# OFFICIAL RECORD OF PROCEEDINGS

# Wednesday, 16 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 CHAN KAM-LAM, J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, S.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

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

THE HONOURABLE WONG YUNG-KAN, J.P.

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

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

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE 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 MA LIK, J.P.

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

# **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

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

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

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

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

PROF LAU SIU-KAI, J.P. HEAD, CENTRAL POLICY UNIT

# **CLERKS IN ATTENDANCE:**

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

# **TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	L.N. No.
Admission and Registration (Amendment) Rules 2005	28/2005
Legal Practitioners (Fees) (Amendment) Rules 2005	29/2005
Notaries Public (Disciplinary Tribunal Proceedings) Rules	30/2005
Notaries Public (Grounds for Refusal to Issue Practising Certificate) Rules	31/2005
Notaries Public (Practising Certificate) Rules	32/2005
Notaries Public (Examinations) Rules	33/2005
Notaries Public (Practice) Rules	34/2005
Notaries Public (Qualifications for Appointment) Rules	35/2005

# **Other Papers**

- No. 68 Vocational Training Council
  Annual Report 2003-2004
- No. 69 Audited Statement of Accounts of the Hong Kong Rotary
  Club Students' Loan Fund together with the Director of
  Audit's Report for the year ended 31 August 2004

- No. 70 Audited Statement of Accounts of the Sing Tao Foundation Students' Loan Fund together with the Director of Audit's Report for the year ended 31 August 2004
- No. 71 Hong Kong Council for Academic Accreditation Annual Report 2003-2004
- No. 72 The Lord Wilson Heritage Trust Annual Report 2003-2004
- No. 73 AIDS Trust Fund 2003-2004 Annual Accounts together with the Director of Audit's Report
- No. 74 Estimates
  for the year ending 31 March 2006
  Volume IA General Revenue Account
  Volume IB General Revenue Account
- No. 75 Estimates
  for the year ending 31 March 2006
  Volume II Fund Accounts

# WRITTEN ANSWERS TO QUESTIONS

# **Cultural Heritage Facilities to Commemorate Dr SUN Yat-sen**

- 1. **MR CHIM PUI-CHUNG** (in Chinese): Madam President, regarding the cultural heritage facilities to commemorate Dr SUN Yat-sen, a modern revolutionary, will the Government inform this Council whether:
  - (a) measures will be taken to speed up the works to convert Kom Tong Hall into the Dr Sun Yat-sen Museum, so that the Museum can be completed before November next year, which will be the 140th anniversary of Dr SUN's birth; and
  - (b) it plans to erect a statue of Dr SUN in the Sun Yat Sen Memorial Park located at Sai Ying Pun, and consult the Central and Western District Council on this matter?

# **SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President,

- (a) After the official takeover of Kom Tong Hall in mid-2004, the Leisure and Cultural Services Department has actively co-ordinated with the Architectural Services Department in the planning of Dr Sun Yat-sen Museum works. The relevant conversion and fabrication works are expected to complete by the end of 2006. The Department will then arrange a series of educational activities in commemoration of the 140th anniversary of Dr SUN's birth. The Museum is expected to be fully opened to the public in early 2007 the earliest.
- (b) The Administration has recently announced that priority would be given to 25 municipal works. One of them is the extension of Sun Yat Sen Memorial Park currently located at Sai Ying Pun. There have been suggestions that a statue of Dr SUN Yat-sen should be erected at the extension of the park. We will, in due course, submit the suggestion, together with the proposed scope of works, design concept, works schedule and other relevant information, to the Central and Western District Council for discussion and consultation before implementation of the works.

# **Preventing Youth from Picking up Smoking Habit**

- 2. MR BERNARD CHAN (in Chinese): Madam President, the Government plans to amend the Smoking (Public Health) Ordinance (the Ordinance) in order to expand no-smoking areas and tighten the control over the advertisement and promotion of tobacco products. However, apart from designating schools as no-smoking areas, no other measures against young smokers and for preventing young people from picking up the smoking habit have been drawn up in the proposed amendments. In this connection, will the Government inform this Council whether:
  - (a) it will consider increasing the tobacco duty to push up cigarette prices so as to resolve the problem of young people smoking and prevent them from picking up the smoking habit; and

(b) it will strengthen its efforts in banning smoking targeted at young people, such as establishing funds to finance voluntary and non-government organizations in carrying out their work in preventing young people from smoking?

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese): Madam President, in line with the recommendations of the World Health Organization, the Administration has adopted a comprehensive approach to youth smoking prevention, featuring a mix of legislative, economic, public education and smoking cessation measures.

On the legislative front, there are numerous provisions in the Ordinance that seek to restrict access to tobacco products by young people. The major ones concern (i) prohibition of sale of cigarettes by retailers to minors; (ii) prohibition of sale of cigarettes individually; and (iii) prohibition of sale of tobacco products from vending machines. To reduce the costs and hazards of smoking and secondhand smoking to our community, we will shortly introduce a bill to the Legislative Council to amend the Ordinance. Apart from the designation of schools as no-smoking areas, the following legislative initiatives will help promote a smoke-free environment that discourages smoking by young people.

- strengthening the powers of the Tobacco Control Office to bring about more effective enforcement of the Ordinance;
- banning smoking in indoor public places frequented by teenagers such as restaurants, karaokes and discos;
- enhancing the deterrent effect of government warnings on cigarette packets by prescribing warnings with pictorial and graphical contents; and
- removing current exemptions on the display of tobacco advertisements at licensed hawker stalls and small retail shops.

Education is another essential component of our strategy to tackle youth smoking. The Education and Manpower Bureau has incorporated anti-smoking messages into routine health programmes and educational materials for primary and secondary schools. The Department of Health (DH) runs health programmes in secondary schools regularly to improve the psychosocial health of adolescents through training on life skills and resilience building. The harms of smoking and the skills to prevent the formation of smoking habits are disseminated through such training activities. Separately, the Hong Kong Council on Smoking and Health (COSH) has been promoting smoke-free messages among primary and secondary school students through educational activities such as anti-smoking dramas.

To complement the legislative exercise to make indoor workplaces and public places smoke-free, we will continue to invest in public education and publicity activities to promote "no-smoking" as the community norm. Apart from allocations to government departments and the COSH, we will provide financial support to voluntary and non-government agencies to conduct anti-smoking activities, including those on youth smoking prevention, through the Health Care and Promotion Fund and the Health and Health Services Research Found. In this connection, we will liaise with the Grant Committee/Council of these Funds to set tobacco control as one of the thematic priorities for the coming years.

On smoking cessation, through the DH's chest clinics and the smoking cessation and counselling centres operated by the Hospital Authority, we have been providing quit-smoking services to persons in need including young smokers. The services provided include medical assessment, counselling, drug therapy and health education. To cope with the anticipated rise in demand for smoking cessation, the DH will implement a number of new initiatives in 2005 including computerization of the cessation hotline to increase the number of concurrent service recipients and interactive dissemination of cessation information through the Internet.

We recognize that economic measures are effective and important means to reduce tobacco consumption by various segments of the population, in particular young persons. Over the years, the Government has progressively increased the tobacco duty for cigarettes, which is now more than half of their retail prices in general. The Administration will continue to keep under review whether adjustments to the tobacco duties should be made, having regard to the implications of further duty increases on illegal tobacco activities and the effectiveness of legislative, publicity and public education measures to curb smoking.

## **Secondary School Places Allocation**

- 3. MR MA LIK (in Chinese): Madam President, since the implementation of the short-term Secondary School Places Allocation (SSPA) in the 2000-01 school year, students entering secondary schools had their school internal assessment (IA) results scaled by the Academic Aptitude Test (AAT) results achieved by the students of their respective primary schools in the 1997-98 to 1999-2000 school The scaled scores of all the students in the same school net were ranked and students were subsequently divided into three allocation bands. students were allocated a place first, followed by Band Two and then Band Three In February this year, the Working Group on Review of Secondary students. School Places Allocation and Medium of Instruction for Secondary Schools under the Education Commission published a consultation document, in which a new SSPA was proposed. In this connection, will the Government inform this Council:
  - (a) of the respective percentages of the 10 primary schools which had the lowest percentage of Band One students in their Primary Six students and the numbers of Band One students in the 10 primary schools with the smallest number of such students, in each of the past three years;
  - (b) whether the existing SSPA can reflect
    - (i) the efforts of those primary schools whose overall academic results have been on the rise over the past few years; and
    - (ii) the academic performance of students with extremely high learning abilities;
  - (c) whether other territories have adopted a secondary school places allocation system similar to the ones currently used in Hong Kong or proposed in the consultation document, including whether such territories have ever used the results of past students in the same school to scale the IA results of the students; if they have, of the details of the systems; and
  - (d) given that the consultation document proposes to use the pre-Secondary One Hong Kong Attainment Test (pre-S1 HKAT), in

place of the AAT results of past students in the same school, as an instrument for scaling school IA results, of the merits of this proposal?

# **SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President,

- (a) Under the existing SSPA mechanism, students' allocation bands are determined on a net basis, viz all participating students in a school net are put into a single order of merit according to their scaled scores, and then divided into three equal allocation bands, with each consisting of one third of the total number of students in the school The banding of students in a school net is for the purpose of determining the order of allocation of Secondary One places. Since the allocation bands are based on the relative performance of the students in a particular school net, they cannot accurately reflect the actual performance of the students nor could they be appropriately used for comparing students' performance on a Besides, as the number of students differs from one territory basis. school net to another, the number of students in each allocation band also varies among school nets. It is therefore not meaningful to make comparison among schools in terms of their number and ratio of students in a particular allocation band.
- (b) (i) Under the present SSPA mechanism, primary schools' results in the last three AATs are used to scale their students' IA Although the AAT was abolished in 2000, the accuracy of using the past AAT results for banding purpose, as demonstrated by research, is still high at about 85%. However, it is acknowledged that the reliability of the past AAT results would diminish over time. Many primary schools and parents consider this as unfair. **Progressing and** newly established schools feel that their efforts and improvement made have not been duly recognized. many secondary schools opine that the continual use of the present scaling mechanism would further widen within-school student diversity, which would increase their difficulties in learning and teaching.

- (ii) Since the allocation bands are determined on the basis of IA results of the participating Primary Six students, those with higher learning abilities would have better performance in their IAs, and hence a better chance of being included in a higher allocation band.
- (c) As regards the arrangement for students' progression from primary to secondary schools, different countries/regions adopt different modes with regard to their local context and the development of their education systems. While some primarily adopt the principle of vicinity (such as China, South Korea and New Zealand), some (such as Singapore) stream/place students on the basis of highly selective public examination(s). In Hong Kong, our present SSPA mechanism has evolved over several decades, taking into account educational considerations. historical factors and the latest The SSPA system development in education in Hong Kong. currently used in Hong Kong, as well as the changes proposed in the consultation document, which include the use of the pre-S1 HKAT results of past students in the same school to scale the IA results of the students, is to address the need for a low-stake scaling tool. far as we know, no other country or region adopts a system congruent to our SSPA mechanism.
- (d) In the consultation document on Review of Medium of Instruction for Secondary Schools and Secondary School Places Allocation, the Working Group puts forth two options for scaling students' IA results, viz continual use of the past AAT results, or replacing the AAT results with the pre-S1 HKAT. The Working Group considers the latter a better choice. The drawbacks of the continual use of the past AAT results for scaling have been mentioned at part (b)(i) above. To use the pre-S1 HKAT as a scaling tool can more accurately reflect the overall performance between schools. The only concern is the possibility of inducing drilling. the incentive to drilling, the Working Group proposes that, if this option is accepted, the pre-S1 HKAT results should be sampled biennially and the average of two most recently sampled results would be used to scale the IAs of the coming cohort of Primary Six students proceeding to Secondary One. Under such a scaling mechanism, students' IA results will continue to form the basis in determining their allocation bands. Since the pre-S1 HKAT results

of the students taking the test will not have any direct bearing on their allocation results, incentive to drill would be reduced. As the pre-S1 HKAT is curriculum-based, distortion of the primary school curriculum is therefore less likely. Even if some primary schools would, due to the scaling purpose of the pre-S1 HKAT, place greater emphasis on students' performance in Chinese, English and Mathematics, meaningless drilling can still be reduced. As a matter of fact, the pre-S1 HKAT is an existing assessment tool which secondary schools make reference to in streaming, and planning enhancement/support programmes for Secondary One new entrants. Students need not sit for an "extra" test, even if it is adopted as a scaling tool.

#### **Serious Cross-border Crimes**

- 4. **MR DANIEL LAM** (in Chinese): Madam President, the recent spate of serious cross-border crimes involving shooting in food premises in busy districts and in public has aroused concern about the state of law and order in Hong Kong and that there is inadequate protection for the public's personal safety. In this connection, will the Government inform this Council:
  - (a) of the respective numbers of firearms intercepted while being smuggled into Hong Kong and of mainlanders arrested for offences involving firearms in Hong Kong in each of the past three years, as well as the current number of unsolved cases of gun homicide;
  - (b) whether it will enhance co-operation with the relevant authorities in Guangdong Province through the liaison mechanism between Hong Kong and the Province, so as to stop the smuggling of firearms and prevent professional killers from bringing firearms into Hong Kong to commit crimes:
  - (c) of the measures to curb the increasing incidence of serious cross-border crimes, including those involving illegal firearms; and
  - (d) whether it will deploy additional uniformed police officers to patrol public places, so as to step up its efforts to deter lawless elements from committing crimes?

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

(a) The Government takes all cases involving firearms seriously, and will spare no effort in their investigation and detection. The crime rate for cases involving firearms in Hong Kong is lower than those of many large cities. Nevertheless, we will continue our effort to ensure the protection of the safety of the public. In the past three years, the number of genuine firearms intercepted by the police is as follows:

Year	Number of cases
2002	23
2003	28
2004	15

From 2002 to 2004, only one person from the Mainland was arrested for offences involving firearms. In the same period, there were a total of five gun homicide cases, of which three cases have been detected, and the other two cases are still being investigated.

- (b) The police have been maintaining close liaison with the public security authorities of the Mainland. A number of communication channels have been established at different levels to address issues of common concern and exchange criminal intelligence, in order to combat various cross-boundary crimes. These include intercepting the inflow of firearms, and stopping the entry of criminals carrying firearms into Hong Kong to commit offences. We will continue our co-operation with the mainland public security authorities to combat such crimes.
- (c) In recent years, there has not been a trend indicating a significant increase in cases involving genuine firearms. There were three such cases in the entire year of 2004, one less than in 2003. However, the Government will not be complacent. The police will continue to adopt an intelligence-led strategy to prevent such crimes. In fact, combating violent crimes is one of the major operational targets of the Police Force in this year.
- (d) The police will ensure that there are adequate front-line police officers performing patrolling duties for the deterrence of crimes.

# **Pulmonary Tuberculosis**

- 5. **DR JOSEPH LEE** (in Chinese): Madam President, it has been reported that a survey undertaken by the Department of Health (DH) reveals that the incidence rate of pulmonary tuberculosis (TB) for children aged below nine in Hong Kong is 10 times that of Europe and the United States and two times that of Japan. Information from the Labour Department (LD) shows that while the total number of occupational disease cases in 2004 decreased by 31% compared to that in 2002, TB cases increased by 44.8%. In this connection, will the Government inform this Council:
  - (a) of the respective numbers of local children, adults and the elderly who contracted pulmonary TB in the past three years and their major sources of infection;
  - (b) of the respective numbers of patients and hospital staff who were confirmed to have contracted pulmonary TB during hospitalization and while on duty in the past three years, together with a breakdown by the ranks of the staff and whether they worked in public or private hospitals; and
  - (c) whether it has analysed the reasons for the high incidence rate for children and an upsurge in cases of staff contracting TB while on duty, and formulated measures to prevent the situation from deteriorating; if it has, of the results of the analysis and details of the measures?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese): Madam President, TB is an infectious disease affecting mainly the lung caused by the bacteria "Myobacterium tuberculosis". TB spreads mainly through the air by droplets. Among those infected, about one out of 10 will develop the disease as a lifetime risk, after a variable latent period of weeks to decades. The other nine infected will remain healthy without developing disease, because the immune system "walls off" the bacteria and the infection remains latent. Thus, a patient developing TB disease might have got the infection a long time ago, and the source of infection for the great majority of the cases is therefore unidentifiable.

Given the very variable and long latent period of the disease, trend analysis of the disease pattern is considered more meaningful if it is conducted over a long period of time. The notification rate<sup>1</sup> of TB in Hong Kong in the past five decades is decreasing, from the peak of 697 in 1952 to 91.5 in 2004<sup>2</sup>.

Development of TB situations in different places can also vary significantly due to their unique evolvement in socioeconomic conditions like population density, general hygiene awareness, nutritional level, living environment, economic well-being, and so on. Moreover, the epidemiological development of TB in different places probably started during different historical times which are decades or centuries from now, thus their manifestations at similar time point can be rather different. This should also be taken into account when comparing the epidemiological condition of TB of one place to another. In fact, the rate of TB in Hong Kong has been higher than those of some Western developed countries for many years, and some experts have attributed a possible reason for this to the different moments in history of the onsets of the TB epidemic in Hong Kong and those developed countries.

(a) The numbers of notification compiled by the DH are categorized into different age groups. The statistics in the past three years are shown in Table 1. It should be noted that, as described in the introduction paragraphs, the total TB cases in Hong Kong display a decreasing trend over half of the past century.

As TB is an airborne disease which can be spread from person to person via airborne droplets from coughing and sneezing of people with active TB, and that the disease exhibits a latent period which can vary significantly among individuals, the source of infection for most of TB cases is unidentifiable.

(b) For the reasons mentioned in part (a), we do not have the number of patients who were confirmed to have contracted TB during hospitalization.

The notification rate is the number of notifications per 100 000 population.

<sup>&</sup>lt;sup>2</sup> This is a provisional figure, which is being verified by the DH for the purpose of formal publication.

Under the Occupational Safety and Health Ordinance (Cap. 509), TB is a notifiable occupational disease. It is a statutory requirement for medical practitioners to notify all occupational TB to the LD. The statistics for the past three years, with breakdown of the health care workers by their positions and the public/private nature of their employing institutions, are shown in Table 2.

(c) The prevalence of TB in Hong Kong has been higher than those of some developed countries in the past few decades. It could be attributed to a number of factors including the unique development history of the disease in different places, and their varying socioeconomic developments. As far as the 0-9 age group is concerned, it should be noted that the notification rates found in this age group show a decreasing trend in the past two decades, with the notification rate dropping from 13.01 in 1984, to 7.37 and 2.33 in 1994 and 2004 respectively.

On the basis of the reasons set out in the introduction paragraphs and part (a) above, the Administration considers that the increase of the number of health care workers believed to have contracted TB in the health care setting in the past three years could probably be due to year-on-year fluctuation. Nonetheless, the Administration will keep a close watch on the trend, and refine disease prevention and control strategy as appropriate.

The DH has been putting in a lot of efforts in the prevention and control of TB in Hong Kong. Nearly 100% of newborn babies are provided with BCG vaccination which is efficacious for the protection against TB. Other measures, including application of directly observed treatment, infection control, and stringent surveillance mechanisms, will continue to be implemented. Also, the DH will continue to maintain close liaison with international counterparts and engage in research activities for improvement in the control of the disease.

Infection control is essential for the prevention of transmission of TB in health care settings, and on this front, the DH is in close collaboration with the Hospital Authority (HA) and private hospitals. Activities will continue to be organized to educate health care workers working in hospitals, clinics, residential care homes for the elderly, and so on, on issues like early recognition and treatment of the disease, maintenance of adequate ventilation, use of personal protective equipment like face masks, as well as precautions to be taken during high risk procedures like cough-inducing procedures.

Further to the above, the HA has promulgated a set of guidelines on "Control of Transmission of TB in Healthcare Settings" to inform front-line staff of the necessary infection control measures to prevent patients and health care workers from contracting the disease in the health care setting. The guidelines have been posted on the HA intranet webpage for easy reference of staff.

Meanwhile, the LD has stepped up inspections to hospitals, clinics and elderly homes, which are considered as high-risk workplaces, to ensure that the ventilation of these workplaces meets the standard, and the staff are provided with adequate personal protective equipment and given training on its use.

Table 1

Number of TB cases by different age groups (2002 to 2004)

Group	2002	2003	*2004
Children and adolescent (aged 0 to 19)	279	265	221
Adults (aged 20 to 59)	3 404	3 210	3 276
The Elderly (60 or above)	2 919	2 549	2 798
Total	6 602	6 024	6 295

<sup>\*</sup> These are provisional figures. They are being verified by the DH for the purpose of formal publication.

Table 2

Number of TB cases contracted by health care workers (2002 to 2004)

Year	Category	Doctors	Nurses	Other allied health professionals	Other supporting staff	Total
2002	Public services	2	15	4	4	25
	Private services	0	1	0	3	4
	Total	2	16	4	7	29
2003	Public services	6	15	1	5	27
	Private services	0	1	1	1	3
	Total	6	16	2	6	30
2004	Public services	8	22	2	6	38
	Private services	1	1	0	2	4
	Total	9	23	2	8	42

## **Surcharges Imposed by Mobile Phone Service Providers**

- 6. **MR JASPER TSANG** (in Chinese): Madam President, at present, mobile phone service providers generally impose surcharges on their subscribers to recover the payment of the fees for three types of licences, namely the Public Radiocommunications Service Licences, Mobile Carrier Licences and Public Non-exclusive Telecommunications Service Licences, and the fees paid to tunnel companies for setting up receiving stations inside various tunnels (collectively known as "licence and tunnel fees"). It has been reported that such licence fees will be reduced with effect from 1 May this year. In this connection, will the Government inform this Council:
  - (a) how the percentage of the annual licence and tunnel fees in the level of monthly subscription fee for local mobile phone services compares to that of the preceding year in each of the past three years, and whether such percentage is on an upward trend;
  - (b) whether it has negotiated with mobile phone services providers on rebating the difference in charges to mobile phone subscribers upon the reduction of the licence fees concerned; if it has, of the details and results of the negotiations; if not, whether it will negotiate with

the providers at this stage or upon further reduction of the licence fees concerned; and

(c) whether it has assessed if the practice of the above service providers to charge licence and tunnel fees is fair; if the assessment results are in the affirmative, of the justifications; if the assessment results show otherwise, whether it will consider regulating the existing practice of the service providers and the other means for them to shift the burden of paying the fees concerned to their subscribers by imposing surcharges under other circumstances (such as when the second generation mobile services providers are subject to the payment of spectrum utilization fees)?

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Chinese): Madam President, currently, mobile phone service operators collect "MTR/tunnel/mobile service licence fees" or "administrative fees" from their subscribers. Operators are free to decide the level and application of such fees. Under certain circumstances such as customers' subscribing to specific monthly tariff plans or applying for service during promotion periods, some operators may waive these fees.

Since the Office of the Telecommunications Authority (OFTA) generally does not intervene in the relationship or ratio between operators' tariffs and licence fees, the OFTA does not have any statistics on the percentage of the licence and tunnel fees in the level of monthly subscription fee for local mobile phone services.

At present, charging of fees for mobile phone services is a business decision of operators. Mobile phone service operators can decide freely the items and levels of fees based on market conditions and their business strategies without the need to seek prior approval from the OFTA. Operators will be driven by market forces to set fees at competitive levels. Nevertheless, in setting the fees, operators must at the same time fulfil their obligations under the Telecommunications Ordinance, the licence conditions and the law of contract (for example, the provisions against anti-competitive conduct and misleading or deceptive conduct under the Telecommunications Ordinance). Should the Telecommunications Authority finds that an operator has breached the Telecommunications Ordinance or the licence conditions, he will exercise his statutory powers to sanction the relevant operator.

#### **Health and Health Services Research Fund**

- 7. **MR LI KWOK-YING** (in Chinese): Madam President, the Government set up the Health and Health Services Research Fund (the Fund) in 2002. Three broad themes, namely public health, health services and Chinese medicine, were identified under the Fund as priorities for research. In this connection, will the Government inform this Council of:
  - (a) the respective numbers of applications received by the relevant authorities for research studies under the three themes since the establishment of the Fund and, among them, the number of successful applications and the respective amounts of funds granted, as well as the number of unsuccessful applications, together with a breakdown by the reasons for their being unsuccessful; and
  - (b) the details of the research studies on Chinese medicine which were financed by the Fund and produced research results conducive to the formulation of public health policies?

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

(a) The Fund was established in 2002 to generate knowledge of local relevance to support formulation of policy relevant to maintaining an efficient and cost-effective health care system and maximizing Taking into account international experience, a public health. two-tiered peer-review process has been put in place to ensure that only research projects of high scientific merit and of potential local application and benefit will be funded. The first tier of review process involves local and overseas experts to assess the scientific merits and ethical issues of applications. The second-tier involves comprising representatives from the Grant Review Board, government departments, academic sectors and hospitals, who shall take into account the local relevance and importance of the applications, to make a funding recommendation. The Research Council of the Fund, under the chairmanship of the Secretary for Health, Welfare and Food, will make the final funding decision. In line with standard of other international funding agencies, the successful application rate is around 25%.

Since the establishment of the Fund, two open calls for applications were issued in November 2003 and September 2004, respectively. A total of 74 applications (November 2003 round) and 98 applications (September 2004 round) were received in these two open calls. A total of 18 applications amounting to \$8.03 million from the 2003 round, which focused on the thematic priorities have been approved. Among the 56 rejected applications, 46 were of poor scientific quality, nine were out of the scope of the Fund and one was withdrawn by the applicant.

The Research Council is reviewing the 98 applications from the latest call. With the recent approval from the Finance Committee of the Legislative Council for additional funding for the Fund, a funding decision will be made in April 2005.

A table showing the distribution of the grant applications received and funded, together with it grant size, in accordance with the three priority themes is as below.

Priority themes	November 2003 round – Applications received	November 2003 round – Projects approved		September 2004 round – Applications received
	No.	No.	Amount Funded (\$ Million)	No.
Public health	23	7	3.32	24
Health services	35	10	4.26	39
Chinese medicine	7	1	0.45	11
Out of scope of the Fund	9			24
Total:	74	18	8.03	98

(b) The Fund was only established in 2002 and out of the 18 approved projects in the 2003 round, only one is on Chinese medicine. The objective of the research is to assess the therapeutic effects and safety of a Chinese medicine capsule in children with atopic dermatitis. This one-year research has just commenced and result is expected to be available in 2006.

## **Automated Passenger Clearance System**

- 8. MR SIN CHUNG-KAI (in Chinese): Madam President, since 16 December last year, the Immigration Department (ImmD) has implemented the Automated Passenger Clearance (APC) System by phases for Hong Kong permanent residents aged 11 or above holding smart identity cards to use the APC auto-gates for self-service immigration clearance. In this connection, will the Government inform this Council:
  - (a) of the utilization and effectiveness of the new system;
  - (b) whether there has been any failure of the new system since its operation; if so, of the counts and causes of such failures;
  - (c) of the updated findings of the Automated Passenger Clearance Questionnaire being conducted by the ImmD on its website and how it will follow up the public opinions collected; and
  - (d) whether it will strengthen its publicity and teach the public, especially the elderly people, how to use the new system; if it will, of the details of such efforts?

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

(a) The APC System was introduced on 16 December 2004. Up to 9 March 2005, more than 500 000 passengers have used the APC Channels (e-Channels) for departure clearance. According to an assessment conducted by the ImmD in mid-February 2005, it takes an average of around 12 seconds for passengers who are familiar with e-Channels to complete the clearance process. We expect that as passengers become more and more familiar with e-Channels, the System will be able to operate more smoothly. So far, the ImmD has installed nine e-Channels at the departure hall of the Lo Wu Control Point and plans to provide another nine e-Channels at the arrival hall of the Lo Wu Control Point before Easter. The ImmD plans to install about 270 e-Channels at our control points by mid-2006.

- (b) The APC System has been operating smoothly since its introduction apart from a few hitches involving certain component parts, such as failure of gate doors to close and temporary malfunction of stand-alone computers at e-Channels. These cases were infrequent. In all these cases, the e-Channels concerned were able to resume operation promptly after urgent repairs had been carried out by staff on site. There was no major adverse impact on users.
- (c) Between April to December 2004, the ImmD conducted an online questionnaire survey on APC and received about 140 completed questionnaires. Major comments from the respondents and follow-up actions taken by the ImmD are summarized as follows:

Respondents' comments	Follow-up actions taken by the ImmD
*	i i
Some respondents opined that as	The stainless steel construction in the
auto-gates were fitted with glass	lower part of the auto-gates and the
panes, they might pose safety hazard	tempered glass in the upper part are
to users if the glass panes were	designed to ensure safety for users.
broken. However, others	
commented that the glass-pane design	
made it easy to monitor the operation	
of auto-gates.	
Some respondents were concerned	The ImmD has installed air blowers
about the hygiene conditions of	and ultra-violet lights above
fingerprint scanners since they were	fingerprint scanners for cleansing and
touched by many users.	disinfection purposes. Liquid soap is
	also provided near auto-gates for
	public use.
Some respondents were of the view	The ImmD will explore the feasibility
that auto-gates should be designed to	of installing two-way auto-gates
allow two-way traffic to enhance	taking into account the operational
flexibility.	needs of individual control points.

(d) The ImmD will continue its publicity campaign targeting at persons of different age groups through the media. Announcement of Public Interest about e-Channels is broadcast on television (TV), radio and trains running on the East Rail, the West Rail and the Ma On Shan Rail. The ImmD also puts up display boards and plays a short video on LCD TVs above the auto-gates at the Lo Wu Control

Point to demonstrate the proper use of e-Channels. We believe that Hong Kong residents, including the elderly, will be able to grasp the message in the short video, which is presented in a simple and easy to understand manner.

# Hong Kong Travel Agents Operating Outbound Travel Services on the Mainland

9. MR HOWARD YOUNG (in Chinese): Madam President, according to the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) concluded in October 2003, upon meeting specified requirements, Hong Kong travel agents can start up businesses in the Mainland, but their scope of business is restricted to mainly operating local tours there. Although CEPA is in its second phase now, the above restriction has not been further relaxed by the Mainland. In this connection, will the Government inform this Council whether the authorities will seek the relaxation of such restriction when they start the negotiation with the Mainland over the third phase of CEPA to enable Hong Kong travel agents to operate outbound travel services in the Mainland and open up more business opportunities there for the industry, so that Hong Kong travel agents may provide one-stop travel services to the mainlanders?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Chinese): Madam President, one of the objectives of CEPA is to progressively achieve liberalization of trade in services. In its consultation with the mainland authorities on CEPA I and II, the Government has taken into account the views of the relevant sectors and striven to achieve market liberalization for these sectors. CEPA has provided a mechanism for liberalization measures in trade in services to be implemented as and when they are agreed by both parties, using a building block approach.

The Government has closely liaised with the travel trade and listened to their views and requests on CEPA. Under CEPA, eligible Hong Kong service providers are permitted to form joint ventures with mainland travel agents to operate inbound and domestic travel business without geographical restrictions in the Mainland; whereas service providers from other World Trade Organization members are only allowed to form joint ventures in Beijing, Shanghai, Guangzhou, Shenzhen, Xian and designated holiday resorts. This means that

these Hong Kong travel agents enjoy the benefit of early access to the mainland market without geographical restrictions.

During previous consultations with the mainland authorities on CEPA, we have discussed with the mainland authorities various proposals of the travel trade including the suggestion to allow Hong Kong travel agents to operate outbound travel services in the Mainland. We will continue to consult the travel trade and reflect their views to the mainland authorities in CEPA III consultations.

## **Suspending Payment of Old Age Allowances**

10. MISS CHOY SO-YUK (in Chinese): Madam President, will the Government inform this Council of the number of cases, in each of the past three years, in which payments of normal or higher old age allowances (OAAs) to elderly persons were suspended by the authorities because they had violated the stipulation on the annual permissible limit of 180 days' absence from Hong Kong, and of the respective amounts of allowances involved?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese): Madam President, under existing arrangement, OAA recipients are entitled to an annual permissible limit of 180 days' absence from Hong Kong subject to the recipient having resided in Hong Kong for at least 90 days in the year, without affecting their entitlement to the payment. In respect of the number of OAA cases in which the recipients have breached the current annual permissible limit of absence, and the respective amounts involved in the past three years, the situation is as follows:

Vaan	Number of Cases	Amount Involved
Year	(including both Normal OAA and Higher OAA)	(\$ Million)
2001-02	6 871	\$15.0
2002-03	7 053	\$14.5
2003-04	7 113	\$13.5

The Social Welfare Department can normally recover the overpayment in respect of the cases which have breached the annual permissible limit of absence. Since OAA is a broadly non means-tested benefit, we have to prudently manage the use of the funds involved. As some elders have expressed the wish to spend

more time with friends and relatives outside Hong Kong, after balancing various considerations, we have announced in the 2005 policy address that the annual permissible limit of absence from Hong Kong would be increased to 240 days without affecting recipients' entitlement to the payment. Subject to approval by the Finance Committee of the Legislative Council, we intend to implement the new measure in October 2005.

## **Manpower and Resources for Handling Hill Fires**

- 11. MR ALBERT CHAN (in Chinese): Madam President, recently I have received a number of complaints from the residents concerned that, owing to shortage of manpower and helicopters, the hill fire on Lantau Island had lasted for over 40 hours from 26 to 28 November 2004 before it was finally put out, resulting in the destruction of hundreds of thousands of trees. At some point, the fire even threatened the safety of residents in the vicinity. In this connection, will the Government inform this Council:
  - (a) of the number of hill fires occurring in other parts of Hong Kong during the period from 26 to 28 November last year, and the numbers of firefighters and helicopters involved in fighting these fires;
  - (b) of the current numbers of firefighters and helicopters specially deployed in fighting hill fires, as well as whether the authorities have reviewed the adequacy of the manpower and resources in this regard; if they have, of the outcome of the review; if not, the reasons for that:
  - (c) if the outcome of the review indicates a shortfall in both the manpower and resources deployed in fighting hill fires, whether the authorities have any improvement measures; and
  - (d) given that, before the reunification, the British garrison had offered assistance when massive natural disasters broke out in Hong Kong, whether the authorities will consider seeking the assistance of the People's Liberation Army Garrison stationed in Hong Kong in the event of a massive natural disaster, such as a huge hill fire?

SECRETARY FOR SECURITY (in Chinese): Madam President, during the period from October to December 2004, the weather was dry and rainfall was scarce. This, coupled with the fact that fewer hill fires in the previous years have led to more vigorous growth of vegetation and thus more fuel accumulated in the countryside, has greatly increased the risk of hill fires. It took more than 40 hours to put out the hill fire that broke out near Discovery Bay, Lautau Island on 26 November 2004. This was mainly due to the prevailing dry weather and strong winds, which caused the hill fire to spread quickly and extensively. In addition, the steep and hilly terrain made it difficult for the firemen to reach the fire scene, hindering further the fire-fighting efforts. There was no question of shortage of manpower or helicopters for fighting hill fires.

Our reply to the specific questions is as follows:

(a) On 26 to 28 November last year, there were a total of 48 hill fires (including the one on Lantau Island) in Hong Kong. The Fire Services Department (FSD) turned out 745 firemen to fight these hill fires. The Government Flying Service (GFS) sent two Super Puma helicopters and three EC155B1 helicopters to carry out fire-fighting missions, and a sixth helicopter to transport several batches of firemen to the fire scenes. In addition, the Civil Aid Service (CAS) turned out 121 members to assist in the fire-fighting operations. On the part of the Agriculture, Fisheries and Conservation Department (AFCD), 115 officers were deployed to combat hillfires in the country parks.

# (b) and (c)

At present, there are 76 fire stations in Hong Kong, with 1 700 firemen on duty each shift. There is sufficient manpower for handling emergencies, including hill fires. The GFS can deploy up to three Super Puma helicopters and three EC155B1 helicopters to carry out fire-fighting missions at the same time. In addition, as mentioned above, the AFCD officers and the CAS members may also be mobilized to join fire-fighting operations when necessary.

The Government attaches great importance to the prevention of hill fires. The departments concerned have sufficient manpower and resources for combating hill fires. They also review the strategies

fighting hill and measures for fires regularly. An interdepartmental Task Force on Hill fires was set up by the Security Bureau in 1999 to co-ordinate the hill fire prevention efforts of member departments, including fire-fighting operations, law enforcement actions and publicity to enhance public awareness of the risk of hill fires. The Task Force on Hillfires will co-ordinate member departments to step up operation and publicity efforts on or around the days of the Ching Ming and Chung Yeung Festivals — the high risk periods of hill fires.

Targeting the dry season last year, we have further strengthened hill fire prevention publicity and law enforcement actions. On the publicity front, apart from Announcements of Public Interest (APIs) on hill fire prevention on television, we have also produced new radio APIs. The AFCD has produced and distributed new leaflets to hikers, and put up posters on information boards in the country parks, advising the public to be careful in handling fire, and, in particular, not to release giant lanterns or light fire-balloons. The AFCD officers have paid about 100 visits to villages in the New Territories to promote awareness of the risk of hill fires. Volunteer hiking teams from the FSD have organized a series of "Hill Fire Prevention Hiking Days" in popular country parks and hiking routes on weekends and Sundays, during which hill fire prevention messages were disseminated to the public.

On the law enforcement front, the AFCD has stepped up patrol in the countryside in order to prosecute illegal lighting or mishandling of fire. There were seven prosecution cases between November 2004 and March 2005.

(d) Article 14 of the Basic Law (Article 14) stipulates that the Government of the Hong Kong Special Administrative Region (SAR) may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and disaster relief. As the SAR Government is fully capable of maintaining internal security and handling general emergencies, we believe that the chance of our having to invoke the Article 14 mechanism and request the Central People's Government assistance from the garrison is slim.

#### **Medical Fee Waiver Mechanism**

- 12. **MS EMILY LAU** (in Chinese): Madam President, a new charge for the Accident and Emergency service at public hospitals was introduced in November 2002 and the fees and charges for some public health care services were adjusted upwards in April 2003. In this connection, will the executive authorities inform this Council:
  - (a) of the annual numbers of access to public health care services by the members of families receiving Comprehensive Social Security Assistance (CSSA) since November 2002;
  - (b) of the annual numbers of applications for fee waivers made since November 2002 by users of public health care services who were not recipients of CSSA, and
    - (i) the number of such applications approved, broken down by whether the monthly household incomes of the applicants exceeded the median monthly domestic household incomes (MMDHIs) applicable to their household size and by the proportion of fees waived (full or half fee waivers), and
    - (ii) a breakdown of the rejected applications by the reasons of rejection; and
  - (c) whether they have publicized the medical fee waiver mechanism and taken the initiative to explain to patients and their relatives how to make applications?

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

(a) CSSA recipients are being exempted from payment of public medical charges. From November 2002 to December 2004, there were 5 682 601 attendances that involved the use of public medical services by CSSA recipients. A yearly statistical breakdown is as follows:

Year	No. of attendances that involved the use of public medical services by CSSA recipients
2002 (November to December)	457 173
2003	2 463 545
2004	2 761 883

(b) To assist vulnerable groups in the community other than CSSA recipients (that is, low-income people, chronically-ill patients and elderly patients in economic hardship), the Government has formulated an enhanced medical fee waiver mechanism to relieve their financial burden. Depending on patients' actual needs, waivers may be granted on a one-off basis or valid for a number of months. This enhanced mechanism has been implemented since April 2003.

According to the enhanced fee waiver mechanism, non-CSSA recipients may apply for a fee waiver if they meet the following economic criteria.

- (i) The patient's monthly household income does not exceed 75% of the MMDHI applicable to his/her household size, and
- (ii) the value of the patient's household asset is within a certain limit applicable to his/her household size.

A patient is generally entitled to a full waiver of medical fees if his/her monthly household income does not exceed 50% of the MMDHI applicable to his/her household size and the asset limit criterion is met.

Aside from assessing the eligibility of an applicant based on his/her household income and asset, medical social workers also take into account various non-financial factors such as (i) the patient's clinical conditions; (ii) whether the patient is a person with a disability or a single parent with dependent children; (iii) whether a fee waiver can help solve the patient's family problems; and (iv) whether a patient has any special expenditure requirements that make it difficult for him/her to afford public medical fees.

There were a total of 132 141 fee waiver applications from non-CSSA recipients from November 2003 to December 2004. The numbers of full waivers and partial waivers granted are 122 554 and 8 811 respectively. A yearly statistical breakdown is as follows:

	No. of	No. of successful	No. of successful	No. of
Year	waiver	applications	applications	unsuccessful
	applications	(full waivers)	(partial waivers)	applications
2003	50 909	46 595	3 053	644
(April to December)	50 292	(92.6%)	(6.1%)	(1.3%)
2004	81 849	75 959	5 758	132
۵004	01 849	(92.8%)	(7.0%)	(0.2%)

Information on the details of unsuccessful applications including the reasons for rejection are not readily available as such details are not captured by the Hospital Authority (HA).

(c) To promote public awareness of the medical fee waiver mechanism, the Social Welfare Department (SWD) and the HA have been displaying/distributing bilingual posters and leaflets at their front-line operational units, including public hospitals and clinics as well as the SWD's medical social services units, family services centres and social security field units. Should there be enquiries on the operation of the waiver mechanism, non-CSSA recipients can approach the staff of relevant operational units and the duty officers will answer the enquires made in detail.

# **Banning Smoking in Public Transport Carriers**

- 13. **MR LAU KONG-WAH** (in Chinese): *Madam President, will the Government inform this Council:* 
  - (a) of the respective numbers of passengers prosecuted for smoking in public transport carriers or no-smoking areas of railway stations and ferry piers, in each of the past three years;

- (b) whether it knows the details of the guidelines issued by various public transport operators to their staff on the actions to be taken when passengers smoke in public transport carriers or no-smoking areas; and
- (c) whether the relevant authorities received last year any complaints about the failure of public transport operators' staff to take appropriate actions immediately when passengers were found smoking in public transport carriers or no-smoking areas?

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

(a) In the past three years, the number of passengers prosecuted for smoking in public transport carriers or no-smoking areas of railway stations and ferry piers is as follows:

2002	62 persons
2003	63 persons
2004	31 persons

- (b) At present, most of the public transport operators, for example, operators of franchised bus, railway, ferry, tramway and the Peak Tramways, have given their employees guidelines for handling smoking by passengers. In general, these guidelines instruct employees to verbally persuade the passenger to stop smoking. If the passenger ignores such persuasion, the employee should ask the passenger to leave the no-smoking area or report the case to the police for them to take enforcement action having regard to the circumstances of the case. The MTRCL, the KCRC and the Peak Tramways Company Limited can prosecute passengers who smoke inside no-smoking areas in railway compartments or stations according to their company by-laws.
- (c) In 2004, the Transport Department received 14 complaints about the failure of public transport operators' staff to take appropriate actions immediately when passengers were found smoking in public transport carriers or no-smoking areas.

# **Fully Automated Train Service**

- 14. **DR RAYMOND HO** (in Chinese): Madam President, it has been reported that the MTR Corporation Limited (MTRCL) would introduce fully automated train service in two to three years. By then, all of its trains would not be manned by train operators. In this connection, will the Government inform this Council whether it knows:
  - (a) which countries are already using fully automated operation (FAO) systems for their railways and whether such systems have ever had any train incidents;
  - (b) how the MTRCL will ensure that, in the event of an incident involving a fully automated train, the passengers inside the train can receive prompt assistance; and
  - (c) the MTRCL's estimated amount of savings achieved by the use of a fully automated train system and the annual maintenance cost for such a system?

# **SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Chinese): Madam President, the MTRCL has no plan to implement FAO on its existing railway system, except for the Disneyland Resort Line (DRL), which is a 3.5-km resort line running between two stations. In Hong Kong, the Automated People Mover operating in the Hong Kong International Airport also adopts FAO.

We understand that a number of overseas countries such as France, the United Kingdom, Denmark, Canada, the United States, Japan, Malaysia and Singapore have adopted FAO for some of their metros since the 1980s. Cases in point are the Metro Line 14 of Paris, the North East MRT Line of Singapore, and the Sky Train Millennium Line of Vancouver. We have no information on the incident statistics of these metros. However, these fully automated railway lines are known to have satisfactory performance in terms of safety and reliability.

The Government and the MTRCL consider passenger safety the most important criterion when assessing the introduction of new railway facilities and technologies. The MTRCL is required to meet stringent safety requirements before commencing operation on any new part of the railway or bringing into use any additional or modified major facilities, equipment, systems, trains or new technologies. In the case of DRL, train-borne communications equipment and a public address system will be provided in train compartments to enable direct communication between passengers on train and the train controller at the control centre. Apart from station staff, additional staff will also be deployed by the MTRCL to provide assistance to passengers on board when needed. The MTRCL will develop a set of robust operational procedures to the satisfaction of government departments concerned for the operation of DRL train and ensure that its staff is fully conversant with the operation. Regular drills and exercises will be conducted to ensure and review the adequacy of the procedures and staff competence.

Since the MTRCL has no plan to introduce FAO on its existing railway system, the Corporation does not have the estimated savings or maintenance cost for such.

#### **Review of Functions of District Councils**

15. MR CHIM PUI-CHUNG (in Chinese): Madam President, the Chief Executive stated in his policy address this year that the authorities would launch a review on the functions of District Councils (DCs) this year. In this connection, will the Government inform this Council how the authorities will proceed with the review, and whether District Council members will be allowed to participate in the initial stages of the review; if they will, of the time they can do so; if not, the reasons for that?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Chinese): Madam President, to review the roles, functions and composition of the DCs, the Constitutional Affairs Bureau and the Home Affairs Department have set up a working group to make preparations. The review is expected to commence by the end of this year. In conducting the review, we will have regard to the relevant statutory provisions, the original thinking behind the introduction of the district administration scheme, the recommendations put forth by the Government in the Report of the Working Group on District Councils Review published in 2001, and the experience of the operation of the DCs.

When the review commences, we will issue a consultation document to seek the views of different sectors of the community, including the views of DCs. Full consideration will be given to the opinions of DC members on subjects covered in the review. In the meantime, although the review has yet to commence, we would welcome any views from the DCs.

## **Liver Transplant Centre**

- 16. **MR LI KWOK-YING** (in Chinese): Madam President, it was reported that Queen Mary Hospital (QMH), the only liver transplant centre in Hong Kong, had aborted liver separation operations on a number of occasions due to inadequate resources, resulting in not only a waste of livers, but also reduced chances for patients to undergo liver transplants. In this connection, will the Government inform this Council whether it knows:
  - (a) the number of liver separation operations aborted at QMH since 2003 and the reasons for the abortion:
  - (b) if the Hospital Authority (HA) has reviewed the incidents in which liver separation operations were aborted due to inadequate resources or manpower; if so, of the review findings; if not, the reasons for that;
  - (c) if the HA has assessed whether the closure of the liver transplant centre at Prince of Wales Hospital and performing all liver transplants at QMH is more cost-effective than the arrangement in the past; and
  - (d) if the HA will review the current operation of the liver transplant centre?

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese): Madam President, a liver separation operation is to divide a liver donated for human transplant purposes into two halves, which can then be transplanted into two separate patients simultaneously. Generally speaking, whenever QMH receives a donated liver, it will try to arrange for a liver separation operation as far as practicable, so as to enable two patients to benefit from the same donated liver.

The performance of a liver separation followed by two simultaneous transplants requires the mobilization of a significant amount of manpower resources, which include a minimum of two teams of transplant surgeons, anaesthetists, nurses and other professionals, the use of three operation theatres and a whole host of medical equipment. Whether or not such a complex operation can be successfully arranged also depends on some external factors, such as whether there are other patients at the hospital with urgent clinical needs at the same time.

- (a) Since becoming the only liver transplant centre in Hong Kong in mid-2003, QMH has not aborted any liver separation operation due to insufficient resources or manpower.
- (b) The HA has been closely monitoring and evaluating the service level, the resources and manpower needs of its liver transplant centre, so as to ensure that the centre receives the appropriate support for its development and that the needs of liver transplant patients are met. In addition, QMH has strengthened the organization and co-ordination of its liver transplant services. It has also introduced a system for mobilizing the relevant staff at any time of the day or night. This is to ensure that no matter when a donated liver may become available, the hospital would be able to mobilize the transplant teams and sufficient manpower to perform a liver separation operation as far as practicable, and to enable two patients to benefit at the same time where possible.
- (c) Given the existing number of donated livers available for human transplant in Hong Kong each year, the current arrangement of designating QMH as the only liver transplant centre in Hong Kong is certainly the most cost-effective.

It is widely recognized internationally that in respect of major surgical operations such as liver transplants, there is a positive relationship between the number of operations conducted in a dedicated surgical centre and the clinical outcome of the operations. Furthermore, to perform living liver transplants, both the transplant centre and the surgical teams must possess the relevant experience. The clinical outcome of the operations is subject to independent reviews as well.

Since QMH became the only liver transplant centre in Hong Kong, the HA was able to consolidate its relevant resources and expertise at a single location. This has not only facilitated the co-ordination and performance of liver transplants, but also allowed the transplant teams to accumulate valuable experience at a faster pace. QMH has already completed over 100 liver transplants since it became the only centre for such operations. At present, the patient survival rate at one year post transplant is 91%, which is at a top-tier level internationally. Before QMH became the only liver transplant centre, the overall survival rate of HA's liver transplant patients at one year post transplant was 83%. Hence, it can be seen that substantial improvements on the effectiveness of liver transplant operations have been brought about by the current arrangement.

(d) The Central Co-ordinating Committee on Surgical Services of the HA reviews the operation of the liver transplant centre from time to time. It also monitors the arrangement for liver transplant operations and its effectiveness.

## **Covering Rivers and Streams with Concrete**

17. **MISS CHOY SO-YUK** (in Chinese): Madam President, will the Government inform this Council of the number of rivers and streams along which concrete was laid in each of the past 10 years as part of drainage works/flooding prevention projects, and the total length of these rivers and streams covered with concrete?

### SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President, in the past decade, we built a total of some 31 km of concrete channel bed in 16 major river training and flood prevention projects (see Annex 1¹ for details). In the light of the growing public awareness of environmental protection, we are committed to including environmentally-friendly features in such projects as far as practicable and technically feasible with a view to making them more compatible with the environment and preserving the natural habitats. The various possible measures are set out at Annex 2.

<sup>&</sup>lt;sup>1</sup> The figure does not include about 11 km of concrete channel bed on smaller streams built in minor works projects, such as minor drainage improvement and rural public works projects.

Annex 1

## Lengths of Concrete Channel Bed Built

Year	Number of major flood prevention and river training projects completed within the year	Total length of concrete channel bed built in the projects (km)	
1995	0	0.0	
1996	0	0.0	
1997	1	0.0	
1998	1	2.3	
1999	1	0.8	
2000	1	0.0	
2001	4	8.5	
2002	3	5.2	
2003	3 10.4		
2004	2	4.0	
10-Year Total	16	31.2	

#### Annex 2

#### Possible Environmental Protection Measures

- Construction of grass slopes and river beds along the rivers by grasscreting for landscaping and ecological purposes;
- Stabilization of riverside slopes by gabions and geo-fabric reinforced grass lining;
- Preservation of the original natural river beds to protect and conserve the flora and fauna;
- Provision of unlined surfaces on the embankments to encourage the growth of vegetation;
- Retention of natural meanders;
- Construction of shallow ponds as habitats for freshwater fishes, amphibians, dragonflies and waterfowl, and so on; and
- Creation of artificial wetlands and reed beds to enhance ecological diversity and for landscaping purpose.

### **Professional Indemnity Insurance**

- 18. **MR HOWARD YOUNG** (in Chinese): *Madam President, will the Government inform this Council:* 
  - (a) of the types of trades for which professional indemnity insurance (PII) is provided by the insurance industry at present and the total amount of annual premium received from such trades;
  - (b) of the total amount of compensation claimed from PII over the past five years and the trade which has made the highest amount of claims;
  - (c) whether it will consider imposing a mandatory requirement that those trades with high operational risks should take out PII; and
  - (d) as many insurance companies have raised the PII premium for travel agents since the September 11 incident in the United States, thereby subjecting travel agents to higher operational costs, whether the authorities will consider setting an upper limit for the compensation amount of each claim so as to reduce the premium concerned?

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

(a) At present, the insurance industry is providing PII to different types of trades or professions, including accountants, solicitors, medical practitioners, and directors and officers of corporations. Statistics collected by the Office of the Commissioner of Insurance are for the purpose of prudential supervision of insurers. PII is grouped under the class of "general liability — non-statutory" business with other types of liability insurance, such as contractors' liability and product liability, and separate statistics are not available. According to the latest statistics, in 2003 the annual gross premium received from "general liability — non-statutory" business is \$1,837.8 million.

(b) The annual amounts of compensation paid out for the class of "general liability — non-statutory" business in the past five years are as follows (in \$million):

1999	2000	2001	2002	2003
503.1	638.0	419.3	362.4	613.4

- (c) The Government considers that it is not appropriate to impose an across-the-board requirement for those trades or professions with high operational risks to take out PII. Insurance is a risk-assessing and pricing business. The operation risk varies from trade to trade or from profession to profession and from business to business within each trade or profession. It should be best left to individual trade or profession to decide, taking into account such factors as the characteristics and the level of risks concerned, past claims experience, financial capability, the prevailing market situation, the operation and practice of the trade or profession, and so on.
- (d) Any rise or fall in premium, claims and compensation for professional indemnities in individual business may be the result of many different factors, such as inherent risk of the business and the market situation, and so on.

In Hong Kong, the common law recognizes the principle of fairness that a wrongdoer should be responsible for the consequence of his acts and omission and be liable to pay to the victim full compensation for the loss attributable to his acts and omission. In assessing the amount of compensation, the principle is to compensate the victim in such manner that his original position can be restored in so far as this can be done by payment of damages. Save in exceptional circumstances, damages awarded are purely compensatory, instead of punitive. From a legal point of view, capping compensation therefore seems to be inconsistent with such common law principles. From a policy point of view, capping compensation will have read-across implication upon other compensation-seeking situations. It may also lower deterrence of malpractice and erode the responsibility for risk management by travel agents.

To strengthen the risk management on the part of travel agents and enhance protection for outbound travellers, the Travel Industry Council (TIC) issued in January 2005 two documents on issues to pay attention to by outbound tour operators when they work with partners outside Hong Kong and a safety checklist for package tours to all travel agents in Hong Kong. These documents aim to help outbound tour operators and tour escorts to enhance both the quality and the safety of outbound tours.

The Administration has been assisting the TIC to communicate with the insurance sector to study the coverage of PII. The concerted efforts of the travel agents and the TIC to reduce the operational risks, and the better communication and understanding between them and the insurance sector would help resolve the issue of insurance premium.

# **Curbing Participation of Underage Secondary School Students in Football Betting**

- 19. **MS EMILY LAU** (in Chinese): Madam President, a survey published by the Hong Kong Gambling Watch in December last year has revealed that the number of underage secondary school students participating in football betting had increased by 52.5%, compared to 2003, accounting for 6.1% of the student population. Among such students, 76% placed their bets with the Hong Kong Jockey Club (HKJC) either directly or indirectly, and 24.5% could be classified as pathological or problem gamblers. In this connection, will the executive authorities inform this Council:
  - (a) whether they have compiled statistics on the number of underage secondary school students who participate in football betting and can be classified as pathological or problem gamblers;
  - (b) whether they will conduct annual surveys on the participation of secondary school students in football betting; if not, how the authorities assess if the trend and problem of football betting among secondary school students are serious;

- (c) of the specific and ongoing measures to curb gambling among secondary school students and prevent the problem from worsening;
- (d) of the current usage rates of the two counselling and treatment centres for problem and pathological gamblers; if they are being used to capacity, whether the authorities will allocate additional resources to provide more counselling and treatment centres; if not, of the alternative services available to help the secondary school students who are beset by gambling problems; and
- (e) whether they will penalize the HKJC for failing to effectively prevent underage persons from entering its off-course betting branches and placing bets; if so, of the penalties to be imposed; if not, the reasons for that?

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, my reply is as follows:

According to the results of the "Study on Hong Kong People's (a) Participation in Gambling Activities" commissioned by the Home Affairs Bureau in 2001 (when football betting had yet been authorized and regulated), 5.7% of the interviewees aged 13 to 17 had participated in football betting. This was approximated to be equivalent to about 30 600 persons based on the population size of In the same study, it was found that 2.6% and that age group. 4.5% of the interviewees aged 13 to 17 could respectively be classified as "probable pathological gamblers" and "probable problem gamblers" (approximated to be equivalent to around 14 000 persons and 24 200 persons respectively). Among those aged 13 to 17 who could be classified as "probable pathological gamblers", around 42.3% (or 5 900 persons) had participated in football betting.

- (b) We recently commissioned the University of Hong Kong to conduct a study on Hong Kong people's participation in gambling activities. This study seeks to track the results of the abovementioned study conducted by The Hong Kong Polytechnic University (PolyU) in 2001. In addition to a general questionnaire survey on the pattern of gambling participation among adults and adolescents, the study would also include a qualitative research into some cases of problem and pathological gambling with a view to gaining a better understanding of the causes of problem and pathological gambling, particularly for adolescent cases. The study is now in progress and is expected to be completed in mid-2005.
- (c) Gambling-related problems have been a long-standing issue. The Government established the Ping Wo Fund in September 2003 for the purpose of financing preventive and remedial measures to address the gambling-related problems. The main objectives of the Ping Wo Fund are to finance three types of measures: (1) research and studies into problems and issues relating to gambling; (2) public education and related measures to prevent or alleviate problems relating to gambling; and (3) counselling, treatment and other remedial or support services for problem and pathological gamblers The HKJC has undertaken to and those affected by them. contribute a total of \$24 million within the first two years, and \$12 million to \$15 million each year in the subsequent three years. Fund also accepts donations from the public.

In October 2003, we commissioned the Hong Kong Education City (HKedCity) to launch a two-year education programme, known as "Say No to Gambling Action", targeting young people, school students, teachers and parents. The primary objectives of the campaign are to enhance the understanding of young people, school students, teachers and parents about gambling-related problems; and strengthen students' and youngsters' ability to exercise self-control, so as to prevent themselves from becoming addicted to, and developing compulsive or pathological behaviour in gambling and other activities. The campaign includes a central website, as well as a series of activities such as workshops, seminars and debating competitions.

To enhance the awareness of gambling-related problems among young people, the HKedCity recently collaborated with a professional drama group to launch a series of roving interactive drama in secondary schools. The purpose is to make use of stimulating interactive activities to drive home the message about the adverse consequences of excessive gambling among young Besides, we have commissioned an advertising agency to produce a new series of television and radio Announcements in Public Interest (APIs) targeting young people. The objective is to warn them against excessive gambling and encourage them to seek assistance in the event of having gambling-related problems. would continue to launch relevant education programmes to enhance adolescents' awareness about gambling-related problems, so that they would be able to guard against such problems.

(d) During the period from October 2003 to February 2005, the two pilot counselling and treatment centres for problem and pathological gamblers (the Centres) financed by the Ping Wo Fund have provided counselling and treatment services to a total of 1 473 gamblers. We have commissioned PolyU to conduct an evaluative study on the effectiveness of the services provided by the Centres with a view to developing the best practice of how the services should be provided. This would also facilitate the planning of such services in the future. In the meantime, we would work closely with the Centres to monitor their services and consider the need for additional resources to cater for service demand if appropriate.

The Centres provide services for gamblers of all ages and their significant others. The Centres have been seeking to promote their services to young people through various channels including their websites, youth education programmes and leaflets. The "gambling counselling hotline", which is being jointly operated by the two Centres, would also be promoted in the APIs on gambling to be launched soon. In view of the popularity of the Internet as a medium of communication among young people, the Centres have launched Internet counselling services so that young people who experience gambling-related problems could also seek assistance from counsellors on the Internet.

(e) In accordance with the conditions of football betting and lotteries licences, the licensees could not allow persons under 18 years of age to enter betting premises or accept bets from juveniles. Under the Code of Practice of the licences of football betting and lotteries, the licensees shall display in a conspicuous manner messages in its betting premises and on its website stipulating the above restrictions, and adopt appropriate and practicable measures aimed at preventing juveniles from placing bets.

If the licensees were found to be in contravention of the licensing conditions, the Secretary for Home Affairs has the authority to impose financial penalty under the Betting Duty Ordinance (the Ordinance). The maximum penalty for the first occasion on which such a penalty is imposed is \$500,000, \$1 million for the second occasion and \$5 million for the third or any subsequent occasions. The Secretary for Home Affairs could revoke the licence if the licensee had failed to comply with the Ordinance, licensing conditions, or failed to pay a financial penalty.

#### **Lunchboxes Ordered for Students**

- 20. **MR LAU KONG-WAH** (in Chinese): Madam President, regarding the lunch boxes ordered by primary schools for their students from food suppliers, will the Government inform this Council:
  - (a) of the number of complaints received by the authorities concerning these lunch boxes in the past three years, the subjects of complaints and how such complaints have been followed up; and
  - (b) whether the authorities have regularly updated the guidelines issued to food suppliers on the hygiene standard and nutrient composition of lunch boxes; if so, of the details of the latest guidelines, and the measures in place to monitor compliance with such guidelines by food suppliers; if no such measures are in place, the reasons for that?

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

- (a) In the past three years from 2002 to 2004, the Food and Environmental Hygiene Department (FEHD) received a total of 19 complaints related to suppliers of lunch boxes to schools. majority of these complaints were related to suspected deterioration and incomplete cooking of the food and the presence of foreign The FEHD conducted detail investigation on all cases, including onsite investigation, testing of food concerned, and checking and collecting evidence at the food processing premises. After the completion of investigation, the FEHD had issued 15 verbal warnings to the relevant food suppliers and initiated five Four of these prosecutions have been successful and prosecutions. the convicted food suppliers were fined an average of about \$4,000. The remaining one prosecution has yet to be heard by the Court. The Department of Health (DH) has not received any complaints related to lunch boxes for bulk supply to primary school students.
- (b) To help ensure food safety, lunch box suppliers are required under the Food Business Regulation to obtain a valid food factory licence The FEHD has in recent years amended a before operation. guideline on the Food Safety of School Lunchboxes and produced the Food Hygiene Code which detail the standard of food hygiene and food safety for the trade, including the requirement for the lunch box containers, storage temperature during delivery, and so The FEHD also disseminates guidelines on food hygiene on the handling and delivery of lunch boxes for lunch box suppliers through telephone hotline, printed education materials, workshops and seminars. The trade can browse and download the relevant information from the departmental webpage (< http://www.info.gov.hk/fehd> ). The FEHD will update the relevant guidelines as and when needed. To ensure that the relevant regulations and conditions for issue of licence are being observed, the FEHD staff has been conducting inspection on these food factories from time to time and will adopt follow-up actions where appropriate.

Separately, to promote nutritional balance in school lunch boxes, the DH has produced an educational pamphlet for distribution to lunch box suppliers, as well as primary and secondary schools in 2001. The pamphlet provides information on the food pyramid, what constitutes a healthy lunch box and some examples of healthy lunch A copy of the pamphlet can be found at the departmental website (< http://www.cheu.gov.hk>). The messages reinforced at the community level, through activities held in collaboration with the District Councils and local groups. Activities, including workshops, health talks, cooking competitions, exhibitions and newsletters, targeting at children, women, teachers, students and parents were launched. In addition, school-based healthy eating campaigns in selected primary schools in Tai Po, Sha Tin and the North District were held in 2003 and 2004.

On another front, advice on related topics was promoted through the mass media, the Internet and the DH's 24-hour Health Education Hotline. As part of its ongoing effort to promote healthy eating, the DH conducted a focus group study of primary school students in 2004 to identify facilitating and inhibiting factors for healthy eating. Findings from the study will be used for the planning of related health promotion activities.

#### **BILLS**

## **First Reading of Bills**

PRESIDENT (in Cantonese): Bill: First Reading.

#### APPROPRIATION BILL 2005

**CLERK** (in Cantonese): Appropriation Bill 2005.

Bill 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): Bill: Second Reading.

#### **APPROPRIATION BILL 2005**

**FINANCIAL SECRETARY** (in Cantonese): Madam President, I move that the Appropriation Bill 2005 be read a second time.

Hong Kong has faced many challenges since the reunification less than eight years ago. Mr TUNG Chee-Hwa, the first Chief Executive of the Hong Kong Special Administrative Region (SAR), has led us through those turbulent times. His selfless devotion and courageous commitment to Hong Kong is exemplary. The State Council has accepted his resignation on 12 March. I respect his decision to resign and I am sure Mr TUNG will continue to serve our Motherland and the people of Hong Kong in his new capacity. I and other members of the SAR Government will work with each other to fulfill our public duties to the best of our ability.

With the support of the Central Government and the combined efforts of the Hong Kong people, we have successfully overcome these trials and tribulations, demonstrating our resilience, perseverance and "the Hong Kong Spirit". As President HU Jintao says, seeking development, stability and harmony is the mainstream social consensus in Hong Kong. Confronted by change, we should show solidarity and each play our part in the community. We should also uphold the principle of "One Country, Two Systems". In this respect, we are fortunate to have a sound and efficient government structure and a well-established administrative system based on the rule of law. I will do my best to live up to the expectations our citizens have of me as Financial Secretary of the Hong Kong SAR, and to ensure the continuity and consistency of the Government's fiscal and economic policies, so as to maintain public confidence in the economic development and social stability of Hong Kong.

## **Economic Performance in 2004**

Our economy recovered throughout 2004, moving out of the doldrums that had beset us since the Asian financial crisis. Last year, it grew by 8.1%, the highest rate in four years and well above the average annual growth rate of 4.8%

over the past 20 years. This suggests that our economy is back on an upward track following the adjustments over the past few years. (Chart 1)

Our external trade in 2004 remained buoyant: total exports of goods and offshore trade both surged by 15%. The number of visitor arrivals for the year reached an all-time high of 21.81 million. Private consumption increased significantly, by 6.7%. Likewise, investment in industrial machinery, after falling for several years, resumed positive growth, with an overall increase of 20% for the year, the highest since 2000. Property values rebounded, and the number of homeowners with negative equity fell drastically from about 106 000 in the middle of 2003 to around 19 000 at the end of 2004. The number of bankruptcy petitions also decreased from more than 22 000 in 2003 to about 12 000 in 2004, and was the lowest in four years.

With the economic upturn, the unemployment rate fell steadily from its peak of 8.6% in the middle of 2003 to a three-year low of 6.4% earlier this year. The total employed population rose at a remarkable pace to an all-time high of 3.34 million, up by about 154 000 over the trough in 2003. There was a surge in vacancies across many sectors. (Charts 2 and 3)

In July 2004, the deflation that had persisted for nearly six years finally came to an end. With brisk local consumer demand and vibrant inbound tourism, 2004 has seen a progressive return of local retailers' pricing power. In the first half of the year, the Composite Consumer Price Index still experienced a 1.3% year-on-year decline, but in the second half of 2004 this reversed to a small increase of 0.5%. For the year as a whole, the average price decline was only 0.4%. (Chart 4)

#### 2004-05 Outturn

As our economy put in a strong performance last year, revenue from various sources was higher than expected.

For the Consolidated Account, I estimate that a surplus of \$12 billion will be achieved in 2004-05, equivalent to 0.9% of Gross Domestic Product (GDP). This is the first time since 1999-2000 that the Consolidated Account has recorded a surplus, and is mainly due to lower-than-expected expenditure and higher-than-expected revenue this year, capital revenue in particular. For example, land premiums amount to \$31.3 billion, more than two and a half times

the original estimate. Operating revenues such as salaries tax, profits tax and stamp duty are also higher than expected, with increases in these items ranging from 9% to 40%.

I must, however, stress that the main reason for the surplus is that revenue from land premiums is far greater than expected. As such revenue is volatile and is affected by a number of factors, we cannot rely too heavily on it to fund operating expenditure. Moreover, the sums raised by issuing bonds in 2004-05 will have to be repaid. Discounting the proceeds from bond issuances, the Consolidated Account will still record a deficit of \$13.4 billion.

As far as the Operating Account is concerned, I am pleased to announce that operating expenditure for 2004-05 will be lower than that for 2003-04. Barring two special accounting arrangements with the former Municipal Councils, this is the first time in over 50 years that operating expenditure has fallen.

This demonstrates that the various control measures taken by the Government are gradually producing results. These include reduction in the civil service establishment, adjustments to civil service pay, reprioritization of service provision, structural reorganization and streamlining of procedures. I am grateful for the joint efforts of Directors of Bureaux and my colleagues in the Civil Service. This also shows that our Civil Service has the flexibility to try new approaches and has striven to reduce operating expenditure while maintaining a quality service. The operating deficit for 2004-05 is forecast to be \$14.1 billion, much lower than the \$46.6 billion originally estimated.

Despite the fact that people's incomes decreased and deflation persisted in the wake of the Asian financial crisis, the Government's operating expenditure continued to soar. I know that members of the public are unhappy about this. Last year, I pledged that the Government would first cut down on spending in order to demonstrate our readiness for action. One year later, we have succeeded in checking the trend of our operating expenditure, which had been on the rise for over 50 years. This clearly demonstrates that we have the determination and capability to contain our spending.

# Consolidating our Recovery, Rising to the Challenges

Although our economy is back on an upswing and the fiscal position of the Government has improved, we are still faced with many challenges. Being

highly externally-oriented, our economy is very sensitive to outside factors such as oil prices, fluctuations in US dollar exchange and interest rates, the pace of the Mainland's economic growth and changes in its policies. The development of the Mainland has also emerged as a strong competitive force for Hong Kong, threatening even some of our industries which had long had an edge over our competitors, such as logistics. Furthermore, increasing globalization has a continuous impact on our strengths. There are also potential problems in the local economy. For example, unemployment in certain industries remains high, our economy is undergoing adjustment and the problem of the structural deficit has yet to be resolved. On the other hand, as our economy continues to improve, we must assiduously monitor inflation and property price movement, so as to avoid a major increase in business costs.

In the face of these challenges, we cannot afford to let our guard down. Instead, we should constantly try to innovate and seize every opportunity. For the Government's part, we will uphold the principle of "Market Leads, Government Facilitates" and actively promote economic growth by facilitating the development of the market and providing a favourable platform for the business community.

We will continue our efforts to secure more favourable market access for local enterprises and to protect the lawful rights of Hong Kong businessmen. We will maintain a healthy social system and a business-friendly environment. We will provide essential services and facilities, for example, by investing in infrastructure and providing assistance to meet the basic needs of socially-disadvantaged groups. Moreover, we will persevere with rigorous control of expenditure and allow the private sector more room to expand.

Promoting social stability and the economic development of Hong Kong will continue to be the key theme of this year's Budget. In striving to improve our business environment, we will encourage fair competition, foster economic co-operation with the Mainland, assist Hong Kong enterprises to access the Mainland market, enhance the competitiveness of our financial, logistics and tourism industries, improve training and attract more talent. I hope that these measures will help create an environment in which enterprises can thrive and give full rein to their creativity, and so raise Hong Kong's competitiveness as a knowledge-based economy. Boosting the economy will also provide us with more opportunities to realize our potential and upgrade our standard of living.

# Reinforcing our Strengths

Improving our Business Environment

Hong Kong has a very favourable business environment, underpinned by a sound legal system, an independent Judiciary, a low and simple tax regime, free flows of capital and information, and a clean and efficient Government. Nonetheless, we must strive for continuous improvement if we are to increase our competitiveness and boost economic development. The Economic and Employment Council established last year has identified the construction and retail industries, which have a significant influence on our economy and the job market, for regulatory review. The review aims to facilitate businesses by breaking down barriers and streamlining procedures. The Council is particularly concerned that many types of licences are required for a commercial undertaking and involve lengthy procedures. One of the main objectives of the review is therefore to look into the feasibility of issuing composite licences and, where practicable, introducing third-party certification or self-certification. This would expedite the licensing process and enable the departments concerned to redeploy resources and step up enforcement action, thereby reducing We expect the Council to complete the review and put forward irregularities. specific proposals by the end of this year.

To create a more user-friendly business environment, we will continue to drive our e-government programme to enhance our service quality and efficiency. We will also promote the adoption of e-business in the private sector. In February this year, for instance, the Land Registry rolled out the Integrated Registration Information System, which enables the industries concerned and the public in general to conduct online land search. Towards the end of last year, the Intellectual Property Department started to allow electronic filing of applications for registration of trademark, patents and designs. As a result, application fees have been considerably reduced and although this arrangement has been in place for only a few months, nearly 30% of applications are now filed electronically.

# Promoting Fair Competition

The Government is determined to promote the principle of fair competition. We have been working to increase the transparency of our existing regulatory regime to ensure it is fair and to enhance Hong Kong's competitiveness. Within

the community, views differ on the introduction of competition law. The Government's stance is that we will legislate where circumstances so warrant. We should, however, take into account the needs and circumstances of individual sectors in deciding whether legislation or other means should be used to achieve fair competition. In view of recent public concerns over the local auto-fuel market, we have commissioned an independent and comprehensive study on the competitive situation in this market. In addition, the Competition Policy Advisory Group will appoint an independent committee to review existing competition policy and the Group's composition, terms of reference and operations.

## Accessing the Mainland Market, Fostering Economic Co-operation

China has attracted worldwide attention as a rapidly-growing, emerging market gradually undergoing further reforms. The Government's role in tapping into this market is to reduce any policy obstacles so as to attract investment from the Mainland, and facilitate market access for Hong Kong businesses and professionals. This is beneficial to Hong Kong and meets the development needs of the Mainland economy. The Closer Economic Partnership Arrangement (CEPA) Phases I and II, signed by Hong Kong and the Mainland in 2003 and 2004 respectively, are key milestones in this process. Under both phases of CEPA, a total of 1 108 products have been granted Taken together with the Mainland's commitment on tariff-free treatment. accession to the World Trade Organization, about 95% of Hong Kong's domestic exports to the Mainland are now entitled to such treatment. Under Phase II, the liberalization of trade in services has been extended to 26 sectors. Both sides have also agreed to enhance co-operation on trade and investment facilitation in The economic benefits of CEPA are gradually being realized. By the end of February this year, products with a total value of \$1.4 billion were exported tariff-free under CEPA from Hong Kong to the Mainland. to the initial findings of the Government's economic benefit analysis, we expect to see the creation of more than 28 000 new jobs in the first two years of implementing CEPA. The Individual Visit Scheme, for instance, has led to the creation of about 16 500 new jobs in 2004 and generated an additional \$6.5 billion in tourist spending during the year.

CEPA provides a useful framework for Hong Kong companies to promote their businesses in the Mainland, and for Mainland companies to invest and identify suitable business partners in Hong Kong, which will then assist them to extend their business networks overseas. In late August last year, the Mainland Authorities introduced a new investment facilitation policy for Mainland enterprises to invest and to establish their businesses in the Hong Kong and Macao SARs. These are important steps under CEPA to facilitate investment. The new policy encourages and supports investment by Mainland enterprises in Hong Kong and expedites the decision-making process in respect of such investment. In response to it, Invest Hong Kong has introduced "Invest Hong Kong One-stop Services" to provide a convenient free service for Mainland enterprises that intend to use Hong Kong as the platform for their global business. To facilitate the development of further business by Mainland enterprises in Hong Kong, the Commerce, Industry and Trade Bureau will keep the existing support measures under review, and step up its co-ordination and promotion work.

Our objective is to develop and expand CEPA still further. To this end, the Government is now soliciting the views of relevant business sectors and will be holding discussions with the appropriate ministries of the Central Government.

Since the opening up of the Mainland, we have continuously been broadening and deepening our economic relationship with it. The Mainland is our largest trading partner and our second-largest source of foreign direct investment, while Hong Kong is its largest source of foreign investment. In the Pearl River Delta (PRD) Region alone, for example, our manufacturing industry employs about 11 million workers, over three times the Hong Kong workforce. Furthermore, around 240 000 Hong Kong residents regularly work in the In recent years, the Mainland economy has been upgrading Mainland. Its structure is also becoming more gradually. diversified. Such developments do pose constant challenges, but they also open up new opportunities for Hong Kong.

As a long-term strategy, Hong Kong needs to continue strengthening its economic ties with Guangdong and other Mainland provinces and cities. This will extend our co-operation with the Mainland, complement its further development and reinforce our own position as the region's premier bi-directional business platform. A good example of this is the Mainland/Hong Kong Science and Technology Co-operation Committee which was established late last year. The Committee has agreed to set up a working group to draw up specific plans for co-operation in four selected areas, namely, automotive parts

and accessory systems, radio frequency identification technologies, Chinese medicine, and integrated circuit design. We are also working in collaboration with leaders of the relevant Mainland provinces and regions to promote Guangdong/Hong Kong co-operation and Pan-PRD co-operation under the "9+2", in order to enhance our regional economic hinterland and efficiency. This will help promote Hong Kong as a base for overseas enterprises to invest in the Mainland and as a platform for Mainland enterprises hoping to enter the international market. This will create a "win-win-win" situation for Mainland, Hong Kong and overseas enterprises.

## Enhancing our Position as an International Financial Centre

Hong Kong's development as an international financial centre during the past year was most encouraging. Hong Kong ranked first in Asia and third in the world last year in terms of capital raised, with total Initial Public Offering (IPO) and post-IPO equity funds reaching some \$265 billion, out-performing the London and Tokyo Stock Exchanges. Market capitalization also hit a new high of about \$6,650 billion, nearly 50% above the pre-reunification level. Kong, Mainland enterprises have raised over \$900 billion since the introduction of H-shares in 1993. As at the end of last year, a total of 304 Mainland enterprises had listed here, 22% more than in 2003 and representing over a quarter of the total number of listed companies in Hong Kong. enterprises accounted for about 30% of our total stock market capitalization. Trading in their shares last year constituted half of our total market turnover. In 2004 alone, 44 Mainland enterprises raised funds through listing in Hong The vast majority of Mainland enterprises listed outside the Mainland are quoted on our stock exchange. Of those listed in Hong Kong, only a minority are also listed in other overseas markets, and more than 70% of their trading is conducted in Hong Kong. This demonstrates that Hong Kong has further consolidated its position as the premier international capital formation centre for the Mainland.

As an international financial centre, one of our major tasks is to provide an effective, transparent and fair regulatory regime on a par with international standards. Last year, this Council enacted the Deposit Protection Scheme Ordinance, which will improve the protection of deposits in Hong Kong. The scheme is expected to start in 2006. We will also introduce a bill into this Council next month to implement the new capital adequacy standards for banks issued by the Basel Committee on Banking Supervision, commonly known as

Basel II. These new standards will strengthen the risk-management capability and stability of our banking sector and stand it in good stead for the further liberalization of the Mainland's financial markets in future.

We will continue to enhance corporate governance so as to attract more local and international investors. Last year, this Council enacted the Professional Accountants (Amendment) Ordinance 2004, which improves the transparency and independence of the regulatory framework for the accounting The amendments include opening up the structure of governance of the Hong Kong Institute of Certified Public Accountants. Later this year, we will be introducing two bills which will give statutory backing to major listing requirements and establish the Financial Reporting Council to strengthen the supervision of auditors and raise the quality of financial reporting by listed Meanwhile, Hong Kong Exchanges and Clearing Limited companies. introduced a new Code on Corporate Governance Practices in January this year, aimed at implementing a number of corporate governance improvement measures in the three areas of directors' and board practices, protection of shareholders' rights and corporate reporting and disclosures.

In addition to our regulatory work, we will continue to promote our bond Most fund-raising activities in Hong Kong are now carried out through banking facilities and the stock market. This means that our bond market has ample room to develop. Last May, we issued a \$6 billion securitization bond for the government tolled tunnels and bridges. This is the largest-ever securitization bond offering in Hong Kong, and the first made available to retail It also ranks among the largest in the region and has received 17 financial services awards, including those from Asiamoney, FinanceAsia and In July last year, the Government launched its \$20 billion global bond IFR. This was the largest dual-currency and multi-tranche offering from the region, available to both retail and institutional investors. It also generated the largest subscription and issue amounts for a retail bond offering in Hong The offering was oversubscribed by local and international investors alike, and opened a new chapter for Hong Kong in the international capital It too was the recipient of a number of awards. We will consider whether to issue additional bonds in future, having regard to our objective of promoting the local bond market and the financial position of the Government. I hope that, as our bond market develops further, more corporations and investors from the Mainland and overseas will make use of our market to meet their funding and investment needs. I also look forward to the issuance in Hong Kong of more bonds denominated in various currencies.

## Reinforcing our Renminbi Business

Last year, Hong Kong became the first place outside the Mainland to conduct personal Renminbi (RMB) business, including deposit-taking, currency exchange, remittances and credit cards. The development of this business has been encouraging. At present, a total of 38 Hong Kong retail banks, nearly all of them, provide the first three of these services. As at the end of January this year, total RMB deposits in Hong Kong exceeded RMB13.1 billion. The cumulative value of transactions by Mainland visitors using RMB cards to spend and make cash withdrawals in Hong Kong exceeds \$2.9 billion, or \$3,000 per transaction on average. Some Hong Kong banks also started issuing RMB cards in late April 2004 to facilitate cross-boundary spending by Hong Kong residents.

While the range of RMB services now available in Hong Kong is quite limited, the provision of such services already represents a breakthrough. the further development of RMB business in Hong Kong, I have earlier indicated three strategic directions: first, exploring the diversification of the RMB assets and liabilities of Hong Kong banks; particularly on the liability side, diversification to non-residents and non-individuals of deposits now restricted to resident individuals; second, exploring the provision of appropriate RMB banking services for trade and other current account transactions between Hong Kong and the Mainland; third, exploring the feasibility of establishing a RMB debt issuance mechanism in Hong Kong. These proposals, if implemented, will facilitate the channelling of RMB back to the Mainland and the diversification of RMB assets. The further development of RMB business in Hong Kong needs to be compatible with the process of financial liberalization in the Mainland. Government is exploring with the Mainland Authorities ways to expand the scope of RMB business on a sound footing, in these three strategic directions. In this context, we will also be studying the establishment of a clearing and settlement platform for RMB transactions so as to enhance their efficiency and safety.

# **Promoting Asset Management**

Hong Kong is already a major asset management centre in Asia. In 2003, total assets of our fund management business amounted to \$2,950 billion, of which \$1,860 billion were sourced from overseas investors and accounted for 63% of the total. The potential to expand our asset management business remains considerable, given the vast pension scheme assets held by banks, fund

managers and insurance companies in Asia, coupled with the continued growth of personal savings in the Mainland.

The Government has consulted the industry on our proposals to exempt offshore funds from profits tax. We will shortly introduce the necessary legislative amendments into this Council.

To promote the further development of our asset management business, the Government last year consulted interested parties and the public at large on the abolition of estate duty. While abolition and retention both have their pros and cons, the majority view tends to support abolition.

Those who oppose abolition consider that estate duty, which is imposed on the better-off in society, is in line with the principle of affordability. They are also of the view that this duty is not an important consideration in investment decisions. Some are even concerned about the possible impact of abolition on certain professions. They have pointed out that, if the duty is abolished, the Government will lose a stable source of income and suffer a reduction in revenue, and the fiscal deficit will be aggravated.

Those in support of abolition take the view that, although the tax is targeted at the better-off, in practice the latter may avoid it through various legal means. Of the dutiable cases processed by the Inland Revenue Department last year, about 70% involved assets with an estate value, after exemptions, below \$20 million. They point out that, in other places, estate duty avoidance is also very common and it is no easy task to plug these loopholes. Others think that, as the assessment of estate duty takes time, and the assets of citizens, particularly operators of small and medium enterprises (SMEs), may be frozen during the assessment period, this causes them cash flow problems. In settling estate duty, some enterprises may have to sell their assets to raise cash and as a result encounter operating difficulties.

In recent years, global financial services have experienced phenomenal growth. The financial markets in the Asia Pacific Region have also quickened the pace of their development. Hong Kong is looking at unprecedented opportunities in this sector, but at the same time faces increasing competition. A number of countries in the region, including India, Malaysia, New Zealand and Australia, have abolished estate duty over the past 20 years. In Europe, Italy and Sweden have also abolished the tax. We understand that one of the

main reasons for the decision by some countries to abolish estate duty is the adverse impact on SMEs.

Investment decisions are influenced by many factors. It is impossible for us to give an accurate estimate of the amount of foreign and domestic investment that will be induced if estate duty is abolished. Nonetheless, we believe that, with its abolition, Hong Kong will become more attractive to investors. Many members of the industry envisage that abolition will encourage more people to hold assets in Hong Kong through a corporate vehicle or trust. More overseas companies and professionals will come here, and this will facilitate the further development of our asset management services, create more employment opportunities, and in turn make Hong Kong more competitive as an international financial centre. Trading in the financial market will also become more active, and contribute additional government revenue from stamp duty and other taxes.

On balance, after weighing these factors, I propose to abolish the tax and will introduce the relevant bill into this Council as soon as possible.

The financial services industry is a high value-added industry and very important to our economy: its direct contribution is 13% of GDP. The industry also fosters growth in a number of professional services, and this in turn becomes a strong driving force for other sectors, such as real estate and the consumer market. With globalization of the industry, the flows of capital, financial talent and expertise have become easier and more frequent, and have created new opportunities for Hong Kong. I hope that the foregoing measures will encourage the further development of our financial services industry and strengthen our position as an international financial centre.

# Developing Tourism

Our economic restructuring and the relocation of manufacturing processes and back-office operations have brought tremendous employment pressure to bear on the less-educated and low-skilled workers. Coupled with a slackened construction industry and rapid advances in technology, the unemployment rate has remained relatively high. Because of the nature of the tourism industry, its demand for manpower is stronger. Thanks to an improved external economy and rapid development in the Mainland, there is still plenty of room for growth in this sector. A boost for the tourism industry can provide a large number of low-skilled workers with job opportunities and alleviate our unemployment

problem. We estimate that, during the period from 2000 to 2003 alone, tourism has created around 25 000 new jobs in Hong Kong. The Government will continue to spare no effort to support and facilitate the development of tourism.

Last year, our tourism industry performed strongly, with visitor arrivals reaching an all-time high of 21.81 million, an increase of almost one third compared with 2002, the year before the SARS outbreak. This boom encouraged growth in tourism-related sectors such as the catering, retail and hotel industries. In 2004, under the Individual Visit Scheme, 4.26 million visits were made by Mainland visitors to Hong Kong. As from March last year, the scheme has been extended to the whole of Guangdong Province and 11 additional major cities throughout the Mainland, and this will further help stimulate our economy. Meanwhile, visitor arrivals from our traditional long-haul markets increased steadily at a rate of 8%, breaking the record set in 2002.

We expect 2005 to be an even better year for the tourism industry. Hong Kong Disneyland is scheduled to open in September, an event which the market is eagerly anticipating, and recruitment of 5 000 staff is fully under way. By the end of this year or early next year, a number of other major tourism infrastructure projects will also be completed, including the second phase of "A Symphony of Lights", the Tung Chung Cable Car System, and Hong Kong Wetland Park. In parallel, a number of new hotels will have opened by the end of 2006, providing about 14 000 rooms and employment for 7 500 staff. The Government is also working on strengthening the further development of our tourism industry, for example, by encouraging ecotourism in the Northern New Territories, so that nature lovers may enjoy the natural beauty of Hong Kong. In addition, we are studying the feasibility of developing spa resort facilities, which will provide high-spending visitors with more choices.

Apart from developing new attractions, we must make the best use of our tourism resources and enhance existing facilities. Ever since its opening in 1977, Ocean Park has been a favourite destination for local and overseas visitors alike. Last year, the number of people visiting the Park reached a new record of more than 4 million. The Park will continue to roll out programmes combining entertainment with education on the themes of "the Ocean" and "Animal Encounter" and will present them in a fresh and creative manner in order to give visitors a brand new experience. Ocean Park has made new development proposals. We will carefully consider the details of these proposals, including their scope, the financial package, complementary facilities, environmental implications and resource requirements.

Over the next two years, to tie in with the completion of our new attractions, the Hong Kong Tourism Board will launch a series of strategic global publicity and promotion programmes. The Board has identified families and business and young executive travellers as the key target segments for the next two years and will introduce brand new tourism products to suit their needs, so as to showcase Hong Kong's many diverse attractions. Another major strategy is to designate 2006 as "Discover Hong Kong Year". Starting from the latter half of 2005 under a new integrated theme, we will launch a wide variety of promotional activities in the major markets around the world through various media channels, to promote our new facilities and new image extensively to the rest of the world, in a bid to attract more visitors to Hong Kong in 2006.

We will also extend the Quality Tourism Services Scheme to cover more tourism-related trades and further improve customer services and the complaint-handling mechanism, in order to enhance consumer protection. By the end of last year, the number of accredited shops had increased from some 2 000, when the scheme was first launched, to over 5 000. This reflects the success of the scheme and retailers' and tourists' support for it.

To promote the tourism industry further, I propose to earmark funding of \$500 million to implement the foregoing measures, which are expected to bring over 1.2 million additional visitors in the next two years, as well as an increase of nearly 2 million days in visitors' length of stay, and additional economic benefits of nearly \$10 billion. The Hong Kong Tourism Board anticipates that, by the end of 2006, the overall number of visitor arrivals will exceed 27 million.

Tourism is an important sector of our economy. It raises Hong Kong's international profile and greatly benefits various aspects of our economic and cultural development. It also provides many job opportunities for the less-educated and low-skilled workers. The Government will continue to support projects to improve tourism facilities and the work of the Hong Kong Tourism Board in order to promote the industry further and maintain our standing as Asia's preferred tourist destination.

# **Developing Logistics**

As our logistics industry faces increasingly stiff competition, we must further raise our competitiveness in order to reinforce our position as an international logistics hub. Later this year, the Government will launch the Digital Trade and Transportation Network System. This system will enhance the competitiveness of our logistics industry by offering an open, neutral, stable and secure e-platform where logistics and related industries can exchange information and data, and by facilitating global information flow and service integration.

For the future development of our port, including the timing and site-selection for Container Terminal 10, we will have to take into account such information as the updated cargo forecast and the findings of the ecology study. As regards the Lantau Logistics Park project, the Government has sought the views of the logistics industry on the park's operational characteristics and planning parameters. A detailed feasibility study has been commissioned to meet the statutory requirements for the planning and reclamation of the park site.

To consolidate our position as an international port as well as a shipping and logistics hub, we must promote our strengths and the latest developments in these areas in the Mainland and overseas markets. In 2005-06, the Government will provide funding of \$5 million each to the Hong Kong Logistics Development Council and the Hong Kong Maritime Industry Council to enhance the marketing of our port, shipping and logistics facilities.

In terms of international air cargo throughput, our airport is the busiest in the world. Taking advantage of this, the Airport Authority is actively seeking out strategic partnerships with Mainland airports in a bid to improve development and co-operation in the logistics industries of both sides. We will, of course, also continue to expand our cross-boundary transport network and other infrastructural facilities to meet the needs of our logistics industry.

#### Cultural and Creative Industries

To improve Hong Kong's competitiveness, creativity is important. Ideas and innovations can improve production efficiency and bring about added convenience, and in some cases can change entire industries and even society as a whole. Individuals and corporations in Hong Kong are putting their heads together to explore new products and services, and searching for breakthroughs in their business methods. In such fields as design, research and development, culture and the arts, media, advertising, or even management, consulting, engineering and health care, we have an abundant supply of creative people. Thanks to their efforts, Hong Kong has become an efficient city with a rich culture and its developments are multi-faceted.

The Government will make every effort to support and facilitate the development of our cultural and creative industries. We are, for example, extending the Film Guarantee Fund so that it may continue to underwrite film production and encourage banks and other lending institutions to participate in We have also earmarked funding for projects such as film financing. manpower training, which are conducive to the general development of the film In last year's Budget, I proposed the \$250 million DesignSmart industry. This was launched in June last year, with the objectives of Initiative. strengthening support for design and innovation and promoting their wider use in industries to help them move up the value chain. In addition, we will provide funding to the Hong Kong Science and Technology Parks Corporation and the Hong Kong Design Centre for the joint development of a one-stop centre which aims to encourage the creation and clustering of high value-added activities among design professionals and companies, and will provide incubation services The one-stop centre will be located in Kowloon Tong and is expected to come into operation this year.

## Small and Medium Enterprises

SMEs have always been a key part of our economy, representing 98% of all business establishments in Hong Kong and employing 1.3 million people. To help SMEs secure loans, expand access to markets outside Hong Kong, upgrade human resources and enhance their overall competitiveness, the Government introduced four SME funding schemes between late 2001 and early 2002. These schemes have been well-received. As at the end of February this year, the Trade and Industry Department had approved over 93 000 applications, and the resulting loans and grants have benefited more than 40 000 SMEs. The provision for the four schemes will be depleted by the middle of this year.

The SME Committee has completed a review of the schemes. I have accepted its recommendation and will seek approval from the Finance Committee of this Council to provide additional funding of \$300 million to the SME Export Marketing Fund and the SME Development Fund. I will also transfer \$200 million from the \$1 billion SME Loan Guarantee Scheme to the two funds, bringing the total additional funding to \$500 million. Separately, we propose to reduce the assumed default rate under the scheme in order to raise the aggregate amount of guarantees. These measures will extend the funds and the scheme to 2007, so that more SMEs can benefit.

## Nurturing and Attracting Talent

The importance of talent to economic development has been thrown into sharp relief by globalization. While containing overall expenditure, we will continue to invest heavily in education. The allocation for education in 2005-06 will still represent the biggest share, or nearly one quarter of recurrent expenditure.

The Government will also endeavour to attract more talented people and professionals from overseas and the Mainland, so as to upgrade our human resources and meet the needs of Hong Kong in its transition to a knowledge-based economy. As I mentioned in last year's Budget, I head a committee to ensure the smooth operation of the assessment procedures under the Admission Scheme for Mainland Talent and Professionals. Since the introduction of the scheme in July 2003, we have received nearly 7 000 applications, over 80% of which have been approved. The applications cover a wide range of sectors including academic research and education, commerce and trade, financial services, culture and the arts, and information technology.

# An Equitable and Sustainable Society

In promoting economic development, we should not lose sight of those in need, who require our care and assistance. As a matter of fact, Hong Kong has always been a caring society. We provide public housing, medical care and social welfare services to those in need. The provision of such services is well-supported by the community as a whole.

Owing to Hong Kong people's caring and generous spirit, the grassroots have a chance to improve their standard of living. Many middle-class or rich people today might have grown up in families living on public assistance. They did not lose heart or a sense of self-reliance as a result. Instead, they strove for advancement and betterment of their livelihood. Some have even achieved great financial success or attained eminent positions.

This reflects the high degree of upward mobility in Hong Kong. Upward mobility is rooted in an equitable society where people from all walks of life have opportunities to develop their potential, realize their aspirations and shape a better future for themselves.

While the Government will continue to promote economic development, we will also encourage our enterprises to maintain the time-honoured generous spirit of our community by doing their duty as good corporate citizens. As individuals, I hope we can continue moving forward to realize a brighter future for ourselves and future generations.

Equity is, of course, just one of the main ingredients for the sustainable development of society. To make Hong Kong a better place for us and succeeding generations to live and work, we must take heed of the other long-term development needs of the community and respond to these in good time.

## Promoting Employment

Promoting employment will help the unemployed to re-enter the labour market, gain self-confidence and ease the pressure on the social security system, thus fostering the development of a healthy and harmonious society. As I pointed out in last year's Budget, the most effective way of tackling unemployment is by encouraging economic development.

A robust performance by private enterprise plays a crucial role in easing the unemployment problem. The Government will also continue to allocate resources for capital works projects, promote tourism, logistics, environmental, and cultural and creative industries, and will facilitate urban renewal and building management and maintenance. Apart from encouraging economic development, these projects create more job opportunities.

Furthermore, the Government has decided to extend about 11 600 temporary jobs in the public sector, involving a sum of more than \$880 million. Meanwhile, the Government has initiated various retraining and skills-upgrading schemes and has been encouraging people to seek self-advancement and enhance their competitiveness through the Continuing Education Fund.

# Improving Building Safety

To speed up urban renewal and building maintenance, the Government has recently announced that it has obtained the support of the Hong Kong Housing Society to launch a \$3 billion Building Management and Maintenance Scheme. The scheme will provide "one-stop" services to owners of old buildings to help

them improve the overall condition of their buildings and living environment. Each year, an estimated 800 or so buildings will benefit from the scheme. In addition, I will earmark a total of \$830 million to the Buildings Department over a period of five years starting from 2006-07, for the purpose of removing over 180 000 unauthorized structures and improving the safety and external appearance of old buildings. These initiatives will create job opportunities for the building construction and decorating sectors and help ease the unemployment situation of less-educated and low-skilled workers.

#### Tax Relief

In preparing for this year's Budget, I have heard many calls for an increase in the allowances for dependent parents and children. At present, salaries taxpayers caring for dependent parents or grandparents aged 60 or above enjoy tax allowances. Because of economic restructuring and the fact that the unemployment rate for older workers is still relatively high, the younger generation will inevitably have to undertake a heavier responsibility in caring for their parents. This responsibility will be less in respect of those parents who are under 60, as they have a better chance of finding a full-time or part-time job. As a relief measure, I propose to introduce two new allowances for taxpayers taking care of dependent parents or grandparents aged between 55 and 59. They will be granted a basic allowance of \$15,000 a year, with an additional allowance of the same amount if their parents or grandparents are residing with them.

I understand that Hong Kong people have high expectations of their children and attach great importance to their education. Moreover, the cost of living is rising, so the burden of raising children is rather heavy. I therefore propose to increase the child allowance from \$30,000 per child to \$40,000. Some people have suggested that the Government should offer tax concessions for children's education. I believe that increasing the child allowance as I have just mentioned is a simpler and more flexible way of easing parents' financial burden in this respect, and more people will be able to benefit from it.

# Helping the Poor, Promoting Self-reliance

Helping the poor is one of our priorities. The recent establishment of the Commission on Poverty reflects the Government's determination to help the poor and address their needs. At the first meeting of the Commission, members

agreed that its objectives should be to prevent and alleviate poverty and promote self-reliance. They also agreed that we should use multiple means and channels and actively involve the community to provide the poor with more opportunities, so that they can realize their potential, regain dignity and self-confidence, and move up the social ladder to live a more fulfilled and happier life.

Some of our existing policies already target these objectives. We have set up the Community Investment and Inclusion Fund and the Partnership Fund for the Disadvantaged, which are now open for applications. Through these funds, we hope to develop a tripartite relationship between the Government, the business community and the non-government organizations, and encourage various entities to mobilize community resources to help individuals and various groups in society cope better with adversity and become self-reliant. We will review the operation of these funds regularly and examine their resource requirements as and when necessary.

I would like to emphasize that helping the poor does not mean dishing out largesse. Because every dollar comes from taxpayers' hard-earned money, we must be very careful in our spending. Besides, providing financial assistance is not the best way to lift people out of poverty. I believe that what the poor want most is an opportunity to improve their livelihood and that of their families through their own efforts. Our policies on economic development, employment, education, training and welfare reflect our belief in helping people to help themselves, so that people from all walks of life can participate in our economic development and build a prosperous and harmonious society together.

#### Environmental Protection

Promoting environmental protection will help reduce wastage, preserve and improve our environment, and ensure the sustainable development of Hong Kong. Moreover, this will help develop our environmental industry, create more job opportunities and improve the quality of life in Hong Kong as a cosmopolitan city so as to attract more talent and enhance our competitiveness.

In the light of overseas experience, I believe that introduction of suitable "green" taxes can help reduce the growth of solid waste and enhance public awareness of environmental protection. The Environment, Transport and Works Bureau (ETWB) is now studying the introduction of a product responsibility scheme for waste tyres. The scheme aims to give those

concerned the responsibility of recovering and recycling waste tyres. Under this scheme, they will have to bear the associated costs in accordance with the "polluter pays" principle. The regulatory impact assessment study on the scheme has been completed. ETWB is now evaluating the cost-effectiveness of different options and their effect on the industry, and aims to commence a public consultation on the recommended options within this year.

During this year's Budget consultation exercise, I floated the idea of a tax on plastic bags. We all know that plastic waste is generally non-biodegradable. A staggering number of plastic bags are used by Hong Kong people. Each day the plastic waste dumped in landfills amounts to 1 064 tonnes, equivalent to over Every day on average, therefore, each citizen disposes 33 million plastic bags. of nearly five plastic bags. Such a grave situation is incongruous with the concept of promoting a sustainable society. ETWB will study ways to help the retail industry to minimize the distribution of plastic bags and to recover and recycle the used products. ETWB also aims to encourage the public to re-use plastic bags and take their own bags with them for shopping. Taking as a frame of reference the overseas practices of levying a tax or charging fees on plastic bags, ETWB is studying the feasibility of introducing similar measures to Hong Kong.

No matter how desirable our proposed measures are, it will be difficult to achieve meaningful results without the community taking ownership and contributing positively to the effort. Environmental protection will bring long-term benefits to our society. I hope the public will respond constructively to the proposals when the Government formally puts them forward.

# Development of Lantau

Lantau has great development potential as well as conservation and recreation value. It will play an important role in the future development of Hong Kong. I hope that we can jointly formulate a planning framework to achieve a sustainable development, balancing economic development and conservation. The Lantau Development Task Force drew up a Concept Plan for Lantau at the end of last year. Public consultation on the Plan ended last month. The public is generally in support of a balanced and co-ordinated approach to planning the future development of Lantau. However, there are those who feel that no further development in Lantau should be carried out. That there are strong and divergent views in the community on this important

subject is perfectly understandable. I would like to stress that the consultation we have just completed is only the beginning of public participation. I hope that the public can keep an open mind and continue their discussions on the Concept Plan. It is not necessary for anyone to jump to any conclusion now.

### **Economic Outlook**

Although Hong Kong's economy is expected to maintain solid growth this year, we still have to be alert to certain risks and variables such as oil prices, US dollar exchange and interest rates, geopolitical uncertainties, and whether the global and Asian economies can maintain their anticipated steady growth this year. In the long term, we still have to face stiff competition from neighbouring economies and as brought about by rapid globalization. I hope that the foregoing measures, which aim at consolidating economic development, promoting equity and a sustainable society, can help reinforce our strengths and competitiveness, thereby fostering our economic growth.

I remain cautiously optimistic about the external economic environment in 2005. Latest indicators show that the US economy is still expanding at a reasonably solid pace, and there is only expected to be a modest increase in US interest rates. The economies in the European Union will also continue to expand. The outlook for the East Asian economies in the short term remains promising. The Mainland's economy will maintain its strong momentum, and the macroeconomic adjustment measures should help address the imbalances in some sectors and should be conducive to long-term economic growth. Taking these factors into account, we can expect the global economy to fare well in 2005, though its growth rate may not be as impressive as in 2004.

Hong Kong's external trade is again expected to perform strongly in 2005, as the earlier weakness of the US dollar will still be advantageous to our export competitiveness in the short term, and as the global economic outlook is promising. With the opening of Hong Kong Disneyland, inbound tourism will continue to thrive. Private consumption expenditure should advance further, buoyed by improved employment income and positive developments in the asset markets. The robust overall demand for goods and services will in turn induce new investment expenditure.

In overall terms, Hong Kong's economy is expected to achieve solid growth in 2005, with GDP forecast to grow by 4.5% to 5.5%. With a further

pick-up in the economy and the development and implementation of various tourism and infrastructure projects, overall employment opportunities look set to increase further, and the unemployment situation in Hong Kong will continue to improve. Inflation will remain modest, with the Composite Consumer Price Index expected to rise by a mere 1.5% for the year.

Since last year, our economy has been staging a broader-based recovery. With the continued economic development of the Mainland and the closer economic ties between it and Hong Kong, our economy is expected to maintain steady growth over the next four years. The trend GDP growth rate in real terms from 2006 to 2009 is forecast at 4%. With deflation coming to an end, the trend rate of increase in the GDP deflator is forecast at 1.5%. After combining these two forecasts, the trend growth rate of nominal GDP over the period from 2006 to 2009 is forecast at 5.5%.

Apart from being confronted with such domestic challenges as economic restructuring and unemployment, however, the economic performance of Hong Kong in the short to medium term will also be influenced by changes in the external economic and financial environment. Such external factors include whether the global economy will rapidly slow down, whether the lagged effect of the oil price hikes is more serious than expected, whether the Mainland's economy will take a longer time to achieve a soft landing, the movements of the RMB, the extent of US dollar movements and their impact on the stability of the global financial markets, and whether interest rate hikes are bigger than generally expected. At the same time, as the economy continues to expand, we need to ensure an adequate supply of manpower and land to meet the needs of the community and economic development, and to ensure that the market has enough flexibility to adjust, in order not to repeat the excessive boom and bust cycles we have experienced in the past.

### **Public Finances**

# Maintaining Fiscal Discipline

The financial position of the Government has gradually improved with the steady economic upturn. As I mentioned earlier, the 2004-05 forecast outturn shows that the operating deficit will be lower than expected. If our economy continues to pick up, we expect to achieve, ahead of schedule, most of the fiscal targets set in last year's Budget. The three targets are:

- (i) reducing operating expenditure to \$200 billion by 2008-09;
- (ii) striving to restore fiscal balance in the Operating and Consolidated Accounts by 2008-09; and
- (iii) bringing public expenditure down to 20% of GDP or below, so as to be in line with the principle of "Big Market, Small Government".

## Based on the latest forecast:

- operating expenditure for 2004-05 will reduce to \$201.2 billion, nearly hitting the \$200 billion target;
- we expect fiscal balance to be restored in the Operating Account by 2008-09 as scheduled, and in the Consolidated Account by 2007-08, one year ahead of our target; and
- the share of public expenditure in GDP will decrease to 20.2% in 2005-06 and is expected to fall below 20% in 2006-07.

Although our financial position has improved, we must not relax fiscal discipline or substantially increase expenditure and reduce taxes just because of good results in a single year. Since the start of the recent bout of operating deficits in 1998-99, our fiscal reserves have already been depleted by about \$170 billion, or 37%. As our economy consolidates, uncertainties for our economic outlook remain. Hong Kong is an international city and our economy is sensitive to external factors. Any changes in the economic outlook would require our financial forecasts to be revised. I would like to reiterate that we will continue to manage our public finances prudently, keep expenditure within the limits of revenues, strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of GDP.

After reviewing the guidelines on operating expenditure which I laid down last year, I have reduced estimated operating expenditure for 2005-06 by \$2.6 billion, from \$210.6 billion to \$208 billion. This reflects the austerity drive by government departments and takes into account their actual operational requirements. In fact, the civil service establishment has been reduced from 170 600 in March last year to about 166 000 at present, and will be further reduced to about 163 300 by March 2006. However, even budgeting for the

latest forecast expenditure level, the Government will still record an operating deficit of \$15.4 billion.

Capital expenditure finances investments in infrastructure and the like. We will continue to allocate resources where they are required to meet the long-term development needs of Hong Kong. We are delivering the commitment made last year to set aside an average of about \$29 billion a year on works projects. We will actively consider channelling capital and talent in the private sector into designing, constructing and managing suitable projects.

Capital expenditure for 2005-06 is estimated to be \$39.8 billion. Over the next five years, capital expenditure will amount to about \$43 billion a year on average.

We estimate that total government expenditure for 2005-06 will be \$247.8 billion. Expenditure on Education, Social Welfare, Health and Security will account for over 60% of the total, with 23.5% for Education, 14.6% for Social Welfare, 13% for Health, and 10.6% for Security.

## Revenue

#### **Taxes**

I believe that, as our economy has only recently begun its recovery, we should leave wealth with the people as far as possible, in order to allow greater flexibility for economic activities. With regard to revenue, I do not propose to introduce new taxes nor raise existing ones. On the contrary, I have earlier in this speech proposed a number of tax concessions to ease the burden on taxpayers.

## Salaries Tax

Some political parties and Members of this Council have suggested that we should shelve the second phase of salaries tax adjustments proposed in the 2003-04 Budget, or allow the salaries tax rates and bands to revert to their pre-2003-04 levels. I know that members of the public hope the Government will relieve their tax burden. However, the suspension of the second phase of adjustments would cost the Government \$3.3 billion in a full year. As the fiscal deficit has yet to be eliminated, I believe it is inappropriate to adjust the salaries

tax rates and bands at the current juncture. Nevertheless, to alleviate the burden on taxpayers, I have just proposed that those maintaining parents or grandparents aged between 55 and 59 should be granted allowances. It is estimated that around 100 000 taxpayers will benefit from this measure, which will cost \$450 million a year. I have also proposed to increase the allowance for children. Around 300 000 taxpayers will benefit from this measure, which will cost about \$620 million a year. We will introduce the relevant bill into this Council for deliberation as soon as possible.

## **Estate Duty**

As regards estate duty, I have just proposed its abolition. This will cost the Government \$1.5 billion a year. We will introduce the relevant bill into this Council for deliberation as soon as possible.

## Duty on Alcoholic Beverages (Laughter)

I pledged in last year's Budget to review the duty on alcoholic beverages. We have now conducted a two-month public consultation exercise. I would like to emphasize that the duty under review is imposed not only on wine but also on other alcoholic beverages such as beer, rice wine and spirits. (Laughter)

We have received a diversity of views on the subject. Those in favour of maintaining the present rate consider that the duty provides a stable source of revenue for the Government and acts as a disincentive to drinking, consistent with the objective of protecting public health. Those in favour of lowering the duty rate think that this would boost consumption, as the rate is higher in Hong Kong than in neighbouring jurisdictions such as the Mainland and Macau.

Some people believe that drinking wine, particularly red wine, is the preserve of only a few rich people. (Laughter) This is not the case. According to last year's figures, the average retail price of the top 10 best-selling wines in Hong Kong was only \$55 per bottle. On the contrary, the high-end products that attracted a duty above \$500 accounted for only about 0.1% by volume of the wine market as a whole, an extremely small share. Reducing the duty on alcoholic beverages, therefore, will not only benefit all consumers but also help promote the culture of wine appreciation in Hong Kong. In fact, many in the tourism industry, along with other business people, have told me that Hong Kong has the potential to become a wine exhibition and trading centre.

However, (laughter) after taking into account the divergent views of the public, I have decided to maintain the status quo for now. (Laughter)

## **Rates**

Rateable values are derived from the expected amount of rent that a property can achieve in the open market. They are thus subject to fluctuation in line with market conditions. As a result, rateable values on properties had fallen for several successive years since 1999-2000, with an average accumulated decrease of about 39%. In the latest revaluation exercise, the rateable values increased for the first time in six years by about 7% on average. The rates charge will remain unchanged at 5% in 2005-06. We expect that about 65% of ratepayers will see an average increase in their rates bill of around \$40 a month.

# Government Fees and Charges

In the past few months, the Government has put forward proposals to the relevant panels of this Council to adjust some fees and charges that do not directly affect people's livelihood or general business activities, such as fees for oil storage installation licences and for registration of general building contractors. I would like to thank Members of the panels concerned for considering these proposals against the principles of fairness and objectivity. We will continue to formulate other fee revision proposals in accordance with the "user pays" principle.

## Sale and Securitization of Government Assets

Last year, the Government successfully launched the \$6 billion securitization of revenues from the government tolled tunnels and bridges as well as its \$20 billion bond offering. While there has been a hitch in the Housing Authority's sale of its retail and car parking facilities, this will not affect the Government's intention to sell or securitize its own assets. For example, the Government is conducting a public consultation on the privatization of the Airport Authority. We are also continuing our discussions with the two railway corporations over a possible merger. The sale and securitization of assets will not only provide the public with more investment options, but also ensure a more effective use of resources. The Government will, in accordance with the principle of "Big Market, Small Government", continue to identify suitable assets for sale or securitization in order to reduce the share of the public sector in the economy and give more scope for the private sector to develop.

## Tax System

## Tax Deduction for Private Medical Insurance

Some Members have suggested that the Government should provide a tax deduction for contributions to private medical insurance schemes, so as to encourage people to take out such insurance and reduce their reliance on public health care services, and to promote the development of private services. Providing a tax deduction is only one of many ways of encouraging people to join private medical insurance schemes. To reduce people's reliance on public health care services, we need to adopt a holistic approach and take into account other, complementary measures. The Health, Welfare and Food Bureau will undertake studies on the financing and sustainability of our public health care services within the next two and a half years. In examining the overall financing options, we will consider any related tax arrangements.

## Goods and Services Tax

Last year I mentioned that there was to be a study on the implementation of a goods and services tax (GST). Suggestions have been made that GST is unfair to the grassroots because it is regressive. However, there are also people who support the introduction of GST on the grounds that it is in line with the principle of affordability. In general, wealthy people, who have a greater capacity to spend, will pay more GST.

I appreciate the community's concerns over the introduction of GST. I would like to emphasize that Hong Kong will continue to maintain the low and simple tax regime that underpins our success. The purpose of the proposed GST is not to increase the grassroots' tax burden. The reason for its introduction is to broaden our tax base so as to secure a steadier source of revenue and reduce our reliance on more volatile revenues. As a matter of fact, our salaries tax and profits tax, which are the major recurrent revenues of the Government, are paid by a minority of taxpayers and enterprises, and these taxes The problems arising from our are highly sensitive to economic fluctuations. The International Monetary Fund has narrow tax base are abundantly clear. also pointed out that Hong Kong should introduce GST to solve the problem of its structural deficit.

An internal committee set up by the Government has carried out the GST study. Our next step is to conduct a public consultation on this subject. We will provide further information in the consultation document that we are

drawing up for publication later this year to give the public a better understanding of the tax. Overseas experience shows that it takes about three years from making a decision to introduce GST to actual implementation. Therefore, the public will have sufficient time to hold in-depth, thorough and constructive discussions on this subject. At this stage, there is no need to jump to a conclusion. As GST will have far-reaching impacts on our tax regime and the Government's financial health, we will listen carefully to the views of the public.

## **Medium Range Forecast and Fiscal Reserves**

## Medium Range Forecast

If our estimated economic growth is achieved and the proposals are implemented in respect of expenditure and revenue, the medium range forecast for 2005-06 to 2009-10 will be as follows:

Year	2005-06	2006-07	2007-08	2008-09	2009-10
Teal	(\$ billion)				
Operating revenue	192.6	195.0	201.3	210.3	221.2
Operating expenditure	208.0	207.1	203.5	200.0	202.5
Operating surplus/(deficit)	(15.4)	(12.1)	(22)	10.3	18.7
Capital revenue	50.5	61.7	69.4	60.8	53.7
Capital spending (including	45.6	48.2	44.4	43.5	43.3
payments from the Capital					
Investment Fund)					
Capital financing surplus	4.9	13.5	25.0	17.3	10.4
Repayment of government	-	2.6	-	2.7	3.5
bonds and notes					
Capital financing surplus after	4.9	10.9	25.0	14.6	6.9
bond repayment					
Consolidated surplus/(deficit)	(10.5)	1.4	22.8	27.6	29.1
before bond repayment					
- as a percentage of GDP	0.8%	0.1%	1.5%	1.8%	1.8%
Consolidated surplus/ (deficit)	(10.5)	(1.2)	22.8	24.9	25.6
after bond repayment					
- as a percentage of GDP	0.8%	0.1%	1.5%	1.6%	1.5%
Fiscal reserves	276.8	275.6	298.4	323.3	348.9
- as a number of months of	13	13	14	16	17
government expenditure					
Public expenditure	268.6	270.2	266.4	261.6	264.0
- as a percentage of GDP	20.2%	19.2%	17.9%	16.7%	16.0%

For 2005-06, we forecast an operating deficit of \$15.4 billion, and this will gradually decline. We estimate that in 2008-09 a surplus of \$10.3 billion will be recorded and the target of restoring fiscal balance in the Operating Account will have been achieved. The surplus will further increase to \$18.7 billion in 2009-10.

In respect of the Consolidated Account, we estimate that a deficit of \$10.5 billion will occur in 2005-06, equivalent to 0.8% of GDP. Looking ahead, we will see a gradual decline in the consolidated deficit. We will achieve fiscal balance in the Consolidated Account by 2007-08, a year earlier than the original target. A surplus of \$25.6 billion will be recorded in 2009-10, equivalent to 1.5% of the GDP forecast for that year. (Chart 5)

## Fiscal Reserves

We expect that by March 31 this year, our fiscal reserves will stand at \$287.3 billion, equivalent to 14 months of government expenditure. Over the next five years, the fiscal reserves will be maintained in a range between \$270 billion and \$340 billion, equivalent to between 13 and 17 months of government expenditure.

I have pledged that the Government will maintain fiscal discipline. have the determination and ability to attain our fiscal targets. Last year, I pledged to cut spending first and reverse the rising trend of operating expenditure. With the concerted efforts of my colleagues in the various departments, our cost-saving measures are now starting to produce results. Last year, I said that I would reduce operating expenditure to \$200 billion by 2008-09. This is now forecast to reduce to \$201.2 billion for 2004-05. I said that I would bring public expenditure down to 20% of GDP or below, and this is forecast to decrease to 20.2% next year. We expect to achieve balance in the Consolidated Account in 2007-08, one year ahead of target. While we will persevere in restoring fiscal balance, we have proposed a number of tax concessions to relieve Our proposal to abolish estate duty will the burden on some taxpayers. encourage the further development of Hong Kong as an international financial centre. For the proposed introduction of GST, the Government will give the public ample opportunity to express their views.

Madam President, our economy is improving steadily and so is the Government's financial position. This is encouraging. Accordingly, some people argue that, even if the Government does not increase its spending or substantially reduce tax, it is at least time to relax its expenditure control. I do not agree. We should take a longer-term view, setting aside any short-term interests and political considerations and work together to lay a solid foundation, so that Hong Kong can stay ahead of the competition.

Promoting stability and development has been the theme of this year's Budget. I will uphold the principle of "Market Leads, Government Facilitates". We will be more proactive in our facilitation work, so as to provide a favourable platform for our enterprises. We will also maintain strict fiscal discipline, ensure the effective use of resources and leave wealth with the people. While promoting economic development, we will, of course, not lose sight of the needy in the community.

Hong Kong has encountered many challenges, but on each occasion we have emerged stronger. This demonstrates that Hong Kong people are tenacious and resilient, and understand how to take advantage of opportunities. As a member of the Administration, I will adopt a forward-looking and pragmatic approach to my work. I will be responsive, proactive and consistent in looking after the interests of various sectors of the community. Let us work together to make Hong Kong a more vibrant, colourful and harmonious city.

Madam President, this Council will go into its Easter recess after the announcement of this year's Budget and will not resume meeting until April, after the new financial year has commenced. Immediately after the delivery of my Budget Speech, therefore, the Secretary for Financial Services and the Treasury will move the Vote on Account Resolution in this Council to seek funds on account, to enable the Government to carry on existing services between the start of the new financial year and the enactment of the Appropriation Ordinance. I hope Members will remain in the Chamber and pass the resolution today. I would like to thank them for their co-operation and understanding. Thank you, Madam President.

Chart 1

## **Gross Domestic Product**

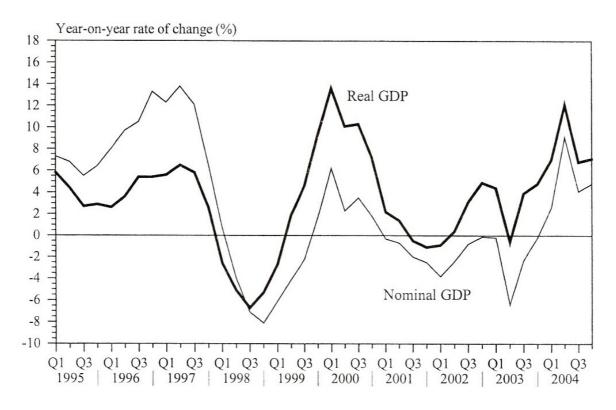


Chart 2
Seasonally-adjusted Unemployment Rate

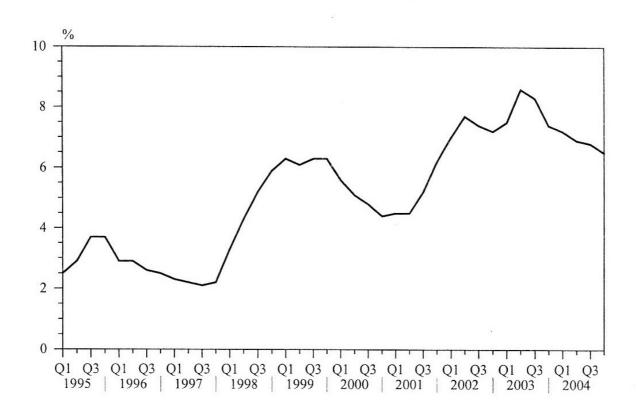


Chart 3

## **Total Employment**

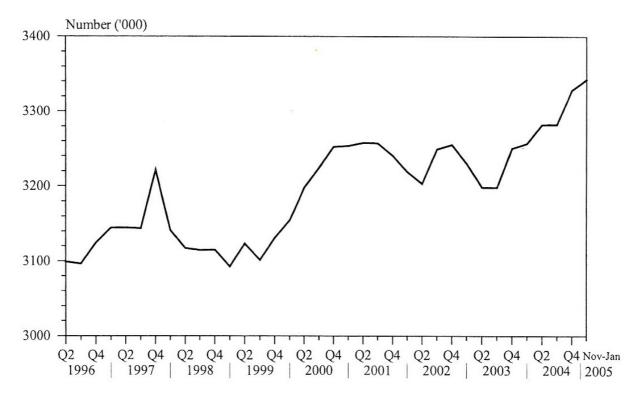


Chart 4
Composite Consumer Price Index and GDP Deflator

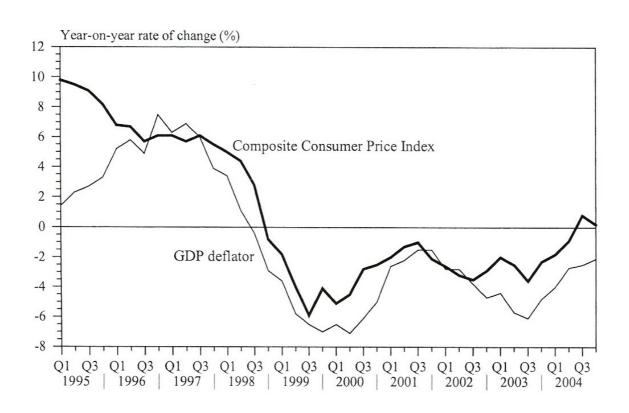
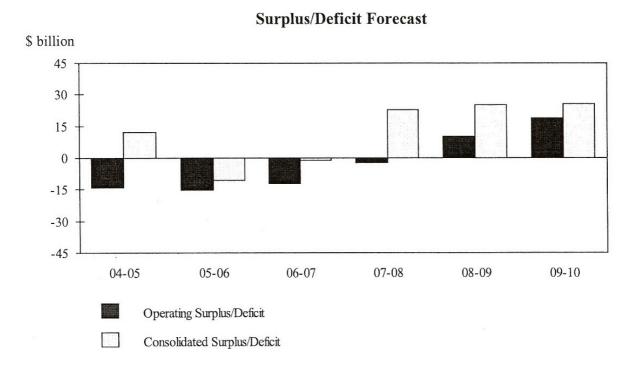


Chart 5



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

**PRESIDENT** (in Cantonese): According to the Rules of Procedure, before the resumption of the Second Reading of the Bill, the Estmates are referred to the Finance Committee for examination.

## **MOTIONS**

**PRESIDENT** (in Cantonese): Motion. Proposed resolution under the Public Finance Ordinance.

# PROPOSED RESOLUTION UNDER THE PUBLIC FINANCE ORDINANCE

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I move the motion standing in my name in the Agenda.

The purpose of this motion is to seek funds on account to enable the Government to carry on existing services between the start of the financial year on 1 April 2005 and the enactment of the Appropriation Ordinance 2005. This follows the procedure long established in this Council.

We have determined the funds on account sought under each subhead in accordance with the fourth paragraph of the resolution, by reference to percentages of the provision shown in the 2005-06 Estimates of Expenditure. If prior to the enactment of the Appropriation Ordinance 2005, the Estimates are changed by the Finance Committee or officers under delegated powers, the funds on account for the relevant heads will also change accordingly. In any case, the aggregate total under all heads is \$56,857,706,000 (Appendix 1) and cannot be exceeded without the approval of the Legislative Council. The initial provision on account under each head is provided in the form of a footnote to this speech.

The resolution also enables the Financial Secretary to vary the funds on account in respect of any subhead, provided that these variations do not cause an excess over the amount of provision entered for that subhead in the 2005-06 Estimates of Expenditure or the amount of funds on account for the relevant head.

The vote on account will be subsumed upon the enactment of the Appropriation Ordinance 2005.

Madam President, I beg to move.

# Footnote

		Amount	Initial
		shown	amount of
		in the	funds on
	Head of Expenditure	<b>Estimates</b>	account
		\$'000	\$'000
21	Chief Executive's Office	59,006	11,802
22	Agriculture, Fisheries and Conversation		
	Department	703,072	174,912
25	Architectural Services Department	1,380,584	276,117
24	Audit Commission	115,379	23,076
23	Auxiliary Medical Service	59,788	11,958
82	Buildings Department	768,256	159,179
26	Census and Statistics Department	499,078	99,850
27	Civil Aid Service	73,009	14,602
28	Civil Aviation Department	648,290	141,521
33	Civil Engineering and Development Department	1,056,152	217,427
30	Correctional Services Department	2,402,021	492,632
31	Customs and Excise Department	1,826,794	379,614
37	Department of Health	2,820,353	603,122
92	Department of Justice	888,151	197,823
39	Drainage Services Department	1,576,514	334,014
42	Electrical and Mechanical Services Department	267,406	99,392
44	Environemntal Protection Department	2,195,717	598,571
45	Fire Services Department	3,007,562	674,247
49	Food and Environemntal Hygiene Department	3,889,855	911,562
	General Expenses of the Civil Service	4,676,657	1,142,245
166	Government Flying Service	229,812	113,209
48	Government Laboratory	234,704	59,812
59	Government Logistics Department	463,032	165,997
51	Government Property Agency	1,679,663	347,266
35	Governemnt Secretariat: Beijing Office	46,104	9,221
143	Governemnt Secretariat: Civil Service Bureau	398,656	87,268
152	Government Secretariat: Commerce, Industry and		
	Technology Bureau (Commerce and Industry		
	Branch)	498,029	115,126
55	Government Secretariat: Commerce, Industry and		
	Technology Bureau (Communications and		
	Technology Branch)	80,874	27,295

		Amount	Initial
		shown	amount of
		in the	funds on
	Head of Expenditure	Estimates	account
		\$'000	\$'000
144	Governemnt Secretariat: Constitutional Affairs		
	Bureau	39,888	12,178
145	Governemnt Secretariat: Economic Development and		
	Labour Bureau (Economic Development Branch)	897,840	192,096
156	Governemnt Secretariat: Education and Manpower		
	Bureau	33,873,648	7,304,736
158	Governemnt Secretariat: Environemnt, Transport		
	and Works Bureau (Transport Branch)	72,025	14,983
159	Governemnt Secretariat: Environment, Transport	•	
	and Works Bureau (Works Branch)	198,474	46,337
148	Government Secretariat: Financial Sercices and the		,
	Treasury Bureau (Financial Services Branch)	121,847	27,248
147	Government Secretariat: Financial Services and the		21,220
11,	Treasury Bureau (The Treasury Branch)	196,226	39,246
149	Government Secretariat: Health, Welfare and Food	100,220	00,210
140	Bureau	27,728,814	5 828 110
59	Governemnt Secretariat: Home Affairs Bureau	669,152	
		009,132	143,527
90	Government Secretariat: Hong Kong Economic and	900 711	50 CO4
100	Trades Offices	290,711	59,684
138	Government Secretariat: Housing, Planning and	00.470	40.000
	Lands Bureau (Planning and Lands Branch)	90,476	18,096
155	Government Secretariat: Innovation and Technology		
	Commission	453,739	156,295
47	Government Secretariat: Office of the Government		
	Chief Information Officer	543,071	108,615
142	Government Secretariat: Offices of the Chief		
	Secretary for Administration and the Financial		
	Secretary	591,386	136,245
151	Government Secretariat: Security Bureau	123,427	25,166
60	Highways Department	1,937,190	390,226
63	Home Affairs Department	1,227,436	284,326
168	Hong Kong Observatory	195,990	40,453

Amount	Initial
shown a	mount of
in the	funds on
Head of Expenditure Estimates	account
\$'000	\$'000
122 Hong Kong Police Force	278,242
62 Housing Department	60,591
70 Immigration Department	449,962
72 Independent Commission Against Corruption 663,024	133,301
121 Independent Police Complaints Council	2,651
74 Information Services Department	69,348
76 Inland Revenue Department	239,171
78 Intellectual Property Department	25,733
79 Invest Hong Kong	55,237
174 Joint Secretariat for the Advisory Bodies on Civil	
Service and Judicial Salaries and Conditions of	
Service	1,904
80 Judiciary	204,239
90 Labour Department	390,628
91 Lands Department	286,745
94 Legal Aid Department	150,299
112 Legislative Council Commission	76,843
	103,133
100 Marine Department	204,339
106 Miscellaneous Services	897,784
114 Office of The Ombudsman	16,445
116 Official Receiver's Office	31,288
120 Pensions	012,037
118 Planning Department	88,376
136 Public Service Commission	3,475
160 Radio Television Hong Kong	90,385
162 Rating and Valuation Department	73,104
163 Registration and Electoral Office	14,759
	119,273
	376,246
180 Television and Entertainment Licensing Authority 87,525	22,417

	Amount	Initial
	shown	amount of
	in the	funds on
Head of Expenditure	Estimates	account
	\$'000	\$'000
186 Transport Department	854,314	183,643
188 Treasury	330,106	66,022
190 Univeristy Grants Committee	11,407,036	2,305,408
194 Water Supplies Department	5,121,371	1,033,539
	209,627,119	51,829,386
184 Transfer to Funds	5,028,400	5,028,400
Total	214,655,519	56,857,786
	======	=====

# The Secretary for Financial Services and the Treasury moved the following motion:

#### "RESOLVED that -

- 1. Authority is hereby given for a sum not exceeding \$56,857,786,000 to be charged on the general revenue for expenditure on the services of the Government in respect of the financial year commencing on 1 April 2005.
- 2. Subject to this Resolution, the sum so charged may be expended against the heads of expenditure as shown in the Estimates of Expenditure 2005-06 laid before the Legislative Council on 16 March 2005 or, where the Estimates are changed under the provisions of the Public Finance Ordinance (Cap. 2) as applied by section 7(2) of that Ordinance, as shown in the Estimates as so changed.
- 3. Expenditure in respect of any head of expenditure shall not exceed the aggregate of the amounts authorized by paragraph 4 to be expended in respect of the subheads in that head of expenditure.

- 4. Expenditure in respect of each subhead in a head of expenditure shall not exceed
  - (a) in the case of an Operating Account Recurrent subhead of expenditure, an amount equivalent to
    - (i) except where the subhead is listed in the Schedule to this Resolution, 20% of the provision shown in the Estimates in respect of that subhead;
    - (ii) where the subhead is listed in the Schedule to this Resolution, the percentage of the provision shown in the Estimates in respect of that subhead that is specified in the Schedule in relation to that subhead; and
  - (b) in the case of an Operating Account Non-Recurrent subhead of expenditure or Capital Account subhead of expenditure, an amount equivalent to 100% of the provision shown in the Estimates in respect of that subhead,

or such other amount, not exceeding an amount equivalent to 100% of the provision shown in the Estimates in respect of that subhead, as may in any case be approved by the Financial Secretary.

# SCHEDULE [para. 4]

				Percentage of
	Head of Expenditure		Subhead	provision shown
				in Estimates
28	Civil Aviation	170	Airport insurance	100
	Department	170		100
46 G C	General Expenses of the	e 013	Personal allowances	40
	Civil Service	013		40

	Head of Expenditure		Subhead	Percentage of provision shown in Estimates
59	Government Logistics Department	225	Traffic accident victims assistance scheme - levies	100
00	Labour Danastmant	280	Contribution to the Occupational Safety and Health Council	30
90	Labour Department	295	Contribution to the Occupational Deafness Compensation Board	30
92	Department of Justice	234	Court costs	35
	Miscellaneous Services	163	Write-offs	50
106		192	Refunds of revenue	100
		284	Compensation	30
120	Pensions	021	Ex gratia pensions, awards and allowances	50
		026	Employees' compensation, injury, incapacity and death related payments and expenses	50
	Social Welfare Department	176	Criminal and law enforcement injuries compensation	60
		177	Emergency relief	100
170		179	Comprehensive social security assistance scheme	25
		180	Social security allowance scheme	25
		187	Agents' commission and expenses	100"

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

## **MEMBERS' MOTIONS**

(Continuation of the debate on the motion moved at the last Council meeting)

**PRESIDENT** (in Cantonese): Members' motions.

We will now continue with the debate on the motion of defending sovereignty over the Diaoyutai Islands.

**PRESIDENT** (in Cantonese): Five Members had spoken before the last meeting was adjourned, and in the last meeting, some Members had pressed the button to indicate their wish to speak.

## DEFENDING SOVEREIGNTY OVER THE DIAOYUTAI ISLANDS

MISS CHOY SO-YUK (in Cantonese): Madam President, it is an indisputable fact that the sovereignty over the Diaoyutai Islands belongs to China. As early as during the Yongle period in the Ming Dynasty, the names and maritime positions of Diaoyutai Archipelago were recorded in detail in *Shen Feng Xiang Song* (Sail With Tail Wind), a book of records of ancient navigation experiences. During the Jiajing period, the Diaoyutai Islands were designated as a coastal defence zone in Fujian Province. The Diaoyutai Islands were incorporated into the territory of China in *An Illustrated Manual for Touring Three Countries* (三國通覽說) published by Japan in 1785, the "ilustrated navigation chart" called "海道圖說" compiled by the British in 19th century, and also the *Encyclopedia Britannica* published in 1950.

However, on 9 February this year, just when the Chinese people were rejoicing in the arrival of the Year of the Rooster and celebrating the beginning of a new year, the Japanese Government took the opportunity to "steal the limelight" by taking possession of the lighthouse on the Islands and turning the lighthouse into a state property of Japan. This provocative act which has infringed upon the sovereignty of our country has not only aroused anger among the Chinese people again, but also hurt the feelings of the people of both countries. It makes us worry that the ghosts of Japanese militarism have revived in an attempt to ruin world peace.

Over the past century or so, Japan has been menacingly eyeing our national territory, including the Diaoyutai Islands. In recent years, Japan has attempted to concoct facts to show that Japan has sovereignty over the Diaoyutai Islands. It has not only condoned the rightist groups to build a lighthouse on the Islands to demonstrate their sovereignty over the Islands, but also repeatedly driven away Chinese fishing boats and also vessels of organizations for defending the Diaoyutai Islands which sought to approach the Islands. In 2002, it even said that the Islands were "leased" from non-governmental organizations. The so-called "takeover" of the lighthouse now is, in fact, another blatant provocative act which again marks another infringement on the territorial sovereignty of our country.

Moreover, Japan has in recent years stepped up efforts to vie for islands in nearby waters. It has entered into rivalry with Korea over the Dokdo Island, which the Japanese call the Takeshima Island. It has vied for the southern Kuril Islands or the Four Northern Islands with Russia. All these acts have given cause for concern about the intention of some Japanese to restore militarism.

In fact, even the Japanese people do not consider these provocative acts of their country agreeable. The late famous Japanese historian Prof Kiyoshi INOUE, after conducting studies of history, had proven that the Diaoyutai Islands are the territory of China. He pointed out to the effect that Japanese militarism is making a comeback. It results in peremptorily insisting that Japan has sovereignty over the Senkaku Shoto, thus pushing the Japanese people into the big whirlpool of militarism.

The Chinese people very much cherish our friendships with the neighbouring countries. Throughout the 30 years or so since diplomacy resumed between China and Japan, the Chinese people have always wished to maintain a friendly relation with Japan and to make concerted efforts for peace in the region. I profoundly believe that after learning a lesson from the Second World War, the new Japanese generation, like the Chinese, also has this noble aspiration for peace. So, we hope that the Japanese Government will not do anything again to hurt the feelings and interests of the people of both countries. It should immediately revoke its decision to take possession of the lighthouse and cease all provocative acts which infringe upon the sovereignty of China by, among other things, removing the facilities and signs on the Diaoyutai Islands immediately.

On the other hand, since the opening and reform, our country has become stronger and stronger economically, with its status in the international community rising continuously. China is now absolutely different from what it was in the past — a weak country vulnerable to invasion. I think in handling its relations with neighbouring countries, China must attach importance to maintaining harmony but in the meantime, it must also uphold principles. We absolutely must not make concessions when it comes to the territorial sovereignty of our country. So, I hope that the Central Government will continue to make solemn representations to the Japanese authorities over the sovereignty of the Diaoyutai Islands and take appropriate actions to defend our country's sovereignty over the Diaoyutai Islands.

In this connection, I urge that the day 9 February on which the Japanese Government took possession of the lighthouse on the Diaoyutai Islands be designated as the Day for Opposing the Revival of Militarism. I urge Chinese people with conscience in the world and all people with conscience in the world not to forget this day, because on this day when the Chinese people were celebrating the New Year, the Japanese Government furtively materialized its wolfish ambitions and paved the way for the revival of militarism step by step to the neglect of the ironclad proof that the Diaoyutai Islands belong to China, to the neglect of the international principle that territorial sovereignty is sacred and inviolable, and to the neglect of strong opposition from the people on both sides As long as the Japanese Government refuses to leave the Islands, all sectors of the Hong Kong community should organize activities on this day every year to teach our next generation the "true face" of the rightist government of Japan and also what they have done. In this connection, I hope that the Japanese Government will learn a lesson from history and cease all these unreasonable, unjustifiable provocative acts which infringe on the sovereignty of China.

Madam President, I so submit.

**MR ALBERT HO** (in Cantonese): Madam President, last week, I listened very attentively to the speeches of colleagues on the Diaoyutai issue. I very much appreciate that Members had spoken their mind on the major principle of upholding national dignity and defending the country's territory. However, I wish to emphasize that the question of the Diaoyutai Islands is not only a question of territorial dispute between China and Japan. Nor does it only involve our national interests and national dignity. If we look at this issue from a broader historical perspective, we will understand the nature of the question. This question involves the uncompleted and unfulfilled responsibilities of Japan as a defeated invader after the Second World War. If we further look at the Cairo Declaration, the Postdam Proclamation and the San Francisco Peace Treaty, we should clearly understand that Japan has the legal responsibility to return Taiwan, the Penghu Islands, and so on, to the original owner of these territories, namely, our country, and this is indisputable.

The so-called argument of Japan in refusing to return the Diaoyutai Islands is this: It considers that the Diaoyutai Islands are neither a part of Taiwan nor a part of the territories ceded to Japan under the Treaty of Shimonoseki signed in

1895. Japan has now stressed unilaterally that in early 1895, that is, before the signing of the Treaty of Shimonoseki, it had unilaterally enacted legislation to incorporate the Diaoyutai Islands into the jurisdiction of the Okinawa Prefecture and so, it argued that this has nothing to do with the validity of the Treaty of Shimonoseki.

Why did Japan have the right to annex the Diaoyutao Islands at that time? Japan did so on the principle of terra nullius in international law. according to a large number of historical documents cited by many academics both in China and foreign countries, including a number of famous Japanese academics (one of whom being Prof Kiyoshi INOUE who has been mentioned by Members many times), and also the principle that international law should be considered having regard to the geographical location, we can see one point very clearly. I do not wish to explain again here that the Diaoyutai Islands have indeed been incorporated into our country's territory since the Ming Dynasty. Not only were the Islands discovered by the Chinese people a long time ago. They have long been included as part of our national territory in defence affairs. An uninhibited island does not mean that it is not owned by anyone or governed Moreover, as Members have said, by any sovereign state in law. geographically speaking, there is a deep-sea trough separating the Diaoyutai Islands from the Kumijima Island within the jurisdiction of Okinawa. Diaoyutai Islands are part of the continental shelf of China. reasons, I think it is unnecessary for me to repeat the fact that the Diaoyutai Archipelago is indeed Chinese territory. Japan has no right to unilaterally annex the Diaoyutai Archipelago in early 1895. Therefore, it must return the Diaoyutai Archipelago to our country in accordance with the Cairo Declaration and the San Francisco Peace Treaty.

The problem now is that after the War, Japan has never seriously fulfilled its moral and legal responsibilities as a defeated state. In 1970 when the United States transferred to Japan the right to govern the Diaoyutai Islands, it was clearly stated that the United States was aware of the disputes over the sovereignty of the Diaoyutai Islands and so, it was expressly set out in the memorandum at the time that the so-called transfer had no implication on the sovereignty over the Diatoyutai Islands.

Madam President, as mentioned by some colleagues, this year is the 60th anniversary of the end of World War II. Over the past 60 years, Japan has not fulfilled the many responsibilities due to the people of many Asian countries

(including the people of my country). It even refused to sincerely admit its many war crimes, including the crime of comfort women, the crime of the "731 troop" and even the Nanjing Massacre and other crimes such as penal servitude. It seeks to whitewash its responsibilities and has attempted to amend history textbooks for this purpose. In recent years, it has even paid official homage to the Yasukuni Shrine and attempted to rebuild the army through the US-Japan Security Treaty by sending troops overseas and even stepping up its military role across the Taiwan Strait. All this has caused extreme anger and anxieties among people in Asia. Many people have the feeling that Japan does intend to relive its old dream of militarism.

Madam President, we feel that apart from having the duty to defend our territory, our country also has the duty to ensure that justice is done to our own people. The movement for defending the Diaoyutai Islands is inseparable from the movement for seeking an apology and compensation from Japan and for opposing Japan's militarism.

Finally, I would like to read out the last paragraph of a famous book written by Prof Kiyoshi INOUE on the Diaoyutai Archipelago: "A single spark can start a prairie fire, and if we condone the acts of the ruling echelon in Japan in snatching the Diaoyutai Islands, the ambition of Japan's militarism in invading Asia will proliferate and spread rapidly."

I so submit.

**MR CHIM PUI-CHUNG** (in Cantonese): Madam President, there is a song called "A true story". What I am going to say is also a true story.

In around September 1996, a political participant who had taken part in the Diaoyutai Movement telephoned me, telling me that he was in an increasingly difficult position, because a group of new participants in the campaign to defend the Diaoyutai Islands would take over his position. So, in order to show that he would continue to work for and participate in the Diaoyutai Movement, he planned to go to the Diaoyutai Islands direct to stage some form of protest there. That certainly required the lease or purchase of a vessel. I, therefore, told him that first, he must consider many factors, including whether he could stand the wind and waves and the many difficulties. Second, judging from the situation at that time, it was simply impossible for him to land at Diaoyutai. All that he

could do was to go into the surrounding water for a while to demonstrate that he had staged a protest within the country's own waters. Third, there was the question of costs.

After negotiation, a vessel was leased at a cost of \$300,000 and he had to pay \$150,000 first and undertook to pay the balance of \$150,000 when he returned. Under such circumstances, with the support of a number of people and led by the captain, this activist in defending the Diaoyutai Islands set out and arrived at the destination two days later. But as expected, he could not bear the rough sea and was very weak in terms of his physical conditions. It was because on the one hand, he could not eat and on the other, the conditions were indeed very bad. Besides, the Japanese armed forces, also as expected, did not allow them to approach the Islands. In order to materialize his wish of going into the waters of his own country, he took a very stupid move and jumped from the vessel into the sea. Obviously, this jump of his cost him his life. Fortunately, his act had gained the recognition of the Xinhua News Agency then and was hence awarded a national flag.

We learn from this story that many people do not forget their responsibilities as Chinese. Afterwards, the captain thought at first that he would be in trouble because someone was dead and that he might not receive the balance of \$150,000. But in the end, that \$150,000 was paid to him.

Madam President, we understand that during the Sino-Japanese War in 1894, the Manchurian Government was defeated and signed the Treaty of Shimonoseki, under which China had to pay an indemnity of \$200 million taels During the eight years of war between China and Japan which ended in 1945, China suffered over 35 million casualties, with a loss of 8 million lives in the army alone. It was believed that the direct economic loss exceeded US\$100 billion whereas the indirect loss exceeded US\$500 billion. when the War was over, the Kuomintang (KMT) Government representing China then only received a compensation of about US\$22 million. 1972, seeing that compensation was unclear under the rule of the KMT and in order to show that the KMT was not as good as the Communist Party, Premier ZHOU Enlai of the Chinese Communist Party decided not to pursue The second reason was that as it had been stated that the compensation. compensation would have to be shouldered by the Japanese people, he did not wish to add to the burden of the Japanese people. Thirdly, for political reasons, Japan subsequently did not continue to pay the compensation. Certainly, as we

can see from the figures, after December 1979, the Japanese Government undertook to provide a number of loans to the Chinese Government, including the first loan of US\$1.5 billion and the second loan of US\$7.5 billion. But in spite of this, how could these loans compare with Germany's compensation to the Jews in tens of billions of US dollars or even close to US\$100 billions after the Second World War? The compensation made by the Japanese Government to China is indeed far too small.

No doubt China has now become strong on various fronts. But I wish to remind the Chinese Government that when the national economy is robust, we absolutely should not let a trivial matter spoil a matter of importance. Yet, the Diaoyutai Islands are after all the territory of China. While we can see that the Diaoyutai Islands are uninhabited, it is all the more necessary for China, as it grows stronger, to put stress on defending its territory, come what may. By the same token, the country should also make Hong Kong people understand clearly that in all issues, the interest of China should be defended under the principles as stated in the Basic Law and besides, efforts should be made not to put Hong Kong people in a dilemma.

MR ALBERT CHAN (in Cantonese): Madam President, in motion debates of the Legislative Council, it is quite rare that the mover of the motion is not in the Chamber when other Members speak. But perhaps Members are very busy. Madam President, it is saddening to see so few Members in this Chamber.

Madam President, the Diaoyutai issue is a very solemn issue that has lingered on for years. Some 30 years have passed in a blink of an eye since the Diaoyutai Movement in Hong Kong during the '70s. I remember that I was just a primary student at that time. But as things develop, we have a very strong feeling that we have only seen boiling sentiments among the people, but not the Government taking an active attitude to address and handle this issue.

Over the past decades or so, we have seen people dedicating their toil and sweat and even sacrificing their lives to demonstrate that the Diaoyutai Islands are the sacred territory of China. Many Members have already mentioned the justifications supporting that the Diaoyutai Islands belong to China and so, I will not repeat their points. However, I wish to point out a strange phenomenon and that is, over the years, many campaigns have been organized by non-governmental groups to defend the Diaoyutai Islands, and there have even

been attempts of forced landing on the Islands, but every time when members of these non-governmental organizations sought to demonstrate China's sovereignty over the Diaoyutai Islands, their attempts would invariably degenerate into an opportunity for the Japanese to demonstrate their military power and to demonstrate that the Diaoyutai Islands belong to Japan, and every time, Japan would win while the attempts of the non-governmental organizations would fail. This is grossly ironic, and it is a disgrace to the Chinese people.

In the many attempts of forced landing by the activists, our Government and also the Chinese and Taiwanese Governments did not render any assistance at all. Worse still, the Taiwanese Government often sought to stand in their way, precluding the vessels from taking actions smoothly.

I know that many organizations campaigning for the defence of the Diaoyutai Islands met obstacles in many ways when they attempted to lease vessels. Given that even such normal acts are subject to political suppression, the Diaoyutai Movement, therefore, has not yet been accomplished. On an issue involving sovereignty and territory, such an attitude which shows that only the people, not the Government, can feel the urgency of the problem, is indeed saddening.

Let us review the disputes between Britain and Argentina over the Falkland Islands. The Falkland Islands were several thousand miles away from Britain. They were just deserted islands used for sheep shepherding with no valuable asset and so, they are very much different from the Diaoyutai Islands. In spite of this, Britain sent a large task force there and even waged a war and finally won back these deserted islands. During World War II, the Russian army had fought to defend each and every street of Stalingrade even at the price of sacrificing thousands of lives and finally defeated the Germans. In many wars, many countries, people and governments would consider each and every piece of their land precious, and they were willing to use all their might, their army and people to defend their national territory. But what is happening now? The Diaoyutai Islands now seem to gradually become the territory of Japan.

Here, I would like to tender a piece of advice to the Chinese leaders, particularly the central power enclave in Zhongnanhai. Let us review the history of China, particularly the 1919 May Fourth Movement, which precisely started out as a movement to defend the country's territory. If the Diaoyutai issue is not handled properly and if nationalistic and anti-foreign sentiments

soared, not only would there be a strong patriotic zeal formed overseas or in Hong Kong, there would also be great reverberations in the Mainland, causing an upsurge in the people's sentiments. It is not difficult for us to imagine that if this issue should ignite nationalistic sentiments, tens of thousands or millions or even tens of millions of people would take to the streets anytime and by then, it would surely create a certain impact on the country or society and would even lead to social upheavals.

Let us look at what happened in the past week or so, particularly concerning the sovereignty of Taiwan, or the so-called "Taiwan independence" Our country has enacted an anti-secession law to defend the territorial issue. Under this law, it is stipulated that the country will ensure integrity of China. its territorial integrity even with the use of force. But what has been done in respect of the Diaoyutai Islands? The spokesman of the Ministry of Foreign Affairs of China has on many occasions verbally stated in public that the Diaoyutai Islands are the territory of China. But what actions have been taken? The Japanese Government now plans to set up an official lighthouse on the I suggest that our Government must really fire missiles and Diaoyutai Islands. cannons at this lighthouse to wreck it. Let us not just make empty talk. often, when the Chinese "beat their sons behind closed doors", their sons will be beaten black and blue, but when faced with foreign invasion, they become weak I hope that this situation will not recur. In the Korean War, the People's Liberation Army beat the United States. So did it in the Vietnam War, as the United States were finally defeated. We have no reason to act so feebly in the face of Japan over the Diaoyutai issue. I hope that this issue will be handled properly, so that we can go to the Diaoyutai Islands in a Chinese vessel and land on the Islands one day and by then, the whole nation will immensely rejoice in jubilation.

Thank you, Madam President.

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, "When the 140 000 soldiers took off their armour, not a single one of them is a man". This line was written by a poet in ancient times who, through the character of a concubine in the imperial palace, asked why the corrupt generals, at a time when the country's territory was lost to foreign invasion could flaunt their powers in ordinary times, but behave totally unlike that of a man when the country was invaded by enemies.

Do not think that I am scolding the Central Government. Indeed, I oppose Japan's occupation of the Diaoyutai Islands, and it is certainly because I am a Chinese; I speak Chinese and I know the habits and customs of Chinese. That is why I have this feeling. Besides, it is also because I learned from school when I was small that the expansion of Japan had condemned the people in Asia and the Chinese people to great pain and sufferings. The defence of the Diaoyutai Islands will carry a modern meaning only when we understand it in the context of opposition against the revival of Japan's militarism and opposition against United States hegemonism.

As we all know, after the revolution in China, the United States Government has adopted a containment policy on the Chinese Government. The notorious United States-Japan Security Treaty is the joining force of United States imperialism and the Japanese right-wing government to dominate the entire Asia. The United States transferred the Diaoyutai Islands to Japan in 1971, and this can be understood only in the context of the dominance of United States imperialism in Asia. In fact, the revival of Japan's militarism has become more and more alarming. The economic boom in Japan after the War has given rise to the Yamato race and the "Three Principles of the People" in Japan, but after the economic recession in Japan, the revival of militarism has become the order of the day, under which the country's military might and territory are used to show the national power under the rule of the Tenno, the Japanese emperor.

I have witnessed and experienced three Diaoyutai movements. In the first movement, I was an observer, because I was a Secondary student at that time. I saw British Hong Kong policemen beat up students in the Victoria Park. The second movement was in 1979 when China sent hundreds of armed vessels to the Diaoyutai Islands. The Japanese could do nothing. DENG Xiaoping later proposed that the issue be resolved by the next generation, and two generations have since passed.

Under the shield of United States hegemonism, and after the US-Japan Security Treaty has changed into United States-Japan defence co-operation which marks even closer ties between them, Japan has openly occupied the Diaoyutai Islands. From building a private lighthouse to the official takeover of the lighthouse, Japan has completely neglected peace in Asia, and it has neglected the history of Japan's militarism plunging Asia into an abyss of sufferings. In fact, all Japanese governments after the War have not tendered an official

apology for its invasion into China which killed 30 million Chinese people, let Japan has even amended the textbooks in a way alone making compensation. that the Nanjing Massacre in which 300 000 Chinese people were massacred is said to be fabrication. Moreover, its invasion into China is described as "entry" into China; their testing of bacteria and chemical weapons on human is described as fabrication, and the fact that thousands or tens of thousands of women being ravaged by the Japanese army, that is, the fact that comfort women were ravaged by the Japanese Army is said as an exaggeration. The rivalry over the Islands has in fact reflected the question of whether or not the militarist logic of Japan We must not forget that during the expansion of Japan, that is, when the Treaty of Shimonoseki was signed in 1895 with Taiwan being ceded to Japan, their logic of invasion was to protect the survival of Japan and so, they aimed to expand their territory, vigorously expanding outward to serve their master, the Tenno.

Today, conspiring with the rightists and under the shield of United States hegemonism, the Japanese Government has occupied the Diaoyutai Islands. In fact, it is possible for Japan to resurrect the logic of imperialism. I defend the Diaoyutai Islands because I am a Chinese and, what is more, I oppose United States hegemonism and the revival of Japan's militarism. I appeal to all Chinese compatriots to adopt an international vision and to fight for peace in the world and peace in Asia and counteract United States-Japan hegemonism. I appeal to all Hong Kong compatriots and people opposing the restoration of Japan's militarism to contribute their money and efforts, make donations and go to the Diaoyutai Islands to demonstrate China's sovereignty, in order to deflate Japan's arrogance in resurrecting militarism. Thank you.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Mr LEE Wing-tat, you may now speak and you have 11 minutes 14 seconds.

**MR LEE WING-TAT** (in Cantonese): Madam President, first of all, I am very grateful to Members who have spoken. I believe the Legislative Council will

have a unanimous view on the issue of defending sovereignty over the Diaoyutai Archipelago. Here, we do not only solemnly assert our position to the world and also to the Japanese Government that the Diaoyutai Islands are the territory of China. I also urge the Chinese Government to adopt a more appropriate and resolute attitude and take more appropriate actions in response to the takeover of the lighthouse on the Diaoyutai Islands by the Japanese Government. I hope that the Chinese Government will not hinder the movement for defending the Diaoyutai Islands which has been gradually developing among the people in the Mainland. I also hope that the Chinese Government will allow more activists in Hong Kong striving to defend the Diaoyutai Islands to work in concert with their counterparts in the Mainland, in order to fight for the territory of our country.

I hope that Members will all support the motion. Thank you, Madam President.

**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.

(No hands raised)

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

(Motion to be moved at this Council meeting)

THAT THIS COUNCIL DO NOW ADJOURN

PRESIDENT (in Cantonese): Motion for Adjournment.

**PRESIDENT** (in Cantonese): Rules 16(6) and 16(7) of the Rules of Procedure provide that the President may determine longer speaking times for Members and the designated public officer respectively. I have accepted the recommendations of the House Committee that each Member including the mover of the motion may each have up to 15 minutes to speak. Correspondingly, I have determined that the duration of the public officer replying is not subject to any limit. The duration of the debate is therefore up to the time the public officer has finished his reply.

**MR LEE WING-TAT** (in Cantonese): Madam President, I wish to raise a point of order before we continue. Have we invited any public officers to come to attend and respond to our motion debate?

**PRESIDENT** (in Cantonese): Yes, we have. The public officer who attends this debate should be the Secretary for Constitutional Affairs, but he is presently not in this Chamber. I think Members would wish to commence this motion debate after the arrival of the Secretary. So I will declare that this meeting be suspended pending the Secretary's arrival to the Chamber.

4.37 pm

Meeting suspended.

4.40 pm

Council then resumed.

**PRESIDENT** (in Cantonese): I notice that a quorum is not present. 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): Now a quorum is present. Mr LEE Wing-tat, please.

**MR LEE WING-TAT** (in Cantonese): Madam President, I move that this Council do now adjourn.

Madam President, as well all know, what has happened during the last couple of weeks in Hong Kong is far from ordinary. More than two weeks ago the media reported that Mr TUNG Chee-hwa was likely to be elected a member of the National Committee of the Chinese People's Political Consultative Conference (CPPCC), then in the following two weeks or so, the subject of whether or not Mr TUNG Chee-hwa would resign sparked widespread concern among the people of Hong Kong. Not only has the matter become the focus of attention in the local media and among the Hong Kong people, but it has also The greatest reason is that Mr TUNG attracted international attention. Chee-hwa is the topmost leader in the Hong Kong Government and any rumours about his resignation would lead to great concern and even uneasiness. Although after more than two weeks, at last Mr TUNG Chee-hwa made an official announcement that he would resign, the speculations that have appeared during these 10 days are in my opinion, to be regretted. The reason is a modern society cannot afford to live in speculations, nor can any government policy be taken forward when speculations are rampant. However, both the Central Government and the SAR Government made no moves to quell such rumours This puts us in great doubts as to what Hong Kong can do in during that period. the context of "one country, two systems" and "a high degree of autonomy".

Madam President, the Democratic Party is of the view that the resignation of Mr TUNG Chee-hwa answers public aspirations. This is because over the eight years past, the public has been opposing the administration by Mr TUNG. Put it simply, Mr TUNG gives people an overall impression that on major policy issues, he follows closely decisions made by the Central Authorities. He acts like a representative of the Central Authorities but he fails to convey public demands on democracy and other matters. In particular, when there are conflicts between the Central Government and the people of Hong Kong, he gives people an impression that he is always on the side of the Central Government. Then with respect to social policies, he is clearly inclined towards the business sector, even to such an extent that suspicions are aroused

about collusion between business and the Government. On a personal front, we are of the view that he is politically very conservative. Not only is he contemptuous of democracy, the rule of law and human rights, but he has also scrapped many established political practices since he has assumed office. This prevents him from being a Chief Executive who holds himself accountable to the people and the Legislative Council. In the past few years, he has cancelled all appearances on radio and television programmes and visits to various districts in the territory where he can have a chance to get in touch with the people. This has clearly shown that in terms of open politics, he is making a big step backward.

We do not feel sorry for Mr TUNG Chee-hwa's stepping down. But we must stress that what we seek is not a venting of our pent-up emotions. What we pursue is the setting up of a system. The system as it is will not be improved as a result of Mr TUNG's departure. By system we refer mostly to the building of a democratic system. This is also the system under which the people will have a greater say and the right to participation and in selecting the Chief Executive and returning all Members of the Legislative Council. It also hinges on even whether in the end such matters would be decided by the public.

We understand that the legal problems triggered off by Mr TUNG's resignation are both a cause of international concern and ours. With respect to the change made by the SAR Government in its position on issues of law, not only does the Democratic Party feel baffled but also regretful. It is because both the Basic Law and the Chief Executive Election Ordinance enacted in 2001 have been scrutinized by Members. For the latter, ever since its passage in 2001, we have a clear common understanding that if the office of the Chief Executive becomes vacant, the new term of office should be five years.

Both Ms Elsie LEUNG, the Secretary for Justice and Mr Stephen LAM, Secretary for Constitutional Affairs, agreed to this point in the press conference held last week and in the special meeting of the House Committee yesterday. They said that after spending so many years studying the Basic Law and also handling the Chief Executive Election Ordinance in 2001, they had an impression that the term should be five years. However, after talking with the legal experts from the Mainland and after reading the past records, Secretary for Justice Elsie LEUNG came up with a new conclusion. We think that this kind of practice is most dangerous. It is because those members of the Basic Law

Drafting Committee and the legal experts may one day be no longer able to tell us what they were thinking when they drafted the Basic Law. Even if they can, it is doubtful whether the practice of their reliance on memory alone is proper. We would query how there can be such a U-turn in the position of the Hong Kong Government on this issue just after Ms LEUNG has talked to a couple of, or even just a few, legal experts from the Mainland and how there could be a change in a decision made after much serious discussion, thinking and a legislative process. How can the legal profession and the people in Hong Kong be convinced? Therefore, we have to state once again that in our opinion, the term of office of the new Chief Executive after the office has become vacant should be five years. Such a position of the Democratic Party is very clear. If the Government wants to introduce any bill to this Council to revise this term of office, we will vote against it.

Madam President, my concern is that in July this year Hong Kong will hold an election for the Chief Executive for the third time. The first time was held in 1996 and that was a small-circle election, but that was held with competition. I am very much worried that when the election for the Chief Executive is held in July for the third time, the election would not be as fair, honest and open as we want it to be. I think that by all chances that election would be unfair, dishonest and not open. It would be unfair and dishonest because like before, only 800 people will take part and the electoral base is only some 160 000 people. As many as some 3 million voters will be excluded from this process. It would not be open because for the election this time, it is very likely to be a replica of the situation in 2002 when only Mr TUNG Chee-hwa stood in the election and the election was not really an election at all.

An election as we understand it should carry a high degree of mobilization. In countries or places with universal suffrage, elections are a political activity which all the people will take part. I think with the only exception of a violent revolution, the time when a democratic place can mobilize the greatest number of people in political issues would be an election. An election is a political activity of a high degree of mobilization. It is an occasion for training and education. It is also an occasion on which those who aspire to power and becoming the supreme leader of the government can explicate their policies and platforms to the public, in the hope that the debates and questions generated among the people will help the way they will govern Hong Kong as the Chief Executive. Such a process has gone beyond talks about winning or losing the election, but it

becomes the question of whether or not there should be a formal channel for the people to take part. Of course, by taking part I do not mean that the some 3 million voters should all have a chance to vote, we are just hoping that there will be more opportunities for the people to express their views, that differences in opinions in society can become a consensus through discussions and debates which in turn would translate into a conceptual blueprint and political platform for the future Chief Executive.

However, and sad to say, I am most worried that this process will never come about. I reckon that as what happened in 2002, the candidate — who is most likely to be Mr Donald TSANG — would only need to invite 1 000 supporters to come to a large conference hall and hold a meeting. He would then come up to the stage and say something, get some 10 to 20 celebrities to pledge their support to him and the whole election will be over. I just want to ask those people who do not support elections by universal suffrage in 2007 and 2008 the question. Will they think that political elections should be held like the election in 2002? Do they not think that there should not be any partisan position in an election and that it should be a process in which there are debates, participation and formulation of a political platform by the whole community? If this is a common understanding among us all, then we should call for a competitive election and that the election this time should not be held in the way Mr TUNG Chee-hwa ran for his second term.

In the City Forum held last week, I heard Mr LAU Kong-wah and Ms Miriam LAU speak on behalf of the DAB and the Liberal Party respectively that they would hope the election this time would be held with discussions generated in the community and even hopefully, with competition. I wish they are sincere According to the DAB, this can be accomplished very easily in their views. because they have 130 people who are members of the Election Committee (EC) and they can nominate one person to stand in the election. For the Liberal Party, it would not be difficult for them to nominate a candidate because of the number of party members in the EC and their links in the business sector. approached many professionals, academics and those who have served as members on the EC, they all hope that there can be debates in the community and popular participation in this election. Of course, as a member of the democratic camp, I am positive about nominating a person from the democratic camp to run Like I have said, the goal is not so much as of winning the race in the election.

but of providing a process for the people to take part and know about what the democrats think about democracy, human rights and the rule of law.

Yesterday, the Chief Secretary for Administration, that is, the Acting Chief Executive, made an effort to evade questions about his intention stand in the election. I hope he can give serious thoughts to the following problem, that when he tenders his resignation only at the beginning of June and does nothing in the next couple of months, then he will be indirectly producing a replica of the Chief Executive election in 2002 — one which is devoid of any competition and an atmosphere of election. I think, in that eventuality, that would be the greatest blunder he would make as the Chief Executive, for he will have failed to make good use of the opportunity to mobilize the public, gather different views from society, forge a consensus and formulate his political platform on such a basis.

Madam President, I wish to use the one minute left to talk about my What worries me most in this resignation of Mr TUNG is that the Central Government will have the impression that it is due to the incompetent governance of Mr TUNG that the blunders and confusions over these years were So the Central Government thinks that the problem will be gone when another person takes up the job — like what Edmund HO has done to Macao. But we believe that the system is the most important. I earnestly hope that the Central Government will see that if the present system is not changed and if only a person is replaced and selected by a small circle of people, that will prevent the public from working closely with the Government for the better development of Public aspirations will not be answered. For no matter how an election is held, a government without the mandate of the people and not accountable to the people will never be able to command lasting support from the Thank you, Madam President. people.

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

"That this Council do now adjourn for the purpose of enabling Members to debate the following issue: All the constitutional and legal issues arising from the office of the Chief Executive having become vacant, and related policies, measures and arrangements."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That this Council do now adjourn.

**DR LUI MING-WAH** (in Cantonese): Madam President, the resignation of the Chief Executive should have been a simple matter, for the existing Election Committee would only have to select a new Chief Executive and life in Hong Kong would go on as before. But incessant disputes have appeared over the question of the tenure of the new Chief Executive, that is, whether the tenure is two years or five years.

Now there are two views and Members know them very clearly. One is that the tenure of the newly-selected Chief Executive should be two years. This is also the view of the Government. Another view is that the newly-selected Chief Executive is the Chief Executive for a new term and so the tenure should be five years. Proponents of both views invoke provisions in the Basic Law to back up their arguments.

The Government resorts to legislative intent of the Basic Law to form its argument. Of course, at the end of the day, the Government may introduce a law to change the electoral method and specify unequivocally that the tenure should be five years. But it is very likely that some people may apply for a judicial review. If someone should really apply for a judicial review and after going through various tiers in the judicial process and as petitions and reviews are made, a long period of time may be taken and a constitutional crisis may ensue. Therefore, after thorough discussions, we in The Alliance suggest that the Government should request the National People's Congress for an interpretation of the Basic Law on this issue expeditiously so that a new Chief Executive can be selected at a prompt and opportune time, hence averting a constitutional crisis.

For ordinary members of the public, it would not matter very much if the tenure of the Chief Executive is two years or five years. The most important thing is that there will be a Chief Executive to go on working and governing Hong Kong, sustaining the pace of economic recovery and spurring further growth of the economy. Of course, some people may think that this kind of approach is utilitarian. I think that this is not unjustified. It is because we in The Alliance think that what Hong Kong society needs most now are stability and people's welfare and it is only in this way that the people can truly be served. As for the disputes, they should be avoided by all means.

Madam President, these are the brief remarks I make on behalf of The Alliance.

Thank you.

MR CHIM PUI-CHUNG (in Cantonese): Madam President, with respect to the impasse in which the Legislative Council finds itself as a result of the resignation of the Chief Executive, personally I feel much regretted. I recall in 12 September last year after I had been elected as a Member of this Council, I received a call from the Office of the Chief Executive, saying that the Chief Executive wished to meet me. I asked how many people would be in the meeting, and I was told that there would be five or six. At that time I said sorry, for as the Chief Executive would be seeing five or six people, I did not want to go there and stage a show. I really did not want to do that.

At last, in three o'clock in the afternoon on Saturday, 30 October last year, we met the Chief Executive in his office as arranged. Of course, there were also two special assistants and a secretary there. I said to the Chief Executive, "Mr Chief Executive, there are still two years and eight months in your term." The Chief Executive said, "So I must work hard, right?" I said, "No, this is not what I mean. After two years and eight months, you will certainly get a position which does not compel you to leave Hong Kong and that is the position of the Deputy Chairman of the CPPCC." It was not that I had got some news, I just inferred from the facts and I knew that was certain. But I had no idea he would get that position so soon and had to leave.

Many people argue why the Chief Executive has to resign. In any case, we have to respect his personal choice. For example, why do so many people kill themselves? It is because they are facing a lot of problems and so they choose to do so. I can only say that the resignation of the Chief Executive is a fact, it does not matter whether or not he has done it of his own accord or he has been forced to do so, but in the end he has tendered his resignation. It is also a fact that the Central Government has accepted his resignation and regardless of whether or not it is very willing or not willing at all, the resignation has been accepted after all. In other words, certainly both parties agree with the reasons as offered by the other, irrespective of whether they are not satisfied with them or very satisfied with them. This is a fact after all.

First of all, I would like to put forth my views on this so-called two years or five years row. Actually, the Basic Law is very clear on this and as many Honourable colleagues have noticed, the term of office of any new Chief Executive shall be five years, and there is no doubt about it. In other words, if this is the third term Chief Executive and this third term is not to be challenged, then the term of office shall definitely be five years. If this is the second term,

personally I would think that we should not say that his term of office is two years, for we should say that he is to finish the remaining term of office of the second Chief Executive. Should any unforeseeable thing happen to the second Chief Executive and if such unforeseeable things happen repeatedly, then will the remaining terms of office mean one and a half years, one year and even six months? This will not do in words and as facts. Therefore, if any law is to be enacted for this purpose, it should be specified that the term of office shall refer to the remaining term of the second Chief Executive, instead of specifying that the term should be two years. If this must be done, the number of days should The Secretary also said that the relevant bill would be be clearly specified. introduced to the Legislative Council in two or three weeks. I am convinced that the relevant Bills Committee would be the largest one we have ever had and the number of Members who will join this Bills Committee would be over 50.

I believe this bill will be passed in the end. But when it is passed, we can see that the law in Hong Kong is fraught with controversies and it is a subject of ridicule. I have asked the Chief Secretary in the Legislative Council a question about the three Judges in the Court of Appeal, why they could reach a two-to-one decision to vote down a law which was passed by the Legislative Council in 2002 and submitted to the Standing Committee of the National People's Congress (NPC) in Beijing for confirmation. Members may recall that I did not take part in that, but the bill in question should be the law about reducing civil service pay over a two-year period.

It is amazing to note a regional Court can rule a piece of legislation enacted by the Legislative Council and confirmed by the Central Government as having contravened the laws and regulations. In Hong Kong, the legal process is ridiculous. I trust that even if a bill on this subject is passed in the Legislative Council, it may still be challenged, that is, subject to judicial review. After such a judicial review, it will be like The Link REIT case and still be subject to other unforeseeable proceedings. In such circumstances, a constitutional crisis will truly appear in Hong Kong.

I wish to appeal here that as a responsible government, it should make preparations in both aspects. On the one hand, legislation on this matter should be completed in Hong Kong. On the other, it should reflect the real circumstances to the Central Government and the NPC. The SAR Government should state whether or not an interpretation of the Basic Law would be sought and even if such a request is not made, it should remind the NPC to keep a close

watch on the developments. I also wish to remind the SAR Government of the representativeness of the 800 members in the Election Committee. As far as we know, at present there are 33 vacancies and of the 33 former members who have left their seats vacant, some have been appointed for a term of five years after the election in 2000. It cannot be denied that two Members of the Legislative Council lost in the election in 2004 and according to the regulations, they are disqualified. But such matters should not and cannot deter or prevent others from applying for a judicial review. This is because they have been given a five-year term. Though I am convinced that such a lawsuit would lose in a court of law, even so, an application for legal assistance may still be made and an appeal lodged. In such circumstances, the Government should be very careful about this when the election is held on 10 July.

In addition, it must be noted that Article 55 of the Basic Law has stated clearly that the term of office of Members of the Executive Council shall not extend beyond the expiry of the term of office of the Chief Executive who Although the Chief Secretary of Administration made an appoints them. explanation yesterday, I think that an effort must be made to study closely the Basic Law if its provisions are to be strictly adhered to. Since it is stipulated that the term of office shall not extend beyond that of the Chief Executive, how can it be said that they can ride on the "through train"? In other words, at least they should get off at a train station and wait for another ticket to board the train This means they will need a new appointment. They may not need to get off at once, but at least in theory they should get off. As provided in the Basic Law, since the Chief Executive TUNG Chee-hwa who appointed these 21 Members of the Executive Council has resigned, how can their appointment continue to be valid? Why can they still wait on board the train? The calculation of their allowances or salaries should stop on of office is over. the day the Chief Executive resigned. This is written very clearly in the Basic Law. I am not trying to split hairs or make things difficult for people, but the question is, since we all should abide by the Basic Law — I have heard some Directors of Bureaux say that the Basic Law should be read as a whole, not in parts — therefore, I wish to reiterate that I am not hair-splitting or making things difficult for other people. We must respect each other and this is the right thing to do.

Madam President, there may be more and more problems lying in front of us but in any case, the possibility of a constitutional crisis can never be ruled out completely. I would like to raise a point and that is, under the collective responsibility system, the Executive Council which is formed by 21 Members under the leadership of Mr TUNG is accountable to the people of Hong Kong and the Legislative Council. It is true that Mr TUNG has been attacked by a lot of people, especially Members from the pan-democratic camp. I firmly believe that Members from the pan-democratic camp may not be targeting at Mr TUNG and no one else, but in any case, Mr TUNG is a leader, a boss. goal and object of their attacks have to be directed at the boss behind. course, many people will deny this point. But we must admit one thing and that is, there is an anti-communist force in this world, and this force comes mostly from the United States. Its policies, aims and targets are all anti-communist while China practises communism. And so it becomes anti-China. As China has sovereignty over Hong Kong and so it is against the nation. This is something we must not deny.

It follows that should the SAR Government, that is, the team led by Mr TUNG, make any blunders, Mr TUNG should not be made to bear the blame alone. The blame should be borne by all the 22 people. For many problems, unless they are traps intentionally laid by Mr TUNG's subordinates for him or if they do not warn him of the pitfalls, then everyone should shoulder the responsibilities. We must be discerning. We must be accountable to all the people of Hong Kong and we must not pass the responsibility onto any single official.

I remember many years ago the then Financial Secretary, Sir Piers JACOBS, was under fire from many quarters and his wife asked a question, and that was whether or not a Financial Secretary would have such great decision-making powers. How could he dare to do such things without any collective decision? We must remember that all the honour and disgrace of the Executive Council belong to everyone in it and they are one entity. This is in no way related to the performance of any single person.

Now more than seven years have passed of the transition. As I always say, there must be a real transition. Under the present circumstances in Hong Kong, it is still a daunting task for anyone to assume office of the Chief Executive of the SAR. It is still a great burden to bear. However, we should have a strong Chief Executive who is accountable. Apart from being a person of high calibre, he should be trusted by the Central Government and supported by the people of Hong Kong. In addition, the person must be tough in the following aspects: first, in the convictions held; second, in the tactics employed

to rule the territory; third, in the way words are always honoured and put into action; and fourth, in moves made to prevent Hong Kong from becoming a political base for anti-China and anti-state activities.

In addition, with respect to finance, the person should never allow Hong Kong to become a colony of another kind. On the economic front, Hong Kong must not be allowed to become a burden and headache for China. It must not always be in the red and a negative equity asset for China so that the Chinese Government will not have to offer assistance in the form of CEPA, the DIY tours and the Hong Kong-Macao-Zhuhai Bridge, and so on. We must also bear in mind that Hong Kong should take into account its social conditions and it must not be allowed to become a city of social welfare and Comprehensive Social Security Assistance.

For those people on the verge of becoming eliminated by society, we must offer them our help. They must be counselled. We must encourage them to strive for self-resilience, for they cannot stay in a protracted state of poverty. In view of this, we ask the future Chief Executive to strike a good balance in everything, in such things as the division of powers between the three branches of government. However, as we see it, the judicial system holds the lifeline of Hong Kong, though we respect the judicial system, any use of it to the excess would preclude a division of powers together with the executive and legislative branches. The least effective of all is the legislative branch. We must remember that after so much work done, which one job has yielded any fruit? So Members must unite and supervise the Government so that we can do our best and make our work the most effective.

MR ALBERT CHENG (in Cantonese): Madam President, the resignation of the leader of a place is a very serious matter. As Hong Kong is an international financial centre and a world city, the rumour that the Chief Executive of our Hong Kong Special Administrative Region (SAR) would resign has been reported extensively by the mass media worldwide and there has been great hubbub in the past fortnight. This can damage the image of Hong Kong and render Hong Kong a laughing stock. Mr TUNG eventually announced his resignation but he did not come to the Legislative Council to give an account, as a matter of convention, but chose to hold a press conference to announce his resignation.

However, the majority of the public, including the mass media worldwide, do not believe that he resigned from the post of the Chief Executive of the SAR Everybody will be able to appreciate that he did not do so for health reasons. Although for many years, the majority of voluntarily but was forced to resign. Hong Kong people wanted him to resign for his wrongdoings, what we hoped to see was that he would resign of his own accord, or better still, to dismiss him according to the procedures for dismissing the Chief Executive of the SAR as stipulated in the Basic Law. Unfortunately, everyone has the feeling that it was the Central Government that took action and dismissed him — of course, this cannot be proven, however, if all people have such an impression, this will seriously erode the system of "one country, two systems" and "Hong Kong people ruling Hong Kong", in particular, the enforcement of the Basic Law will Therefore, on the one hand, Hong Kong people are delighted, but on the other, they have mixed feelings because such a move has seriously interfered with the status of Hong Kong as an SAR where "Hong Kong people ruling Hong Kong" and "one country, two systems" are practised.

Hong Kong people very much hope that a Chief Executive can be elected without event on 10 July and of course, everyone wants to be able to take part. Actually, is it the case that given a replacement, this will bring changes to the bungled governance in the past eight years in Hong Kong? There is a great deal of controversy over this point. Some Honourable colleagues believe that the system is more important than the man and this is the fact. Come 10 July, can we return a Chief Executive without hiccup? There are as yet many unknown factors, therefore, the public have expectations on the Legislative Council and even on the democratic camp that all of us can co-operate and facilitate the smooth election of Chief Executive. However, after the debate yesterday, we have heard the views of many legal experts and insofar as the term of office is concerned, there is a great deal of controversy over the Basic Law. how hard Secretary for Justice Elsie LEUNG tried and how hard and sincerely Secretary Stephen LAM explained to us about the two-year term of office, it is difficult to sound convincing and convince everyone that a two-year term is proper and legal.

In the past, the SAR Government has conducted in-depth studies on the election of the Chief Executive of the SAR and drawn up a piece of electoral legislation. The Basic Law also clearly stipulates that the term of office of the Chief Executive of the SAR shall be five years. However, in order to accommodate the political reality, the law has been distorted and twisted to mean

that the term of office of the newly selected Chief Executive is two years. This is hardly convincing.

Many people have also asked if everybody can be more co-operative and avoid kicking up so much fuss, and refrain from applying for a judicial review or taking any action, but go along with the public opinion in Hong Kong, so that a new Chief Executive can be elected on 10 July? In this way, Hong Kong can from now on have a smooth transition, the economy will recover and everyone will be happy. However, we must not forget that the rule of law is a very important element in Hong Kong's success. We cannot sacrifice the rule of law for the sake of an election. If there is no rule of law, there will be no difference between Hong Kong and other cities in China, nor will there be "one country, two systems", "Hong Kong people ruling Hong Kong", or the possibility of remaining unchanged for 50 years, and the authority of the Basic Law will also be reduced to naught.

Although some people have asked others not to apply for any judicial review or cause any trouble, we all know and are well aware that Chief Secretary Donald TSANG will be elected the Chief Executive of the SAR without incident. If Members have listened to a radio programme this morning, they will know that the performance of Chief Secretary TSANG in the Legislative Council yesterday came as a breathe of fresh air to many members of the public and they have high expectations on him. However, the question is between our judicial system and the smooth election of Chief Secretary Donald TSANG as the Chief Executive, which is more important. I believe whoever we ask will consider upholding judicial independence and the rule of law in Hong Kong to be important above all else. The rule of law comes at a price and we must uphold the rule of law steadfastly.

Yesterday, many of us had a dialogue with Chief Secretary Donald TSANG and the Secretary for Justice. The explanation given by the Secretary for Justice was a bit strained. How can one simply go to Beijing, look for one or two legal experts in the Central Government, listen to their views and then overturn the electoral legislation that the SAR Government has drawn up so meticulously and with so much effort? How can people disown what they have said before by saying something else these days? If what they said were true, then it means that the officials in the Department of Justice of the SAR, as well as the Legislative Council, have taken their work lightly, because we went so far as to pass a piece of legislation that was totally at variance with the legislative intent

of the Basic Law. I believe that we should not destroy the judicial system for the sake of expediency and wantonly insult the rigourous approach and authority of our judicial officers. I think this is an insult on the legal sector in Hong Kong.

Most importantly, if an election is to be held on 10 July, what we have to do is to consider how to make it legitimate. The democratic camp has proposed making amendments to the Basic Law, whereas some members of the public (including some of Honourable colleagues) intend to apply for a judicial review. Some people are of the view that if a judicial review is sought, then this should be done early because it is not possible to take any legal action in the Court when the relevant electoral legislation is being amended or drawn up. What I mean is that if the Government wants to hold an election of the Chief Executive, the term of office of which I just cannot tell is the second, second-and-a-half or third, it must sort out the legal procedures clearly, otherwise, the smooth conduct of the election will be difficult. The SAR Government, rather than the people who pose a legal challenge, will have to bear the ultimate responsibility.

In addition, what we are striving for is a fair election by universal suffrage. We want to elect our Chief Executive through "one person, one vote". If an election by universal suffrage were to be held on 10 July and the candidate backed by the SAR Government were Mr Donald TSANG, I believe he would still win the election without incident. This being so, what do we have to be afraid of? Why do we have to fear? Why do we not hold a fair and honest election, so that Hong Kong people can elect their Chief Executive through "one person, one vote"?

In fact, democracy is nothing to be scared of, what is scary is using the law as a political tool to put in place a Chief Executive on which the fate of all Hong Kong people and Hong Kong rest. I think it is very unconvincing to do so and the rule of law will be at stake. Even if we cannot secure the election of the Chief Executive by universal suffrage and "one person, one vote", I still hope that the SAR Government will ensure that the election to be held on 10 July will be fair, honest and open.

How can a fair, honest and open election be ensured? As we have suggested, the situation that occurred when Mr TUNG ran for a second term as the Chief Executive must be avoided and there must be more than one candidate in the election. Mr LEE Wing-tat has said that even the DAB supports

nominating one more candidate. If the DAB wants to nominate a candidate, this is just like lifting a finger unless they have no say over the 130 votes in their hands and the way they nominate and vote is manipulated by other people. Of course, I do not believe or hope that this is the case. They definitely have the opportunity to nominate anybody to compete for office of the Chief Executive of I do not know which term, for example, they can nominate Mr Jasper TSANG or Mr TAM Yiu-chung. Mr MA Lik once said that Mr Jasper TSANG and Mr TAM Yiu-chung were qualified to become Secretaries. Since they are qualified to become Secretaries, of course they are qualified to become the Chief Executive.

Just now, Mr LEE Wing-tat also said that the Liberal Party had several dozen votes as well as a business network which will enable it to secure 100 nominations. I believe that if the Liberal Party wants to nominate a candidate but they do not have enough nominations, perhaps the democratic camp can also lend its support. I do not support any candidate of the Liberal Party but I support people standing in the election so that it can be held in a fair, honest and open manner.

The most important thing is still the rule of law. I think that Secretary for Justice Elsie LEUNG exerted a great deal of effort yesterday and I have to thank her. Although she tried very hard to persuade us or lecture us, I believe that even the layman who has no knowledge of law but has common sense, not to mention people with such knowledge or legal professionals, once they have read the Basic Law or the relevant electoral legislation, will know that this is a counter-productive attempt at covering things up and it lacks persuasion. This will damage the authority and credibility of the Secretary for Justice.

Concerning Secretary Stephen LAM's admission of his past mistakes, I am most sympathetic to him because he is not at fault. If he were, I would be the first person to point out his mistakes. His answer in response to the question posed by Ms Emily LAU that the term of office of the Chief Executive was five years was absolutely correct. The Secretary has to believe what he did is correct. How can he disown what he said in the past? If what one did in the past was not right, it is fine to disown what one did in the past. Many of the things that the Secretary did was not right, including those concerning the Fourth Report, electoral legislation and remarks such as functional constituency elections are tantamount to direct elections. All those things were wrong, but

when he said that each term of office of the Chief Executive is five years, that is absolutely correct. If one does something wrong, one should not be afraid of admitting it. How can one deny what one said in the past? However, I also have to thank the Secretary for what he did yesterday because when Secretary for Justice Elsie LEUNG fielded a question from Ms Audrey EU, she said that the Chief Executive of the next tenure — we are now all confused and do not know if it should be a new term of office or a new Chief Executive assuming office — his term of office can be 12 years at the longest. I do not know if anyone had subsequently tried to find Secretary Stephen LAM to reason with him, nor do I know if it was a slip of the tongue or he was being politically incorrect, but at that time, he corrected Secretary for Justice Elsie LEUNG immediately, saying, "Not 12 years, this is not necessarily the case. We have already asked Beijing." We are grateful to the Secretary for being so frank and telling us that the final say in this election in fact rests with the Central Government in Beijing. really the case, then it is really pathetic. Therefore, I hope it was only a slip of the tongue by the Secretary yesterday, however, I also call on him to insist on his stand, since what is right is right. In the past, the Secretary was always like When he argued with us, he would maintain that he was right even though he was not, however, this time, he is right but he did not insist. Secretary said five years, he was right and he has our total support.

Thank you, Madam President.

MR LAU CHIN-SHEK (in Cantonese): Madam President, in today's adjournment debate, Mr LEE Cheuk-yan will talk about the system and the responsibilities, whereas I will talk about the requirements for the future Chief Just now, an Honourable colleague asked me what I would say in my speech today, to which I replied I would discuss the requirements for being a Chief Executive. This Honourable colleague asked whether it was a bit early to I always think that it is better to say what has to be said talk about this now. Mr TUNG has resigned and the new Chief Executive will assume office early. Although it is possible that the Chief Executive will be elected by 10 July (perhaps a little bit later), as Mr Albert CHENG has said, no matter if we are willing or not, and no matter if he is returned by universal suffrage or otherwise, the new Chief Executive will still be selected. Many people have said that the requirement for being the Chief Executive is that he must possess the abilities and he must have his own team or cabinet. I am not going to dwell on this area again.

Madam President, yesterday, in a special meeting of the House Committee (I do not know if you have ever observed the meetings of the House Committee), a certain Honourable colleague mentioned the prospect that there may no longer be any loyalist party. Others said that since the acting Chief Executive was so competent, he may no longer require our help, leading to speculation on whether discord between body and mind in the centre of power will arise. President, in order to govern Hong Kong properly, the most important point is not whether the Chief Executive has the support of any one party, since insofar as the development of political parties in Hong Kong is concerned, party politics is still immature and there is no ruling party in Hong Kong. coalition of the past can be considered a calculated marriage of strategic partners rather than a partnership founded on common convictions that can stand the test Therefore, the success or otherwise of the Chief of good and bad times. Executive will depend on whether he can unite Hong Kong people. The major factor is whether he can foster cohesion among the Hong Kong public, irrespective of their political affiliations and wealth, so as to make Hong Kong Madam President, the only thing that has to be pointed out clearly to the future Chief Executive is that he is not just the Chief Executive of the Liberal Party, or the Chief Executive of the DAB, the democratic camp, LI Ka-shing or LO Siu-lan but he should also be the Chief Executive of Hong Kong people.

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

Madam Deputy, many members of the public were very dissatisfied with the governance of Mr TUNG Chee-hwa in the past seven years when he was in office, however, even as they censured him, most people said that Mr TUNG is a good man. Sure enough, a good man does not necessarily make a good political leader. However, we must affirm that a good political leader must be a good man. What does a good man in politics mean? That means he will not take reprisals against people and he will not use his special power to clamp down on dissent. For this reason, no matter how bungling Mr TUNG was in his governance, the fact that he did not take reprisals on people is worthy of our recognition. Mr TUNG did not hit out at his political opponents through law enforcement or punitive agencies, nor did he ask the Inland Revenue Department to harass people or organizations opposed to him for political reasons; nor did he abuse the power of the Independent Commission Against Corruption in an

attempt to flush out his political opponents, nor did he intend to re-establish the Special Branch and use it as a tool to suppress dissent. I repeat that he has never taken reprisals, nor has he abused his powers to target dissent.

Madam Deputy, no matter how competent the future Chief Executive may be, I believe the two foregoing points will be his litmus test and are the essential qualities of a genuine political leader. These are my expectations on the future Chief Executive and I have spelt them out for the record. Thank you, Madam Deputy.

MR ALBERT HO (in Cantonese): Madam Deputy, the sudden resignation of Mr TUNG Chee-hwa has brought a shock and a pleasant surprise to Hong Kong. We are shocked in that nobody would have expected that Mr TUNG Chee-hwa would resign suddenly, particularly at this point in time. It has brought a pleasant surprise because just when many people were still doing a countdown and wondering for how long they would have to endure hardships before the term of Mr TUNG Chee-hwa would end, the "Chee Hwa chaotic era" has quite unexpectedly come to an early end. So, to the people, his resignation is not only acceptable but is also something over which they should rejoice.

In fact, the unfortunate thing about all this is that, during Mr TUNG Chee-hwa's governance over the years, there was no merit on his part to speak of whether in his way of handling things, his position in formulating policies, and even his decision to accord priority to many issues or the handling of crises, and so on, no one would have expected that he would follow the "TUNG Chee-hwa's style" in stepping down, as he had dragged things on and muddled things up. Even when his stepping down had become the talk of the town all over the territory and the world, he could still respond by a mere "Good Morning" or even saying that an explanation would be given in due course later. How could this be the reaction required of a capable and responsible Chief Executive? really do not understand why he could not give an explanation to the general public in Hong Kong to whom he should be accountable. I think it is indisputable that when he openly announced last Friday that he had submitted his letter of resignation, he had already paved the way for his resignation long before. Of course, it is obvious that the arrangement made for him to run in the election of Vice Chairman of the Chinese People's Political Consultative Conference and be elected is an important part of the arrangement for his resignation.

In fact, when many people in the political circle had continuously disclosed details privately or openly, and when his friends and even some so-called private doctors of his had openly talked about his health conditions, and even when some eminent figures in the real estate sector had taken the lead to hint at his resignation, why could he still consider it unnecessary to make a candid explanation? This is indeed most unsatisfactory and most depressing to the people of Hong Kong. Certainly, what makes us feel all the more regrettable is that even in the highest parliamentary assembly where legislation is enacted and political issues discussed, a place where public opinions are expected to converge and where open debates are conducted with the representation of public opinions, it was impossible for this issue to be debated early for Members to speak their minds freely. In this connection, we strongly regret the ruling made the President of this Council (of course, I do not mean you, Madam Deputy).

However, Madam Deputy, the resignation of Mr TUNG Chee-hwa has become a fact. What we know is that he resigned for health reasons. Many people have doubts about whether or not he resigned truly for health reasons. Some people even have doubts as to whether his doing so is consistent with the specific requirement of the Basic Law, that is, whether he resigned is truly because he had lost the ability to discharge his duties. I personally think that if a person, or the Chief Executive, considers that he cannot remain in his office any longer, whether for psychological or physical health reasons, then I think it is unnecessary to verify it any further, because it is his own feeling anyway that he cannot discharge his duties. Certainly, many Hong Kong people are also worried about whether this incident is the result of political pressure from the We will never know the truth. But I still hope that through this debate today, mainland officials will understand the concern of the general public for "one country, two systems". Even though some people have joked that the Central Authorities have after all done a good thing by asking Mr TUNG Chee-hwa to step down early, disregarding whether or not the Central Authorities were right in so doing, I hope that the Central Government will understand that Hong Kong people also attach importance to "one country, two systems" and "a high degree of autonomy". It is not our wish to see any Chief Executive in the future being forced to step down due to political pressure from Here, I wish to emphasize that if our Chief Executive the Central Authorities. is truly returned by the people, I do not think that he who has the people's mandate would succumb to pressure from the Central Authorities so easily and resign on his own initiative.

Madam Deputy, in Mr TUNG Chee-hwa's policy speech recently, I could hear that he had taken great pains to criticize himself. The criticisms made of himself were very comprehensive. He said that he had failed to establish the vision of "people-based" governance, and that he had fallen short of "thinking what people think" and "addressing people's pressing needs"; he admitted that he was not sufficiently mindful of the impact of some policies on the community's capacity to bear and the potentially controversial nature of these policies, that he had introduced too many policies too hastily and finally, he said that he lacked a sense of crisis, political sensitivity as well as the necessary experience to cope with emergencies and had therefore reacted indecisively. All these are very comprehensive, thorough self-criticisms. Obviously, it is indeed very good that the Chief Executive is willing to do this, if he can truly take stock of experience and thoroughly correct the mistakes and also rectify his shortcomings and start things all over again. But at the same time, seeing that the highest leader having admitted such incompetence on his part, I, as I said in my speech in the relevant motion debate, did wonder how he could stand the embarrassment and continue to remain in his office. Now it turns out that he has stepped down early and resigned early without completing his term of office.

The staying or leaving of Mr TUNG Chee-hwa is a very personal issue. Today, the problem that we face is institutional. The future Chief Executive will continue to be selected by a coterie — he would be selected on the surface but underneath he would actually be handpicked by the Central Authorities. This Chief Executive will continue to rely on his personal relationship with the Central Authorities and to rely on his many personal ties in governance.

The Central Government used to hold the misconception that if they could find an international mogul who is loyal to the Central Authorities, he could certainly take this economic city forward, for he, being a capitalist, certainly knows about capitalism and hence, he would naturally direct all efforts to the economy and correctly shy away from political issues. But it has been proven that economic issues still involve plenty of political issues, for the economy is inseparable from politics. As we can see from the West Kowloon project, the profit control scheme of the power companies, the increase or decrease of transport fares, and so on, how can these issues be separated from politics? Certainly, the handling of many political issues may directly affect the effectiveness of his governance and hence affect investors' confidence in him. This has precisely reflected the serious mistake of putting in this post a person who completely lacks political experience and who has no political convictions at

all. I strongly believe that this is the most serious mismatch of human resources in the history of the Hong Kong Special Administrative Region (SAR) and in respect of the most important position of political powers. In fact, there have been many cases of mismatch of human resources in the SAR Government. But who would have expected that a mismatch of human resources would exist even in the top post? This is most regrettable.

Madam Deputy, the question of whether the term of office of the new Chief Executive should be two years or five years has aroused extensive I believe colleagues who are legal experts will later discuss in depth I only wish to emphasize that to people like us who the legal issues involved. insist on a term of five years, we have considered the issue purely from a legal perspective and there is entirely no political consideration. We think that the rule of law is the most precious tradition of Hong Kong and also the cornerstone of perpetual stability in Hong Kong. This issue cannot be handled for the sake We must face it solemnly and seriously. of political expediency. unfortunately, the interpretation by the Secretary for Justice and the Secretary for Constitutional Affairs, who had all along insisted that a term of five years should be applied as a general rule in all circumstances, have made a 180-degree change. After discussing it with legal experts in the Mainland in private, the Secretary for The many arguments presented by the Justice has changed her position. Secretary for Justice were premised on information in unofficial and non-public files, based on which she had made indirect and rather far-fetched inferences. The Secretary for Justice said that this should be interpreted in accordance with This, I beg to differ. I really think that this is an continental law. interpretation of law with the characteristics of Chinese socialism. That is, law is considered a tool of political governance or manifestation of the wish of the As long as a conclusion is drawn, no other justification is important. What is most important is that when the ruler said that something is correct, then it is absolutely correct.

Madam Deputy, we can see that in handling issues relating to the Basic Law, the attitude of the Government has always been very solemn and clear. I believe that last year when Ms Emily LAU asked the Secretary for Constitutional Affairs in writing again as to how long the term of the Chief Executive would be if a by-election was held (nobody would have guessed at the time that a by-election would really be held), the Secretary for Constitutional Affairs explicitly stated that it should be five years in his view. Judging from the very cautious attitude of the Secretary for Constitutional Affairs and Secretary for

Justice in handling these issues, we do not believe that they had not conducted a comprehensive study beforehand, and I think they had even communicated with mainland experts, only that the mainland experts who gave them opinions at the time did not take account of the political considerations involved and so, they agreed on a term of five years. I hope the Secretary for Constitutional Affairs and Secretary for Justice can tell me whether they had discussed this with the mainland experts before giving a reply to Ms Emily LAU's question last year. The situation now is that when the Mainland has not exercised the power to interpret the Basic Law, the Hong Kong Government, in order to obviate the need for an interpretation of the Basic Law or out of fear for such an interpretation, has nevertheless given in and changed its position on its own initiative, a position in which it has long believed and which is supported by legal justifications.

Madam Deputy, I hope that the Acting Chief Executive can expeditiously amend the Prevention of Bribery Ordinance by introducing provisions applicable to the public office of the Chief Executive. I also hope that regulations can be drawn up expeditiously to regulate the activities of the Chief Executive after his retirement in the future and to guarantee that the future Chief Executive will disclose his assets and also make arrangements to avoid arousing suspicions. Thank you.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Deputy, the resignation of Mr TUNG Chee-hwa has become history. Therefore, many people have said that we should not discuss things that have become history anymore. In fact, I also agree that we should not talk about it anymore. Having said that, however, I think there are still things that we must talk about, particularly the problems that have emerged in the entire process of Mr TUNG's resignation. I personally think that they are very regrettable indeed, and I am also worried that such an approach will cause certain adverse impact on the future of Hong Kong. So, I must rise to speak.

The first point that I would like to talk about is that Mr TUNG indeed has not given the public a clear account of the circumstances surrounding his resignation, thus prompting many members of the public or colleagues in this Chamber to ask many questions. Did he resign of his own accord or was he compelled to do so? Certainly, many colleagues feel that his personal wish should be respected if he did it of his own accord. But if he did not do it

voluntarily, the problem will be very serious, because I believe Members all understand one thing and that is, the principles of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" are most important to us. If his resignation was not voluntary, I am worried about whether this will deal a blow to "one country, two systems", "Hong Kong people ruling Hong Kong", and "a high degree of autonomy". But so far, no clear explanation has been given to dispel the doubts. That is why many people have been worrying about this. In fact, there is reason for us to be more worried about this, as there is the question of two years or five years which I will discuss later, and also the series of problems revolving around it. So, on this point, I must say that it is very regrettable.

What is my second regret? After Mr TUNG Chee-hwa had taken office, he repeatedly stressed that he would improve the relationship between the executive and the legislature. But much to our regret, in this incident of his resignation, he first held a meeting with Members of the Executive Council and called a press conference afterwards, and that was all. He has completely ignored this monitoring body of the Legislative Council. Why? Some people said that since he would be leaving, it did not matter even if he ignored us. Of course, it does not really matter if it is Mr TUNG alone who ignored us, as he has not shown much respect to the Legislative Council before and so, there is no big problem if he shows disrespect to the Legislative Council when he is going to Then what is the problem? I am worried that this attitude will become a habit or a tradition and as a result, the new Chief Executive will also show disrespect to the Legislative Council, because it is most easy to just follow past examples. Since that is the tradition, why is it necessary to change it? my worry and concern.

In fact, at the special meeting of the House Committee yesterday, I felt that even the Secretary of Department and the Director of Bureau did not show much respect to the Legislative Council either, and they did not attach great importance to the spirit of the rule of law and the questions posed by colleagues. It is because we can see that in the controversies over the question of two years or five years, two years and five years are indeed just a number, and this is not a very important issue. But why do we attach so much importance to it and call for discussion on this question of two years or five years? The most important thing is the rationale behind all this. We can see that on this question of two years or five years, although the Director and the Secretary had spoken at length

to explain how they had worked very hard to address this problem, many problems have, in fact, remained unsolved. It is because if we have to do something forcibly and if we must distort the original system in order to do so, the problem cannot be solved no matter what has been done.

Why do I say so? It is because I asked a question yesterday about the terms of office of the Election Committee and the Chief Executive. some time lag between their terms of office, a gap of two years will emerge. other words, the term of office of the Election Committee will end on 30 July this year, whereas that of the Chief Executive will originally end in 2007. How should this time lag of two years be handled? I remember most clearly that Secretary Stephen LAM said in reply to me that this gap would indeed be a problem, but there has yet been any solution to this problem. I do not know if my memory has failed me as to what Secretary Stephen LAM had said, but if he did say so, then there will be a problem. The problem is not that a gap will The problem is why Secretary Stephen LAM would say that there would indeed be the problem of a gap. That is where the problem lies. do I say so? It is because the Secretary and the Director have repeatedly stressed that the Basic Law has provided a clear and complete answer to this question and that the Chief Executive Election Ordinance has also dealt with all the problems expressly and so, there should not be any problem. But as these words still ring in our ears, telling us that there would be no problem, then why will there be a gap of two years?

There is a problem indeed. Yesterday, I cited an example, and Mr Frederick FUNG also cited one. For example, what will happen if the election scheduled on 10 July is postponed for several days because of typhoon or heavy rain? Can the incumbent members of the Election Committee still cast their votes? They cannot do so under the law. What should we do if they cannot vote? I would like to make an assumption which may be a rather bad scenario. If, in the next two years, the new Chief Executive will, like Mr TUNG, leave his post before his term of office expires because of health problems, what should we do? Do we have to re-elect a new group of members to form the Election Committee for the purpose of selecting a new Chief Executive? If that is the case, there would be plenty of problems.

The Secretary for Justice, Ms Elsie LEUNG, said yesterday that originally, the reason for the five-year term of the Election Committee to tally with the

five-year term of the Chief Executive is to ensure that the Chief Executives selected will not be very different, and to avoid a situation where LEUNG Kwok-hung is selected in the end although members of the Election Committee first voted for Jasper TSANG. But in case the scenario as in my earlier assumption occurs, that is, if the new Chief Executive stepped down one year after he had taken office for whatever reason, what should we do? Should we ask the original members of the Election Committee to stay on the ground that this is a special case, so that they can select a new Chief Executive? If so, it will be inconsistent with the original legislation and conflicts will arise. But if a new Election Committee is formed, it will not meet the requirement of the Secretary for Justice of having a new Chief Executive returned by the same group of members of the Election Committee to serve the remainder of the term, in order to ensure that the discrepancy will not be too big.

So, judging from all these developments, we do see that there is a problem. The problem lies not just in the existence of many conflicts, but the fact that the entire idea smacks of sheer misrepresentation and distortion. This is what I am Regarding the resignation of Mr TUNG, members of the most worried about. public should actually feel very happy about it. The people hope that there will be a new Chief Executive and that this new Chief Executive will not repeat the mistakes made by Mr TUNG previously, and this, they think, will be very good. They also hope that they can have the opportunity to vote for the candidate whom they like, and this, they think, will be even better. But apart from this problem, we feel that problems also exist in the system and the rule of law. We cannot just bury our heads into the sand like ostriches do, and then say that all the problems are fixed. It is not my wish to see the SAR Government taking stopgap measures to address the problems or only adopting an ad hoc approach.

In fact, from Secretary Stephen LAM's reply yesterday, we can apparently see a phenomenon and that is, steps should be made to address one problem first, and the problems that may arise in the future should be tackled only in the future, and after all, that may be a hypothetical question, as the Chairman put it yesterday. Madam Deputy, I do hope that it is truly a hypothetical question, but today, when we are talking about the system and the rule of law, we just cannot shun these hypothetical questions. Indeed, it is not our wish to see this problem, but very often, we must prepare for the worst. In case there is really this problem, what should we do? This question just cannot be evaded. Nor can it be ignored. However, the Director and the Secretary appeared to be saying that

they would not attend to this problem for the time being, for they have to address the problems concerning the election on 10 July now and therefore, they will take care of the ensuing problems only afterwards. If such an attitude is adopted, then I think they are really irresponsible and they are really doing a disservice to Why? It is because they have failed to truly uphold "one Hong Kong people. country, two systems", "Hong Kong people ruling Hong Kong", and "a high degree of autonomy". In fact, with regard to "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", it is not my wish that they are just slogans. I hope they can be truly implemented, but when will they be implemented? Their implementation is all the more necessary at the critical moment. But at this critical moment, the Secretary and the Director are only chanting empty slogans. They are only telling us repeatedly that we must attach importance to "one country, two systems", "Hong Kong people ruling Hong Kong", and "a high degree of autonomy". But how to uphold "one country, two systems", "Hong Kong people ruling Hong Kong", and "a high degree of autonomy"? How will the Secretary and the Director convince us that they are genuinely working for this cause? So, with regard to Mr TUNG's resignation, while it is pointless to further discuss some issues that are already history, the after-effects and problems left by this incident are indeed voluminous and very serious and must therefore be addressed squarely.

- So, I think it is very good that we can have this opportunity today to discuss this issue. We hope that it is our common objective to consolidate the foundation of the rule of law. I hope that insofar as the system is concerned, we should not do something out of expediency only to pander to the wish of a small group of people. I hope that the system can be compatible with the overall interest of the community and only in this way will it be meaningful. Certainly, how can we meet the overall interest of the community? I have raised a number of points and I hope Members can discuss them:
- 1. Regarding my proposal on the mechanism for amending the Basic Law that should be activated in Hong Kong, we have not seen any follow-up action. The parties concerned have promised before that they will look into and discuss this issue. But what has been done so far? Nothing at all. So, I hope the Bureau Director can take this opportunity to tell us what progress has been made in this regard? What will be the mechanism for amending the Basic Law? Can a mechanism be put in place afresh? We hope to have the opportunity to activate the mechanism for amending the Basic Law, so as to propose amendments to provisions in the Basic Law which we consider not in order.

2. This is the most important point and a point that I have been repeating. It concerns the election of the Chief Executive. I hope that the Chief Executive can be returned by all Hong Kong people by "one person, one vote". Only in this way can members of the public express their wish and aspirations, and it is also the best opportunity for us to raise social issues for discussion and analysis. Now, it is most important to make the Chief Executive understand who will be watching him in the course of his work in the future. It is because not only a small group of people will be watching him. The entire community and all members of the public will be watching him and so, he must be responsible and accountable to the community, instead of acting in a slapdash manner as it was the case in the past.

Madam Deputy, I so submit.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, TUNG Chee-hwa is a tragic character in the drama of reunification, a character who steered Hong Kong into seven years of pains and sufferings.

Hong Kong has suffered not only political and economic losses but also the death of its "high degree of autonomy". Moving afore from the backstage, the Central Authorities have turned "Hong Kong people ruling Hong Kong" into "Beijing officials ruling Hong Kong", deposing TUNG Chee-hwa and replacing him by Donald TSANG. They have been so peremptory and ruthless, but have they ever considered "Hong Kong people ruling Hong Kong"? What has become of our "high degree of autonomy"?

Hong Kong people are so miserable. Whether in the case of TUNG Chee-hwa's ruthless ousting or Donald TSANG's meteoric rise to power and

fame, we have always been kept in the dark, denied of any access to the truth, of any respect and of any participation. All along, we have been mere onlookers who can only watch silently how TUNG Chee-hwa's leg ailment has helped him ascend to the Chinese People's Political Consultative Conference leadership and how a whistling Donald TSANG is going to become the Chief Executive that can control our future and destiny. But we in Hong Kong can only resign ourselves to the reality that politically, we are just second-class citizens with no votes and choices. Such is the misery of Hong Kong people.

The people of Hong Kong have finally come to realize that there are no democracy and "high degree of autonomy" in Hong Kong. The State has long since practised "one country, one system" and "nationalized" all major political issues, such as the democratic election of the Chief Executive based on universal suffrage. According to Donald TSANG, his administration will just be a caretaker government. The use of the word "caretaker" is indeed very clever—a "caretaker" who will see to it that the Special Administrative Region Government will not defy its superior and go beyond the parameters set down by the Central Authorities.

If we look at the term of office of the Chief Executive from this angle, we will realize that the controversies over its length — five years or two years — are absurd from the legal point of view and fruitless from the political perspective. Although the Basic Law and the Chief Executive Election Ordinance both provide that the term of office of the Chief Executive shall be five years, the Central Authorities have nonetheless sought to distort the law for political reasons, bending the law to suit its political purposes. In future, people may not necessarily interpret Basic Law provisions to the letter. Instead, they may be interpreted in the interest of political ploys, the recollections of mainland legal experts, the so-called legislative intent and pure speculations about the intended messages of State leaders.

As early as the drafting stage, it was already emphasized that the provisions of the Basic Law of Hong Kong "should preferably be general rather than specific". As a result, the Basic Law is marked by all sorts of grey areas susceptible to misinterpretation. Since the reunification, the Standing Committee of the National People's Congress has twice interpreted the Basic Law, each time causing huge repercussions in Hong Kong. By exercising their ultimate power of interpreting the Basic Law, the Central Authorities have been

incessantly curtailing the "high degree of autonomy" enjoyed by Hong Kong. In the controversies over the Chief Executive's term of office, we have once again witnessed the very peremptory nature of the Central Authorities and how this has led to Donald TSANG's apology, Elsie LEUNG's volte-face, Stephen LAM's speechlessness and the "repentance" of various apologists. All these people have been making a collective effort to cleanse the Common Law to suit the thinking of the leaders. If this continues, the law will be rendered largely meaningless — the rule of law will be turned into the rule of man, thus smashing that very precious Zisha Clay Teapot called the rule of law in Hong Kong.

Two years or five years notwithstanding, Donald TSANG has already started to whistle, ready to assume office as the Acting Chief Executive or even the caretaker Chief Executive. The most notable features of Donald TSANG are his allegiance and competence. Allegiance here means his loyalty to the boss. And, competence refers to his administrative competence. But the people of Hong Kong all hope that the Chief Executive can be loyal to the people, and that his competence can be applied to governing Hong Kong. In regard to constitutional reforms, Donald TSANG has just been faithfully executing the order of the Central Authorities, in total disregard for Hong Kong people's aspiration to democracy. He is not up to scratch. Concerning the row over the West Kowloon Cultural District development, what he has displayed is nothing but his competence in currying favour with super-consortia, in total disregard, again, for all the queries about the transfer of benefits from the Government to business. Once again, he is not up to scratch.

The greatest lesson that Donald TSANG can learn from TUNG Chee-hwa's seven years of turbulent administration is this: The staunch backing of the Central Authorities cannot be relied upon, and neither can any majority support in a coterie election. When JIANG Zemin flew into a rage in a bid to support TUNG, when TUNG Chee-hwa was re-elected by as many as more than 700 votes, who could have imagined that he would have to step down in such great haste and with such humiliation and despondency? Public opinions can be compared to water, which can both float a boat and turn it over. After all his whistling, can a self-satisfied and elated Donald TSANG still remain calm and alert, wary of all the potential risks around him?

Anyway, the stepping down of TUNG Chee-hwa is still very happy news to everybody. For seven years since the reunification, Hong Kong has been battered by all sorts of difficulties and hardship brought about by recession, and it has also witnessed the decline and degeneration of society. Everybody hopes that all the adversities are over by now, and that Hong Kong can thus start afresh. But Donald TSANG will be in charge of a highly unstable government. As we all know, the two-year tenure actually implies that the Central Authorities are not without mistrust, that the competition for the post of Chief Executive will still be fierce, and that political struggles will persist. All this will bring instability and anxieties to the administration of Donald TSANG.

The vying for the post of Chief Executive aside, the people are most concerned about their own livelihood and well-being. Donald TSANG is a preordained Chief Executive who does not have any direct mandate from the people. For this reason, he must respect the public opinions expressed in the Legislative Council and formulate policies in keeping with the people's aspirations. All along, Donald TSANG has not paid too much attention to the views of the Legislative Council, as evidenced by his peremptory approach to the West Kowloon Cultural District development, which obliged Mr James TIEN to criticize him for "covering up everything with his hand". After Donald TSANG has become the Chief Executive, will he still obstinately defy public opinions? If Donald TSANG wishes to improve the relationship between the executive and the legislature, he must bear in mind that "receptiveness, humility and calmness" are the only keys.

The greatest cause of conflicts between the executive and the legislature is in fact the long-time marginalization of the democratic camp. prevented the democratic camp from becoming a force of checking the Government and building up Hong Kong. The Central Authorities have been ostracizing some members of the democratic camp because of the 4 June incident, with the result that for 15 years, they have been unfairly and unreasonably barred from returning to the Mainland. Those who died in the 4 June incident are the martyrs of the Chinese people. The hope of the democratic camp for a vindication of the 4 June incident symbolizes the conscience of all Chinese At the end of the day, there is bound to be a fair historical appraisal of The authority of Donald TSANG is limited, so he may not be their aspiration. able to help the democrats to return to the Mainland, but at least, as the head of the SAR, he should not tread the same old path of TUNG Chee-hwa and demean the democratic camp, which represents the opinions of 60% of the electors.

Premier WEN Jiabao has recently remarked that the compatriots of Hong Kong must work together with one heart for their own development. Does this imply that the root causes of the decline of the SAR during TUNG Chee-hwa's times were in fact his rejection of the democratic camp, his bias towards certain opinions and his peremptory, paternalistic style? Does this imply any awareness that the dominance of the "royalists" in the Legislative Council and their attempts to suppress public opinions were the main reasons for the detachment of the Government from the people? Today, at this very time of "dynastic change", please give Hong Kong people an opportunity to start afresh, to strive for common grounds while preserving their differences, and to work together with one heart. It is hoped that the people's views, as represented by the democratic camp, can be appropriately heeded and turned into a concerted force promoting development.

Hong Kong is our home. It is the very place where we were born and brought up, a place we all love. The seven years of chaos under TUNG Chee-hwa has broken the hearts of all those who love Hong Kong. At a time when China is embracing itself to reform and opening, when the rest of the world is progressing so rapidly, we will certainly fail history and our future generations if we still permit ourselves to mark time, still allow this Pearl of the Orient of ours to lose its lustre. Working together should not merely be the wish of a well-intentioned State leader. Instead, it should imply the introduction of a democratic system for resolving differences and forging a consensus. This is the only way in which we can foster the social unity and cohesion necessary for our common development.

What the democratic camp pursues is not power for itself but power for the people; not a place as the ruling party but simply a choice for the people. Donald TSANG is leading Hong Kong to a crossroads in its history — a democratic political system for the people? Or, the continued denial of such a system? Such is a historic decision to be made by Donald TSANG. The trend of democracy is just like a vast and rapid river of no return, one which Donald cannot possibly avoid. Beware!

Madam Deputy, I so submit.

MR FREDERICK FUNG (in Cantonese): Madam Deputy, the resignation of Chief Executive TUNG Chee-hwa has recently become a focus of concern in Hong Kong and even the international community. People and the mass media

are mostly speculating on the choice of successors and the problem of gearing-in within the executive authorities. But the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I am concerned more about the term of office of the next Chief Executive — whether it should be two years or five years. And, we are also very concerned about whether all the related disputes will impact on the constitutional system of Hong Kong or lead to any constitutional crisis. The ADPL and I both think that when considering the term of office, the Hong Kong Government and the Central Government should base their discussions and studies on two fundamental principles.

First, any decision on the term of office of the next Chief Executive must be based on solid and established principles of law. In other words, on the part of Hong Kong, when the Administration determines the term of office, it must make reference to the relevant provisions of the Basic Law and use the procedures and wording of relevant local legislation as the core of discussions. No attempt whatsoever must be made to fabricate or invent any legal justifications.

Second, when making any decision on the term of office of the next Chief Executive, the Central Government and the SAR Government must adhere strictly to the principle of "one country, two systems". In the interpretation of any relevant legislation, they must respect and follow Hong Kong's time-tested common law judicial system, the continued application of which is guaranteed They must uphold the judicial spirit when attempting to under the Basic Law. establish the legality of any term of office. Unfortunately, if we examine the Secretary for Justice's recent remarks on the term of office of the Chief Executive (especially those made on last Saturday) against these two legal principles, we will notice that the SAR Government has actually given up the judicial autonomy of Hong Kong entirely, smashing the common law spirit into pieces in the face of the Central Government's authoritarianism, which accords overriding importance to political considerations. The ADPL and I thus find the position of the SAR Government utterly disappointing.

To begin with, Article 46 of the Basic Law reads "The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He or she may serve for not more than two consecutive terms." For reason of this Article, the SAR Government actually shares the view of society in general on the term of office of the next Chief Executive, that is, it also thinks that the term of office should be five years. This can be illustrated clearly by what the authorities said in 2001 when they put forward the Chief

Executive Election Ordinance: If a new Chief Executive is elected to fill a vacancy arising prematurely, his term of office should run afresh for a period of five years.

As a matter of fact, in his reply to our oral question on 5 May 2004, Secretary for Constitutional Affairs Stephen LAM also referred to a five-year term as a requirement, stating to this effect, "This provision applies to any Chief Executive. There is no exception. In the light of the above, any amendment to the Chief Executive Election Ordinance which would provide for a term of office other than that of five years is not consistent with the Basic Law." He also said that the relevant provisions of the Chief Executive Election Ordinance had been reported to the Central Government and the National People's Congress for the record.

The ADPL and I thus think that the wording of Article 46 of the Basic Law, when interpreted in accordance with the common law spirit, can show clearly that the term of office of every Chief Executive should be five years. Whatever the cause of resignation of the previous Chief Executive may be, this interpretation should not be affected. But the SAR Government has chosen to submit itself to the views of mainland legal experts, changing its position and displaying once again that it is completely unable to safeguard the rule of law and the common law spirit in Hong Kong.

Madam Deputy, there have been many rumours that Central Government officials have come to ascribe all political problems in Hong Kong over the past seven or eight years to a problem of governance. I must take such a view with a The emphasis on governance in fact implies that Hong Kong will do much better if a Chief Executive who knows how to govern Hong Kong Mr LEE Wing-tat has already talked about an example people can be selected. cited by people holding this view, the case of Macao. It is often said that since the Chief Executive of Macao is very competent, the governance of Macao is in perfect order, but since the Hong Kong Chief Executive is not good at governance, Hong Kong is in trouble. This way of thinking completely ignores the fact that the problem of governance is not related so much to which person is selected as the Chief Executive. If all was simply about this question, how could we possibly ensure that every time, a person who knows how to govern Hong Kong well can be selected? And, even if we can select the right person this time around, what will happen next time if we select the wrong person?

Central Government officials should realize that the people of Hong Kong have always aspired to the establishment of a democratic political system in Hong Kong, and that the essence of such a system is not an ability to identify the best leader but the assurance that the worst candidate will never be elected. And, even if the worst leader is elected, we will still be able to make him step down. But what has the electoral system consisting of just a coterie of 800 electors proved to us over the past eight years? It has proved that any such system can neither help us pick the best leader nor enable us to ask anyone to step down after his election. Such is the truth borne out empirically by an undemocratic electoral system.

Actually, an electoral system is as much a mechanism for selection as an institution of empowering the elect. The very nature of an electoral system is indicative of the minimum quality of governance expected of a political leader. Madam Deputy, please allow me to cite an example. The case of Hong Kong is quite unique. Usually, in democratic countries, electors are the only source of power, and they can elect their Presidents or Prime Ministers. But in Hong Kong, there are two sources of power. Since the Hong Kong SAR is a local administrative region directly under the Central Government, one source of power is necessarily the Central Government. But at the same time, under the State policy of "one country, two systems", electors are another source of power. What will happen when the number of electors is very small? This is precisely the situation we are currently facing — the election of the Chief Executive by merely 800 electors. I can well imagine that if I were the Chief Executive, I would definitely have all the means and capability required for approaching, winning over all these 800 electors and for following their advice. electors are a source of power and assuming I wished to be re-elected, I would definitely approach these 800 electors, listen to them and heed their advice.

We can notice that every time after he had been elected, the Chief Executive would attend many Chinese New Year gatherings and spring receptions, all hosted by various chambers of commerce and clansmen associations which hold many votes. But he has always been reluctant to attend Legislative Council meetings. There are also some votes here, but they are comparatively small in number and scattered among pro-establishment and anti-establishment factions. This explains why he was so selective. Obviously, his discretion was largely meant to show his close connection with the sources of power. In particular, when he sought re-election, his attendance at these activities would certainly help his canvassing.

However, when the source of power is so enormous as to cover 3 million people, I am sure that no one can possibly meet with all electors during his five-year term of office, even if he keeps doing so every day. Consequently, when contacting electors and listening to their views for the purpose of policy formulation, one is likely to heed only the most popular opinions held by the majority. Members can hence see that the dimensions of the sources of power will definitely affect the governance quality or directions of leaders responsible for making political decisions.

Therefore, if Central Government officials think that poor governance is just a problem unique to a specific leader, I must say that what they have grasped is just one side of the complex politics in this metropolis of Hong Kong; they are still unable to understand the other side of the picture, in other words. Understandably, some are worried that an electorate of 3 million people may lead to the emergence of a political entity similar to that in Taiwan, and that this may result in Hong Kong's increasing detachment from China, or even its ultimate independence. To begin with, given its proximity to China, it is basically impossible for Hong Kong to become independent. Besides, Hong Kong is an extremely affluent society, and although its people are warm and considerate, they are at the same time very pragmatic. Hong Kong is an affluent society made up mainly of middle-class people, and whether from the practical perspective, or as judged from their traditions and voting behaviour, the people of Hong Kong are more on the side of being conservative. What does the Central Government have to fear? Why does it have to show such apprehension about the people of Hong Kong? Why does it not trust the people of Hong Kong and let them elect their own Chief Executive instead?

If Central Government officials still insist that the governance problem of Hong Kong is only caused by an individual leader, not by the political system itself, then this problem will only persist. They may replace TUNG Chee-hwa today and install another Chief Executive that is not quite like TUNG Chee-hwa the day after tomorrow. But then, some time later, there may come yet another Chief Executive that is even worse than TUNG Chee-hwa. In this way, it will never be possible to solve the problem of varying governance standards. I think that in order to solve this problem, the Central Government should grasp the opportunity of Mr TUNG Chee-hwa's resignation and do some rethinking on which type electoral system can ensure a minimum standard of governance acceptable to Hong Kong. What the people of Hong Kong have been fighting for is just an electoral system based on universal suffrage.

Madam Deputy, the Financial Secretary finished announcing the Budget just a few minutes ago. After reading this Budget, I am really scared, because I have been checking it against the recent policy address of the former Chief Executive, Mr TUNG Chee-hwa. Let me just refer to some of the contents of the policy address. The 35th paragraph reads: "Our policy vision is to first promote economic growth and create employment opportunities. Then, through education and training, we seek to provide individuals with the opportunity to give full play to their potential, enhance themselves and free themselves from poverty. The Government also allocates resources for public housing, health care, education and welfare (including the Comprehensive Social Security Assistance (CSSA) Scheme) to weave a reliable social safety net to provide basic protection for those in need."

Madam Deputy, I am sure you are also aware that in the Budget just announced, with the exception of social welfare expenditure, which will see a growth of 2% to 3%, there will be negative growth for many other policy areas mentioned in the policy address, including health care, housing and education. Public housing, in particular, will even see an expenditure reduction of 12% to 13%. Is it really true that one's policies will always end with one's departure? Is it really true that with the replacement of the Chief Executive, the 35th paragraph of the policy will have to be struck out? What is more, it was mentioned by our former Chief Executive, Mr TUNG, in the 36th paragraph of the policy address on inter-generational poverty that in the hope of giving children in poor families equal opportunities of making a reasonable head start in life, a Head Start Programme on Child Development, meant for children under five years of age in poor families, will be launched in the four local communities of Tin Shui Wai, Tuen Mun, Sham Shui Po and Tseung Kwan O on a trial and phased basis.

But how much has the Budget earmarked for this Head Start Programme? There is no mention of this in the Budget. At the Sham Shui Po District Council meeting yesterday, the Deputy Permanent Secretary gave a briefing on the Head Start Programme, disclosing that a sum of \$10 million had been earmarked. I suppose it will be very fine if the entire \$10 million is to be spent on Sham Shui Po. But, sorry, this \$10 million is instead meant for five Head Start Programmes in four local communities. In other words, each local community will only be allocated \$2 million a year, or less than \$200,000 a month, for the provision all the services, rather than just 90% of the services, required by newborn babies and children up to the age of five. And, let us not forget the many different problems we will have to deal with the aftermath of the

implementation of the Head Start Programmes. Post-partum depression is an example. This is a serious problem. Suppose only 10% of newborn babies' mothers were found to suffer from post-partum depression in the past, but then more general check-ups and interviews will be required, so who will be providing these services? Existing Medical Social Workers and health care personnel? If the proportion of mentally handicapped children increases from 10% in the past to 12%, should they all be transferred to schools for the handicapped? In other words, should there be a change from five years to seven years?

**DEPUTY PRESIDENT** (in Cantonese): Mrs Selina CHOW, a point of order?

**MRS SELINA CHOW** (in Cantonese): Madam Deputy, a point of order. May I ask in what ways is the Budget mentioned by Mr Frederick FUNG directly related to this motion debate?

**DEPUTY PRESIDENT** (in Cantonese): Mr Frederick FUNG, can you elaborate?

MR FREDERICK FUNG (in Cantonese): What I am talking about is precisely related to the replacement of the Chief Executive. In his last policy address, the former Chief Executive laid down a set of policies for the coming few years. But I notice that the Budget announced today actually runs completely counter to the policies of the former Chief Executive. I hope that the successor of the former Chief Executive can adhere to the principles laid down in the policy address in the coming year. Therefore, my speech is relevant to the debate topic.

**DEPUTY PRESIDENT** (in Cantonese): Please focus on the motion topic.

MR FREDERICK FUNG (in Cantonese): The example I have cited shows that the Budget is a departure from the policy address. As I have asked just now, does this mean that one's departure will necessarily bring an end to one's policies?

If it is really a caretaker government, it must work like one and adhere to the policy address. The focus of the policy address is the alleviation of poverty. Therefore, allocation of funds should not be stopped, for this will end up creating more poverty. I hope that personnel changes will not lead to any changes in policies. If the Government wishes to foster social stability, it should enhance policies beneficial to the people and improve those problematic ones.

Madam Deputy, I so submit.

DR FERNANDO CHEUNG (in Cantonese): Madam Deputy, it is a precious opportunity that we have today, for we can at last discuss the resignation of Mr TUNG Chee-hwa. Over the past week or so when everyone was discussing this issue, the President of the Legislative Council had nevertheless repeatedly rejected our request for a debate on this issue. To quote Mr TUNG Chee-hwa's words, "the resignation of the Chief Executive is a very, very big issue". Today, everything is over, and the incident has already happened. The Chief Executive back then is not the Chief Executive anymore, and we can only comment on this in retrospect. Certainly, having the opportunity to debate this is still better than not being able to do so at all.

In fact, the entire process of Mr TUNG's resignation does carry great Since he has already resigned, I will not further symbolic significance. comment on the many wrong policies implemented by him during his office, and to quote his words, these policies have caused the public much pain and unease. However, the entire process of Mr TUNG's resignation is indeed bizarre. because when news about his resignation was extensively spread, reported and commented both in the international and local media, he had nonetheless kept silent and the Government had never given any clear response. This incident has dragged on for over 10 days. From the presentation or arrangement of the entire incident, we can see several points very clearly. First, transparency was grossly lacking, and this is precisely symbolic of the SAR Government's *modus* operandi characterized by black-box operation. In this so-called Asian cosmopolitan, the people do not know a thing about the leaving or staying, or the resignation or otherwise of their Chief Executive. Members of the public or even the Legislative Council are just bystanders, and it appears that the whole incident has nothing to do with us at all. The role of the Chief Executive appears to be no different from the Board Chairman of a private company.

Honestly speaking, if the Board Chairman of a listed company resigns, I think the process will even be more transparent with some degree of monitoring. However, the arrangement for the resignation of the Chief Executive of the SAR Government could be so covert. The process of his resignation precisely runs counter to the principles of accountability and people-based governance as consistently stressed by the SAR Government. From its entire presentation, the incident seemed to be manipulated by somebody behind the scene. Obviously, he would not have resigned for no reason, and many arrangements must have been involved. These arrangements are beyond our understanding, and they are certainly not the personal arrangements of the Chief Executive. The Central Government must have been involved in the arrangements. But much to our regret, the Chief Executive appeared to be inhibited from speaking his mind freely. After a week or so, he still did not say a word except "Good Morning". It just reminds us of his reaction after the 1 July march.

Finally, the Chief Executive openly stated that he had health problems and that he had resigned for this reason. We certainly respect his decision. I believe the Chief Executive has good personal ethics or intention. But when he said that he had to resign for health reasons, it seemed that he was not telling the truth. If he truly has health problems, why can he assume the post of a state leader? How can his health recover so quickly that he can take up the post of Vice Chairman of the Chinese People's Political Consultative Conference but cannot remain in the office of the Chief Executive? This is baffling indeed.

Madam Deputy, I think in the entire process, the greatest symbolic significance is that the Chief Executive appeared to have lost himself. His personal wish, his character and even his soul and values all appeared to be of little significance. The entire process seemed to be manipulated. It is indeed impossible for us, being outside onlookers, to have any idea about what actually happened. Regrettably, this symbolic significance can also apply to Hong Kong, for Hong Kong people seemed to have also lost their bearings in the entire process. The staying or leaving of our Chief Executive was not arranged by the Chief Executive himself, and we completely had no part to play in it. After the reunification, we should have, as the leader said, become master of our own house. But why is there this situation?

As we all know, Mr TUNG Chee-hwa has performed rather badly during his governance for the past seven years or so. In fact, his stepping down can be interpreted as a manifestation of people power or the people's will, and this should theoretically be something over which all the people should rejoice. However, we have not seen many Hong Kong people swarming onto the streets or opening champagnes to celebrate the news. I believe many Hong Kong people did feel the urge to do so and they did feel elated, because the stepping down of the Chief Executive represents a new beginning and new hopes after all. But it is precisely because of the lack of transparency, the manipulation, and the black-box operation which have turned "a high degree of autonomy" into "a high degree of intervention" as mentioned by me earlier that Hong Kong people cannot feel joyous. On the contrary, throughout the process, I felt angry and I felt that I was utterly not respected. I feel that Hong Kong still seems to have After the stepping down of Mr TUNG, all that has been left is lost its bearing. There are uncertainties even about such questions as how long the term of the next or succeeding Chief Executive should be and how the entire team of officials should articulate.

The Basic Law does not provide for how things should be handled in the event of the office of the Chief Executive becoming vacant under the present But Article 53 clearly provides that "In the event that the office circumstances. of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law". Article 45 also clearly stipulates that the Chief Executive shall be selected in accordance with Annex I: Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region, which provides for the selection of that "The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He or she may serve for not more than two consecutive terms". I have read the Basic Law, and I do not find any other parts relating to the office of the Chief Executive becoming vacant. on these provisions, the legal profession of Hong Kong is of the view that the term of office of the Chief Executive should be five years; and even the Government had expressed this view when it clearly stated this view in black and white in reply to Ms Emily LAU's question last year. Nevertheless, the Secretary for Justice, Ms Elsie LEUNG, told us recently that after listening to the legal opinions of mainland experts, she considered that it should be interpreted as two years. In fact, on the question of whether it should be two years or five years, I personally do not wish to argue over whether it should basically be two years or five years, and I believe the pro-democracy camp does not wish to do so either, for our focus is on the rule of law.

First, we should act in accordance with the law. If it is clearly stated in law that the term of office is five years, then it should be implemented in Should there be disputes, they should be settled accordance with the law. through legal channels. But much to our regret, in past legal disputes, the Basic Law was nevertheless interpreted on two occasions. These two interpretations have dealt a severe blow to the spirit of the rule of law in Hong Kong. people pointed out that the interpretation by the Standing Committee of the National People's Congress (NPCSC) is equivalent to the decision of the highest Court and that its judgement has the highest authority and so, it is only a manifestation of the spirit of the rule of law. However, I think these people have some misunderstanding. The spirit of democracy is premised on the separation of the executive, judicial and legislative powers. The interpretation of the Basic Law is an administrative means. The NPCSC is not a Court. is it the highest Court. So, the NPCSC's interpretation of the Basic Law is an administrative act interfering with the administration of justice and the spirit of the rule of law. We absolutely do not wish to see a recurrence of this. Regrettably, this means seems to be threatening us now. Should proceedings for a judicial review be instituted in Court, it would very likely lead to another interpretation of the Basic Law.

Now, we are under threats because according to the spirit of the rule of law, the term of office should be five years as stipulated in the Basic Law. the SAR Government, out of political expediency, has suggested that the term Is the Government going to maintain the symbolic should be two years. significance of Mr TUNG Chee-hwa's stepping down in a way that it will continue to lose its bearing and be fully manipulated? The experiment of ruling Hong Kong by businessman as epitomized by Mr TUNG Chee-hwa is a proven failure. Have the SAR Government and the Central Government learned a lesson from failure and identified their inadequacies? Now that a civil servant Is it because civil servants are loyal and have no will take over. self-consciousness and no soul and know only to serve their master? Should this attitude be a characteristic of governance in Hong Kong? Are Hong Kong people still considered as having no self-consciousness and no soul, setting eyes only on the economy and knowing only to make money and caring only about practical benefits? When can we rid ourselves of such destiny of a colony?

Judging from previous community or social movements, we very much appreciate that the public do have aspirations. The people and society of Hong Kong have matured. In the coming months, the Government will face a huge task. The Government can act in accordance with the law in a way as suggested

by Chief Secretary Donald TSANG yesterday and rush to select the next Chief This Chief Executive will file his candidacy only in June but the election will be held in July. It will be entirely unnecessary for him to explain his views on social policies, the people's livelihood or other issues of public concern, such as culture, environmental protection, social welfare, poverty, housing, medical services and education, and so on. All he will need is the support of those 800 people and then he will rush to contest the election and worse still, he may not even have to contest the election, for he may have already obtained a vast majority of nominations or he may be the only candidate. Consequently, Hong Kong people can continuously be kept in the dark, small-circle governance can continue, and Hong Kong people can continuously be deprived of self-consciousness. If such being the case, I am afraid that we will completely fail to identify inadequacies and to learn a lesson from the past seven and a half years. I sincerely urge the SAR Government and the Central Government to reconsider the whole arrangement and respect the wish of Hong Kong and act in accordance with the law.

Madam Deputy, I so submit.

MR JAMES TIEN: Madam Deputy, I think it is fair to say that the resignation of the Chief Executive has taken all of us by surprise. With Hong Kong assuming its new identity as a Special Administrative Region only for the eighth year, we are presented with this constitutional challenge which we must, for the sake of Hong Kong, handle sensibly and rationally.

In the last two weeks, a lot of debate has taken place regarding the way ahead. Hong Kong made headline news again on the BBC, the CNN and other news channels. The current main focus has been on the term of the new Chief Executive, whether it should be two years or five years, and whether it is lawful in either case. This is the topic I would like to concentrate on today.

Many lawyers have quickly concluded that according to Article 46 of the Basic Law, the term of the Chief Executive is five years. So, the new Chief Executive should serve for five years. However, the majority of the public feels that the new Chief Executive should really serve out the remaining term, which is the remaining two years from the day the new Chief Executive will be elected in July.

The Liberal Party's position is that the Basic Law does not deal with any by-election. However, given the new Chief Executive will still be elected by the existing Election Committee, and the method of election of the Chief Executive in 2007 is now subject to a consultation exercise which may result in the broadening of the Election Committee, it is in the interest of Hong Kong to adhere to the schedule already set down for constitutional development.

Since the Basic Law is silent on by-election, clarification is definitely required to ensure that the election and the term of the new Chief Executive would not be threatened by judicial challenge, serious or frivolous. Such clarification can take a number of forms. It can take the form of domestic legislation, which I believe is what the Administration proposing. However, the community is still smarting from the Link REIT fiasco, whereby one person, in fact any person, can bring forward a judicial review to the Court. That would put an immediate stop to the election process. Do we want another saga where Hong Kong would once again become the laughing stock of the world? Do we want to face a scenario where we cannot conduct the election of the new Chief Executive here and therefore have to force the Central Government to appoint a new Chief Executive with an order after six months?

Madam Deputy, I am very much aware of the reluctance which Hong Kong people have against the interpretation of the Basic Law. In fact, I believe the Central Government is equally reluctant as interpretation involves a decision at the highest level and should not be used lightly. However, I think we are facing an extraordinary situation, and in the interest of Hong Kong, certainty is needed. I would like to hear what better ideas the Administration or the opposition parties might have which would safeguard the election of the new Chief Executive in July. If not, the Liberal Party would like to reiterate our position, that is, among all possible choices, an immediate interpretation of the Basic Law to clarify the legislative intent by the Standing Committee of the National People's Congress is still the most viable option.

Thank you.

**MR MARTIN LEE** (in Cantonese): Sorry, Madam Deputy, it did not occur to me that Mr James TIEN's speech could be so short.

Madam Deputy, whether the term of office of the new Chief Executive (that is, the one to be elected on 10 July) should be two years or five years is of course highly controversial. But many Hong Kong people do also think that having waited so long for the resignation of TUNG Chee-hwa, they should all have a glass of champagne instead of bothering about the controversies over his successor's term of office — they should have loved a sip of red wine as well, but a reduction of wine duty was not suggested in the Budget today.

A friend who often plays mahjong with me once said to me, "When you are waiting for either a 'Twenty Thousand' or 'Fifty Thousand' to win, why bother about which one you are going to get in the end?" Some people also say, "A burnt child dreads fire. TUNG has been the Chief Executive for so many years, and he has turned Hong Kong into such a mess. So, it will be a good idea to give a new Chief Executive two years first, then five more if he is good, and yet five more if he continues to do well." Secretary Elsie LEUNG has expressed a similar view. But Secretary Stephen LAM has asked people not to decide so soon, saying that the Central Authorities must be consulted first. Frankly speaking, under the common law system of Hong Kong, all people, including senior counsels and heavyweights in the pro-Communist camp, will agree that the term of office should be five years. Everybody has made it very clear that the term of office should be five years, and the Government has made Honestly, I simply do not believe that the Government had this even clearer. not reached any tacit understanding with the Central Authorities before it submitted the Chief Executive Election Ordinance to the Legislative Council for deliberations.

On 5 May last year, in reply to an oral question in this Council, Secretary Stephen LAM averred that any amendment to the Chief Executive Election Ordinance which would provide for a term of office other than that of five years would be inconsistent with the Basic Law. I dare to bet everybody my own head that if Secretary Stephen LAM had not obtained the "blessing" and consent of the Central Authorities, he would not have been so firm and definite in his But following the recent resignation, the Secretary for Justice was instructed by the Chief Executive to go to Beijing to seek its views. that she had attempted to persuade the Central Authorities, explaining to them why the term of office should be five years under the common law system of Hong Kong. Unfortunately, she was there alone while there were at least two professors on the side of the Mainland - Prof XU Chongde and Prof LIAN Xisheng, so she was persuaded in no time. But then after some thinking, I said to myself that these two professors might just be voicing their personal opinions,

as they never said they were speaking for the Standing Committee of the National People's Congress and the Central Government. If we submit ourselves to their position so soon and hasten to amend our laws, what are we going to do in case the Central Authorities hold a different view or the Standing Committee of the National People's Congress does not interpret the Basic Law that way? Why should we act in such a great hurry?

After her return to Hong Kong, Secretary Elsie LEUNG quickly decided to shorten the term of office from five years to two without consulting the Legislative Council and the legal profession. I have studied Secretary Elsie LEUNG's arguments thoroughly — the arguments supplied to her by her mainland "masters", perhaps. But I have still failed to see any sound justifications for her current amendment. Her arguments were mere sophistry and totally unconvincing, and not only this, the documents and evidence cited will all be inadmissible in the Courts of common law in Hong Kong. greatest mistake of Secretary Elsie LEUNG and the Government is that they have forgone the application of common law principles in the SAR, a common law jurisdiction, and have instead applied principles and concepts of law of the mainland legal system in ascertaining the so-called legislative intent. Admittedly, under the common law system, the Court may from time to time seek to ascertain the legislative intent of a law. But it will also examine the legislation or ordinance in its entirety, trying as much as possible to find that why there is a certain interpretation, and whether the first possibility or the second possibility should be the case, for example. Under the common law system, there is a precedent entitled *PEPPER vs HART*. The doctrine of the case is that the statements made by Government Ministers (in our case, Bureau Directors) when moving a motion in Parliament must be taken in account. That is why it is perfectly acceptable to consider the speech delivered by Mr JI Pengfei, Chairman of the Basic Law Drafting Committee at the Plenary Session of the National People's Congress on 27 March 1990 (if my memory is correct). the important point is that his speech did not cover the topic we are currently discussing.

Secretary Elsie LEUNG says that since the current Election Committee (EC)'s term of office is five years, it should naturally select the next Chief Executive. But when I questioned her on this, she did agree that there seemed to be a gap of 18 months, adding that since she did not know how to handle this, she must seek the views of the Central Authorities again. She also says that the maintenance of the same 800 EC members will ensure that the new Chief Executive will not adopt policies completely opposite to his predecessor.

She even says that if the outgoing Chief Executive was Mr Jasper TSANG, for example, the maintenance of the same EC will ensure that Mr LEUNG Kwok-hung, whose political beliefs are entirely different from those of Mr TSANG, will not be elected. Why did she cite Mr Jasper TSANG and Mr LEUNG Kwok-hung as examples? Both of them have lots of hair. She should use Mr Albert CHAN as an example, for he is bald. Mr LEUNG Kwok-hung has lots of hair.

However, has Secretary Elsie LEUNG ever considered another scenario, the scenario that even the resigning Chief Executive also thinks that he has made mistakes? Let us, for example, look at the attempt to enact legislation on Article 23 of the Basic Law in 2003. Suppose the Chief Executive thought that he should also resign (together with Mrs Regina IP), would the new Chief Executive elected by the same EC still insist on enacting legislation to implement Article 23 of the Basic Law? Definitely not. This means that the maintenance of the same EC will not necessarily mean the election of a person sharing exactly the same views as his predecessor.

Actually, she is a very clever person, so why has she adopted all these unconvincing arguments? The only reason is that their attempt is grossly unreasonable, and there can be no convincing justification at all. She also talks about the need for smooth transition under the Basic Law. But it must be remembered that the Basic Law is to be used for 50 years, not just in the first few years after the reunification. When people argue that smooth transition should be the primary objective in the first few years after the reunification, can they tell us what will happen when the transition period is over? And, what are the actual provisions of the Basic Law? Article 46 provides that the term of office shall be five years in each and every term, not just the case of the first, second and third Chief Executives. Hence, this is no justification as well.

Madam Deputy, did the Basic Law Drafting Committee ever discuss this topic? A certain lady whose long post title I have forgotten has reportedly said that the Committee did discuss this issue, and she even said that I also talked about it. But I really cannot remember doing so. My memory is not good, so I have asked Mr TAM Yiu-chung and he has also answered in the negative. And, even Mr Louis CHA cannot remember doing so. Mr Louis CHA was in fact the convenor of the political sub-group of the Basic Law Drafting Committee. So, everybody says that there were no discussions on this. And, the more I listen to them, the more I am convinced that there were no such discussions, because if there had been any, there must be clear records.

That being the case, one of the following was bound to be the case. discussions were held, but no conclusions were reached. In that case, such discussions cannot be regarded as evidence and can be ignored. Second. there were indeed discussions and a conclusion was reached. However, if a conclusion was indeed reached, there must be some records, because in the Mainland, in case anyone steps down, it is an established practice for his successor to serve out the remaining term of office. This is a very clear practice in the Mainland, but there is no clear provision at all in Hong Kong. The Hong Kong members of the Basic Law Drafting Committee, especially I, would certainly have asked them to make a record had there been any This is precisely the reason for the listing of so many national laws, item by item, in Annex III to the Basic Law. I remember that when Mr LU Ping first raised the point that some national laws must be applied in Hong Kong, I immediately said (to this effect), "Hold it! We should be left alone. Our legal system is different from yours." He then replied (to this effect), "Alright, but should the resolution on the National Flag also be applied in Hong Kong?" I thought it over for a while and had to admit that he was right. he went on to say (to this effect), "How about the capital? Our capital is Beijing, right?" I thought it over for a while again and also had to admit that he He explained that he was simply referring to these laws. was correct. Hearing this, I requested them to make a record. After some arguments, I finally succeeded in making them listing all these laws one by one in Annex III to the Basic Law. What I mean is that had there been any discussions, there must have been some records.

The argument we hear now is very strange. People say that since the views of the Mainland at that time were all very clear, there was no need to make any records at all. But I must then ask, "Does this argument imply that all the existing provisions of the Basic Law are in fact about topics and issues that were considered grey areas at the time? Does this mean that since provisions are made for the grey areas only, there should be no provisions on those that are free from any ambiguities?" But if Members look at the Basic Law, they will see that many of its provisions are copied from the Sino-British Joint Declaration (the Joint Declaration). All the issues and topics concerned should be free from any ambiguities, but why are there still so many provisions dealing with them? The argument concerned is therefore deceptive. Frankly speaking, if we had really discussed the issue of holding a by-election in case a Chief Executive fails to complete his term of office, why is it that the term "by-election" is not mentioned in Article 53 of the Basic Law? If there had really been an agreement that a new Chief Executive returned by a by-election shall only serve

out the remainder of his predecessor's original term of office, why is such an agreement not written in any provision? This should be a fairly easy thing to do. Such an argument is therefore downright absurd.

Madam Deputy, before the promulgation of the Joint Declaration, I once invited the then Deputy Director of the Xinhua News Agency LI Chuwen to my office. During this meeting, he told me that the laws of Hong Kong, especially the common law, must remain in force. His was no casual remark, for it is written down in both the Joint Declaration and the Basic Law. I also talked with LI Jusheng (also Deputy Director of the Xinhua News Agency), and he remarked that mainland judges would be unable to handle Hong Kong law cases He therefore said that because they were not versed in the laws of Hong Kong. we must appoint our own judges, and that the Court of Final Appeal must also be constituted by local judges. Later on, I even persuaded him to invite the participation of judges from other common law jurisdictions. The situation now is very awkward. If they really meant what they said, why are we being forced to interpret the Basic Law and our Chief Executive Election Ordinance on the basis of mainland legal principles? Mainland judges simply do not understand the laws of Hong Kong, so it must be wrong to ask for any interpretation from them.

Our current concern is not so much about the term of office — whether it should be five years or two. Rather, we are concerned about our legal system. What will become of our legal system? Should the views of the Central Authorities be sought every time before a barrister writes up his opinion or before the Court interprets some particular provisions of our own laws or the Basic law? Or, for example, should we, as asserted by Secretary Stephen LAM, also seek the views of the Central Authorities on whether the two-year term of the new Chief Executive should be counted as a complete term *per se*? What kind of legal system is this anyway? If this situation continues, there will neither be "one country, two systems" nor "one country, one system". Instead, "one country, no system" shall prevail.

Madam Deputy, the legal profession has been extremely saddened by the recent developments. It is obvious that what Secretary Elsie LEUNG has been doing must have been approved by the Acting Chief Executive, and Secretary Stephen LAM and even the entire Government must agree to this approach. In the handling of this issue, we have foregone the common law and resorted to the mainland legal system for the interpretation of the Basic Law and our own legislation. Recently, I have been asked by foreign consuls and businessmen

why our Government has done something so stupid. Actually, many foreign businessmen operate their businesses in the Mainland but set up their headquarters in Hong Kong. Why? The reason is that there is a sound legal system in Hong Kong. Because of the recent actions of the Government, many foreign businesses may withdraw from Hong Kong at any time and move to the Why? The reason is that they will be able to do business in Mainland instead. the Mainland more directly, and the wages and rents there are both low. is a good idea to move there, isn't it? But how about the lack of respect for the law in the Mainland, or the defective legal system there? Well, Hong Kong is not much better now because everything has become so uncertain. been practising the common law, under which there is certainty and But recently, we have become uncertain as to how our laws will predictability. In conclusion, I find the recent blows dealt by the Government be interpreted. to the common law most regrettable.

Thank you.

**DR KWOK KA-KI** (in Cantonese): Madam Deputy, I actually wanted to ask the Chief Secretary for Administration a question yesterday. But I do not think that there is any more opportunity for me to do so today. Actually, I also wanted to congratulate him before asking the question. To begin with, I wished to congratulate Mr TSANG on being selected by the Central Authorities for such an important post. Second, I hoped that Mr TSANG could relay our delight to the Central Authorities because they had made the right choice and identified a perfectly suitable and totally loyal person to fill the post of Chief Executive.

I suppose all of us the people of Hong Kong were truly very delighted when we learnt of the resignation of the former Chief Executive Mr TUNG. However, after a brief moment of delight, we came to realize that we simply should not be happy at all. And, I even started to worry beginning from 12 March, because I noticed that on that very day, a show, or a farce written, directed and acted by the Central Authorities was staged.

Why was 12 March selected as the day? It was not until some time later that I realized that it had been chosen after meticulous and precise calculations. Before that, I already heard Dr Stanley HO say that the Central Authorities had worked out a "superb" solution to all the problems in Hong Kong, including those connected with the elections in 2007 and 2008. At that time, many Hong Kong people still did not know what he was talking about. But it has turned out

that he was very much a seer, whose words were a revelation of the "divine plot". I heard that the show was considered so appealing that it was even broadcast by a certain television station during the prime time. The ratings of popular soap dramas thus dropped. This show was certainly more appealing than Dae Jang Geum, was it not?

I think we must congratulate the Central Authorities because their tactic this time around has enabled them to kill six birds with one stone. First, they can thus replace a totally unpopular Chief Executive who is not accepted by anyone in Hong Kong.

Second, they have succeeded in removing people associated with the old ruling clique, or purging the Party. As we all know, Mr TUNG is nicknamed "JIANG's firm handshake" because he was handpicked and nurtured by former State President JIANG Zemin. Certainly, we understand that the departure of an emperor will see the replacement of all his ministers. Anyway, Mr TUNG should not be lonely because I have heard that several Governors in the Mainland have been replaced in this exercise. And, Mr TUNG should also have no regret at all because he has been elected Vice Chairman of the Chinese People's Political Consultative Conference, a retired senior officials' club in the Mainland.

Third, they have managed to call a halt to another drama being staged in Hong Kong — the competition for the post of Chief Executive. At the beginning, in this competition, the recently selected Mr TSANG, was one of the contestants. He was originally a dark horse, and I also do not understand how this dark horse can run so fast. In just a few months, it has become a favourite and even won in a photo finish.

This may be due to his "excellent" performance in two issues. The first one was the West Kowloon Cultural District development, in which he displayed complete loyalty to large consortia. The second was his total obedience to the orders of the Central Authorities when leading the Task Force on Constitutional Development. There is absolutely no substance in the four reports of the Task Force, and the only point put forward is that there will be no universal suffrage. According to him, he has already put forward the best available options. He may even find it difficult to mark time, but since people want it that way, he can only comply. He has completely forgotten the aim of achieving universal suffrage by gradual and orderly progress as provided for in Articles 45 and 46 of the Basic Law.

Fourth, by replacing the most unpopular person with Mr TSANG, whose popularity rating is the highest, the Central Authorities can answer the aspiration of the people. The replacement is a good deed of the Central Authorities because the most popular person is selected.

Fifth, I think the new Chief Executive will be even more obedient. Mr TSANG's performance, down from the colonial times, has been superb. A couple of days ago, I saw a very interesting translation of his name "Donald" in a local Chinese newspaper — "當 (be)奴 (a slave)". I do not think that I need to dwell on what this means. I certainly do not want to see him become a slave. But I suppose I will be disappointed.

Finally, the sixth gain, and the biggest gain, of the Central Authorities is that they have managed to completely ward off the request for universal suffrage in 2007 and 2008. The reason that Mr TUNG, the greatest cause of disputes and symbol of poor governance, has already been removed. This has often been supplemented by a combination of sticks and carrots, which makes people think that since there is no hope of universal suffrage in 2007 and 2008, they should instead be content with making a bit more money. They may think that since there is the Individual Visit Scheme and the possibility of more inflow of money from the Mainland, they should perhaps stop thinking about anything else. Hong Kong people are indeed forgetful, but they should not be forgetful so soon.

Secretary Elsie LEUNG is not here, but Secretary Stephen LAM is. personally do not have any ill-feelings towards them. Quite the contrary, I Why? The primary duty of Secretary Elsie LEUNG is to really pity them. safeguard the rule of law in Hong Kong, and this should of course include the However, as the Secretary for Justice, who is responsible for safeguarding the Basic Law and the rule of law in the Hong Kong Special Administrative Region, she has handled this extremely serious and solemn legal issue in a most shoddy manner. She simply made two phone calls to two retired old men who used to be Basic Law drafters (or she might have visited them while in Beijing), asking them to "interpret" some concepts that are nowhere Some misinterpretations of the Basic Law have mentioned in the Basic Law. This time around, there is no need for any thus been rationalized as "facts". interpretation of the Basic Law by the National People's Congress, for there is the interpretation by "Chongde". This may be a far more sophisticated approach.

In Articles 45, 46, 52 and 53 — excuse me for not citing the exact wordings, all is stated very clearly. In May last year, when Secretary Stephen LAM replied to Ms Emily LAU's oral question on the need to elect a new Chief Executive, whether necessitated by a vacancy or other circumstances, he stated very clearly that the term of office of the new Chief Executive should be five years. But after a very short time, now, he has to admit shamelessly that his statement was wrong. So, the job of the Secretary is really very difficult. I for one do not find his high salaries and position any cause of envy. How can he do something like this? He was so certain about what he said just a few months ago, but now, since the northern overlord thinks differently, he must make a volte-face, justify himself, pretend that nothing has happened and continue to obey the dictate of the Central Authorities. This is no easy task, but I simply will not pity him.

I feel the greatest pity for the people of Hong Kong because they have been the biggest and most miserable victims of this show. We have been shown that "a high degree of autonomy" and "one country, two systems" are no longer in existence. There are clearly no "one country, two systems" and "high degree of Mr TSANG's elevation to this position is basically the result of a autonomy". very clever tactic of the Central Authorities. The aims of this tactic are to utterly destroy "one country, two systems", or all our aspirations to autonomy and self-rule, and to install a person whom all people, or the people of Hong Kong, consider to be the best. We may describe this tactic as "beating one with one's own staff". What I mean is that the best stuff, that is, the person considered by Hong Kong people as the best and most popular, is being used as a bait, and then all our requests for democracy and "one country, two systems" will be stifled. The tactic of the Central Authorities is indeed very clever.

I am certainly not concerned about who can become the Chief Executive, nor am I concerned about the term of office. As long as the system of coterie elections is maintained, who shall become the Chief Executive is largely meaningless. The 800-strong Election Committee must basically look northward for instructions. Most of the members will do so. Many people have commented that the democratic camp may as well nominate a candidate. I support this proposal entirely, because even though we are bound to lose, we must do something to expose the ugliness, shortcomings and ridiculous nature of this coterie election.

It is of course impossible for the democratic camp to gather enough nominations, and winning the election is even more out of the question. But by coming forward, we can show clearly that Mr TSANG is not actually as popular as commonly imagined, and that he is just a candidate supported by a coterie of electors, enjoying neither any mandate nor legitimacy. Our mass media are in a way quite "nice" and I do not know whether they should be described as hailing the rising sun. But the fact is that within a very short time, they have managed to boost the popularity of Mr TSANG to very high levels, creating a very "favourable" situation that baffles everyone.

Actually, many Members now present are very disappointed. I do not know why Mr James TIEN made such a short speech. But I have the impression that he was a bit dejected. As we all know, many Members were very keen on voicing their views on this issue, and some even toyed with idea of becoming "kingmakers". However, once after the Central Authorities have blown the whistle, ending all their hopes, they have to stop all plans. The Central Authorities can pick whoever they like. The people of Hong Kong simply have no power to ask any questions or voice any opinions.

The only way through which the people of Hong Kong, the Legislative Council and all political parties can truly determine their own destiny is the introduction of universal suffrage. I wish to quote some remarks made in the past — it is good that Mr TAM Yiu-chung is present now, because the remarks I am about to quote were delivered by him. In 1994, when we discussed the so-called package of violation presented by Governor Chris PATTEN, described by Mr LU Ping as a "sinner of a thousand centuries", some Members voiced their views on the introduction of universal suffrage. Mr TAM Yiu-chung said at that time, "In their speeches today, many of the Members made repeated references to the aspirations to democracy and the quest for democracy and in particular, they emphasized the ratio of directly-elected seats in this Council. Some want 30 directly-elected seats while some others request for 60. In fact, the Basic Law has embodied this sort of request for the introduction of direct election, ..... there will be 30 directly-elected seats in 2003 and a fully directly-elected legislature will, I believe, emerge by the year 2007. The DAB raised this issue with the Director of the Hong Kong and Macau Affairs Office, Mr LU Ping, during our visit to Beijing in 1992 and positive responses were received."

I sincerely hope that what Mr TAM Yiu-chung said at that time can come true and the introduction of full-scale direct elections can really come in 2007. In that case, Members belonging to the DAB and the Liberal Party may not have to worry so much, may not have to suffer any more merciless slaps on the face from the Central Authorities. All these years, they have been apologists of the Central Authorities. Now, even these staunch apologists of the Central Authorities have been treated in this way, so the democratic camp's aspiration to democratization and "Hong Kong people ruling Hong Kong" is downright wishing thinking. But this is in a way something good because everyone will thus wake up from their dreams, and Members belonging to the DAB and the Liberal Party may then (as I very much hope) join us in our fight for universal suffrage, "Hong Kong people ruling Hong Kong" and "a high degree of autonomy".

Finally, I wish to quote the remarks delivered by Mr JI Pengfei in the Third Session of the Seventh National People's Congress in 1990. His remarks were in a way really ironic. He said (to this effect), "Over this period of more than four years, the Drafting Committee has held nine plenary sessions, 25 meetings of the Chairman and Vice-Chairman and two enlarged meetings of the Chairman and Vice-Chairman; the General Working Group held three meetings; the Special Sub-groups met 73 times ..... In reviewing the work done over this period of more than four years, we must say that the drafting of this legal document was conducted in a very democratic and open manner. During the process of drafting the Basic Law, members of the Drafting Committee worked together with one heart and pooled their wisdom and efforts; and each and every article of the document was worked out after investigation, study and full discussion in which views of the majority were followed and those of the minority respected." I hope he was right. But had he really been right, Mr Martin LEE would not have raised so many questions today. Mr LEE was also a member of the Basic Law Drafting Committee, but he too is not aware of the discussions on these issues at that time. And, when controversies over the Basic Law provisions crop up now, people simply refuse to activate the established mechanism — the Basic Law Committee, so that our rule of law can be upheld by, for example, amending the Basic Law. Instead, they have turned to two elders for advice, and their advice is regarded as law. What is meant by the rule of law and "Hong Kong people ruling Hong Kong" they have been talking about?

When I was reading the remarks mentioned above, I was saddened by his description of our regional emblem, because he said that its red and white

colours symbolize the spirit of "one country, two systems". When I look at the emblem now, I can no longer see the red and white colours. I can only see grey. I guess that like the regional emblem, "one country, two systems" will also fade gradually, turning all grey in no time. Thank you, Madam Deputy.

**DR YEUNG SUM** (in Cantonese): Madam Deputy, TUNG Chee-hwa has resigned from the office of Chief Executive for health reasons, and the National People's Congress has also accepted his resignation in no time. But I am sure that to most Hong Kong people, his explanation is simply unconvincing and unacceptable. On television, we saw how State President HU Jintao gave the three Secretaries of Departments and 11 Bureau Directors a dressing-down in Macao, instructing them to identify their inadequacies. Later on, in his policy address, TUNG Chee-hwa himself admitted that he must identify his inadequacies. Then, Mr ZENG Qinghong again stressed that TUNG had not done enough in identifying his inadequacies, urging him to keep up his efforts. I believe that the Central Authorities must have played a certain part and exerted some pressure in bringing about the resignation of TUNG Chee-hwa.

The resignation of Mr TUNG indeed represents a triumph of public opinions in Hong Kong. But I will not be overjoyed at this triumph, because I always think that regardless of Mr TUNG's performance, any pressure on him from the Central Authorities will invariably set a very bad precedent. maintain that such a precedent is absolutely undesirable. The Central Authorities must realize that under the Basic Law, we are entitled to "Hong Kong people ruling Hong Kong", "a high degree of autonomy" and "one country, two systems". No matter how poor his performance has been, they should still allow Hong Kong to deal with the matter internally instead of exerting any pressure from the outside. I believe people should feel most sorry for this Admittedly, the people of Hong Kong may not think that this is a big problem, and if such intervention can serve a positive purpose, they may even give a warm applause, because it can make the unpopular Mr TUNG step But as a cool-headed observer, I must say that the intervention by the Central Authorities has already set a very bad precedent.

The mysteries surrounding the resignation have also seriously damaged the relationship between the executive and the legislature. Madam Deputy, the Basic Law provides that the executive shall be accountable to the legislature, but the resignation has nonetheless been surrounded by all sorts of mysteries, and

even Legislative Council Members have to read the newspapers to gather some fragmentary information. I believe that so far, no Legislative Council Members have been able to grasp all the facts about the entire incident. Therefore, the resignation has indeed seriously damaged the relationship between the executive and the legislature.

## (THE PRESIDENT resumed the Chair)

Madam President, I am particularly concerned about the term of office of the new Chief Executive (I do not know whether I should say the third Chief Executive). We all think that this should be a concern of society as a whole. It is true that according to the surveys conducted by the Democratic Party, people do not bother so much about whether the term of office should be two years or five. And, some people even question why the Democratic Party should still stir up so many arguments. They think that since the unpopular Mr TUNG has after all stepped down and the highly popular Donald TSANG has assumed office as Acting Chief Executive, everybody should be happy about this nice replacement. They thus wonder why anyone should still stir up any more trouble.

Madam President, we must make it very clear that our insistence on arguing about the term of office does not stem from any preference on our part to either two years or five years. The main point is that the Government has been telling us that the term of office of any new Chief Executive must be five years. This has been the position of the Government since the enactment of the Chief Executive Election Ordinance in 2000. In his written reply to Ms Emily LAU's question dated 5 May 2004, Secretary Stephen LAM stated the following position regarding the term of office when the office of the Chief Executive becomes vacant:

"Article 46 of the Basic Law provides that the term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. Article 53 provides that in the event that the office of the Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of the Basic Law. The Chief Executive Election Ordinance, and in particular sections 3 and 6, gives effect to the above provisions

of the Basic Law in respect of the term of office of the Chief Executive and the election to return a candidate for appointment to fill a vacancy in the office of the Chief Executive. The term of office of the Chief Executive, as prescribed in the Basic Law, is five years. This provision applies to any Chief Executive. There is no exception. In the light of the above, any amendment to the Chief Executive Election Ordinance which would provide for a term of office other than that of five years is not consistent with the Basic Law."

This was Secretary Stephen LAM's written reply to Ms Emily LAU's question on 5 May 2004. Some time later, Secretary Elsie LEUNG also remarked that the relevant provisions of the Basic LAW were very clear and the SAR Government had no intention to seek any interpretation by the National People's Congress. But in her reply yesterday, with just a simple apology, Secretary Elsie LEUNG said that their original interpretation was inadequate, and that having consulted mainland legal experts and studied the relevant drafts, the SAR Government realized that its original interpretation was wrong. She added that mistakes must be admitted, so the term of office should be two years.

Actually, how did the Central Authorities reach the decision that the term of office should be two years? Actually, there was just a joint press conference held by XU Chongde and WANG Zhenmin, during which it was asserted that where the office of the Chief Executive becomes vacant during a term of office, the new Chief Executive elected to fill such a vacancy should only serve out his or her predecessor's term of office. They therefore concluded that the term of office should be fixed at two years. Since the making of this political decision, the SAR Government has started to talk differently about the matter.

I am no expert in law, but my experience as a Legislative Council Member since 1991 has given me some understanding of how laws are scrutinized. Let me just put it that way: From now on, I will always be skeptical about any interpretations of the Basic Law offered by the Government. Honestly, I am sure that a person like Secretary Stephen LAM will never make any decisions entirely on his own, so he must have consulted the Central Government before replying to Ms Emily LAU's written question and speaking for the Government in the scrutiny of the Chief Executive Election Ordinance. If my guess is correct, then it is reasonable to think that at that time, the relevant authorities of the Central Government must also agree that the term of office should clearly be five years under the Basic Law. Now, of course, due to political considerations

necessitated by changed circumstances, the legal experts of the Central Authorities have come up with a different viewpoint. But we must not forget that even Mr Louis CHA, convener of the political sub-group of the Basic Law Drafting Committee at that time, also said in a Cable Television interview that the term of office should be five years.

Which interpretation is correct? Is it really a matter of individual opinions? Should we hasten to change our position for political reasons once after several authorities on the Basic Law have offered their interpretation? Or, should the SAR Government do so because of the position expressed by the Central Authorities? If we do so, we will certainly deal a heavy blow to the rule of law in Hong Kong. We naturally understand that the common people are pragmatic and they do question why the democratic camp has still insisted on arguing about all this. We must declare for the record that we are angry at and deeply regret the Government's volte-face regarding the term of office of the new Chief Executive, because this will deal a very heavy blow to the rule of law in Hong Kong.

Very soon, in mid-April, the Government will table a bill on the Chief **Executive Election Ordinance.** I believe that seven weeks later, the Government will certainly be able to get approval for its desired two-year term and the Acting Chief Executive will serve out the remaining two years as the Chief Executive of the caretaker government. But I am afraid that the next two years will be marked by many governance crises and political undercurrents. As Members can read from the press, the traditional leftists actually hold a very negative view of this "leftover from the colonial past". Will such an attitude affect his working relationship with the DAB? On the other hand, Liberal Party Chairman James TIEN has repeatedly disclosed that in principle, his political party will support Financial Secretary Henry TANG as a Chief Executive candidate. In other words, the Liberal Party already has somebody in mind. These two well-known "royalist parties" in Hong Kong all have their own plans, I fail to see how the Acting Chief Executive can possibly or secret agendas. obtain the full support of these "royalist parties" in the coming two years.

The existing Principal Officials have all been invited to stay, and they have accordingly accepted the Acting Chief Executive's invitation. But I guess that some Bureau Directors actually want to run in the Chief Executive election. This means that in the coming two years, they will not be particularly keen on assisting the Acting Chief Executive, because they will not want to add to his

political credits and put up obstacles for themselves in any eventual election. Since everybody has his own ulterior motives, there will be no team spirit among the accountability officials.

Hence, on the one hand, it is very doubtful whether the royalist parties (including the Liberal Party and the DAB) will fully support the Acting Chief Executive, and on the other, it will be very difficult to foster any team spirit among Bureau Directors, because some of them may themselves vie for the post of Chief Executive in the future. How can anyone ever expect all these Chief Executive hopefuls to do their best to support the Acting Chief Executive, to do something that may hinder their own political elevation? Therefore, although the Central Authorities have made a special appeal to the people of Hong Kong, urging them to remain calm, foster stability and promote harmony, I believe the likelihood of realizing this hope is very small.

Madam President, the Democratic Party is sensible and pragmatic, and we thus also hope that the crisis can be turned into an opportunity. I must make it a point to say that instead of asking the people of Hong Kong not to apply for a judicial review, the Central Government and the SAR Government may themselves propose amendments to the Basic Law. The greatest problem with the Basic Law is the absence of any by-election mechanism, and it does not provide for a Deputy Chief Executive either. That is why when the office of the Chief Executive becomes vacant during a term, problems will indeed emerge. One possible way to fill this gap is for the SAR Government and the Central Government to put forward proposals on amending the Basic Law as soon as This is far better than simply asking several authorities on the Basic possible. Law to offer verbal interpretations. If asked to choose between an interpretation of the Basic Law and its amendment, we are more on the side of introducing amendments through the formal legislative process. better than having all sorts of different personal interpretations. Seeking interpretation from just a handful of authorities and thus reducing the Basic Law to the level of rule by man will certainly deal a very heavy blow to Hong Kong.

Madam President, if Members have been following world media reports, they will notice that the resignation of the Chief Executive and the reduction of the term of office from five years to two have already become an international laughing stock. This will produce heavy impacts on the confidence of investors. We know very well that members of the public have repeatedly expressed the view that the Democratic Party should stop arguing about this matter. But I

maintain that there are sound justifications for carrying on the arguments because the impacts are far-reaching.

Second, the coterie election by 800 electors will certainly be held as scheduled on 10 July. I very much hope that the Central Authorities can refrain from any intervention, so that these 800 electors can get in touch with community organizations through various channels. That way, members of the public will have an opportunity to take part and the 800 electors may exercise their choices. I therefore hope that the election can be conducted openly and fairly without any intervention from the Central Authorities.

The pan-democratic camp and the Democratic Party both think that one of us should run in the election. Frankly speaking, I do not hold any imagination for this election. However, I also think that now that Mr TUNG has stepped down, the democratic camp should take this opportunity to describe to the people of Hong Kong its ideas on running Hong Kong. We have our own ideas on the development of Hong Kong and our own directions as well. Although the outcome of the election is a foregone conclusion, we should still try to expose the shortcomings of a coterie election in the process. That way, members of the public will be able to learn of and consider the different options of running Hong Kong. In addition, our participation will also make it necessary for candidates to face the mass media publicly (in various forums and district visits). I am sure that this will help enhance people's desire for universal suffrage. For this reason, I agree that the democratic camp should run in the election.

Finally, I wish to stress in particular that the interpretation of the Basic Law by the National People's Congress, the reduction of the Chief Executive's term of office from five years to two and even the resignation of Mr TUNG have cast doubts on "one country, two systems" and "a high degree of autonomy" among the people of Hong Kong. I therefore very much hope that the Central Government can learn a lesson and delegate more powers to the people of Hong Kong. What I mean is that it should trust the people of Hong Kong and allow them to elect the Chief Executive and run Hong Kong. Preferably, it should allow the people of Hong Kong to elect the Chief Executive and the Legislative Council by universal suffrage as soon as possible. It should also proposed a timetable for this. In this way, people overseas and across the Strait will be convinced that "one country, two systems" is practicable under Chinese sovereignty.

Sadly, there has not been too much confidence in this regard, whether here in Hong Kong, or in Taiwan, or even in the international community. I hope that the Central Government can learn a lesson from all these incidents. Thank you, Madam President.

MS EMILY LAU (in Cantonese): Madam President, like other Members, I am very happy that the Legislative Council is at last able to debate this very hot topic which is so important to Hong Kong. I hope that as our Legislative Council continues to develop, we can become always able to react at the right time and conduct timely debates on topics regarded by society as important instead of always trying to catch up on past incidents in our debates. I also hope that on significant issues like this debate topic, the Legislative Council can always come up with a consensus, so as not to give members of the public the impression that we are forever unable to take actions and hold discussions at the moments when they are warranted. I sincerely hope that we too can identify our own inadequacies and draw lessons from experience.

Madam President, I very much agree to the views expressed by many Members just now, especially those put forward by Dr Fernando CHEUNG. Honestly speaking, I should have been very delighted to learn of this incident, because I have been opposing TUNG Chee-hwa all along. However, as mentioned not only by pro-democracy Members but also by their pro-Communist and pro-business counterparts just now, we have at the same time witnessed how the Central Authorities have manipulated the whole issue and blatantly moved from the backstage to the front, much to the horror and amazement of all. Indeed, one cannot but marvel at the tactic of the Central Authorities. However, must politics necessarily be like this? More importantly, after one has ambushed even one's "allies" in this way, how can one expect any continued co-operation in the future?

Madam President, co-operation is of course not our concern, and we are not against TUNG on every front. But they have still treated their long-time allies in this way, so we can all see how ruthless the Communist Party is. We are all glad to see the departure of TUNG Chee-hwa, but seeing how others are manipulating the affairs of Hong Kong, how will Hong Kong people look at their future?

Madam President, I have time and again said that the way in which the Central Authorities handle things and their mindset are very different from ours, so we will certainly be baffled if we look at them from our own perspective. But still, we must speak up for our beliefs, because we are elected by the people of Hong Kong to do so. I sincerely hope that the Central Government can identify its inadequacies. The great calamity in Hong Kong over the past seven years was caused as much by one single individual as by the system. Most importantly, it must be noted that the system itself actually begot the individual in question. In regard to the Central Authorities, as mentioned by several Members, it has been rumoured that they have conducted some analyses — well, these are all rumours, but in many cases, they have turned out to be true. According to the analyses of the Central Authorities, it is all a problem of administrative competence: Since the person is so mediocre, he can be removed, and the problem can be solved by finding a more competent replacement.

However, why are the Central Authorities unable to understand one point? Several years ago, Mr LEUNG Yiu-chung was expelled from the Chamber for saying "foul grass out of a foul vase". This is precisely the point I am driving at. A preordained candidate will necessarily hold himself accountable to the people who preordain him. Who are these people in the present case? Madam President, I am referring to the Central Authorities and the literally handful of plutocrats. This time around, even some people from the business sector have described to me how they marvel at the ability of these plutocrats, saying that they have managed to liaise so successfully with all sides to bring about the early departure of this poor performer, this negative asset, and also to replace him by a more competent "subordinate".

But should all of us, the 7 million people in Hong Kong, allow ourselves to be abused in this way by these plutocrats? Even Mr TUNG Chee-hwa has pointed out in his policy address that he does not accept "collusion between business and the Government" and any "transfer of benefits". But can we really eliminate "collusion between business and the Government" simply by turning a former civil servant into the Chief Executive, Madam President? I just do not believe that the State President is so innocent as if he was born yesterday. But I do not know what he has in mind either. To begin with, no one in Hong Kong wants any independence, nor does anyone want to turn Hong Kong into a base for anti-communist activities. But if they do not come here for a first-hand understanding of Hong Kong and continue to impose on us what only they themselves consider appropriate, they will do enormous harm to Hong Kong.

Some have commented that the resignation of TUNG Chee-hwa is very similar to the retirement of JIANG Zemin. JIANG Zemin has even relinquished the Chairmanship of the Military Commission upon his retirement. But, Madam President, is the matter as simple as that? Like it or not, Hong Kong politics and mainland politics have become inextricably linked, and frankly, the people of Hong Kong do not quite understand mainland politics, which are not only sinister but also ruthless. Very often, things there are beyond all our imagination. However, I hope that the Central Authorities can understand one point. I do not care whether JIANG Zemin still has any influence, whether he can still control many others, whether there is still any intricate relationship between him and Hong Kong plutocrats and whether he will continue to preordain the helmsman of Hong Kong. But I must speak up for my own beliefs and many Hong Kong people — we are highly discontented. For this reason, let me once again call upon the people of Hong Kong to join the march Some Members who spoke just now were very confident that the election will be held as scheduled on 10 July, but I am not so sure. election really be held on 10 July? Some Members have, however, advised that we had better not go to such lengths as to force the Central Authorities to unilaterally declare the appointment of a Chief Executive, because when this happens, there will certainly be complete chaos in Hong Kong.

Yesterday, or the day before yesterday, Secretary Stephen LAM remarked that there was no need to worry about anything because the Central Authorities would definitely do something. This means that whatever problems there may be — legally or politically — the Central Authorities will definitely take some actions. I do not know how the whole thing will develop, but I also do not wish to see any troubles. Madam President, we have no intention to stir up any troubles now because we know very well that the situation is rather volatile. But how can we remain silent if the Central Authorities insist on confounding right and wrong and calling a stag a horse, so to speak?

In regard to the term of office, if there are any legal provisions specifying that the new Chief Executive must serve out his predecessor's original term of office, I will raise no objection. But the point is that there are no such provisions. When it is clear that this point is not mentioned in any existing legislation, how can anyone claim the contrary? If there have been any changes in policy and mindset, then the relevant legislation should be amended. And, I have never said that I will object to the legislative amendments that may be put forward by the Government. I have never said that I will do so. But despite

the fact that this point is not mentioned in any existing legislation, they are still claiming that the opposite is the case.

As I pointed out yesterday, while the lawyer-Members of this Council are kept in the dark, many lawyers in the wider community have also started to grow impatient. Everybody just does not know what will happen. Some have asked us what will happen in the end. Actually, we do not have any choices at all. I therefore cannot help asking, "Why must Hong Kong be forced into such a situation? Does the Central Government understand our situation?"

Some say that the Central Government is extremely shrewd and calculating. But is it really that shrewd? TUNG Chee-hwa has been removed, but the Central Government is still unable to placate many of those who are disgruntled. I have heard some people say that now that the Central Authorities have preordained Donald TSANG, they can just vote for him and the whole problem can thus be solved very easily. But is it really going to be plain sailing? We do understand that as the saying goes, the poor cannot confront the rich, nor can the latter rival the government. But, Madam President, is it really so easy to achieve the so-called co-operation? It is all about secret deals again, right? Want any help? Any votes from Legislative Council Members? Any support for him? Any support for his proposals? But people will just think, "Well, they do not want our people to become the Chief Executive, and they do not even want us to be the 'kingmaker' either, so what benefits can we possibly reap?"

Hence, it is all about transfer of benefits, collusion and secret deals once again. There have been many such instances and there will be more of these, more political handouts, in the future. People are just told to calm down, and the five-year term is reduced to two years to pacify them. They are told that two years later, all can run in the election, and in the meantime, they can get whatever they want provided that they support the SAR Government.

Are members of the public unaware of all this? Is the business sector also unaware? And, the academic sector? Actually, everybody is aware of what is going on. But then why has the situation become so bad? Madam President, we really find the present situation very regrettable. The Bill is put forward at so late a time, but Members must complete their scrutiny and endorse all its contents in a matter of weeks. That is why some journalists have questioned whether the experience of Article 23 legislation is being repeated. I really find it very regrettable.

Besides, although I already talked about this just yesterday, I still wish to express my regret at Secretary Stephen LAM's failure to handle an issue shelved for six years. Six years ago, he was not yet the Secretary for Constitutional Affairs, but I already started to ask questions on the Prevention of Bribery Ordinance. Madam President, on Monday next week, the Panel on Constitutional Affairs will convene a meeting, but once again, the papers submitted still make no mention of the related issues. Are there very great difficulties? Even the Chief Executive himself has agreed to be subject to this Ordinance. Is the delay all caused by the failure of the lawyer concerned to draft the required provisions? If the lawyer is unable to perform this task, Madam President, then let us just look for another one capable of doing so!

There is also the issue of post-office arrangement for the Chief Executive. The issue has dragged on for a shorter time, not as long as six years. still dragged on for some four years. Discussions have been held, and everybody initially thought that there needed be no hurry because he would definitely be re-elected and serve for 10 years. But then, in no time, he has already resigned. Yesterday, I was asked how I looked at the issue. I of course hope that the former Chief Executive, who served for seven years, can be bound by some post-office arrangements. But the problem is that a commission is set up in great haste to draw up post-office arrangements only after he has Madam President, in law, there is admittedly something known as retrospective effect, but should we really apply this in the present case? Are we supposed to tell Mr TUNG that although there was no regulation at the time, and that there were no indications of any such regulation in the future, we will still impose regulation on him all the same? Or, can we simply say that there was no need to worry about anything because Mr TUNG himself has claimed that he will not take up any employment? The question is: Are we upholding the rule of law or the rule of man?

When it comes to issues that Secretary Stephen LAM has failed to handle, there are indeed countless many examples. What has he done over the past few years? We have been asking for universal suffrage, but he has been putting up various obstacles, saying that no change can be made. In regard to things we want to handle, there is such a "never-ending" list of items pending discussions in the Panel on Constitutional Affairs. Madam President, we should have been able to get something done, but now, so sadly, nothing more can be done. Despite the democratic camp's claim to the contrary, nothing more can be done. How can we possibly impose any regulation on TUNG Chee-hwa now? I can

only call upon Secretary Stephen LAM to pray to God, imploring Him not to allow TUNG Chee-hwa to do anything wrong like Elaine CHUNG and others. If he really does anything wrong, we will be in trouble because the whole thing will become a laughing stock, much to the disgrace of Hong Kong. Why has the situation become so worse? Why have they failed to do something so easy?

Madam President, I still wish to raise one point, a point which I also talked about yesterday — the coterie election. No one will ever believe that other aspiring contestants can be elected. The Central Authorities and the plutocrats have already made it very clear that they will support Donald TSANG. several months ago, Donald TSANG might still not be the chosen one. some people have direct audience with the top authorities. These people are very influential, and anyone who has their support will surely be elected. still think that if anyone wishes to join the race, he or she should be given a That was why I proposed yesterday that some sort of chance to participate. regulation should be imposed to prevent the chosen one from getting all the 700 or so nominations. Is it really impossible to do this? The Chief Secretary for Administration was so shrewd, and he hastened to rule out such a possibility yesterday. Did he mean that this was impossible from the legal perspective? Or, was he referring to other reasons? How about the provisions in Annex I to the Basic Law, Madam President? Paragraph 4 of Annex I is very simple: "Candidates for the office of the Chief Executive may be nominated jointly by not less than 100 members of the Election Committee. Each member may nominate only one candidate." Can any regulation be imposed on the basis of this paragraph? Frankly speaking, I will certainly be criticized for saying something like this because some people will think that it is useless to say anything on such a coterie election.

I was also present at the closed-door consultation conducted by the SAR Government. I could hear all people say that he must not be allowed to become the one and only candidate in the election. Dr Raymond HO, or may be another Member, even said that even if he really became the only candidate, some form of voting, such as confidence voting, should still be conducted. It can thus been seen that everyone wants to make some sort of personal representation. Therefore, I believe no one actually thinks that the election will be a genuine one. The reason is that the Central Authorities have already preordained an elect. But to Hong Kong, nothing can be worse than this. However, as long as we still live in Hong Kong, we will do our utmost, speaking up for the people and struggling for them. Why? Madam President, just a month ago, no one would have imagined that TUNG Chee-hwa would "step down". Similarly, before the

march on 1 July 2003, no one would have predicted that the plan to enact Article 23 legislation would fall flat. Therefore, there is always hope in our life.

**MR RONNY TONG** (in Cantonese): Madam President, the situation in the past few days reminded me of a song in mandarin called "You Make Me Happy And Sad" that was very popular some years ago in Hong Kong. What delighted me was that the era referred to by the public as the "Reign of Chaos under Chee-hwa" is finally coming to an end with the resignation of Mr TUNG for health reasons. However, what followed has made me very worried because the Central Government is again using high-handed tactics and distorting the provisions of the Basic Law for political ends. On 12 March, which is the anniversary of the birth of Dr SUN Yat-sen, I heard the explanation given by the Secretary for Justice, Ms Elsie LEUNG, about the law and it grieved and saddened me even more. Even a layman with no training in law can see that these arguments are illogical, unreasonable, inconsistent and self-contradictory. If we amend local legislation solely based on such arguments and disregard the provisions of the Basic Law, which even the Secretary has described as very clear, the damage to the tradition of the rule of law and social stability will be irreversible.

The first argument advanced by Secretary Elsie LEUNG in her statement is that, based on the same understanding of the principle for important offices in state organs, Article 46 of the Basic Law provides that the term of office should be two years and that there is no need to elaborate further by drawing up any provision. However, if we take a look at Article 46 of the Basic Law, any person who can read Chinese will find that this Article is in fact very simple and there are only two sentences: "The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He or she may serve for not more than two consecutive terms." In these two dozen words, how can it be seen that a new Chief Executive filling a vacant post will serve the remaining term of office, or two years? I found that if the numeral five is turned upside down, it becomes the numeral two. I wonder if this is the reason.

Even if the principle put forward by Secretary Elsie LEUNG is applicable to the Basic Law, we found that there is no provision that states so explicitly in the Basic Law. We have also searched through the records of the Basic Law Drafting Committee mentioned by Secretary Elsie LEUNG but there is no reference in it saying that if the office of the Chief Executive becomes vacant, his

successor can only serve out the remaining term of office. How can we accept the explanation given by the legal experts in Beijing and plug the meaning of the remaining term of office into the Basic Law?

Secretary Elsie LEUNG has said a number of times that initially, she tried to understand the issue from the common law angle, however, she found that it was also necessary to understand legal principles and legal viewpoints on the Mainland.

In that case, let us look at it from the mainland legal viewpoint. Mr XU Chongde, one of the so-called four defenders of the Basic Law, said in the *21st Century Teaching Materials in Legal Studies* edited by him in 1999 that if the definitions in the constitution are clear and specific, then the scope for interpretation of the definitions of the Constitution is very limited. Basically, interpretations according flexible meanings cannot be made to the time, figures and limits prescribed in the Constitution.

On the power of the Standing Committee of the National People's Congress (NPCSC) to interpret the constitution, Mr ZHANG Zhiming, Associate Professor of the Jurisprudence Section of the Institute of Law, explained in another article that the claim by some academics that it is possible to perfect the constitution to meet the needs of social development better by way of making interpretations of the Constitution in fact carries the meaning of amending the Constitution through interpretation and this is a misconception about the interpretation of the Constitution. He further pointed out that if the power of the NPCSC to interpret the Constitution is understood to mean that the NPCSC possesses the power to interpret the Constitution in excess of it original meaning, it is tantamount to making amendments in the name of interpretation. Therefore, any interpretation of the Constitution cannot exceed the strict meaning originally intended in the Constitution. Another legal expert on the Mainland, Prof HU Jianmiao, even pointed out in a clear-cut manner in the "Ten Dissertations on Constitutional Law" that before the Constitution is amended, the party making the interpretation cannot act in such a way as to be ultra vires. This is the price of developing the rule of law. This is written by a Chinese scholar on law.

Madam President, in citing at length the views of these mainland legal experts, I only want to illustrate three all too obvious points, that is, from the viewpoint of the mainland legal system, firstly, there is not any specific provision in the Basic Law and we cannot invent something out of nothing,

particularly with regard to the provisions involving specific time and figures, that is, five cannot be taken to mean two. Secondly, anybody, be it mainland legal experts or the NPCSC, cannot exceed the originally intent of the Constitution when making interpretations, otherwise, this is tantamount to making amendments and it would look as though the NPCSC were non-existent because only the NPCSC is empowered to amend the Constitution. Thirdly, no matter how outdated these provisions are or how much they have failed to keep up with the pace of social development, we cannot make any interpretation at will before the law is amended. This is the price that has to be paid by any society that upholds the rule of law.

The second jurisprudence argument presented by Secretary Elsie LEUNG is that the Election Committee (EC) is in fact a standing committee, the design of which is to handle any by-election of the Chief Executive that may occur. an argument is even more strained. Firstly, no matter according to Articles 53 or 45 or Annex I to the Basic Law, we cannot see any meaning that the term of office of each EC must be the same as that of the Chief Executive. direct relationship between the two or with the term of office of the Legislative law and its duty is to return six Members to the Legislative Council of the second term and the Chief Executive of the second term. Its term of office is obviously very different from that of the Chief Executive. Even under normal circumstances, the term of office of the Chief Executive of the second term will definitely be longer than that of the EC. If the argument advanced by Secretary Elsie LEUNG stands, then by this token, if Mr TUNG had resigned a day after the term of office of the EC ends, the Chief Executive who will succeed him will have to be selected by the EC of the third term. In that case, will the term of office of the new Chief Executive be five years? If the term of office of the new Chief Executive is wholly dependant on the day which his predecessor chooses to tender his resignation, does such a rationale sound reasonable in jurisprudence? Will this be feasible?

In addition, when the Basic Law was being drafted, the phrase "the Chief Executive of a new term of office" was amended to "the new Chief Executive" and "new" should not be understood to mean a "new term of office". It is possible that this is what was really intended, however, we cannot find any such reference in the texts of either the Basic Law or the records of the Basic Law Drafting Committee to such a meaning. We cannot find any argument supporting the interpretation about the remaining term of office.

The last argument put forward by Secretary Elsie LEUNG is that the decisions made by the NPCSC on 26 April last year on the constitutional arrangements for 2007 and 2008 in its interpretation of the Basic Law already affirmed that the election for the Chief Executive of the third term will not be held until 2007. Therefore, when the office of the Chief Executive of the second term becomes vacant, the election is only a by-election. Sorry, I find this argument most fictitious. May I ask Honourable colleagues seated here which chapter, which section or what evidence there is in the original text of the decisions on 26 April indicates that when the NPCSC made its decision, consideration had been given to the possibility of the Chief Executive falling sick or resigning? Had the NPCSC foreseen that Mr TUNG would definitely fall ill or resign after one year and his resignation would definitely be accepted? least, we cannot find any such evidence, rationale or theory that can back up such a view.

Madam President, in fact, the Acting Chief Executive, Mr Donald TSANG, already admitted indirectly in a meeting of the House Committee yesterday that there was actually controversy over the term of office of the new Chief Executive. How should such a controversy be resolved? No matter who is right or wrong, the only way forward is to amend the provisions of the Basic Law through lawful procedures. We certainly cannot rely solely on the views of the legal experts in Beijing, no matter how renowned they are or how much homework Secretary Elsie LEUNG believes she has done. Nor can we rely on the views expressed by other people and look upon them as authoritative then amend our local legislation according interpretations, interpretations, since doing so is to deliberately violate Articles 11 and 46 of the If the Secretary still remembers, Article 11 states that no law Basic Law. enacted locally shall contravene the Basic Law. If the SAR Government does so, it is holding the Basic Law in disregard, as well as disregarding existing legal procedures and disregarding the rule of law. This is totally unacceptable.

Madam President, the state leaders have reiterated many times since last year that Hong Kong people must support the Chief Executive and the SAR Government in governing Hong Kong according to the law. I hope the leaders of our country and the SAR can abide by and put this appeal into practice.

Thank you.

MR TAM YIU-CHUNG (in Cantonese): Madam President, Mr TUNG Chee-hwa has resigned from the post of Chief Executive last week, which is very much regretted by the DAB. Over the past eight years, Mr TUNG has spared no effort in serving Hong Kong, led Hong Kong in the full implementation of "one country, two systems", successfully fought against the challenges brought about by the financial turmoil, revived Hong Kong economy, facilitated the conclusion of Mainland/Hong Kong Closer Economic Partnership Arrangement, and led Hong Kong out of the economic doldrums. Furthermore, Mr TUNG's high level of enthusiasm devoted to polices relating to education development, elderly services and the protection of the interest of grass-roots labour is evident to all.

The handover of the leadership of the SAR Government has been conducted very smoothly in the past couple of days. It is our belief that, following the return of a new Chief Executive to be elected in accordance with the law, the SAR Government can definitely continue to upgrade its governance capabilities and improve the livelihood of the people, thereby promoting social stability and development. The DAB will, as in the past, support the new Chief Executive in governing Hong Kong according to the law — the Basic Law. If the Government's policies are correct, we will definitely support them. If there are problems with the policies, we will definitely express our views and make criticisms. At present, the priority task of the SAR Government is the proper conduct of the election of a new Chief Executive. In this respect, it is imperative for the Government to first clarify the issue of the length of tenure of the new Chief Executive.

There have been a lot of discussions in the community lately. I have also heard a lot of Members expressing their views just now. Generally speaking, there are two major views: one is that the term should be five years, and the other one is the remainder of the term. It should come as no surprise for different interpretations of the provisions of the Basic Law emerging, so long as the Government further clarifies and elaborates the matter. However, I am afraid that some people are seeking to deal a blow to the prestige of the SAR Government in governance in the name of insisting on a five-year tenure. They have paid no attention at all to the legal basis involved in the proposal of serving out the remainder of the term. Instead, they have resorted to indiscrimately pinning labels of undermining the rule of law and the "one country, two systems" in the hope of instigating confrontations among members of the community. They have thus unavoidably given people an impression that they are seeking to stir up troubles rather than resolve problems.

Regarding the term of the Chief Executive to be returned by the by-election, the DAB is of the view that the remainder of the Chief Executive's term should be used as the yardstick. I wish to elaborate my justifications from two aspects.

First, from the angle of the constitutional design of the Basic Law, the term of the Chief Executive should be five years, with the replacement serving out the remainder of the term. The Basic Law is legally based on the Constitution. According to the Constitution, the terms of important offices in state organs such as the President, the National People's Congress (NPC), the State Council and the Chinese People's Political Consultative Conference (CPPCC) are invariably five years. When an office becomes vacant prematurely, the successor will serve out the remaining term of the outgoing office holder. As members of the Basic Law Drafting Committee (BLDC), we interpreted the stipulation of the term of the Chief Executive in accordance with this principle in drafting the Basic Law.

Similarly, Annex I to the Basic Law is able to manifest the notion of this design model. Annex I has provided that the Chief Executive shall be elected by an 800-member Election Committee. At the same time, it is put beyond doubt that the method for selecting the Chief Executive for the terms subsequent to the year 2007 can be amended. The year 2007 is defined by counting 10 years, or two terms for the Chief Executive, starting from 1997. In other words, even should the Chief Executive be replaced a number of times during these 10 years, the total length of tenure would still be 10 years. This concept was re-affirmed subsequent to the passage on 6 April 2004 of a motion on the Interpretation by the NPCSC of Article 7 of Annex I and Article III of Annex II to the Basic Law and the passage on 26 April 2004 of a motion on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008. out in these legal documents that the Chief Executive to be elected in 2007 is the Chief Executive of the third term. The purpose of doing so is to spell out clearly the year and the term. It is not because it is anticipated that problems will occur or a vacancy will arise.

Another document which can manifest the design direction of the constitutional system is Annex I to the Basic Law in which the "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region" is spelt out. As I pointed out yesterday, according to

Article 4 of the Decision, the term of office of the first Chief Executive shall be the same as the regular term. In other words, the five-year term as referred to in Article 46 of the Basic Law is a normal term. As for the emergence of a vacancy in the post of Chief Executive as referred to in Article 53 of the Basic Law, it means that the Chief Executive does not resign upon the expiry of his normal term. The election conducted subsequently is thus not a normal election for the Chief Executive of the new term. As such, the tenure of the Chief Executive to be elected is not necessarily counted as a normal term. From these legal bases, we can see that the replacement Chief Executive should serve out the remainder of the term of his predecessor.

Second, from the angle of legal interpretation, we must avoid relying solely on the literal meaning of words in interpreting the Basic Law. This principle *per se* is similarly an important principle in common law. In addition to the CHONG Fung-yuen case specially mentioned by the Secretary for Justice in this Council yesterday, in *NG Ka-ling and others v Director of Immigration*, the Chief Justice also said that in interpreting constitution like the Basic Law, the courts tend to consider the legislative intent and must avoid a literal meaning, technical, narrow or rigid approach.

In the past couple of years, the SAR Courts have dealt with a number of lawsuits involving the provisions of the Basic Law. Instead of interpreting a provision in isolation, the Courts would examine the implication of the provision by reading that provision in conjunction with other provisions so as to make a general or targeted interpretation. It can thus be seen that we cannot rely solely on Article 46 of the Basic Law to judge and interpret the term of the Chief Executive to be elected.

It is not at all strange for the existence of diverse views in the community on the term of the Chief Executive to be elected. It is because the implementation of the Basic Law is, after all, something new. There can be inconsistent interpretations of the provisions. However, it requires patience and practice before the conflict between the civil law system represented by the Basic Law and the common law system practised in Hong Kong can finally be resolved. The existing divergence in views has definitely nothing to do with right or wrong. People insisting on a five-year term because of their political motives and recklessly attacking others with dissenting views by pinning labels of destroying the rule of law will only show that they have a guilty conscience and they are insincere in their words. Therefore, I believe all the more that Mr Martin LEE was talking sincerely while he was not yet fully awake.

Recently, there has been much speculation by Members on a string of problems arising from Mr TUNG's resignation for health reasons. Actually, we will find that many of their comments are lack of prudence if we read the recent newspapers carefully. Very often, their comments are inconsistent. Even many critic media concur that sometimes they (Members of the democratic camp) do not know what they are talking about.

Given the disputes on the term of the replacement Chief Executive, some people might make use of this opportunity to stir up another constitutional crisis should the community fail to reach a mutual understanding. Therefore, we do not oppose the idea of seeking a legislative interpretation by the NPCSC to enable the SAR Government to continue to operate effectively. people have already wasted no time in requesting the NPCSC to exercise self-restraint and refrain from interpreting the Basic Law. Such people actually seek to confuse public opinion in the name of upholding morals and give others an impression that the Central and SAR Governments are defying the rule of law. The rule of law stresses legitimacy. To all this I will object. According to the Basic Law, the NPCSC has the power to interpret the Basic Law. interpreting the Basic Law is lawful. This would by no means damage the "one country, two systems" and the "high degree of autonomy". On the contrary, this would assure the effective governance of the SAR Government and social stability.

Madam President, after Mr TUNG Chee-hwa's resignation from the office of Chief Executive, some Members have even openly admitted and complained to the media that greater effort would be needed to rally more public grievances in future. They hold that the inadequacy of TUNG's governance has provided them with enormous political capital — the political capital they previously possessed will disappear once Mr TUNG quits. Such an attitude of taking part in politics is most dangerous. We hope they can soon come round and get back to the path of construction for fighting for the well-being of the people.

I heard earlier Ms Emily LAU's frightening description that Mr TUNG was ordered by the Central Authorities to resign and that the Central Authorities had "shown no hesitation in swinging the axe". One moment, she blamed the resignation on Mr TUNG's personal problems; the next she attributed the problem to the institution. At times, she said that both the institution and Mr TUNG himself are problematic. She seemed to be uncertain as to what is right. I believe should the Central Government refuse to accept Mr TUNG's

resignation for health reasons, Ms LAU would definitely criticize the Central Authorities for "backing" Mr TUNG. Now that the Central Authorities have approved of Mr TUNG's resignation, Ms LAU again described them as "showing no hesitation in swinging the axe". I think sometimes even the Central and SAR Governments do not know what to do because a lot of Members say different things at different times.

Furthermore, it has been anticipated that numerous problems might arise should the Central Authorities announce that the term of the Chief Executive should be five years. For instance, this was what Mr Ronny TONG said as reported by Sing Tao Daily on 1 March — I do not know whether the report is correct but Mr TONG is not in this Chamber at the moment. Let me read it out now — "If the Central Authorities, as speculated, really pave the way for TUNG to resign from his post of Chief Executive by naming him a Vice Chairman of the CPPCC, there can only be one underlying reason, and that is, the Central Authorities hope to postpone the constitutional reform expected to be conducted in 2007 and 2008 because they do not hope to see it triggering Mr TONG explained that should TUNG quit at this moment, a social turmoil. new Chief Executive would have to be selected. As the term of a Chief Executive is five years, the new Chief Executive might serve past 2007 and, as a result, the Chief Executive Election, originally scheduled for 2007, might be postponed for two to three years, thereby postponing the entire constitutional This was Mr TONG's analysis, though he seemed to say something different later. Never mind, whatever he said.

I find it most amazing that Dr KWOK Ka-ki earlier quoted some of the remarks I made in 1994. Even I myself would not necessarily bother to take so much trouble to find out what I said in 1994. However, up to the present moment, I do not find anything I said then incorrect. Moreover, it has once again been confirmed that the DAB has been campaigning for dual elections by universal suffrage since its establishment in 1994. Dr KWOK also mentioned our effort to reflect the relevant views to Director LU Ping of the Central Authorities. It is true that we have been making great efforts in fighting for our cause in this respect. It is most regrettable that, up to last year, we could still see that Hong Kong community had yet to reach a consensus on the issue of holding dual elections by universal suffrage. Actually, the Central Authorities do not feel at ease with the proposal of hastily achieving dual elections by universal suffrage in 2007 and 2008. Moreover, it is felt that this is inconsistent

with the Basic Law and the conditions are not yet ripe. Nevertheless, we still hope to work hard to create the required conditions to prepare for the early implementation of dual elections by universal suffrage on a full scale.

Dr KWOK expressed his views in a very pessimistic manner. However, it makes no sense to me. Dr KWOK said that he had found it very pessimistic when Mr TUNG was in office. Even though there is now an opportunity for a new Chief Executive to be selected, he still found it equally pessimistic. It seems to me that he feels the same way whatever happens. It is meaningless if one behaves in such a pessimistic manner because this is a sign of having no confidence in oneself. In my opinion, we should preferably seize this opportunity to work in collaboration for a better future of Hong Kong. We should examine ways to do something really constructive to enable the Central Government and the so-called democrats in Hong Kong to build up mutual trust. Thank you, Madam President.

MS LI FUNG-YING (in Cantonese): Madam President, after dragging on for nearly two weeks, Mr TUNG has eventually announced formally his resignation from the office of Chief Executive. Mr TUNG, a senior in his late sixties, has been working diligently in the past seven-odd years as the Chief Executive. Now that he has decided to depart before the expiration of his term, I believe the vast majority of the people of Hong Kong would like him to do so in a proper and dignified manner.

Today, an adjournment debate is being held in this Council on the office of Chief Executive becoming vacant and relevant arrangements. In my opinion, the Central Government's acceptance of the Chief Executive's resignation serves as an important indicator of the implementation of the concepts of "one country, two systems" and "Hong Kong people ruling Hong Kong". It is evident that the Central Government has opted for a more open and pragmatic manner in handling Hong Kong issues. Nevertheless, the entire process, from the breaking of news about Mr TUNG's resignation on 1 March, to the holding by Mr TUNG of a press conference to formally announce his offer of resignation to the Central Authorities on 10 March, has fully underlined the cultural differences between the Mainland and Hong Kong. I feel sorry that Mr TUNG has failed to make use of this opportunity to highlight Hong Kong's *modus operandi* under the "one country, two systems".

Hong Kong is an open society with advanced information networks and fierce competition among the media. Such an important event as the resignation of the highest person in charge of Hong Kong is bound to attract extensive attention among members of the public. It was not until 10 March, when the news of the Chief Executive's resignation was widely believed by the public to be true, that Mr TUNG called the press conference to explain to the public the whole story of the submission on that day of his resignation to the Central Authorities for approval. This approach is not only inconsistent with the situation of Hong Kong society, it is also not the expected performance of a world city in dealing with personnel changes. The Government's failure to timely respond to the community's concern about the resignation of the Chief Executive will only undermine the foundation of mutual trust between the people and the Government.

Mr TUNG has all along strived to properly perform his duties as Chief Executive. It is an indisputable fact that he had to face enormous pressure and work long hours. "A steady decline in his general health" is thus inevitable. However, in citing this as the reason for his resignation from the office of the Chief Executive simply could not dispel the misgivings of the general public. On the one hand, it has not occurred to the public that the health condition of Mr TUNG has deteriorated to such an extent that his work is already at risk, and on the other, Mr TUNG has devoted much of his policy address early this year to reviewing the blunders of the Government in past years and planning the direction of the Government's future tasks. Mr TUNG's abrupt decision to resign for health reasons is indeed incomprehensible.

Madam President, I hope that Hong Kong's bureaucratic culture is pragmatic. Given that the Government has implemented the accountability system, its accountable officials must be responsible for their own policy areas. It is just natural and right for them to resign for failing to do so. Only in doing so can the broad-mindedness of the people involved in politics and their courage in assuming responsibilities be manifested in a more categorical manner.

In the past seven-odd years since the reunification, Hong Kong has experienced the challenges brought about by a string of incidents, such as the financial turmoil, the burst of the bubble economy, the economic transformation and the SARS epidemic. It is indeed unfair to blame all these blunders on one single person. In tandem with Hong Kong's economic recovery, the resignation of the Chief Executive will turn a new page for Hong Kong where the "one country, two systems" is practised. However, how should this be done? It is

imperative for all of us, from the Central Government to the Hong Kong community, to conduct a full review so as to enable Hong Kong to understand itself better and equip itself better for the road ahead. A new Chief Executive is expected to be returned in six months. Despite the diverse views in the community on the term of the new Chief Executive, I earnestly hope that these disputes can be properly resolved in the end to avoid stifling Hong Kong's development.

Madam President, in preparing the draft of this speech for today's adjournment debate, I looked up the first policy address delivered by Mr TUNG in his office as the Chief Executive. This policy address, entitled "Building Hong Kong for a New Era" reads, "I understood, as I drew up this policy address, that what I say today will affect the future development of Hong Kong and the interests of each and every citizen. I asked myself some searching questions: Is our outlook broad enough? Is our thinking down to earth? Has our direction reflected the fundamentals of a free market economy and the principle of prudence in financial management? Has our thinking reflected the feelings and aspirations of our citizens? Have we only delivered the good news and not the bad in our assessment of the current situation? Are we making promises to our citizens we cannot realistically achieve? Have we ensured the development of democracy by proceeding in an orderly fashion and in accordance with the principle of steady progress? Have we allowed our attention to be distracted by too many things, and lost focus? questions have been in my mind during the entire process of preparing this policy address, and will, I am sure, guide me in my work during the coming five years." These eight questions, which have always been confronting Mr TUNG, do not apply to him only. I believe his successor will similarly find them valuable reference.

Madam President, I so submit.

MR ALBERT CHAN (in Cantonese): Madam President, in the beginning of March, I learnt of the speculation about Mr TUNG's stepping down in the newspapers. I was overjoyed, seemed to have set down a heavy burden which I have been carrying for years. I did not feel at a loss or having no sense of direction, as some people from the DAB described the way we democrats might have felt. I absolutely do not have those feelings. The stepping down of Mr TUNG was the result brought about by the two mass demonstrations participated by 500 000 people and it was the manifestation of public opinion. Regarding

the stepping down of Mr TUNG, we can say that both the pro-democracy camp and the Central Authorities hold the same view. The pro-democracy camp fully supports the decision of the Central Authorities. We support and accept the stepping down of TUNG Chee-hwa. This is completely different from the DAB's feeling of implicit disappointment. The DAB had been benefiting politically from the shelter of Mr TUNG by securing lots of seats in all kinds of bodies. Therefore, the DAB feels disappointed and sentimental. In the meantime, it is understandable that the DAB should feel worried about the rise of Donald TSANG to the top post because they have temporarily lost their political reliance.

In the seven years of governance by TUNG Chee-hwa, Hong Kong has seen numerous tragedies and errors, which have escalated to disastrous Yet, as we take a retrospective look, we would realize that the stepping down of TUNG Chee-hwa has been systematically orchestrated and well co-ordinated; it was simply the work of a great master. First of all, we witnessed President HU scolding TUNG Chee-hwa in Macao to tell him to identify inadequacies. Later on, Vice President ZENG Qinghong said again in South America that there were still some inadequacies not yet addressed. Next, we learned of the possibility that TUNG Chee-hwa might be appointed the Vice Chairman of the Chinese People's Political Consultative Conference (CPPCC). Obviously, he would be given a nominal promotion. Given that, he really stood a good chance of stepping down. With the former President JIANG Zemin having formally resigned from all his official positions except the post of the Chairman of the Military Commission of the Central Committee of the Communist Party of China, TUNG Chee-hwa also resigned on the following day. I very much appreciate that this might be the way how personnel changes took place among the Communists, which take cares of the feelings, viewpoints and relationships of the different affected parties. However, I find it hard to accept one point, that is, TUNG Chee-hwa cited his leg pain as the reason for his resignation. I have also suffered from a leg pain for over a decade. through these years, I have been taking pain killers before going to my football games. I do not know whether it is because Mr TUNG's doctor is less capable or for some other reasons, our conditions can show such great differences. pain killers I take are prescribed by the Yan Chai Hospital. I can play a full 90-minute football game after taking two tablets of such pain killer. that can happen is I will suffer from the pain again on the following day. But I can finish the game without leaving the football pitch in the middle of it. This is sportsmanship, which should be displayed by all athletes.

Madam President, after the stepping down of TUNG Chee-hwa, I believe Hong Kong will face even greater challenges in the post-TUNG Chee-hwa era This is because, for Mr TSANG, the present ruling team is not of his own making, and the trust of the Central Authorities in him is not absolute, in addition to the fact that he has to take care of the numerous headaches left behind by TUNG Chee-hwa. Recently, when I woke up in the middle of the nights, I often sighed over the fact that TUNG Chee-hwa had created lots of problems during his governance of Hong Kong, and even after his departure, many problems, such as the Chief Executive Election Ordinance are still affecting Hong Kong in no small way. This is one of those headaches. At present, the "two or five years" dispute over the term of office of the new Chief Executive is also caused by this Ordinance. Yesterday, Chief Secretary for Administration Donald TSANG made an open apology in the special meeting of the House Committee and assumed responsibility for the error. However, when Mr TAM Yiu-chung delivered his speech, he was so shameless as to insist that there were justifications and that according to the design of the Basic Law, the two-year term was an inevitable fact. I do not know when the Legislative Council enacted the .....

**MR TAM YIU-CHUNG** (in Cantonese): Point of order.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung, do you have a point of order? Mr Albert CHAN, please sit down first.

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, a Member who has delivered a speech has been named as shameless. May I ask, should this remark be used in this Council to criticize other Members?

**PRESIDENT** (in Cantonese): I rule that this remark is offensive. Mr Albert CHAN, please withdraw this remark.

MR ALBERT CHAN (in Cantonese): Madam President, "hou yan wo chi" ("厚顏無耻" means shameless) is a Chinese idiom.

**PRESIDENT** (in Cantonese): Yes. But there is a precedent. On the last occasion when another Member used this remark, my ruling then was to ask him to withdraw it, and he did.

MR ALBERT CHAN (in Cantonese): Madam President, I refuse to withdraw this remark. I feel that this remark did reflect the stand and method adopted by him in delivering his speech. I do have my own justifications. If you would allow me to explain, I shall spend some time to explain why I made this remark and it should illustrate what sufficient justifications I have.

**PRESIDENT** (in Cantonese): Mr Albert CHAN, I hope you can think about this. If you want to criticize the speech of another Member, you are absolutely allowed to do so. But it is not necessary for you to use this four-character Chinese idiom. Therefore, your withdrawal of this four-character Chinese idiom just shows your respect for the ruling of the President. Please think about it.

MR ALBERT CHAN (in Cantonese): Madam President, I respect facts and I respect history. I do not intend to show any disrespect to this Council, nor do I intend to show any disrespect to your ruling. Madam President, if you would allow me to explain and after I have done so, you may accept my explanation. However, you do not give me the chance to explain my case. I have just made this remark, but I have not finished the ensuing part of my speech. You do not let me explain my case.

**PRESIDENT** (in Cantonese): Mr Albert CHAN, if you do not withdraw this remark, I shall have to suspend the meeting and invite you to the President's office for a discussion because I have to act according to the Rules of Procedure. If you wish to express what you think, I hope you can consider withdrawing this remark.

**MR ALBERT CHAN** (in Cantonese): Madam President, I respect your ruling. But I hope you can give me the chance to explain my case.

**PRESIDENT** (in Cantonese): At this moment, you are using your speaking time. Of course you can continue with your speech, as long as you withdraw this remark.

**MR ALBERT CHAN** (in Cantonese): Madam President, if you let me explain my case, perhaps you may think that I need not withdraw this remark.

**PRESIDENT** (in Cantonese): I now suspend the meeting.

8.26 pm

Meeting suspended.

8.37 pm

Council then resumed.

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

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

**PRESIDENT** (in Cantonese): Honourable Members, I have talked to Mr Albert CHAN in the office. He said he was unwilling to withdraw this remark. I now ask for the last time: Mr Albert CHAN, are you willing to withdraw the offensive remark you made earlier?

**MR ALBERT CHAN** (in Cantonese): Madam President, I have nothing to add. I will not withdraw what I have said.

**PRESIDENT** (in Cantonese): Mr Albert CHAN, please leave this Chamber. You do not have to come back to join today's meeting.

(Mr Albert CHAN left the Chamber)

MR LEUNG KWOK-HUNG (in Cantonese): In fact, Mr Albert CHAN just said that Mr TAM Yiu-chung was "shameless", and it was similar to JIANG Zemin's remark of "too simple, sometimes naive". As a matter of fact, it is not as simple as that, is it not? This adjective is not adequate to describe the situation. We all know that there is a Chinese idiom "qing zhu nan shu" (馨竹難書), meaning that "even after using up all the bamboo for writing, one cannot put down all the details fully". Actually, even having used up all the bamboo for writing, it is impossible for us to list out all his wrong-doings. So this simple adjective of "shameless" is really inadequate, is it not?

So, "hou yan wo chi" (shameless) is a Chinese idiom, and any idiom may cause problems because the description is not precise enough. And I am going to elaborate it in a modern sense ......

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, you are not asked to give a "lecture" here. We are debating on the motion "That this Council do now adjourn".

MR LEUNG KWOK-HUNG (in Cantonese): No, my issue is .....

**PRESIDENT** (in Cantonese): Please come back to the subject of the motion, will you?

MR LEUNG KWOK-HUNG (in Cantonese): I discuss this issue because many people are concerned about this remark "hou yan wo chi" (shameless). In doing what I have been doing, I am actually making a contribution. (Laughter) So if I have to put it into English, I shall have to say "thick" is the same as "shameless"......

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, you must come back to the subject of the motion. Please speak on the subject of the motion. If you want to express any opinion, you may do so by continuing with your speech, as long as it is related to the subject of the motion, can you?

## MR LEUNG KWOK-HUNG (in Cantonese): Understood.

Even in English, it is the same: "thick" is "shameless". In fact, I feel that there is a shortcoming with Chinese idioms, that is, they are not precise enough.

When Mr TAM Yiu-chung delivered his speech, he said he did not know what Members of the pro-democracy camp were talking about. However, I know he must surely know what he was talking about. First, he was reading aloud the speech with a script in his hand, which might have been written by his And he had read it beforehand. So he knew what he would be Unless his speech went in an irrelevant direction (then he would not be reading. able to deliver the speech eloquently), I absolutely believe that Mr TAM Yiu-chung knew what he was talking about. Secondly, he is a "yesman to the north". No matter what the people from the north say, he will follow. people from the north seem to the Plough to him. This is just similar to those old revolutionary tales which said that MAO Zedong was like the Plough to the Looking to the north, you definitely know what you are talking about. But he just uses his own mouth to utter words of others.

I feel that he is a relatively honest person. He came forward to safeguard a principle, that is, whatever the Central Authorities say must be correct. His dogged dedication to uphold this principle has already reached a magical proportion. We can consider the following: Mr TUNG has been through thick and thin all these years. Ever since 1998, people in the business sector have started the trend of calling for the stepping down of Mr TUNG. With many different changes in the circumstances, Mr TUNG was sometimes criticized, while he was praised at some other times. All these currents came from the north, while currents from the south did not have any impact at all. So the people knew how they should react simply by finding out where the current was originated. Once they sensed that the current came with a smell of the deserts, they knew it was from the north, then they knew for sure when they should be supporting TUNG and when they should be criticizing him.

What was my personal experience? It was at a time when I was running in the 2004 Legislative Council Election. I found that nearly all the candidates contesting for directly-elected seats would criticize the governance of Mr TUNG (such criticisms were not necessary for candidates contesting for indirectly-elected seats). The criticisms might differ in their intensity and depth. Some criticisms were light, while others were heavy and daring blows in his face. Yet there was one thing in common: No one supported Mr TUNG anymore. It was because at that juncture, the strategy was to lash all out at Mr TUNG in order to gain the seat; then upon their return to the Legislative Council, they could continue their support for him albeit obliquely. It was really the cleverest calculation in the world.

This has been crystal clear to me. I have run in this election twice. I really know what I am talking about. During my first election campaign, I called for the stepping down of TUNG Chee-hwa, urging for the conduct of a referendum on amending the Basic Law, and for a decision to be made within one year on when universal suffrage should be implemented. Very unfortunately, I lost the election, so there was no way for me to carry out my platform. In my second election campaign, the most significant items of my platform remained the same: Calling for the stepping down of TUNG Chee-hwa, urging for the conduct of a referendum on amending the Basic Law, and a decision to be made on when universal suffrage should be implemented.

Honourable colleagues, in the political history of China, there had been a person by the name the Elder Changle. I do not know whether Members have heard of him before. He was Mr FENG Dao, who had served 11 masters of four family names. Being a person without any soul, he found it all too natural to repeat what his masters had advocated. But he did not simply repeat everything his masters had said. Instead, as he climbed up the bureaucratic ladder, he would become more dedicated to repeating his masters' words with Some people act like a parrot repeating its master's more sophisticated skills. words. It is shameful for such people to act like parrots. In fact, someone has He is none other than Mr LO, an employee of Mr TUNG's said this before. He said he was like a parrot. He was just saying what Mr family business. TUNG had told him to say. Therefore, the adjective used by Mr CHAN was like having used up all the bamboo for writing, he would still find it inadequate to meet his purpose. It was just not adequate for depicting what actually had happened.

Let me come back to the subject matter. In the whole saga of Mr TUNG's stepping down, we have fully manifested one thing. First of all, I would like to talk about the controversy over the term of office of the new Chief Executive. What is the controversy all about? In fact, everyone has failed to see the crux of the problem. During the run-up to the reunification, there were a lot of Sino-British disputes. In order to strike a balance amidst the power struggles among different factions, the Basic Law was drafted in a "half-baked" manner. After the democratic movement in 1989 and the 4 June crackdown, Hong Kong people felt very disheartened. So the provisions of the Basic Law were drafted in a kind of compromising manner. As a result, the Basic Law is full of errors and contradictions. It was eventually passed under such I have no intention of condemning those members of the Basic circumstances. Law Drafting Committee (BLDC), because as the Basic Law has already been passed, it has become a political reality. However, when it is applied now, it is equivalent to riding an ox cart on an autobahn. The worn-out ox cart is either holding up the traffic or crushed into pieces by vehicles travelling at a high speed This is the reality. This is where the major dispute lies. from behind.

In fact, what does the controversy over the term of office of the new Chief Executive reflect? It reflects that it does not work at all for us to rely on a small group of people to draft a mini constitution that would have implications on the welfare of 6 million people. It did not work even if it was drafted by some so-called elites — in fact, many of them are not elites at all, just obedient people. Even though they had been chosen after a lot prudent considerations, they did not manifest the opinions of the people, nor public justice. Montesquieu once said that: What actually is law? Law is the manifestation of public justice, and public justice is of the utmost importance. In the process of monitoring the drafting of the Basic Law, these elements were completely missing. It was just a makeshift product. So, it explains why it has led to the present predicament.

Therefore, I would like to advise the pro-democracy camp not to argue about whether the term of office of the new Chief Executive should be two years or five years. It is all meaningless. What should we fight for instead? I feel that the stepping down of TUNG, be it due to his leg pain, heart pain or headache, was not due to some real pain for him. It was actually due to a political pain caused by years of labour. During the seven-year chaos of the Chee-hwa era, he suffered from such pain at least twice a year, and it has become increasingly unbearable. Therefore, he must step down. Secondly, his master has resigned or was forced to resign. He can no longer enjoy any further support, so he has to step down. But how should he withdraw from the

scene? He often said that, to him, staying was more difficult than stepping down. At that time, the pro-TUNG faction said that his way of thinking was full of moral responsibility. However, Honourable colleagues, I would like to ask him not to tell lies to the world. Leg pain is just a minor medical condition. He suffers from such serious leg pain as warranting the resignation from the office of the Chief Executive and can no longer serve Hong Kong. However, he was now promoted to a more significant position as the Vice Chairman of the Chinese People's Political Consultative Conference in a country with the largest population in the world. He is really telling a lie to the entire world. This is a conspiracy, which disgraces us all.

Honourable colleagues, the official promotion of TUNG is actually his demotion in reality. It reflects, apart from the internal power struggle among the different factions of the Chinese Communist Party, that the Central Authorities also think that TUNG should not stay anymore; that the seven-year chaos of the Chee-hwa Era should not be recorded in the history textbooks of Hong Kong; and that he should be relieved of his official duties. would like to ask one question: Why could such a person be elected and re-elected, and secure the majority support when he ran for the second term of the office of the Chief Executive? Why can no one object to his re-election for a second term? This serves to illustrate one point, that is, a bad system will bring a bad candidate to power, and a bad system will enable a bad candidate to This is just common safeguard the bad system which will benefit him in return. sense in political studies. As a common saying goes, "Absolute power corrupts absolutely."

Today, there are still people supporting TUNG here. I can recall that, soon after TUNG had been scolded and told to identify inadequacies, he admitted the existence of collusion between business and the Government and transfer of benefits. But he refused to acknowledge this on the following day. Then all those supporters of TUNG accused the pro-democracy camp of stirring up trouble, thus causing him to make a slip of tongue. Having done that, many people in the pro-democracy camp can successfully achieve their objective of causing confusion in Hong Kong as well as bringing trouble and chaos. I would like to ask these people, now that Mr TUNG has departed, that he has stepped down now, have they ever thought of the fact that they have played a part in supporting his appointment? If they continue to shore up this bad system, they will only create more replicas of TUNG Chee-hwa or Donald the Great. This is where the problem lies.

Therefore, I think that, on this issue, nothing is important unless the Central Authorities (it is unnecessary to issue an decree to assume responsibility for the wrong-doings this time) reverse the NPCSC "26 April decision" which distorted the public opinions in Hong Kong, killed "the high degree of autonomy" and Hong Kong people's right of implementing universal suffrage, if they really think that they have committed errors. The pro-democracy camp should boldly acts on behalf of Hong Kong people by telling the Central Authorities that it has committed errors. Do not conceal the truth. Instead, the pro-democracy camp should proceed to tell the Central Authorities that they should rectify the errors and do something good for Hong Kong people.

In addition, Mr Donald TSANG is now the Acting Chief Executive, and is a favourite candidate for the office of the Chief Executive. And he shall be the king of the Donald Era. He should reflect on himself. He once said that he had grown up drinking Hong Kong water with Hong Kong blood running in his But subsequently, in the four constitutional development reports compiled by him, is there a single line of honest words? Is there a single sentence not in line with members of the royalist faction in distorting the public opinions in order to please the authorities in Beijing? He should tell Hong Kong people that he was wrong. Now that he is in charge now, and it is no longer the fault of Mr TUNG. It has become all the more necessary for him to amend those four reports. He should discard those four reports now. really frightened, he should say that he will abandon the West Kowloon project However, he will not say something like this. now.

In the *History of the Later Han Dynasty*, there is a chapter entitled "A biography of HU Guang", and it was said that, "In the capital there is a popular ballad on HU Guang". If this is expressed in lay language, it simply means "People in Beijing are badmouthing HU Guang." There are two lines in the ballad, "We can ignore everything, and all we have to do is ask Boshi for advice. Mr HU is the only person in the world who knows the truth of life". Who is Boshi? Scholars in the past did have several aliases, and "Boshi" is an alias of HU Guang, and "Mr HU" also refers to HU Guang. The common masses said that they did not have to care about anything but ask the all-powerful Prime Minister. But this Mr HU would change his stance all the time according to the likes and dislikes of the emperor. Therefore, all the people in the capital hated him very much.

Is this the course of action that Mr TSANG would like to take? Does Mr TSANG want to follow the example of HU Guang? I think he has a chance to do justice to himself. So he should change his own course of action and give Hong Kong people a fair chance by telling the Beijing Government that the seven years' of chaos in the Chee-hwa era were caused by poor governance attributable to the poor systems which should be changed accordingly. I hope Chief Secretary Donald TSANG will not become another HU Guang, nor should he become another Elder Changle to serve 11 masters of four family names.

Honourable colleagues, some voices have been suppressed in this Council. 60% of the public opinion can be described as the minority view. With regard to causing such a situation, Beijing should be blamed, Mr TUNG should be blamed, the royalist faction should be blamed, the pro-TUNG faction should be blamed and Donald TSANG should also be blamed.

Thank you.

MR WONG KWOK-HING (in Cantonese): Madam President, for the motion debate of "That this Council do now adjourn", I have contacted some labour unions and grass-roots workers during the past few days. They said that, during this transition period, they are very concerned about issues in two aspects. First of all, they are concerned about the political stability of Hong Kong. hope that during this transitional period, the political situation of Hong Kong can remain stable and smooth and that a new Chief Executive can be elected Secondly, they hope that the measures already announced in the last policy address by Mr TUNG will not be abandoned altogether, and that they will be implemented for improving the people's livelihood all the same. I feel that, insofar as these two aspects are concerned, it is worthwhile for Legislative Council Members to listen to the voices of our grass-roots workers, so as to fulfil the function of the Legislative Council, namely, to lead Hong Kong people through a smooth and stable transition without failing the missions assigned to them by the citizens.

According to some labour unions and the fellow workers whom I have contacted, the civil servants are all very concerned about the six pledges made by the former Chief Executive, Mr TUNG Chee-hwa, last year. For example, the Chief Executive had said that the remunerations of civil servants would not be

lower than the level in the year 1997; that the pensions of civil servants would not be changed; that they would not be compelled to retire on a compulsory basis; that no further reduction would be introduced to the existing establishment of 160 000 civil servants; that the civil service reform should proceed in compliance with four major principles in an gradual and orderly manner; that it would be ensured that existing employees would have peace of mind when reforms were introduced and its implementation could span over a period of up to 15 years; and that civil servants would be consulted and consensus would be sought before reforms were implemented; and that corporatization schemes would stop. The former Chief Executive had made these pledges, will the Acting Chief Executive and the new Chief Executive adhere to them as well? These are issues which civil servants and civil service unions are most concerned about, and such issues will have the most immediate impact on them.

Besides, what is the greatest concern to non-civil service employees? is whether the Government's undertaking of enhancing job opportunities can Would there be really some specific measures? really be fulfilled. Government contract and temporary staff be converted into permanent staff? With regard to staff employed on outsourced work of the Government, how can it eliminate contractors' exploitation of them and how can it enforce the use of the model employment contract as soon as possible? Mr TUNG said he intended to enhance job opportunities in Hong Kong and he would implement certain measures in respect of local cultural economy. After his resignation, will all such proposed measures be abandoned by the Acting or future Chief Executive altogether? What measures or approaches will the Government adopt in order to create more job opportunities? Although from the Budget delivered by the Financial Secretary this afternoon, we can hear that he does have some innovative proposals, we really feel that the measures adopted by the Government in enhancing job opportunities are inadequate, nor is the intensity Therefore, during this transitional period, we hope that the sufficient. Government will not ignore the voices of the workers, nor should it overlook the expectations of labour organizations. So, I would like to convey the immediate concerns of labour unions and organizations in this transitional period.

With regard to the political situation, I have also listened to their expectations. They strongly hope that during this transitional period, the Government of the Hong Kong Special Administrative Region (SAR) can handle and make good arrangements for the election of the Chief Executive in a stable, smooth, reasonable and legitimate manner. They feel that at the moment, the

focus or core issue is: Should the Chief Executive returned in a by-election serve out the remainder of the term of the outgoing Chief Executive or a full term of Regarding the controversy over the term of office, it seems that there are two distinctly different viewpoints: Should it be two years, or five years? It appears that neither party can convince the other party, yet both sides have their own justifications. As a result, the by-election for selecting the new Chief Executive cannot be proceeded smoothly. Given such a situation, I also find it regretful and disappointing. At present, all the Hong Kong people actually strongly hope that they will not be dragged into such a trivial controversy, and they just wish to see that the by-election can be held as soon as possible. union leaders said to me that if any seat of the Legislative Council should become vacant, the term of office of the Member returned in a by-election to fill the seat can only be the remainder of the term of the outgoing Member. The case of the District Councils is also another good example. The new District Council members returned in the two recent by-elections will also serve out the remainders of the outgoing members. Why should the case of the Chief Executive be different? I think this is a prevalent viewpoint in society. hold such a viewpoint, though I am neither a legal expert nor a lawyer.

Therefore, I think the Government may hold different viewpoints in this regard, and such viewpoints may well be contradictory. So the Government should assess the situation adequately, and be prepared for all kinds of scenarios that may emerge, so that it can cope with any difficult situations that may arise. The Government has the responsibility of ensuring the smooth conduct of the by-election of the Chief Executive without affecting the political and economic situations in Hong Kong. For this reason, I would like to raise four questions which I hope the Government can face squarely:

First, regarding the present controversy over the term of office of the Chief Executive, how will the Government handle it properly? Are there any practical and effective measures? I hope the Government can give a detailed reply in this regard.

Second, in the course of holding the by-election, if someone poses a challenge by way of a judicial review, how will the Government cope with it? Hong Kong is a free society where anyone has the right to apply for a judicial review. When the Government holds the by-election for selecting the new Chief Executive, a replica of The Link REIT incident may take place. I feel that the Government should make adequate preparations, so as to be able to

handle any possible situation in a responsible manner, and always be ready to act in response. Will the Government seek an interpretation of the Basic Law from the NPCSC on this issue? I think the Government should answer such questions.

Third, how can the Government present the legal basis in support of the remainder term in a better and more detailed manner, so as to gain the understanding and acceptance of the general public? I think it is also necessary for the Government to do this. Just as we heard Secretary for Justice Elsie LEUNG say in this Chamber yesterday, we found that she had not adopted this viewpoint in the first place; she had also thought that the term of office of the Chief Executive should be five years. However, after collecting more information, she changed her way of thinking. As citizens, we would ask why it should happen this way. I think the Government has the responsibility to clarify this. Otherwise, I think that it is possible that more problems may emerge.

Fourth, the Government has the responsibility to identify ways and methods of making people from different sectors and different walks of life live together in a most harmonious manner, striving for the largest common ground and minimizing differences. This will enable us to grasp the good opportunities that may come our way for reviving the economy of Hong Kong, thereby creating more job opportunities to improve the people's livelihood. I think these are the measures that a responsible government must adopt.

Madam President, I so submit.

**DR PHILIP WONG** (in Cantonese): Madam President, the resignation of Chief Executive TUNG Chee-hwa before the expiry of his term of office has aroused some arguments in Hong Kong. I am of the view that on balance, the achievements and performance of Mr TUNG over the past seven years should all deserve our recognition and commendation. My justifications are as follows:

(1) The resumption of both sovereignty and administration over Hong Kong under "one country, two systems" is a great innovation of the late Mr DENG. Needless to say, it will be extremely difficult to implement this innovation. It has not been easy at all to achieve the present results.

- (2) Mr TUNG assumed office virtually as a lone fighter, completely devoid of any practical experience and having to rely solely on his perseverance and persistence to realize the grand vision of the late Mr DENG. As a result, we should not judge his performance against the highest standards. His scores are already on the high side.
- (3) Given the global economic crises, natural and man-made calamities and endless unexpected incidents over the past seven years, it would have been almost impossible to avoid any impact on the people's livelihood. That being the case, should we not agree that the General should not be blamed for losing the battle?
- (4) Mr TUNG decided to run for the office of Chief Executive with the sole intention and purpose of serving Hong Kong after its reunification with the Motherland. His willingness to bear the burden of office and his integrity and dedication should come under no doubt. I am sure that many from the mass media in Hong Kong will be more than willing to testify to his broadmindedness and tolerance.

I think that Mr TUNG's rise to esteem, to the Vice Chairmanship of the Chinese People's Political Consultative Conference, can aptly reflect the State's general recognition and commendation of his achievements and diligence. I also believe that as Hong Kong gradually turns prosperous and people start to calm down, they will certainly miss Mr TUNG for his perseverance and endurance of humiliation. And, Mr TUNG's place in history will also be given a fair appraisal.

At present, the most important issue is construction for the future, and, the most pressing problem is how to sort out the term of office for Mr TUNG's successor. Although both the Central Government and the SAR Government have already stated that the Chief Executive to be elected a few months later should only serve out Mr TUNG's term of office, some still insist that there should be a new five-year term. Under Article 53 of the Basic Law, "in the event that the office of Chief executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law." Should the term "new" in this provision be taken to mean "a new Chief Executive with a separate term of office", or just a "new Chief

Executive"? Years back, I happened to take part in the discussions on and formulation of the Basic Law. As far as I can remember, this provision should refer to "a new Chief Executive with a separate term of office", only that the expression "with a separate term of office" was deleted when the Basic Law was promulgated. Consequent, the term "new' should not refer to "a new Chief Executive with a separate term of office". But then, I must admit that I am no authority on this. The only authority that can interpret the Basic Law should be the Standing Committee of the National People's Congress (NPCSC). therefore call upon the NPCSC to make an interpretation of this particular provision as soon as possible, so as to help foster harmony in our society. When presenting the government work report in the recent Session of the National People's Congress, Premier WEN Jiabao highlighted the importance of both social harmony and economic development. I sincerely hope that everybody can uphold the spirit advocated by Premier WEN Jiabao in the report and join hands to build up a harmonious society in Hong Kong. We have always believed that harmony will make a family prosperous.

Madam President, I so submit.

MR BERNARD CHAN: Madam President, Mr TUNG Chee-hwa's decision to stand down as the Chief Executive has come as a surprise to the whole community. I hope the history books will be kinder to him than many of our fellow citizens have been over the last few years.

Mr TUNG himself admitted in his last policy address that his Administration had suffered from a lack of experience and political sensitivity. But at least, he recognized that Hong Kong needed to make a start on difficult and long-term reforms. Mr TUNG's opponents may have succeeded in limiting those reforms, or simply putting them off for the future. But can they really claim that this was in Hong Kong's interest? Those reforms were necessary, and they will continue to be necessary. One day, we will have to get round to them.

Mr TUNG also impressed me with his sincere concern for the disadvantaged. As the Chairperson of the Hong Kong Council of Social Service, I know how seriously he took this issue. Now that he has stepped down, Hong Kong faces a certain amount of uncertainty.

From the point of view of day-to-day administration, I am sure there will be nothing to worry about over the coming months. Our Acting Chief Executive Donald TSANG has asked all Members of the Executive Council to stay on between now and the election in July, and everyone has agreed to do so. With Mr TSANG as the Acting Chief Executive, and with our extremely competent civil servants working as usual, Hong Kong is in good hands. But we do have this problem of whether someone will challenge the two-year term of office for the next Chief Executive?

From a practical point of view, many people would prefer to stick to the timetable of a 2007 election. Certainly, if the July election was for a five-year period, there would be Members of this Council complaining that this was a plot to put off democratic reforms until 2010.

From a legal point of view, the situation is more complicated. There is a real possibility that someone will go to Court and claim that an amended Chief Executive Election Ordinance is against the Basic Law. That raises the very real possibility that there could be a delay in the election timetable.

If that happens, we will enter an unknown territory. There could be serious uncertainty about who exactly has executive responsibility for Hong Kong. I do not know where that would lead to, but I think we would all prefer not to find out. We could, for example, have instability in the markets. It would certainly not be good for our international image.

I think most members of the community will agree that our priority must be a smooth election, then, the new Chief Executive can get on with his or her job. Therefore, I think we need to face the fact that we might have to ask the Standing Committee of the National People's Congress for an interpretation of the Basic Law on this issue. It might be controversial, but the alternative could be worse.

Madam President, after some difficult times, Hong Kong has an opportunity for a new beginning, but we need to have this uncertainty cleared up first. Thank you.

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

**DR RAYMOND HO** (in Cantonese): Madam President, with regard to the administration by Mr TUNG during the past seven years or so, we all think that he had been too eager to launch reforms, including the civil service reforms, the "85 000-flat housing policy", on top of some other new initiatives such as mother tongue teaching, Chinese Medicine Port and Cyberport, thereby affecting the foundation of social stability of Hong Kong. Unfortunately, he had not done a good job in promoting his own public relations image. It is doubly unfortunate for the financial turmoil to have taken place in 1997, to be followed by the unprecedented SARS outbreak in 2003. All these combined has caused the property market to plummet sharply, making many middle-class people become negative-equity property owners. Policy-wise, Mr TUNG also caused the pace of implementing infrastructure projects to slow down. This has made the engineering and construction sector one of the worst hit sectors plagued by unemployment — its unemployment rate has remained twice as high the overall corresponding figure of Hong Kong. The total number of unemployed workers, technicians, and professionals in the sector amounts to over 300 000 persons. If estimation is made on the basis of one family comprising 3.5 person, that means over 1 million people have been affected.

From another perspective, we may say that Mr TUNG has successfully fulfilled the grand mission of effecting a return of sovereignty to China in 1997. We can see that "one country, two systems" has been smoothly implemented. He has also dashed the internationally popular "doomsday fallacy" for the post-1997 Hong Kong. Now, Mr TUNG has tendered his resignation due to his health problems, and the Central Government has already accepted his resignation. On the other hand, the National People's Congress (NPC) has also passed a resolution to appoint him as a Vice Chairman of the Chinese People's Political Consultative Conference (CPPCC), and he has become a national leader now.

However, recently a dispute has emerged on the term of office of the new Chief Executive: Should it be five years or two years, the so-called "remainder of the term"? I wish to put forward my personal view on this issue in simple terms. If we just look at Article 53 para 2 of the Basic Law, the new Chief Executive should be elected within six months after the office has become vacant. According to Article 46 of the Basic Law, the term of office of the Chief Executive should be five years, and he can be re-elected for a second term. If we base our understanding of the issue on the principles and basis of common

law, this seems to be explicit and obvious. The SAR Government has also held such an understanding in the past.

Between 1985 and 1990, I was a member of the Basic Law Consultative Committee (BLCC). I was recommended by the Executive Committee of the Hong Kong Institution of Engineers to join the BLCC, and was accepted by the authorities. At that time, we held many meetings. You can say that we had been very meticulous in studying the wording of various articles of the Basic Law. Even for some details, or expressions consisting of only a few words, we would still spend a lot of time discussing them. For example, in one of such meetings, over 30 members attended it. I trust each and every member a very busy work schedule. However, during the two-hour meeting, all of us concentrated on the discussion of just four characters, namely, whether "有的" (certain) or "有些" (some) should be used as we all felt that there was a great difference between the two terms. As such, I learned a lot of legal knowledge as well as knowledge in other fields during this period of time.

I still recall that, when the discussion progressed to Chapter IV Political Structure, we also spent a lot of time discussing certain articles on which we are still debating — Articles 45, 46 and 53 as well as Annex I to the Basic Law. course, it would be impossible for me to recall all the details of our discussion. But I can remember that we did discuss wordings like "新的" (new) and "新一屆 " (of the new term). The most important point of Article 53 para 2 of the Basic Law is that it is stipulated that "In the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law." And in Article 45, it is stipulated that "The specific method for selecting the Chief Executive is prescribed in Annex I". And in Annex I, it is stipulated that "If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007,.....", well, I am not going to read the remaining part. Members can all look it up in the Basic Law. However, the Basic Law has never mentioned any by-election. So that is why we are still discussing the original intent of the relevant articles of the Basic Law now. Many people have referred to the interpretation of the Basic Law promulgated by the Standing Committee of the National People's Congress (NPCSC) at the end of April last Such wording was used at the beginning of the NPCSC's interpretation, which I have looked up, ".....the third Chief Executive in 2007". In other words, the new Chief Executive elected before 2007 will not be the Chief Executive of the third term, and the term of his office will not be five years. Recently, it is reported that in the Final Report on the Provisions submitted by the Basic Law Drafting Committee (BLDC) in October 1988, it recorded the proposal put forward by the BLDC after consultation and discussion had been held on the relevant issues; it was mentioned in the proposal such wording as ".....a new Chief Executive shall be selected.....".

Of course, the legal system of the Mainland is slightly different from that According to the practice in the Mainland, the terms of all public offices are five years, regardless if they are the offices of the President or the Vice President of China or leaders of the CPPCC. And should any such office become vacant before expiry, the term of office of the successor will be the remainder of the term of the predecessor. As such, the concept of the remainder of the original term appears to be very clear to people of the As for the cases in Hong Kong, when a seat in the Legislative Council or the District Councils has become vacant, the term of office of the successor returned in a by-election will only be the remainder of the original term of office of his predecessor, instead of a new term. Therefore, according to the relevant articles as well as the legislative intent, under the present circumstances, the Chief Executive to be selected in the by-election on 10 July should be "the new Chief Executive", instead of "the Chief Executive of a new term"; and his term of office should be the remainder of the original term, that is, the remaining two years of the term of office of the former Chief Executive, Mr TUNG Chee-hwa. This is my personal opinions on these two issues.

The Government now plans to put forward a proposal to the Legislative Council to introduce supplementary provisions to the Chief Executive Election Ordinance. The move will spell out in specific terms the concept that the term of office of a new Chief Executive returned in a by-election shall be the remainder of the original term of his predecessor. If the amendments are passed by the Legislative Council after deliberations, such amendments will be reported to the NPCSC for the record. This will lay a good legal foundation, and will be able to comply with the public opinions of Hong Kong people insofar as the proper procedure is concerned.

Dr LUI Ming-wah of The Alliance has already put forward on our behalf the conclusion of our discussion, that is, no matter it is decided that the term of office should be two years or five years, someone may eventually pose a legal challenge in the course of the by-election. This is exactly the precious rights currently enjoyed by each and every Hong Kong citizen. However, if someone should apply for a judicial review, it will bring about a crisis in governance, which none of us would wish to see. Therefore, if we do not seek an interpretation of the Basic Law, the risk we shall face in future will be very great, and the stability of Hong Kong will surely be undermined. Once a constitutional crisis emerges in Hong Kong, we shall become an international laughing stock. We cannot take such a risk. Our economy has just started to revive with substantial growth in our GDP, and the confidence of the people has gradually stabilized. So even if we really have to seek an interpretation of the Basic Law by the NPCSC, I think it would not undermine "one country, two systems".

Although Prof WANG Zhenmin, Deputy Dean of the Law School of the Qing Hua University, said recently that it was not a simple issue to seek an interpretation of the Basic Law by the NPCSC, nor is it an easy decision for the NPCSC to make an interpretation of the Basic Law. However, I think we must proceed to seek an interpretation of the Basic Law so as to ease the worry on the mind of everyone. Only by doing so can we really rest assured that a new Chief Executive will be smoothly selected on 10 July. If we can proceed to seek an interpretation as soon as possible, then I am confident that we will be able to see the Government resume its normal operation very soon, without being affected by this by-election of the Chief Executive.

Madam President, I would like to make one more point. Yesterday, when the Chief Secretary for Administration came to the Legislative Council to answer questions raised by Members, I also asked him to conduct this by-election in a better manner than the Second Chief Executive Election in 2000. In that year, as there was only one candidate standing in the election, consequently the Election Committee did not have to vote and Mr TUNG Chee-hwa was elected without attending any public forums, question and answer sessions or any radio or television programmes. I felt greatly disappointed I still recall that in the First Chief Executive Election in 1998 (sic), I made some efforts to arrange two open forums through one of the organizations in the constituency, and Mr TUNG Chee-hwa and Mr Ti-liang YANG were invited to attend the two occasions, and answered respectively more than 30 questions raised by the participants, and such questions were of different nature and fell into different areas. Both candidates answered the questions very well, and I felt both of them were suitable candidates. I hope we can also have such opportunities to let the Chief Executive candidate(s) tell us his viewpoints on the future political system as well as other aspects, so as to let us see his performance, abilities, and attitudes in handling different issues and leadership, and so on. These are all very important, as they will have a great impact on the public image of the future Chief Executive elect, or even the international image of Hong Kong. Therefore, I am also very willing to make arrangements for such open occasions in due course, so as to enable the candidate(s) to answer questions raised by participants of such occasions. Irrespective of the number of open forums I may have to arrange, I shall do my best to help. Thank you, Madam President.

**MR ALAN LEONG** (in Cantonese): Madam President, some people say that those who wanted Mr TUNG Chee-hwa to step down have got what they wanted now, so they should feel happy and contented. Some other people say that those who regarded the early replacement of the Chief Executive by the Central Authorities a trick intended to delay the Chief Executive election in 2007 and stall the progress of democratization should feel happy now because the Central Authorities have decided that the new Chief Executive should serve out just the remainder of the term of Mr TUNG Chee-hwa. These people raise this question: Since the Central Authorities have successfully persuaded Mr TUNG Chee-hwa to step down, and the Chief Executive election in 2007 will still be conducted, why do those people still feel unhappy and even regard it as damaging the "one country, two systems" and the system of rule of law in Hong Kong? So those people must hold ulterior motives. They just aim at causing damages instead of working in a constructive manner. They just raise their objection for the sake of objection.

So are those people making such remarks right or wrong? In my opinion, they are wrong. Being an international financial, economic and trading centre, the Hong Kong Special Administrative Region (SAR) must have a clear and systematic procedure for the succession of its governing teams. Naturally, many Hong Kong people will feel happy that the Central Authorities have managed to persuade the Chief Executive to step down as everyone has wanted to see him off so badly. But on second thought, we find that the resignation of the Chief Executive has actually exposed the many inherent weaknesses of our system, which makes one shudder. As it turns out, the rise and fall of our Chief Executive are completely at other people's pleasure. Whether or not Members of the Executive Council need to resign *en masse* remains unclear. Even the

term of office of the new Chief Executive, something which the SAR Government had regarded as clear and indisputable, could have gone through dramatic changes overnight in Beijing's favour. During the whole process, the people of Hong Kong did not even have any say. The people of Hong Kong could only feel disillusioned and helpless. As such, why should there be any cause for joy and delight under such circumstances?

I have never called for the stepping down of Mr TUNG Chee-hwa because I understand that the problems we face in the political scene is attributable to the fact that our systems have failed to catch up with the needs of the newly emerging constitutional order and the political environment of Hong Kong. Even if we had a Chief Executive with many superpowers, I believe the situation could not have been any better, as long as the present outdated system is still with us.

Madam President, insofar as the term of office of the Chief Executive is concerned, the SAR Government has always held the same view, that is, the term of office must be five years. However, when the Secretary for Justice attended this Council and met members of the media the other day, she suddenly remarked that after talking to legal experts on the Mainland, she found the view of the SAR Government was wrong, and she said that the person who would succeed Mr TUNG Chee-hwa after winning the Chief Executive election would only serve out the remainder of the term of office of Mr TUNG. The Secretary for Justice has changed her view so abruptly without any traces or signs in advance. Being the most senior legal officer of the SAR, she can completely refute her own view just expressed yesterday. The way in which she has changed her stance in such a casual and rash manner is astounding. It is simply chilling.

Perhaps the people of Hong Kong may well appreciate that the Secretary for Justice actually did not have much choice but to follow the advices of the Central Authorities and make such a stance. However, it is very unsettling for the Secretary for Justice to have come up with such pale arguments. Earlier Mr Ronny TONG has pointed out the fallacies with the four reasons advanced by the Secretary for Justice, so I do not wish to repeat them here. I just want to talk about the first reason given by the Secretary for Justice: Should a national leader of the Central Authorities fail to finish his term of office, his successor can only serve out the remainder of the term of office, so this is the same for Hong Kong. The remainder of the term of office of Mr TUNG is two years, so his successor

will only serve two years. However, in the Mainland, the National People's Congress (NPC) system is adopted. Under this system, the NPC is responsible for appointing officials at different levels, and the term of office of each NPC Session is five years. Under the system, no officials should have a term of office longer than that of the NPC. This arrangement is made by the mainland authorities for facilitating the succession of NPC's different terms. But in Hong Kong, Madam President, the Basic Law stipulates that the term of office of the Chief Executive shall be five years, and that of the Legislative Council shall be The term of office of the Election Committee does not tie in with that of the Chief Executive or the Legislative Council. So generally speaking, the SAR Government has never had any succession arrangement similar to that So, the explanation given by the Secretary for Justice was of the Mainland. based on a wrong analogy, and it is unconvincing.

Madam President, the essence of the rule of law is to be people-oriented. Laws are made to serve the noble causes of impartiality, justice, benevolence and peace, for the protection of the socially disadvantaged groups, and for regulating how civic rights are exercised. Laws are never intended to serve political goals which contradict the essence of these noble causes. A core value of the rule of law is the existence of clearly defined legal provisions which are to be implemented consistently regardless of the influence of any particular person and Clearly defined provisions in law are not to be reasons of expedience. interpreted according to the wills of the power that be, not to be bent to meet short-term political goals, and not to be misrepresented for the purpose of This is the core value of the legal system and the administrative convenience. spirit of the rule of law in Hong Kong that has stood the test of time, that has These are what the people of Hong Kong treasure. Does proved to be effective. the Secretary for Justice not understand that?

With such leadership in the SAR, how can Hong Kong people have any faith in the undertakings of "one country, two systems", "a high degree of autonomy" and "Hong Kong people ruling Hong Kong" as stipulated in the Basic Law?

Those who initially opposed delaying the election of the Chief Executive in 2007 by the Central Authorities have always agreed that the term of office of the Chief Executive must be five years and nothing else. They have never considered the remainder of the term an option. Precisely because they respect Articles 46, 45 and 53 of the Basic Law that they have to remind the public that

the Central Authorities might adopt such an arrangement to circumvent the issue of the 2007 Chief Executive Election. Although it appears that the current interpretation of the term of office of the Chief Executive by the Central Authorities seems favourable to the aspiration of speeding up the progress towards universal suffrage, these people still uphold the principle of the rule of law and speak out clearly against an act which puts the cart before the horse and distorts the meaning of the Basic Law. So what have they done wrong? Therefore, instead of criticizing them as causing damages without any contributions, it is more appropriate to commend them for their stubborn adherence to the rule of law and commitment to the same.

Madam President, since half a million citizens took to the streets on 1 July 2003, intervention in Hong Kong affairs by the Central Authorities has changed from the implicit to the explicit. The intervention this time has been snappy without any hesitation. It is so spectacular to Hong Kong people that they are awed with surprise.

Madam President, in spite of all that has happened, I still believe the Central Authorities do care about Hong Kong, and what they have done was just aimed to solve problems for Hong Kong. However, if things are not done the proper way, it would cause more harm than good to Hong Kong and it would be the greatest irony indeed. Our systems and the rule of law, in which we take pride, hold the key to the success of Hong Kong. It is upon the foundation of such software that the international society thinks highly of Hong Kong and investors have confidence in Hong Kong. In terms of the hardware and infrastructure, a number of cities in the Mainland are catching up with or may have even surpassed the standards of Hong Kong. However, in terms of software like systems and the rule of law, mainland cities are still unable to reach international standards, and this is an indisputable fact. The software Hong Kong now possesses has not come overnight, being the result of many years of Maintaining Hong Kong's competitive edge will not only meet development. the aspirations of Hong Kong people but will also bring about a positive effect in putting China at the forefront of the international arena.

Madam President, why the "one country, two systems" concept, devised by the late Mr DENG Xiaoping, is so great because it allows Hong Kong to retain its institutionalized mode of governance and the spirit of the rule of law. It also allows the people of Hong Kong to be the master of their own house, without being reduced to the status of second-class citizens in a colony. If Hong Kong can only change from an English colony to a Chinese colony, and the SAR will become just another city in the Mainland, then we shall consider ourselves as having failed to achieve the grand mission of the late Mr DENG Xiaoping.

I wish the Central Authorities are really prepared to heed good advice. If the Central Authorities really want to work for the good of Hong Kong, they should not tamper with the hard earned, time tested systematic mode of public administration and the spirit of the rule of law for the sake of short-term political goals. I would be most contented if the Central Authorities would not be doing a disservice out of good intentions.

Madam President, I would also like to take this opportunity to respond to certain points raised by various Honourable colleagues. A Member mentioned that the term of office of the Chief Executive of Hong Kong is clearly five years, and that the third Chief Executive Election has to take place in 2007. for this argument was that Annex I to the Basic Law mentioned that the third Chief Executive would be elected in 2007. However, if we look at Annex I, Article 7 states clearly that "if there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council ....." According to the context of the text, it was talking about subsequent to the year 2007, therefore, so long as the Chief Executive election takes place subsequent to the year 2007, naturally a new set of election methods can be adopted. In this regard, I am of the opinion that we absolutely cannot support the argument that the term of office for the third term of the Chief Executive must start from 2007.

Furthermore, another Member cited another attachment to the Basic Law — "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region", and quoted the final sentence of Article 4 of the attachment. I quote: "The term of office of the first Chief Executive shall be the same as the regular term". The Member therefore came to interpret that the regular term refers to the term of office which is five years, like that of the election to be held in 2007. Therefore, if the office of the Chief Executive should become vacant under circumstances where Article 53 would apply, then the above interpretation would no longer be applicable. However, if we look at the attachment, we will know that the document refers to the Method for the Formation of the First Government and the First Legislative Council. Since the

first Chief Executive was not elected by the Election Committee comprising 800 people as stipulated by Annex I to the Basic Law, so it was necessary to specify in Article 4 in the said attachment that even though the Chief Executive was not elected in accordance with the stipulations of Article 45 and Annex I to the Basic Law, it was a regular term as if it was elected in accordance with the stipulations of Annex I. Therefore, this cannot support the argument that the term of office of the Chief Executive to be elected on 10 July will necessarily be five years.

Lastly, a colleague remarked that when a seat in the District Council or the Legislative Council becomes vacant, the successor will only serve out the remaining term of office, so there should be no exception in the case of a vacant office of the Chief Executive. I think this does not need much elaboration by me because there are relevant ordinances concerning the District Councils and the Legislative Council which clearly illustrate how by-elections shall be conducted and how incidental matters should be handled. However, no such provision was drafted for the election of the Chief Executive, not even in the Chief Executive Election Ordinance of 2001, though the matter had gone through explicit debates. The stance of the Government at that time has been mentioned by another Member, which I shall not repeat.

Madam President, for the above arguments, I wish the SAR Government and the Central Authorities are willing to heed good advice and respect Hong Kong's rule of law and the time-tested model of public administration. If so, I shall be very contented. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Honourable Members and public officers, it is now 9.44 pm in the evening. I think we shall be able to complete this motion debate on "That this Council do now adjourn" before 12.00 o'clock midnight. Therefore, we shall continue with our meeting.

Does any other Member wish to speak?

MS MARGARET NG (in Cantonese): The resignation of Chief Executive TUNG Chee-hwa has turned an unprecedented page in the history of Hong Kong. The constitutional and legal problems triggered by his resignation deserve a careful and prudent search for answers by us. During the seven years of

administration by TUNG Chee-hwa, Hong Kong people suffered from unprecedented difficulties and long-term hardship in their lives. Apart from economic factors, the way of governing of Mr TUNG also strongly affected the accustomed way of life of Hong Kong people. By the accustomed way of life, it includes the rule of law under the common law system, respect for systems and established procedures, respect for professional and independent advice and standards, the mode of governance with the neutral civil service as its foundation, the high degree of freedom enjoyed by the people, and non-intervention in political and religious thinking. Open political intervention in the rule of law and judicial proceedings is simply beyond the wildest imagination of both the people and the Government.

The objective of the Basic Law is to safeguard "one country, two systems" and the accustomed way of life of Hong Kong people. Soon after assuming the office of Chief Executive, Mr TUNG had repeatedly dealt blows to the rule of law in Hong Kong as he proceeded in a haste to achieve certain political goals. One of the incidents that had left a deep impression on the minds of people of the legal sector was the interpretation of the Basic Law on 26 June 1999 by the Standing Committee of the National People's Congress (NPCSC) which seriously violated the independent judicial power of the Court, thereby rocking the entire foundation of the rule of law in Hong Kong. After the Court of Final Appeal (CFA) had passed its judgement, Mr TUNG requested the NPCSC to interpret the Basic Law to overturn the judgement on the pretext that Hong Kong could not accommodate the influx of 1.67 million children born to Hong Kong residents in the Mainland. At that time, people of the legal sector repeatedly urged the Government that, if it could not bear the legal consequences, it should amend the Basic Law according to Article 159. However, Mr TUNG refused to heed this advice and ultimately set an irrevocable precedent that caused extremely strong repercussions in the international community.

As practitioners of the legal sector, members of the Article 45 Concern Group (the Concern Group) are extremely adamant that the Government must strictly observe the Basic Law; and irrespective of the difficulties involved, it must abide by the laws. Therefore, at the beginning of the post-TUNG Chee-hwa era, we hope the Government of the Hong Kong Special Administrative Region (SAR) can respect the rule of the law again. However, what we find most regrettable is that the first move made by the Chief Secretary for Administration after assumed office as the Acting Chief Executive is to mess up the intended meaning of the provisions of the Basic Law, once again pressing

Hong Kong to the verge of seeking an interpretation of the Basic Law. This time, it was simply an open challenge — if you do not accept the Government's point of view and seek a judicial review, then the Government would request the NPCSC to interpret the Basic Law. Should that happen, the opposition faction shall have to take the full responsibility for triggering the interpretation of the Basic Law. Such is tackling legal problems with the employment of political tactics. I heard that the Chief Secretary Donald TSANG is a shrewd political manipulator. If this means that the rule of law would be subject to arbitrary abuses, we shall find the situation very regrettable.

On the issue of the term of office of the new Chief Executive, whether it should be five years or only the remainder of the original term, the provisions of the Basic Law are very explicit in this regard. Mr Ronny TONG has already spoken on this in his speech, and people of the legal sector are quite unanimous and unified in their views, and the Government had also held the same stance until recently. So the bone of contention is not why it should be five years, or whether there are some ambiguities. Instead, the core issue is whether the Government can put forward some credible reasons to support its sudden change of stance in saying that the term of the new Chief Executive should be the remainder of the original term.

The Secretary for Justice had put forward six points of arguments, and Mr Ronny TONG has already briefly refuted her main arguments. But I still wish to discuss them clearly one by one, so as to let the people see why the arguments of Secretary Elsie LEUNG do not hold water at all.

The first argument of Secretary Elsie LEUNG is, "Insofar as state organs in the Mainland are concerned, the term of office of an official filling a vacant post must be the remainder of the original term. The rationale requires no elaboration." Several Members also made the same point earlier. Secretary Elsie LEUNG said that she had consulted the opinions of legal experts in the Mainland.

I would like to quote some comments made by Prof XIAO Weiyun in p. 138 of his book entitled *One country, two systems and the Basic Law of the Hong Kong Special Administrative Region*, "In designing the political system of the Hong Kong Special Administrative Region (SAR), we must do so with reference to the specific circumstances in Hong Kong. ..... If we want to design the SAR's political system with reference to the specific circumstances in Hong

Kong, we cannot do so simply by copying direct the political frameworks of other countries or territories. We cannot just copy the models of political regimes implemented in certain countries in Europe and America such as 'the parliamentary system' and 'the presidential system'. ..... Nor is it feasible for the SAR to copy the National People's Congress (NPC) system implemented in the Mainland because this NPC system is applicable only to the circumstances in the Mainland". In trying to understand the Basic Law, we must understand one point first, that is, the mainland system can by no means be used to interpret the Basic Law. If we want to see the origin of the Basic Law, we must first take a According to Article 31, "The look at Article 31 of the Constitution of China. state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific Therefore, we must refer to the Basic Law as a self-sufficient conditions." Why is the remainder of the original term applied in state organs statute *per se*. Today I came across an article in Hong Kong when a vacant position is filled? Economic Journal written by Mr DING Wang. He reminds us that this argument exists because the vacant position of the President of China is to be In other words, Article 84 of the Constitution of filled by the Vice President. China has provided for this. I now read out Article 84, "In case the office of the President of the People's Republic of China falls vacant, the Vice President succeeds to the office of President. In case the office of the Vice President of the People's Republic of China falls vacant, the National People's Congress shall elect a new Vice President to fill the vacancy. In the event that the offices of both the President and the Vice President of the People's Republic of China fall vacant, the National People's Congress shall elect a new President and a new Prior to such election, the Chairman of the Standing Vice President. Committee of the National People's Congress shall temporarily act as the President of the People's Republic of China." If we compare this to Article 53 of the Basic Law, we will know that the Chief Secretary for Administration will only temporarily act as the Chief Executive, but he will not succeed to the office Therefore, the "inevitable" situation which "requires of the Chief Executive. no elaboration", that is, the remainder of the original term, will never take place.

As such, the NPC system mentioned by Prof XIAO Weiyun is not applicable to the systems of Hong Kong. As Mr Alan LEONG said just now, there will be a succession of the different terms of NPC. It is the same for us. Whenever a Legislative Council Member is elected in a by-election to fill a vacant seat, his or her term of office will expire at the end of the term of that

particular Legislative Council. Therefore, Paragraph 2 of Article 79 of the Constitution of China stipulates, "The term of office of the President and Vice President of the People's Republic of China is the same as that of the National People's Congress." It is the same for the situation in the State Council. Therefore, all these are institutional provisions in the Constitution of China. If we want to interpret the Basic Law on the basis of "the term of office of any official filling a vacant post must be the remainder of the original term" in state organs, and think that this is the legislative intent, this is primarily contrary to the implication of Article 31 of the Constitution of China. Therefore, this rationale is not valid.

If we take another look at Article 46 of the Basic Law, we would be able to see that from the Basic Law which has been passed and promulgated, the word "屆" (the term of ) is never used in connection with the Chief Executive. a style of writing of the Basic Law, as reminded by Mr DING Wang, is characterized by the use of the word "屆" in relation to the Legislative Council and the Election Committee (EC). The term of each Legislative Council is four years, whereas the term of each EC is five years. But for provisions governing the Chief Executive, only "第一任" (The first [Chief Executive]) and "2007年 以後各任" ([The Chief Executives for] the terms subsequent to the year 2007) are used, as in the case of Annex I to the Basic Law. Mr DING Wang had explained why "屆 "is used on the Legislative Council, but "任" is used on the Chief Executive because you will describe the Chief Executive as "- $\notin$ ", but not as "- ${\ensuremath{\mathbb B}}$ ". Therefore, Article 46 of the Basic Law reads, "The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He or she may serve for not more than two consecutive This is not incidental, but has been so written after very careful terms." deliberation.

Secretary LEUNG put forward her second argument by saying, "The deletion of "一屆" from the original wording obviously means that it does not mark the beginning of a new term, but the continuation of the uncompleted term or the period less than a term." This deduction is absolutely feeble and unfounded. Secretary Elsie LEUNG said that some changes had been made to the wordings in the course of drafting the Basic Law. She also produced some documents dated 1987, 1988 and 1990 to illustrate that "新的一屆" was first used in drafting Article 53. Later on, someone asked whether the term of office should be a full new term or only the remainder of the original term. We must note that, Secretary Elsie LEUNG did not tell us that those documents contained

the answer which specified that the term of office should be "the remainder term". She did not say that. We only know that someone had raised this question. The only point we can be sure of is that some people did not understand the issue very well. Therefore, the wording of "新的一屆" was amended as "新的行政長官". Therefore, these are not documentary evidences. Instead, Secretary Elsie LEUNG had identified the ambiguities in such wording, so she deduced that "it is obvious that it did not mark the beginning of new term". Why is it obvious? In particular, regarding those documents, those constitutional provisions, why did she still say that it is obvious that it did not mark the beginning of new term, but a continuation of the uncompleted term?

As a matter of fact, we have also read those documents which Secretary Elsie LEUNG had read. We can see that "每屆行政長官" was used in the early stage of drafting Article 46 of the Basic Law. At that time, whenever "每屆" was used in Article 46, the same was also used in Article 53. But after Article 53 had been amended to use "新的行政長官", Article 46 was amended to its present wording, that is, the term of office of the Chief Executive shall be five years and the word "屆" was not used anymore. Therefore, there is clear evidence to support the observation that Articles 46 and 53 are articulated. Actually I do not need such evidence because the wording of that Article is already very evident in itself. If you say that the intent explicitly expressed in the provision is actually not its original intent, and that the original intent is just the contrary, then I bid you to produce strong evidence to prove your case. Therefore, when Secretary Elsie LEUNG said "it is obvious", it is only her personal subjective deduction, instead of objective evidence. Secretary Elsie LEUNG also used NPCSC's last interpretation of the Basic Law to support her However, we all know that the second interpretation of the explanation. NPCSC was in fact something that happened afterwards, and can never be used as the basis for explaining something that took place before that.

Next, Secretary Elsie LEUNG put forward the third argument, highlighting that mainland experts had stated their rationale, together with the relevant documents, including those from the Basic Law Drafting Committee, and so on. I have already discussed them earlier. Therefore, Secretary Elsie LEUNG's third argument is actually an integration of the first and second arguments.

The fourth point, Secretary Elsie LEUNG said, "In the process of this legal analysis, I did not simply go to Beijing to accept the opinions of the legal

experts there. Apart from taking part in the debate, I have also considered the principles of legal interpretation in common law." Next, Secretary Elsie LEUNG read out some legal precedents with which all of us are familiar, have heard about and read before. But the main point was, these principles advise us not to interpret any legal provision out of context, and must consider what is before and after the provision in question. In fact, when Secretary Elsie LEUNG explained these provisions for the first time, she already knew them well. Why did she need to re-read them at this juncture to make her come to a totally different conclusion?

The last point of her arguments is, the original intent and the goal of the Basic Law are to ensure that there will be a smooth transition. She mentioned that the EC in Annex I should ensure that the elected Chief Executives should not be totally different. However, please bear in mind that, according to Article 52, the resignation of the Chief Executive may be necessitated by the people's loss of confidence in him or his repeated failure in enabling the passage of some important bills presented by him. Under such circumstances, how can the same type of Chief Executives be elected?

Madam President, after examining the arguments very carefully, we consider that they are all invalid.

Thank you.

MR HOWARD YOUNG (in Cantonese): Madam President, on 10 March, Mr TUNG Chee-hwa formally tendered his resignation as Chief Executive. On 12 March, his resignation was formally accepted by the State Council. According to Article 53 of the Basic Law, a new Chief Executive shall be selected within six months after the office of Chief Executive having become vacant. Under the Chief Executive Election Ordinance, a by-election has to be held within 120 days after the office of Chief Executive has become vacant. In this connection, the Government of Hong Kong Special Administrative Region (SAR) has announced that the election will be held on 10 July.

However, as the Basic Law has not provided clearly for the term of the Chief Executive returned in a by-election and a grey area has thus existed, or a hole has to be plugged, disputes have arisen in the community on whether the term of the new Chief Executive should be two years (that is, the remaining term), or five.

Earlier Mr James TIEN has elaborated the legal basis in detail from two aspects. I will only sum up the points in brief here. The vast majority of the legal professionals in Hong Kong have, from the angle of common law, interpreted the literal meaning of the provision and concluded that the term should be five years. This is also the viewpoint held by the Government previously. However, both Chief Secretary for Administration Donald TSANG and Secretary for Justice Elsie LEUNG admitted, at the meeting held by the House Committee yesterday, that the Government's previous viewpoint was wrong for the issue had not been explored in an in-depth manner.

Views supporting a two-year term include: A "new Chief Executive" is not tantamount to the "Chief Executive of the new term". Does the Election Committee of the current term have the power to elect a Chief Executive whose tenure transcends 2007? Moreover, the five-year term mentioned in the Basic Law normally refers to the entire term of a Chief Executive, not including the scenario of the office falling vacant prematurely.

In addition to a pure jurisprudence basis, as the Chief Executive is appointed by the Central Authorities and the Basic Law is the law of Hong Kong as well as a national law, we therefore hold the view that reference should be made to the Mainland's constitutional tradition at the same time.

The terms of important offices in state organs such as the President, Vice President, National People's Congress, State Council and the Chinese People's Political Consultative Conference are five years. It has become a constitutional tradition of the State that where an office falls vacant prematurely, the successor will serve out the remaining term of the outgoing office holder. Let me quote the words of another mainland legal expert, WANG Zhenmin: the by-election seeks to replace the person, not the term. In his opinion, the term of the new Chief Executive should be the remaining two years.

Considering the relevant legal basis and the usual practice of the Mainland, the Liberal Party has come to the view that "two years" is more convincing. But how should the "hole" in the legal system be plugged? The Government has planned to table a bill to this Council to amend the existing law, a move welcomed by the Liberal Party. However, amending the Chief Executive Election Ordinance does not mean that the matter can be settled for good. Applications can be made to Court for a judicial review at any time to reverse the amendment. Actually, at a meeting held yesterday, Mr Albert CHAN already

announced in advance his planned action to seek a judicial review after the Third Reading of the bill.

Is this action supported by the public? I would like to point out that the Liberal Party successfully interviewed 1 166 members of the public during the period 12 March to 14 March. It was found that 55.4% of the respondents thought that the term of the new Chief Executive should expire by 2007. In other words, more than half of the respondents consider that the term should be limited to two years. Anyone preparing to seek a judicial review should prudently evaluate whether the review is consistent with the wishes of the vast majority of the public.

The Liberal Party very much hopes to stress that, whatever the disputes, the new Chief Executive must be selected before the expiration of the term of the Election Committee of the current term on 13 July. The last thing we want to see is someone applying to Court for a judicial review at the last minute to turn the election into a repeat of The Link REIT incident.

Madam President, while the listing of The Link REIT can be shelved, Hong Kong cannot do without a Chief Executive for a day. As the saying goes, a country cannot survive without a ruler for even a day. The consequences would be disastrous if a new Chief Executive cannot be selected smoothly. Not only would the daily operation of the Government be affected, Hong Kong's international image would be undermined and the territory would thus be reduced to a laughing stock in the international community. The legal problems thus arisen would also be extremely complicated.

Therefore, should the NPCSC be eventually compelled to interpret the Basic Law in order to settle the disputes, the Liberal Party will accept if this is the only solution — though this is the last thing all of us would like to see. I wish to clarify once again that it is not the case that the Liberal Party, like what Chief Secretary Donald TSANG said at the House Committee meeting yesterday, very much like to see an interpretation by the NPCSC. Like the vast majority of the public, we do not hope to see such an interpretation. This should only be our last resort.

Actually, apart from the disputes on the term of the Chief Executive, certain issues relating to the Chief Executive have also become a matter of concern to outsiders. These issues range from whether the Prevention of

Bribery Ordinance is applicable to the Chief Executive Election, whether the activities of an outgoing Chief Executive should be monitored to the salary review of the Chief Executive of the third term, and so on. The Administration has indicated that a study will be conducted. This is welcomed by the Liberal Party too.

Lastly, it is worth mentioning that some Members of the democratic camp have recently made an appeal to conduct the forthcoming Chief Executive Election by way of universal suffrage. The method for selecting the Chief Executive before 2007 has been clearly spelt out in the Basic Law. As regards how the method for selecting the Chief Executive shall be brought forward in accordance with the principle of gradual and orderly progress, the Government has, on the basis of the NPCSC's interpretation and decision, consulted various sectors for the purpose of driving democratization forward in Hong Kong. The by-election to be held in July is not far away. It can even be described that time is running out. Unexpected troubles arising at this time would only make the public more confused and do no good to social stability.

Madam President, we therefore hold the view that various sectors of the community, and various parties and factions should put aside their differences in the interest of reaching a consensus to enable the election of the Chief Executive to be conducted smoothly on the premise of safeguarding continued social stability.

I so submit.

MR PATRICK LAU (in Cantonese): Madam President, first of all, I would like to take this opportunity to thank the outgoing Chief Executive, Mr TUNG Chee-hwa, who has offered to resign, for working diligently to serve the people of Hong Kong in the past seven-odd years. I do understand the discontent of the people about Mr TUNG and his government in the past couple of years for the substantial decline in Hong Kong economy, which was caused by external factors and such unfortunate events as SARS. However, under the leadership of Mr TUNG, Hong Kong has, after 1997, successfully put "one country, two systems" into implementation during this difficult period. I heard many people say when I travelled abroad that they were surprised that Hong Kong had not experienced any social unrest after undergoing such a dramatic political change. Mr TUNG's achievements are indeed enormous.

The resignation of Mr TUNG has triggered a fresh round of political disputes. The Acting Chief Executive, Mr Donald TSANG, has been entrusted with this important post at this critical and difficult moment. I hope he can smoothly lead Hong Kong through this governance crisis, triggered by the election of the Chief Executive, and maintain social stability.

Madam President, regarding whether the term of the Chief Executive of the new term should be two years or five, many colleagues have explained very clearly their own position and viewpoint. Yesterday, the Government also explained to us what was already known. In brief, there are three major methods for resolving the tenure disputes: First, judicial review can be sought; second, to amend the Basic Law; and third, to seek an interpretation by the Standing Committee of the National People's Congress (NPCSC). Despite the Government's hope to appease the uproar this time by amending the Chief Executive Election Ordinance, I am of the opinion that, to avoid further hitches that may be brought about by undue delay, the Government must steadfastly adhere to its executive-led style and, should no other better solutions be forthcoming, request the NPCSC for an interpretation. To radically resolve this issue with the most direct method is invariably better than waiting for someone to seek judicial review and thereby create more unpredictable variables.

Actually, I do appreciate that there are bound to be voices of discontent and disapproval from certain people in the community, regardless the Government making its position clear that the term of the new Chief Executive to be elected is two years or five.

As for issues of greater complexity, such as how many times and years the Chief Executive of the new term can be re-elected and whether he can serve "two plus five" or "two plus five plus five", how should the vacuum of the Election Committee be dealt with, should another 800 members be elected if the office of the new Chief Executive become vacant again, how long should their term last and should it be five years or what, the Government should indeed make use of this discussion to consider the matter in a more comprehensive manner. It must not wait until something has happened before hastily taking remedial actions.

As the Government has already conceded that this point had not been considered when legislation was enacted initially and that it is necessary to further consult the relevant legal experts, I hope full clarification and consequential legislative amendment can be made expeditiously to prevent the ambiguity of the legal provisions from affecting the public's confidence in the prevailing rule of law, or even dealing a blow to the Government's credibility.

Actually, the Government should expeditiously take the initiative to resolve all constitutional and legal problems and refrain from being entangled in these matters. It should adopt a most positive attitude to expeditiously involve itself in making arrangements for the election of the Chief Executive of the new term. Various sectors of the community should be encouraged to participate or even run in the election to select the candidate considered to be the most suitable by all, as well as working in collaboration to revive Hong Kong economy so that Hong Kong can continue to enjoy prosperity and stability. Furthermore, we must not give outsiders an impression that Hong Kong is still caught in crises and there is social unrest. Should this be allowed to continue, the pace of our economic revival will be slowed down and this will be detrimental to all the people of Hong Kong.

Madam President, I am very pleased to listen to the Budget delivered by the Financial Secretary today and learn that Hong Kong economy is gradually improving. I hope we can make concerted efforts and take the interest of the whole into account, and refrain from involving ourselves in legal procedures that might otherwise pose obstacles to the by-election arrangements. Conversely, it is more practical and more conducive to Hong Kong society as a whole for representatives from different sectors to actively nominate their ideal candidates to run in the Chief Executive Election. Thank you, Madam President.

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

MR LEE CHEUK-YAN (in Cantonese): Madam President, during the past one year or so or the past few years, the political scene in Hong Kong has undergone dramatic changes — the speed and frequency of such changes were really rare even by international standard. With such episodes as the enactment of laws to implement Article 23 of the Basic Law, the 1 July march, the interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC) and the resignation of Mr TUNG last week, we can see that the political scene in Hong Kong changes very quickly.

I can still recall that during the 1 July march, the organizer had already explicitly stated that they would not call for the stepping down of TUNG Chee-hwa. But the sentiment of the people was very obvious. The organizer did not chant such slogans, but whenever Mr TUNG's name was mentioned, the people would finish the sentence by calling for his stepping down. Regardless of whether the Government likes it, this clearly reflected the sentiments of the people. The Government must admit that Mr TUNG did not have the support of the people. All along, the people have held very little confidence in him, or we can say that there was a collapse of confidence in him. His seven years of governance was considered by many Hong Kong people as a major disaster. Some even describe the period as the Era of the Chaos of Chee-hwa. However, Hong Kong people are very kind. After the stepping down of Mr TUNG, many people would still say that he should be commended at least for his diligence, if not for his achievement. They recognize his industry.

I fully appreciate the kindhearted nature of Hong Kong people. However, there is a very major problem hidden behind such kindness, that is, Hong Kong people have put all the blame on Mr TUNG without examining clearly the situation behind him. Sometimes, I feel that this was unfair to Mr TUNG. still remember that when Mr TUNG resigned, some said that it was simply because "he could not stand it anymore". He was scolded by the people everyday. I would like to ask, who can "stand it" in the face of such criticisms? Indeed Mr TUNG had already been exceedingly tough in having endured such criticisms for such a long time. If you were in his situation, maybe your "game" was already "over" much earlier — you "could not stand it" anymore. The fact that he had endured it for such a long time fully reflected that he does possess the character of a cow — he does possess very tough physical fitness. was born in the Year of the Rooster. So if I was in his situation, I would probably have been torn very soon. Some said that it was all too natural for Mr TUNG to feel "intolerable" under such severe criticisms. But I think the people should discern the circumstances clearly, and should not vent all the anger onto him alone.

The most miserable thing about Hong Kong is the fact that the entire system makes us very miserable. Just like what Mr Albert HO said, the most miserable thing about this system is the manpower mismatch that has been in place in Hong Kong all along, that is, the person unsuitable for the position of the Chief Executive has assumed such an office. Who let him become the Chief

Executive? Did the Hong Kong people cast their votes to put him in that office? Hong Kong people do not enjoy such a right to make this choice. I wish to point out that it was those 800 persons in the Election Committee (EC) who did it. They knew it very well Mr TUNG was a "zero-attribute" Chief Executive, but still they nominated him to take up the top post.

Hong Kong people would recall that Mr TUNG was re-elected for a second term in 2002 uncontested with over 700 nominations. Hong Kong people will never forget this incident. This system has led Hong Kong people down a dead alley. I always feel that those 800 persons were hiding behind the back of Mr TUNG and forced him to come forward to be the Chief Executive. However, when Mr TUNG encountered problems, they were all gone. Some were even doing their best to file them was available to offer assistance. vicious reports against him behind his back. Therefore, I feel that Hong Kong people really need to take a good look at this system. If this group of people is allowed to continue doing harm to Hong Kong, the consequences could be even worse than letting Mr TUNG stay in his original office. It is true that Mr TUNG has stepped down. But if these 800 persons are allowed to stay on, and if this system is allowed to continue, then there will be many TUNG Chee-hwa's I very much hope that Hong Kong people do not just focus their attention on Mr TUNG, but on the whole system instead. This group of people in fact owes Hong Kong people a very solemn apology.

If Recently, I came across a website called < sorryeverybody.com>. you have browsed it, you must say that it is totally trivial and meaningless. It was set up by some Americans who said that they felt ashamed for their inability to stop George BUSH from being re-elected as the President even though they Therefore, they posted their own pictures onto the had already done their best. website to say sorry to the world. However, none of these 800 EC members has ever made any apology to anyone. Well, I was not involved in selecting Mr TUNG as the Chief Executive, I am sure I did not nominate him at that time. But for those Members present today who nominated him, have they apologized to Hong Kong people? Mr Albert CHAN said some people were "shameless". For those who have not apologized, are they "shameless"? They had nominated Mr TUNG, and let him stir up lots of political troubles, making Hong Kong people suffer from a collapse of confidence. Yet, none of them has come forward to offer the people an apology. So far, no one has made any apology.

Now let us turn our attention to the present Members of the Executive Council. Among the three Secretaries of Departments and 11 Directors of Bureaux, none of them has ever said that he or she should be assuming part of the responsibility for Mr TUNG's problems. Has anyone said something like this? No. I feel that this is very unfair to Mr TUNG. Mr TUNG has his own governing team. Why does this governing team not have the least trace of apologetic feeling? All those policies that angered the entire population were not made solely by Mr TUNG, but were jointly made by him and his governing team.

Sometimes, I feel the most ridiculous thing of all is the fact that Chief Secretary Donald TSANG — now he is the Acting Chief Executive — enjoys very high ratings in public opinion polls. It seems all these things were unrelated to him. I really do not understand: Why can Donald TSANG be detached from all the problems of Mr TUNG? Madam President, I would really ask all the Hong Kong people, why do they not relate all these to the entire governing team? In fact, what is the ultimate difference? Maybe it will just be a matter of magnitude, that is, the "high degree autonomy" may eventually be undermined. From the tenure dispute, I am now worrying that the "high degree of autonomy" may actually become increasingly low.

Right now, the "one country, two systems" of Hong Kong is in a very very dangerous state. I just heard Members arguing about the term. Nearly everyone is of the same view, that is, there is nothing we can do about it. Everyone appears to think that seeking an interpretation of the Basic Law is the only option; those who hold this view include Mr Patrick LAU, Mr James TIEN, Dr LUI Ming-wah and Mr Howard YOUNG. They all say that it is most important for us to have the issue clarified, so maybe we can solve it by simply seeking an interpretation of the Basic Law. Then, under "one country, two systems", where has Hong Kong's right of interpreting the laws gone? Of course, the Secretary for Constitutional Affairs may say that such a right has never been in the hand of Hong Kong because it is stipulated in the Basic Law that the power is vested in the NPCSC.

I can still recall that, a long time ago, when everybody was still arguing about the Basic Law, many people expressed their objection to the fact that the Court of Final Appeal (CFA) in Hong Kong did not have the right of

interpretation. I still remember some people saying that the CFA in Hong Kong was just a court of semi-final appeal. May I ask Members to recall such a scenario, and do not put history out of your mind so soon. We were very anxious, not wanting to hand over the right of interpreting the laws to Beijing and wishing to retain this right in Hong Kong instead. This was an issue over which we had been fighting for many years, but now are we going to give it up easily? I would like to ask Mr Patrick LAU: Should some contract disputes emerge in future, are we going to ask the NPCSC to interpret the contracts? Businessmen place great emphasis on legal provisions and contracts. So in future, do we have to ask Beijing to interpret the laws or contracts if our emphasis is on stability and the commercial interests of certain people in future?

I still recall that when we were debating on the issue of the rule of law, many were very anxious because the entire world was watching the development of the incident. The Government often claims that the rule of law is one of the core values of Hong Kong. I feel that what the Government practises is different from what it preaches. In what way has it acted to make the rule of law a core value of Hong Kong? I think the greatest horror lies in the arbitrary twisting of the five-year term into a two-year one.

I still recall that the Secretary for Justice, Ms Elsie LEUNG, said that the law is by no means some fast food, and I remember very clearly that she did make that remark. She even spent five minutes explaining it. having listened to her explanation, I feel that, to her, the law is just some fast She made a trip to Beijing, and came back with some specious reasons. For example, she said the term "新的行政長官" in Article 53 of the Basic Law had been amended repeatedly and eventually the term "新的一屆行政長官" was abandoned, therefore from this we could draw the conclusion that the Chief Executive returned in a by-election should not serve from the beginning of a new This was what she said after returning from a Beijing trip. However, no one knows why "新的一屆行政長官" was abandoned because there was no record of this. I still remember a legal expert, Eric CHEUNG, once said that "新的行政長官" was just a textual modification of an earlier version and the corresponding English version had not shown any difference, that is, it remains As such, it is very difficult to convince others that the legislative intent at that time did include the concept of by-election. After returning from a trip she said this, and after returning from another trip, she wanted to say that the same EC can select the new Chief Executive.

I remember Ms Audrey EU asked the Secretary for Justice yesterday what The Secretary for Justice could not give any reply would happen in future. apart from saying that it all depended on the circumstances after 2007. If this interpretation is so definitive, why should the situation be different and why should it depend on the circumstances? She said that it was the legislative intent. If so, why should it be different after 2007? How will it be different in future? Why can she not be definitive in telling us what will happen in future? makes us think that the interpretation is just arbitrary in nature. After returning from a trip and having taken some fast food, she could tell us that she had taken the fast food now and was able to give us the answer. And then, if colleagues said "no way", then she would resort to seeking an interpretation of the Basic In fact, we all know what the answer would be, and we know eventually the NPCSC would definitely interpret it in that way. Yesterday, I asked this question: "If we all thought that the two-year or five-year term issue really warranted a discussion, why could we not amend the Basic Law?" we can discuss this because politically there are reasons supporting both sides of the argument. But the critical issue is: If this has to be done, we should do it by way of amending the Basic Law according to the legal procedures. the Secretary said yesterday that the NPCSC would not agree to it because it felt that the interpretation had already made the issue very explicit.

Simply put, they want to impose the decision on Hong Kong in a "top-down" manner. It is as simple as that, and the file will be closed. Everyone finds this very convenient. It is harmless, so let us seek an ruined in our hands, that is, the rule of law will not prevail in Hong Kong Therefore, I feel that Hong Kong people will feel sad about this: What else is left of "one country, two systems" in Hong Kong? I still remember the Secretary said yesterday that it is most important for us to cut the excessive talks and make sure that the election could be conducted in an explicit manner on Frankly, I do not know what will happen in the world in the future because Hong Kong has really undergone changes much too swift. something really happens on the day of the nomination deadline with the result of no candidates forthcoming, then the election will have to be postponed for 42 days as stipulated by law. But who will elect the Chief Executive after these 42 days of postponement? By then the term of office of members of the EC will have already expired. Will we have to seek an interpretation from the NPCSC again, to say that the term of the EC is not five years, but can be adjusted at the

superior officer's will? In this way, if the election is postponed, the term of the EC can be extended as well. Will it not be even more convenient if we ask the NPCSC to make an interpretation of this too?

Everyone likes fast food. So let us do it this way, or are there some other methods? This is a very solemn issue, and such an issue in law will inevitably arise in future, so we must discuss this. The term of office of the EC will expire on 13 July, what shall we do? I do not know whether the Secretary has the answer already and knows what to do. Or maybe another 800 persons have to be selected quickly, so that they can take over the job. However, some people may not like this because later on another dispute could emerge to challenge why another 800 persons have to be selected. Actually, should that EC be responsible for selecting the Chief Executive of only a two-year term? Or should it be also selecting the Chief Executive of a five-year term, after selecting the one of a two-year term only? However, it seems not feasible as the term of such an EC will expire in 2007. In that case, why should we bother to elect an EC which will have a two-year term only? So we need to reconsider the whole issue all over again. I feel that this is an issue which we must deliberate very carefully because we should not allow any loophole in law. Otherwise, we shall not know how to handle it in the future. What is the lesson that we should learn from the present situation? That is, in the past, we all thought that the term should be five years, so we did not realize that we might have to discuss the issue today. But I hope we can take all the possibilities into Only in this way can we ensure a perfect system can be in place. consideration.

Thank you, Madam President.

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

MR WONG TING-KWONG (in Cantonese): Madam President, I had not intended to speak in the beginning. However, as I listened to the debate, I found that it was becoming increasingly interesting, and I also found that Honourable colleagues could be rather lovely sometimes.

Mr LEE Cheuk-yan used to "snipe at" Mr TUNG, but he was sympathetic to him earlier. In the past, the slogan they had been chanting all along was

"Down with TUNG Chee-hwa". But today he appears to have a machine-gun in his hand, and his ceaseless shooting has been sweeping across the field to gun down at all the officials including Donald TSANG — he seems determined to "kill" them all with his "machine-gun", whereas TUNG Chee-hwa was the only target in the past. Besides, others may utter words from the bottom of their hearts only when they are drunk. However, Mr Martin LEE sometimes may utter words from the bottom of his heart when he is half awake.

The arrangement of "one country, two systems" has been implemented in Hong Kong during the past few years. In fact, this is something which has never taken place in the history of mankind. And I think in the history of mankind, there has never been a set of law similar to the Basic Law. such circumstances, when there are uncertainties in some of its provisions, I think everyone should adopt a more tolerant and understanding attitude because when "one country, two systems" is implemented in Hong Kong, it is inevitable that some gearing-in has to be allowed for the system to function properly, so we should all be accommodating. If none of the parties involved is ready to make concessions, then extended conflicts will result and eventually both parties will be hurt as a result of such direct conflicts between them. Therefore, I have a question on my mind: When there are contradictions that call for interpretations, is it feasible for Hong Kong to make such interpretations all on its own? Of course, due to "one country, two systems", the source of our authority is the Central Government. Or else, are we going to seek an interpretation of the Basic Law from the Privy Council of the United Kingdom, or the Congress of Certainly not, it is all too natural for us to seek the United States? interpretations of the Basic Law from our national legislature — the Standing Committee of the National People's Congress (NPCSC). An interpretation of the Basic Law by the NPCSC is a matter of course, which in itself is a respect for It is totally illogical for anyone to say that seeking an interpretation of the Basic Law is a disrespect of law because this is the only way for us to act Given this, what is it so frightening about an according to the law. interpretation of the Basic Law?

I feel that Mr Martin LEE can really live up to his reputation as a "Senior Counsel". Once awake, his legal spirit can already function properly, and should there be any problem, he can immediately identify the source of the legal authority, and he can quickly point out that we should seek clarification from the source of that authority. I feel that this is the most correct attitude.

A moment ago, Mr LEE Cheuk-yan referred to the remarks made by Mr Patrick LAU. But for unknown reasons, he said maybe in future some people might seek interpretations from the NPCSC even on some commercial disputes. It was totally irrelevant. Being the highest authority of the State, the NPCSC only handles major national issues. Why on earth should it be made to handle commercial disputes? Or is he trying to give up Hong Kong's power of final adjudication? This is really tantamount to killing Hong Kong's power of final adjudication, which is the privy of the Hong Kong Special Administrative Region.

At present, many people are concerned about the dispute over whether the term of office of the new Chief Executive should be two years or five years. feel that, if the Central Government says that it should be a two-year term, certain people in Hong Kong will definitely say that it has to be a five-year term. Conversely, if the Central Government says five years, then they will definitely say that it should be two years. They will always adopt an opposite stand, why? It was because they had been advocating universal suffrage in the dual elections But the decision made by the NPCSC on 26 April last year of 2007 and 2008. has already dashed their hope. So in order to identify a political goal, they would, by hook or by crook, distort the circumstances, side-step the conflict, in order to keep their game going. Otherwise, how can they account for themselves? Therefore, many friends of mine and many Hong Kong people with whom I have come into contact all say that they extremely loathe all such disputes. They request us to do some practical work. Why should we waste our time on those trivial disputes? Instead, we should strive for the economic prosperity of Hong Kong. We should promote greater harmony in society and This is the best approach. This is the right everyone should do his work well. way of fighting for the well-being of the 6 million to 7 million people in Hong These Members spend all their time arguing over some "trivial" issues and always engage themselves in some nonsensical and childish talks in this Chamber, criticizing and attacking one another. What is the point of doing all They even resort to accusing others as "shameless". I believe no one in this Chamber is willing to see themselves being trapped in such predicaments.

I hope all of us can strive to do better and stop wasting our time on such trivial issues. I so submit.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Members have finished delivering their speeches. I now call upon the Secretary for Constitutional Affairs to reply.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, a week ago, Mr TUNG tendered his resignation from the office of Chief Executive and Mr TUNG's request for resignation has been approved by the State Council. In accordance with the Basic Law, the Chief Secretary for Administration has assumed the duties of the Chief Executive as the Acting Chief Executive. All accountable officials and Members of the Executive Council will remain in office to ensure a smooth transition in the interim. The Government has announced that an election will be held soon to return a new Chief Executive in accordance with the Basic Law.

These changes can be said as opening a new page for Hong Kong. The issue of particular concern in the community is whether the term of office of the new Chief Executive should be five years or two years, a topic under discussion in this Council today.

Concerning the term of office of the Chief Executive, it has been the understanding of the Government of the Hong Kong Special Administrative Region (SAR) that a new Chief Executive elected to fill a vacancy arising prematurely shall serve for a term of five years. This was the view held by us in 2001 when the Chief Executive Election Bill was formulated. We also expressed the same position in reply to a written question asked by Ms Emily LAU in May last year. The SAR Government used to interpret the provisions of the Basic Law according to their literal meaning.

Recently, because of Mr TUNG's resignation, we had re-examined the term of office of the Chief Executive. We found that as the Basic Law has no express provision for the length of the term of the successor elected to fill a vacant office of the Chief Executive, it will be far from comprehensive if we consider the term of office of the Chief Executive solely on the basis of Article

46 of the Basic Law. We must consider it more comprehensively in the context of other provisions of the Basic Law, including Articles 45 and 53 and Annex I, as well as the history of the drafting of the relevant provisions. After re-examining this issue, our conclusion is that the new Chief Executive should serve out the remainder of Mr TUNG's term, which means two years. The justifications are as follows:

Firstly, Article 52 para 2 of the Basic Law (Appendix 2) is not linked with Article 46. Rather, it makes direct reference to Article 45 which mentions that the method for selecting the Chief Executive is prescribed in Annex I.

Annex I to the Basic Law provides that the Chief Executive shall be elected by an Election Committee (EC) composed of 800 members. Paragraph 7 of Annex I also provides that if there is a need to amend the method for selecting the Chief Executive for the terms subsequent to the year 2007, such amendments must be made with the consent of a two-thirds majority of Members of the Legislative Council, the Chief Executive and the Standing Committee of the National People's Congress (NPCSC). In other words, the incumbent 800-member EC is tasked to return the second Chief Executive whose term of office is from 2002 to 2007. Annex I allows new provisions to be made for the election of the Chief Executive after 2007.

Secondly, the decision made by the NPCSC on 26 April last year specifically mentioned "the election of the Chief Executive of the Hong Kong Special Administrative Region for the third term to be held in the year 2007.....". Since the NPCSC has affirmed that the election of the Chief Executive of the third term will be held in 2007, meaning that the Chief Executive of the third term will be returned only in 2007, any election of the Chief Executive held prior to 2007 will only be a by-election in nature to fill the office of Chief Executive which has fallen vacant during the term of the second Chief Executive, rather than an election of the Chief Executive of the third term.

Madam President, Ms Margaret NG said in her earlier speech that these are retrospective arguments, not evidence already available before the drafting and promulgation of the Basic Law. It is true that the decision of the NPCSC on 26 April last year was a decision made only last year, but the decision of the NPCSC is legally binding and has an equal status as that of the Basic Law. So, in our view, this is strong statutory evidence.

Thirdly, during the initial drafting of Article 53 para 2 of the Basic Law, it was first written as "新的行政長官" (a new Chief Executive). It was subsequently revised to "新的一屆行政長官" (the Chief Executive of a new term) but was later reverted to "新的行政長官" (a new Chief Executive). This shows that Article 53 para 2 does not refer to the start of a new term afresh, but a term being the remainder of the predecessor's term.

Fourthly, it has been the practice of state organs in the Mainland that when a person fills a vacancy, he shall serve out the remainder of his predecessor's term. I believe when the Mainland drafted or endorsed the Basic Law, the same principle was adopted to interpret the term of the Chief Executive elected to fill a vacancy arising prematurely.

Mr Ronny TONG particularly mentioned Prof XU Chongde in his discussion on this issue, and Ms Margaret NG mentioned the Constitution. particularly drew Members' attention to Article 84 of the Constitution of China. I have also read it, but my view is completely different from that of Ms Margaret NG. Let me now cite Article 84. It reads, "In case the office of the President of the People's Republic of China falls vacant, the Vice President succeeds to the office of President. In case the office of the Vice President of the People's Republic of China falls vacant, the National People's Congress shall elect a new Vice President to fill the vacancy. In the event that the offices of both the President and the Vice President of the People's Republic of China fall vacant, the National People's Congress shall elect a new President and a new Vice Prior to such election, the Chairman of the Standing Committee of the National People's Congress shall temporarily act as the President of the People's Republic of China." In fact, if we take a closer look at this Article, we will see that it is very similar to Article 53 of the Basic Law, in that a person will temporarily assume the duties pending an election, and the elect will then serve out the remainder of the term.

Mr Ronny TONG and a number of other pro-democracy Members said that they did not quite accept what the Secretary for Justice, Elsie LEUNG, said yesterday, and they had expressed their views on the latest legal opinion provided by Secretary Elsie LEUNG. They opined that the Secretary for Justice had changed her position after discussing with a few legal experts in the Mainland, and they questioned the justifications advanced. But I would like to

tell Members that apart from the exchanges and communication between the Secretary for Justice and a number of legal experts in the Mainland on this issue, the Legislative Affairs Commission of the NPCSC also issued a statement on 12 March. It said in the statement that "the opinion given by the Government of the HKSAR on the issue relating to the term of office of the Chief Executive returned in a by-election in the event that the office of the second term Chief Executive becomes vacant is consistent with the legislative intent of the Basic Law. The Chief Executive returned in a by-election by the Election Committee with a term of five years in the event that the office of the second term Chief Executive becomes vacant is still the second term Chief Executive, and his term of office should be the remaining term of the outgoing Chief Executive."

This statement was issued by the NPCSC's Legislative Affairs Commission, a commission of the country's highest state organ. The legal opinion expressed by this commission is authoritative, and is more than just the opinion of a few academics. We all should study it seriously.

Today, Madam President, Members have suggested that we should proceed in the direction of amending the Basic Law, in order to explicitly set out the arrangements relating to "the remainder of the term". The SAR Government does not agree that this is the best way to address the problem. To the SAR Government and the Central Authorities, the position that the new Chief Executive shall serve out the remainder of the term is unequivocally clear. The Legislative Affairs Commission has also issued a statement in support of this position. Since the meaning of the provisions in the Basic Law is clear, the relevant provisions must be enforced accordingly. It is unnecessary to amend the Basic Law. Nor are we in a position to do so.

Madam President, let me come back to the election. Indeed, I am very glad to hear Mr LEE Wing-tat, Dr YEUNG Sum and a number of other Members expressing their wish to run in the election. If the democratic camp can field candidates in this election, we will see that the election is free and competitive. Hong Kong very much believes that competition will foster progress. So, all qualified persons are welcome to secure nominations for their candidacy and contest this election.

I would like to further respond to the questions asked by a number of Members. Mr Albert HO, Dr YEUNG Sum and Mr Martin LEE asked or

mentioned whether I had discussed the matter with the relevant authorities in Beijing when I replied to Ms Emily LAU's question on 5 May last year. My answer to the Members is very simple. No, I had not. I had only made reference to the opinions given to me by colleagues in the Department of Justice. As we have to answer questions asked by the Legislative Council every week, it is unnecessary to consult Beijing if we are clear about our viewpoints. However, I would like to tell Mr Martin LEE who is not in the Chamber now that he does not need to escalate the matter to such a level as to put his own head in the stake. Let us discuss the legal opinions calmly.

Madam President, I also thank Mr Albert CHENG for his support and concern for my work. But I must also tell him that we in the SAR Government work with team spirit. We will make full reference to the legal advice given to us by the Department of Justice in our work. I agree with their argument that the rule of law is important and that expediency must not be the order of the day. It is precisely because the rule of law is important that we hope to take forward legislation in this regard based on the latest and most comprehensive legal advice given to us by the Secretary for Justice.

The Chief Executive Election Ordinance is not inconsistent with the Basic Law. It is only because Article 53 para 2 of the Basic Law is not clearly provided for in the local legislation that we need to add a provision for local legislation.

I also wish to say that our position presented on this issue is a result of meticulous consideration. The latest position of the SAR Government is supported by legislative history and empirical records, and also proven by people who had participated in the process. So, our position is not conjured out of thin air.

We note that a number of Members have mentioned judicial review. They said that the disputes over this issue should be dealt with through judicial proceedings. Under Article 35 of the Basic Law, Hong Kong people shall have the right to access to the Courts and institute legal proceedings in the Courts against government departments or acts of public administrators. We absolutely respect this decision, and we will properly and expeditiously handle any case of a judicial review in this connection.

Some people have repeatedly stated that the NPCSC's interpretation of the Basic Law constitutes a breach of the rule of law and is detrimental to the rule of

law. I take full exception to this point. The NPCSC has the power to interpret the Basic Law, and this power is conferred on the NPCSC by the Constitution of our country and the Basic Law. The Basic Law also confers on the Court of Final Appeal the power to apply the Basic Law and interpret the relevant provisions of the Basic Law in adjudicating cases. For issues that fall within the responsibility of the Central Authorities or issues concerning the relationship between the Central Authorities and the SAR, it is necessary to seek an interpretation from the NPCSC in order to make the most up-to-date and final judgement. This is provided for in the Basic Law. If work has been carried out in accordance with the Constitution and the Basic Law, why is it considered dealing a blow to the law? Moreover, we are now seeking an interpretation of the legislative intent, which is required not only under common law, but also by any other legal system, including the legal system in the Mainland, and under the Basic Law, we are also required to ascertain the legislative intent.

In this connection, Madam President, I will further respond to Members. I must say that today, I note that a number of Members, including Dr LUI Ming-wah, Mr CHIM Pui-chung, Mr James TIEN, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr Bernard CHAN, Mr Howard YOUNG, Dr Raymond HO, Mr Patrick LAU and Mr WONG Ting-kwong have expressed the concern that a judicial review may impede the smooth conduct of the election of the Chief Executive on 10 July. They do not wish that legal disputes over the term of office of the Chief Executive will pose obstacles to the returning of a new Chief Executive in Hong Kong. Members consider that the SAR Government should take pre-emptive actions and consider seeking an interpretation of the Basic Law by the NPCSC to establish the legal basis for "the remainder of the term". At the moment, we hope that it will not become necessary to take this step. Meanwhile, we will closely monitor the situation and the ensuing discussion on the term of office of the Chief Executive. I will bear in mind the advice tendered to me by Members today. The SAR Government will introduce a bill to the Legislative Council shortly to amend the Chief Executive Election Ordinance, in order to reflect our view on the term of office of a Chief Executive elected to fill a vacancy which arises other than due to the expiry of term.

Madam President, I already explained to Members the arrangements for the three stages of this election at the meeting of the House Committee yesterday. I will not explain them again here.

I would like to further respond to the points made by a number of Members in various aspects. Mr Albert HO, Mr LEUNG Yiu-chung and Mr Albert CHENG questioned and commented on whether the former Chief Executive, Mr TUNG Chee-hwa, had resigned truly for health reasons. share with Members a few phenomena I have seen. Between 1999 and 2002, I was engaged in information co-ordination work in the Chief Executive's Office where I had worked with Mr TUNG for three and a half years. period of time, I had arranged for him numerous press conferences and activities. He was always energetic and full of vigour, and he did not find it difficult at all to stand for a long time to answer questions from reporters. did not find it difficult when he had to stand for two hours or more in the Legislative Council to deliver his policy address. However, as he has told Members, he did have difficulties in delivering his latest policy address and he had to take analgesics and put on a waist supporter, in order to be able to stand there for an hour or so. Madam President, I can also tell Members that after attending a press conference for 30 minutes or so on 10 March, Mr TUNG sat on the sofa immediately after he had gone backstage. I saw him sitting there for almost 10 minutes before rising and said that he felt an excruciating pain here all So, although Mr Albert CHAN is not in this Chamber now, I would like to tell him that taking up the office of the Chief Executive and taking part in a soccer match cannot be mentioned in the same breath. This is an entirely inappropriate analogy.

Ms Emily LAU mentioned a number of issues which, in her view, must be followed up actively given the sudden departure of Mr TUNG. However, I would like to tell Ms LAU that she does not have to fly into a rage. Nothing in the world is unsolvable. What we have to do now is to follow up the more Regarding the Chief Executive's arrangements after his straightforward issues. departure and whether he will again engage in commercial activities after his resignation from his office, Mr TUNG has explicitly stated that he would only serve the country and Hong Kong after his resignation and that he would not serve or work for any private company, including participating in and working for his family business or engaging in any activity that may cause conflicts of I believe these undertakings have fully addressed the concern. Yet, we do appreciate that some members of the public consider it necessary for the Government to impose regulation on the activities of the Chief Executive after he As we have already stated, this issue will be referred to an has left his office. independent committee for studies, and the findings will be explained to the community and the Legislative Council in due course.

Mr LEUNG Yiu-chung and a number of other Members mentioned the problem of a gap which will arise upon the expiry of the term of office of the Election Committee (EC) in mid-July. Indeed, there will be a gap of about 18 months between July 2005 and the formation of a new EC in early 2007. We already know that a gap will arise owing to the design of the Basic Law. The EC as provided for in Annex II was formed in 2000 and under Annex I, the term of the same EC will end in mid-2005. But we have already drawn the attention of the Central Government to the problem of a gap in respect of the EC, and the Central Government is aware that it may have to deal with this problem.

In fact, Madam President, concerning the disputes over two years or five years, I notice that the pan-democratic Members have expressed two different positions at different times. At first, they were worried that if the term of office of the new Chief Executive is five years, that would preclude constitutional reform in 2007 and 2008 and so, a fortnight ago they questioned in no time whether this is a conspiracy and whether this is a new strategy adopted by the Central Authorities. Later, when it became clearer to them that the new Chief Executive shall serve out the remainder of the term, they nevertheless questioned that this new legal interpretation or position is contrary to the Basic Law. It seems that no matter the SAR Government takes the path on the left side or the right side, the pan-democrats will still say that we are not taking the right path.

In fact, I wish to tell Members in the Chamber — not just the pan-democratic Members — that it is unnecessary for any political party or faction to be inhibited by unnecessary apprehensions. We all are working for Hong Kong, and the problem must be tackled.

Madam President, the Basic Law is a unique constitutional document. The notion of "one country, two systems" is unprecedented. The Basic Law is a unique constitutional document because it was formulated in accordance with mainland laws and implemented in a common law jurisdiction. Therefore, in the course of implementation, it is absolutely not peculiar for some twists and turns to arise. But we share a common responsibility to enable the two systems to reconcile, so that the Basic Law can be implemented smoothly while preserving the common law spirit and system. Over the past seven years, we have, in fact, grasped some experiences and principles.

Several Members mentioned the right of abode and constitutional Here, I would like to respond to them. It is true that the NPCSC interpreted the Basic Law in relation to the right of abode in 1999. There were controversies at the time, but we must not forget that the community of Hong Kong supported this option back then. The community supported the interpretation of the Basic Law by the NPCSC, in order to solve this major problem for Hong Kong. Meanwhile, although the NPCSC had exercised its power of interpretation of the Basic Law, the power of final adjudication of the Court of Final Appeal was still maintained. In accordance with the judgement passed by the Court of Final Appeal in end-January in 1999, thousands of applicants for right of abode were allowed to stay in Hong Kong and thousands more were also allowed to do so later. The power of final adjudication of the Court of Final Appeal and the power of interpretation of the Basic Law of the NPCSC can co-exist and are not in conflict. The exercise of the power of interpretation of the Basic Law is fully consistent with the legal system and the spirit of the rule of law conferred on Hong Kong by the Basic Law.

Mr LEE Cheuk-yan questioned earlier whether, according to Mr Patrick LAU's reasoning, we will surrender "a high degree of autonomy" and the legal system of Hong Kong to the NPCSC one day. I think Members must be fair in their remarks. What we are talking about now is the Basic Law. The Court of Final Appeal in Hong Kong has absolute power of final adjudication over laws enacted by the Legislative Council of Hong Kong and common law in Hong Kong. What will be involved in contractual disputes cannot be the Basic Law, but the common law as practised in Hong Kong or the laws of Hong Kong at the most. Members are skillful in their speeches, but even if they have to distort other people's words, they must have clear justifications for doing so, in order to be fair.

Madam President, I would like to mention another issue, that is, the NPCSC's interpretation of the Basic Law and decision last year in respect of 2007 and 2008, which has aroused extensive discussion in society. While discussion on this issue has remained controversial, I have noted or observed that over the past year or so, insofar as the discussion on constitutional development is concerned, the community of Hong Kong has, particularly since April last year, further recognized that Hong Kong does not have the final say over important issues relating to constitutional development or the constitutional system. Under the Constitution of our country and the Basic Law, the final decision-making power is vested in the Central Authorities, but Hong Kong can

take part in the process and has a role to play, in that we can put forward proposals and provide support to Beijing to further take forward these two electoral systems in Hong Kong, so that they can be improved to provide greater room for public participation in politics and their representativeness enhanced.

Madam President, I mentioned these important issues because I wish to explain to Members a simple and yet important principle. As the Basic Law of Hong Kong is a new constitutional document, we must therefore learn and make adjustments in implementing this set of constitutional principles before we can work out a set of legitimate, constitutional, sensible and reasonable arrangements for Hong Kong.

Madam President, I know that the disputes over the term of office of the Chief Executive will not end simply because the SAR Government has made clear its position. I know that in the coming days, Members' views on this issue may, to some extent, remain divergent as they insist on their positions. I will respect this. However, over the past two weeks since this issue was raised, we have noted that it is the wish of the public to have a new Chief Executive elected as soon as possible in accordance with the Basic Law and the laws of Hong Kong. Generally speaking, it seems that members of the public consider it more acceptable for the new Chief Executive to serve out the remainder of the term. So, I appeal to Members to make concerted efforts to enable this arrangement to be finalized in a sensible, reasonable and legitimate manner and in full compliance with the Basic Law and the laws of Hong Kong.

I very much thank Members for their very detailed speeches and for giving us many valuable opinions tonight. Their input will lay a very important foundation for the very significant work we will carry out in the next couple of months. I so submit. Thank you, Madam President.

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): In accordance with Rule 16(7) of the Rules of Procedure, I now adjourn the Council until 11.00 am on Wednesday, 6 April 2005.

Adjourned accordingly at one minute past Eleven o'clock.

# **Changes to Salaries Tax Allowances**

	Present	Proposed	Inci	ease
	(\$)	(\$)	(\$)	(%)
Basic Allowances:				
Basic	100,000	100,000	_	_
Married	200,000	200,000	_	_
Single Parent	100,000	100,000		_
Additional Allowances:				
Child:				
l <sup>st</sup> to 9 <sup>th</sup> child	30,000	40,000	10,000	33.3
Dependent Parent/Grandparent:				
Aged 60 or above				
Basic	30,000	30,000	_	_
Additional allowance (for dependant living with taxpayer)	30,000	30,000	_	_
Aged 55 to 59				
Basic	_	15,000	N	ew
Additional allowance (for dependant living with taxpayer)	_	15,000	N	ew
Dependent Brother/Sister	30,000	30,000	_	_
Disabled Dependant	60,000	60,000		

## EFFECT OF THE GENERAL REVALUATION OF RATES ON MAIN PROPERTY CLASSES

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Property Type	Average Increase in Rateable Value <sup>(6)</sup>	New Average Rates Payable	Increase
	%	\$ per month	\$ per month
Small Domestic Premises <sup>(1)</sup> (Private)	5	218	11
Medium Domestic Premises <sup>(1)</sup> (Private)	9	520	43
Large Domestic Premises <sup>(1)</sup> (Private)	9	1,341	106
Public Domestic Premises <sup>(2)</sup>	4	122	4
All Domestic Premises(3)	6	234	13
Shops and Commercial Premises	8	1,470	110
Offices	11	1,052	103
Industrial Premises <sup>(4)</sup>	8	541	39
All Non-domestic Premises(5)	8	1,490	104
All Properties	7	405	25

(1) Domestic units are classified by relation to saleable areas, as follows –

Small domestic	up to 69.9m <sup>2</sup>	(up to 752 sq. ft.)
Medium domestic	70m² to 99.9m²	(753 sq. ft 1 075 sq. ft.)
Large domestic	100m <sup>2</sup> and over	(1 076 sq. ft. and above)

- (2) Including Housing Authority and Housing Society rental units.
- (3) Including car parking spaces.
- (4) Including factories and storage premises.
- (5) Including miscellaneous premises such as hotels, cinemas, petrol filling stations, schools and car parking spaces.
- (6) The rateable values for 2005-06 reflect the changes in open market rental values between 1 October 2003 and 1 October 2004.

# EFFECTOF THE GENERAL REVALUATION OF GOVERNMENT RENT ON MAIN PROPERTY CLASSES

		2005-06	
Property Type	Average Increase in Rateable Value <sup>(6)</sup>	New Average Rent Payable	Increase
	%	\$ per month	\$ per month
Small Domestic Premises <sup>(1)</sup> (Private)	5	124	6
Medium Domestic Premises <sup>(1)</sup> (Private)	10	290	25
Large Domestic Premises <sup>(1)</sup> (Private)	8	631	48
Public Domestic Premises <sup>(2)</sup>	4	71	3
All Domestic Premises(3)	6	135	8
Shops and Commercial Premises	5	814	39
Offices	10	1,117	106
Industrial Premises <sup>(4)</sup>	8	335	26
All Non-domestic Premises <sup>(5)</sup>	7	830	52
All Properties	6	224	13

(1) Domestic units are classified by relation to saleable areas, as follows –

Small domestic	up to 69.9m <sup>2</sup>	(up to 752 sq. ft.)
Medium domestic	70m <sup>2</sup> to 99.9m <sup>2</sup>	(753 sq. ft 1 075 sq. ft.)
Large domestic	100m <sup>2</sup> and over	(1 076 sq. ft. and above)

- (2) Including Housing Authority and Housing Society rental units.
- (3) Including car parking spaces.
- (4) Including factories and storage premises.
- (5) Including miscellaneous premises such as hotels, cinemas, petrol filling stations, schools and car parking spaces.
- (6) The rateable values for 2005-06 reflect the changes in open market rental values between 1 October 2003 and 1 October 2004.

## **ECONOMIC PERFORMANCE IN 2004**

1. Estimated rates of change in the Gross Domestic Product and its expenditure components and in the main price indicators in 2004:

(a)	Growth rates in real terms of:	(%	<b>%</b> )
	Private consumption expenditure		6.7
	Government consumption expenditure		0.5
	Gross domestic fixed capital formation		4.5
	of which:		
	Building and construction Machinery, equipment and computer software	-10.3 12.2	
	Total exports of goods		15.3
	Re-exports Domestic exports	16.3 2.4	
	Imports of goods		14.1
	Exports of services		14.9
	Imports of services		10.5
	Gross Domestic Product (GDP)		8.1
		\$186,300 \$23,900)	6.9
(b)	Rates of change in:		
	<b>Composite Consumer Price Index</b>		-0.4
	GDP Deflator		-2.8
	Government Consumption Expenditure Deflator		-3.0
(c)	Growth rate of nominal GDP		5.1

2. Annual growth rates in real terms of re-exports and domestic exports:

	Re-exports (%)	Domestic exports (%)
2002	11	-11
2003	16	-7
2004	16	2
Share in the value of total exports of goods in 2004	94	6

3. Annual growth rates in real terms of retained imports:

## Retained imports

	Consumer			Capital	Raw materials and		
	Total (%)	goods (%)	Foodstuffs (%)	goods (%)	semi-manufactures (%)	Fuels (%)	
2002	2	6	5	-14	10	5	
2003	6	1	2	6	8	- ]	
2004	9	3	6	13	8	8	

4. Annual growth rates in real terms of retained imports of capital goods by type:

## Retained imports of capital goods

	Total (%)	Office muchinery (%)	Industrial Machinery (%)	Construction Machinery (%)	Telecommunications Equipment (%)
2002	-14	-12	-1	11	-2
2003	6	6	-7	-19	12
2004	13	2	20	-11	31

5. Annual growth rates in real terms of exports of services by type of activity:

## Export of services

	<i>Total</i> (%)	Trade-related services (%)	Transportation services (%)	Travel services (%)	Finance, business and other services (%)
2002	12	13	12	26	- 1
2003	6	17	*	-3	2
2004	15	15	17	19	7

<sup>\*</sup> Change of less than 0.5%.

6. Hong Kong's visible and invisible trade balance in 2004 reckoned on a GDP basis:

	(HK\$ bi	llion)
Total exports of goods	2,027.0	
Imports of goods	2,099.5	
Visible trade balance		-72.5
Exports of services (Note I)	407.6	
Imports of services (Note 1)	225.0	
Invisible trade balance (Note 1)		182.6
Combined visible and invisible trade balance (Note to		110.0

Note I Preliminary figures.

7. Annual averages of the unemployment and underemployment rates and rates of change in labour force and total employment:

	Unemployment rate (%)	Underemployment rate (%)	Growth in labour force (%)	Growth in total employment (%)
2002	7.3	3.0	1.8	-0.6
2003	7.9	3.5	0.3	-0.4
2004	6.8	3.3	0.9	2.1

8. Annual rates of change in the Consumer Price Indices:

	Composite CPI	CPI(A)	CPI(B)	CPI(C)
	(%)	(%)	(%)	(%)
2002	-3.0	-3.2	-3.1	-2.8
2003	-2.6	-2.1	-2.7	-2.9
2004	-0.4	*	-0.5	-0.9

<sup>\*</sup> Change of less than 0.05%.

## **ECONOMIC PROSPECTS FOR 2005**

Forecast rates of change in the Gross Domestic Product and prices in 2005:

Gross Domestic Product (GDP)		(%)
Real GDP		4.5 to 5.5
Nominal GDP		3.5 to 4.5
Per capita GDP, in real terms		3.7 to 4.7
Per capita GDP at current market prices	HK\$191,400-193,300 (US\$24,500-24,800)	
<b>Composite Consumer Price Index</b>		1.5
GDP Deflator		-1
Government Consumption Expenditure Defl	ator	-1.5

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Appendix A—Contd.

#### SECTION I - FORECASTING ASSUMPTIONS AND BUDGETARY CRITERIA

I — A number of computer-based models are used to derive the Medium Range Forecast (MRF). These models reflect a wide range of assumptions about the factors determining each of the components of Government's revenue and expenditure. Some are economic in nature (the general economic assumptions) while others deal with specific areas of Government's activities (the detailed assumptions). These are supported by studies of historical and anticipated trouds.

#### **General Economic Assumptions**

Real Gross Domestic Product (real GDP)

2 GDP is forecast to increase by 4.5% to 5.5% in real terms in 2005. For planning purposes, over the ensuing four-year period 2006 to 2009, the trend growth rate of the economy in real terms is assumed at 4% per annum. We have made reference to the mid-point of the range forecast of GDP growth rate for 2005 in deriving the MRF.

#### Price change

3 The GDP deflator, measuring overall price change in the economy, is forecast to decline by 1% in 2005. For the four-year period 2006 to 2009, the GDP deflator is assumed to increase at a trend rate of 1.5% per annum. The Composite Consumer Price Index, measuring inflation in the consumer domain, is forecast to increase by 1.5% in 2005. The trend rate of increase for the ensuing period 2006 to 2009 is assumed to be 3.0% per annum.

Nominal Gross Domestic Product (nominal GDP)

Taking the assumptions on the rates of change in the real GDP and the GDP deflator together, the growth rate of GDP in nominal terms is forecast at 3.5% to 4.5% in 2005, and the trend growth rate in nominal terms for the period 2006 to 2009 is assumed at 5.5% per annum.

#### **Detailed Assumptions**

- 5 The MRF incorporates a wide range of detailed assumptions on expenditure and revenue patterns over the forecast period, taking the following, amongst other factors, into account—
  - estimated cash flow of capital projects.
  - forecast completion dates of these capital projects and their related recurrent consequences in terms of staffing and running costs.
    - estimated eash flow arising from new commitments resulting from policy initiatives.
  - the expected pattern of demand for individual services.
  - the trend in yield from individual revenue sources, and
  - new revenue/expenditure measures in the 2005 Budget.

#### **Budgetary Criteria**

- 6 In addition to the above forecasting assumptions, there are a number of criteria against which the results of forecasts are tested for overall acceptability in terms of budgetary policy.
- 7 The following covers the more important budgetary criteria
  - —Budget surplus/deficit
    - The Government aims to achieve balance in consolidated and operating accounts by 2008–09. In the longer term, the Government needs to achieve an operating surplus to partially finance capital expenditure.
  - —Operating expenditure
    - The Government aims to bring operating expenditure down to \$200 billion by 2008–09.
  - -Capital expenditure
    - By its nature, some fluctuations in the level of capital expenditure are to be expected. However, over a period the aim is to contain capital expenditure within expenditure guidelines.
  - Total expenditure
    - The general principle is that, over time, expenditure growth should not exceed the growth of the economy, taking into account both real and nominal terms. The Government aims to keep public expenditure at or below 20% of GDP by 2008-09.
  - —Revenue policy
    - Account is taken of the need to maintain over time the real yield from revenue.
  - —Fiscal reserves
    - The Government in the long run aims to maintain the level of reserves at around 12 months of total government expenditure.

Appendix A—Contd.

#### **SECTION II - THE MRF FOR 2004-05 TO 2009-10**

**8** The current MRF (*Note a*) is summarised in the following table which indicates the forecast financial position of the Government—

Table 1

							Table I
	Original Estimate*	Revised Estimate			Forecast		
(S million)	2004-05	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Operating Account							
Operating revenue (Note b)	155,593	175,640	181,388	184,111	189,929	197,939	207,804
Operating expenditure(Note c)	212,200	201,241	208,000	207,080	203,540	200,000	202,500
Surplus/(deficit) before investment income	(56,607)	(25,601)	(26,612)	(22,969)	(13,611)	(2,061)	5,304
Investment income (Note h)	10,039	11,453	11,161	10,878	11,360	12,367	13,405
Operating surplus/(deficit) after investment income	(46,568)	(14,148)	(15,451)	(12,091)	(2,251)	10,306	18,709
Capital Financing Statement							
Capital revenue (Note d)	18,624	39,839	42,159	40,619	41,687	43,458	44,110
Asset sales (Note d)	11,000	6,177	5,401	18,126	24,770	14,225	6,226
	29,624	46,016	47,560	58,745	66,457	57,683	50,336
Capital spending (Note e)	53,418	48,058	44,741	47,403	43,613	42,791	42,734
Surplus/(deficit) before investment income/interest expenses	(23,794)	(2,042)	2,819	11,342	22,844	14,892	7,602
Investment income (Note d)	2,215	3,192	2,940	2,930	2,987	3,173	3,397
Interest expenses (Note e & f)	500	442	853	826	799	754	642
<b>Surplus/(deficit) after investment income/interest expenses</b> Net proceeds from issuance of bonds and notes (Note d & f)	(22,079)	708	4,906	13,446	25,032	17,311	10,357
,	6.000	5.533					
<ul> <li>Toll Revenue Bond</li> <li>Other government bonds and notes</li> </ul>	6,000 20,000	5,522 19,871	-	-	-	-	-
Repayment of bonds and notes (Note e & f)	20,000	19,871	-	2,550	-	2,700	3,500
Capital financing surplus/(deficit)	3,921	26,101	4,906	10,896	25,032	14,611	6,857
after bond issuance/repayment	3,721	20,101	4,700	10,070	20,002	14,011	0,007
Consolidated Account							
Fiscal reserves at 1 April	266,448	275,343	287,296	276,751	275,556	298,337	323,254
Operating surplus/(deficit)	(46,568)	(14,148)	(15,451)	(12,091)	(2,251)	10,306	18,709
Capital financing surplus/(deficit)	(22,079)	708	4,906	13,446	25,032	17,311	10,357
before bond issuance/repayment							
Consolidated surplus/(deficit)	(68,647)	(13,440)	(10,545)	1,355	22,781	27,617	29,066
Net proceeds from issuance of bonds and notes							
- Toll Revenue Bond	6,000	5,522	-	-	-	-	-
- Other government bonds and notes	20,000	19,871	-	-	-	-	-
Repayment of bonds and notes	-	-	-	2,550	-	2,700	3,500
Consolidated surplus/(deficit)	(42,647)	11,953	(10,545)	(1,195)	22,781	24,917	25,566
after bond issuance/repayment							
Fiscal reserves at 31 March	223,801	287,296	276,751	275,556	298,337	323,254	348,820
As number of months of government expenditure	10	14	13	13	14	16	17
Outstanding debt at 31 March (Note f)							
- Toll Revenue Bond	6,000	5,667	4,877	4,538	3,319	2,979	1,840
<ul> <li>Other government bonds and notes</li> </ul>	20,000	20,000	20,000	17,450	17,450	14,750	11,250
			L				

<sup>\*</sup> We have reclassified the net proceeds of Toll Revenue Bond and the interest expenses of bonds. The consolidated deficit before bond issuance for the 2004-05 Original Estimate becomes \$68,647 million (vs \$62,147 million in the 2004 Budget), while the consolidated deficit after bond issuance remains unchanged at \$42,647 million.

Appendix A—Contal.

#### Notes-

#### (a) Accounting policies

- (i) The MRF is prepared on a cash basis and reflects forecast receipts and payments, whether or not they relate to operating or capital transactions.
- (ii) The MRF includes the General Revenue Account and the Funds (Capital Investment Fund, Capital Works Reserve Fund, Civil Service Pension Reserve Fund, Disaster Relief Fund, Innovation and Technology Fund, Land Fund, Loan Fund, and Lotteries Fund).

#### (b) Operating revenue

(i) The operating revenue has taken into account the revenue-concession measures proposed in the 2005 Budget, and is made up of –

S 1161	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
(\$ million) Operating revenue before investment income	175,640	181.388	184.111	189,929	197,939	207,804
Investment income	11.453	11.161	10.878	11,360	12.367	13.405
Total	187,093	192,549	194,989	201,289	210.306	221.209

(ii) For the purpose of the MRF, investment income under the Operating Account includes the investment income of the General Revenue Account which are credited to revenue head Properties and Investments and the investment income of the Land Fund. The rate of investment return is assumed at 5% per annum throughout the MRF period.

#### (c) Operating expenditure

- (i) The operating expenditure in 2004-05 and 2005-06 includes forecast expenditure of \$4 billion and \$0.4 billion respectively for the Voluntary Retirement Schemes. The one-off expenditure under these schemes comprises commuted pensions and compensation for takers of the schemes.
- (ii) The level of operating expenditure in 2004–05 to 2009–10 has taken into account the two-phased payeut on 1 January 2004 and 1 January 2005.

#### (d) Capital revenue

(i) The breakdown of capital revenue is -

	2004-05	2005-06	2006 07	2007 08	2008-09	2009-10
(\$ million)						
General Revenue Account	3,652	5,008	3.193	2.183	2,104	762
Capital Works Reserve Fund	31.368	32.161	33,753	35,620	37.591	39.671
Capital Investment Fund	2,389	2,432	2,009	1,938	1.488	871
Innovation and Technology Fund	14					
Logn Fund	1,412	1,527	584	816	1,075	1.551
Lotteries Fund	1.004	1,031	1.080	1,130	1,200	1.255
Capital revenue before asset sales, investment income and net proceeds from bond issuance	39,839	42,159	40,619	41.687	43.458	44,110
Asset sales	6,177	5,401	18,126	24,770	14.225	6.226
Investment income	3,192	2,940	2,930	2,987	3,173	3,397
Net proceeds from issuance of bonds and notes	25,393					
Total	74,601	50,500	61,675	69,444	60,856	53,733

Appendix A-Contd.

- (ii) For the purpose of the MRF, the annual land premia included under the Capital Works Reserve Fund are assumed at 2.4% of GDP throughout the MRF period.
- (iii) For the purpose of the MRF, investment income under the Capital Financing Statement includes investment income of the Funds except Land Fund (i.e. Capital Investment Fund, Capital Works Reserve Fund, Civil Service Pension Reserve Fund, Disaster Relief Fund, Innovation and Technology Fund, Loan Fund and Lotteries Fund).

#### (e) Capital spending

The breakdown of capital spending is

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
(S million)						
General Revenue Account	1.790	1.628	4.015	4.060	4,105	4.152
Capital Works Reserve Fund	34,858	32.035	33.581	33,669	33,665	33,900
Capital Investment Fund	6,767	5.802	3,956	503	284	250
Disaster Relief Fund	36					
Innovation and Technology Fund	470	809	809	809	809	809
Loan Fund	2,973	3.259	4.052	4,019	3,518	3,363
Lotteries Fund	1.164	1,208	990	553	410	ltil
Capital spending before interest on and repayment of government bonds and notes	48,058	44.741	47,403	43.613	42,791	42,734
Interest expenses	442	853	826	799	754	642
Repayment of bonds and notes			2,550		2,700	3,500
Total	48,500	45.594	50.779	44.412	46.245	46,876

#### (f) Government bonds and notes

- (i) For 2004-05, two bond programmes were launched, viz. a Toll Revenue Bond of \$6 billion in April 2004 and a global bond issue totalling \$20 billion in July 2004. The net proceeds of the two bond programmes were credited to the Capital Works Reserve Fund.
- (ii) Interest expenses and repayment of bonds and notes are only in respect of the global bond issue and not the Toll Revenue Bond. The interest expenses and repayment of the Toll Revenue Bond are charged directly against the net toll revenue of concerned tunnels and bridges. The toll revenue thus foregone has been taken into account in forecasting Government's operating revenue.

Appendix A-Contd.

# SECTION III - RELATIONSHIP BETWEEN GOVERNMENT EXPENDITURE, PUBLIC EXPENDITURE AND GDP IN THE MRF

9 For monitoring purposes, the Government's own expenditure is consolidated with the expenditure of the Housing Authority and the Trading Funds (collectively referred to as "other public bodies") in order to compare total public expenditure with Gross Domestic Product.

Government Expenditure and Public Expenditure in the Context of the Economy Table 2

					the 12cm	•	711171 <b>(</b> _
	Original Estimate	Revised Estimate	Foregast				
(S million)	3004-05	2004-05	3005-06	2006-07	3007-08	2008-09	3009-10
Operating expenditure	212,200	201.241	208,000	207,080	203,540	200,000	202,500
Capital expenditure	46,539	41.733	30,792	44.273	43,909	43,261	43,126
Total government expenditure	258,739	243,974	247,793	251,353	347,449	243,261	245,626
Other public bodies	27,235	22,285	30,798	18,835	18,968	18,333	18,327
Total public expenditure (Note a)	285,974	265,259	268,590	270.188	266,417	261.594	263,953
Gross Domestic Product (calendar year)	1,269,744	1.281,990	1,332,877	1,406,722	1,484,658	1,566,913	1,653,724
Growth in GDP (Note b)							
Money terms		5 l%	4.0° a	5.5%	5.5° <sub>0</sub> .	5.5° o	5.5° a
Real terms		S, [ 9 o	5.0° a	4,0%	J.(P° o	$+10^8$ $_0$	4,0 <sup>n</sup> a
Growth in government expenditure $\partial Souc(x)$							
Money terms		-U.   ° <sub>0</sub> ,	2.0° s	1.44 a	- .(i <sup>n</sup> 1)	-1.7° <sub>0</sub>	1.0° a
Real terms		1.7%	2.7° o	0.5° a	-2.5%	-2.7°	- <b>(</b> 0, 2** o
Growth in public expenditure (Note c)							
Money terms		-2, 2° o	1.3™₀	$0.6^{n_a}$	-1,4"	-1,8° o	0.9 <sup>u</sup> a
Real terms		-0,5° n	1,9° a	$-0.5^{n}a$	-3.3° n	-3,8° o	-0.2%
Public expenditure as a percentage of GDP	22.5%	2(6.7%)	20,244	19.2%	17,9% o	16.7%	[6,0° a

#### Notes

- Public expenditure comprises government expenditure (i.e. all expenditure charged to the General Revenue Account and financed by the Government's statutory funds excluding Capital Investment Fund), and expenditure by the Trading Funds and the Housing Authority. But not included is expenditure by those organisations, including statutory organisations, in which the Government has only an equity position, such as the Airport Authority, the MTR Corporation I mitted and the Kowloon-Canton Railway Corporation Similarly, advances and equity investments from the Capital Investment Fund as well as repayment of government bonds and notes are excluded as they do not reflect the actual consumption of resources by the Government.
- 161 For 2005-06, the GDP growth in money terms of 4.0% represents the mid-point of the range forecast of monimal GDP growth at 3.5% to 4.5% for the calendar year 2005. Similarly, the growth in real terms of 5.0% represents the mid-point of the range forecast of real GDP growth at 4.5% to 5.5% for 2005.
- 263 The growth rates refer to year-on-year change. For example, the rates for 2004-05 refer to the change between revised estimate for 2004-05 and actual expenditure in 2003-04. The rates for 2005-06 refer to the change between the 2005-06 forecast and the 2004-05 revised estimate, and so forth.

10 Table 3 shows the relationship amongst the sum to be appropriated in the 2005 Budget, government expenditure and public expenditure. It also shows the effect of the Budget revenue measures on the overall surplus/deficit position for 2005–06.

#### Relationship between Government Expenditure and Public Expenditure in 2005-06

S million)	c Expenditure	III 2005-00			Table	
Components of expenditure and revenue	Appropriation	Government expenditure and revenue			Public expenditure	
		Operating	Capital	Total	expenditure	
Expenditure						
General Revenue Account						
Operating						
Recurrent	199,117	199,117	_	199,117	199,117	
Non-recurrent	8,883	8,883		8,883	8,883	
Capital	824		824	824	824	
Plant, equipment and works Subventions	804	_	804	804	804	
Subventions	004		804	604	804	
	209,628	208,000	1,628	209,628	209,628	
Transfer to Funds	5,028	-	-	_	-	
Capital Works Reserve Fund		_	32,888	32,888	32,888	
Innovation and Technology Fund	_	_	809	809	809	
Loan Fund			3,259	3,259	3,259	
Lotteries Fund			1,208	1,208	1,208	
Trading Funds	-	_	-	_	3,109	
Housing Authority		_	_	_	17,689	
	214,656	208,000	39,792	247,792	268,590	
Revenue (before Budget revenue measures) General Revenue Account		155.000	4.510	154 530		
Taxation Other revenue		155,028 31,905	1,510 3,998	156,538 35,903		
		186,933	5,508	192,441		
Land Fund		6,376	_	6,376		
		193,309	5,508	198,817		
Capital Works Reserve Fund		_	33,820	33,820		
Capital Investment Fund		_	2,482	2,482		
Civil Service Pension Reserve Fund		_	784	784		
Disaster Relief Fund		_	2	2		
Innovation and Technology Fund Loan Fund			208 1,547	208 1,547		
Lotteries Fund		_	1,248	1,248		
Asset sales		_	5,401	5,401		
		193,309	51,000	244,309		
Surplus/(deficit) before Budget revenue measures	i	(14,691)	11,208	(3,483)		
ess: Effect of Budget revenue measures		760	500	1,260		
Surplus/(deficit) after Budget revenue measures  Less: Advances and equity investments from		(15,451)	10,708	(4,743)		
the Capital Investment Fund		_	5,802	5,802		
Consolidated surplus/(deficit)		(15,451)	4,906	(10,545)		

#### SECTION IV - ESTIMATES OF CONTINGENT LIABILITIES

11 The Government's contingent liabilities as at 31 March 2004, and estimates of these should they remain unsettled as at 31 March 2005 or 31 March 2006, are provided below as supplementary information to the MRF-

(at 31 March)	2004 Sm	2005 Sm	2006 Sm
Guarantee to the Hong Kong Export Credit Insurance Corporation for liabilities under contracts of insurance	9,499	9,983	10,383
Litigation			
<ul> <li>the Government's appeals arising from judicial reviews challenging the lawfulness of the two pieces of pay reduction legislation giving effect to the civil service pay adjustments in October 2002, January 2004 and January 2005</li> </ul>	-	5,400	9,600
- others	113	119	124
Possible capital subscriptions to the Asian Development Bank	2.069	2.069	2.069
Guarantees provided under loan guarantee schemes for small and medium enterprises, the Film Guarantee Fund and the Loan Guarantee Scheme for Severe Acute Respiratory Syndrome Impacted Industries	3.680	4,092	3.850
Total	15,361	21,663	26,026

## Appendix B

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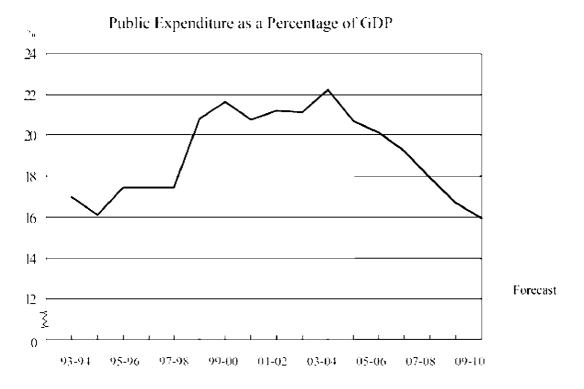
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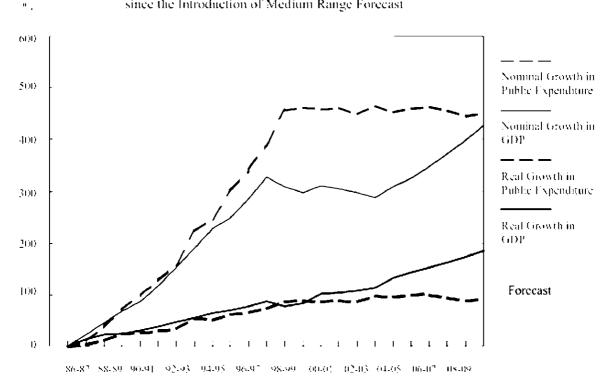
### SECTION 1 - THE ESTIMATES IN THE CONTEXT OF THE ECONOMY

#### Relationship between Government Expenditure, Public Expenditure in 2005-06 and GDP

	2005-06 Estimate Sin
General Revenue Account	
Operating	208,000
Capital	1,628
	209,62X
Capital Works Reserve Fund	32,888
Loan Fuad	3,259
Lotteries Fund	1,208
Innovation and Technology Fund	809
Government Expenditure	247.792
Trading Lunds	3,109
Housing Authority	17,689
Public Expenditure	268,590
GDP	1,332,877
Public Expenditure as a % of GDP	20.2%



Comparison of Cumulative Growth in Public Expenditure with Cumulative Growth in GDP since the Introduction of Medium Range Forecast



# SECTION II - ANALYSIS OF RECURRENT PUBLIC/GOVERNMENT EXPENDITURE BY POLICY AREA GROUP

## Recurrent Public Expenditure : Year-on-Year Change

				Increase/Decrease over 2004-05	
	2004-05 Original Estimate	2004-05 Revised Estimate	2005-06 Estimate	Original Est in Nominal Terms	intate in Real Terms
	Sm	S:::	Sm	: 11	":•
Education	19,189	15,535	48,680	-1.0	0.3
Social Welfare	33.718	32,575	34.318	1.8	2.8
Health	30,328	30,2118	29,432	-3.0	-1.1
Security	23,949	23,403	23,156	-3.3	-1.7
Housing	12.806	10,980	11,175	-12.7	-13.5
Infrastructure	11,367	11.244	11.131	-2.1	-1.5
Economic	10,844	10.636	10,753	-0,8	0
Environment and Food	8 108	7.750	7,864	-4.1	-3.6
Community and External Affairs	7,106	6937	6,817	-4,2	-4,1
Support	31,298	30,152	29,524	-5.7	-5.8
	218,805	209,431	212,850	-2.7	-1.8

# SECTION II - ANALYSIS OF RECURRENT PUBLIC/GOVERNMENT EXPENDITURE BY POLICY AREA GROUP

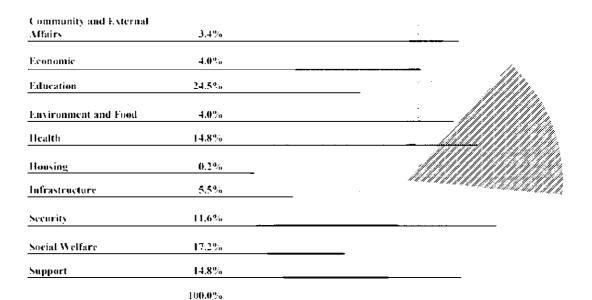
### Recurrent Government Expenditure: Year-on-Year Change

	2004-05	2004-05		Increase/Decrease over 2004/05 Original Estimate		
	Original Estimate Sin	Revised Estimate Sin	2005–06 Estimate Sm	in Nominal Terms	in Real Terms	
Education	49/189	15,535	48,680	-1.0	0.3	
Social Welfare	33.715	32,575	34.318	1.8	2.8	
Health	30,325	30,208	29,432	-3.0	-1.1	
Security	23,949	23,405	23,156	-3.3	-1.7	
Infrastructure	11,248	11,114	10,991	-2.3	-1.7	
Economic	7,978	7,714	7,929	-0,6	0.2	
Environment and Food	8,198	7,759	7,864	-4.1	-3.6	
Community and External Affairs	27.16	6,937	6.817	-4.2	<b>→. t</b>	
Housing	455	422	406	-10,8	-8.7	
Support	£1 <u>.2</u> 96	30,152	29,524	-5.7	-5.8	
	203,469	195,851	199,117	-2.1	-1.1	

# Percentage Share of Expenditure by Policy Area Group Recurrent Public Expenditure: 2005-06 Estimate

Community and External		e e e e e e e e e e e e e e e e e e e
Affairs	3.2%	<del></del>
Economic	5.0%	
Education	22.9%	
Environment and Food	3,7%	
Health	13.8%	
Housing	5.3%	
Infrastructure	5.2%	
Security	10.9%	
Social Welfare	16.1%	
Support	13.9%	
	100,0%	

# Percentage Share of Expenditure by Policy Area Group Recurrent Government Expenditure: 2005-06 Estimate



# SECTION III - ANALYSIS OF TOTAL PUBLIC/GOVERNMENT EXPENDITURE BY POLICY AREA GROUP

### Total Public Expenditure: Year-on-Year Change

	2004-05	2004 (05		Increase/Do over 200 Original E	4 05
	Original Estimate Sec	Revised Estimate Sm	2005–06 Estimate Sm	in Nominal Ferms	in Real Terms
Education	59,542	55,730	58.160	-2.3	-1.4
Social Welfare	35,404	34,119	36,302	2.5	3.4
Health	32,977	32,355	32,240	-2.2	-0.6
Security	27,037	26,312	26,192	-3.1	-1.8
Infrastructure	30,123	28,245	26.008	-13.8	-13.8
Housing	24,583	19,523	18.108	-26.3	-26.9
Геонотіє	(6,675	14,912	15,509	-7,0	-6,8
Environment and Food	(2,604	10,438	10.818	-14.2	-14.0
Community and External Affairs	8,593	8.213	8.266	-3.8	-3.8
Support	38[30]	35,410	36,987	-3.7	-3.9
	285,974	265,259	268,590	-6.1	-5.5

# SECTION III - ANALYSIS OF TOTAL PUBLIC/GOVERNMENT EXPENDITURE BY POLICY AREA GROUP

### Total Government Expenditure : Year-on-Year Change

	2014-05	2004-05		Increase/Decrease over 2004–05 Original estimate		
	Original Estimate Sm	Revised Estimate Sm	2005–06 Estimate Sm	in Nominal Terms	in Real Terms	
Education	59,542	55,732	58,160	-2.3	-1.4	
Social Welfare	35,404	34,:19	36,302	2.5	3.4	
Health	32,977	32,355	32,240	-2.2	-0.6	
Security	27,032	26,312	26,192	-3.1	-1.8	
Infrastructure	30,024	28,082	25,846	-13.9	-14.0	
Economic	13 (800)	11,870	12,563	-8.3	-8.1	
Environment and Fond	12.604	10.438	10,818	-14.2	-14.0	
Community and External Affairs	8,593	8.213	8,266	-3.8	-3.8	
Housing	482	443	418	-13.1	-11.2	
Support	38,391	35,410	36,987	-3.7	-3.9	
	25%,739	242,974	247,792	-4.2	-3.6	

# Percentage Share of Expenditure by Policy Area Group Total Public Expenditure: 2005-06 Estimate

Community and External		
Affairs	3.1%	We.
Feonomic	5.8%	
Education	21.6%	
Environment and Food	4.0%	
Health	12.0%	
Housing	6.7%	Manner -
Infrastructure	9.7%	·
Security	9.8%	
Social Welfare	13.5%	· · · · ·
Support	13.8%	

100.0%

# Percentage Share of Expenditure by Policy Area Group Total Government Expenditure: 2005-06 Estimate

Community and External	2.40		
Affairs	3.4%n		
Leonomic	5.1%		Ma
F.ducation	23.5%		
Environment and Food	4.3%	<del>,</del>	_ <del></del>
Health	13.0%		
Housing	0.2%		
Infrastructure	10.4%	· · · · · · · · · · · · · · · · · · ·	
Security	10.6%		
Social Welfare	14.6%		
Support	14.9%		

100.0%

### SECTION IV - MAJOR CAPITAL PROJECTS TO BEGIN IN 2005-06

Lunds allocated for capital projects to start in 2005, 06 include

Infrastructure 6.918
Replacement and rehabilitation of water mains
Water supply to housing development at Anderson Road and to Sha Lin development Area 56A
Ring manis for Cha Kwo Ling salt water supply system
Road PLadvance works at Sinny Bay of Lantan and Trunk Road 14 in Sha Lin
Improvements to San 1 in Interchange
Rentaming engineering works in Sha Tin New Town
Area traffic control and closed circuit television system for Tuen Mini and Yuen Long districts
Environment and Food 2.244
Lai Po sewage treatment works, stage 5 phase 1
Sewerage in North and South Kowloan, Yuen Long, Kam Lin, North District and Outlying Islands
Retrofitting of noise barriers on Cheung Pei Shan Road and Ma On Shan Road
Retrofitting of an-conditioning and general improvement to markets and cooked food centres
Conversion of aqua privies into thishing toilets - phase ?
Public Filling Burging Points in Kwai Chung and Chai Wan
Education 1.325
Construction, extension and redevelopment of primary and secondary schools
Construction of special schools
Stabilisation of slopes within the campus of the Chinese University of Hong Kong
Support 1.197
Drainage improvement in Northern New Territories, Sha Tin, Tai Po, Fanting and Sai Kung
Fitting out works for customs, immigration and quarantine facilities at Sky Plaza, Hong Kong
International Auport
Health 539
Establishment of a community health and wellness centre at Yan Char Hospital
Improvement of infection control provisions for autopsy facilities in public hospitals
Improvement of Incilities in the Specialist Outpatient Block of Pamela Youde Nethersole Lastern
Hospital
Community and External Affairs 527
I scang Kwan O Sports Ground
Dr Sam Yat-sen Museum
Provision of open spaces
Economic 513
Transport link in Tsun Sha Tsin East
Lourist District Enhancement Programme - The Peak
Enhancement of public facilities at Ngong Ping, Lantan

#### SECTION V - TRENDS IN PUBLIC EXPENDITURE: 2000-01 TO 2005-06

#### Introduction

This section presents trends in public expenditure over the period 2000-05 to 2005-06. The analysis includes expenditure by the Government, the Trading Funds and the Housing Authority.

- 2 Details of the individual heads of expenditure contributing to a particular policy area are provided in an index in Nolume 1 of the 2005-06 Estimates. This index further provides details by head of expenditure of individual programmes which contribute to a policy area.
- 3 Where appropriate, historical figures have been adjusted to comply with the current classification of expenditure.

Appendix  $\mathbf{B}$ —Contd.

## Recurrent Public Expenditure by Policy Area Group 2000-01 to 2005-06

•	Whil				Keyisəd Estir de	e + to to te
Policy Area Greens	200 (4)	260 - (2)	2002 3	2003 - 4	2 01 46	2 + 5 105
			٠٠,	4.		
1'ducation	** ;	``n	25.5	<b>.</b>	\. •	\1 g
Social Welfaire	138	† X	14.5	163	144	16.1
Health	٠,	÷ :	15.3	15	:	7.8
Security	1211	; ;	1.5	1 .	11.2	(100
Housing	K (s.	4.8	8.4	k 1	· .	۲:
Infrastructure	8.1	\$ 1	× ;	N 7	٢ (	4.3
Economic	<b>5</b> 2	,	8 11	<b>*</b> 1	<b>V</b> 1	V fi
I usiconment and I ood	‡ ti	<i>t</i> 13	<b>:</b> 10	١.	, -	; .
Community and External Affairs	3.4	1 ;	şĸ	3.3	; ;	1:
<b>Ѕ</b> пррог (	. 2	1.	129	13.5	t: I	3.0
	' p - n	(100 tt	((31))	[+4]	: • *	( ) <b>=</b> + ()
	<b>X</b> :	N:	N/I	N I.	×1	N ti
Loral Resorrent Public Expenditure	P48 619	210-125	211.728	2314-2	2014-141	212.89

## Total Public Expenditure by Policy Area Group 2000-01 to 2005-06

	Noted				Revisal Estinate	) with saids
Percy Ac Chers	2.0 (0)	\$ 00° 05	202.5	2 (4) 5 - 4	2004-03	2: 05 ms
	,	٠,	۲.,	<i>,</i> ,	•	
Education	W.2	fo :	<u>.</u>	ŭt∗•	2.0	_1 :
Social Welfare	11 5	11.2	13.3		12.4	114
Health	::	13.5	123	(7 fs	12.2	:
Securits	1+ (+	Ju S	ţ		ţ(+++)	., 🔻
Infrastructure	У 15	93	: .	W.5	[1.76	. '
Housing	: Esy	11.5	÷ 1	WS	7.	
Есонопис	t -		٠,	4.4	4 %	: .
Environment and Food	<b>;</b> `	.4	4.5	<b>4</b> ++	3-4	i
Community and External Affairs	; 1	,	<b>i</b> 1	7.1	٠ ١	; t
Support	1.0	[50	,	ЦV	155	; <
	) (C) (D)	14131	.11	piten	[1896]	ju :
	No	Sei	× +,	Str	• 1	No.
Total Public Expenditure	267 807	pares	263.520	271 1198	265-250	268 850 ;

#### SECTION VI - KEY TO CLASSIFICATION OF EXPENDITURE

## Index of Policy Area Groups

Policy Area Group	Description by Policy Area	Reference (Ninc)
Community and External	District and Community Relations	[9]
Affairs	Recreation, Culture, Amenities and Entertainment Licensing	18
Economic	Air and Sea Communications and Logistics Development	3
	Commerce and Industry	6
	Employment and Labour	8
	Linancial Services	I
	Information Technology and Broadcasting	17
	Manpower Development	.34
	Posts, Power, Competition Policy and Consumer Protection	4
	Public Safety	7
	Travel and Tourism	5
Education	Education	16
Environment and Food	Agriculture, Fisheries and Food Safety	2
The state of the s	Environmental Hygiene	32
	Environmental Protection and Conservation	23
	2.30 (Value and Arvection and Conservation	2.
Health	Health	15
Housing	Housing	.31
Infrastructure	Buildings, Lands and Planning	22
	Transport	21
	Water Supply	24
Security	Administration of Justice	12
	Anti-corruption	13
	Immigration Control	[()
	Internal Security	9
	Legal Administration	П
	Legal Aid	20
Social Welfare	Social Weltare	14
	Women's Interests	33
Support	Central Management of the Civil Service	26
	Complaints Against Maladministration	30
	Constitutional Affairs	28
	Intra-Governmental Services	27
	Revenue Collection and Emancial Control	25
	Support for Members of the Legislative Council	29

Vote: The Policy Area Reference corresponds with that used in the Index of Policy Areas in the Estimates of Expenditure.

Appendix C

#### GLOSSARY OF TERMS

Note: Terms shown in **bold italic** are defined elsewhere in the glossary.

Capital expenditure. This comprises all expenditure charged to the Capital Account of the General Revenue Account, the Capital Works Reserve Fund (including interest on government bonds and notes but excluding repayment of the bonds and notes). Disaster Relief Fund, Innovation and Technology Fund, Loan Fund and Lotteries Fund. Unlike capital spending, it excludes advances and equity investments made from the Capital Investment Fund and repayment of government bonds and notes charged to the Capital Works Reserve Fund. Major items are highlighted below —

General Revenue Account

equipment, works and capital subventions of a minor nature

Capital Works Reserve Fund

acquisition of land Public Works Programme expenditure capital subventions major systems and equipment computerization interest on government bonds and notes

Disaster Relief Fund

relief to disasters that occur outside Hong Kong

Innovation and Technology Fund

projects promoting innovation and technology upgrading in manufacturing and service industries

Loan Fund

loans to schools, teachers, students, and housing loans to civil servants, etc. loans made under various finance schemes supported by the Government

Lotteries Fund

grants, loans and advances for social welfare services

Capital financing surplus/deficit. The difference between capital revenue and capital spending.

Capital revenue. This comprises certain revenue items in the General Revenue Account and all receipts credited to the Funds (except Land Fund), as highlighted below

General Revenue Account

disposal proceeds of government quarters and other assets estate duty taxi concessions recovery from Housing Authority donations repayment of loans and advances

Capital Investment Fund

repayments received dividends interest on loans interest on balances proceeds from sale of investments

Appendix C-Contd.

Capital Works Reserve Fund

land premia investment income donations for projects recovery from MTR Corporation Limited and Trading Funds net proceeds from issuance of government bonds and notes

Civil Service Pension Reserve Fund

investment income

Disaster Relief Fund

investment income

Innovation and Technology Fund

loan repayments received investment income

Loan Fund

loan repayments received interest on loans interest on balances proceeds from sale of loans

Lotteries Fund

loan repayments received share of proceeds from the Mark Six Lottery investment income

**Capital spending.** The aggregate of *eapital expenditure*, advances and equity investments from the Capital Investment Fund, and repayment of government bonds and notes charged to the Capital Works Reserve Fund.

Consolidated surplus/deficit. The difference between government revenue and government spending.

**Fiscal reserves.** The accumulated balances of the General Revenue Account and the Funds, including the net proceeds from issuance of bonds and notes and after deducting their repayment charged to Government's accounts.

Government expenditure. The aggregate of *operating expenditure* and *capital expenditure*. Unlike *government spending*, it excludes advances and equity investments from the Capital Investment Fund, and repayment of government bonds and notes charged to Government's accounts. Also, unlike *public expenditure*, it excludes expenditure by the Housing Authority and the Trading Funds.

Government revenue. The aggregate of operating revenue and capital revenue.

**Government spending.** The aggregate of *government expenditure*, advances and equity investments from the Capital Investment Fund, and repayment of government bonds and notes charged to the Capital Works Reserve Fund.

Operating expenditure. All expenditure charged to the Operating Account of the General Revenue Account.

Appendix C-Contd.

**Operating revenue.** This comprises all revenue credited to the General Revenue Λccount (except those items which are treated as *capital revenue*) and the Land Fund, as highlighted below—

General Revenue Account

duties fines, forfeitures and penalties investment income rents and rates royalties and concessions taxes utilities, fees and charges

Land Fund

investment income

Operating surplus/deficit. The difference between operating revenue and operating expenditure.

**Public expenditure.** Government expenditure plus expenditure (operating and capital) by the Housing Authority and the Trading Funds.

**Transfer to Funds.** It is not counted as expenditure or spending under the General Revenue Account. In fact, all transfers between the General Revenue Account and the Funds are merely internal transfers within the Government's accounts and do not form part of the revenue, expenditure or spending.

## Appendix 1

## REQUEST FOR POST-MEETING AMENDMENTS

The Secretary for Financial Services and the Treasury requested the following post-meeting amendment

## Line 4, fourth paragraph, page 67 of the Confirmed version

To amend "....., the aggregate total under all heads is \$56,857,706,000 ....." as "....., the aggregate total under all heads is \$56,857,786,000 ....." (Translation)

(Please refer to line 6, third paragraph, page 5476 of this Translated version)

Appendix 2

## REQUEST FOR POST-MEETING AMENDMENTS

The Secretary for Constitutional Affairs requested the following post-meeting amendment

Line 1, fifth paragraph, page 160 of the Confirmed version

To amend ".....Article 52 para 2 of the Basic Law....." as ".....Article 53 para 2 of the Basic Law....." (Translation)

(Please refer to line 1, second paragraph, page 5622 of this Translated version)