going through tender. One is the Disneyland and the other is the Cyberport. One of these projects now looks likely to succeed with its admission fee being the lowest in the world. For the other project, the take-up rate has remained unsatisfactory as a result of the bursting of the IT bubble. But in neither case was "transfer of benefits" involved, for the problem actually boils down to policy blunders.

Madam Deputy, the Legislative Council is not a court. We cannot conduct a hearing on every issue. Moreover, invoking the Legislative Council (Powers and Privileges) Ordinance to conduct a hearing requires a substantial input of public money. Judging from the past seven occasions when the Ordinance was invoked, each and every such inquiry cost more than \$1 million and even \$10 million. All this is the money of taxpayers, and we must be extremely careful.

Furthermore, Hong Kong has in place a sound legal system and an independent Judiciary. If there is sufficient evidence, the relevant enforcement agencies will definitely commence investigation. For example, the Director of

Audit has said that a file is opened on the Cyberport incident. We do not see the need for the Legislative Council to cook up another inquiry.

For these .....

**MR LEE WING-TAT** (in Cantonese): Madam Deputy.

**DEPUTY PRESIDENT** (in Cantonese): Mr LEE Wing-tat.

**MR LEE WING-TAT** (in Cantonese): Madam Deputy, Mr Jeffrey LAM has commented in his speech that the conduct of public hearings will incur public expenditure. I do not know whether Mr LAM is aware that my motion only asks for access to the relevant information, and that there is no mention of any public hearings. Madam Deputy, since he has made repeated references to public hearings, investigations, public expenditure in the millions, and so on, I must enquire whether the contents of his speech are relevant to my motion.

**DEPUTY PRESIDENT** (in Cantonese): Are you requesting Mr Jeffrey LAM to make a clarification?

**MR LEE WING-TAT** (in Cantonese): Yes.

**DEPUTY PRESIDENT** (in Cantonese): Mr Jeffrey LAM, you .....

**MR LEE WING-TAT** (in Cantonese): Is he aware that this motion does not involve the issue of public hearings?

**DEPUTY PRESIDENT** (in Cantonese): Mr Jeffrey LAM, are you prepared to make a clarification?

**MRS SELINA CHOW** (in Cantonese): A point of order.

**DEPUTY PRESIDENT** (in Cantonese): Yes, Mrs Selina CHOW.

**MRS SELINA CHOW** (in Cantonese): Before Mr LEE Wing-tat asks for any clarification, should he not first ask whether Mr Jeffrey LAM is prepared to give way?

**DEPUTY PRESIDENT** (in Cantonese): Mr Jeffrey LAM, are you prepared to give way?

**MR JEFFREY LAM** (in Cantonese): No, I am not.

**DEPUTY PRESIDENT** (in Cantonese): In that case, please continue with your speech.

**MR JEFFREY LAM** (in Cantonese): For all the reasons I have mentioned, I oppose Mr LEE Wing-tat's motion. Madam Deputy, I so submit.

**DR FERNANDO CHEUNG** (in Cantonese): Madam Deputy, the Cyberport is a black box that may have a lot of secrets about the collusion between the Government and business hidden, but we are not very sure about this. However, for many years, the general public has very much wanted to open it, disgorge its little known inside information and put it under broad daylight. It is after the delivery of the policy address this year that the Government eventually took the initiative and tried to clarify issues relating to the Cyberport. However, since the Government was selective in disclosing the documents, the outcome is of course an even darker picture painted and the doubts of the public, instead of being allayed, actually increased.

However, this counterproductive effect is in fact of the Government's own making. The crux leading to this effect lies in the 23 correspondences and

papers that the Government exchanged with the PCG before the Cyberport project got the go-ahead, as disclosed by the Government to this Council earlier on. In one of them, a discussion note issued on 26 January 1999, Mr KWONG Ki-chi, the then Secretary for Information Technology and Broadcasting raised five major issues. My Honourable colleague, Mr Albert HO, has already explained them clearly, so I am not going to repeat them. This document clearly indicates that even an official in charge of the relevant policy at that time also had some fundamental queries about the whole project and the questions he raised were also very basic, such as whether this project should come into being and why such a course of action had to be taken. However, in a short span of 15 days, the Government changed its position in a dramatic fashion and accepted the proposal made by the PCG wholesale. What had actually happened in these 15 days? Or is it that the nod had been given before 26 January 1999, as Mr Albert HO has said? Even the then Secretary, Mr KWONG Ki-chi, was not privy to the intimate details. What secret deals and agreements does this black box within black box hold?

On these issues, I believe the public absolutely have the right to know because the issue of the Cyberport involves important public interest. First, were the public funds used appropriately? The Government projected that by 2010, it will receive a share of \$11.4 billion in proceeds from the residential portion in the Cyberport project. Together with the ownership of the Cyberport portion with a market value of \$2.89 billion that the Government was given at that time, the Government claimed that the overall return can be as much as \$14.3 billion.

All these sound rather appealing, however, is this the reality? The Government said that the capital it had invested was the piece of land valued at \$7.9 billion. However, as Mr Ronny TONG pointed out, the Government in fact had not done a valuation on the parcel of land slated for office development. Therefore, the value of the piece of land should be as high as \$16 billion. To pay \$16 billion in return for \$14.3 billion is obviously not a satisfactory return.

On the other hand, although the Cyberport is wholly owned by the Government, its location is isolated and its letting rate is still below 50%. Together with depreciation and the high maintenance costs, the Hong Kong Cyberport Development Holdings Limited has accumulated a loss over \$200 million. In offering a piece of high-value land, the original intention was to

promote the development of technology in Hong Kong, however, this goal has become a joke whereas the developer is grinning from ear to ear because of the profits it made.

Even if we assume that the Government had made substantial profits in this project and technological development in Hong Kong had advanced in leaps and bounds, does that mean the Cyberport project is acceptable? I believe that this is by no means the case. This is because another issue of even greater public interest is involved, that is, is the system in Hong Kong fair, open and just?

The Government has failed to explain from the outset why a final decision was made without putting the Cyberport project out to public tender. Moreover, how does it explain its choice of the PCG as the partner? This inevitably induces this thought: Is it because of the good relationship that Mr TUNG maintains with Mr LI Ka-shing that the proposal made by the son of his friend was agreed to? In the commercial field, it is perfectly normal and reasonable to choose to co-operate with a familiar partner, however, when issues of public policy are involved, such occurrences can in no way be condoned because public policies involve the distribution of public resources and what is at stake is not one's private business. The reason that the Cyberport affair has become a perennial sore of the Hong Kong public is precisely because the Government did not put it out to open and fair tender and has acted counter to an open and fair procedure which is considered a must by society. Moreover, this matter smacked of being an illicit deal. Maybe Mr TUNG subjectively believes that it is good for Hong Kong and that his conscience is clear. However, I regret to say that what we believe in is not Mr TUNG's subjective conscience but an objective and fair procedure. If he does not follow procedures in his conduct of public office, he will not be able to win the public over, even if he may have very good grounds.

Democratic countries in Europe and the United States have put in place laws on the freedom of information and members of the public have the right to obtain information from the Government and monitor if the Government has abused its power. For example, a civil group in the United States, the American Civil Liberties Union, exercised the right conferred by the legislation on the freedom of information last year to obtain a number of e-mails from the Federal Bureau of Investigation, thus exposing new information on the abuse of prisoners in Iraq by the authorities. One of the e-mails revealed that the

President of the United States, George BUSH, had issued an executive order to empower the armed forces in Iraq to take harsh interrogation measures on prisoners to extract information. In these instances, the public can monitor whether the Government has abused its power from the perspective of a civil society.

Unfortunately, there is no such legislation in Hong Kong for the time being and it is difficult for the public to monitor the Government and hold the Government accountable. It can be said that the political system in Hong Kong is still very much closed. Since the attitude of the Government in this Cyberport incident is so obdurate and it refuses to give an account to the public, we have no choice but to take this step, that is, to invoke the Legislative Council (Powers and Privileges) Ordinance and force the Government to disclose all information. Although it appears that Mr TUNG is about to resign, this affair will not come to an end because of this. We should and must pursue this matter to the fullest, open the black box, safeguard the system in Hong Kong and restore public confidence. We have to tell future Chief Executives that Hong Kong is not their private business, therefore, their power and actions must be subject to monitoring and checking by the public.

Thank you, Madam Deputy.

**MR LEUNG KWOK-HUNG** (in Cantonese): Madam Deputy, before I speak on this motion, I must say that I feel that Mr LEE Wing-tat is really a timid idiot — what is the use of just requesting the Government to produce the documents? The documents themselves cannot speak. They will only be useful if someone elaborates on their contents. When a Court hears a case, it will not only require the submission of documents. It will involve cross-examinations and asking questions, and so on. Mr LEE just asks the Government to produce the documents, what purpose does this serve? But, unfortunately, they do not even produce the documents. Instead, they just provide some dead objects — some records which cannot speak, but can be freely explained and interpreted. They have acted much too over board indeed.

I have met Chief Secretary Donald TSANG. I am not sure whether he will move one step further in his career in the Government. Yet my viewpoint is, "Deeply I sigh for faded flower's falling in vain. Vaguely I seem to know the swallow that returns." Mr TUNG is the faded flower and has fallen in vain, though we never know whether he is really suffering from an ailment. But we

can be sure about one thing: That he is fading out. After Mr TUNG has left, no one can tell us what had actually happened in the Executive Council which he once was in charge. Mr TUNG becomes an ordinary citizen now. This is actually a blessing for us because in future when the committee established by virtue of the Legislative Council (Powers and Privileges) Ordinance summons him to testify before it, he may gladly accept it and talk without fears. But on second thought, I find this not possible, because he is the Vice Chairman of the Chinese People's Political Consultative Conference. As a national leader, he will not come here to give testimony.

Honourable colleagues, I have talked for such a long while, in fact I just wish to put across one point, and that is, it is extremely, extremely difficult to find out the truth. There is a very famous story in China. Once upon a time, two men were talking in a private room behind closed door. When they were discussing certain issues, one of them said, "It is safe for you to tell me here. Do not be afraid. We are talking in a private room." But the other person said, "No, everything I say here will be known by you, me, the heaven and the earth." What he meant was both you and I would know what had been spoken, and for the heaven and the earth, they were used for implying their own conscience. Secretary John TSANG — are you still the Secretary or something else? Oh, maybe I should address him simply as Mr TSANG. He is indeed very brave.

**DEPUTY PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please face the President when you speak.

**MR LEUNG KWOK-HUNG** (in Cantonese): He is very brave. As someone had written a letter to him, so he gave a reply. I think he did the right thing. But the problem is, his letter had involved Mr KWONG, and it was exactly this letter that has baffled the public. And this is exactly the reason which has prompted Mr LEE to move the motion to ask the Government to produce the documents. I think this is understandable.

Commercial secrets are very important to investors. However, when a Government is suspected of being not fair, not open and not impartial, then in comparison, the significance of such commercial secrets will inevitably diminish substantially. In addition, the interests of investors should never override those

of society as a whole. Why should I say so? Today, the SAR Government was forced to disclose certain documents due to its past blunders, its past favouritism or transfer of benefits, then in fact the Government is making itself accountable to the relevant commercial organizations. So even if it risks breaching the contract and be sued, the Government still has to disclose the documents because what we are discussing are political issues.

What are political issues? They are about the division of powers in a society: legislative, executive and judicial powers. And now we also have an additional fourth power, namely, the supervision by public opinions. How do public opinions exercise supervision? If the information is kept tightly, how can any supervision be exercised? Therefore, I think Mr LEE Wing-tat has done one thing right, that is, he hopes that the Government can give a full account of what actually happened. Actually it will never be a full account — at most only a half account — so as to allow others to exercise supervision. I know that on this issue, some people still find this inappropriate. But I think the only impropriety is none other than these people. It is because we have already given sufficient time and sufficient occasions to the Government to explain why it turned out to be a single-tender exercise. But the Government had not been able to give an explanation. And what had been unfolded was that there had been a drastic change within a short span of 15 days. What had been unfolded is the fact that a Bureau Secretary had raised major doubts over this incident, but no further follow-ups had been recorded afterwards. Therefore, we have good reasons for demanding the provision of the minutes of meetings of the Executive Council. It is because from these records, we can find out what are the justifications upon which the big wigs on the Executive Council had acted, and what made them exercise their authority to make such a hasty and unusual decision.

Some people say that acting in this manner may not be wrong, and we can simply see how successful the Hong Kong Disneyland has become. There may be problems with such a claim. Actually, the Walt Disney Company has been notorious for taking advantage of other parties. From the data I have read, I can see that the Walt Disney Company has not been successful in managing its businesses. Be it the main theme parks in the United States or those in Paris and Tokyo, all of them have to rely on the continuous injection of capital to update the facilities in order to maintain its appeal to the people. *The Economist* has frequently published such reports. This is how single-tender companies work. But even the Walt Disney Company has to take advantage of

others before it can survive. Yet the Government still thought that it was very intelligent and wise, so it simply gave the green light as fast as lightning. And in addition, it had to provide land for the project, though no cost estimation had ever been made in this regard. Should the Hong Kong Disneyland fail and have to cease operation in future, then the Government will have to do some calculations on such costs. I do not know why Honourable Members had been so rash in their actions and said that the project had to commence the construction works very soon. Does the Government consider the commencement of construction works a success? Given such a government attitude in taking forward projects, no wonder such a situation can occur. We know that the opening of the new airport had been a major laughing stock at that time. The airport was in a great mess, making everyone scared to death. It seems that the commencement of works alone is good enough, and when some work is in progress, then it is good enough. Therefore, I feel that, from the Disneyland project to the Cyberport project, the ways in which the Government made its decisions were really questionable.

In fact, had the Government been slightly more prudent, no one will pursue such issues anymore because most politicians are forgetful. As time goes by, when so many incidents and issues happen every day, especially there were so many "virtuous acts" by Mr TUNG, how can they pursue each and every one of them? However, the worst part of it was: He took the initiative of bringing up the issue, saying that he was against collusion between business and the Government and transfer of benefits. He was under nobody's pressure to utter such words. And then, after he had mentioned it, everyone tried to identify which project he was referring to. After searching for some time, the people immediately associated it with the development project in West Kowloon because it is a single-tender development project. So it is very close, very close to the format of the Cyberport project. So these were the circumstances under which the incident took place.

Mr TUNG changed his mind and refused to acknowledge what he had said. He said what he meant was not past happenings, but what might possibly happen in the future. Basically he was making fun of himself when he said that. I can recall that he said he would eliminate any transfer of benefits. By the word "eliminate" (杜絕), anyone who knows the Chinese language (even the English translation conveys the same idea) will know that there must be the existence of something before you can eliminate (杜絕) it, such as the case of eliminating insects (杜蟲). But as he said it had never happened, then we had to say that it

did happen. As the story developed, Mr TSANG came forward to fight the defensive battle. He said, you were preaching evil doctrines to mislead the people and what you said was purely hearsay. I am sorry. Of course, I must be quoting words from hearsay. As I am not a secret agent from the KGB, how can I know the details of your discussion in the meetings? Therefore, everyone can only understand the incident according to the existing documents, or hearsay or guesses (I think of course someone might have leaked certain information, needless to say). But who has monopolized the information? It is none other than the Government.

Therefore, if the Legislative Council has to maintain its dignity, all we can do is to ask the Government to provide the documents as evidence, and in doing so, we should by no means be criticized as making excessive demands. My Honourable colleague, Mr Jeffrey LAM, said that we had conducted seven hearings and wasted a lot of money. Yes, the money spent could amount to tens of billion dollars or hundreds of billion dollars. However, why do we have to conduct such hearings? It is because we want to prevent similar incidents from happening again in future. I would like to ask everyone, including Chief Secretary, Donald TSANG — or maybe the next Chief Executive Mr TSANG — has he told us that the development project in West Kowloon will not proceed? No. Will the single-tender approach be abandoned? He did not say no. As for the canopy, he also has not said that it would not be built. As a matter of fact, in the meeting of the Legislative Council, the majority of Members had voted no on the issue of whether the canopy should be built. Our worry is justified because it is very likely that the Government will go ahead despite strong opposition. But will the Government take actions in the form of a "black box operation"? Actually, black box operation is a gentle description of what will happen. We should actually describe it as a "black hole operation". What do I mean by a "black hole operation"? The black hole is a very large hole which amasses gigantic energy and is capable of sucking all kinds of matter into it. The Cyberport or other investment projects with collusion between business and the Government will generate the black hole effect — that it will suck enormous amounts of the hard-earned money of the people. The hot trends of IT and cyber stocks at that time was stirred up by the Cyberport development project, and the PCCW acquisition by Mr LI took place against such a background. How could Mr LI succeed in acquiring this mega-enterprise by just making use of very little capital? How could he do it if there was no stimulation by this incident, and if there are no prospects of turning

Hong Kong into a high technology port after the construction of the Cyberport? How could he do it successfully?

Next, the funniest parts were about "Stock No. 8" and "Tom dot com". We all understand the issues involved. Some people may say that, LEUNG Kwok-hung, "Long Hair", you often wrongly accuse others. In fact, sometimes when I walk past the Star Ferry Pier, I can see a woman singing by the side of the pavement there, in the hope of getting some money from the passers-by. I usually give her \$5. In this way, I have really transferred some benefits to her. But, in this incident, some public money was transferred unfairly to a consortium by way of policy, benefiting it. The benefits were transferred to the consortium legitimately but unreasonably, so as to enable it to launch a development project on the site. This was done by way of the so-called "crony-capitalism", which is well known to everyone. Therefore, we cannot prove it by investigation. It is exactly for this reason that the incident warrants our careful deliberation.

As Members of the Legislative Council, we must monitor the Government. Mr LAM was right. Of course, we are not conducting investigations like the detectives. Of course we are not ICAC investigators. If this incident falls into this category, of course we can lodge a complaint with the ICAC. However, when a political delegate had assumed the role of an administrative department, but he did not follow the procedures, nor could he explain why, and when he repeatedly transferred benefits to one or two consortium(s) through some unusual policies, his conduct should really be described as modern crony-capitalism. If you still cannot understand this, you had better read the works of Paul KRUGMAN. I am not going to give a lecture on this subject here. He explained very clearly what had happened in Indonesia. Although Hong Kong has not degenerated to such a state, what we are doing now is to prevent such incidents from occurring.

Therefore, Mr LEE Wing-tat's motion is just like scratching an itch on the head. If you think we should not even ask the Government to produce several items, then you are giving up your duty of monitoring the Government. I just want to say, Mr TUNG is leaving, those with the surname TSANG will assume high positions, and that includes Donald TSANG, John TSANG and whoever with the surname TSANG. I just wish to share with them a piece of good advice: A student of Confucius surnamed TSANG said, "I reflect on myself three times a day." You should also reflect on yourselves three times a day to

see if you have spoken anything wrong. Now it is even better: It is some other people asking you to reflect on yourselves. What is wrong with that? You do not feel angry. Instead, my colleagues, the so-called pro-royalist Members, are feeling angry. It really baffles me.

I think that if we are speaking our conscience, no one should stop such a Legislative Council from exercising its privileges to demand the Government to produce the documents. If some legal proceedings have to be instituted as a result of this, then it is better to let certain commercial organizations to apply for exemption by petitioning for a so-called judicial review, which you frequently make use of. If it were wrong for the Government to provide the documents to the Legislative Council, then let the Court conduct a judicial review. What do fairness, justice and impartiality mean? They mean that each party should act to the best of its abilities, and then let the neutral Judiciary pass its verdict. It must be done in this way. For those who criticize us for demanding production of the documents, they totally do not understand modern politics. If we were wrong, then let us be prosecuted. Or else, the other parties may apply for judicial reviews so as to stop us from taking certain actions. These are very simple logics.

(THE PRESIDENT resumed the Chair)

Therefore, let me conclude by saying this: We should not accept "the emperor's new clothes" anymore. We must conduct a thorough investigation into it. In fact, with regard to The Link REIT incident, I also want to invoke the privileges of the Legislative Council to conduct a thorough investigation into it. Today, all we are asking of the Government is just a small concession, just the provision of documents. Otherwise, I must insist on conducting a thorough investigation. Thank you.

**MR ABRAHAM SHEK:** Madam President, the Honourable Albert HO challenged Members to reply if we disagree with the motion moved by the Honourable LEE Wing-tat. It is not our duty to speak in defence of the Government, but it is our responsibility to speak when a Member of the Council challenges another Member — it happens to be my colleague Mr Patrick LAU. We respect the Honourable Members who have spoken for the motion because

we know they speak of what they believe. But for those who have spoken against the motion — not many have, we speak of what is right.

The Honourable Patrick LAU spoke, and he asked Members to let bygones be bygones and said we should look forward. Albert, my colleague Patrick being a learned man, must have been influenced by a Greek philosopher — Epictetus — when he made his speech. If I may quote, "Men are disturbed not by things that happened, but by their opinions of the things that happened." So, that was how and why Mr Patrick LAU made that speech, because he believed what the Government had done was for the good of Hong Kong.

Madam President, I believe I have been one of the severest critics of the Cyberport. From the beginning, I had thought that the project was undesirable because it represented the worst kind of government intervention in the name of public private partnership. The Government's invisible hand was only disrupting the free operation of the market. Even today, the property market still feels the pain of the excessive supply of commercial office spaces in the Cyberport, creating unfair competition. But, even being the project's long-time opponent, I am not convinced that the Government has committed the kind of offence which it has been accused of recently.

First of all, I am not aware that the Government has had any premeditated intention to collude. In hindsight, the way the Government handled the project reflected its over-zealous desperation in finding a magical cure-all for Hong Kong's economic problems in the late 1990s, a time when our economy was struggling to recover from the East Asian financial crisis. Simultaneously, it was undergoing a painful restructuring. I believe the Administration's greatest mistake, though, is its total disrespect or ignorance of the principle of market economy. It violated one of the core values it claims to cherish so much. Nevertheless, this policy deviation must not be interpreted as a transfer of interests, or collusion between businesses and the Government.

If one cares to take a closer look at the "charges" levelled at the Administration, one will realize that they are more allegations based on speculative suggestions than facts backed by solid evidence. The major "proof" so far is an extract from a correspondence of Mr K C KWONG, as quoted by the Honourable Albert HO, which includes five fundamental questions raised by the Government, which the PCG (PCCW's former body) has already

addressed. It should be noted that the questions are only a minor part of the concerned correspondence. The document's major purpose was to deal with the mode of implementation. To me, it looks as if the fundamental questions had already been adequately dealt with when this document was drafted. The five questions serve no more purpose than a reminder for the PCG. As a result, I do not feel that it offers a convincing case for an invocation of the Legislative Council's special powers.

In addition, I doubt the suggestion that the public's right to know, as well as the right to access government information, has been threatened, and that this right has to be safeguarded by exercising the Legislative Council's special powers.

Within the power entrusted by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance, the Legislative Council may order any person to attend meetings before this Council and produce any material relevant to the issue in discussion. In the case of the Cyberport, I certainly do not think that the Government, as suggested by some, deliberately locked up key documents and kept them away from the public. On the contrary, the Government recently disclosed documents charting the events during the negotiation process between the Government and the PCG. It has released 23 internal correspondences, published articles in newspapers (which it very seldom does), as well as written letters to this Council. I, therefore, do not feel that there is a pressing need to defend that right, nor is there any ground to invoke section 9(1). Indeed, the debate has been so politicized that sometimes it is difficult to tell whether it is justice, or other political agenda, which is being pursued in this quest for information.

Madam President, it is quite clear to me that if we insist on invoking the law in the absence of a convincing argument, as had been the case which the Honourable Albert HO quoted — the 短樁 issue, we will be acting irresponsibly and without caution. Considering the fact that the Legislative Council is a law-making body, should legislators not exercise extra prudence in handling issues relating to rules and laws? Should we not display a reasonable level of restraint when exercising our special powers? Are there no other alternatives or avenues which we could explore?

I, for one, am very reluctant to see the working relationship between this legislature and the Government undermined. Nor do I want to see the normal,

candid dialogue between businesses and the Government discouraged. More importantly, I do not want to lose the trust which the public has placed in us.

Before I conclude, I must say that I am surprised that those, with the possible exception of 長毛, who have just spoken and have severely criticized the Cyberport project are also staunch supporters of the Disneyland project. Both the Cyberport and the Disneyland, after all, involve a similar process of negotiation on development rights between the Government and a private company. In fact, the deal with PCCW is by far a better deal than that with Disney. To me, it seems that two very different sets of rules are being applied. Why? This is a plain case of double standards!

Hence, Madam President, I am against today's motion. Thank you.

**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 LEE Wing-tat's motion.

Hong Kong's success is underpinned by its level playing field — it is generally believed in Hong Kong that everyone can compete fairly by virtue of their own ability. At the same time, the Government has strived to maintain a clean and impartial role in maintaining the level playing ground.

It is a great pity that we can see from the its decision not to award the Cyberport project through open tender that the Government is solely responsible for destroying this level playing field, thereby giving people a strong impression that there are transfer of benefits between the Government and certain consortia as well as collusion between business and the Government. In this year's policy address, the Chief Executive particularly mentioned the Government's determination to combat or eliminate collusion between business and the Government. He also urged Members to produce evidence to enable the ICAC to take follow-up action.

Madam President, the Chief Executive probably thinks that he can clear up the image of collusion between business and the Government by doing this.

Unfortunately, his policy address has only ended up creating the effect of attracting more attention, despite his great effort to conceal the matter.

Secretary John TSANG has also written some articles in the press to explain the Government's position. According to the Secretary, there is no collusion between business and the Government or transfer of benefits to the consortium on the part of the HKSAR Government in the Cyberport incident. In his opinion, it was mainly in the interest of the public at large that the Government decided to do away with open tender. On the one hand, the Government sought to provide Hong Kong economy with a new locomotive to stimulate the economy at that time and, on the other, Hong Kong was under time constraint to avoid lagging behind other Asian countries, particularly in the development of information technology. The Secretary has particularly emphasized that the funding application of the relevant project was approved by the then Legislative Council.

Madam President, despite Secretary John TSANG's strenuous effort to defend the Government, I still feel that he has good intentions but a lack of ability. This is because the crucial question is: Why did the Government decide not to award the Cyberport project through open tender? It can be said that the Government has totally failed to offer us a valid explanation.

The Government subsequently disclosed some information. As Mr Albert HO has elaborated the five questions raised by Mr KWONG Ki-Chi, I am not going to repeat them. These five questions have aroused even greater public concern about the issue of collusion between business and the Government and transfer of benefits by the Government to consortia.

Madam President, it has been quite some time since the occurrence of the Cyberport incident, yet public doubt is still not dispelled. Should Members support invoking the Legislative Council (Powers and Privileges) Ordinance, we might have an opportunity to seek the relevant information and documents from the Government so as to enhance the transparency of the entire matter and uncover the whole truth.

Madam President, from the Cyberport project to the West Kowloon Cultural District project, the Government has often resorted to land grant to sideline this Council in exercising its power of approving funding. This Council has also lost its power of monitoring major government works as a

result. I find this arrangement unacceptable. As we all know, land is an important asset in Hong Kong. Hence, its utilization should be monitored by this Council.

Madam President, I would like to briefly respond to the comments made by several colleagues. Mr Jeffrey LAM of the Liberal Party has apparently overestimated the influence of the democratic camp in thinking that we can create waves in a peaceful society. By common sense, how can waves be created in the absence of wind? Actually, public grievances have to be channelled. We must not suppress public grievances by all possible means because such grievances may, upon explosion, run completely out of control. Insofar as the question of whether the democratic camp is suiting the argument to the case is concerned, why does the Liberal Party not support Mr LEE's motion to enable us to invoke the Legislative Council (Powers and Privileges) Ordinance to obtain the relevant documents to dig out the truth? It can then be proved whether the democratic camp is making such an attempt of suiting the argument.

Actually, for the sake of protecting social interest, it is not impossible for commercial information to be inspected. There were previous examples in the airport incident and the short piling incident of public housing estates. The documents involved, though containing a lot of commercial information, have been continuously disclosed to let the public find out the truth.

Furthermore, Madam President, although the FTU and the DAB have sometimes criticized the Government in categorical terms over some social incidents, they have exhausted all possible means this time around to make up excuses to justify their refusal to support Mr LEE's motion to invoke the Legislative Council (Powers and Privileges) Ordinance to get to the bottom of the matter by obtaining the relevant information from the Government. Why are they behaving in such an overcautious manner?

Mr Abraham SHEK remarked that we, Members of this Council, have to carefully exercise our powers. Frankly speaking, Mr LEE's motion is basically very restrained and low-keyed. Instead of asking for a commission of inquiry, he has merely asked the Government for the relevant information. We have actually approached the Government for the relevant information through various channels. However, the Government has merely selectively published some of it. Most importantly, the Government has always wanted to keep us in

the dark. As such, if Members still object to such a restrained and low-keyed motion that merely requests the Government for the relevant documents, I believe they have failed to discharge their vocation of monitoring the Government.

With these remarks, Madam President, I support Mr LEE Wing-tat's motion.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, Mr LEE Wing-tat has proposed this motion in the hope that the Government can disclose more information to enable us to gain a better understanding of the Cyberport incident. Many people said that it was a past event and it would not be meaningful at all to revisit it. Some people asked: Do we really have to be nitpicking?

Madam President, we should not entangle ourselves with these issues by examining whether this is fault-finding. Most importantly, we hope members of the community can be told the truth and offered a clear explanation. This is the most important, as well as the most crucial, issue in the entire motion debate today.

Madam President, the community has recently been discussing whether the Chief Executive is prepared to quit. Although this incident appears to have little relevance to this motion, I feel that it has, to a certain extent, reflected certain problems — it is believed by the public at large that Mr TUNG will probably do Hong Kong good should he quit. At least, there would be hope that some grievances of members of the community or certain social problems may not appear or happen again in the future.

During Mr TUNG's tenure, many people, groups and Members of this Council repeatedly raised the point that there were problems of collusion between business and the Government and transfer of benefits. Actually, there was no way for Mr TUNG to avoid responding to these problems and, consequently, he chose to give his response in the policy address. However,

his response was indeed much too simple — he attempted to settle the matter by merely denying the existence of collusion between business and the Government. However, is it enough? As a truly responsible government, it has not done enough. Most importantly, it should produce evidence to tell the public and let them see for themselves that there is really no collusion between business and the Government. There is no way for the Chief Executive to convince the public by simply saying "no" authoritatively by virtue of his status.

Insofar as the Cyberport incident is concerned, many people and groups have kept questioning whether there is collusion between business and the Government and transfer of benefits. Given that there are so many doubts and questions, why can the Government not produce all the relevant documents to let people gain a clear understanding and know the truth? As a responsible government, it should dispel the public of their doubts. The SAR Government also must act according to public sentiment in order to quell our doubts.

It is a great pity that, as a number of colleagues have said, the Government has, insofar as this incident is concerned, chosen to give explanation selectively, or chosen to explain matters not considered to be problematic. Now that the Government has decided to offer explanation to show us that it has no problems, why does it not produce everything? Why selectively? Is the Government doing this because it is trying to conceal something? If not, why does it not produce everything as requested? In my opinion, a responsible government should act in the last manner.

Meanwhile, the disclosure of this incident can dispel the doubts of the public. Insofar as the whole territory is concerned, in addition to removing public grievances and certain misgivings, such disclosure can actually enhance public confidence in future developments, and it can also help investors map out a clearer plan on investment in Hong Kong in the future. Actually, not only the public feels that there is the so-called transfer of benefits and collusion between business and the Government, even the consortia feel in the same way too. This will, directly and indirectly, deal a blow to and impede the desire of investors to develop in Hong Kong.

I really cannot see what arguments and principles the Government can produce to justify its refusal to disclose certain documents or to give us a full explanation.

The request made by Mr LEE Wing-tat today seeks to enable us to refer to certain information only. The major issues can still be discussed in the future. However, should the Government act evasively and reject our requests, we would feel, and see, that it is simply incapable of facing significant issues. This is not a correct and desirable attitude to tackle problems. For these reasons, I will support the request made by Mr LEE.

Madam President, I so submit.

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

If not, I will now call upon the Secretary for Commerce, Industry and Technology to speak.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, the Government absolutely opposes Mr LEE Wing-tat's motion.

Over the past month or so, the Chief Secretary for Administration and I have repeatedly explained the background and considerations relating to the Cyberport development to Members and the public on many different occasions, including the meetings of the Legislative Council and its relevant panel. And, in response to the request of the Panel on Information Technology and Broadcasting, we have also provided, in full, all the correspondence and documents exchanged between the Government and the then Pacific Century Group (PCG) on the Cyberport development — and, I mean all the correspondence and documents.

We have provided these documents to the Legislative Council in the hope of enabling Members and the public to further understand that the Government did do its best to fight for the greatest benefit of Hong Kong as a whole during its negotiations with the PCG on the Cyberport development, and that every attempt was made to reduce the risks borne by the Government. Throughout the whole process, no improper acts of any kind, either related to any ulterior motives or the status any particular organizations, were ever conducted. And, this applied equally to the staff of the then Information Technology and Broadcasting Bureau and all government officials.

In the Chief Secretary for Administration's reply to Mr LEE Wing-tat dated 7 February 2005, there is a detailed account of the Government's considerations at that time and also the reasons for entering into a PPP with the PCG in developing the Cyberport.

I wish to take this opportunity to reiterate the five considerations underlying the Government's decision to enter into a PPP with the PCG in developing the Cyberport at that time:

- (1) In 1998, the Hong Kong economy had suffered sharply in the wake of the Asian financial crisis and its aftermath. The territory was desperately in need of new drivers to boost not only economic growth but also the people's confidence. In response to this situation, the Government believed that Hong Kong should ride on the information era and augment its established strengths in information technology (IT) and tourism as a matter of urgency. After careful deliberations and negotiations, the Government announced in the 1999-2000 Budget its firm intention to undertake two special projects, namely, the Cyberport and the Disney project. The Cyberport concept was premised on the strategic consideration of Hong Kong's competitive position both in the region and globally. The state of IT, telecommunications and broadcasting development in other cities was rising rapidly, and a global trend was firming up towards convergence of IT, telecommunications and broadcasting technologies and infrastructures. The Government believed that Hong Kong had an edge in developing information services and multimedia content creation. We should thus capitalize on the strengths of our sophisticated telecommunications network, strong intellectual property rights protection regime and well established service industries. The Cyberport provided an important infrastructure that was lacking in Hong Kong at that time; we needed it to form a strategic cluster of IT and related companies.
- (2) The Cyberport project was conceived when many of our regional neighbours had already built or were in the process of building their own integrated IT infrastructure. In view of the speed at which the IT sector was developing and the efforts of practically all of our regional competitors in trying to carve out their corners in the market, Hong Kong had to race against time and put in place a state

of the art IT infrastructure as soon as practicable. There were also strong sentiments and overwhelming support in the IT sector in Hong Kong that we should expedite the completion of the Cyberport project. This sector regarded the Cyberport as an essential building bloc in the Government's overall IT strategy — Digital 21.

- (3) To meet the specialized needs of IT companies, the Government considered that the Cyberport development should draw on the expertise and entrepreneurial spirit of the private sector. In order that Hong Kong might make a head-start in this project as early as possible, the Government had to secure external help in articulating the project profile, detailed design and hardware specifications of the Cyberport. Quite simply, there was insufficient expertise within the Government at that time to plan and build a Cyberport that would meet the high specifications of such a project. It was in these circumstances that the Government decided to commence negotiation with the PCG, the originator of the Cyberport concept.
- (4) The PCG was one of the leading players in the IT sector based in Hong Kong. It was best positioned to develop the project. Moreover, the PCG also pledged, should it be allowed to undertake the project to attract quality tenants to the Cyberport by mobilizing its extensive network of partners and suppliers in the field.
- (5) Most important of all, the PCG was willing to bear all the risks involved in project development. The Government regarded this as a significant pledge, given the volatilities across the market at the time.

After many rounds of discussions, in early 1999, the Government and the PCG finally managed to reach a consensus on the specific arrangements for the Cyberport development. Subsequently, a Letter of Intent was signed on 2 March in the same year, and the Cyberport project was announced in the 1999-2000 Budget. Following this, the Government and the PCG entered into rounds of negotiations lasting for one year or so regarding the project profile, detailed design, hardware specifications and rights and responsibilities of both sides. After all these negotiations, on 17 May 2000, a legally-binding Cyberport Project Agreement (the Project Agreement) was concluded to form the legal basis of the future construction and development of the Cyberport. The Project Agreement involves many details of commercial negotiations and

the advice given by the legal advisers of both sides. If the Government discloses the documents on its negotiations with a private-sector organization and its legal adviser, the confidence of local and even overseas enterprises in the SAR Government will be seriously undermined, thus weakening their desire to invest in government projects.

Under the Project Agreement, the Cyberport portion, or the commercial part, must be completed in four phases between early 2002 and late 2004 to provide a combined lettable office space of 1 million sq m. Between 2000 and 2001, when the Cyberport openly invited interested companies to submit tenancy applications, the response was very enthusiastic and more than 100 IT and related companies submitted applications. However, when the office premises of Cyberport Phases I and II were actually completed in 2002 and 2003 respectively, Hong Kong was already battered by the bursting of the dot.com bubble, the plummeting of the commercial property market and the outbreak of SARS. Even the pre-sale of Residence Bel-Air Phase I residential units in March 2003 was met with the outbreak of SARS and the nose-diving of the property market. Today, six years later, when we comment on whether the Cyberport has achieved its original objective and whether the decision of the Government was wrong, we must not forget that the vicissitudes experienced by Hong Kong over the past years were all not foreseeable by any ordinary man.

Mr LEE Wing-tat's motion requests the Legislative Council to invoke section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and order the Private Secretary to the Chief Executive and the Secretary for Commerce, Industry and Technology to produce five categories of documents. The Government's opposition to this is categorical.

The Government has already provided to the Panel on Information Technology and Broadcasting all the correspondence and documents exchanged between the Government and the PCG during the period from September 1998 to March 1999. Apart from all these correspondence and documents, there are no more relevant file records.

As for records of internal government meetings, for reasons of public interest, they cannot be disclosed. This is an established policy of the Government. If we cannot assure the confidentiality of such records or discussions, the candour of discussions within the Government will be seriously impaired, thereby harming the operation of the Government, and ultimately the

wider public interest. We are unable to disclose the records of such meetings and discussions, but the Chief Secretary for Administration's reply to Mr LEE Wing-tat dated 7 February already contains detailed answers to Members' queries and an accurate reflection of internal government discussions on the Cyberport project.

As for the take-up guarantee, under the Letter of Intent signed between the Government and the PCG on 2 March 1999, the PCG undertook to occupy at least 7 000 sq m of office space in Cyberport Phase I and to take up extra space (not less than 20% and not more than 50%) if the Cyberport did not attract enough tenants as envisaged.

During the negotiations on the Project Agreement, it became clear that the PCG considered that its proposed take-up guarantee would give it an automatic right to occupy not less than 20% and not more than 50% of the office space in Cyberport under a long-term lease and on concessionary terms.

Had we agreed to keep this guarantee in the Project Agreement, we would have given a long-term commitment to the PCG, whereby it could occupy up to 50% of the space available in a government-owned IT infrastructure. This might lead to a situation under which one single company would be able to dominate or even dictate the development of the Cyberport. What is more, we must not forget that at that time, as many as 120 companies had already expressed an interest in becoming Cyberport tenants. As a result, the Government considered that dropping the "take-up guarantee" could allow more flexibility in accommodating a greater number of IT companies interested in operating in the Cyberport. In the light of these considerations, the Government considered that dropping the take-up guarantee would be preferable, and required the PCG to apply for tenancy in the same way as other interested companies, and all such applications would be subject to the approval of a committee comprising local and international experts. The PCG agreed to this.

On 17 May 2000, the Government promptly reported to Legislative Council in a formal Brief of the decision to drop the PCG's proposed "take-up guarantee" from the Project Agreement. There was no dissent noted. The officials of the Information Technology and Broadcasting Bureau later highlighted this point again at the meeting of the Panel on Information and Broadcasting held on 12 June 2000, and none of the members present queried the decision. As at January 2005, the PCG has taken up some 8 000 sq m in

Cyberport Phases I and II, which is equivalent to 8% of the total office area available in all phases. It is the largest tenant at the Cyberport at present.

Today, when we criticize that the Government should not have dropped the "take-up guarantee" of the PCG, we must not forget that the decision was actually made during the dot.com boom. More importantly, regardless of the occupancy rate in the future, it would have been unreasonable to allow the PCG to occupy up to 50% of the lettable space in the Cyberport.

Madam President, over the past month or so, the Government has repeatedly explained in great detail to the Legislative Council the background and considerations relating to its decision of entering into a PPP with the PCG in developing the Cyberport. And as far as possible, we have also provided to the Legislative Council the correspondence and documents exchanged between the Government and the PCG. However, we must at the same time adhere to the established policy of the Government, so as to ensure the candour of internal government discussions. If we do not do so, government officials will become wary during internal discussions, thereby seriously impairing the governance and operation of the Government, and ultimately the wider public interest.

Madam President, finally, I reiterate that the Government absolutely opposes Mr LEE Wing-tat's motion. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Honourable Members, under the normal arrangement for motions, a Member will be called upon to move the motion proposed by him, and this will be followed by the delivery of remarks by other Members. When all this is over, the public officer concerned will give his reply. And, the mover of the motion will give his reply at the end.

In the past, I did permit some Members to speak after the replies given by public officers. The reason was that the Members in question were not present when I asked, "Does any other Member wish to speak?" Owing to these precedents, though I am not so keen on this practice, I shall still give the same permission this time around due to the presence of precedents. Consequently, I shall now permit Mr Albert CHENG to speak. Since I permit Mr Albert CHENG to speak, I shall also permit other Members who have not spoken to do likewise. But then, I shall also give the Secretary one more opportunity, so as to see whether he wants to give a further reply.

**MR ALBERT CHENG** (in Cantonese): Madam President, first of all, I would like to apologize to you as I was not in the Chamber just now. Thank you for giving me another chance of speaking, Madam President.

I do share one point with Secretary John TSANG, that is, when the Cyberport project was discussed in the Legislative Council, both of us were not in this Chamber — Secretary TSANG was not the official responsible for the project, and I was not a Legislative Council Member yet.

In his last policy address, Mr TUNG mentioned collusion between business and the Government and transfer of benefits. After he had delivered this policy address, it aroused great concern in society about the issue of collusion between business and the Government. Secretary John TSANG acted in a most proactive manner, including utilizing media space in all the local newspapers to publish two articles written by him — only one newspaper had declined compliance. However, despite his two published articles, he has failed to remove public doubts on whether there had been collusion between business and the Government and transfer of benefits in the Cyberport project.

The Secretary has also acted in a most proactive manner in taking the initiative of providing to the Panel on Information Technology and Broadcasting many documents, one of which bearing neither any reference number nor any date. This document is none other than the one mentioned by other Honourable Members and it contains five questions raised by the responsible Secretary at that time, Mr KWONG Ki-chi. We seemed to have made a new discovery after finding it from the huge piles of documents.

When Members were making speeches just now, some of them spoke with a touch of philosophy, saying let bygones be bygones, and let us look ahead instead. I do not know whether this is the way of a wise man, or that of a stupid man. The wise man may have made a mistake on one point even though his consideration has already covered a thousand other points. I believe the respectable Prof LAU must be among the wise men, but he must have missed one point. But I am a stupid man, and I may come up with one wise viewpoint. Having considered it for a long time, I think I cannot accept the viewpoint of letting bygones be bygones.

Mr Albert HO's earlier speech was very fantastic. Mr Albert HO's narration of the incident was just perfect, but his speech was astounding and

beyond our imagination. It was so astounding that it would make others think that this is nothing more than his bold assumption, and that the serious accusation he made was most unfair to the Government. What actually was the basis of his accusation? Apart from his very appealing speech, does he have any evidence? However, as we listened to his account, it was all very convincing. I believe when the people listened to him through the television, the radio, or read the printed version in the newspapers, they would definitely feel that Mr HO's allegation was well founded, and that this Government had acted most outrageously in allowing collusion between business and the Government and transfer of benefits.

If so, the only thing the Government can do is to do justice to itself — this is the responsibility of Secretary TSANG. He must actively co-operate with the Legislative Council by providing Members with all the documents, instead of stating that the Government absolutely opposes Mr LEE Wing-tat's motion. As a matter of fact, he should support Mr LEE Wing-tat's motion, and even thank him for giving him an opportunity of proving the innocence of the Government.

As for the allegation that disclosing confidential documents will deter investors from making investment, and that the officials will become wary in their work in future, I think this is actually the right manner they should be acting in. For such a large-scale project, it is only natural that the responsible official should act in a very prudent manner. He must be cautious, and of course he should not act in any arbitrary manner. Right? The Government also enjoys a privilege, that is, there is an ordinance which stipulates that even if the Legislative Council invokes the Legislative Council (Powers and Privileges) Ordinance, it still cannot have access to certain information. The Government can continue enjoying the protection without providing the documents to the Legislative Council. Besides, this is also unfair to the PCG as the present accusation is not just directed at the Government but also at the PCG as well for collusion between business and the Government and transfer of benefits on the Cyberport project. Has the Government ever secured the consent of the PCG for disclosing these documents, so as to do justice to both of them and protect the goodwill of the PCG? Has the Government taken the initiative in doing this? Or will the PCG be willing to do this?

Some Honourable colleagues compare this to the Disneyland, accusing the Member who moved the motion as applying double standards. The Disneyland

will be open to the public very soon, and many Hong Kong people are waiting eagerly for its opening. It will provide more than 10 000 job opportunities; whereas, according to the *prima facie* evidence, it is shocking, as Mr Albert HO said, for us to learn that the Cyberport has provided profits amounting to several billion dollars to the developer. The two projects are not comparable, and I also think that we should consider them from a double standard perspective.

I also do not understand why Members would oppose the request made by Mr LEE Wing-tat. We just demand access to the documents. If we can have access to the documents, we will know the ultimate truth. Otherwise, we shall never know the truth. So the Government will be aggrieved, so will be the PCG. It simply will not do any good to society. Therefore, I hereby call on all Members to give absolute support to the motion. I, for one, will support it absolutely, and I hope all Members will absolutely support Mr LEE Wing-tat's motion as well.

As for Mr KWONG Chi-kin's allegation that today's motion is useless because even if it is passed, we shall still be unable to get the required documents. That would be all the more better. Mr KWONG, Madam President, if the motion is passed, and then we can demand access to the documents. Even if our demand is not satisfied, we will not have any problem. But if they do have something to conceal, let them go on concealing them. We just hope that the Government can provide us with what they can provide, without burying anything under the carpet. This will just arouse the suspicion of the people, making more and more people worry that the Government might be involved in transfer of benefits and collusion between business and the Government.

The Government has many such projects still ongoing, including the West Kowloon Cultural District project and the Container Terminal No. 10. If there are so many people criticizing the Cyberport project of involving collusion between business and the Government and transfer of benefits, yet the Government is not making an active effort to find out the truth and prove its own innocence, it will just further deter investors from making investments here. Everyone is afraid of coming to the Legislative Council to listen to the 15-minute speech delivered by Mr Albert HO, who will accuse them of collusion between business and the Government and transfer of benefits. I think we should not let bygones, be bygones. For some past cases of injustice, if the Government feels that it is aggrieved, it should bring it up to seek redress. I believe if the

Government is proved innocent, Mr Albert HO may withdraw his earlier remark, or even apologize for it. I believe Mr Albert HO will be willing to do so. If not, I shall move a motion to request him to make an apology. I would like to thank the President again for allowing me to speak. I do not want to take up any more of Members' time because many people are waiting for the voting to begin. I so submit. Thank you, Madam President.

I absolutely, absolutely support Mr LEE Wing-tat's motion.

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

**MR HOWARD YOUNG** (in Cantonese): Madam President, I did not intend to speak originally because having seen the operation of the Legislative Council for so many years, I knew that, as far as I understand, that voting should take place right after the officials have finished giving their replies. However, as explained by the President just now, she allowed Mr Albert CHENG to speak simply because he had not been in the Chamber when she asked whether any other Member wished to speak. As I was also not in the Chamber at that time, so I also want to take this opportunity to speak.

Yet, I also hope that the House Committee can hold a discussion on this subject, which should be focused on whether the rules of the game in the past should be restored. Only by doing so will it be proper and appropriate.

Regarding this motion under discussion today, my situation was slightly different from that of Mr Albert CHENG, that is, when the Cyberport project was proposed, I was in this Chamber and was also a member of the Panel on Information Technology and Broadcasting. We can still recall that everyone in Hong Kong at that time was trying to identify all kinds of solutions to help Hong Kong tide over the difficulties arising from its economic restructuring.

As we take a retrospective look at an even earlier time, that is, the end of the '90s, or right before the reunification in 1997, Hong Kong implemented a Pilot Scheme for the Entry of Mainland Professionals, with the objective of enabling Hong Kong not to lose its competitive edge in the emerging sector of information technology. As an exceptional measure, the Government imported some professionals into Hong Kong, and technology is one of the fields benefited

by the Scheme. At that time, all the people in the information technology sector, from its representative in the Legislative Council to the people working in the sector, felt that Hong Kong must do something in this aspect, so as to help Hong Kong undergo economic restructuring, thus enabling Hong Kong not to lose its competitive edge. Under such circumstances, we all hoped that the Government could have some innovative thinking for introducing some extra initiatives.

There are a lot of competition all over the world. Just now many Honourable colleagues mentioned that the Disneyland theme park is a development project brought to Hong Kong by the Government after some fierce competition, and it will bring enormous benefits to Hong Kong.

Our neighbouring countries and regions are making continuous efforts to attract overseas investments. In this Chamber, there are many Members who have made criticism against the Government for lacking innovative thinking. For example, a certain foreign electronic/computer component manufacturing company had requested the Government to grant it land and provide it with tax concession; otherwise it would direct its investment to Shanghai instead. However, the Government still turned down its requests. In this case, some Members had criticized the Government for having missed the opportunities. Therefore, today, when we hold a debate on this motion, we must consider the historical background at that time — that is, everyone then hoped to do something for Hong Kong. Although the information technology and property market bubbles burst eventually, such outcomes were just caused by the changes in the circumstances.

If today we still insist on pursuing the responsibility issue of this incident and even relate it to collusion between business and the Government, it will just scare away certain international investors. Will they still have the courage to come to Hong Kong to negotiate with the Government on certain projects? No matter what kinds of commercial confidential information is involved, once a motion is passed by the Legislative Council, then all kinds of information have to be divulged. So, under such circumstances, international investors will simply avoid such trouble by making their investment in other neighbouring countries and regions. Earlier on, many Members and Mr James TIEN, Chairman of the Liberal Party, had presented justifications for not supporting this motion in their speeches. We shall continue upholding this attitude. Thank you, Madam President.

**MR MARTIN LEE** (in Cantonese): Madam President, my speech will be very short. I heard Secretary John TSANG argue most eloquently, and it seemed he was supported by very good justifications. But why did such arrangements have to be made at that time, or else it would be very unfavourable to Hong Kong? Since you have this reason, why can you not provide us with the documents to prove what you said was true? Now the situation appears to be very much like a court case. You tell the judge that what your client had done was absolutely correct, and your speech is becoming increasingly appealing. However, when the judge asks you what kinds of documents you have in your possession, you say that you cannot show them to him. This is exactly the case which is under discussion.

Why can you not produce the evidence so as to prove that you are whiter than white? Why can you not discuss it with the PCG? This will be beneficial to both parties as both of you know that you were aggrieved and all along have been ridiculed by Members. The authorities should secure the consent of the PCG for disclosing the documents so as to prove that both of you were correct, so as to prove that both of you were innocent. This can be done easily, but the authorities just choose not to do it.

Besides, having been a Member of this Council as well as the former Legislative Council for so many years, I have virtually never heard of the Government saying that it will absolutely oppose any particular motion. Therefore, I have absolute reasons to believe that the Government does have something to conceal. Thank you, Madam President.

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

(No Member indicated a wish to speak)

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

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, I wish to give a brief speech only. I believe I have explained the Government's position in a considerably clear,

comprehensive and detailed manner. Actually, I have nothing to add in terms of content. We have always operated in a highly transparent and co-operative spirit. I can also tell Mr Martin LEE that the documents have, according to its request, been provided to the Panel of Information Technology and Broadcasting of this Council on 2 February. Those are all the letters and documents exchanged between us. I would also like to reiterate that we absolutely oppose Mr LEE Wing-tat's motion.

**PRESIDENT** (in Cantonese): I now call upon Mr LEE Wing-tat to reply.

**MR LEE WING-TAT** (in Cantonese): Madam President, how much time have I left to reply?

**PRESIDENT** (in Cantonese): You have 15 minutes.

**MR LEE WING-TAT** (in Cantonese): Thanks a lot. (*Laughter*)

Madam President, first of all, I would like to thank Honourable Members for joining this discussion. This is because I find it most worthwhile for us to seriously consider the views expressed by a number of colleagues. Today, some reporters asked me whether such powers had been exercised frequently. Actually, I have to thank Mr Jeffrey LAM. He has been so nice to point out that we have exercised such powers for seven times only since 1993. Discounting the Provisional Legislative Council, it would mean a total of 11 years. If such powers have only been exercised seven times over a period of 11 years, it would translate into a frequency of less than once a year. From a certain point of view, this Council is very restrained and has exercised this power in a similar manner. I also agree that this power should not be used indiscreetly. As such, I hope Members could stop mentioning frequently that this power could be exercised very easily. We must determine if we are justified to exercise this power whenever it is used. I have repeatedly stated the reason earlier and that is, the Government has failed to provide all the information.

Secretary John TSANG said earlier that he had provided all the information he could possibly give. Sorry, he said that he had not provided all

the information in his reply just now; he had repeated several times that he would not provide the Government's internal discussion papers. Therefore, his first statement is wrong. I do not object to the comment that the Secretary has only provided the information he wishes to give. However, he has definitely not provided some crucial documents, that is, the Government's internal discussion papers.

Of course, the Secretary did give an explanation when he stated that certain documents would not be provided. According to his explanation, the provision of such documents would impede the candour of discussion and exchanges between government officials. I am afraid I have to apologize again and invite the Secretary to refer to the documents sought by the select committees on the past seven occasions. Many of the documents were internal documents. I have only joined one of these seven committees — I was a member of the Select Committee chaired by Mrs Selina CHOW to inquire into the new airport incident. At that time, we inspected all the internal documents issued by the New Airport Steering Committee, headed by the then Chief Secretary for Administration, Mrs Anson CHAN. Therefore, I think the Secretary's comment is wrong. I hope he could stop using this excuse to tell the public that the Government would thus be affected because such documents have been provided by the Government before.

I have mentioned in my speech that, should the Government consider that the officials taking part in the discussions recorded in individual documents were merely freely expressing their own views and it would not be too good to them if those documents could now be inspected, I have no objection to deleting their names. Although Secretary John TSANG impresses me as a relatively moderate and pragmatic person, I am extremely dissatisfied with his comment on this point. First, he has not referred to their history; second, he has failed to see that I have imposed certain restrictions on myself in seeking documents. These restrictions are extremely clear, unless the Secretary is unaware. As such, I feel that the Secretary is not doing very well in this respect though, relatively speaking, I respect him as he appears to me to be not bad.

Second, I am a bit disappointed because my request for documents today is an order. In other words, it is "mandatory" for the two officials, one being you, Secretary John TSANG, and the other, the Private Secretary to the Chief Executive, to provide me with the information. Madam President, excuse me, the latter is not in attendance in this Council today. Neither can Secretary John

TSANG give a reply on behalf of him here. It is therefore incorrect for the Secretary to say that he has provided everything. When he spoke for the second time, he contradicted himself by saying that not everything had been provided. There is a complete lack of information about, during the period from mid-1998 to early or mid-1999, the number of times the Chief Executive had met with Mr Richard LI, whether this issue was discussed, how it was discussed, and whether any decisions were made during the discussion. Even if the President allows the Secretary to reply one more time, he would still be unable to answer this question. Therefore, I would like to ask him to stop telling the public that all the documents that should be provided have already been provided. He has not provided all of them. Moreover, within his scope of authority, he is unable to provide the documents I have requested, that is, the documents on the meetings between the Chief Executive and Richard LI during that year and the matters discussed, and whether decisions were made. I hope the Secretary can look at his own scope of authority. Actually, he does not enjoy full authority in this area. For these reasons, I hope the Secretary can slightly modify his "absolute objection" and not to raise so many "objections".

Regarding the take-up guarantee mentioned by the Secretary earlier, I would like to point out his fallacy once again. The position of the Democratic Party on this issue is extremely clear. The Government's requirement for the PCG to first make a guarantee does not mean that the PCG has to lease 50% of the Cyberport. I hope Secretary John TSANG can stop misleading the public. According to the terms of the agreement, the PCG has to fulfil its commitment to the Government by leasing 50% of the Cyberport when no other tenants could be secured. However, the agreement allows other competitors who wish to lease the Cyberport. Therefore, the Secretary should not distort the fact again by arguing that the PCG might enjoy a dominant position should it be allowed to do so. Actually, it is not spelt out in the terms that this has to be done. Instead, it is stated clearly that the Cyberport has to be leased to other tenants who are interested to do so. The Cyberport tenancy will be underwritten by the PCG only when no other tenants can be secured. This is very simple indeed.

Madam President, I am going to briefly respond to the speeches delivered by several colleagues. First, I want to respond to the comment of Mr KWONG Chi-kin because it is extremely serious. According to Mr KWONG, even if this motion is passed, government officials, including Secretary John TSANG and the Private Secretary to the Chief Executive, can refuse to provide

information. Right, they can do so; however, they would breach the law if they do so for their alleged acts of contempt. Mr KWONG then went on mentioning the next step, saying that despite their acts of contempt, the Secretary for Justice would not press charges against them in the name of the Government. Mr KWONG has made such a remark probably because he is a Member of the new term. This is why I have to tell him some history. I have witnessed seven times from past history that never once — I repeat, never once, even the President is nodding her head — has the executive or government departments refused to submit information after the passage of the relevant motion. Never once — I have to speak loudly like Mr WONG Kwong-hing — has the person requested by a select committee to attend a hearing refused to do accordingly. Even the Chief Executive has to discuss with us who should be appointed to attend the hearing and answer the questions. As such, I think Mr KWONG has been worrying too much. Moreover, he has not commented this issue on the basis of history. I feel that he has something in his mind that he finds it difficult to disclose. His behaviour is tantamount to abstaining. His comments from the point of law are actually groundless. I have no wish to criticize him further because he is, relatively speaking, willing to talk.

I used to chat with Mr WONG Kwok-hing regularly. He described Mr KWONG as the "Long Hair" of the patriotic camp. This is really what he said. Even *Wen Wei Po* and *Ta Kung Pao* have reported something like this before. Mr KWONG would fight to the end for everything and would never give up. This is characteristic of the FTU. Nevertheless, excuse me, what I have seen today is a panic-stricken FTU. On the issues arising from this motion, Mr KWONG has merely employed some specious reasons to explain why he would abstain. Actually, an abstention in this Chamber is tantamount to an objection. He practically oppose my motion. I really cannot see from history which organs, government officials or even the Chief Executive have dared to act against the power passed in this Chamber, that is, the power conferred upon us by virtue of the Legislative Council (Powers and Privileges) Ordinance. I have never seen anything as such before.

Madam President, Mr Jeffrey LAM earlier asked this question: Is exercising this power an indiscreet and costly course of action. Excuse me, I already pointed out when I interrupted earlier that we are merely seeking information. We are not asking for the establishment of a select committee. Actually, I hope various colleagues can see that Members of the Democratic Party and Members of the democratic camp are acting in a most restrained

manner. We are not requesting the immediate establishment of a select committee because we do know that such an organ would have extensive power. We merely seek to look into the areas where there is a lack of information. It is a great pity that the Government has failed to provide such information. I cannot see why consulting such information would give rise to the numerous problems mentioned by Mr LAM, such as the business sector's concern that this motion would affect their investment.

I know that Mr LAM has been working in the Hong Kong General Chamber of Commerce for a long time. He should remember who made the most noise in the newspapers over this matter in early 1999. In addition to the democracy camp, it was the nine major chambers of commerce, the nine key members of the Hong Kong General Chamber of Commerce, of which Mr LAM was a representative. So, was he criticizing the nine chambers of commerce for hampering investment in Hong Kong during that year? In addition to meeting the Democratic Party and numerous Members of the democratic camp, the criticisms they made were even harsher than those made by Members who are sitting here today. I dare not even quote some of the comments they made. Neither do I wish to quote those extremely critical comments. The nine property developers included Sun Hung Kai, Hang Lung, the Sino Group (this property developer did not join in), Wheelock, and so on. Many of these property developers were actually known to him. So, why did it not occur to him then there was something wrong when the nine property developers loudly proclaimed that the relevant arrangements were inappropriate? It is thus evident that not only general representatives of public opinion found that there was something wrong, even his fellow businessmen and the industry represented by him felt the same way. Of course, one or two trade associations represented by Mr LAM might probably not find such arrangements problematic. However, I believe the Hong Kong General Chamber of Commerce, of which Mr LAM is a representative, represents a number of trade associations, not just one or two.

It is very difficult to answer the question raised by Mr Abraham SHEK, whom I respect. His question is: Why was it that the democratic camp had not made much noise about the development project of Disneyland, which was similarly not put up for tender, but voiced so many opinions on the Cyberport project? I agree that we need to discuss this. Mr Albert CHENG did try to respond to the question, though his response is incomprehensible. The reasons cited by him are simply wrong. It has nothing to do with whether the project is

profitable. The implementation of the project was not determined by whether it can make money and whether it can undertake creating certain opportunities (such as job opportunities). Given Hong Kong's land policy, the Democratic Party does not deny that some development projects have not gone through open tender. For instance, the Government once awarded the container terminal by way of private treaty grant. Our principle is that, we will be willing to discuss if, according to the Government, the project involves enormous public interest and the reasons presented are convincing to the public and considered by this Council worth considering.

As regards the case of Disneyland, first, it is indisputable that Disney is an international brand. During that time, many mainland cities, in addition to Hong Kong, were competing for the construction of Disneyland. Nowadays, many places and countries around the world have the presence of this internationally recognized brand. Moreover, the intellectual property and equipment related to this brand are irreplaceable in the modern world. Does the PCG possess these conditions? The answer is no. It is not Microsoft, Cisco or Oracle. It has no internationally recognized brand, although it was described by Secretary John TSANG as a leading player in the IT sector in Hong Kong. I can only say that the PCG has made some investment and achievements in the IT field. The word "leading player" has been used by the Secretary too indiscreetly. Not everyone can be called a "leading player". Now it is even more inappropriate to call the PCG a leader. Basically, it cannot be considered a leader, given the size of its investment and achievements. Back then, the Government did offer us an explanation with respect to the Disneyland, and the explanation was accepted after discussions among the public and in this Council. This explains why the private treaty grant came into being. As for the Cyberport project, it was not recognized and accepted by the public. Nor did the public find the Government's explanation sound. This is where the biggest difference lies. It does not mean that we will definitely raise objection to a project without going through tender. We will act according to the situation.

Madam President, the last point to which I have to respond concerns the comment made by Mr LAU Kong-wah in relation to the Director of Audit. I hope Mr LAU, as a member of the Public Accounts Committee (PAC), can understand that the Director of Audit is responsible for conducting value-for-money examination. As many members of the PAC are aware, it means that the Director is not responsible for examining policy blunders.

Instead, he is merely responsible for examining whether the basis within the scope of policies is the most cost-effective. This is out of the ambit of the information we are seeking and the discussion we are conducting at the moment. The scopes are completely different. This is why I hope Mr LAU and the DAB can refrain from confusing this issue with our present discussion.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mr James TIEN, do you wish to clarify the part of your speech that has been misunderstood?

**MR JAMES TIEN** (in Cantonese): Madam President, just now Mr LEE Wing-tat requested Mr Jeffrey LAM to clarify the part of involvement of The Hong Kong General Chamber of Commerce (HKGCC) in 1999 which he had mentioned. I hope you can let me make a clarification. As I have not spoken earlier, so I should not say I wish to clarify what I had said previously. I was the representative of the HKGCC then. Mr LEE Wing-tat said just now, regarding the situation of the HKGCC at that time, he would like to ask Mr Jeffrey LAM to make a clarification. Of course, the President will have to consider and decide whether I should be permitted to make this clarification.

**PRESIDENT** (in Cantonese): I understand the situation of Mr James TIEN and I also understand why he wants to make the clarification. This is because, being the representative of the HKGCC then, you have full knowledge of the circumstances at that time. However, you should have risen to raise a point of order when Mr LEE Wing-tat mentioned this incident in his speech, and then you could ask Mr LEE Wing-tat to answer your question. But now, as he has already finished his reply, so at this stage, I can only allow a Member to clarify the part of his speech which has been misunderstood. So, according to this procedural requirement, I am sorry, I cannot allow you to speak.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEE Wing-tat 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 LEE Wing-tat rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for three minutes, after which the division will start.

**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, Ms LI Fung-ying, 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 Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr Patrick LAU voted against the motion.

Mr WONG Kwok-hing and Mr KWONG Chi-kin abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, 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 LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr LI Kwok-ying 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, eight were in favour of the motion, 18 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 18 were in favour of the motion and six 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.

**MR ALBERT HO** (in Cantonese): Madam President, I wish to move under Rule 16(2) of the Rules of Procedure that this Council do now adjourn to debate the rumoured resignation of the Chief Executive, Mr TUNG Chee-hwa, and the relevant by-election and other arrangements required should he resign. Madam President, may I seek your permission to briefly present three reasons in support of this motion I wish to move today.

First, even though the resignation of Mr TUNG is still a rumour today, it is not simply a rumour. Instead, it has been taken very seriously. Over the past 10 days, it was the focus of attention of people everywhere in the territory, Hong Kong's media, as well as global news publications. Therefore, under no circumstances can we take this rumour, which has attracted the attention of people around the world, including those of Hong Kong, lightly.

Second, it is not simply a rumour. As of today, many discussions have been conducted on the arrangements required once Mr TUNG Chee-hwa resigns. People engaging in such discussions include important mainland figures as well. For instance, Mr TANG Jiaxuan, State Councillor, has raised

the issue of tenure of office. Some former members of the Basic Law Drafting Committee and legal experts mentioned the issue of legal interpretation. Even the Chairman of Hong Kong's Electoral Affairs Commission raised the point that time would be very tight if a by-election is called for.

Lastly, Madam President, and most importantly, even if this might be just a rumour, how the Government reacts to and handles it would reflect the level of governance of Hong Kong as an international financial centre and world city. As Members of this Council, we are duty-bound to discuss matters of concern to every member of the community. I hope the President can allow Members of this Council to conduct a full discussion on this important matter. I hope you would not stop us from performing the duties required of us.

**PRESIDENT** (in Cantonese): Mr Albert HO, you have actually told me beforehand that you are prepared to do this. I did not stop you because last week Mr LEE Wing-tat also expressed his view on the motion he intended to move. I therefore allowed you to express yours too. However, I requested you to be concise as far as possible because I had made a ruling on your request. Members have already had a copy of my ruling at hand; therefore, I do not wish to spend any more time here discussing this matter. I understand that Mr HO and some people consider this a matter of enormous import. However, as President of this Council, I can only say that while Honourable Members, members of the public or anyone else can express their views on this matter, I must make a ruling in accordance with the Rules of Procedure. Furthermore, I am required by the Rules of Procedure to consider the urgency and importance of the matter in making a ruling. However, I cannot treat a rumour as a fact. I hope Members can understand that I cannot possibly make consideration in the absence of a factual basis.

Two motions with no legislative effect. First motion: Shortcomings of functional constituencies.

### **SHORTCOMINGS OF FUNCTIONAL CONSTITUENCIES**

**MR RONNY TONG** (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

Madam President, Secretaries, Honourable colleagues, standing here today, on the eve of a brewing storm, I only feel like weeping but the tears are not coming to me. I really cannot pull myself together to participate in the debate on constitutional reform. Just imagine, it may take us one or two years to discuss then amend the provisions of Annexes I and II to the Basic Law. However, in the end, it is difficult to ensure that our proposed amendments will not be interpreted beyond recognition overnight; in the end, it is difficult to ensure that the Chief Executive will not eventually be hand-picked. It does not grieve me that Mr TUNG, the Chief Executive, requests to quit. It does grieve me that the vulnerable "one country, two systems" is so fragile that it is unable to stand the test.

However, I remind myself that falling into a depression and becoming dispirited are our worst enemies. The fight for democracy is neither an overnight job nor an individual campaign. No matter whether there is going to be an election of the Chief Executive in 2007, we should try our best in our term to promote democratic constitutional development of the SAR. Over the past few months, words and deeds that may obstruct democratic development have come thick and fast. I know that if we just slacken off a little, the pace of democracy will not advance but regress. Not long ago, Secretary for Justice Elsie LEUNG and Secretary Stephen LAM pointed out in this Chamber that functional constituency (FC) elections could also be regarded as a form of universal suffrage. Moreover, the Constitutional Development Task Force has focused its attention only on FCs and paid no heed to the promotion of democracy. Other than describing this attitude as calling a stag a horse and deceiving themselves as well as others, I can really think of no better adjectival phrases.

I propose this motion today in the hope that the undemocratic nature of FCs can be exposed to the public through rational discussions. First, I have to clarify that "functional constituencies" by my definition is the representative system that Members are returned by elections within certain strata, sectors or professional bodies. This system is unfair and undemocratic in the constitutional context; creates a privileged class in the political context and heightens divisions and unrests in the social context. I would examine the shortcomings of FCs with Honourable colleagues in the above three contexts.

Let us first take a look at the constitutional context. It is no doubt that "universal suffrage" is not clearly defined in the Basic Law. However, it is

obvious that the Basic Law has mapped out a democratization agenda for constitutional development. I think we all know the contents of Article 45 of the Basic Law. Director Ji Pengfei said in the Third Session of the Seventh National People's Congress in 1999, "The existing political structure of the SAR should be gradually developed into a democratic system that suits Hong Kong's situation in accordance with the principle of gradual and orderly progress." A process towards democracy for the constitutional development of the SAR can also be seen in Annexes I and II to the Basic Law. Paragraph 3 of Annex I stipulates that the delimitation of the various sectors and the number of members of each sector shall be prescribed by an electoral law enacted in accordance with "the principles of democracy and openness". Annex II also stipulates that 36 FC seats against 24 direct election seats in the second term of the Legislative Council should be progressively decreased to 30 seats against 30 seats in the current term.

In addition, the International Covenant on Civil and Political Rights (ICCPR) has been introduced into Article 39 of the Basic Law. The Preamble of the ICCPR categorically states that the recognition of the equal rights of all members of the human family is the foundation of freedom, justice and peace in the world. Article 2 of the ICCPR states that all individuals subject to the jurisdiction of each State Party to the ICCPR are ensured the rights recognized in the ICCPR, without distinction of social origin, property and other status. Article 26 also states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. And Article 25 even clearly points out that every citizen shall have the right and the opportunity, without any of the distinctions and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage; (c) To have access, on general terms of equality, to public service in his country. We should not forget about the comments of the United Nations made on the first report on human rights of the SAR submitted by China in 1999. The United Nations pointed out at the time that the system of FC implemented in Hong Kong was not in line with the provisions of Articles 2, 25 and 26 of the ICCPR which I have just cited. In fact, it is impossible for us to imagine how, in terms of logic, a system that allows only members of individual sectors to elect representatives to participate in politics can be described as universal and equal. Moreover, only persons who control the corporations and organizations in these sectors have the right to vote. They may even have several votes by setting up subsidiaries and

affiliates, while those who work in these sectors, on the contrary, have no right to vote. In the constitutional context, this is an extremely undemocratic and extremely unfair system. Should the number of representatives of FCs be increased, whether in the election of the Legislative Council or in the election of the Chief Executive, it means back-peddalling from universal suffrage.

In the political context, when the right to vote and the right to participate in politics rest in the hands of a handful of people, they will monopolize the power in politics. A privileged class will then be created. The unfairness of FCs is reflected in the recent vigorous endeavours made inside and outside this Council by various sectors previously not represented for inclusion as newly-added FCs. What are the objective criteria to determine which sector has an edge in terms of maturity, qualification and right over another to participate in politics?

At the hearings of this Council, representatives from a number of organizations that strive for becoming newly-added FCs have frequently exhausted their arguments and efforts to justify the fairness of their proposals. However, all of these are fine rhetoric. It seems that they have all neglected the most fundamental question: Should all the seats be returned by direct election or by FCs in an election by universal suffrage? If the answer is all the seats should be returned by direct election, how can an increase in the number of FC seats help the realization of universal suffrage?

In the social context, problems arising from FCs are also not to be ignored. As the name implies, a large majority of the representatives of FCs will accord first priority to the interests of their respective sectors. They have not much enthusiasm for major issues concerning society as a whole and the people's livelihood. In particular, when there is a conflict of interests between their respective sectors and society as a whole, most of these representatives will disregard overall public interests to avoid accusations from their respective sectors. As a result, it is impossible for this Council to reach a consensus or find an effective solution to a number of major social issues concerning the people's livelihood. As social problems become more serious, disputes and divisions will increasingly deteriorate and governance will become more and more difficult.

In the selection of the Chief Executive, a vast majority of the Election Committee (EC) members are representatives of FCs. Among the current 800

members, only those returned by direct election can genuinely represent public opinion. The Chief Executive has to face an electorate which is not the general public but representatives of these subsectors instead. Over the past few years, there have been lots of incidents involving partiality and even collusion in the governance of the Chief Executive. As a result, our community has become more divided and our people have had a heightened sense of unfairness. Lots of people have consequently taken to the streets, which has given rise to social instability. Under these circumstances, the proposal of an increase in the numbers of representatives of FCs in the Legislative Council and the EC will only create further unbalance and divisions within the community.

It is thus clear that the electoral system of FCs is full of conflicts and absurdities. An increase in the number of representatives of FCs, whether in the Legislative Council or the EC, is inconsistent with the basic principles of gradual and orderly progress and democratic election by universal suffrage prescribed in the Basic Law. No matter how we view it, an increase in FC seats will run counter to the ultimate aim of universal suffrage. It is definitely not the direction for our constitutional reform.

Madam President, I so submit. Thank you.

**Mr Ronny TONG moved the following motion: (Translation)**

"That this Council considers that any constitutional reform proposal which involves an increase in the numbers of functional constituency seats in the Legislative Council and of the members representing functional constituencies in the Election Committee violates Articles 45 and 68 of the Basic Law, which stipulate that the principles of "gradual and orderly progress" and "actual situation" should be followed in achieving the aim of universal suffrage; and requests the Government to state clearly in the Fifth Report of the Constitutional Development Task Force that any so-called "mainstream proposal" which will be put forward in the future will not include proposals to increase the numbers of functional constituency seats in the Legislative Council and of the members representing functional constituencies in the Election Committee."

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

**PRESIDENT** (in Cantonese): Dr KWOK Ka-ki will move an amendment to this motion, as printed on the Agenda. The motion and the amendment will now be debated together in a joint debate.

I now call upon Dr KWOK Ka-ki to speak and move his amendment to the motion.

**DR KWOK KA-KI** (in Cantonese): Madam President, I move that Mr Ronny TONG's motion be amended, as printed on the Agenda.

First of all, I would like to express my gratitude to Mr Ronny TONG for proposing this motion today. In fact, an electoral method as odd as FCs should not exist in Hong Kong. Perhaps, during the discussions on constitutional development as far back as a couple of decades ago, it should be decided not to retain this electoral method. However, this electoral method has remained until now.

When I came across today's motion moved by Mr Ronny TONG among the heap of Legislative Council papers last Wednesday, I found myself caught in a little conflict at the time. As rumours of resignation of the Chief Executive ran rampant on that very day, I was caught in a state between illusion and truth, feeling hesitant and confused. I was thinking at the time: Was there any hope for democracy in Hong Kong? Should we continue to brave forward and take a great step to strive for the expeditious implementation of universal suffrage; or should we accept to confine ourselves to the unyielding deadlock set under the framework of the 26 April NPC interpretation? Should we do some piecemeal work to explore the possibility of finding some room for manoeuvre in constitutional reform?

The question of the quitting or staying of the Chief Executive still has us puzzled this week. And the complacency of Chief Secretary Donald TSANG, the strongest heir, was also unflattering. In the remaining two and a half years' term, how can the risk of governance faced by the SAR Government be resolved, and the public grievances arising from lost credibility of high-ranking officials be assuaged? Is the term of service of the new Chief Executive going to be two years or five years? I believe most of the people of Hong Kong share our feelings that we do not understand why political issues with profound implications that will affect society as a whole could become as lifeless as a pool of stagnant water. And we even have to put up with the secretive dealings

between the Central Authorities and a handful of high-ranking officials who have treated reporters and members of the public like fools by only saying "good morning" or "an account will be given in due course" and have then kept everything in the dark without comments.

Why is it impossible for the people of Hong Kong to have any open, transparent and clear formal explanation and choice? Are the people of Hong Kong willing to be "obedient citizens"? I have mixed feelings today. I have been bestowed the title of Honourable Member by being returned to the Legislative Council by the Medical FC. My capacity as a representative of the FC has allowed me to be elected to or to be involved in the Legislative Council. This is the exact reason why many of the electors who did not cast their votes for me have queried: Would he only have regard to the interests of his own sector? The 3 million electors who did not take part in the FC elections also queried whether I would disregard public interests and would not have the interests of 7 million people at heart. In fact, I have all along wished to bare my heart. I have gone into politics because I still have hope for democracy in Hong Kong. I believe in Hong Kong. And I believe in democracy. So, I support the implementation of dual elections by universal suffrage in 2007 and 2008. To fight for more space for universal suffrage for the next generation, I have all along supported the abolition of the electoral system of FCs.

Mr Ronny TONG's motion has clearly indicated that an increase in the number of FC seats in the future mainstream proposal is neither our wish nor something that we can accept. However, on second thoughts, I find these compromises are, in fact, a form of accommodation for the sake of the overall interest. Mr Ronny TONG's motion is actually an indirect response to the NPC's gesture made on 26 April last year, which pronounced a death sentence to the constitutional system of Hong Kong. It is apparent that the 26 April interpretation has not only ruled out election by universal suffrage in future but also stipulated that any change or increase in the number of direct election seats in future has to be complemented by an increase in the number of FC seats. Perhaps, it is this "golden hoop" that leaves Mr Ronny TONG no choice but to put forward this request. He would rather give up everything so that neither side can win. He would rather have no increase in the number of FC seats so that Hong Kong will continue its progress towards democracy.

This is precisely the point that makes this motion carry "only a destructive but not constructive effect", as mentioned by a number of Members. What

should we fight for? Do we want neither side to win; to achieve only a destructive but not constructive effect? Or should we continue to fight for the implementation of dual elections by universal suffrage in 2007 and 2008, which is a goal that we have never given up? I have no definite answers to these questions. But I can tell you that I have so far supported the implementation of dual elections by universal suffrage in 2007 and 2008. However, in the process of discussion, there have been indeed very few options open to us. If we are able to continue to support the implementation of dual elections by universal suffrage in 2007 and 2008, we will definitely not give up. However, the Government or the Central Government has promulgated the 26 April interpretation in response, inflicting a "golden hoop" upon us. If we put up a request of not increasing the number of FC seats, we have to re-examine the following issues: How should constitutional reform be launched in future? What is the democratization agenda? Should there be an increase in the number of direct election seats in future? Are we going to cast all these requests or ideas in the winds, without giving them another thought? I propose this amendment in the hope that concerted efforts will be made to examine the future direction of constitutional development.

The 26 April Decision has gradually become an iron-clad rule that tolerates no alterations. Hong Kong is now experiencing the so-called "birdcage politics". And fitting a lock on the birdcage has made the situation even more pathetic. Future democracy for the people of Hong Kong can only spread its wings inside the birdcage. It can at best march at the same place, but never can it fly away even if given wings. Are we doomed to be subservient and entrenched in the birdcage with the Chief Executive and his ruling team, or are we going to take a brave step out of it?

Since the rigid 26 April interpretation has confined the outlook of our constitutional reform, Mr Ronny TONG's original motion, as well as public opinions, has expressed a strong sense of helplessness. As the 50:50 ratio for Members returned by FCs and geographical constituencies through direct election will remain unchanged, is imposing restrictions on ourselves and clipping our wings the only way out? The constraint of circumstances and our inferior position have really left us powerless to strike back. Perhaps, our current bottomline can only be set at the request of not to have, and not to allow any increase in the numbers of FC seats in the Legislative Council and of the members representing FCs in the EC in the mainstream proposal in the Fifth Report of the Constitutional Development Task Force.

"One country, two systems", "Hong Kong people ruling Hong Kong", "a high degree of autonomy" and "election by universal suffrage" have, in fact, all gone. They have all reached an impasse. And we have been forced into a "dead corner", leaving us no room for manoeuvre. The people of Hong Kong have completely turned into "cage cultured chickens" since 1997. Even if they have feathers, they cannot fly. When considering proposing this amendment, some difficult situations have come to my mind. When considering proposing an amendment to Mr Ronny TONG's motion, I had the feeling that we seemed to have accepted the 26 April interpretation which has sentenced democracy to death. It was like pronouncing a sentence to have democracy chilled. I had only one purpose in mind at the time, and it was to have universal suffrage defrosted. Therefore, I proposed an amendment to the original motion.

I have kept on giving this matter plenty of thoughts over the past few days. And many friends of the democratic camp asked me whether there were other options. After spending some time to reminisce about the road of democracy of Hong Kong, I cannot help feeling a great sense of irony. It is because my amendment is tantamount to the pot calling the kettle black. It is justifiable for people to query me: Have you given up fighting for the implementation of dual elections by universal suffrage in 2007 and 2008? Have you made a volte-face and accepted a midway proposal for constitutional reform? But I would like to tell Members that the answers are in the negative. I still support the implementation of dual elections by universal suffrage in 2007 and 2008 without remorse. We have to free ourselves from the shackles of the existing cage. We have to face constitutional reform and matters on universal suffrage in future. As a member of the Hong Kong public, I am overwhelmed by sorrow. We are in the generation that craves for democratic election by universal suffrage. However, we have so far never had a taste of it. Hong Kong, a modern city that has a free economy, a sophisticated information network, a population that lives in peace and plenty, a living standard that proceeds from comfortably well-off to relatively affluent and a status of an international cosmopolitan city, surprisingly, is unable to have democracy. After the mass processions on 1 July for two years in a row, and even after a demonstration by over 500 000 people of their discontentment, this fact remains unchanged.

The proposal of enlarging the electorate base of FCs represents compromise. Perhaps, details of enlarging the electorate base of FCs will be given in future. However, such piecemeal work cannot help Hong Kong. I

fully understand that the proposal of an increase in the number of direct election seats on the basis of no increase in the number of FC seats is in violation of the 26 April Decision. I understand this. But should we put up with the 26 April Decision and introduce no amendments? The answer is definitely in the negative. Although I cannot predict how the voting on this motion will conclude, I hope Members who have Hong Kong's democracy at heart will agree that the democratic constitutional system that we request or we will request in the future is something that should not be given up. Thank you, Madam President.

**Dr KWOK Ka-ki moved the following amendment: (Translation)**

"To add "; furthermore, to achieve the aim of universal suffrage, the Report should also, on the basis of no increase in the number of functional constituency seats, stipulate the specific proposal to increase the number of geographical constituency seats" after "will not include proposals to increase the numbers of functional constituency seats in the Legislative Council and of the members representing functional constituencies in the Election Committee". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr KWOK Ka-ki to Mr Ronny TONG's motion, be passed.

It is now nearly 9 pm. I intend to suspend the meeting at around 10 pm today until tomorrow morning. Mr Ronny TONG, I am sorry that the debate on your motion has to be broken up into two parts. But I think you do understand.

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, it has been 20 whole years since the first introduction of functional constituency (FC) seats to the colonial Legislative Council in 1985. This constitutional arrangement, in which sectoral interests are institutionalized into political privileges, should long have been swept away to the cold palace in history. However, it is both sad and regrettable that, to date, the question of whether there should be an increase in the number of FC seats remains a subject of debate for the people of Hong Kong.

Some may say that it is only because the democratic camp can gain no "advantages" and cannot share the benefits that it opposes an increase in the number of FC seats. I do not agree to this view. First of all, the democratic camp is equally able to win FC seats. For example, in the Legislative Council Election last September, the democratic camp succeeded in winning the seat of the Accounting FC first time ever. Moreover, an amendment to Annex II to the Basic Law to increase the number of FC seats must be made with the endorsement of two thirds of the Members of the Legislative Council. As the democratic camp has a total of 25 votes, if it has its mind set to it, it should have enough chips to play in the "share of the pie" game. It is absolutely not a problem to win several FC seats that are tailor-made for the democratic camp.

The gain and loss of seats is not, and should not be the reason for the democratic camp opposing an increase in the number of FC seats. We challenge this constitutional arrangement in principle rather. The nature of FC seats is anti-democracy. By protecting the privileges of individuals with a vested interest, this arrangement has made it impossible forever for political parties or groups that represent the majority of the public to assume a leading and dominating role in a representative council.

Madam President, only a few countries in history adopted the system of FCs. The most well-known examples are the fascist regimes under MUSSOLINI and FRANCO. Under the rule of MUSSOLINI, Italy was governed on the basis of occupations and trades in the Second World War. Its parliamentary seats were also allocated in proportion accordingly. This system was put in place in the name of eliminating class conflicts. However, the workers had no right to elect leaders. The government was, in reality, a spokesman of the capitalists under the guise of an arbitrator between labour and capital. This system of equating a country with an enterprise absolutely runs counter to the democratic system in which people are the masters of their own country.

Another example of the adoption of FCs is the municipal authorities called "Municipal Council" in the days of Shanghai International Settlement. European big powers adopted this system with the intent of securing their control over the Council. Therefore, members of either the democratic camp or the patriotic camp have no reasons to advocate the adoption of a system in the SAR that symbolizes imperialist oppression of China in the past. Otherwise, it is an irony to history.

Madam President, I wish to stress that the greatest of FCs is its forced segregation of people into various groups and sectors by different sectional interests. It does not seek to unite the strength of the people to strive for their overall well-being. The logic behind FCs is that the more interests one gains for his own sector, the more successful he will become. So, sectional interest is often placed over overall interest. Even with the enlargement of the electoral base, as some people suggested, the nature of FCs that segregates people by sectional interests remains unchanged. Therefore, even the proposal of the "new nine Functional Constituencies" is unacceptable in principle.

An increase in the number of FC seats means an increase in "benefits", which will only attract more sectors to demand a share of it. As a result, more and more people will lay particular stress on individual interests and this will definitely have an adverse impact on the overall interests of society. Moreover, the creation of one more class with political privilege and one more sector with a vested interest in society means one more obstacle on the road to universal suffrage, which is inconsistent with the principle of achieving universal suffrage in gradual and orderly progress.

Madam President, I so submit.

**DR YEUNG SUM** (in Cantonese): Madam President, as I am suffering from flu, my voice is not very clear.

Madam President, Article 45 of the Basic Law stipulates that the method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

Article 68 of the Basic Law also stipulates that the method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the Members of the Legislative Council by universal suffrage.

In accordance with the relevant provisions in Annexes I and II to the Basic Law, if there is a need to amend the election of the Chief Executive in 2007 and the election of the Legislative Council after 2007, such amendments must be made with the endorsement of a two-thirds majority of all the Members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress (NPCSC) for approval or for the record. The former involves the appointment of the Chief Executive, and the latter the formation of the Legislative Council.

It cannot be clearer that, in terms of law, the Hong Kong Special Administrative Region (SAR) can elect the Chief Executive and all the Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively.

To consider in the light of the actual situation in the SAR, public opinion surveys of the past years and the mass processions on 1 July in the past two years have demonstrated a very clear general consensus in the SAR community that the Chief Executive and all the Members of the Legislative Council should be returned by universal suffrage as soon as possible. In fact, the mainstream proposal of the SAR is the election of the Chief Executive and all the Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively.

Secondly, to consider in accordance with the principle of gradual and orderly progress, an electoral system was first introduced to the former Legislative Council in 1985. At that time, 12 Legislative Council Members were returned by FCs; the Urban Council and the Regional Council each elected one representative to the Legislative Council and the district boards elected 10 representatives to the Legislative Council. In 1991, seats returned by geographical constituencies through direct election were first introduced to the former Legislative Council. There were 18 Legislative Council Members returned by geographical constituencies, and the number of seats returned by FCs was increased to 21. It was until 1995 that the former Legislative Council was fully elected, with the elimination of the appointed seats. There were 30 seats returned by FCs; 20 seats returned by geographical constituencies, and 10 seats returned by the Election Committee. Madam President, in view of this course of history, it is completely consistent with the principle of gradual and orderly progress for the SAR to have all the Members of the Legislative Council returned by universal suffrage in 2008. In fact, many Hong Kong people think it is already very late indeed!

Due to the political intervention by the Central Authorities, in which the NPCSC first gave an "Interpretation on the Basic Law" in April 2004, and then promulgated a "26 April Decision" to brutally rule out universal suffrage in 2007 and 2008, the SAR has then been caught in a retrogression in democratization. The Fourth Report of the Constitutional Development Task Force pointed out, "There are many views that the Chief Executive should be returned by universal suffrage in 2007. As this proposal is inconsistent with the Decision of the Standing Committee of the National People's Congress, the Task Force will not process it further." Similar comments were given on the proposal of returning all the Members of the Legislative Council by universal suffrage in 2008.

At the hearing of the Legislative Council Panel on Constitutional Affairs, a lot of deputations came to the Legislative Council to offer their views. When they put forward the so-called "middle-of-the-road proposals", they stressed their basic support for the implementation of dual elections by universal suffrage in 2007 and 2008, and that middle-of-the-road proposals were put forward only because a decision had been promulgated by the NPCSC. They may not know that such a move will only give people who oppose universal suffrage an excuse to retain FCs and help those people continue to oppose universal suffrage. However, the report of the Constitutional Development Task Force and the statements of the deputations have, nevertheless, demonstrated that Hong Kong supports the implementation of dual elections by universal suffrage in 2007 and 2008, only that the Central Authorities oppose it.

The current functional constituencies are basically the politically privileged, with a large majority of them holding small-circle elections. Discounting the four largest FCs such as the Education FC, and so on, the sum total of voters of the remaining 26 FCs is less than 60 000. Moreover, some FCs only allow corporations and organizations to register as voters. Just imagine, there are around 2.88 million employees in Hong Kong, but the election of the Labour FC is taken care of by 519 trade union leaders; there are around 40 000 people employed in the insurance sector, only 161 insurance company representatives can elect a representative of their FC to the Legislative Council; there are nearly 140 000 people employed in the finance sector, the election of the Finance FC is monopolized by 154 banking big wigs. Similar situations happen in the Agriculture and Fisheries FC, Transport FC, and so on. It is pointless for me to list them all. On many occasions, working persons within the sector are not voters at all. And, sometimes, the topmost executive

of a corporation can have a number of votes in his hands. Should such a privilege in politics remain in Hong Kong, it is really a great insult to Hong Kong people.

At present, only 30 Legislative Council Members are returned through direct election by geographical constituencies which have a total of around 3 million voters, whereas the 30 seats returned by FCs are elected by less than 200 000 voters. This is definitely against the so-called principle of "balanced participation". Madam President, I must stress that FC seats are the politically privileged, which should be replaced by universal suffrage as soon as possible.

To retain FCs or to increase the number of seats of FCs will only create more people with a vested interest and place more obstacles and hurdles on the road to universal suffrage. The Democratic Party supports the original motion and opposes the amendment. The major reason is that Dr KWOK Ka-ki proposes to increase the number of direct election seats on the basis of no increase in the number of FC seats. This has undoubtedly abandoned universal suffrage and become a middle-of-the-road proposal. I hope that the 25 Members of the democratic camp will uphold the stance of putting universal suffrage in place in 2007 and 2008 and continue to resist the so-called "mainstream proposal" about to be put forward by the Government. I think this battle still has a long way to go. We should be determined and oppose the Government's so-called "mainstream proposal" with concerted efforts. I also hope that the concern of the public for universal suffrage will be further raised and a positive step forward will be taken for the future of Hong Kong. Madam President, I so submit.

**DR RAYMOND HO:** Madam President, the early adoption of universal suffrage should be supported. However, we must not rush for its full implementation without the slightest regard to the actual situation. The aim of implementing universal suffrage must be achieved according to the principle of "gradual and orderly progress" as stipulated in Articles 45 and 68 of the Basic Law.

Undoubtedly, the abovementioned stipulations have ensured a smooth transition following the reunification of Hong Kong with the Mainland in 1997. Heading towards the ultimate goal of universal suffrage, geographical

constituency seats have been increased from 20 in the First Legislative Council to 30 in the current term, as promised and stipulated in the Basic Law.

With the eventual elimination of seats returned by the Election Committee in the current term, functional constituency (FC) representatives remain an important stabilizing force in this Council. Besides providing their expert advice on related subjects, the FC representatives tend to offer more balanced views on a wide range of issues based on their professional opinions and experience rather than politically inclined considerations. Though political parties have contested fiercely for the FC seats in recent elections, there is no indication that candidates with political affiliation had any edge over other contestants. In fact, independent candidates still enjoyed more support in some FCs.

The restrictive number of the FC voters has always been the main point of contention. To address the issue, I am of the opinion that the electorate base of the FCs should be broadened to enhance their representativeness. Take the Engineering FC as an example. There are more than 10 000 eligible voters at present. But the number could be increased to 20 000 to 30 000, or even more, should the electorate include graduates and associate members of the Hong Kong Institution of Engineers. Graduates are those with recognized university degrees, whereas associate members are basically technicians with sub-degrees or various kinds of diplomas. Of course, the subject must be thoroughly discussed by the individual FCs, including the Engineering FC.

Without any doubt, the expansion of the FC electorate is no substitute for universal suffrage. But it is definitely a move forward during the transitional stage and is in line with the principle of "gradual and orderly progress", as stated in the Basic Law.

Madam President, there is an old Chinese saying, "If you are in a hurry, you will never get there." Is it not a good motto for our way forward to achieving the aim of universal suffrage?

With these remarks, I so submit. Thank you.

**MR LI KWOK-YING** (in Cantonese): Madam President, the electoral system of FCs in Hong Kong is a product of political and historical development. This

system has all along attracted a lot of discussions and disputes since its establishment in 1985. Some people think that the system of FCs is absolutely without merit. Some even regard it as a symbol of the undemocratic political system of Hong Kong.

Some people have misconceptions about FCs because they do not fully understand the significance behind the electoral system of FCs, which is the realization of the principle of balanced participation. To quote the White Paper on representative government, "The aim is to have major social, economic and professional sectors with shared interests represented in the Legislative Council."

In fact, over the past years, Members returned by FCs have made substantial contribution to upgrading the deliberations of this Council based on their own professional knowledge and experience. Ms Margaret NG is now in the Chamber. She is a member of the Article 45 Concern Group, as well as one of the political stars of the democratic camp, and she is returned to the Legislative Council exactly by the Legal FC. In fact, Members returned by FCs in this term are really remarkable. It proves that as long as the electoral system of FCs operates soundly, it is equally able to recruit a lot of people with exceptional quality to pool a wealth of talent in this Council to act as a positive and stabilizing force to promote the level of professionalism of this Council.

Madam President, I had a meeting with a deputation called the "Concern Group of Hong Kong Chinese Medical Practitioners on Constitutional Reform" this morning. It represents 50-odd Chinese medicine practitioner groups, in which all of them are registered Chinese medicine practitioners with their minds set on rendering their expertise and service to the public. Their primary concern is the health of the public, and they hope to put forward suggestions to serve the public. The SARS incident has taught us a valuable lesson. We all know that the treatment of SARS by combining Chinese medicine with Western medicine in the Mainland yielded marked curative result. However, group consultation of doctors practising Chinese and Western medicine was initiated by the Hong Kong Government at a late stage. Investigation report at the time indicated that the fatality rate of SARS patients treated with Western medicine was as high as 17%, while that of patients treated with Chinese medicine was just 7%. According to these figures, 10 more patients have died out of 100 patients, which is a shocking figure. After the SARS incident, there has

particularly been a growing recognition of the Chinese medical practitioners. However, it is a pity that government policy on the prospect of Chinese medicine practitioner is not well-defined. At present, there are over 5 000 registered Chinese medicine practitioners and 3 000 listed Chinese medicine practitioners, so together with people working in the Chinese medicine trade and other related trades, the total number is in tens of thousands. However, neither their views can be reflected in this Council, nor the rights of the public and the sector can be safeguarded. I think this should not happen in a democratic society nowadays.

In the light of the current actual situation in Hong Kong, and to be consistent with the principle of gradual and orderly progress, should there be inadequacies in the electoral system of FCs, remedial measures to plug its loopholes should be proposed in a pragmatic manner. For example, the DAB supports an increase of five seats under the existing system of FCs. This can both enhance the representation of FCs and allow professions that have previously been kept away from the system, such as the Chinese medicine practitioners, to have a voice in this Council and to offer their advice and suggestions to the SAR Government.

A rational participant in politics should not act on impulse to throw the baby out with the bathwater. He should not merely oppose an increase in the number of FC seats blindly and offer no effective remedies to constitutional development.

The insistence on no increase in the number of FC seats will certainly bring us farther away from the road to universal suffrage. This is because in accordance with the Decision promulgated by the NPCSC on 26 April 2004, the election of all the Members of the Legislative Council in 2008 will not be by means of universal suffrage, and the 50:50 ratio for Members returned by FCs and geographical constituencies through direct election will remain unchanged.

That means if there is no increase in the number of FC seats, there will be no increase in direct election seats correspondingly. The electoral system for the Legislative Council of the SAR will then gain no advance and the chances of our moving towards universal suffrage become all the more slimmer.

To show respect for the NPCSC Decision, the best way is to increase the number of FC seats so that the number of direct election seats will increase correspondingly. As a result, the representation of the Legislative Council will gradually be enhanced. As the formation of the Legislative Council in 2008 cannot be conducted by way of direct election, an increase in the number of FC seats is indeed a pragmatic proposal readily acceptable to the general public.

In a nutshell, universal suffrage is a way out for the future political system of Hong Kong. This principle is affirmed in the Basic Law. To enable the early implementation of universal suffrage, I am resolutely against any people blindly opposing an increase in the number of FC seats and preferring no advance in the constitutional development of Hong Kong. Such a move will let slip a golden opportunity to improve the existing constitutional system and render our political development at a standstill.

Madam President, I so submit.

**MR LEUNG KOWK-HUNG** (in Cantonese): Madam President, I think a quorum is lacking now.

**PRESIDENT** (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

**PRESIDENT** (in Cantonese): A quorum is now present. Mr LEUNG Kowk-hung, you may speak.

**MR LEUNG KOWK-HUNG** (in Cantonese): Madam President, I think ..... *(laughter)* the discussion on the shortcomings of FCs is no more than a platitude. In fact, this topic is in many textbooks on politics, ranging from secondary school to university. It is simply ridiculous that this Council is holding a discussion on this topic today. Surprisingly, this Council has acted against

common sense. Why? It is because certain power is over this Council and makes it act against common sense.

Mr LAU Chin-shek mentioned MUSSOLINI. In fact, there is no need for him to cite an age-old example. It also happened in Indonesia before SUHARTO was overthrown. It is actually an insult to the system of China to defend FCs. There are dual political assemblies in the system of China. Separated from the Deputies to the National People's Congress (NPC), views can be put forward by whether FCs or any other bodies. The NPC will not comment on these views even if it is aware of them. This is the bicameral system. As you are Chinese and love your country, even if you do not believe in the way the NPC works, you should not insult your own country in this Council because our country will not put this system in place. It conducts consultations, but consultation is an entirely different matter. The House of Lords in Britain had power of veto over the House of Commons in the past, which is the origin of aristocratic politics. But the power has been revoked now. A Lord of the House once invited a guest to attend the meeting as a visitor. But the guest made trouble and was fouled. And the Lord was given a dressing down.

What is going on here? The worst system is adopted, which is a cross-bred of the Chinese and British systems. Are you not ashamed of defending a system that is condemned in the history textbooks and in human history?

Therefore, I think it is pointless for the 25 Members of the democratic camp to strive for anything here in this Council. We should be brave and face the influential officials direct. We should go to Beijing to tell the national leaders that the elections of FCs, particularly those with corporate bodies as electors, are rotten to the core. They were misled at the beginning, especially by TUNG Chee-hwa, who is about to quit. They could not get a clear picture. Therefore, the NPCSC Decision promulgated last year is wrong. To retain a system that includes elections of FCs, in which electors are legal persons instead of natural persons, completely runs counter to history. And this is intolerable.

The Members of the NPCSC should rectify this mistake. The members of the NPCSC should not hide half of their faces behind a pipa. Although they have found out the leader who is hand-picked by JIANG Zemin, returned by

small-circle election and draped with the imperial yellow robe has blundered in governance, they did not admit the mistake. Instead, they have kicked him upstairs to mock the people of Hong Kong. The fatuous ruler has gone. But he is going to ascend to be an overlord. Is this right? This is not at all right. The members of the NPCSC should face the reality and put the wrong decision right. This is a famous saying of Mr DENG Xiaoping. Incidents that need to be set right include the wrong tone set for 26 April 1989 and the wrong decision made on 26 April 15 years later. I am not asking them to rectify the mistake made 15 years ago. I am only asking them to rectify the mistake made 15 years down the line for the time being. Why does the democratic camp not act like this? Why did the democratic camp not make the Central Authorities understand that they could actually rectify this mistake at the key moment when it has formed an alliance in election and is prepared to go to Beijing, and when the Central Authorities have told the world that they were wrong but they would not admit it openly?

Mr LAU Chin-shek told us that there was a need for reconciliation. Our friends in this Council also often tell us that there is a need for reconciliation. The first and only condition of reconciliation is to know one's mistake and rectify it. Only when one rectifies his mistake can people's confidence be restored. How can one insist on not to rectify his obvious mistake? Therefore, the 25 Members of the democratic camp have the moral obligation to apply to go to Beijing immediately, and apply to the Liaison Office of the Central People's Government to have a meeting with the leaders of the Central Authorities. At present, the members of the NPCSC are in Beijing. The Deputies to the NPC are also in Beijing. The members of the NPCSC can rectify their own mistake. And the Deputies to the NPC can reverse the mistake of the NPCSC. It is pointless for us to debate the issue here in this Council. I have said in this Council time and again that the time has come for us to take action.

It is the wish of Hong Kong people that TUNG Chee-hwa quits. But I can tell you that after TUNG Chee-hwa, there is going to be LI Chee-hwa, ZHANG Chee-hwa, CHEN Chee-hwa, HE Chee-hwa, HUANG Chee-hwa. Why? It is because we have a small-circle election, and a rubbish, cross-bred political system that uses FCs as a piece of loincloth. Such a system will only benefit the privileged. In this respect, the democratic camp should dedicate itself to the cause without the least reservation. The democratic camp should not retreat. The democratic camp should be accountable to history. The democratic camp should have more courage than QU Yuan. They are not

going to jump into the river but to go to Beijing. Mr YU Dafu wrote the following verses when the Japanese tried to pursue and kill him in Malaysia, "The poem of Zheng Qi I read once more, Unlike the road of the sages, mine is wider". We are now sitting in comfort in this Council. We receive much better treatment than the sages, that is, wise men in the past. I hope the democratic camp can pluck up courage, and that the 25 of them will go to Beijing together to express the view of the people of Hong Kong and to request the members of the NPCSC to reverse the wrong decision.

**MR HOWARD YOUNG** (in Cantonese): Madam President, an authoritative decision on the method for forming the Legislative Council in 2008 was made by the NPCSC on 26 April last year. One of the essential points in the Decision is that the existing 50:50 ratio for Members returned by geographical constituencies through direct election and FCs in the Legislative Council will be maintained. And the Decision categorically stated that should there be an increase in the number of seats of the Legislative Council, the numbers of seats returned by geographical constituencies through direct election and FCs have to be increased simultaneously. Moreover, the ultimate aim of the election of the Chief Executive and the Legislative Council by universal suffrage, as prescribed in the Basic Law, remains unchanged.

However, Mr Ronny TONG now tells us that an increase in the number of FC seats violates the Basic Law because it is inconsistent with the stipulations of the Basic Law, which require constitutional development should proceed in accordance with the principle of gradual and orderly progress and in the light of the actual situation to achieve the aim of universal suffrage. I want to ask: Does the NPCSC Decision also violate the Basic Law? Is Mr Ronny TONG's interpretation of the Basic Law more authoritative than the one made by the NPCSC?

In fact, Mr Ronny TONG's intention is clear. He has requested for a proposal that makes no progress. He has picked on the shortcomings of FCs and disapproved an increase in the number of FC seats in 2008. This will indirectly make it impossible for an increase in the number of direct election seats, and also impossible for the Election Committee (EC) to enhance its legitimacy. As a result, constitutional development is unable to make the slightest progress. However, I have to point out that the Basic Law stipulates

that constitutional development should proceed in accordance with the principle of gradual and orderly progress, that is, there has to be "progress". Therefore, the Liberal Party is resolutely against a proposal that makes no progress because it is a proposal that really violates the Basic Law.

Article 45 of the Basic Law clearly stated that though the ultimate aim is the selection of the Chief Executive by universal suffrage, he should be nominated "by a broadly representative nominating committee in accordance with democratic procedures". It does not require the members of the EC to be returned by universal suffrage. Instead, how to broaden the representation of the nominating committee is precisely the issue we should give plenty of thoughts to. If it is not even possible to increase the element of functional constituencies in the nominating committee, how can it be ensured that the committee's composition is consistent with the principle of balanced participation?

In what ways can the representation of the EC be enhanced? For instance, there is much room for discussion on an increase in the number of the EC members, or an enlargement of the electorate base of the EC representatives. The Liberal Party has all along advocated the enhancement of the legitimacy and credibility of the EC. We have suggested increasing the number of members from 800 to 1 200 or 1 600, and doubling the number of electors from over 160 000 at present to over 300 000. However, are avoiding these issues and setting prerequisites for the forming of the EC at the very beginning a pragmatic and rational manner of discussion?

Madam President, from the British Hong Kong era to the time after the reunification, Members returned by FCs have formed an integral part of the legislature. Over the past years, a number of outstanding Legislative Council Members have been returned by FCs. They have made significant contribution to the enactment of law, monitoring of the Government's administration and reflection of public aspirations.

An increase in the number of FC seats virtually allows greater public participation in the election by means of both geographical constituencies through direct election and FCs. An overall effect of greater democratic participation can also be achieved. Moreover, it can provide more platforms for members of the business sector to participate in politics. They may then have time to make achievements in their political career and to fight for a seat returned by geographical direct election. Chairman James TIEN and

Vice-chairman Selina CHOW of the Liberal Party are good examples. From a positive point of view, FC seats can help nurture more political talents for Hong Kong to lay a sound foundation for the early implementation of universal suffrage.

The Fourth Report of the Constitutional Development Task Force is now under consultation to seek the views of different social sectors. The Task Force is prepared to put forward a mainstream proposal in its Fifth Report due for release in the middle of the year. As the consultation is still underway, different social sectors are now actively offering their views on the constitutional development of Hong Kong. Is it an act of respect for public opinion for Members of the democratic camp to set a prerequisite for the consultation at this time?

Dr KWOK Ka-ki's amendment requests an increase in the number of direct election seats on the basis of no increase in the number of FC seats, which is poles apart from the NPCSC Decision. The Liberal Party will not support his amendment.

Madam President, we understand that a lot of people have been disappointed by the decision of the NPCSC to rule out universal suffrage in 2007 and 2008. However, this does not mean we are going to do nothing. I believe it is the wish of a lot of people that we should be more practical and focus on improving the existing system in a pragmatic and rational manner with a view to getting well prepared for the full implementation of universal suffrage in the future.

Any amendments to the methods for selecting the Chief Executive and for forming the Legislative Council must be made with the endorsement of two thirds of the Members of the Legislative Council, but the democratic camp has so far not given an inch, so it has to bear full responsibility should constitutional development unfortunately make no progress eventually.

Madam President, I so submit.

**MR WONG TING-KWONG** (in Cantonese): Madam President, the set-up of having half of the Legislative Council Members returned by geographical direct election and half by FCs has ensured that different strata, sectors and areas are

represented in the Legislative Council. Not only can this set-up protect the interest of the general public, including the working class, but also the interests of the business and professional sectors. It is in line with the actual situation of Hong Kong and consistent with the principle of balanced participation.

The original motion of Mr Ronny TONG has mentioned Articles 45 and 68 of the Basic Law, which stipulate that the principles of "gradual and orderly progress" and "actual situation" should be followed in achieving the aim of universal suffrage. The development of democracy in Hong Kong in a gradual and orderly way is definitely a significant principle prescribed in the Basic Law, that is, democracy should be developed in the light of the actual situation of Hong Kong and in a gradual and orderly manner. These two issues must be complementary and linked to each other. At the same time, it must be in line with the actual situation of Hong Kong. And rash advance must be avoided.

In the light of the actual situation, Hong Kong is a multi-strata and multi-cultural society with diversified interests. The development of a capitalist economy and its prosperity and stability cannot do without the efforts of the business sector, different social strata and the people of Hong Kong. Therefore, the interests of different strata should be taken into account in both political and economic terms so that every stratum will have a reasonable share of the fortune and economic achievements created.

As I have mentioned above, there are different strata of complicated facets in society. When a new policy is introduced by the Government, it cannot necessarily gain the support of all sides. Apart from Members returned by geographical constituencies through direct election representing the general public expressing their views and fighting for their interests in this Council, Members returned by business and professional FCs can also raise more profound technical issues and offer more professional advice from other angles. In this way, wide-ranging and in-depth discussions will be carried out and the interests of different sectors will be balanced. As a result, different social strata will develop smoothly and all will be satisfied.

Take the Import and Export FC of which I am the representative as an example. Both Mr HUI Cheung-ching, the former representative and I are very concerned about the development of our own FC. Mr HUI Cheung-ching was once the Chairman of the CEPA Advisory Panel of the Hong Kong Export

Credit Insurance Corporation, who helped the sector grasp more business opportunities under CEPA. Moreover, he was very concerned about the rights and development of the small and medium enterprises (SME). He commissioned academics to compile two study reports on the development of SMEs, which eventually brought about the establishment of the "SME loan fund" by the Government. He also followed up from time to time the issues of pressure from the development of the mainland freight transport industry, handling charges of the container terminals and the development of the logistics industry. I will act in pursuance of the aspiration of Mr HUI Cheung-ching and focus my attention on the rights and development of the sector, promoting the complementary advantages of the enterprises of China and Hong Kong, and meeting with the sector regularly to listen to their views. I will commit myself to the role as far as possible.

On the other hand, Mr Ronny TONG has assumed that universal suffrage means "one person, one vote". However, I think we should also take into account the principle of gradual and orderly progress and avoid trying to reach the goal in one leap. It is necessary to make people fully understand universal suffrage and to put a healthy electoral mechanism in place. The leaders of Taiwan have boasted that Taiwan is one of the most democratic regions in Asia and they are elected by "one person, one vote". However, Taiwan is also "notorious" for its "money" politics, which is an open secret and even made into a film. This has led people to think of the following questions: What is the case with election of "one person, one vote"? Can it truly reflect public opinion hundred percent? Is it the best electoral method in the world?

In addition, some may say that universal suffrage is an election of "one person, one vote". Every citizen is able to participate in public affairs through the casting of his own vote. However, does "universal suffrage" equal "one person, one vote"? In fact, it is not prescribed in the Basic Law that "universal suffrage" equates with "one person, one vote". Universal suffrage includes other models of "one person, one vote" election, such as indirect election. As long as it is consistent with the electoral principles of "universal" and "equal", and in the light of the situation of Hong Kong, it may be regarded as a model of universal suffrage. Some suggest that candidates may be nominated by functional or professional bodies and elected by universal suffrage by the voters of Hong Kong. This is one of the models of universal suffrage, in which FCs can also be retained. Society can hold extensive discussions on different

aspects of the issue. But most importantly, we must all consider the issue in the best interest of Hong Kong.

Madam President, I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, earlier you ruled against Mr Albert HO's request for an urgent adjournment debate on the grounds that Mr TUNG's resignation from the post of the Chief Executive is only a rumour. However, Madam President, I think the majority of people do not share the premise of your decision. I think they believe that Mr TUNG is going to ascend to be the Vice-chairman of the National Committee of the Chinese People's Political Consultative Conference and resign from the office of Chief Executive. Nevertheless, some people said that the democratic camp must be very happy about Mr TUNG's resignation because it has all along demanded his stepping down. In fact, a Member of this Council once proposed a motion to debate on this issue and we voted for it.

I have to point out that we are not exactly happy or unhappy about the resignation of Mr TUNG. This is because what we have fought for a very long time is the democratization of the political system, but the resignation of Mr TUNG will not bring about the realization of such democratization. We tend to believe Mr TUNG is most probably a victim rather than a winner in this undemocratic system. Coterie election has left the Chief Executive an inherent lack of legitimacy and public support. In order to ensure the endorsement of government policies, the composition of the Legislative Council has particularly included FCs to represent the so-called sectoral interests. As a result, public aspirations cannot be expressed, but are suppressed instead. And it is traumatic to both the authority of the Government and its legitimacy in governance.

We believe that if there is no full democratization in Hong Kong, even if Mr TUNG is replaced by Mr TSANG, Mr TANG or Mr LI as the Chief Executive, the actual situation will not undergo any substantial changes because they still lack public support and only protect the interests of a minority. Therefore, I think no matter who is going to be the Chief Executive, the pressing task on hand is the expedient implementation of democratization. In particular, the Legislative Council and the Chief Executive should be elected by "one person, one vote". And the existing FC elections, that is, coterie elections, should be abolished.

Madam President, I have to stress that it is stipulated in the Basic Law that constitutional development should proceed in accordance with the principle of gradual and orderly progress to achieve the ultimate aim of universal suffrage. Based on these two points, I think the NPCSC interpretation of the Basic Law promulgated last year, in which it was decided that FC elections would be retained, and the 50:50 ratio for Members returned by geographical constituencies through direct election and FCs would remain unchanged, has apparently violated the relevant provisions in the Basic Law. However, it saddens us even more that Secretary Elsie LEUNG and Secretary Stephen LAM have actually stressed time and again that FCs can also be regarded as a form of universal suffrage. So, basically, FC elections will be retained. Secretary Stephen LAM has also particularly stressed that FC elections are not inconsistent with the principle of pursuing the ultimate aim of universal suffrage as prescribed in Article 68 of the Basic Law.

Madam President, of course, I absolutely disapprove of Secretary Stephen LAM's view. However, even if I give in ten thousand steps and agree to it, a problem still exists. Why? I recall the Government has recognized the principle of equal participation and the civil rights in the International Covenant on Civil and Political Rights. Therefore, may I ask Secretary Stephen LAM, should the principle of equal participation be embodied, how FCs can achieve this effect, fulfil this function and realize this principle?

Madam President, why do I challenge Secretary Stephen LAM in this way? It is because when we are talking about equal participation, I want to raise one question. Why do some electors have more than one vote to choose their representatives to the Legislative Council while some electors have only one vote in the present FC elections? If this situation continues, is it the so-called equal participation? Moreover, why are some sectors represented and some others are not? For example, why are Western medicine practitioners presently represented and Chinese medicine practitioners are not as some Members have asked? Is this not unequal participation? Some may say that as Chinese medicine practitioners are not represented, they should fight for having their own representative. Then may I ask, as there are traditionally 72 trades, if every trade should have its own representative? If this is the case, there is going to be 72 Members in this Council. However, it is only in accordance with tradition that we say there are 72 trades. Nowadays, apart from those 72 trades, there are many other different trades. Then, how can it be universal?

Therefore, as regards the right to equal participation, how can the present FCs achieve this aim? Some people are not qualified to run in the elections, while some people have more than one vote to elect their representatives. Madam President, how can the right to equal participation be realized? I really cannot see it. Therefore, if it is suggested that the existing FC elections can be regarded as equal and universal and one of the models of universal suffrage, it is definitely an attempt to deceive the public and not a serious discussion of a practical problem.

In the meantime, it worries me even more that the Government has chosen this time to emphasize the need to retain FCs. In the final analysis, they are expected to perform a check and balance function on Members returned by geographical constituencies through direct election. In fact, this has presently become a subject of discussion. If this is true, and it actually is, what does it mean? The corrosion of the authority of the Government and the policy blunders in governance in the last seven to eight years have exactly been the result, and a bad result indeed, of the so-called having Members returned by functional constituencies perform a check and balance function on Members returned by geographical constituencies through direct election. Is the Government very happy to see the SAR Government have this result ..... (*the buzzer sounded*) and does it then feel satisfied and contented?

**MISS TAM HEUNG-MAN** (in Cantonese): Madam President, FC election was introduced to Hong Kong in the 1980s, which set off extensive discussions in society at the time. After the reunification, this contentious electoral system not only has escaped a review, it has also been applied to the Election Committee which is responsible for the election of the Chief Executive and Deputies to the National People's Congress. I believe everybody is aware of the result. And needless to say, everybody understands the shortcomings of FCs.

To be specific, the greatest cause of complaint about FC election is its small circle nature. As the electorate base is thin, how much public opinion can each Member represent? Even FCs with a larger number of electors, such as over 77 000 in Education, over 35 000 in Health Services, and over 17 000 in Accounting, their electorate bases are not as wide as those of geographical direct election, in which each seat represents at least hundreds of thousands of electors. Even FCs with over 100 000 electors are like that, let alone those with only a

hundred or a few dozens electors such as Finance, and Agriculture and Fisheries.

An electorate base with a lack of representation has greatly undermined the credibility of FC elections. The adoption of body or corporate voting has made the feature of serving the big bosses and the privileged class of some FCs more prominent. As an elector, the representative of a corporation or body will certainly select candidate based on criteria that suit the angle of his boss or the interest of the body to which he belongs. Will Members elected in this way have regard to the interests of people working in different levels in the sector? This remains a big question mark.

Take Catering FC as an example. Only licence holder or representative of an organization can be an elector. People working at the front line such as employees of the catering and tourism sectors are rejected from the election. Will Members so elected not give people an impression that they will only fight for the interests and express the aspirations of the electors, that is, the bosses in the trade? Those elected may not necessarily think this way. But the inherent defect of the electoral system has given rise to distrust or doubt in the Members.

Some may ask, "TAM Heung-man, you are returned to the Legislative Council by FCs. Why do you criticize this mode of election so severely?" I can tell Members that I am returned to the Legislative Council by FCs with the aim of changing the establishment by entering into it. I want to remove FC election. Should there be direct elections four years later, I do not mind not being a Member four years later. What will happen if the seat of my FC is taken by people who want to retain FCs forever? If all the Members returned by FCs are attached to FCs, how can we talk about constitutional reform and the implementation of dual elections by universal suffrage in 2007 and 2008?

Madam President, it is apparent that FC election is a dysplastic system. It is no good allowing it to stay. Recently, some people have even proposed a simultaneous increase in the numbers of Legislative Council seats returned by geographical constituencies through direct election and FCs. They have also suggested an increase in the number of the Election Committee members, but the number of members in each subsector should be increased in proportion. These proposals appear to push constitutional development one step forward in accordance with the principle of gradual and orderly progress prescribed in the

Basic Law. However, should we not give these proposals some serious thoughts? Legislative Council Members and Election Committee members returned by the deformed FC election will have the same influence as before. If this is the case, is there progress in our constitutional development? Is it possible for the people to have wider and universal participation?

It is apparent that any proposal on an increase in the number of FC seats is a secret replacement of concept and fishing in troubled waters. Is it the direction we want for the constitutional reform, that is, allowing problematic FCs to exert stronger influence? Is it a correct move for constitutional development to allow coterie elections to continue to exist? Only by putting universal suffrage in place can the problem be completely resolved. However, if universal suffrage cannot be put in place at this moment, we should not allow or tolerate the existing electoral mechanism of FCs to continue to exist so that some people will continue to enjoy privileges. Although I have two votes, I do not find comfort in having a FC vote that will continue to exploit the public's right to equal participation in election.

Madam President, it is my ultimate aim to have FCs abolished and universal suffrage in place. No matter what the cost is, I will uphold my belief to promote democracy in Hong Kong. With these words, I support the original motion. Thank you, Madam President.

**MR JEFFREY LAM** (in Cantonese): Madam President, FC elections of the Legislative Council have a history of around two decades. The performance of Members returned by FCs has all along been widely recognized. They have offered the Government considerable valuable advice on the way forward of the overall economy of Hong Kong and on promoting the development of different trades and industries.

I believe everybody will remember that the first FC election was held as early as 1985. The Green Paper: The Further Development of Representative Government in Hong Kong published in 1984 stated that the advantage of the establishment of FCs was the development of a more representative mechanism in Hong Kong. And two different types of common interest among the people were recognized: First, those arising from their place of residence; Second, those arising from their occupations. In other words, they translated into the geographical constituencies (GCs) and FCs. This set-up has ensured a wide

representation in the Legislative Council, in which the two will be complementary to each other and the aim of balanced participation will be achieved.

After the reunification, the method for forming the Legislative Council will be specified in the light of the actual situation in the Hong Kong Special Administrative Region (SAR) and in accordance with the principle of gradual and orderly progress, as prescribed in the Basic Law. With the Legislative Council developed to its current term, that is, the third term of the legislature of the SAR, half of its seats are returned by FCs. These 30 Members eventually returned by 28 FCs, which include labour, business and various professional sectors, belong to different political parties and organizations.

Madam President, Members returned by both GCs and FCs have the same sufficient public mandate and the same important role of making significant contribution in this Council. Therefore, I really cannot agree to the proposal in today's motion to restrict an increase in the number of FC seats.

The original motion proposes that any future constitutional reform proposal should state clearly that there will not be any increase in the number of FC seats, and the amendment even suggests that the number of GC seats should be increased on the basis of no increase in the number of FC seats. I hope Members will understand that the NPCSC categorically stated on 26 April last year that the 50:50 ratio for Members returned by FCs and GCs would remain unchanged for the Legislative Council in 2008. We really should not waste any more time on initiating some fruitless disputes and even disregard the law. Instead, we should formulate a proposal that suits the people of Hong Kong best within the established framework. For instance, there are currently around 200 000 electors in FCs. I think it is possible to consider an increase in the number of electors to enhance the legitimacy and representation of the FC elections.

Over the past years, Members returned by FCs have gained support of their sectors. And they have reflected industry views of their respective sectors so that the Legislative Council can listen to the voices of the people from different strata and trades. As the representative of the Commercial (First) FC, I have often attended various meetings of the Hong Kong General Chamber of Commerce and met with people in the sector. I also have had countless meetings with other friends in the business sector. Views on domestic

economy, government policies and common concerns of the sector will be exchanged and then conveyed to relevant bureaux in the Government.

As regards new policies that the Government achieved to implement in the past such as the Individual Visit Scheme and CEPA, Members of the business sector have reflected considerable constructive advice offered by the sector in this Council so that wisdom can be pooled to improve the policies and as a result, benefit society as a whole. Is it fair to describe Members returned by FCs as good-for-nothing and abandon them in the future?

Madam President, I so submit.

### **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): It is now precisely 10 pm. I declare the meeting suspended until 9 am tomorrow.

*Suspended accordingly at Ten o'clock.*



**Appendix 1**

**REQUEST FOR POST-MEETING AMENDMENTS**

**The Secretary for Security requested the following post-meeting amendment to Question 3**

**Line 5, fourth paragraph, page 31 of the Confirmed version**

To amend ".....64 places" as ".....60 places" (Translation)

(Please refer to line 8, third paragraph, page 5109 of this Translated version)

**Appendix I****WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Mr LEE Cheuk-yan's supplementary question to Question 1**

As regards the Private Sector Involvement Preliminary Feasibility Study on Prison Redevelopment at Lo Wu and Chi Ma Wan (the Study), the Correctional Services Department, with the support of the Security Bureau, has commissioned the Efficiency Unit to conduct the Study. The objective of the Study is to explore the practicability of adopting private sector involvement (PSI) arrangements (including public private partnership (PPP) arrangement) for the redevelopment of certain existing penal institutions in Hong Kong. The current study is confined to the consideration of the feasibility of PSI arrangements including PPP in the design, construction and financing of the new penal institutions and provision of Correctional Services Department's non-core services (for example, building maintenance and repair, electrical and mechanical services, non-custodial transportation services, staff quarters building management, and so on). The Study does not cover the core services of the Correction Services Department such as prison operation and management and prisoner re-integration.

Subject to the outcome of the Study, further more detailed studies might be necessary and stakeholders will be consulted before a decision is taken on whether or not to adopt PSI arrangement for the redevelopment of penal institutions.